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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

_____)	
FEDERAL TRADE COMMISSION,)	
)	No. 04 C 7177
Plaintiff,)	Judge Joan H. Lefkow
)	
v.)	Magistrate Judge Morton Denlow
)	
3R BANCORP, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

**STIPULATED FINAL JUDGMENT AND ORDER FOR
PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), commenced this action by filing its Complaint for injunctive and other equitable relief pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101, *et seq.*, charging that the Defendants engaged in deceptive acts and practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, and the FTC’s Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310.

The Commission and Defendants 3R Bancorp, 3R e-Solutions, Inc., 3R E-Solutions Corporation, National United Properties, LLC, 3R Real Estate Corporation, E Three R Info Systems Pvt. Ltd., Ranbir Sahni, and John Perton have consented to the entry of this Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief (“Order”).

NOW, THEREFORE, the Commission and Defendants having requested the Court to

enter this Order, and the Court having considered the contents of the Order and the record in this case, it is **ORDERED, ADJUDGED, AND DECREED** as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter of this case and the parties pursuant to Sections 5, 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 45, 53(b) and 57b, the Telemarketing Act, 15 U.S.C. §§ 6101, *et seq.*, the FTC's Telemarketing Sales Rule, 16 C.F.R. Part 310, and 28 U.S.C. §§ 1331, 1337(a), and 1345. Pursuant to these statutes and regulations, the Commission has the authority to seek the relief contained herein.
2. Venue, process, and service of process are proper.
3. The activities of Defendants are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
4. The Commission's Complaint states claims upon which relief may be granted against Defendants under Sections 5, 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45, 53(b) and 57b, the Telemarketing Act, 15 U.S.C. §§ 6101, *et seq.*, and the FTC's Telemarketing Sales Rule, 16 C.F.R. Part 310.
5. Defendants have entered into this Order freely and without coercion. Defendants further acknowledge that they have read the provisions of this Order and are prepared to abide by them.
6. Defendants deny liability for any of the actions alleged in the Complaint, and this Order does not constitute, and shall not be interpreted to constitute, either an admission by the Defendants of any wrongdoing or a finding by the Court that the Defendants have engaged in any violation of law.

7. The Commission and the Defendants stipulate and agree to entry of this Order, without trial or final adjudication of any issue of fact or law, to settle and resolve all matters in dispute between them arising from the Complaint in this matter, up to the date of entry of this Order. This Order is in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law.

8. Defendants hereby waive all rights, if any, to seek judicial review or otherwise to challenge, contest or dispute the validity or binding effect of the provisions of this Order, including, without limitation, the findings, numbered paragraphs 1 through 10, at pages 2-3 of the Order. Defendants agree that this Order does not entitle Defendants to seek or to obtain attorneys' fees as a prevailing party under the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, and Defendants further waive any rights or claims that may arise under said provision of law. The parties shall each bear their own costs and attorneys' fees incurred in this action.

9. Defendants, their owners, interest holders, directors, officers, employees and professionals, or any of them, waive and release any and all claims that any of them has or may have, known or unknown, against the Federal Trade Commission and its employees, agents and representatives, or any of them, and/or against the Receiver, High Ridge Partners, Inc., their owners, interest holders, directors, officers, employees and professionals, or any of them.

10. Entry of this Order is in the public interest.

DEFINITIONS

For purposes of this Order, the following definitions shall apply:

1. "Asset" means any legal or equitable interest in, right to, or claim to, any real or personal property, including, but not limited to, "goods," "instruments," "equipment," "fixtures,"

“general intangibles,” “inventory,” “checks,” or “notes,” (as these terms are defined in the Uniform Commercial Code), lines of credit, chattels, leaseholds, contracts, mail or other deliveries, lists of consumer names or consumer information, shares of stock, partnership interests, accounts, credits, premises, receivables, funds, and all cash, wherever located.

2. “Assisting others” means: (1) performing customer service functions including, but not limited to, receiving or responding to consumer complaints, receiving identifying and financial information from consumers, or communicating with consumers about extensions of credit; (2) developing, providing, or arranging for the development or provision of sales scripts or any other marketing material; (3) providing names of, or arranging for the provision of names of, potential customers; or (4) performing marketing services of any kind.

3. “Credit-related product, program, or service” means any product, program, or service which is advertised, offered for sale, or sold to consumers as a method by which consumers may establish or obtain any extension of credit or credit device, including, but not limited to, credit cards, loans, or financing, or as a method to consolidate or liquidate debts.

4. “Customer” means any person who has paid, or may be required to pay, for goods or services.

