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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

DEBT MANAGEMENT FOUNDATION SERVICES, INC.; ONE STAR MARKETING, INC.; DEBT SPECIALIST OF AMERICA, INC.; AMERIDEBT GROUP, INC.; CREDIT COUNSELING SPECIALISTS OF AMERICA, INC.; DALE BUIRD, JR.; DALE BUIRD, SR.; and SHAWN BUIRD,

Defendants.

Case No. 8:04-CV-1674-T-17MSS

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF

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

1. Plaintiff FTC brings this action under Sections 5(a), 13(b), and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a), 53(b), and 57b; the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. §§ 6101-

6108; Sections 503 and 505(a)(7) of the Gramm-Leach-Bliley Act ("GLB Act"), 15 U.S.C. §§ 6803 and 6805(a)(7); and the Credit Repair Organizations Act, 15 U.S.C. §§ 1679-1679j ("CROA"), to secure temporary, preliminary, and permanent injunctive relief, rescission of contracts and restitution, disgorgement of ill-gotten gains, an asset freeze, appointment of a receiver, and other equitable relief for defendants' violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), the FTC's Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310; Title V of the GLB Act, 15 U.S.C. §§ 6801-27; the FTC's Privacy of Consumer Financial Information Rule ("Privacy Rule"), 16 C.F.R. Part 313; and Sections 404-407 of CROA, 15 U.S.C. §§ 1679b-1679e.

JURISDICTION AND VENUE

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

3. Venue is proper in the United States District Court for the Middle District of Florida pursuant to 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b) and (c).

PLAINTIFF

4. Plaintiff FTC is an independent agency of the United States Government created and given statutory authority and responsibility by the FTC Act, as amended, 15 U.S.C. §§ 41-58. The Commission is charged with enforcing, among other things: (1) 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; (2) rules promulgated under the Telemarketing Act, 15 U.S.C. §§ 6101-6108, including the TSR, 16 C.F.R. Part 310, which prohibits deceptive or abusive telemarketing acts or practices; (3) Subtitle A of Title V of the GLB Act, 15 U.S.C. §§ 6801-09, and the FTC's Privacy Rule, 16 C.F.R. Part 313, which require, among other things, that financial institutions provide notices accurately describing their privacy practices to their customers; and (4) CROA, which regulates the practices of organizations that offer services for improving a consumer's credit record, history, or rating. 15 U.S.C. § 1679a. The

Commission may initiate federal district court proceedings, in its own name by its designated attorneys, to enjoin violations of any provision of law it enforces and to secure such other equitable relief as may be appropriate in each case, including but not limited to restitution for injured consumers. 15 U.S.C. §§ 53(b), 57b, 6105(b), and 6805(a)(7).

DEFENDANTS

5. Defendant DEBT MANAGEMENT FOUNDATION SERVICES, INC. ("DMFS"), is a Florida corporation with its principal place of business at 13553 66th Street North, Suite 101, Largo, Florida 33771. Articles of incorporation representing that DMFS is a not-for-profit corporation were filed on September 23, 2003. Notwithstanding these incorporation papers, DMFS is organized to carry on business for its own profit or that of its members within the meaning of Section 4 of the FTC Act. Additionally, the individual defendants have conducted the business of DMFS jointly or interchangeably with their own affairs and/or the business of the for-profit corporations that the individual defendants control.

6. Defendant ONE STAR MARKETING, INC. ("One Star"), is a for-profit Florida corporation with its principal place of business at 13553 66th Street North, Suite 101, Largo, Florida 33771. Its articles of incorporation were filed on September 19, 2003.

7. Defendant DEBT SPECIALIST OF AMERICA, INC. ("DSA"), is a for-profit Florida corporation with its principal place of business at 13553 66th Street North, Suite 101, Largo, Florida 33773. Its articles of incorporation were filed on January 21, 2003. Through at least September 2003, DSA marketed and enrolled consumers in debt management programs.

8. Defendant AMERIDEBT GROUP, INC. ("Ameridebt Group"), is an inactive, for-profit Florida corporation. Its principal place of business was at 5770 Roosevelt Blvd., Clearwater, Florida 33760. Its articles of incorporation were filed on April 23, 2002. Through at least the spring of 2003, Ameridebt Group marketed and enrolled consumers in

debt management programs. The Florida Secretary of State administratively dissolved Ameridebt Group on September 19, 2003, for failure to file an annual report.

