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 UNITED STATES OF AMERICA

11 UNITED STATES DISTRICT COURT
 12 CENTRAL DISTRICT OF CALIFORNIA
 13 SOUTHERN DIVISION

14 UNITED STATES OF AMERICA,

15 Plaintiff,

16 v.

17 CREDIT FOUNDATION OF AMERICA, a
 California corporation;
 18 TTT MARKETING SERVICES, INC., a
 California corporation;
 19 CREDIT DEFENDERS OF AMERICA, INC.,
 a California corporation;
 20 CREDIT SHELTER OF AMERICA, INC., a
 California corporation;
 21 SURE GUARD CREDIT CORPORATION,
 INC., a California corporation;
 22 ANTHONY P. CARA, individually and as a
 director or officer of Credit Foundation of
 23 America and TTT Marketing Services, Inc.;

Case No. CV06-3654 ABC(VBKx)

COMPLAINT FOR
 CIVIL PENALTIES,
 PERMANENT INJUNCTION,
 AND OTHER RELIEF

1 WALTER F. VILLAUME, individually and as
2 a director or officer of TTT Marketing
3 Services, Inc., and Sure Guard Credit
Corporation, Inc.;

4 TODD A. RODRIGUEZ, individually and as a
5 director or officer of TTT Marketing Services,
Inc., and Sure Guard Credit Corporation, Inc.;

6 ROBERT BROWN, individually and as a
7 director or officer of Credit Defenders of
America, Inc.; and

8 BRYAN TAYLOR, individually and as a
9 director or officer of Credit Shelter of
America, Inc.,

10 Defendants.

11
12 Plaintiff, the United States of America, acting upon notification and
13 authorization to the Attorney General by the Federal Trade Commission (“FTC” or
14 “Commission”), pursuant to Section 16(a)(1) of the Federal Trade Commission
15 Act (“FTC Act”), 15 U.S.C. § 56(a)(1), for its complaint alleges:

16 1. Plaintiff brings this action under Sections 5(a), 5(m)(1)(A), 13(b), 16(a), and
17 19 of the Federal Trade Commission Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b),
18 56(a) and 57b; and Section 6 of the Telemarketing and Consumer Fraud and
19 Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. § 6101, to obtain
20 monetary civil penalties, consumer redress, a permanent injunction, and other
21 equitable relief for defendants’ violations of Section 5(a) of the FTC Act, 15
22 U.S.C. § 45 (a), and the FTC’s Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part
23 310, as amended by 68 Fed. Reg. 4580, 4669 (January 29, 2003).

1 **JURISDICTION AND VENUE**

2 2. This Court has subject matter jurisdiction over this action pursuant to 28
3 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and 15 U.S.C. §§ 45(m)(1)(A), 53(b),
4 56(a), and 57b. This action arises under 15 U.S.C. § 45(a).

5 3. Venue is proper in this District under 28 U.S.C. §§ 1391(b)-(c) and 1395(a),
6 and 15 U.S.C. § 53(b).

7
8 **DEFENDANTS**

9 4. Defendant Credit Foundation of America, Inc. (“CFA”), is a California
10 nonstock corporation with its principal place of business at 9501 Jeronimo Road,
11 Suite 120, Irvine, CA 92618. CFA sells debt management services. It generates
12 clients by leaving unsolicited prerecorded voice message advertisements on
13 consumers’ home answering machines. Its articles of incorporation, filed in
14 August 2002, represent that it is organized as a nonprofit corporation. In June
15 2003, CFA obtained 501(c)(3) status from the IRS based on representations that it
16 would operate exclusively as a charitable and educational organization.
17 Notwithstanding its status with the IRS, it has operated for the benefit of for-profit
18 companies and/or private persons and is therefore a “corporation” within the
19 meaning of Sections 4 and 5(a) of the FTC Act, 15 U.S.C. §§ 44 and 45(a). CFA
20 transacts or has transacted business in this District.

21 5. Defendant TTT Marketing Services, Inc. (“TTT Marketing”), is a California
22 for-profit corporation that, until recently, shared its principal place of business
23 with defendant CFA, at 9501 Jeronimo Road, Suite 120, Irvine, California 92618.
24 TTT Marketing has operated a call center whose purpose is to answer calls from
25 consumers responding to CFA’s unsolicited prerecorded voice message
26 advertisements and to sell these consumers CFA’s debt management services.
27 TTT Marketing transacts or has transacted business in this District.

