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7 ATTORNEYS FOR PLAINTIFF
FEDERAL TRADE COMMISSION
8

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11 WESTERN DIVISION

12 _____)
13 FEDERAL TRADE COMMISSION)

14 Plaintiff,)

15 v.)

16 HOLIDAY PLUS TRAVEL, LLC, a)
California company;)

17 BLAIN BURKE, individually;)

18 KEVIN M. CLARKE, individually and)
19 as an officer of HOLIDAY PLUS)
TRAVEL, LLC; and)

20 LIZETTE TEMPLETON, individually)
21 and as an officer of HOLIDAY)
PLUS TRAVEL, LLC,)

22 Defendants.)
23)
24 _____)

CV

COMPLAINT FOR INJUNCTION
AND OTHER EQUITABLE RELIEF

25 Plaintiff, the Federal Trade Commission ("FTC" or
26 "Commission"), for its complaint alleges:

27 1. The FTC brings this action under Sections 13(b) and
28 19 of the Federal Trade Commission Act ("FTC Act"), 15

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

9 **JURISDICTION AND VENUE**

10 2. This Court has subject matter jurisdiction pursuant
11 to 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), and 6105(b), and
12 28 U.S.C. §§ 1331, 1337(a), and 1345.

13 3. Venue in the Central District of California is
14 proper under 15 U.S.C. §§ 53(b) and 28 U.S.C. § 1391(b)
15 and (c).

16 **PLAINTIFF**

17 4. Plaintiff, the Federal Trade Commission, is an
18 independent agency of the United States Government created
19 by statute. 15 U.S.C. §§ 41 *et seq.* The Commission is
20 charged, *inter alia*, with enforcement of Section 5(a) of the
21 FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or
22 deceptive acts or practices in or affecting commerce. The
23 Commission also enforces the Telemarketing Sales Rule, 16
24 C.F.R. Part 310, which prohibits deceptive or abusive
25 telemarketing acts or practices. The Commission is
26 authorized to initiate federal district court proceedings,
27 by its own attorneys, to enjoin violations of the FTC Act
28 and violations of the Telemarketing Sales Rule, in order to

1 secure such equitable relief as may be appropriate in each
2 case, and to obtain consumer redress, 15 U.S.C. §§ 53(b),
3 57b, 6102(c), and 6105(b).

4 **DEFENDANTS**

5 5. Defendant Holiday Plus Travel, LLC ("HPT") is a
6 California limited liability company with its principal
7 place of business at 5959 West Century Boulevard, Suite 510,
8 Los Angeles, California 90045. HPT transacts or has
9 transacted business in the Central District of California.

10 6. Defendant Blain Burke manages or owns Defendant HPT.
11 At all times material to this complaint, acting alone or in
12 concert with others, he has formulated, directed,
13 controlled, or participated in the acts and practices of
14 Defendant HPT. He transacts or has transacted business in
15 the Central District of California.

16 7. Defendant Kevin M. Clarke is a manager or has held
17 himself out as a manager of Defendant HPT. At all times
18 material to this complaint, acting alone or in concert with
19 others, he has formulated, directed, controlled, or
20 participated in the acts and practices of Defendant HPT. He
21 transacts or has transacted business in the Central District
22 of California.

23 8. Defendant Lizette Templeton is an officer or has
24 held herself out as an officer of Defendant HPT. At all
25 times material to this complaint, acting alone or in concert
26 with others, she has formulated, directed, controlled, or
27 participated in the acts and practices of Defendant HPT.
28 She transacts or has transacted business in the Central

1 District of California.

2 COMMERCE

3 9. At all times relevant to this complaint, Defendants
4 have maintained a substantial course of trade in or
5 affecting commerce, as "commerce" is defined in Section 4 of
6 the FTC Act, 15 U.S.C. § 44.

7 DEFENDANTS' COURSE OF CONDUCT

8 10. Since at least March 1999, Defendants have operated
9 a business enterprise that has deceived consumers throughout
10 the United States and abroad by deceptively telemarketing
11 vacation travel packages.