5. “Defendant” or “Defendants” means 3R Bancorp; 3R e-Solutions, Inc., also doing business as CR Bancorp, Euro Banca, 3R Companies, 3R Ventures, 3R Contact Centers, 3R Solutions, 3RE E-Solutions, R 3R E-Solutions, E3R E-Solutions, and E 3R Capital Solutions; 3R E-Solutions Corporation; National United Properties, LLC; 3R Real Estate Corporation, formerly Fairview, Inc. and still intermittently doing business under that name; E Three R Info Systems Pvt. Ltd., also known as E 3R Infosystems Pvt. Ltd.; Ranbir Sahni, individually and as an officer

or director of the corporate Defendants; and John Perton, individually and as an officer or director of the corporate Defendants; and each of them, by whatever names each may be known.

6. "3R Defendants" means 3R Bancorp; 3R e-Solutions, Inc., also doing business as CR Bancorp, Euro Banca, 3R Companies, 3R Ventures, 3R Contact Centers, 3R Solutions, 3RE E-Solutions, R 3R E-Solutions, E3R E-Solutions, and E 3R Capital Solutions; 3R E-Solutions Corporation; 3R Real Estate Corporation, formerly Fairview, Inc. and still intermittently doing business under that name; E Three R Info Systems Pvt. Ltd., also known as E 3R Infosystems Pvt. Ltd.; and Ranbir Sahni, individually and as an officer or director of the corporate Defendants.

7. "Document" means any materials listed in Federal Rule of Civil Procedure 34(a) and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, into reasonably usable form through detection devices. A draft or nonidentical copy is a separate Document within the meaning of the term.

8. "Established business relationship" means a relationship between the seller and a person based on: (a) the person's purchase, rental, or lease of the seller's goods or services or a financial transaction between the person and seller, within the eighteen (18) months immediately preceding the date of the telemarketing call; or (b) the person's inquiry or application regarding a product or service offered by the seller, within the three (3) months immediately preceding the date of a telemarketing call.

9. "Financial Institution" means any bank, savings and loan institution, credit union, or any financial depository of any kind, including, but not limited to, any brokerage house.

trustee, broker-dealer, escrow agent, title company, commodity trading company, or precious metal dealer.

10. "Material" means likely to affect a person's choice of, or conduct regarding, goods or services.

11. "National Do Not Call Registry" means the National Do Not Call Registry maintained by the Commission pursuant to 16 C.F.R. § 310.4(b)(1)(iii)(B).

12. "Outbound telephone call" means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution.

13. "Person" means a natural person, an organization or other legal entity, including a corporation, partnership, sole proprietorship, limited liability company, association, cooperative, or any other group or combination acting as an entity.

14. "Plaintiff" means the Federal Trade Commission ("Commission" or "FTC").

15. "Receiver" means Nancy A. Ross.

16. "Receivership Entities and Interests" means 3R Bancorp; 3R e-Solutions, Inc., also doing business as CR Bancorp, Euro Banca, 3R Companies, 3R Ventures, 3R Contact Centers, 3R Solutions, 3RE E-Solutions, R 3R E-Solutions, E3R E-Solutions, and E 3R Capital Solutions; 3R E-Solutions Corporation; National United Properties, LLC; 3R Real Estate Corporation, formerly Fairview, Inc. and still intermittently doing business under that name; E Three R Info Systems Pvt. Ltd., also known as E 3R Infosystems Pvt. Ltd; and any interest of any Defendant in the following entities: E3R Financial Corporation; National United Properties, Inc.; Realfair Holdings Corp.; 3R Ventures, LLC; 3R Investments, LLC; Call Center Investors, LLC; Regal Development, LLC; DRE Tres Lomas, LLC; DRE Palmdale, LLC; Dycoal, Inc., Dycoal

Unit No. 1, LLC; Dycoal Unit No. 3, LLC; Dycoal Unit No. 5, LLC; and any interest of any Defendant in the following partnerships: Agua Terrace Apartments, a California Limited Partnership; Alcazar Apartments, a California Limited Partnership; Bainbridge Apartments, a California Limited Partnership; Boyle Apartments, a California Limited Partnership; Casa Grande Apartments, a California Limited Partnership; Casa Griffin Apartments, a California Limited Partnership; Columbia Apartments, a California Limited Partnership; Georgian Court Apartments, a California Limited Partnership; Greenway Park Apartments, a Kansas Limited Partnership; Jewel Terrace Apartments, a California Limited Partnership; Linda Vista Apartments, a California Limited Partnership; Marygold Apartments, a California Limited Partnership; Pennbrooke Apartments, a California Limited Partnership; Pine Lake Estates, a California Limited Partnership; Premier Apartments, a California Limited Partnership; Princess Apartments, a California Limited Partnership; Queen Apartments, a California Limited Partnership; Vinewood Apartments, a California Limited Partnership; and Woodlane Apartments, a California Limited Partnership; provided that "Receivership Entities and Interests" does not encompass the above-listed partnerships themselves, or the HUD-insured properties they own, but extends only as far as the interest of Ranbir Sahni or any other Defendant in said partnerships. Nothing in this order shall limit HUD's ability to control, manage and/or otherwise oversee such properties as provided by HUD's statutory, regulatory and contractual authority.

