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13 Attorneys for Plaintiff
14 FEDERAL TRADE COMMISSION

15 UNITED STATES DISTRICT COURT
16 DISTRICT OF NEVADA

17
18 FEDERAL TRADE COMMISSION,

19 Plaintiff,

20
21 v.

22 CITY WEST ADVANTAGE, INC., a
23 Nevada corporation, also d/b/a as
24 Unified Services; and

25 JAMES S. SLEMBOSKI, individually
26 and as an officer of, CITY WEST
ADVANTAGE, INC.,

27 Defendants.
28

Case No. _____

**COMPLAINT FOR PERMANENT
INJUNCTION AND OTHER EQUITABLE
RELIEF**

1 Plaintiff, the Federal Trade Commission ("FTC"), for its complaint alleges:

2 1. The FTC brings this action under Sections 13(b) and 19 of the Federal
3 Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the
4 Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing
5 Act"), 15 U.S.C. §§ 6101 - 6108, to obtain a temporary restraining order and asset
6 freeze, preliminary and permanent injunctive relief, rescission or reformation of
7 contracts, restitution, disgorgement of ill-gotten monies, and other equitable relief for
8 defendants' acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C.
9 § 45(a), and in violation of the FTC's Telemarketing Sales Rule ("TSR"), 16 C.F.R.
10 Part 310.

11
12 **JURISDICTION AND VENUE**

13 2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§
14 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), and 6105(b).

15 3. Venue is proper in this District under 28 U.S.C. § 1391(b) and (c), and
16 15 U.S.C. § 53(b) and (c).

17
18 **PLAINTIFF**

19 4. Plaintiff FTC is an independent agency of the United States
20 Government created by statute. 15 U.S.C. §§ 41 - 58. The FTC is charged, *inter*
21 *alia*, with enforcement of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which
22 prohibits unfair and deceptive acts or practices in or affecting commerce. The FTC
23 is also charged with enforcement of the Telemarketing Act, 15 U.S.C. §§ 6101 -
24 6108. Pursuant to the Telemarketing Act, the FTC promulgated and enforces the
25 TSR, 16 C.F.R. Part 310, which prohibits deceptive and abusive telemarketing acts
26 or practices. The FTC is authorized to initiate federal district court proceedings, by
27 its own attorneys, to enjoin violations of the FTC Act and the TSR, and to secure
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1 such equitable relief as may be appropriate in each case, including restitution and
2 disgorgement. 15 U.S.C. §§ 53(b), 57b, 6102(c), and 6105(b).

3
4 **DEFENDANTS**

5 5. Defendant City West Advantage, Inc., is a Nevada corporation that also
6 does business as "Unified Services." Its principal place of business is 5940 South
7 Rainbow Boulevard in Las Vegas, Nevada. Unified Services transacts or has
8 transacted business in this District.

9 6. Defendant James S. Slemboski is President, a director, and an owner of
10 City West Advantage, Inc. In connection with the matters alleged herein, he resides
11 or has transacted business in this District. At all times material to this complaint,
12 acting alone or in concert with others, he has formulated, directed, controlled, or
13 participated in the acts and practices of City West Advantage, Inc., including the acts
14 and practices set forth in this complaint.

15
16 **DEFENDANTS' BUSINESS ACTIVITIES**

17 7. Defendants are sellers of various products and services to consumers.
18 Defendants are also telemarketers that initiate outbound telephone calls to consumers
19 in the United States to induce the purchase of their products or services.

20 8. Defendants have engaged in telemarketing by a plan, program, or
21 campaign conducted to induce the purchase of products or services by use of one or
22 more telephones and which involves more than one interstate telephone call.

23 9. At all times relevant to this complaint, Defendants have maintained a
24 substantial course of trade or business in the offering for sale and sale of products or
25 services via the telephone, in or affecting commerce, as "commerce" is defined in
26 Section 4 of the FTC Act, 15 U.S.C. § 44.

1 10. Defendants, individually and in concert, and through the mutual
2 assistance of one another, have engaged in a nationwide scheme to take money from
3 the bank accounts of consumers across the United States through deception or
4 without valid consent. Defendants have engaged in this scheme through the
5 marketing and sale of their various products and services. Defendants have carried
6 out their scam as follows:

7 **Defendants' Deceptive and Abusive Telemarketing Sales Calls**

8 11. Defendants' telemarketers, representing Unified Services, call
9 consumers offering them a "free" item, such as a "\$1,000 shopping spree" which
10 purportedly can be used at numerous online or "brick and mortar" stores, or an "all-
11 expense-paid vacation" to an exotic locale, for which consumers are asked to pay
12 only a nominal shipping and handling fee (often \$1.95).