9. Defendant CREDIT COUNSELING SPECIALISTS OF AMERICA, INC. ("CCSA"), is a New York corporation. Its articles of incorporation, which were filed on January 21, 2004, represent that CCSA is a not-for-profit corporation. Further investigation or discovery will show that CCSA is organized to carry on business for its own profit or that of its members within the meaning of Section 4 of the FTC Act. Additionally, further investigation or discovery will show that the individual defendants have conducted the business of CCSA jointly or interchangeably with their own affairs and/or the business of the for-profit corporations that the individual defendants control.

10. Defendant DALE BUIRD, JR., is the president of defendants DMFS, One Star, DSA, and Ameridebt Group. He is also a director of defendants DMFS and CCSA. He is the son of defendant Dale Buird, Sr., and the brother of defendant Shawn Buird. Dale Buird, Jr., resides in the Central District of Florida.

11. Defendant DALE BUIRD, SR., is the vice-president, secretary, and general manager of defendant DMFS, the vice president of defendant One Star, and the general manager of defendant DSA. He is also a director of defendants DMFS and CCSA. He is the father of defendants Dale Buird, Jr., and Shawn Buird. Dale Buird, Sr., resides in the Central District of Florida.

12. Defendant SHAWN BUIRD is the vice president of defendant One Star. He is also a director of defendants DMFS and CCSA. He is the son of defendant Dale Buird, Sr., and the brother of defendant Dale Buird, Jr. Shawn Buird resides in the Central District of Florida.

COMMON ENTERPRISE

13. The corporate defendants have operated as a common business enterprise while engaging in the deceptive acts and practices, and other violations of law alleged below.

Because the corporate defendants have operated as a common enterprise, each of them is jointly and severally liable for the deceptive acts and practices, and violations of law alleged below. The individual defendants are also jointly and severally liable for this conduct because of their participation in, and authority to control and direct, the activities of the defendant corporations.

COMMERCE

14. At all times relevant to this complaint, the defendants have maintained a substantial course of business in the advertising and marketing of debt management programs, in or affecting commerce, including the acts and practices alleged herein, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' BUSINESS PRACTICES

The Marketing Companies

15. Since at least 2002, defendant Dale Buird, Jr., has solicited consumers to enroll in debt management programs using defendant corporations Ameridebt Group, DSA, and DMFS.

16. Prior to September 2003, the corporations used by Dale Buird, Jr., to solicit consumers included defendant corporations Ameridebt Group and DSA. Each of these entities was incorporated under Florida law as a for-profit corporation.

17. On April 3, 2003, the Federal Trade Commission announced that regulations prohibiting telemarketers from making outbound telemarketing calls to numbers registered on the National Do Not Call Registry would become effective October 1, 2003. 68 Fed. Reg. 16238-16247 (2003). A corporation that is not organized to carry on business for its own profit or that of its members is not subject to these regulations. 15 U.S.C. § 44.

18. Sometime in September 2003, Dale Buird, Jr., began using the purportedly nonprofit corporation DMFS to conduct the solicitation for debt management programs that he had formerly conducted under the names Ameridebt Group and DSA. The three

defendant corporations used by Dale Buird, Jr., to market these programs -- Ameridebt Group, DSA, and DMFS -- are collectively referred to in this complaint as "the Marketing Companies."

The Buirds

19. During all or part of the period that Dale Buird, Jr., has used Ameridebt Group, DSA, and DMFS to solicit consumers for debt management programs, defendants Dale Buird, Sr., and Shawn Buird have participated in and substantially assisted Dale Buird, Jr., in controlling in the activities of one or more of these corporations. These three individual defendants are collectively referred to in this complaint as "the Buirds."

The Marketing Program

20. Consumers participating in a debt management program agree to pay off debts that are included in the program by making regular payments to an agency that agrees to distribute payments to the consumers' creditors.

