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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

FEDERAL TRADE COMMISSION,)	
)	
and)	
)	
STATE OF NEVADA <u>ex rel.</u>)	
FRANKIE SUE DEL PAPA,)	
Attorney General,)	CIVIL ACTION NO.
)	
Plaintiffs,)	
v.)	
)	
CONSUMER MONEY MARKETS, INC.,)	
a Nevada corporation,)	

DATA TECH SOLUTIONS, INC.,)
a Nevada corporation,)
)
INTERSTATE CHECK SERVICES, INC.,)
a Nevada corporation,)
)
CONTINENTAL DIRECT SERVICES, INC.,)
a Nevada corporation,)
)
WILLIAM S. KELLY,)
individually and as an owner/officer of)
Data Tech Solutions, Inc.,)
)
ANA S. MILLER,)
individually and as an owner/officer of Consumer)
Money Markets, Inc.)
)
GARY ALLEN BALAZS,)
individually and as an officer of Consumer Money)
Markets, Inc., and)
)
RAYMOND ELIA,)
individually and as an owner/officer of Interstate)
Check Services, Inc.)
)
Defendants.)
)

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

Plaintiffs, the Federal Trade Commission ("FTC" or "the Commission") and the State of Nevada, for their complaint allege:

1. The FTC brings this action under Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. §§ 6101 *et seq.*, and the Truth

in Lending Act (“TILA”), 15 U.S.C. §§ 1601-1666j, as amended, to secure preliminary and permanent injunctive relief, rescission or reformation of contracts, restitution, disgorgement, and other equitable relief for Defendants' unfair or deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), the FTC’s Telemarketing Sales Rule, 16 C.F.R. Part 310, and TILA and its implementing Regulation Z, 12 C.F.R. § 226, as amended.

2. Plaintiff, the State of Nevada, brings this action under Section 4(a) of the Telemarketing Act, 15 U.S.C. § 6103(a) and under Sections 598.282(4) and 598.0923 of the Nevada Deceptive Trade Practices Act, Nev. Rev. Statutes, §§ 598.282(4) and 598.0923 (“DPTA”), to secure similar injunctive and equitable relief for Defendants’ violations of the DPTA.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this matter pursuant to 15 U.S.C. §§ 45(a), 53(b), 57b, 1607(c), 6102(c), 6103(a), and 6105(b), and 28 U.S.C. §§ 1331, 1337(a), and 1345, and over the state law claims of the State of Nevada pursuant to 28 U.S.C. § 1367.

4. Venue in the United States District Court for the District of Nevada is proper under 15 U.S.C. § 53(b), as amended by the Federal Trade Commission Act Amendments of 1994, Pub. L. No. 103-312, 108 Stat. 1691, and 28 U.S.C. §§ 1391 and § 6103(a).

THE PARTIES

5. Plaintiff, the Federal Trade Commission, is an independent agency of the United States government created by statute. 15 U.S.C. §§ 41 *et seq.* The Commission is charged, *inter alia*, with enforcement of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or

deceptive acts or practices in or affecting commerce. The Commission also enforces TILA, 15 U.S.C. §§ 1601-1666j, which establishes, *inter alia*, disclosure and calculation requirements for consumer credit transactions and advertisements. The Commission further enforces the Telemarketing Sales Rule, 16 C.F.R. Part 310, which prohibits deceptive or abusive telemarketing acts or practices. The Commission may initiate federal district court proceedings by its own attorneys to enjoin violations of the FTC Act, TILA, and the Telemarketing Sales Rule and to secure such equitable relief as is appropriate in each case. 15 U.S.C. §§ 53(b), 57b, 1607(c), 6102(c), 6103(a), and 6105(b).

6. Plaintiff, the State of Nevada, is one of the fifty sovereign states of the United States. Frankie Sue Del Papa is the Attorney General for Plaintiff State of Nevada, and brings this action in her official capacity as such. The State of Nevada is authorized to initiate federal district court proceedings to enjoin telemarketing that violates the Commission's Telemarketing Sales Rule, and, in each such case, to obtain damages, restitution, and other compensation on behalf of residents of the State of Nevada, and to obtain such further and other relief as the court may deem appropriate, 15 U.S.C. § 6103(a). The State of Nevada is also authorized to enjoin violations of the Nevada Deceptive Trade Practices Act, NRS §598.0903 *et seq.* and to obtain such damages, restitution, and other compensation and relief as the court may deem appropriate.