13 12. In numerous instances when the consumer declines the telemarketer's
14 offer, the telemarketer calls back repeatedly until the consumer agrees to listen to the
15 sales pitch. Some consumers who continue to decline the telemarketer's offer are
16 subjected to abusive or obscene language.

17 13. In numerous instances when the consumer declines the telemarketer's
18 offer and tells the telemarketer that he does not wish to receive any additional
19 telephone calls made by or on behalf of the seller whose products or services are
20 being offered, the telemarketer calls back repeatedly until the consumer agrees to
21 listen to the sales pitch.

22 14. Defendants' telemarketers induce consumers to disclose their bank
23 routing and account numbers by telling consumers that, in order to receive the free
24 item, they need to supply their bank routing and account numbers so that the nominal
25 shipping and handling charges can be paid.

26 15. Defendants' telemarketers obtain the consumer's bank routing and
27 account numbers without disclosing, clearly and conspicuously, that Defendants will
28

1 charge consumers significantly more than \$1.95: often \$149 for products and
2 services marketed by Defendants.

3 16. In numerous instances, Defendants' telemarketer misleads the consumer
4 in order to obtain affirmative responses ("yes" or "okay") during an automated
5 verification recording process. In a manner neither clear nor conspicuous, the
6 verification process confusingly tells the consumer for the first time that, if he or she
7 fails to cancel his order within a trial period, he or she will be charged fees
8 substantially more than \$1.95 for a variety of products and services. These include
9 purported diet pills, purported Internet service, and purported long-distance
10 telephone service.

11 17. In some instances, Defendants' telemarketers have manipulated the
12 verification process so that consumers were not required to listen to, or respond to,
13 questions posed during the automated verification process. In other instances,
14 Defendants' telemarketers have assured consumers that they will make sure that the
15 consumer will not be charged for any unwanted products, after which the
16 telemarketers have instructed consumers to answer "yes" to all questions posed
17 during the automated verification process. Examples of misrepresentations made by
18 Defendants' telemarketers to induce the consumer to say "yes" or "okay" before or
19 during the verification process include statements that:

- 20 a. The consumer should not worry about the charges mentioned in the
21 recording because those charges do not pertain to the consumer;
- 22 b. The consumer's bank account will not be charged more than \$1.95 and
23 that this charge supersedes any of the charges identified during the
24 verification process; or
- 25 c. The consumer may easily cancel the order during a trial period for
26 Defendants' products or services and thereby avoid being charged more
27 than the nominal shipping and handling fee.
- 28

1 None of these material misrepresentations is recorded during the verification process.

2 **Defendants' Business Practices Harm Consumers**

3 18. Consumers who provide their bank account information to Defendants
4 typically receive a package in the mail from Defendants within a few weeks of the
5 telemarketing call. Included in the package are a \$1,000 certificate for an "Internet
6 shopping spree," brochures on how to obtain travel deals, and other goods and
7 materials.

8 19. The \$1,000 shopping certificate is redeemable only through a single
9 website, www.freegiftsamerica.com. This website sells commonly available
10 products at prices far above their customary retail prices. While the \$1,000
11 certificate can supposedly be used to purchase these products, it cannot be used for
12 "shipping and handling" charges. Most, if not all, of these products include shipping
13 and handling costs that are higher than the product's fair market value.

14 20. Defendants typically also send consumers brochures on obtaining
15 supposed travel deals, not the all-expense-paid vacations Defendants represented.

16 21. The Defendants also include in their packet a cover letter about their
17 products and services. The letter states that consumers must cancel their orders for
18 each of the products or services within a ten day trial period to avoid being charged;
19 the date that trial period ends is not specified.

20 22. Defendants debit consumers substantially more than \$1.95: anywhere
21 from \$50 to \$250, but usually around \$149, typically via check remotely created by
22 Unified Services. Many consumers report that they only realized they had been
23 charged this amount after bouncing checks or finding their bank accounts in
24 overdraft.

25 23. Many consumers attempt to contact Defendants about these charges,
26 often after receiving a copy of the check remotely created by Unified Services.
27 These consumers have a great deal of trouble reaching Defendants' customer service
28

1 department. When consumers do reach Defendants' customer service
2 representatives, consumers are consistently told that they do not qualify for refunds
3 for one of two principal reasons:

- 4 a. That Defendants have verification tapes of the consumer agreeing to be
5 billed for the products he or she received; or
- 6 b. The consumer waited more than ten days to cancel, counting from the
7 day the consumer placed his or her order, not from the date the package
8 was received.