21. Creditors may waive fees and/or lower interest rates for consumers who participate in debt management programs.

22. The Marketing Companies solicit consumers by leaving prerecorded messages on consumers' answering machines or voice mail systems. These messages state that the speaker is calling on behalf of one of the Marketing Companies and claim that the consumer is pre-approved for a credit card debt consolidation program and can receive interest rates of as low as one-and-one half percent through a debt reduction program. The messages state further that the corporation identified in the message definitely can help the consumer before his or her next billing cycles. The messages urge the consumer to gather his or her credit card names and balances and call the speaker at a toll-free telephone number.

23. For approximately one month beginning in mid-October 2003, the speaker in these messages stated that the speaker is "from Debt Management Foundation Services, a 501(c)(3) non profit agency."

24. For example, a Texas consumer received the following message on her telephone answering machine on Monday, October 27, 2003:

> Hi, this is Mike Noble at Debt Management Foundation Services, a 501(c)(3) nonprofit agency at 1-800-413-4404. I'm calling in regards to a letter we had sent out pre-approving you to consolidate your credit cards together in one low monthly payment. The interest rate is going to be as low as one-and-a-half percent provided only through one of our debt reduction programs.
>
> I'm actually surprised you haven't called yet because we could definitely help you before your next billing cycle. Just have your creditor names and balances ready when you call. You can reach me toll-free at 1-800-413-4404. I'll be working until 10:00 p.m. Talk to you soon.

25. Since mid-November 2003, the messages have stated that the call is from "Debt Management Foundation Services, a non-profit agency."

26. In addition to such telephone solicitations, the Marketing Companies used a websites to solicit consumers. The Marketing Companies used a website at *www.ameridebtgroup.org,* and, since 2003, have used a site at *www.dmfoundation.com.* The websites contain essentially the same claims that are made in the Marketing Companies' telephone presentations. The websites state that consumers who enroll in the program will, among other things, reduce the term on their debts by 50% and reduce or eliminate interest on their debts.

27. The Marketing Companies' websites represent that, by enrolling in the Marketing Companies' program, consumers will preserve and/or rebuild their credit. The current DMFS website represents that, by enrolling in the DMFS program, consumers may "[i]mproved [sic]" their credit rating.

28. The Marketing Companies' websites urge consumers to telephone the Marketing Companies to enroll in a debt management program, or urge consumers to give the Marketing Companies their telephone number or other information so that a representative may contact the consumer about enrolling in a debt management program.

The Marketing Companies' Enrollment of Consumers for Debt Management Programs

29. Consumers who respond to telephone calls, website advertising, or other solicitations from the Marketing Companies receive a sales pitch for a debt management program. The consumers are connected with the Marketing Companies' representatives who repeat and elaborate on the claims made in the Marketing Companies' telephone messages and website. These representatives tell consumers that the Marketing Companies can reduce or eliminate the consumers' credit card interest payments, thereby saving the consumers thousands of dollars in interest and allowing the consumers to pay-off their credit card debts much sooner than they could if they did not participate in the program. In numerous instances, the Marketing Companies represent, expressly or by implication, that they provide debt management services for the consumers who enroll in their programs.

30. The Marketing Companies' representatives also make specific representations concerning the terms consumers will receive if they enroll in the program. The Marketing Companies' representatives, based on consumer-provided information about their credit card debts, identify a specific, monthly payment that each consumer will make as part of the program and the number of monthly payments that each consumer will be required to make in order to pay-off the accounts included in the program. The Marketing Companies' representatives also state a specific interest rate to which each of the consumers' credit card accounts will be reduced in the debt management program.

31. The Marketing Companies' representatives tell consumers that, in order to participate in the debt management program, the consumers must pay the Marketing Companies a setup or enrollment fee, plus a monthly fee. The monthly fee varies from $20 to $49 per month and is collected from consumers' bank accounts with the monthly payment for consumers' creditors. The setup or enrollment fees charged by the Marketing Companies generally range from $100 to $500, but have been over $1,000 in some instances.

32. The Marketing Companies' representatives request the consumers' bank account numbers so that the fees and monthly payments can be debited from the consumers' accounts.

33. In numerous instances, the Marketing Companies' telephone representatives have told consumers that the Marketing Companies will honor refund requests from consumers who contact the Marketing Companies within 72 hours of the consumers' enrollment dates to request a refund of their enrollment fees.

34. In numerous instances, the Marketing Companies have failed to honor refund requests from consumers who have contacted them within 72 hours of the consumers' enrollment dates.

