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8 **UNITED STATES DISTRICT COURT**
9 **WESTERN DISTRICT OF WASHINGTON**
10 **AT SEATTLE**

11 FEDERAL TRADE COMMISSION,

12 Plaintiff,

13 v.

14 CANADA PREPAID LEGAL SERVICES, INC.,
15 D.B.A. BSI PREMIUM BONDS;
16 DAVID JOHN EDWIN HYDE and JOSEPH
17 SHAWN PROULX, individually and as directors of
18 Canada Prepaid Legal Services, Inc.;;
19 E.R.S. HOLDINGS LTD.;;
20 NEIL JOHN SCHULER, individually and as
21 Director of E.R.S. Holdings Ltd.;;
22 ITH ENTERPRISES LTD.;;
23 KAILEY LEWIS BABUIN, individually and as
24 Director of ITH Enterprises Ltd.;;
25 NAGG HOLDINGS LTD.;;
26 WAYNE WEIS, individually and as Director of
27 NAGG Holdings Ltd.;;
28 TIMOTHY RYAN BABUIN;
557631 B.C. LTD., D.B.A. GUARANTEED
CAPITAL HOLDINGS;
FERNANDO VILLAGRAN, individually and as
president of 557631 B.C. Ltd.;;
CALGARY CONCRETE AND HOME
IMPROVEMENT CORP., D.B.A. UNION GLOBAL
TRADING;
MARTIN ROY LAMB, individually and as Director
of Calgary Concrete and Home Improvement Corp.,

Defendants.

Civil No.

**COMPLAINT FOR
INJUNCTIVE AND OTHER
EQUITABLE RELIEF**

Plaintiff Federal Trade Commission ("FTC" or "Commission") brings this action under Sections 5(a), 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C.

1 §§ 45(a), 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act
2 (“Telemarketing Act”), 15 U.S.C. § 6101 *et seq.*, to obtain temporary, preliminary and
3 permanent injunctive relief, rescission of contracts, restitution, disgorgement, and other
4 equitable relief for defendants' deceptive acts or practices in violation of Section 5(a) of the FTC
5 Act, 15 U.S.C. § 45(a), and the FTC's Trade Regulation Rule entitled "Telemarketing Sales
6 Rule" ("TSR"), 16 C.F.R. Part 310.

7 **JURISDICTION AND VENUE**

8 1. Subject matter jurisdiction is conferred upon this Court by 15 U.S.C. §§ 45(a),
9 53(b), 57b, 6102(c), and 6105(b) and 28 U.S.C. §§ 1331, 1337(a), and 1345.

10 2. Venue in the Western District of Washington is proper under 15 U.S.C. §§ 53(b)
11 and 6103(a) and 28 U.S.C. § 1391(b), (c) and (d).

12 **PARTIES**

13 3. Plaintiff, Federal Trade Commission, is an independent agency of the United
14 States Government created by statute. 15 U.S.C. § 41 *et seq.* The Commission enforces Section
15 5(a) of the FTC Act, 15 U.S.C. § 45 (a), which prohibits unfair or deceptive acts or practices in
16 or affecting commerce. The Commission also enforces the TSR, 16 C.F.R. Part 310, which
17 prohibits deceptive or abusive telemarketing acts or practices. The Commission may initiate
18 federal district court proceedings to enjoin violations of the FTC Act and the TSR and to secure
19 such equitable relief as is appropriate in each case, including restitution for injured consumers.
20 15 U.S.C. §§ 53(b), 57b, and 6105(b).

21 4. Defendant Canada Prepaid Legal Services, Inc., d.b.a. BSI Premium Bonds,
22 ("BSI") is incorporated in British Columbia, Canada. Its office and principal place of business
23 have been at 201 - 96 East Broadway, Vancouver, British Columbia, Canada. Its registered
24 office is at 315 - 615 S.E. Marine Drive, Vancouver, British Columbia, Canada. BSI has used a
25 mailing address at #125 - 5934 Fraser Street, Vancouver, British Columbia, Canada. BSI has
26 transacted business throughout the United States.

27 5. Defendant E.R.S. Holdings Ltd. ("ERS"), is incorporated in British Columbia,
28 Canada. Its office and principal place of business have been at 207 West 6th Avenue, Vancouver,

1 B.C. Its registered office is located at 379 - 916 N. Broadway, Vancouver, B.C. ERS has also
2 maintained a mailing address at Box 34069, Dept. 577, Seattle, WA. ERS has transacted
3 business in the state of Washington and throughout the United States.