12 11. In addition to using in-house telemarketers,
13 Defendants contract with and utilize a number of "third-
14 party" telemarketing firms throughout the United States to
15 sell Defendants' vacation travel packages. The contractual
16 relationship gives Defendants control over the third-party
17 telemarketers.

18 12. Defendants typically contact consumers by inviting
19 them to fill out a form at a public event that enables
20 consumers to participate in a "drawing." Defendants
21 represent that consumers may win a valuable travel package
22 prize. Defendants' telemarketers then contact consumers by
23 telephone and advise them that they have won or have been
24 specially selected to receive a vacation travel package.

25 13. During the telephone call, Defendants'
26 telemarketers describe the contents of the vacation travel
27 packages. The packages offer various vacations, such as a
28 number of nights' lodging in various vacation destinations

1 such as Florida, with the use of a rental car; a cruise to
2 the Bahamas; and mini-vacations to other destinations.

3 14. Defendants' telemarketers then inform consumers
4 that there is an "incidental charge," typically \$350 to \$399
5 per person, to obtain the vacation package. The
6 telemarketers assure consumers that Defendants' vacation
7 package is worth much more than the incidental charge.
8 Defendants' also represent that this charge will be the
9 total cost to obtain the vacation package. Consumers are
10 told that the charge will be placed on their credit accounts
11 or a debit will be made against their bank accounts to pay
12 for the vacation package. Once the consumers' credit card
13 numbers or bank account numbers are obtained, the charge is
14 made against their accounts.

15 15. Defendants misrepresent or fail to disclose
16 material terms of their refund and cancellation policies.
17 For example, in numerous instances Defendants' telemarketers
18 ask for and are given consumers' credit card or bank account
19 information while assuring consumers that they can cancel
20 the transaction. However, when consumers subsequently
21 attempt to cancel, Defendants advise consumers that they
22 have no right to do so. In other instances, Defendants
23 obtain and charge consumers' credit or checking accounts
24 before consumers are aware that HPT does not provide refunds
25 or allow cancellations.

26 16. Defendants later send consumers confirmation
27 materials that contain advertisements, information about the
28 vacation locations, and travel documents that require

1 consumers to send "reconfirmation" forms to Defendants
2 either 45 or 60 days prior to the consumers' desired travel
3 dates. When consumers read the confirmation materials, or
4 when they reconfirm and begin to schedule their vacations,
5 for the first time they learn of previously undisclosed
6 expenses imposed by Defendants, and other material terms and
7 conditions.

8 17. Many consumers attempt to cancel their purchase of
9 the vacation travel package at various point during
10 Defendants' sales call, and upon receipt of the confirmation
11 materials. Defendants routinely deny consumers' requests
12 for refunds or cancellations.

13 **THE FEDERAL TRADE COMMISSION ACT**

14 18. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a),
15 provides that "unfair or deceptive acts or practices in or
16 affecting commerce are hereby declared unlawful."

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

18 **COUNT I**

19 19. In numerous instances since at least 1999, in
20 connection with the advertising, marketing, promotion,
21 offering for sale, or sale of vacation travel packages,
22 Defendants have represented, expressly or by implication,
23 that consumers have won or been specially selected to
24 receive a vacation travel package.

25 20. In truth and in fact, consumers have neither won nor
26 been specially selected to receive a vacation travel
27 package. The package is available to consumers only if they
28 pay various fees and costs to Defendants.

1 21. Therefore, Defendants' representation in Paragraph
2 19 is false and misleading and constitutes a deceptive act
3 or practice in violation of Section 5(a) of the FTC Act, 15
4 U.S.C. § 45(a).

5 **COUNT II**

6 22. In numerous instances since at least 1999, in
7 connection with the advertising, marketing, promotion,
8 offering for sale, or sale of vacation travel packages,
9 Defendants have represented, expressly or by implication,
10 that the price quoted to consumers in their sales
11 solicitation is the total cost to purchase, receive or use
12 the vacation travel package offered by Defendants.

13 23. In truth and in fact, in numerous instances, the
14 price quoted to consumers in their sales solicitation is not
15 the total cost to purchase, receive or use the vacation
16 travel package offered by Defendants.