The Marketing Companies' Failure To Provide Debt Marketing Services

35. The Marketing Companies do not provide debt management services to consumers who enroll in their programs. In numerous instances, instead of providing such services, the Marketing Companies send consumers who agree to enroll as clients papers that include an application or an unexecuted contract to obtain services from another entity that provides debt management services. The application or contract provides that this entity will provide services such as contacting creditors on the consumer's behalf and developing a debt consolidation plan. The application or contract that the Marketing Companies send to consumers has varied over time, and the entity named in the application or contract as the debt management service provider has varied over time.

36. In numerous instances in which the Marketing Companies give consumers an application or contract for services from another entity, the debt management services described in the application or contract consumers receive are materially different from the services described by the Marketing Companies in the course of persuading consumers to enroll. For example, the application or contract does not provide that enrollment in the debt management program will entitle the client to a specific monthly interest rate or payment

reduction. The application or contract does not guarantee that any of the clients' creditors will grant any particular interest rate or payment reduction.

37. In some instances, the Marketing Companies also send consumers an unexecuted contract that is described as a "Service Agreement" between the consumer and one of the Marketing Companies. The Service Agreement sometimes states that the Marketing Company identified in the contract will transfer the customer's file to a nonprofit processing center.

38. The Service Agreement sometimes states that the Marketing Company identified in the agreement does not warrant or guarantee that any of the customer's creditors will lower interest rates, lower payments, or reduce or waive late fees and penalties.

39. The Service Agreement sometimes states, falsely, that the Marketing Company identified in the contract ". . . will use its best efforts in negotiating a lower payment, lower interest rates and reduction/waiver of late fees and penalties."

40. After receiving written materials from the Marketing Companies, many consumers have requested that the Marketing Companies cancel their enrollment in the debt management program and refund all fees because the program described in the written materials is not the same as the program described to them in the prerecorded message, the telephone sales presentation, or the DMFS website.

41. In numerous instances, the Marketing Companies have failed to honor these refund requests.

42. In numerous instances, consumers signed and returned the application or contract for debt management services to the Marketing Companies, but did not receive debt management services, even though weeks or months had passed since the consumer returned the application or contract.

43. The Marketing Companies have caused billing information relating to consumer enrollment fees to be submitted for payment without a consumer's express informed consent

because the Marketing Companies failed to clearly and conspicuously disclose to the consumers, before submitting the billing information, that: (1) consumers who enroll in the program must apply to or contract with another entity to receive debt management services; and (2) consumers may not receive through the other entity the specific monthly debt payment designated by the Marketing Companies.

44. The Marketing Companies do not provide consumers with notices concerning the Marketing Companies' policies and practices for protecting the confidentiality and security of financial information obtained from consumers. The Marketing Companies also do not provide consumers with notices concerning their credit file rights under state and federal law, and their right to cancel a contract with a credit repair organization.

Business Practices Relating to Defendant DMFS's Claims to be a Non-Profit Corporation

45. Defendant DMFS's articles of incorporation provide that the corporation is organized exclusively for religious, charitable, scientific, literary, and educational purposes, within the meaning of Section 501(c)(3) of the Internal Revenue Code.

46. The Internal Revenue Service has not recognized DMFS as exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code.

47. Defendant DMFS's marketing practices do not differ in any significant way from the marketing practices of defendants DSA and Ameridebt Group.

48. The Buirds control defendant DMFS and for-profit companies that do significant business with defendant DMFS, including defendants One Star and DSA.

49. Defendants Dale Buird, Jr., and Dale Buird, Sr., control the One Star and DSA accounts at AmSouth Bank and, with Shawn Buird, control the DMFS account at AmSouth Bank.

50. Defendant DMFS is organized and operated to provide economic benefit for the Buirds and other members of their family, in part by transferring revenue from defendant DMFS to for-profit corporations that are controlled and owned by the Buirds.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

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

52. Misrepresentations or omissions of material fact likely to mislead consumers acting reasonably under the circumstances constitute deceptive acts or practices prohibited by Section 5 of the FTC Act.

COUNT ONE
SERVICES

53. In numerous instances in the course of marketing debt management programs, the Marketing Companies have represented, expressly or by implication, that they provide debt management services, such as negotiating with consumers' creditors to obtain better payment terms and distributing payments to consumers' creditors.

