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11 ATTORNEYS FOR PLAINTIFF

12 UNITED STATES DISTRICT COURT
13 DISTRICT OF ARIZONA
14 AT PHOENIX

15 FEDERAL TRADE COMMISSION,

16 Plaintiff,

17 v.

18 VECTOR DIRECT MARKETING, LLC,
19 MIKE STAFFORD, and LISA MILLER,

20 Defendants.

Case No. CV04 0095 PHX SMM

COMPLAINT

21 Plaintiff, the Federal Trade Commission (“FTC”), for its Complaint alleges:

22 1. The FTC brings this action under Sections 13(b) and 19 of the Federal Trade Commission Act
23 (“FTC Act”), 15 U.S.C. §§ 53(b), and 57b, and the Telemarketing and Consumer Fraud and Abuse
24 Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101-6108, to secure a permanent injunction,
25 rescission of contracts and restitution, disgorgement of ill-gotten gains, and other equitable relief
26 against the Defendants for engaging in deceptive acts or practices in connection with the advertising,
27 marketing and sale of services to stop telemarketing solicitations and to protect consumers’ personal
28 financial information from fraud in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and
violation of the FTC’s Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310.

1 **JURISDICTION AND VENUE**

2 2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331,
3 1337(a), and 1345, and under 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c) and 6105(b).

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

5 **THE PARTIES**

6 4. Plaintiff, FTC, is an independent agency of the United States Government created by statute.
7 15 U.S.C. §§ 41 *et seq.* The FTC is charged, *inter alia*, with enforcement of Section 5(a) of the FTC
8 Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce.
9 The FTC also enforces the TSR, 16 C.F.R. Part 310, which prohibits deceptive and abusive
10 telemarketing acts or practices. The FTC is authorized to initiate federal district court proceedings, by
11 its own attorneys, to enjoin violations of the FTC Act and the TSR, and to secure such equitable relief
12 as may be appropriate in each case, including redress, restitution and disgorgement. 15 U.S.C.
13 §§ 53(b), 57b, 6102(c), and 6105(b).

14 **DEFENDANTS**

15 5. Defendant Vector Direct Marketing LLC, d/b/a National Solicitation Guard (“NSG”) and Anti-
16 Solicitation Company (“ASC”) (collectively referred to as “Vector”), is a Colorado corporation with
17 its principal place of business located at 2020 S. Mill Ave., #111, Tempe, Arizona. Defendant Vector
18 receives mail at 1739 Broadway #295, Tempe, Arizona. Vector has transacted business in the District
19 of Arizona.

20 6. Lisa Miller is a member and manager of Vector. At all times material to this Complaint, acting
21 alone or in concert with others, she has formulated, directed, controlled, or participated in the acts or
22 practices set forth in this Complaint. Defendant Miller has transacted business in the District of
23 Arizona.

24 7. Defendant Mike Stafford was a manager and member of Vector until September 5, 2003. At all
25 times material to this Complaint, acting alone or in concert with others, he has formulated, directed,
26 controlled, or participated in the acts or practices set forth in this Complaint. Defendant Stafford has
27 transacted business in the District of Arizona.

1
2 **COMMERCE**

3 8. At all times relevant to this Complaint, defendants have maintained a substantial course of
4 trade or business in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15
5 U.S.C. § 44.

6 **DEFENDANTS’ BUSINESS PRACTICES**

7 9. Since at least February 2003, defendants have engaged in a nationwide plan, program or
8 campaign to telemarket services purported to stop telemarketing solicitations and to protect consumers’
9 personal financial information from fraud. Defendants target elderly consumers telling them that their
10 personal information, such as social security number, credit card numbers and bank account
11 information, is included in numerous telemarketing lists making them targets for fraud and ID theft. In
12 many instances, in an effort to persuade consumers that such information is readily available, they
13 have told consumers that they have already purchased such information from third party list managers
14 or brokers. Defendants claim that as part of their service they will ensure that the consumer’s personal
15 financial information will be deleted from telemarketing lists.

16 10. Defendants charge consumers between \$380 and \$399 for their purported services. In
17 numerous instances, consumers did not agree to purchase the defendants’ services or to authorize
18 payment. Defendants, nevertheless, charged \$380 to \$399 to consumers’ credit cards or withdrew that
19 amount from consumers’ bank accounts without authorization.