9 24. Typically, consumers who try to explain that Defendants' telemarketers
10 promised consumers that they would have to pay only a nominal amount are still
11 denied refunds. As a basis for this refusal, Defendants commonly cite to verification
12 tapes of consumers supposedly agreeing to pay much more than a nominal fee for
13 Defendants' products and services.

14
15 **VIOLATIONS OF SECTION 5 OF THE FTC ACT**

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

18 **Count 1: Material Misrepresentations of Fact**

19 26. In numerous instances, in connection with the marketing of various
20 products and services, Defendants represent directly or indirectly, expressly or by
21 implication, that:

- 22 a. Defendants will only charge the consumer a nominal fee for shipping
23 and handling, often \$1.95, and the consumer will not be charged any
24 other amount;
- 25 b. The consumer has a trial period during which the consumer may cancel
26 his or her order with Defendants to avoid being charged substantially
27 more than the initial shipping and handling fee.

1 27. In truth and in fact, in numerous instances in which Defendants have
2 made the representations above:

3 a. Defendants charge consumers amounts far in excess of the nominal
4 shipping and handling fee, often \$149; and

5 b. Defendants do not provide a trial period during which the consumer
6 may cancel his or her order with Defendants to avoid being charged
7 substantially more than the initial shipping and handling fee.

8 28. Therefore, Defendants' representations as set forth in Paragraph 26 of
9 this complaint are false and misleading and constitute deceptive acts or practices in
10 violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

11
12 **VIOLATIONS OF THE FTC'S TELEMARKETING SALES RULE**

13 29. Congress directed the FTC to prescribe rules prohibiting abusive and
14 deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15
15 U.S.C. §§ 6101 - 6108, in 1994. On August 16, 1995, the FTC adopted the
16 Telemarketing Sales Rule (the "Original TSR"), 16 C.F.R. Part 310, which became
17 effective on December 31, 1995. On January 29, 2003, the FTC amended the
18 Original TSR by issuing a Statement of Basis and Purpose and the final amended
19 Telemarketing Sales Rule ("TSR"). 68 Fed. Reg. 4580, 4669.

20 30. Defendants are "seller[s]" or "telemarketer[s]" engaged in
21 "telemarketing," as defined by the TSR, 16 C.F.R. § 310.2(z), (bb), and (cc).

22 31. The TSR prohibits sellers and telemarketers from misrepresenting,
23 directly or by implication, in the sale of goods or services any of the following
24 material information:

25 a. The total costs to purchase, receive, or use, and the quantity of, any
26 goods or services that are the subject of a sales offer. 16 C.F.R.
27 § 310.3(a)(2)(i); and
28

- 1 b. Any material aspect of the nature or terms of the seller's refund,
2 cancellation, exchange, or repurchase policies. 16 C.F.R.
3 § 310.3(a)(2)(iv).

4 32. It is an abusive telemarketing act or practice and a violation of the TSR
5 for any seller or telemarketer to cause billing information to be submitted for
6 payment, directly or indirectly, without the express informed consent of the
7 customer. 16 C.F.R. § 310.4(a)(6).

8 33. It is an abusive telemarketing act or practice and a violation of the TSR
9 for any seller or telemarketer to engage in the following conduct:

- 10 a. Causing any telephone to ring, or engaging any person in telephone
11 conversation, repeatedly or continuously with intent to annoy, abuse, or
12 harass any person at the called number. 16 C.F.R. § 310.4(b)(1)(i)(A);
13 and
14 b. Initiating any outbound telephone call to a person when that person
15 previously has stated that he or she does not wish to receive an
16 outbound telephone call made by or on behalf of the seller whose goods
17 or services are being offered. 16 C.F.R. § 310.4(b)(1)(iii)(A).

18 34. Since December 31, 1995, sellers and telemarketers have been
19 prohibited from initiating an outbound telephone call to any person when that person
20 previously has stated that he or she does not wish to receive an outbound telephone
21 call made by or on behalf of the seller whose goods or services are being offered or
22 made on behalf of the charitable organization for which a charitable contribution is
23 being solicited. 16 C.F.R. § 310.4(b)(1)(iii)(A).

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

1 **Count 2: Misrepresentation of Cancellation Policy**

2 36. In numerous instances, in connection with the telemarketing of various
3 products and services, Defendants have misrepresented, directly or by implication, a
4 material aspect of the nature or terms of their cancellation policy, including that
5 consumers will have a designated period of time in which to review and cancel their
6 orders before incurring any charges.