4 6. Defendant ITH Enterprises Ltd. ("ITH"), is incorporated in British Columbia,
5 Canada. Its office and principal place of business have been at 207 West 6th Avenue, Vancouver,
6 B.C. Its registered office is located at 667 - 1755 Robson Street, Vancouver, B.C. ITH has
7 transacted business throughout the United States.

8 7. Defendant NAGG Holdings Ltd., a.k.a. North American Gaming & Gambling
9 Holdings Ltd. ("NAGG"), is incorporated in British Columbia, Canada. Its office and principal
10 place of business have been at 207 West 6th Avenue, Vancouver, B.C. Its registered office is
11 located at 102 - 468 Seymour Street, Vancouver, B.C. NAGG has maintained mailing addresses
12 at 379 - 916 W. Broadway, Vancouver, B.C., Box 34069, Dept. 577, Seattle, WA, and
13 577 101-1001 W. Broadway, Vancouver, B.C., and a business office at 808 Nelson Street, 17th
14 Floor, Vancouver, B.C. NAGG has transacted business in the State of Washington and
15 throughout the United States.

16 8. Defendant 557631 B.C. Ltd., d.b.a. Guaranteed Capital Holdings (GCH), is
17 incorporated in British Columbia, Canada. Its office and principal place of business have been
18 at 253 - 1917 West 4th Avenue, Vancouver, B.C. Its registered office is at 6200 McKay Avenue,
19 #141-955, Burnaby, B.C. It has maintained a mailing address at 351 - 3495 Cambie Street,
20 Vancouver, B.C. GCH has transacted business throughout the United States.

21 9. Defendant Calgary Concrete and Home Improvement Corp., d.b.a. Union Global
22 Trading ("UGT"), is incorporated in Alberta, Canada. Its office and principal place of business
23 have been at 269 - 1039 17th Avenue, Calgary, Alberta, Canada. Its registered office is at #206,
24 2723 - 37 Avenue NE, Calgary, Alberta, Canada. UGT also has a mailing address at #731 101 -
25 1001 W. Broadway, Vancouver, B.C. UGT has transacted business throughout the United
26 States.

27 10. Defendant David John Edwin Hyde ("Hyde") is a Director of Canada Prepaid
28 Legal Services, Inc., d.b.a. BSI. At all times relevant to this Complaint, acting alone or in

1 concert with others, he has participated directly in, or has had authority to control, the acts and
2 practices of BSI, including the acts and practices set forth in this Complaint. Hyde has
3 transacted business throughout the United States.

4 11. Defendant Joseph Shawn Proulx ("Proulx") is a Director of Canada Prepaid Legal
5 Services, d.b.a. BSI. At all times relevant to this Complaint, acting alone or in concert with
6 others, he has participated directly in, or has had authority to control, the acts and practices of
7 BSI, including the acts and practices set forth in this Complaint. Proulx has transacted business
8 throughout the United States.

9 12. Defendant Neil John Schuler, a.k.a. John Norman Schuler ("Schuler"), is Director
10 of ERS. At all times relevant to this Complaint, acting alone or in concert with others, he has
11 participated directly in, or has had authority to control, the acts and practices of ERS, including
12 the acts and practices set forth in this Complaint. Schuler has transacted business in the State of
13 Washington and throughout the United States.

14 13. Defendant Kailey Lewis Babuin ("K. Babuin") is Director of ITH. At all times
15 relevant to this Complaint, acting alone or in concert with others, he has participated directly in,
16 or has had authority to control, the acts and practices of ITH, including the acts and practices set
17 forth in this Complaint. K. Babuin has transacted business throughout the United States.

18 14. Defendant Wayne Weis ("Weis") is Director of NAGG and also does business as
19 Lifetime Trust Corporation ("LTC"). At all times relevant to this Complaint, acting alone or in
20 concert with others, he has participated directly in, or has had authority to control, the acts and
21 practices of NAGG and LTC, including the acts and practices set forth in this Complaint. Weis
22 has transacted business in the State of Washington and throughout the United States.

23 15. Defendant Timothy Ryan Babuin ("T.Babuin"), at all times relevant to this
24 Complaint, acting along or in concert with others, has participated directly in, or has had
25 authority to control, the acts and practices of ITH and NAGG. T.Babuin has transacted business
26 in the State of Washington and throughout the United States.