20 11. Consumers receive nothing of significant value from defendants. Defendants do not cause
21 consumers’ personal information, such as social security numbers, credit card numbers and bank
22 account information, to be deleted from telemarketing lists thereby protecting them from fraud and ID
23 theft. Some consumers receive written materials informing them that, “The process of removing your
24 personal information has already begun. We have sent legal notice to the three major list compilers on
25 your behalf: Equifax, Experian, and Trans-Union demanding that you (sic) information be added to
26 there (sic) do not call list, and preventing your information from being added to any future sales lists.”
27 Equifax, Experian and Trans-Union do not sell customer lists that contain consumers’ social security,
28 credit card or bank account numbers. Therefore, the “legal notice” to these companies is ineffective to

1 fulfill the claim made by the defendants to have consumers' personal financial information deleted
2 from telemarketing lists. Moreover, in numerous instances defendants do not notify the credit reporting
3 agencies as they claim to.

4 12. Some consumers also receive a call screening device that will supposedly block some
5 telemarketing calls. This device, or a similar device, sells for about \$35 at retail department stores.
6 Defendants often do not even mention the device to consumers during the sales presentation, or
7 mention it only in passing. On occasions, defendants have totally misrepresented the telephone device,
8 telling consumers that they can monitor telemarketing calls to the consumer through this device, and
9 that when a telemarketer calls the consumer that defendants will fine the telemarketer \$1500, which
10 they then will send to the consumer.

11 13. Defendants have used intimidating and harassing techniques to induce consumers who have
12 stopped payment of or reversed previously authorized check debits or charges to pay for their spurious
13 do-not-call and fraud protection services.

14 **SECTION 5 OF THE FTC ACT**

15 14. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts or practices in
16 or affecting commerce. Misrepresentations or omissions of material fact constitute deceptive acts or
17 practices prohibited by Section 5(a) of the FTC Act. An act or practice is unfair under Section 5(a) of
18 the FTC Act if it causes or is likely to cause substantial injury to consumers that is not reasonably
19 avoidable by the consumers and not outweighed by countervailing benefits to consumers or to
20 competition.

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

22 **COUNT I - Unauthorized Billing**

23 15. In numerous instances, in connection with the marketing of do-not-call and fraud protection
24 services, defendants have caused charges to be billed to consumers' credit cards, or have caused
25 consumers' bank accounts to be debited, without the consumers' authorization.

26 16. Defendants' practice, as set forth in Paragraph 15, has caused or is likely to have caused
27 substantial injury to consumers that was not reasonably avoidable by the consumers and was not
28 outweighed by countervailing benefits to consumers or to competition.

1 17. Therefore, defendants' practice, as alleged in Paragraph 15, is unfair and violates Section 5(a)
2 of the FTC Act, 15 U.S.C. § 45(a).

3 **COUNT II - False Representations**

4 18. In numerous instances, in connection with the marketing of do-not-call and fraud protection
5 services, defendants have represented, directly or indirectly, expressly or by implication, that
6 consumers' personal information, such as social security, credit card, and bank account numbers,
7 appeared on telemarketing lists, making the consumers a likely target for fraud, and that defendants
8 would cause consumers' personal financial information to be removed from the telemarketing lists that
9 included that information.

10 19. In truth and in fact, in numerous instances defendants have not caused consumers' personal
11 information to be removed from the telemarketing lists that include that information.

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

14 **THE TELEMARKETING SALES RULE**

15 21. In the Telemarketing Act, 15 U.S.C. § 6101 *et seq.*, Congress directed the Commission to
16 prescribe rules prohibiting deceptive and abusive telemarketing acts or practices. On August 16, 1995,
17 the Commission promulgated the Telemarketing Sales Rule, 16 C.F.R. Part 310. The Rule became
18 effective on December 31, 1995. On January 29, 2003, the FTC adopted an amended TSR with the
19 amendments becoming effective on March 31, 2003.

20 22. Defendants are "telemarketers" or "sellers" engaged in "telemarketing," as those terms are
21 defined in the Rule, 16 C.F.R. § 310.2(z),(bb), and (cc).