7 37. Defendants' practice as alleged in Paragraph 36 is a deceptive
8 telemarketing practice that violates Section 310.3(a)(2)(iv) of the TSR, 16 C.F.R. §
9 310.3(a)(2)(iv).

10 **Count 3: Misrepresentation of Total Cost**

11 38. In numerous instances, in connection with the telemarketing of various
12 products and services, Defendants have misrepresented, directly or by implication,
13 the total costs to purchase, receive, or use Defendants' products and services,
14 including that consumers will have to pay only a nominal shipping and handling fee,
15 often \$1.95, and that consumers will not be charged any other amount.

16 39. Defendants' practice as alleged in Paragraph 38 is a deceptive
17 telemarketing practice that violates Section 310.3(a)(2)(i) of the TSR, 16 C.F.R. §
18 310.3(a)(2)(i).

19 **Count 4: Lack of Express Informed Consent to be Billed**

20 40. In numerous instances, in connection with the telemarketing of their
21 products and services, Defendants have caused billing information to be submitted
22 for payment without the express informed consent of the consumer.

23 41. Defendants' practice as alleged in Paragraph 40 is an abusive
24 telemarketing act or practice that violates Section 310.4(a)(6) of the TSR, 16 C.F.R.
25 § 310.4(a)(6).

1 **Count 5: Repeatedly Calling Consumers With Intent to Annoy or Harass**

2 42. In numerous instances, in connection with the telemarketing of their
3 products and services, Defendants, with the intent to annoy or harass, have
4 repeatedly called consumers who have declined to purchase products and services
5 from Defendants.

6 43. Defendants' practice as alleged in Paragraph 42 is an abusive
7 telemarketing act or practice that violates Section 310.4(b)(1)(i) of the TSR, 16
8 C.F.R. § 310.4(b)(1)(i).

9 **Count 6: Ignoring Entity-Specific Do Not Call Requests**

10 44. In numerous instances, in connection with telemarketing, Defendants
11 have engaged in or caused others to engage in initiating an outbound telephone call
12 to persons who had previously stated that they do not wish to receive calls made by
13 or on behalf of the Defendants.

14 45. Defendants' practice as alleged in Paragraph 44 is an abusive
15 telemarketing act or practice that violates Section 310.4(b)(1)(iii)(A) of the TSR, 16
16 C.F.R. § 310.4(b)(1)(iii)(A).

17
18 **CONSUMER INJURY**

19 46. Consumers in the United States have suffered and will continue to
20 suffer injury as a result of Defendants' violations of the FTC Act and the TSR. In
21 addition, Defendants have been unjustly enriched as a result of their unlawful
22 practices. Absent injunctive relief by this Court, Defendants are likely to continue to
23 injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

1
2 47. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court
3 to grant injunctive and such other relief as the Court may deem appropriate to halt
4 and redress violations of the FTC Act. The Court, in the exercise of its equitable
5 jurisdiction, may award ancillary relief, including rescission of contracts and
6 restitution, and the disgorgement of ill-gotten monies, to prevent and remedy any
7 violation of any provision of law enforced by the FTC.

8 48. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 6(b) of the
9 Telemarketing Act, 15 U.S.C. § 6105(b), authorize this Court to grant such relief as
10 the Court finds necessary to redress injury to consumers resulting from Defendants'
11 violations of the TSR, including the rescission and reformation of contracts, and the
12 refund of money.

13
14 **PRAYER FOR RELIEF**

15 Wherefore, Plaintiff Federal Trade Commission, pursuant to Sections 13(b)
16 and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and Section 6(b) of the
17 Telemarketing Act, 15 U.S.C.

18 § 6105(b), and the Court's own equitable powers, requests that the Court:

19 A. Award Plaintiff such preliminary injunctive and ancillary relief as may
20 be necessary to avert the likelihood of consumer injury during the pendency of this
21 action and to preserve the possibility of effective final relief, including but not
22 limited to, temporary and preliminary permanent injunctions, appointment of a
23 receiver, immediate access, and an order freezing assets;

24 B. Enter a permanent injunction to prevent future violations of the FTC
25 Act and the TSR by Defendants;

26 C. Award such relief as the Court finds necessary to redress injury to
27 consumers resulting from Defendants' violations of the FTC Act and the TSR
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1 including, but not limited to, rescission or reformation of contracts, restitution, the
2 refund of monies paid, and the disgorgement of ill-gotten monies; and

3 D. Award Plaintiff the costs of bringing this action, as well as such other
4 and additional relief as the Court may determine to be just and proper.

5 Respectfully submitted,

6 WILLIAM BLUMENTHAL
7 General Counsel

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9 Dated: 5/12/08



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