7. Defendant Consumer Money Markets, Inc. ("CMM") is a Nevada corporation whose last known office and principal place of business is 1050 E. Sahara Avenue, Las Vegas, Nevada 89104. CMM transacts or has transacted business in the District of Nevada.

8. Defendant Data Tech Solutions ("DTS") is Defendant William Kelly's wholly

owned Nevada corporation with its office and principal place of business located at 1050 E. Sahara Avenue, Las Vegas Nevada 89104. DTS transacts or has transacted business in the District of Nevada.

9. Defendant Continental Direct Services, Inc. ("CDS") is a Nevada corporation with its office and principal place of business located at 1050 E. Sahara Avenue, Las Vegas, Nevada 89104. CDS is the successor to CMM, having purchased the assets of CMM in July 1999. CDS transacts or has transacted business in the District of Nevada.

10. Defendant Interstate Check Services, Inc. ("ICS") is a Nevada corporation with its office and principal place of business located at 1050 E. Sahara Avenue, Las Vegas, Nevada 89104. ICS transacts or has transacted business in the District of Nevada.

11. Defendant William S. Kelly ("Kelly") is an officer, director or principal owner of the corporate defendant DTS. At all times material to this complaint, acting alone or in concert with others, he has formulated, directed, controlled or participated in, or assisted or facilitated, the acts and practices set forth in this Complaint. Defendant Kelly resides in and transacts or has transacted business in the District of Nevada.

12. Defendant Ana S. Miller ("Miller") is an officer, director or principal owner of the corporate defendant CMM. From at least November 1998 through July 19, 1999, acting alone or in concert with others, she has formulated, directed, controlled or participated in the acts and practices of defendant CMM set forth in this Complaint. Defendant Miller resides in and transacts or has transacted business in the District of Nevada.

13. Defendant Gary Allen Balazs ("Balazs") has been an officer of the corporate

defendants CMM and CDS. At all times material to this complaint, acting alone or in concert with others, he has formulated, directed, controlled or participated in the acts and practices of defendants CMM and CDS, including the acts and practices set forth in this Complaint. Defendant Balazs resides in and transacts or has transacted business in the District of Nevada.

14. Defendant Raymond Elia (“Elia”) is an officer, director, or principal owner of the corporate defendant ICS. From at least January 1999 through the present, acting alone or in concert with others, he has formulated, directed, controlled or participated in the acts and practices of defendant ICS, including the acts and practices set forth in this Complaint. Defendant Elia resides in and transacts or has transacted business in the District of Nevada.

15. Defendants Elia and ICS sold the “cash on demand” portion of CMM’s and CDS’s credit offer; shared office space with CMM and CDS; shared staff with CMM and CDS; and otherwise employed deceptive practices through an integrated business structure made up of interrelated companies. Defendants Elia and ICS constituted a common enterprise with CMM for purposes of this proceeding until the sale of CMM’s assets to CDS on or about July 19, 1999. Thereafter, Defendants Elia and ICS constituted a common enterprise with CDS for purposes of this proceeding.

COMMERCE

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

DEFENDANTS' COURSE OF CONDUCT

17. Defendant CMM, in 1996, began marketing credit offers to consumers through direct mail solicitations and telephone presentations. CMM represented to consumers that they were pre-approved for a CMM credit line worth thousands of dollars, regardless of their credit history. CMM claimed that consumers could use the CMM card for general shopping and also could obtain thousands of dollars of “cash on demand” against this credit line. In early solicitations, CMM further stated or implied that consumers, in addition, would receive pre-approved VISA or MasterCard credit cards.

18. CMM’s claims were false, causing millions of dollars of injury to consumers who paid membership fees and then failed to receive the credit and cash they expected. Although Defendants’ mail solicitations and telephone presentations have varied over time, CMM’s promotion of its “MoneyMarketCard” in the first half of 1999 illustrates CMM’s scheme.

19. CMM, with the assistance of Defendants Kelly and DTS, purchased lists of consumers from list-brokering services, targeted consumers, and sent to each consumer a customized mail solicitation. The front page of the solicitation stated that the consumer was approved for a credit line of \$5,500 at 14.99% annual interest, and stated or implied that the company’s card could be used like an ordinary credit card for general shopping (*e.g.*, “MoneyMarketCard” . . . “Your new membership for Easy Shopping and fast Cash On-Demand is ready for IMMEDIATE ACTIVATION!” . . . “There is no collateral needed for your unsecured credit card issued from CMM.”). The few ambiguous references to a CMM catalog were insufficient to alert numerous consumers that their only shopping option was to purchase from a CMM catalog.