54. In truth and in fact, the Marketing Companies do not provide debt management services, such as negotiating with consumers' creditors and distributing payments to consumers' creditors. Instead, the Marketing Companies transfer information about the consumers to entities that purport to provide such services and/or provide the consumers with documents that can be used to apply to an entity that purports to provide such services.

55. Therefore, the representations described in Paragraph 54 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), for which each of the defendants is liable.

COUNT TWO
PROGRAM BENEFITS

56. In numerous instances in the course of marketing debt management programs, the Marketing Companies have represented, expressly or by implication, that consumers who

enroll in their debt management program will receive specific benefits, including but not limited to:

a. the elimination of interest charges on credit card debt, or a reduction of those interest charges to as low as one-and-one-half percent;

b. the ability to consolidate credit card debts and pay-off the consolidated debt by making the specific monthly payment designated by the Marketing Company soliciting the consumer; or

c. the ability to receive debt management services before a consumer's next credit card billing cycle.

57. In truth and in fact, in numerous instances in which the Marketing Companies make these representations, the debt management programs to which the Marketing Companies refer consumers do not provide the benefits represented. Among other things, these programs do not:

a. eliminate interest charges or reduce those interest charges to as low as one-and-one-half percent;

b. enable consumers to consolidate credit card debts and pay-off the consolidated debt by paying the specific monthly payment designated by the Marketing Company soliciting the consumer; or

c. provide debt management services before a consumer's next credit card billing cycle.

58. Therefore, the representations described in Paragraph 57 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), for which each of the defendants is liable.

COUNT THREE
REFUNDS

59. In numerous instances in the course of marketing debt management programs, the Marketing Companies have represented that they will honor a refund request if a consumer contacts the Marketing Company that solicited the consumer within 72 hours of the consumer's enrollment date and requests a refund of his or her enrollment fee.

60. In truth and in fact, in numerous instances in which the Marketing Companies make these representations, the Marketing Companies have not honored refund requests from consumers who have contacted the Marketing Companies within 72 hours of the consumers' enrollment dates and requested refunds of their enrollment fees.

61. Therefore, the representation described in Paragraph 60 is false and misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), for which each of the defendants is liable.

COUNT FOUR
MISREPRESENTATION OF NON-PROFIT STATUS

62. In numerous instances in the course of marketing debt management programs, defendant DMFS has represented, expressly or by implication, that defendant DMFS is a nonprofit entity or a tax-exempt nonprofit entity under Section 501(c)(3) of the Internal Revenue Code.

63. In truth and in fact, defendant DMFS is neither a nonprofit entity nor a tax-exempt nonprofit entity under Section 501(c)(3) of the Internal Revenue Code.

64. Therefore, the representations described in Paragraph 63 are false and misleading and constitute a deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), for which each of the defendants is liable.

VIOLATIONS OF THE TELEMARKETING SALES RULE

65. In 1994, Congress directed the Federal Trade Commission to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices pursuant to the

Telemarketing Act, 15 U.S.C. §§ 6101-6108. On August 16, 1995, the FTC adopted the Telemarketing Sales Rule ("Original TSR"), 16 C.F.R. Part 310, which became effective on December 31, 1995. On January 29, 2003, the FTC amended the Original TSR by issuing a Statement of Basis and Purpose ("SBP") and the final amended TSR ("Amended TSR"). 68 Fed. Reg. 4580, 4669.

66. Both the Original TSR and the Amended TSR prohibit sellers and telemarketers engaged in telemarketing from making a false or misleading statement to induce any person to pay for goods or services. 16 C.F.R. § 310.3(a)(4).

67. The Amended TSR provides that it is an abusive telemarketing act or practice for a seller or telemarketer to cause billing information to be submitted for payment without the express, informed consent of the customer. 16 C.F.R. § 310.4(a)(6). Consent is "informed" only when the seller or telemarketer has clearly and conspicuously made all the material disclosures required under the Rule such that the customer can gain a clear understanding that they will be charged and the payment mechanism that will be used to effect the charge. *See* SBP, 68 Fed. Reg. 4580, 4620; 16 C.F.R. § 310.3(a)(1)(i). Among the material information the seller or telemarketer must clearly and conspicuously disclose are all material restrictions, limitations, or conditions to purchase, receive, or use the service that is the subject of the sales offer. 16 C.F.R. § 310.3(a)(1)(i).