27 16. Defendant Fernando Villagran ("Villagran") is president and sole owner of
28 557631 B.C. Ltd., d.b.a. GCH. He also does business as Overseas Registry Service ("ORS"),

1 International Bond Headquarters (“IBH”), and Advanced Treasury Systems (“ATS”). At all
2 times relevant to this Complaint, acting alone or in concert with others, he has participated
3 directly in, or has had authority to control, the acts and practices of GCH, ORS, IBH, and ATS,
4 including the acts and practices set forth in this Complaint. Villagran has transacted business
5 throughout the United States.

6 17. Defendant Martin Roy Lamb ("Lamb") is Director of UGT. At all times relevant
7 to this Complaint, acting alone or in concert with others, he has participated directly, or has had
8 authority to control, the acts and practices of UGT, including the acts and practices set forth in
9 this Complaint. Lamb has transacted business throughout the United States.

10 COMMERCE

11 18. At all times relevant to this complaint, defendants' course of business, including
12 the acts and practices alleged herein, has been and is in or affecting commerce, as "commerce" is
13 defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

14 DEFENDANTS' BUSINESS PRACTICES

15 19. Defendants ITH, NAGG, ERS, GCH, T.Babuín, K.Babuín, Weis, Schuler, and
16 Villagran (hereinafter “Babuín Defendants”), BSI, Hyde, and Proulx induce United States
17 residents, many of whom are elderly, to purchase or pay fees associated with purported United
18 Kingdom Premium Savings Bonds. During telephone solicitations, the Babuín Defendants, BSI,
19 Hyde, and Proulx have made varied representations to consumers to induce their purchase of the
20 purported bonds or to induce their payment of various fees. For example, the Babuín
21 Defendants, BSI, Hyde, and Proulx represent that by purchasing the purported bonds, consumers
22 will receive substantial monthly payments. They have also told consumers that by purchasing
23 the bonds, consumers would be entered into monthly drawings to win substantial cash prizes.
24 The Babuín Defendants, BSI, Hyde, and Proulx have advised some consumers that they must
25 pay taxes or processing fees in order to receive the bonds or prizes that they have won. These
26 telephone representations have been made by some or all of the Babuín Defendants, BSI, Hyde,
27 and Proulx since at least early 1999.

1 20. Relying on the statements and representations of the Babuin Defendants, BSI,
2 Hyde, and Proulx, consumers have paid the these defendants thousands of dollars with the
3 expectation of receiving cash prizes, monthly cash payments or bond investments with the
4 chance to participate in monthly drawings for cash prizes. In fact, consumers who pay the
5 Babuin Defendants, BSI, Hyde, and Proulx receive nothing of value. National Savings, the
6 second largest savings institution in the U.K., is the only organization authorized to sell
7 Premium Savings Bonds. Genuine Premium Savings Bonds, offered by National Savings, are
8 government securities issued by the British Treasury. National Savings has never authorized any
9 third party to sell its bonds to U.S. consumers. Premium Savings Bonds can only be issued to
10 individuals, not businesses, and the bonds are not transferable. The interest earned on the
11 genuine bonds is pooled and then distributed to randomly-selected bond holders through
12 monthly prize drawings. Because these bonds have a lottery feature, they cannot legally be sold
13 in the United States, pursuant to 18 U.S.C. §§ 1301 and 1302. The Babuin Defendants, BSI,
14 Hyde, and Proulx implicitly tell consumers that it is legal for the them to sell and for consumers
15 to purchase the bonds. The Babuin Defendants, BSI, Hyde, and Proulx have not advised
16 consumers that the sale and trafficking in foreign lottery materials is a crime in the U.S.

17 21. Defendants ERS, ITH, GCH, NAGG, UGT, Schuler, K.Babuin, T.Babuin,
18 Villagran, Weis, and Lamb have charged consumers' credit cards without the consumers'
19 authorization or have charged consumers more than the amount the consumers authorized. In
20 other cases, they have told consumers that they would not be charged until they received one or
21 more of their purported monthly cash awards. After obtaining consumers' credit card account
22 numbers, these defendants charged consumers the entire amount immediately. Defendants UGT
23 and Lamb charged consumers' credit card accounts without any prior telephone contact with the
24 consumers. In some instances, these consumers subsequently received promotional materials in
25 the mail from defendant UGT

26 22. In late 1999, defendants Hyde, T.Babuin, and Lamb, who appear to be central
27 figures in this operation, established credit card processing arrangements with an offshore credit
28 card processing service. Hyde was the first to establish a merchant account with the credit card

1 processing company, followed by T.Babuin, using Hyde as a reference, and then days later by
2 Lamb. They falsely implied to the credit card processor that they were Internet merchants
3 authorized to sell British Premium Savings bonds via their web sites. Hyde and T.Babuin
4 assisted and facilitated third party telemarketers by using their deceptively obtained credit card
5 merchant accounts to process credit card transactions on behalf of defendant and non-defendant
6 third-party telemarketers and sellers.