20. The front of the solicitation further stated or implied that consumers could obtain thousands of dollars of “cash on demand” against this revolving credit line (*e.g.*, “MoneyMarketCard” . . . “Cash on Demand PIN code: xxxx” . . . “Once you receive your card, you get cash with Cash On-Demand** at any time!”). Having made these strong claims that consumers could obtain substantial cash advances as in the case of an ordinary credit card, the front of the solicitation failed clearly and conspicuously to disclose the critical differences -- CMM’s large up-front fee (\$169.95); the APR of CMM’s cash loans; the size and repayment terms of the loans; and other material terms. The back of the solicitation not only failed to state the APR, but also inaccurately stated the range of initial amounts available for such loans (“up to \$150”) and failed to state the range of fees charged in dollar terms. Such disclosures as were made were not clear and conspicuous due to ambiguous language, their lack of proximity to strong claims on the front of the solicitation, confusing format, and other defects.

21. The solicitation directed the consumer to call a 1-800 number. CMM’s telemarketers, after taking down the consumer’s checking account or credit card information, congratulated the consumer on being approved for the full credit line of \$5,500. The telemarketers reinforced CMM’s sales themes that CMM was offering a type of general credit card and, in the course of a confusing 15 to 20 minute presentation, failed to disclose clearly and conspicuously the material differences between CMM’s card and ordinary credit cards referred to in Paragraph 20.

22. CMM collected the membership fee of \$169.95 through automatic debiting of the consumer’s checking or credit card account. CMM, four to six weeks later or more, then sent to the consumer a packet containing a CMM catalog and further information for ordering products and

using cash on demand. These materials alerted the consumer for the first time that the MoneyMarketCard, in fact, could not be used for purchases like an ordinary credit card. The MoneyMarketCard could be used only to purchase goods from a CMM catalog, and, unlike a general credit card, also required consumers to make 30% down payments on such product purchases.

23. Consumers also learned upon receiving this packet that the CMM MoneyMarketCard, unlike many ordinary credit cards, offered no cash advances on the revolving credit line. Instead, a firm called Interstate Check Services, Inc. offered only initial loans of \$20, payable within 30 days. ICS charged “\$6 or 10% of cashed amount, whichever is greater” for such loans. This was the equivalent of a 360% annual percentage rate (“APR”) on a \$20 loan payable within 30 days. The consumer was required to give ICS a post-dated personal check made out to ICS in the amount of the loan plus a fee (\$26), or advance authorization to automatically debit the consumer’s checking account in that amount.

24. The written information given to consumers in the catalog packet, like the mail solicitations, failed clearly and conspicuously to disclose the APR of the cash on demand loans or the range of finance charges in dollar terms. The documents also inaccurately stated the range of initial loans available (“up to \$150”).

25. CMM, from August 1996 through July 1999, sold over \$12,000,000 in membership fees through these practices. In that time, only a small minority of CMM’s customers, upon learning the true nature of CMM’s offer, elected to buy any catalog goods or to use CMM’s or ICS’s “cash on demand” service.

26. Defendants William S. Kelly, through his wholly-owned corporation DTS, assisted or facilitated the practices of CMM by, among other things, purchasing consumer names for CMM; by segregating those lists into target audiences; by providing and maintaining computer software for tracking consumer purchases and collecting payment; and by other means. Defendants Kelly and DTS also directly formulated, controlled, or participated in CMM's and CDS's practices by formatting and editing mail solicitations; testing consumer response to advertisements and giving other marketing advice; editing telemarketing scripts; and other means. Defendants Kelly and DTS also exerted indirect control of CMM by virtue of an arrangement to share half of CMM's profits. Defendants Kelly and DTS committed these acts and practices with the knowledge, or conscious avoidance of knowledge, that CMM's claims to consumers were deceptive.

27. Defendant Ana Miller assumed the position of 100% owner and President of CMM on or about November 1998, upon the death of her husband Jimmy Miller, the founder of CMM. From that time until on or about July 19, 1999, Defendant Miller, among other things, exercised authority as CMM's president and highest officer; substituted her name on CMM solicitations, controlled bank accounts, and continued to collect profits for her own use. At the same time, Defendant Miller took no significant steps to attempt to control CMM's deceptive practices. Defendant Miller did so with actual knowledge of material misrepresentations, reckless indifference to the truth or falsity of CMM's misrepresentations, or an awareness of a high probability of fraud along with intentional avoidance of the truth.