68. The Amended TSR established a "Do Not Call" registry, maintained by the Commission (the "National Do Not Call Registry" or "Registry"), of consumers who do not wish to receive certain types of telemarketing calls. Consumers can register their telephone numbers on the Registry without charge either through a toll-free telephone call or over the Internet at *donotcall.gov*.

69. Sellers and telemarketers can access the Registry over the Internet at *telemarketing.donotcall.gov* to download the registered numbers, after paying the appropriate annual fee as set forth at 16 C.F.R. § 310.8(c). Sellers and telemarketers are

prohibited from making "outbound" telemarketing calls to numbers on the Registry. 16 C.F.R. § 310.4(b)(1)(iii)(B). Sellers and telemarketers are also prohibited from making outbound telemarketing calls to any telephone number within a given area code unless the seller first has paid the annual fee for access to the telephone numbers within that area code that are included in the National Do Not Call Registry. 16 C.F.R. § 310.8(a) and (b).

70. Consumers who receive telemarketing calls to their registered numbers can complain of Registry violations the same way they registered, through a toll-free telephone call or over the Internet at *donotcall.gov*.

71. Most provisions of the Amended TSR, including those relating to deceptive telemarketing practices and billing without express informed consent, became effective on March 31, 2003. 68 Fed. Reg. 4580.

72. Since September 2, 2003, sellers, telemarketers, and other permitted organizations have been able to access the Registry over the Internet at *telemarketing.donotcall.gov* to download the registered numbers.

73. Since October 17, 2003, sellers and telemarketers subject to the FTC's jurisdiction have been prohibited from calling numbers on the Registry in violation of the Amended TSR. 16 C.F.R. § 310.4(b)(1)(iii)(B).

74. The Telemarketing Act provides that the Commission has the same jurisdiction, powers, and duties under the Telemarketing Act as it has under the FTC Act, 15 U.S.C. § 6105. Consequently, the Commission's authority under the Telemarketing Act does not extend to entities that are not covered by the FTC Act, including corporations that are not organized for their own profit or the profit of their members within the meaning of Section 4 of the FTC Act, 15 U.S.C. § 44.

75. Regulations promulgated by the Federal Communications Commission under the Telephone Communications Privacy Act, 47 U.S.C. § 227, prohibit initiating a "telephone solicitation" to a residential telephone subscriber who has registered his or her number on

the National Do Not Call Registry, 47 C.F.R. § 64.1200(c), but those regulations do not apply to certain solicitations, including solicitations by or on behalf of a tax exempt nonprofit organization. 47 C.F.R. § 64.1200(f)(9); 47 U.S.C. § 227(a)(3)(C).

76. 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), a violation of the TSR constitutes an unfair or deceptive act or practice in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

77. A person who is not required to access the Do Not Call Registry under the Amended TSR, Federal Communications Commission regulations, or any other federal law is permitted to access and download registered numbers without charge, if the person is accessing the Registry solely to prevent telephone calls to telephone numbers on the Registry. *See* 16 C.F.R. § 310.8(c). If a person accessing the Registry claims to be entitled to access without charge, it must provide the identifying information required by the FTC and certify that it is accessing the Registry solely to prevent telephone calls to telephone numbers on the Registry. *Id.* § 310.8(e).

78. The Marketing Companies are "sellers" or "telemarketers" engaged in "telemarketing" as those terms are defined in the Original TSR, 16 C.F.R. §§ 310.2(r), (t), and (u), and the Amended TSR. 16 C.F.R. §§ 310.2(z), (bb), and (cc).

79. On October 22, 2003, defendant DMFS accessed the Registry and identified itself as an "Exempt Organization or Seller." Since that date, defendant DMFS has downloaded registered numbers associated with 173 area codes. Defendant DMFS has not paid for this access to the Registry.

80. Since October 17, 2003, DMFS has caused thousands of telemarketing calls to consumers whose telephone numbers are on the National Do Not Call Registry.