7 23. At Hyde's direction, proceeds from the BSI operation were wired from the credit
8 card processor to accounts in Britain and Canada controlled by Hyde and Proulx, respectively.
9 At defendant T.Babuin's direction, proceeds from the ITH operation were wired from the credit
10 card processor to a Bank of Nevis account titled Blue Gold Corporation, of which T.Babuin has
11 reportedly claimed to be a director. At defendant Lamb's direction, proceeds from the UGT
12 operation were wired from the credit card processor to a Bank of Nevis account titled Maverick
13 Financial Ltd.

14 24. Defendants are associated or connected in various ways. The merchant accounts
15 for defendants BSI, ITH, and UGT show charges to the same consumers' credit card accounts
16 within days or weeks of each other, suggesting that the consumer names or account numbers
17 were shared by the three entities. The Babuin Defendants have shared various offices, phone
18 rooms, mail drop boxes, contact names, and/or telephone numbers at various times, and the
19 materials they send to consumers are similar or virtually identical to the materials sent to
20 consumers by defendant BSI.

21 **VIOLATIONS OF SECTION 5 OF THE FTC ACT**

22 25. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts
23 or practices in or affecting commerce.

24 26. Misrepresentations or omissions of material fact constitute deceptive acts or
25 practices prohibited by Section 5(a) of the FTC Act.

26 27. An act or practice is unfair and violates Section 5 if it is one that causes or is
27 likely to cause substantial injury to consumers which is not reasonably avoidable by consumers
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1 themselves and not outweighed by countervailing benefits to consumers or to competition. 15
2 U.S.C. Sec. 45(n).

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5 **COUNT ONE**

6 28. In numerous instances, in connection with telemarketing purported bonds to U.S.
7 consumers, the Babuin Defendants, BSI, Hyde, and Proulx have represented, expressly or by
8 implication, that consumers who purchase from, or pay fees to, the Babuin Defendants, BSI,
9 Hyde, and Proulx will receive substantial cash payments or will be entered into monthly
10 drawings to win substantial cash prizes;

11 29. In truth and in fact, consumers who purchased from, or paid fees to, the Babuin
12 Defendants, BSI, Hyde, and Proulx did not receive substantial cash payments and were not
13 entered in drawings to win substantial cash prizes.

14 30. Therefore, the representations set forth in Paragraph 28 are false and misleading
15 and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C.
16 § 45(a).

17 **COUNT TWO**

18 31. In numerous instances, in connection with telemarketing purported bonds to U.S.
19 consumers, or in the course of billing, attempting to collect, and collecting money from U.S.
20 consumers, defendants ERS, ITH, NAGG, GCH, UGT, Schuler, T.Babuin, K.Babuin, Villagran,
21 Weis, and Lamb have represented expressly or by implication:

22 a. that they will not charge the consumers' credit card accounts without the
23 consumers' authorization or will not charge in excess of the amount authorized
24 by consumers; or

25 b. that consumers agreed to purchase goods or services from them and that
26 therefore consumers owed them money.

27 32. In truth and in fact, in numerous instances,
28

1 a. defendants ERS, ITH, NAGG, GCH, UGT, Schuler, T.Babuin, K.Babuin,
2 Villagran, Weis, and Lamb did charge consumers' credit card accounts without
3 the consumers' authorization or did charge in excess of the amount authorized by
4 consumers; and

5 b. consumers did not agree to purchase goods or services from them and
6 therefore do not owe money to defendants.

7 33. Therefore, the representations set forth in Paragraph 31 are false and misleading
8 and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C.
9 § 45(a).

10 **COUNT THREE**

11 34. In numerous instances, defendants UGT and Lamb charged the credit card
12 accounts of consumers.

13 35. Consumers have not contacted, been contacted by, purchased from, agreed to
14 purchase from, or agreed to be billed by defendants UGT and Lamb. Consumers have never
15 heard of UGT prior to receiving their account statements. Therefore, consumers cannot
16 reasonably avoid defendant UGT's billing for services or products which consumers did not
17 purchase.