28. Defendant Gary Allen Balazs served as Consumer Service Representative for CMM and, on or about December 1998, became Director of Operations. Defendant Balazs

formulated, participated in, directed, controlled, or had the capacity to control the practices of CMM, including hiring and firing personnel, reviewing and editing CMM's deceptive sales solicitations, and committing other acts and omissions. Defendant committed these practices with either actual knowledge of material misrepresentations, reckless indifference to the truth or falsity of CMM's misrepresentations, or with an awareness of a high probability of fraud along with intentional avoidance of the truth.

29. Defendant Raymond Elia joined CMM on or about November 1998 and shortly thereafter became sole owner, officer, and director of ICS. Defendant Elia formulated, participated in, directed, controlled, or had the capacity to control the practices of ICS, including the company's failure to disclose to consumers, among other things, the APR's of the ICS loans, their finance charges, and the range of initial loans available. Defendants committed these practices with either actual knowledge of material misrepresentations, reckless indifference to the truth or falsity of CMM's, CDS's, and ICS's claims, or with an awareness of a high probability of fraud along with intentional avoidance of the truth. As alleged in Paragraph 15 herein, Defendant CMM also acted in common enterprise with Defendants Elia and ICS for purposes of this proceeding.

30. Defendant Continental Direct Services, Inc. ("CDS"), a company having no prior business connection to CMM or other defendants, purchased the assets of CMM from Defendant Ana Miller on or about July 19, 1999. CDS's solicitations, telephone sales pitches, and materials given to consumers in the catalog packet, despite certain revisions, continued to mislead many consumers in the same fashion as CMM's corresponding materials. CDS, as in the case of CMM,

also shared employees and office space with ICS, used ICS to sell a portion of its offering (“cash on demand”), and otherwise cooperated and acted in concert with Defendants Elia and ICS to carry out its plan. As alleged in Paragraph 15 herein, Defendants CDS also acted in common enterprise with Defendants Elia and ICS for purposes of this proceeding.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

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

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

COUNT ONE (MISREPRESENTATIONS)
(By Plaintiff Federal Trade Commission)

33. Paragraphs 1 through 32 are incorporated herein by reference.

34. In numerous instances, Defendants have represented, expressly or by implication, that consumers, for a fee, will receive from CMM or CDS a credit card with a revolving credit line of \$5,000 or more that can be used for general purchases or to obtain thousands of dollars in cash loans at interest rates of 14.99 - 17.99%.

35. In truth and in fact, in numerous instances, consumers will not receive from CMM or CDS a credit card with a revolving credit line of \$5,000 or more that can be used for general purchases or to obtain thousands of dollars in cash loans at interest rates of 14.99 - 17.99%.

36. The representations set forth in Paragraph 34 are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT TWO (DECEPTIVE OMISSIONS)

(By Plaintiff Federal Trade Commission)

37. Paragraphs 1 through 36 are incorporated herein by reference.

38. Defendants, in connection with the advertising, promotion, or extending of credit, represented, expressly or by implication, that its CMM or CDS card has benefits and costs comparable or superior to those of ordinary unsecured credit cards.

39. In doing so, Defendants failed to disclose clearly and conspicuously (a) that consumers were required to pay a membership fee \$149 - \$179; (b) that the card could not be used for general purchases, (c) that consumers, to purchase goods from the CMM or CDS catalog, typically had to make down payments of 30%; and (d) that the “cash on demand” was closed-end credit whereby the consumer initially could receive only one loan at time of \$20; had to entirely repay each loan within 30 days before receiving another; and had to pay finance charges amounting to 360% or more annual interest.

40. In light of the representations set forth in Paragraph 38, Defendants failure to disclose the facts stated in Paragraph 39 are deceptive omissions that are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

VIOLATIONS OF THE TELEMARKETING SALES RULE

41. The Commission promulgated the Telemarketing Sales Rule pursuant to Section 6102(a) of the Telemarketing Act, 15 U.S.C. § 6102(a). The Rule became effective on December 31, 1995.