1 6. Defendant Credit Defenders of America, Inc. (“Credit Defenders”), is a
2 California for-profit corporation with its principal place of business at 2 South
3 Pointe, Suite 240, Lake Forest, California 92630. Credit Defenders has operated a
4 call center whose purpose is to answer calls from consumers responding to CFA’s
5 voice message advertisements and to sell these consumers CFA’s debt
6 management services. Credit Defenders transacts or has transacted business in
7 this District.

8 7. Defendant Credit Shelter of America, Inc. (“Credit Shelter”), is a California
9 for-profit corporation. Until April 2004, when it closed, Credit Shelter’s principal
10 place of business was in the same building as defendants CFA and TTT Marketing
11 at 9501 Jeronimo Road, Suite 110, Irvine, California 92618. Credit Shelter
12 operated a call center whose purpose was to answer calls from consumers
13 responding to CFA’s voice message advertisements and to sell these consumers
14 CFA’s debt management services. Credit Shelter transacts or has transacted
15 business in this District.

16 8. Defendant Sure Guard Credit Corporation, Inc. (“Sure Guard”), is a
17 California for-profit corporation that shared office space with defendants CFA and
18 TTT Marketing at their previous location, 25A Technology Drive, Suite 250,
19 Irvine, California 92618. From about May through September 2003, Sure Guard
20 operated a call center whose purpose was to answer calls from consumers
21 responding to CFA’s voice message advertisements and to sell these consumers
22 CFA’s debt management services. Sure Guard used TTT Marketing employees
23 and telephone lines to conduct its business. Sure Guard transacts or has transacted
24 business in this District.

25 9. Defendant Anthony P. Cara is or has been an owner, officer or director of
26 CFA and TTT Marketing. In connection with the matters alleged herein, he
27 resides or has transacted business in this District. At all times material to this
28 complaint, acting alone or in concert with others, he has formulated, directed,

1 controlled or participated in the acts and practices of CFA and TTT Marketing,
2 including the acts and practices set forth in this complaint.

3 10. Defendant Walter F. Villaume is or has been an owner, officer or director of
4 TTT Marketing and Sure Guard. He was a signer on CFA bank accounts, and has
5 acted in a management or supervisory capacity at CFA. Villaume receives
6 compensation for his work at TTT Marketing and CFA indirectly through other
7 corporate affiliates. In connection with the matters alleged herein, he resides or
8 has transacted business in this District. At all times material to this complaint,
9 acting alone or in concert with others, he has formulated, directed, controlled or
10 participated in the acts and practices of CFA, TTT Marketing, and Sure Guard,
11 including the acts and practices set forth in this complaint.

12 11. Defendant Todd A. Rodriguez is or has been an owner, officer or director of
13 TTT Marketing and Sure Guard. He has also acted in a management or
14 supervisory capacity at CFA. Rodriguez receives compensation for his work at
15 TTT Marketing and CFA indirectly through other corporate affiliates. In
16 connection with the matters alleged herein, he resides or has transacted business in
17 this District. At all times material to this complaint, acting alone or in concert
18 with others, he has formulated, directed, controlled or participated in the acts and
19 practices of CFA, TTT Marketing, and Sure Guard, including the acts and
20 practices set forth in this complaint.

21 12. Defendant Robert Brown is or has been an owner, officer or director of
22 Credit Defenders. In connection with the matters alleged herein, he resides or has
23 transacted business in this District. At all times material to this complaint, acting
24 alone or in concert with others, he has formulated, directed, controlled or
25 participated in the acts and practices of Credit Defenders, including the acts and
26 practices set forth in this complaint.

27 13. Defendant Bryan Taylor is or has been an owner, officer or director of
28 Credit Shelter. In connection with the matters alleged herein, he resides or has

1 transacted business in this District. At all times material to this complaint, acting
2 alone or in concert with others, he has formulated, directed, controlled or
3 participated in the acts and practices of Credit Shelter, including the acts and
4 practices set forth in this complaint.

5 6 **COMMON ENTERPRISE**

7 14. Defendants CFA, TTT Marketing, and Sure Guard and individual
8 defendants Cara, Villaume, and Rodriguez have operated as a common enterprise
9 while engaging in the deceptive acts and practices and other violations of law
10 alleged below. Because these defendants have operated as a common enterprise,
11 each of them is jointly and severally liable for the deceptive acts and practices, and
12 other violations of law alleged below. Collectively defendants CFA, TTT
13 Marketing, Sure Guard, Cara, Villaume, and Rodriguez will be referred to as the
14 “common enterprise defendants.”