18 36. Defendants UGT's and Martin Lamb's practice of charging consumers' credit
19 card accounts without authorization causes substantial injury to consumers that is not
20 outweighed by countervailing benefits to consumers or competition.

21 37. Therefore, defendants' practice, as outlined above, is unfair and violates Section
22 5(a) of the FTC Act, 15 U.S.C. § 45(a).

23 **COUNT FOUR**

24 38. In numerous instances, in connection with telemarketing purported foreign bonds
25 with lottery features to U.S. consumers, the Babuin Defendants, BSI, Hyde, and Proulx have
26 represented, expressly or by implication, that it is legal for the Babuin Defendants, BSI, Hyde,
27 and Proulx to sell such bonds to consumers in the United States and for consumers in the United
28 States to purchase such bonds.

1 39. In truth and in fact, the Babuin Defendants, BSI, Hyde, and Proulx have failed to
2 disclose to consumers that the sale and trafficking in foreign lotteries is a violation of federal
3 criminal law.

4 40. In light of the representations made in Paragraph 38, above, the Babuin
5 Defendants', BSI's, Hyde's, and Proulx's failure to disclose this material fact is deceptive, and
6 violates Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

7 **VIOLATIONS OF THE TELEMARKETING SALES RULE**

8 In the Telemarketing Act, 15 U.S.C. § 6101, *et seq.*, Congress directed the FTC to
9 prescribe rules prohibiting deceptive telemarketing acts or practices. On August 16, 1995, the
10 Commission promulgated the TSR, 16 C.F.R. Part 310. The TSR became effective December
11 31, 1995.

12 41. The Babuin Defendants, BSI, Hyde, and Proulx are "telemarketers" or "sellers"
13 engaged in "telemarketing" as those terms are defined in the TSR, 16 C.F.R. § 310.2(r), (t) and
14 (u).

15 42. The TSR requires sellers and telemarketers to disclose all material restrictions,
16 limitations, or conditions to purchase, receive, or use the goods or services that are the subject of
17 the sales offer. 16 C.F.R. § 310.3(a)(1)(ii).

18 43. The TSR prohibits sellers and telemarketers from "making a false or misleading
19 statement to induce any person to pay for goods or services." 16 C.F.R. § 310.3(a)(4).

20 44. It is a violation of the Rule for any person to provide substantial assistance or
21 support to any seller or telemarketer when that person knows or consciously avoids knowing that
22 the seller or telemarketer is engaged in any practice that violates § 310.3(a) of the Rule. 16
23 C.F.R. § 310.3(b).

24 45. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102 (c), and
25 Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), violations of the TSR constitute
26 deceptive acts or practices in or affecting commerce, in violation of Section 5(a) of the FTC Act,
27 15 U.S.C. § 45(a).

28 **COUNT FIVE**

1 57. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 6(b) of the
2 Telemarketing Act, 15 U.S.C. § 6105(b), authorize this Court to grant such relief as the Court
3 finds necessary to redress injury to consumers or other persons resulting from defendants'
4 violations of the TSR, including rescission and reformation of contracts and refund of monies.

5 58. This Court, in the exercise of its equitable jurisdiction, may award other ancillary
6 relief to remedy injury caused by the defendants' law violations.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, plaintiff the Federal Trade Commission, pursuant to Sections 13(b) and
9 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, Section 6(b) of the Telemarketing Act, 15
10 U.S.C. § 6105(b), and the Court's own equitable powers, requests that the Court:

- 11 a. Award plaintiff such preliminary injunctive and ancillary relief, including
12 a temporary restraining order, as may be necessary to avert the likelihood of
13 consumer injury during the pendency of this action and to preserve the possibility
14 of effective final relief;
- 15 b. Permanently enjoin the defendants from violating the FTC Act and the
16 TSR, as alleged herein;
- 17 c. Award such relief as the Court finds necessary to redress injury to
18 consumers resulting from the defendants' violations of the TSR and the FTC Act,
19 including but not limited to, rescission of contracts, the refund of monies paid,
20 and the disgorgement of ill-gotten monies; and
- 21 d. Award plaintiff the costs of bringing this action and reasonable attorneys'
22 fees, as well as such other and additional relief as the Court may determine to be
23 just and proper.

24
25 Dated: _____, 2000

26 Respectfully Submitted,

27 DEBRA A. VALENTINE
28 General Counsel

CHARLES A. HARWOOD

Regional Director

Mary T. Benfield, WSBA #18835
Eleanor Durham
Attorneys for Plaintiff
Federal Trade Commission

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