22 23. The Rule prohibits telemarketers and sellers from causing billing information to be submitted
23 for payment, directly or indirectly, without the express informed consent of the customer, and from
24 charging the customer for goods or services without the express informed consent of the customer to
25 be charged and to be charged using the identified account. 16 C.F.R. §310.4(a)(6).

26 24. The Rule prohibits telemarketers and sellers from misrepresenting any material aspect of the
27 performance, efficacy, nature, or central characteristics of the goods or services that are the subject of
28 the sales offer. 16 C.F.R. § 310.3(a)(2)(iii).

1 25. The Rule prohibits telemarketers and sellers from using threats, intimidation, or profane or
2 obscene language. 16 C.F.R. § 310.4(a)(1).

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

6
7 **VIOLATIONS OF THE TELEMARKETING SALES RULE**

8 **COUNT III- Unauthorized Billing**

9 27. In numerous instances, in connection with the marketing of do-not-call and fraud protection
10 services, defendants have caused charges to be billed to consumers' credit cards, or have caused bank
11 accounts to be debited, without consumers' express informed consent.

12 28. Defendants' practice as alleged in Paragraph 27 is an abusive telemarketing practice in violation
13 of Section 310.4(a)(6) of the TSR, 16 C.F.R. 310.4(a)(6).

14 **COUNT IV - False Representation**

15 29. In numerous instances, in connection with the marketing of do-not-call and fraud protection
16 services, defendants have represented, directly or indirectly, expressly or by implication, that
17 consumers' personal information, such as social security, credit card, and bank account numbers,
18 appeared on telemarketing lists, making consumers a likely target for fraud, and that defendants would
19 cause consumers' personal information to be removed from the telemarketing lists that include that
20 information.

21 30. In truth and in fact, in numerous instances, defendants have not caused consumers' personal
22 information to be removed from telemarketing lists that include that information.

23 31. Therefore, defendants' acts and practices, as set forth in paragraph 29, violates Section
24 310.3(a)(2)(iii) of the TSR, 16 C.F. R. § 310.3(a)(2)(iii).

1 **COUNT V - Threats or Intimidation**

2 32. In numerous instances, in connection with the marketing of do-not-call and fraud protection
3 services, defendants have used threats or intimidation to induce vulnerable elderly consumers who have
4 attempted to stop payment to pay for defendants' products and services.

5 33. Defendants' practice as alleged in Paragraph 32 is an abusive telemarketing practice in violation
6 of Section 310.4(a)(1) of the TSR, 16 C.F.R. 310.4(a)(1).

7 **CONSUMER INJURY**

8 34. Consumers in many areas of the United States have suffered, and continue to suffer, substantial
9 monetary loss as a result of defendants' unlawful acts and practices. In addition, defendants have been
10 unjustly enriched as a result of the unlawful practices. Absent injunctive relief by this Court,
11 defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public.

12 **THIS COURT'S POWER TO GRANT RELIEF**

13 35. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and
14 such other relief as the Court may deem appropriate to halt and redress violations of the FTC Act. The
15 Court, in the exercise of its equitable jurisdiction, may award other ancillary relief, including but not
16 limited to, rescission of contracts and restitution, and the disgorgement of ill-gotten gains, to prevent
17 and remedy injury caused by Defendants' law violations.

18 36. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 6(b) of the Telemarketing Act, 15
19 U.S.C. § 6105(b), authorize this Court to grant such relief as the Court finds appropriate to halt and
20 redress injury resulting from defendants' violations of the TSR, including the rescission and
21 reformation of contracts, and the refund of monies.

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

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff requests that this Court, as authorized by Sections 13(b) and 19 of the
26 FTC Act, 15 U.S.C. §§ 53(b) and 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b),
27 and pursuant to its own equitable powers to:

1. Preliminarily and permanently enjoin defendants from violating the FTC Act and the TSR;
2. Award such relief as the Court finds necessary to redress injury to consumers resulting from defendants' violations of the FTC Act and the TSR, including but not limited to, rescission or reformation of contracts and restitution, and the disgorgement of ill-gotten gains by the defendants and relief defendants; and
3. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Respectfully submitted,

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Dated: _____

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