17 24. Therefore, Defendants' representation in Paragraph
18 22 is false and misleading and constitutes a deceptive act
19 or practice in violation of Section 5(a) of the FTC Act, 15
20 U.S.C. § 45(a).

21 **THE TELEMARKETING SALES RULE**

22 25. In the Telemarketing Act, 15 U.S.C. §§ 6101 *et*
23 *seq.*, Congress directed the FTC to prescribe rules
24 prohibiting abusive and deceptive telemarketing acts or
25 practices. On August 16, 1995, the Commission promulgated
26 the Telemarketing Sales Rule, 16 C.F.R. Part 310. The Rule
27 became effective on December 31, 1995.

28 26. Defendants are "sellers" or "telemarketers" engaged

1 in "telemarketing," as those terms are defined in the
2 Telemarketing Sales Rule, 16 C.F.R. §§ 310.2(r), (t)
3 and (u).

4 27. The Telemarketing Sales Rule requires sellers and
5 telemarketers "to disclose, in a clear and conspicuous
6 manner . . . all material restrictions, limitations, or
7 conditions to purchase, receive, or use the goods or
8 services that are the subject of the sales offer. . . .
9 [b]efore a customer pays for goods or services." 16 C.F.R.
10 § 310.3(a)(1)(ii).

11 28. The Telemarketing Sales Rule also requires sellers
12 and telemarketers to make a statement "in a clear and
13 conspicuous manner [that] the seller has a policy of not
14 making refunds, cancellations, exchanges, or repurchases" if
15 that is the case "[b]efore a customer pay for goods or
16 services." 16 C.F.R. § 310.3(a)(1)(iii).

17 29. The Telemarketing Sales Rule prohibits sellers and
18 telemarketers from "[m]isrepresenting, directly or by
19 implication, . . . [a]ny material aspect of the nature or
20 terms of the seller's refund, cancellation, exchange or
21 repurchase policies." 16 C.F.R. § 310.3(a)(2)(iv).

22 30. The Telemarketing Sales Rule also prohibits sellers
23 and telemarketers from "[m]isrepresenting, directly or by
24 implication, . . . [a]ny material aspect of a prize promotion
25 including, but not limited to, the odds of being able to
26 receive a prize, the nature or value of a prize, or that a
27 purchase or payment is required to win a prize or to
28 participate in a prize promotion." 16 C.F.R.

1 § 310.3(a)(2)(v).

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

8 **VIOLATIONS OF THE FTC TELEMARKETING SALES RULE**

9 **COUNT III**

10 32. In numerous instances, in connection with the
11 advertising, marketing, promotion, offering for sale, or
12 sale of vacation travel packages, Defendants have failed to
13 disclose, in a clear and conspicuous manner before consumers
14 pay for the vacation travel package, all material
15 restrictions, limitations or conditions to purchase,
16 receive, or use the goods or services that are the subject
17 of the sales offer, including but not limited to, that the
18 periods to travel are significantly limited due to blackout
19 dates and other scheduling restrictions. Defendants have
20 thereby violated Section 310.3(a)(1)(ii) of the
21 Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(1)(ii).

22 **COUNT IV**

23 33. In numerous instances, in connection with the
24 advertising, marketing, promotion, offering for sale, or
25 sale of vacation travel packages, Defendants have failed to
26 disclose, in a clear and conspicuous manner before consumers
27 pay for the vacation travel package, the total costs to
28 purchase, receive, or use any goods or services that are the

1 subject of the sales offer, including, but not limited to,
2 that the promised hotel accommodations may be available only
3 for an additional charge. Defendants have thereby violated
4 Section 310.3(a)(1)(i) of the Telemarketing Sales Rule, 16
5 C.F.R. § 310.3(a)(1)(i).

6 **COUNT V**

7 34. In numerous instances, in connection with the
8 advertising, marketing, promotion, offering for sale, or
9 sale of vacation travel packages, Defendants have failed to
10 disclose, in a clear and conspicuous manner before consumers
11 pay for the vacation travel package, that the seller has a
12 policy of not making refunds or cancellations. Defendants
13 have thereby violated Section 310.3(a)(1)(iii) of the
14 Telemarketing Sales Rule, 16 C.F.R. § 310.(3)(a)(1)(iii).