15 16 **COMMERCE**

17 15. At all times relevant to this Complaint, defendants have maintained a
18 substantial course of business in connection with the advertising, marketing,
19 promoting, offering for sale, and sale of debt management services, in or affecting
20 commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

21 22 **THE TELEMARKETING SALES RULE** 23 **AND THE NATIONAL DO NOT CALL REGISTRY**

24 16. Congress directed the FTC to prescribe rules prohibiting abusive and
25 deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15
26 U.S.C. §§ 6101-6108 in 1994. On August 16, 1995, the FTC adopted the
27 Telemarketing Sales Rule (the “Original TSR”), 16 C.F.R. Part 310, which became
28 effective on December 31, 1995. On January 29, 2003, the FTC amended the TSR

1 by issuing a Statement of Basis and Purpose (“SBP”) and the final amended TSR
2 (the “Amended TSR”). 68 Fed. Reg. 4580, 4669.

3 17. Among other things, the Amended TSR established a “do-not-call” registry,
4 maintained by the Commission (the “National Do Not Call Registry” or
5 “Registry”), of consumers who do not wish to receive certain types of
6 telemarketing calls. Consumers can register their telephone numbers on the
7 Registry without charge either through a toll-free telephone call or over the
8 Internet at *donotcall.gov*.

9 18. Consumers who receive telemarketing calls to their registered numbers can
10 complain of Registry violations the same way they registered, through a toll-free
11 telephone call or over the Internet at *donotcall.gov*, or by otherwise contacting law
12 enforcement authorities.

13 19. On or after September 2, 2003, the FTC allowed sellers, telemarketers and
14 other permitted organizations to access the Registry over the Internet at
15 *telemarketing.donotcall.gov*, pay the required fee(s), and download the registered
16 numbers by area code.

17 20. Since October 17, 2003, sellers and telemarketers subject to the FTC’s
18 jurisdiction have been prohibited from calling numbers on the Registry. 16 C.F.R.
19 § 310.4(b)(1)(iii)(B).

20 21. Since December 31, 1995, sellers and telemarketers have been required to
21 honor company-specific or entity-specific do not call requests. They have been
22 prohibited from initiating an outbound telephone call to any person when that
23 person previously has stated that he or she does not wish to receive an outbound
24 telephone call made by or on behalf of the seller whose goods or services are
25 being offered. 16 C.F.R. § 310.4(b)(1)(iii)(A).

26 22. Since March 31, 2003, sellers and telemarketers have been prohibited from
27 engaging in conduct that denies or interferes in any way, directly or indirectly,
28

1 with a person's right to be placed on a list of persons making an entity-specific do
2 not call request. 16 C.F.R. § 310.4(b)(1)(ii).

3 23. Since October 17, 2003, sellers and telemarketers generally have been
4 prohibited from calling any telephone number within a given area code unless the
5 seller first has paid the annual fee for access to the telephone numbers within that
6 area code that are included in the National Do Not Call Registry. 16 C.F.R.
7 § 310.8(a) and (b).

8 24. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c), and
9 Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the TSR
10 constitutes an unfair or deceptive act or practice in or affecting commerce, in
11 violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

12 13 **DEFENDANTS' BUSINESS ACTIVITIES**

14 25. Since at least February 2003, defendants marketed and sold debt
15 management services nationwide. CFA and its for-profit marketers enrolled many
16 customers into debt management plans, for which CFA was remunerated both by
17 its customers and by creditors. Additionally, customers signing up for CFA's debt
18 management program paid the marketer a large up-front fee (described as a
19 refundable "security deposit"), equal to their first month's payment.