COUNT FIVE
MISREPRESENTATIONS IN VIOLATION OF THE TSR

81. In numerous instances, in connection with telemarketing debt management programs, the Marketing Companies have made false or misleading statements to induce consumers to enroll in the programs. These false or misleading statements include, but are not limited to, statements that consumers who enroll in the debt management program will receive the following specific benefits:

a. the elimination of interest charges on credit card debt, or a reduction of those interest charges to as low as one-and-one-half percent;

b. the ability to consolidate credit card debts and pay-off the consolidated debt by paying a specific monthly payment designated by the Marketing Company that solicited the consumer; or

c. the ability to receive debt management services before a consumer's next credit card billing cycle.

82. By inducing consumers to enroll in debt management programs by making such false or misleading statements, the Marketing Companies have violated Section 310.3(a)(4) of the Original and Amended TSR, 16 C.F.R. § 310.3(a)(4), and each of the defendants is liable for these violations.

COUNT SIX
BILLING WITHOUT EXPRESS INFORMED CONSENT

83. In numerous instances since March 31, 2003, in connection with telemarketing debt management programs, defendants DSA and DMFS have caused billing information to be submitted for payment without the express informed consent of their customers.

84. By causing billing information to be submitted for payment since March 31, 2003, without the express informed consent of their customers, defendants DSA and DMFS have

violated Section 310.4(a)(6) of the Amended TSR, 16 C.F.R. § 310.4(a)(6), and each of the defendants is liable for these violations.

COUNT SEVEN
CALLS TO TELEPHONE NUMBERS ON THE NATIONAL DO NOT CALL REGISTRY

85. In numerous instances since October 17, 2003, in connection with telemarketing debt management programs, defendant DMFS has engaged in, or caused telemarketers to engage in, initiating outbound telephone calls to persons when those persons' telephone numbers were on the National Do Not Call Registry.

86. The conduct described in Paragraph 86 violates Section 310.4(b)(1)(iii)(B) of the Amended TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B), and each of the defendants is liable for these violations.

COUNT EIGHT
FAILING TO PAY THE FEE TO ACCESS THE NATIONAL DO NOT CALL REGISTRY

87. In numerous instances since October 17, 2003, in connection with telemarketing debt management programs, defendant DMFS has initiated, or caused telemarketers to initiate, outbound telephone calls to telephone numbers within given area codes without first paying the required annual fees for access to the telephone numbers within those area codes that are included in the National Do Not Call Registry.

88. The conduct described in Paragraph 88 violates Section 310.8 of the Amended TSR, 16 C.F.R. § 310.8, and each of the defendants is liable for these violations.

VIOLATIONS OF THE GRAMM-LEACH-BLILEY ACT

89. Section 503 of the GLB Act, 15 U.S.C. § 6803, and the Privacy Rule, 16 C.F.R. § 313.4, require that financial institutions provide each customer with a clear and conspicuous notice that accurately reflects the financial institution's privacy policies and practices not later than when the customer relationship is established, and before disclosing any nonpublic personal information about the consumer to any nonaffiliated third party for any nonexempt purpose. Financial institutions must also provide such notices at least annually during the continuation of the customer relationship. 16 C.F.R. § 313.5.

90. For purposes of Section 503 of the GLB Act and the Privacy Rule, the term "financial institution" means any institution the business of which is engaging in financial activities as described in 12 U.S.C. § 1843(k). 15 U.S.C. § 6809(3); 16 C.F.R. § 313.3(k).

COUNT NINE
FAILURE TO PROVIDE REQUIRED PRIVACY DISCLOSURES

91. The Marketing Companies are financial institutions for purposes of the GLB Act and the Privacy Rule, 15 U.S.C. § 6809(3); 16 C.F.R. § 313.3(k).

92. Upon enrolling consumers seeking debt management services, the Marketing Companies establish a customer relationship and are required to provide a clear and conspicuous notice that accurately reflects the Marketing Companies' privacy policies and practices.

93. In numerous instances, the Marketing Companies have not sent consumers with whom they have a customer relationship the notices required by the GLB Act and the Privacy Rule.

94. The Marketing Companies' failure to provide these required notices to their customers constitutes a violation of Section 503 of the GLB Act, 15 U.S.C. § 6803, and the Privacy Rule, 16 C.F.R. Part 313, and each of the defendants is liable for these violations.