15 **COUNT VI**

16 35. In numerous instances, in connection with the
17 advertising, marketing, promotion, offering for sale, or
18 sale of vacation travel packages, Defendants have
19 misrepresented, directly or by implication, material aspects
20 of the nature or terms of the seller's refund or
21 cancellation policies, including, but not limited to,
22 informing consumers that they have the right to cancel and
23 later denying them that right. Defendants have thereby
24 violated Section 310.3(a)(2)(iv) of the Telemarketing Sales
25 Rule, 16 C.F.R. § 310.3(a)(2)(iv).

26 **COUNT VII**

27 36. In numerous instances, in connection with the
28 advertising, marketing, promotion, offering for sale, or

1 sale of vacation travel packages, Defendants have
2 misrepresented, directly or by implication, material aspects
3 of a prize promotion including, but not limited to, that
4 consumers have won or been specially selected to receive
5 travel vacation packages when in fact consumers have not won
6 or been specially selected to receive such packages.
7 Defendants have thereby violated Section 310.3(a)(2)(v) of
8 the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(2)(v).

9 **CONSUMER INJURY**

10 37. Consumers throughout the United States have
11 suffered, and continue to suffer, substantial monetary loss
12 as a result of Defendants' unlawful acts and practices. In
13 addition, Defendants have been unjustly enriched as a result
14 of their unlawful acts and practices. Absent injunctive
15 relief, Defendants are likely to continue to injure
16 consumers, reap unjust enrichment, and harm the public.

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

18 38. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b),
19 authorizes this Court to issue a permanent injunction
20 against Defendants' violations of the FTC Act and, in the
21 exercise of its equitable jurisdiction, to order such
22 ancillary relief as a preliminary injunction, consumer
23 redress, rescission, restitution and disgorgement of profits
24 resulting from Defendants' unlawful acts or practices, and
25 other remedial measures.

26 39. Section 19 of the FTC Act, 15 U.S.C. § 57b, and
27 Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b),
28 authorize the Court to grant to the FTC such relief as the

1 Court finds necessary to redress injury to consumers or
2 other persons resulting from Defendants' violations of the
3 Telemarketing Sales Rule, including the rescission and
4 reformation of contracts and the refund of money.

5 **PRAYER FOR RELIEF**

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

11 1. Award Plaintiff such preliminary injunctive and
12 ancillary relief as may be necessary to avert the likelihood
13 of consumer injury during the pendency of this action and to
14 preserve the possibility of effective final relief,
15 including but not limited to, temporary and preliminary
16 injunctions;

17 2. Permanently enjoin Defendants from violating the FTC
18 Act and the Telemarketing Sales Rule, as alleged herein;

19 3. Award such relief as the Court finds necessary to
20 redress injury to consumers resulting from Defendants'
21 violations of the FTC Act and the Telemarketing Sales Rule
22 including, but not limited to, rescission or reformation of
23 contracts, restitution, refund of monies paid, and
24 disgorgement of ill-gotten monies; and

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

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Respectfully Submitted,

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1 CERTIFICATE OF SERVICE

2 My name is Raymond E. McKown. I am an attorney employed
3 by the Federal Trade Commission, 10877 Wilshire Blvd., Ste.
4 700, Los Angeles, California 90024. On

5 _____ I placed the document captioned "COMPLAINT
6 FOR INJUNCTION AND OTHER EQUITABLE RELIEF," in the first
7 class United States mail, postage prepaid, addressed to the
8 following:

9 Kevin M. Clarke
10 Ronnin Law Group
11 5959 West Century Boulevard, Suite 510
12 Los Angeles, CA 90045
13 Attorney for Defendants

14 I declare under penalty of perjury that the foregoing
15 is true and correct. Executed this ____ day of _____
16 at Los Angeles, California.

17 _____
18 Raymond E. McKown
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