20 ***Defendants' Marketing Program***

21 26. Defendants solicited prospective clients primarily by leaving prerecorded
22 voice message advertisements on consumers' home answering machines.
23 Defendant CFA placed more than three million such outbound telemarketing calls
24 each week through automated dialing equipment. The unsolicited messages
25 advised consumers that they had been pre-approved to consolidate their credit
26 accounts to a much lower monthly payment and that their interest rates could be as
27 low as zero percent. The messages urged consumers to call a toll-free telephone
28 number to learn more about how the nonprofit agency can "definitely help you

1 before your next billing cycle.” The unsolicited messages are substantially
2 similar, other than different toll-free numbers that direct calls to CFA’s various
3 marketers. A typical message states:

4 *Hi, this is John calling from Credit Foundation of America. I'm*
5 *calling you in regards to the letter we sent you out which pre-*
6 *approved you to consolidate your credit cards to a much lower*
7 *monthly payment. Your interest rate is going to be as low as zero*
8 *percent provided through our nonprofit agency. This is not a new*
9 *loan and you've already been approved. I'm actually surprised you*
10 *haven't called me because I could definitely help you before your next*
11 *billing cycle. Have your statements handy, please, when you call me.*
12 *You can reach me at 1-800-315-0041. Thank you very much. I'll be*
13 *here until about 11:00 p.m. Have a wonderful day.*

14 27. Consumer calls to the toll-free numbers were answered by one of several
15 call centers, also known as “enrollment agents,” operated by defendants TTT
16 Marketing, Credit Defenders, Credit Shelter, and Sure Guard. CFA provided the
17 call centers with scripts and instructions on how to market the debt management
18 program. The main function of the call centers was to convince consumers to
19 enroll in CFA’s debt management program. The telemarketers, although called
20 “credit counselors” by the defendants, did not provide individual counseling about
21 consumers’ finances, nor did they teach consumers how to handle debt in the
22 future. There was little incentive for the telemarketers to provide such counseling
23 because they were paid a commission for each customer they enrolled – and could
24 lose their jobs if they failed to achieve a sales quota.

25 28. The telemarketers described the favorable results that could be achieved
26 through enrolling in CFA’s debt management program. Consumers were told that
27 they would save significant amounts of money by paying off their debts in a
28 shorter period of time at reduced interest rates. The telemarketers explained to

1 consumers that instead of making monthly payments to each of their creditors,
2 they could make one low monthly payment to CFA, which in turn would disburse
3 payments to consumers' creditors. The telemarketers promised that this monthly
4 payment would be lower than the combined monthly payments consumers were
5 currently paying creditors because they had pre-negotiated lower interest rates
6 with the major creditors, and these new interest rates would be changed from
7 compound interest to a fixed simple interest calculation.

8 29. The telemarketers made specific representations concerning the terms
9 consumers would receive if they enrolled in the program. Based on information
10 consumers provided about their credit card debts, the telemarketers identified a
11 specific, monthly payment amount that each consumer would pay as part of the
12 program, the number of monthly payments that each consumer would be required
13 to make in order to pay off the accounts included in the program, as well as a
14 specific interest rate to which each of the consumers' credit card accounts would
15 be reduced in the debt management program. Telemarketers' phone sales were not
16 adequately monitored by the marketing companies, and the telemarketers
17 sometimes inflated the numbers in the savings analysis to make the savings claims
18 more attractive to potential customers.

19 30. Fees associated with enrolling in the debt management program were also
20 explained. Consumers were told there was a \$39 monthly administrative fee
21 included in the quoted monthly payment to creditors. In addition, consumers
22 needed to pay a "security deposit" equal to the consumers' monthly payment to
23 creditors, typically \$299 or more. The telemarketers assured consumers this
24 deposit was fully refundable after consumers participated in the program for 36
25 months with on-time payments or otherwise completed their plans. Once
26 consumers agreed to enroll in the program, their bank accounts were debited the
27 "security deposit" by whichever marketer handled the call.

1 31. Consumers were then sent enrollment materials, which included, among
2 other things, the disclosure and authorization form in which consumers agreed to
3 retain CFA's services and permit CFA to contact consumers' creditors and debit
4 their bank accounts. At this point, many consumers discovered that they did not
5 receive the benefits promised by the telemarketers during their sales pitches. The
6 enrollment materials disclosed, often for the first time, that the quoted monthly
7 payment and interest rates were not guaranteed. Despite the representation that
8 consumers were pre-approved to participate in the described DMP, defendants
9 first needed to present a proposal to each creditor to determine whether that
10 particular credit account was eligible for the proposed DMP. This process could
11 take one to three months.

12 32. In numerous instances, creditors declined to accept the proposed DMPs for
13 certain consumers. Thus, those consumers did not obtain lowered interest rates or
14 other beneficial modifications to the terms of their credit account contracts
15 promised by the telemarketers, such as waived late fees or re-aging of accounts.
16 Additionally, in numerous instances, consumers continued to receive collection
17 calls and letters from their creditors despite their enrollment in the debt
18 management plan. Further, neither the telemarketers nor CFA provided the credit
19 counseling promised in the sales pitches.