VIOLATIONS OF THE CREDIT REPAIR ORGANIZATIONS ACT

95. CROA was enacted to ensure that prospective buyers of the services of credit repair organizations are provided with the information necessary to make an informed decision regarding the purchase of such services and to protect the public from unfair or deceptive advertising and business practices by credit repair organizations. 15 U.S.C. § 1679(b). CROA provides that a credit repair organization:

a. may not charge or receive any money or other valuable consideration for services which the credit repair organization has agreed to perform before such service is fully performed, 15 U.S.C. § 1679b(b);

b. may not provide services without a written and dated contract that includes a full and detailed description of the services to be performed and other terms and conditions set forth in 15 U.S.C. §§ 1679d(a)(1),1679d(b).

c. must provide to the consumer, before any contract or agreement between the consumer and the credit repair organization is executed, the written statement set forth in Section 405(a) of CROA concerning consumer credit file rights under state and federal law and the right to cancel a contract with a credit repair organization, 15 U.S.C. § 1679c; and

d. must allow a consumer to cancel any contract with the credit repair organization without penalty or obligation if the consumer notifies the credit repair organization of the consumer's intention to cancel before midnight of the third business day after the date that the contract between the consumer and the credit repair organization is executed, 15 U.S.C. § 1679e.

96. CROA empowers the Commission to enforce the requirements that CROA imposes on credit repair organizations with all powers available to the Commission under the FTC Act, including the power to enforce the provisions of CROA in the same manner as

if the violation had been a violation of a Commission trade regulation rule. 15 U.S.C. § 1679h.

COUNT TEN

COLLECTING PROHIBITED ADVANCE PAYMENTS; FAILURE TO PROVIDE WRITTEN CONTRACT, NOTICE, AND REFUNDS

97. The Marketing Companies are "credit repair organizations," as that term is defined in the Credit Repair Organizations Act ("CROA"), because they use instrumentalities of interstate commerce to sell, provide, or perform (or represent that such defendants can or will sell, provide, or perform) a service for the express or implied purpose of improving a consumer's credit record, credit history, or credit rating, and this service is offered in return for the payment of money. 15 U.S.C. § 1679a(3).

98. In numerous instances, the Marketing Companies have:

a. charged or received money or other valuable consideration for the performance of services that defendants the Marketing Companies have agreed to perform before such service was fully performed;

b. charged for and performed services for consumers that have not executed written and dated contracts that include a full and detailed description of the services to be performed and other terms and conditions set forth in 15 U.S.C. § 1679d(b);

c. failed to provide consumers with the written disclosure statement described in 15 U.S.C. § 1679c; or

d. failed to comply with the requests of consumers who seek to cancel any agreement to purchase services from the Marketing Companies without penalty or obligation, even though the consumers have sought to cancel at a time when three business days have not elapsed since the consumer executed a contract for such services.

99. The conduct described in Paragraph 99 above violates CROA. Therefore, this conduct constitutes unfair and deceptive acts or practices in commerce in violation of the FTC Act, 15 U.S.C. § 1679h(b), and each of the defendants is liable for these violations.

CONSUMER INJURY

100. Consumers throughout the United States have suffered as a result of defendants' unlawful acts or practices. Absent injunctive relief by this Court, defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

101. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the court may deem appropriate to halt and redress violations of the FTC Act, the TSR, the Privacy Rule, the GLB Act, and CROA. The Court, in the exercise of its equitable jurisdiction, may award other ancillary relief, including but not limited to, rescission of contracts and restitution, the disgorgement of ill-gotten gains, an asset freeze, and appointment of a receiver, to prevent and remedy injury caused by defendants' law violations.

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

PRAYER FOR RELIEF

Wherefore, plaintiff Federal Trade Commission, pursuant to 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); Section 505(a)(7) of the GLB Act, 15 U.S.C. § 6805(a)(7); Section 410 of the CROA, 15 U.S.C. § 1679h; and the Court's own equitable powers, requests that this Court:

1. Award plaintiff such temporary and preliminary injunctive and ancillary 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 defendants from violating the FTC Act, the TSR, the GLB Act, the Privacy Rule, and CROA;

3. Award such relief against the defendants as the Court finds necessary to redress injury to consumers resulting from violations of law described above including, but not limited to, rescission of contracts and restitution, and disgorgement of ill-gotten gains; and

4. 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.

Dated: July 20, 2004

Respectfully submitted,

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