42. The Telemarketing Sales Rule prohibits telemarketers and sellers, *inter alia*, (1)

from misrepresenting, directly or by implication, any material aspect of the nature or central characteristics of services that are the subject of a sales offer, 16 C.F.R. § 310.3(a)(2)(iii); and (2) from failing to disclose in a clear and conspicuous manner, before a customer pays for goods or services offered, all material restrictions, limitations, or conditions to use the goods or services that are the subject of the sales offer, 16 C.F.R. § 310.3(a)(1)(ii). In addition, (3) it is a violation of Section 310.3(b) of the Telemarketing Sales Rule for any person to provide substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any practice that violates § 310.3(a) or (c), or § 310.4 of the Rule. 16 C.F.R. § 310.3(b).

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

44. Defendants CMM, DTS, CDS, ICS, Kelly, Miller, Balazs, and Elia are "sellers" or "telemarketers" engaged in "telemarketing," as those terms are defined in the FTC Telemarketing Sales Rule. 16 C.F.R. §§ 310.2(r), (t) and (u). Defendants Kelly and DTS, in addition, are "person[s]" who provided substantial assistance and support to telemarketers CMM and CDS within the meaning of Sections 310.2(o) and 310.3(b) of the Rule. 16 C.F.R. §§ 310.2(o) and 310.3(b).

COUNT THREE (MISREPRESENTATIONS)
(By Plaintiffs Federal Trade Commission and State of Nevada)

45. Paragraphs 1 through 44 are incorporated herein by reference.

46. In numerous instances, in connection with offers to provide lines of credit, cash advances, and credit cards to consumers for a fee, Defendants have represented, expressly or by implication,

- a. That consumers will receive large cash advance privileges on a CMM or CDS credit line of \$5,000 or more;
- b. That consumers will receive an unsecured CMM or CDS credit card of \$5,000 or more that can be used for any credit card purchases;
- c. That consumers will receive from CMM an unsecured, pre-approved VISA or MasterCard credit card.

47. In truth and in fact, in numerous instances,

- a. Consumers do not receive large cash advance privileges on a CMM or CDS credit line of \$5,000 or more;
- b. Consumers do not receive an unsecured CMM or CDS credit card of \$5,000 or more that can be used without restriction for any credit card purchases;
- c. Consumers do not receive from CMM an unsecured, pre-approved VISA or MasterCard credit card.

48. Defendants thereby have misrepresented material aspects of the nature or central characteristics of its offered service, in violation of Section 310.3(a)(2)(iii) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(2)(iii).

COUNT FOUR (FAILURE TO DISCLOSE)
(By Plaintiffs Federal Trade Commission and State of Nevada)

49. Paragraphs 1 through 48 are incorporated herein by reference.

50. Defendants, in connection with the advertising, promotion, or extending of credit, represented, expressly or by implication, that its CMM or CDS card has benefits and costs comparable or superior to those of ordinary unsecured credit cards.

51. In doing so, Defendants failed to disclose clearly and conspicuously (a) that consumers were required to pay a membership fee \$149 - \$179; (b) that the card could not be used for general purchases, (c) that consumers, to purchase goods from the CMM or CDS catalog, typically had to make down payments of 30%; and (d) that the “cash on demand” was closed-end credit whereby the consumer initially could receive only one loan at time of \$20; had to entirely repay each loan within 30 days before receiving another; and had to pay finance charges amounting to 360% or more annual interest.

52. Defendants thereby have violated Section 5 of the Federal Trade Commission Act and Section 310.3(a)(1)(ii) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(1)(ii).

COUNT FIVE (ASSISTING/FACILITATING)
(Plaintiffs Federal Trade Commission and State of Nevada)

53. Paragraphs 1 through 52 are incorporated herein by reference.

54. In numerous instances, in connection with telemarketing offers to obtain or arrange credit, Defendants Kelly and DTS have provided substantial assistance and support to Defendants CMM and CDS when Kelly and DTS knew or consciously avoided knowing that CMM and CDS were engaged in acts or practices that violate Sections 310.3(a) and 310.4 of the Telemarketing Sales Rule, such as the acts and practices described in Counts One through Three above.

55. Defendants Kelly and DTS thereby have violated Section 310.3(b) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(b).