20 ***Business Practices Relating to CFA's Claim to be a Nonprofit***

21 33. Defendant CFA is organized as a nonprofit corporation and has been
22 granted tax exempt status pursuant to Section 501(c)(3) of the Internal Revenue
23 Code. Despite its corporate form, however, CFA has operated to profit the
24 common enterprise defendants and other marketing companies. Indeed, much of
25 the money earned through the marketing and sale of CFA's debt management
26 program was paid to the enrollment agents and their owners. For example, the
27 enrollment agents kept the up-front fee paid by consumers prior to enrollment in
28 the DMP.

1 34. The marketers also received \$20 of each \$39 monthly administrative fee
2 paid by consumers to CFA. These residual payments continued so long as the
3 consumer was enrolled in CFA's debt management program. Consumers were
4 told that the administrative fee covers the costs of "telephone calls, postage,
5 photocopies, facsimile charges and account review and accounting services."

6 35. CFA's payment of these large sums to its marketers was not as a result of an
7 arms-length transaction or through the disinterested decision-making of its
8 directors. Rather, CFA officers and directors, including defendant Cara, CFA's
9 president, are TTT Marketing employees. Further, defendant Villaume, who has
10 acted as CFA's General Counsel, is an owner of TTT Marketing. CFA has also
11 shared office space, computer equipment, and phone systems with TTT Marketing.

12 36. CFA's primary operational purpose was to generate income for its for-profit
13 marketers. Other than the marketing and sale of its debt management services,
14 which it claimed benefitted the public, CFA performed little public service. CFA
15 itself engaged in substantial for-profit business activity through the sale of its
16 auto-dialing services. Pursuant to its contracts with its enrollment agents, CFA
17 drove sales leads to them by its computerized telephone dialing. CFA charged its
18 marketers for each outbound call. Revenue from this marketing service accounted
19 for 20% of CFA's income in 2003.

20 ***Do Not Call Requests and the FTC's Do Not Call Requirements***

21 37. The defendants are "sellers" or "telemarketers" engaged in "telemarketing,"
22 as defined by the Amended TSR, 16 C.F.R. § 310.2.

23 38. In the course of placing outbound calls to consumers, defendant CFA
24 intruded on the privacy of millions of people who did not wish to be called. Many
25 had placed their names on the National Do Not Call Registry. Others had futilely
26 requested to be placed on CFA's in-house do not call list. In some instances,
27 when consumers requested to be placed on CFA's do not call list, telemarketers
28 promised that the consumer would not be called again. On other occasions,

1 telemarketers refused to place consumers on CFA's list, saying that, because CFA
2 was a nonprofit and exempt from do not call requirements, it could call consumers
3 as often as it liked. Sometimes, telemarketers simply refused to address
4 consumers' do not call requests and hung up on them.

5 39. Even after requesting to be placed on CFA's do not call list, in numerous
6 instances consumers were called again by CFA.

7 40. Although CFA has claimed to be exempt from the FTC's Telemarketing
8 Sales Rule because of its tax-exempt status with the IRS, organizations like CFA
9 that primarily produce profit for for-profit companies or individuals are subject to
10 FTC jurisdiction and must comply with the TSR, regardless of the form of their
11 corporate organization.

12 41. One of the TSR provisions that CFA, like other entities operated for profit,
13 must comply with is the fee requirement. Pursuant to that provision, CFA was
14 required to pay a fee to the National Do Not Call Registry, 16 C.F.R. § 310.8.
15 Instead of paying the required fee, however, CFA claimed that it was a nonprofit
16 that was exempt from the fee provision. Based on CFA's claim to be a nonprofit
17 organization, the FTC allowed it to access the FTC's National Do Not Call
18 Registry without paying a fee, which it has done.

19 42. The common enterprise defendants knew that profits generated by CFA's
20 debt management services business were inuring to the benefit of individuals and
21 for-profit businesses and that CFA was performing almost no nonprofit program
22 services. Despite that knowledge, the common enterprise defendants failed to
23 comply with the FTC's Telemarketing Sales Rule, including its do not call
24 provisions.

25 26 **VIOLATIONS OF SECTION 5 OF THE FTC ACT**

27 43. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or
28 deceptive acts or practices in or affecting commerce."

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COUNT I

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**(Misrepresentations that Customers Have Been Pre-approved or are
Guaranteed Acceptance into their Creditors' Debt Management Plans)**

5 44. In connection with the advertising, marketing, promoting, offering for sale,
6 and sale of debt management services, defendants have represented, expressly or
7 by implication, that consumers were pre-approved for participation in a debt
8 management plan with particular creditors or were guaranteed acceptance in a debt
9 management plan at a particular interest rate or payment level by particular
10 creditors.

11 45. In truth and in fact, in numerous instances, consumers were not pre-
12 approved for participation in a debt management plan by particular creditors and
13 were not guaranteed acceptance in a debt management plan at a particular interest
14 rate or payment level by particular creditors. Defendants cannot guarantee
15 acceptance of any particular debt management plan by any creditor until CFA has
16 submitted a proposed request on behalf of that consumer and received an
17 affirmative response from the creditor.

18 46. Therefore, defendants' representations as set forth in Paragraph 44 are false
19 and misleading, and constitute deceptive acts or practices in violation of Section
20 5(a) of the FTC Act, 15 U.S.C. § 45(a).

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COUNT II

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(Misrepresentations of Program Benefits)

24 47. In connection with the advertising, marketing, promoting, offering for sale,
25 and sale of debt management services, defendants have represented, expressly or
26 by implication, that consumers who purchase defendants' debt management
27 services will receive specific benefits including, but not limited to:

- a. a reduction of the interest rates they pay on their debt obligations to as low as zero percent;
- b. the ability to save money by paying off all debt obligations for a reduced amount within a shorter period of time;
- c. receiving debt management services before their next credit billing cycle;
- d. help from credit counselors who will provide individual credit counseling;
- e. stopping or lessening their creditors' debt collection efforts;
- f. the interest rate on consumers' debt will be reconfigured to be calculated as simple interest rather than compound interest; and
- g. the payments consumers make to defendants will be tax deductible.

48. In truth and in fact, in numerous instances, consumers who purchase defendants' debt management services do not receive the specific benefits represented including, but not limited to:

- a. a reduction of the interest rates they pay on their debt obligations to as low as zero percent;
- b. the ability to save money by paying off all debt obligations for a reduced amount within a shorter period of time;
- c. receiving debt management services before their next credit billing cycle;
- d. help from credit counselors who provide individual credit counseling;
- e. stopping or lessening their creditors' debt collection efforts;
- f. the interest rate on consumers' debt is not reconfigured to be calculated as simple interest rather than compound interest; and
- g. the payments consumers make to defendants are not tax deductible.

1 49. Therefore, defendants' representations as set forth in Paragraph 47 are false
2 and misleading, and constitute deceptive acts or practices in violation of Section
3 5(a) of the FTC Act, 15 U.S.C. § 45(a).

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5 **VIOLATIONS OF THE TELEMARKETING SALES RULE**

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7 **COUNT III**

8 **(Failure to Disclose Material Limitations in Violation of the TSR)**

9 50. In numerous instances, in connection with telemarketing debt management
10 services, defendants have failed to disclose the material limitation that consumers
11 may not achieve the promised reductions in interest rate and/or minimum
12 payments because these concessions have not yet been approved by particular
13 creditors who may modify or reject the debt management plan proposed by
14 defendants for that particular consumer.

15 51. Therefore, defendants have violated Section 310.3(a)(1)(ii) of the TSR, 16
16 C.F.R. § 310.3(a)(1)(ii).

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18 **COUNT IV**

19 **(Misrepresentations in Violation of the TSR)**

20 52. In numerous instances, in connection with telemarketing debt management
21 services, defendants have made false or misleading statements to induce
22 consumers to purchase defendants' debt management services including, but not
23 limited to, statements that consumers who purchase defendants' debt management
24 services will receive the following specific benefits:

- 25 a. a reduction of the interest rates they pay on their debt obligations to
26 as low as zero percent;
- 27 b. the ability to save money by paying off all debt obligations for a
28 reduced amount within a shorter period of time;

- 1 c. receiving debt management services before their next credit billing
2 cycle;
- 3 d. help from credit counselors who will provide individual credit
4 counseling;
- 5 e. stopping or lessening their creditors' debt collection efforts;
- 6 f. the interest rate on consumers' debt will be reconfigured to be
7 calculated as simple interest rather than compound interest; and
- 8 g. the payments consumers make to defendants will be tax deductible.