TRUTH IN LENDING AND REGULATION Z VIOLATIONS

(By Plaintiff Federal Trade Commission)

56. Under the TILA, 15 U.S.C. §§ 1601-1666j, as amended, and its implementing Regulation Z, 12 C.F.R. § 226, as amended, persons who *advertise* “closed-end credit,” as defined in 12 C.F.R. § 226.2(a)(10), must comply with applicable provisions of the TILA and Regulation Z, including but not limited to, §§ 226.4, 226.22, and 226.24 of Regulation Z, 12 C.F.R. §§ 226.4, 226.22, and 226.24. The TILA and Regulation Z also require *creditors who extend* closed-end credit to comply with applicable provisions of the TILA and Regulation Z, 12 C.F.R. §§ 226.4, 226.17, 226.18, and 226.22. “Credit” means the right to defer payment of debt or to incur debt and defer its payment, 12 C.F.R. § 226.2(a)(14). “Closed-end” credit is all credit which is not characterized by such factors as (1) a reasonable expectation of repeated loans; (2) the imposition of finance charges in varying absolute amounts, depending upon the outstanding balance; and (3) the borrower’s self-replenishment of the loans through repayment and reuse. 12 C.F.R. §§ 226.2(a)(10) and 226.2(a)(20).

57. ICS’s loans are closed-end credit subject to these requirements. The ICS loans were single payment loans as to which there was no necessary expectation of repeated loans (and historically were not repeated); the loans involved a fixed finance charge; and the loans required the borrower to repay the loan and fee in their entirety before any new loan could be issued.

58. Pursuant to TILA, a violation of the TILA constitutes a violation of the Federal Trade Commission Act, 15 U.S.C. § 1607(c).

COUNT SIX (TILA ADVERTISING VIOLATIONS)

59. Paragraphs 1 through 58 are incorporated herein by reference.

60. Defendants CMM and CDS, and also ICS by virtue of being in common enterprise with these firms, advertised closed-end credit to consumers. The mail solicitation stated specific credit terms and Defendants therefore had the obligation to “state only those terms that actually are or will be arranged or offered by the creditor.” 12 C.F.R. § 226.24(a). The mail solicitation also stated a rate of finance charge. Defendants therefore had the obligation to state the rate as an “annual percentage rate,” using that term. 12 C.F.R. § 226.24(b).

61. Defendants CMM, CDS, and ICS violated the requirements of Regulation Z in the following and other respects by:

(a) failing to disclose the annual percentage rate of such loans, in violation of § 226.24(b) of Regulation Z, 12 C.F.R. § 226.24(b); and

(b) failing to state only those terms that actually are or will be arranged or offered by the creditor by stating a range of initial loan amounts greater than would be available (“up to \$150,” “\$20 to \$200”), in violation of § 226.24(a) of Regulation Z, 12 C.F.R. § 226.24(a).

COUNT SEVEN (TILA WRITTEN DISCLOSURE VIOLATIONS)

62. Paragraphs 1 through 61 are incorporated herein by reference.

63. ICS, and also CMM and CDS by virtue of their being in common enterprise with ICS, were “creditors” who “extended” closed-end credit to consumers. “Creditor” for this purpose means a person who regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than 4 installments (not including a down payment), and to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract. 12 C.F.R. § 226.2(a)(17). The ICS loans in question

involved a finance charge and the loan was payable to ICS.

64. Defendants ICS, CMM, and CDS, as creditors extending closed-end credit, were required to provide certain disclosures to consumers, clearly and conspicuously in writing, in a form that consumers could keep, and before consummation of the loan transaction. 12 C.F.R. §§ 226.4, 226.17, 226.18, and 226.22.

65. Defendants CMM, CDS, and ICS violated the requirements of Regulation Z in the following and other respects by:

(a) failing to disclose the annual percentage rate of such loans, in violation of §226.18(e) of Regulation Z, 12 C.F.R. §226.18(e);

(b) stating a higher range of initial loans than were actually available, thereby failing to disclose the “amount financed” in violation of §226.18(b) of Regulation Z, 12 C.F.R. §226.18(b);

(c) stating the finance charge as a hypothetical “\$6 or 10% of cashed amount, whichever is higher,” thereby failing adequately to disclose in dollar terms “the finance charge, using that term, and a brief description such as ‘the dollar amount the credit will cost you,’” in violation of §226.18(b) of Regulation Z, 12 C.F.R. §226.18(b);

(d) failing to make the disclosures referred to in Paragraphs 63(a)-(c) clearly and conspicuously in writing before the consummation of the loans, in violation of §§ 226.17(a)-(b) of Regulation Z, 12 C.F.R. §§ 226.17(a)-(b).