9 53. Therefore, defendants have violated Section 310.3(a)(4) of the TSR, 16
10 C.F.R. § 310.3(a)(4).

11
12 **COUNT V**

13 **(Violating the National Do Not Call Registry)**

14 54. In numerous instances, in connection with telemarketing debt management
15 services, the common enterprise defendants have engaged in, or caused others to
16 engage in, initiating an outbound telephone call to a person's telephone number on
17 the National Do Not Call Registry in violation of the TSR, 16 C.F.R.
18 § 310.4(b)(1)(iii)(B).

19
20 **COUNT VI**

21 **(Failing to Honor Entity-Specific Do Not Call Requests)**

22 55. In numerous instances, in connection with telemarketing debt management
23 services, the common enterprise defendants have engaged in, or caused others to
24 engage in, initiating an outbound telephone call to a person who has previously
25 stated that he or she do not wish to receive such a call made by or on behalf of the
26 seller whose goods or services are being offered in violation of the TSR, 16 C.F.R.
27 § 310.4(b)(1)(iii)(A).

1 **COUNT VII**

2 **(Interfering with a Do Not Call Right)**

3 56. In numerous instances, in connection with telemarketing debt management
4 services, the defendants have engaged in, or caused others to engage in, denying
5 or interfering with, directly or indirectly, a person's right to be placed on CFA's
6 entity-specific do not call list in violation of the TSR, 16 C.F.R. § 310.4(b)(1)(ii).

7
8 **COUNT VIII**

9 **(Failing to Pay National Do Not Call Registry Fees)**

10 57. In numerous instances, in connection with telemarketing debt management
11 services, the common enterprise defendants have initiated, or caused others to
12 initiate, an outbound telephone call to a telephone number within a given area
13 code without the common enterprise defendants, either directly or through another
14 person, first paying the required annual fee for access to the telephone numbers
15 within that area code that are included in the National Do Not Call Registry in
16 violation of the TSR, 16 C.F.R. § 310.8.

17
18 **CONSUMER INJURY**

19 58. Consumers in the United States have suffered and will suffer injury as a
20 result of defendants' violations of Section 5 and the TSR. Absent injunctive relief
21 by this Court, defendants are likely to continue to injure consumers and harm the
22 public interest.

23
24 **THIS COURT'S POWER TO GRANT RELIEF**

25 59. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to
26 grant injunctive and other ancillary relief, including consumer redress,
27 disgorgement, and restitution, to prevent and remedy any violation of any
28 provision of law enforced by the FTC.

1 60. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as modified
2 by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28
3 U.S.C. § 2461, as amended, and as implemented by 16 C.F.R. § 1.98(d) (1997),
4 authorizes this Court to award monetary civil penalties of not more than \$11,000
5 for each violation of the TSR. The common enterprise defendants' violations of
6 the TSR were committed with the knowledge required by Section 5(m)(1)(A) of
7 the FTC Act, 15 U.S.C. § 45(m)(1)(A).

8 61. Section 19 of the FTC Act, 15 U.S.C. § 57b, authorizes this Court to grant
9 such relief as the Court finds necessary to redress injury to consumers or other
10 persons resulting from defendants' violations of the Rule, including the rescission
11 and reformation of contracts, and the refund of money.

12 62. This Court, in the exercise of its equitable jurisdiction, may award ancillary
13 relief to remedy injury caused by defendants' violations of the TSR and the FTC
14 Act.

15
16 **PRAYER FOR RELIEF**

17 WHEREFORE, plaintiff requests that this Court, as authorized by Sections
18 5(a), 5(m)(1)(A), 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A),
19 53(b) and 57b, and pursuant to its own equitable powers:

- 20 1. Enter judgment against defendants and in favor of plaintiff for each
21 violation alleged in this complaint;
- 22 2. Permanently enjoin defendants from violating the TSR and the FTC Act;
- 23 3. Award plaintiff such relief as the Court finds necessary to redress injury to
24 consumers resulting from defendants' violations of the FTC Act and the TSR
25 including, but not limited to, rescission or reformation of contracts, restitution,
26 refund of monies paid, and the disgorgement of ill-gotten monies;
- 27 4. Award plaintiff monetary civil penalties from the common enterprise
28 defendants for every violation of the TSR;

- 1 5. Order defendants to pay the costs of this action; and
2 6. Award plaintiff such other and additional relief as the Court may determine
3 to be just and proper.

4 Dated: _____, 2006 Respectfully submitted,

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