66. Defendant CMM’s, CDS’s, and ICS’s practices also were deceptive acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45.

VIOLATIONS OF NEVADA STATE LAW STATUTES

COUNT SEVEN
(By Plaintiff State of Nevada)
(Deceptive Trade Practices Act: Failure to Disclose)
(NRS § 598.0923 (2))

67. Paragraphs 1 through 66 are incorporated herein by reference.

68. By engaging in the acts and practices described above, the defendants violated NRS § 598.0923(2) and engaged in deceptive practices when they:

"in the course of [their] business or occupation [they] knowingly:

(2) Failed to disclose a material fact in connection with the sale of goods or services."

COUNT EIGHT
(By Plaintiff State of Nevada)
(Deceptive Trade Practices Act: Failure to Register as a Credit Services Organization)
(NRS § 598.2825)

69. Paragraphs 1 through 68 are incorporated herein by reference.

70. Since at least 1996, defendants have made numerous representations to consumers, with respect to the extension of credit by others, that the defendant, in return for the membership fee or other payment from the consumer, would sell, provide or perform any of the following services:

- a. obtain an extension of credit for the buyer.
- b. provide advice or assistance to the buyer with regard to an extension of credit.

As such, defendant is a credit service "organization" as that term is defined in NRS § 598.281(5).

71. Defendants have failed to register and post a bond or other security as a credit service organization with the Nevada Consumer Affairs Division in violation of NRS § 598.2825 and, therefore, have committed a deceptive trade practice pursuant to NRS § 598.289.

COUNT NINE

(By Plaintiff State of Nevada)

(Deceptive Trade Practices Act: Credit Services Organization, Misleading Representations)
(NRS § 598.282) (4)

72. Paragraphs 1 through 71 are incorporated herein by reference.

73. Since 1996, Defendants, their agents, employees and representatives who sold or attempted to sell the services of CMM made the following misleading representations: (a) That consumers will receive large cash advance privileges on a CMM or CDS credit line of \$5,000 or more; (b) That consumers will receive an unsecured CMM or CDS credit card of \$5,000 or more that can be used for any credit card purchases; and (c) That consumers will receive from CMM an unsecured, pre-approved VISA or MasterCard credit card.

74. In truth and fact, CMM offers no substantial cash advances on a general line of credit; no card that can be used without restriction for general credit card purchases; and no VISA or MasterCard

75. In violation of NRS §598.202(4), Defendants engaged in deceptive trade practices when they made the foregoing misrepresentations.

CONSUMER INJURY

76. Consumers throughout the United States have suffered and continue to suffer substantial monetary loss as a result of the Defendants' unlawful acts or practices. In addition, the Defendants have been unjustly enriched as a result of their unlawful acts or practices. Absent injunctive relief by this Court, the Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

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

78. Section 19 of the FTC Act, 15 U.S.C. § 57b, Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6106(b), and Section 1681s of the Truth in Lending Act, 15 U.S.C. § 1681s, authorize this Court to grant such relief as the Court finds necessary to redress injury to consumers or other persons resulting from Defendants' violations of the Telemarketing Sales Rule and TILA and Regulation Z, including the rescission or reformation of contracts, and the refund of monies.

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs the Federal Trade Commission and the State of Nevada, as authorized by Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), and pursuant to its own equitable powers:

1. Award Plaintiffs such preliminary injunctive and ancillary equitable relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief;
2. Permanently enjoin the Defendants from violating the FTC Act, the Telemarketing Sales Rule, and TILA and Regulation Z, as alleged herein;
3. Award such relief as the Court finds necessary to redress injury to consumers resulting from the Defendants' violations of the FTC Act, the Telemarketing Sales Rule, and TILA

and Regulation Z, including, but not limited to, rescission or reformation of contracts, the refund of monies paid, and the disgorgement of ill-gotten monies;

4. Award Plaintiffs the costs of bringing this action, as well as other and additional relief as the Court may determine to be just and proper; and

5. Order that Defendants' privilege of conducting business in the State of Nevada be suspended subject to meeting all registration and bonding requirements under state law.

Respectfully submitted,

Dated:

DEAN C. GRAYBILL
JEROME M. STEINER
Attorneys for Plaintiff
FEDERAL TRADE COMMISSION

Dated:

By:

TRACEY J. BRIERLY
Deputy Attorney General
Attorneys for Plaintiff
STATE OF NEVADA