17. "Seller" means any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration whether or not such person is under the jurisdiction of the Commission.

18. "Telemarketer" means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor.

19. "Telemarketing" means any plan, program or campaign (whether or not covered by the Telemarketing Sales Rule, 16 C.F.R. Part 310) that is conducted to induce the purchase of goods or services, or the payment of money, by means of the use of one or more telephones.

20. "Telemarketing Sales Rule" or "Rule" means the FTC Rule entitled "Telemarketing Sales Rule," 16 C.F.R. § 310, attached hereto as **Appendix A** or as may be hereafter amended.

ORDER

I. BAN ON TELEMARKETING OR SALE OF CREDIT-RELATED PRODUCT, PROGRAM OR SERVICE

IT IS THEREFORE ORDERED that the 3R Defendants, as defined herein, are permanently restrained and enjoined from engaging or participating, or assisting others who are engaged or participating, directly or indirectly, or through any business entity or other device, in the telemarketing, advertising, promotion, offering for sale, or sale of any credit-related product, program, or service. Nothing in this Order shall be construed as being an exception to this Section. *Provided, however,* that this Order does not prohibit the acceptance and processing of credit card payments in connection with the telemarketing or sale of products, programs or services that are not credit-related.

II. PROHIBITED BUSINESS PRACTICES

IT IS FURTHER ORDERED that, in connection with the advertising, promotion, offering for sale, or sale of any goods or services by any means whatsoever, Defendants, and their

successors, assigns, officers, agents, servants, employees, and those persons in active concert or participation with them who receive actual notice of this Order by personal service, facsimile, or otherwise, whether acting directly or through any corporation, subsidiary, division, entity, person, name, or other device, are hereby permanently restrained and enjoined from:

- A. Making, or assisting others in making, any express or implied representation or omission of material fact that is false or misleading, in any manner, including, but not limited to, any false or misleading statement:
 - 1. That Defendants will provide consumers with, or arrange for consumers to receive, a major credit card, such as a Visa or MasterCard;
 - 2. Concerning Defendants' ability to provide consumers with any credit-related product, program, or service;
 - 3. That, after paying a fee, consumers will, or are highly likely to, receive a credit card; and
 - 4. Concerning any fact material to a consumer's decision to purchase any product, program or service;

- B. Violating, causing other persons to violate, or assisting others in violating any provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310, including, but not limited to:
 - 1. Misrepresenting, expressly or by implication, that after paying a fee, consumers will, or are highly likely to, receive a credit card;
 - 2. Requesting and/or receiving payment of a fee in advance of consumers obtaining a loan, credit card, or other extension of credit when the seller or

- telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan, credit card, or other extension of credit;
3. Initiating any outbound telephone call to a person's telephone number on the National Do Not Call Registry to induce the purchase of goods or services unless the seller proves:
 - a. the seller has obtained the express agreement, in writing, of such person to place calls to that person. Such written agreement shall clearly evidence such person's authorization that calls made by or on behalf of a specific party may be placed to that person, and shall include the telephone number to which the calls may be placed and the signature of that person; or
 - b. the seller has an established business relationship with such person and that person has not previously stated that he or she does not wish to receive outbound telephone calls made by or on behalf of the seller; or
 4. Initiating any outbound telephone call to a telephone number within a given area code without first paying the required annual fee for access to the telephone numbers within that area code that are on the National Do Not Call Registry.

Provided, however, that if the Commission promulgates rules that modify or supersede the Telemarketing Sales Rule, in whole or part, Defendants shall comply fully and completely with all applicable requirements thereof, on and after

the effective date of any such rules; and

- C. Assisting others who violate any provision of Subsections A or B of this Section.

III. CONSUMER REDRESS

IT IS FURTHER ORDERED that:

A. Judgement in the amount of One Million, Eight Hundred, Fifty Thousand Dollars (\$1,850,000.00) is hereby entered in favor of the Commission and against Defendants, jointly and severally, for equitable monetary relief, including but not limited to consumer redress and/or disgorgement, and for paying any attendant expenses of administering any redress fund. Prior to or concurrently with the execution of this Order, the Receiver shall cause that amount to be transferred to an interest bearing escrow account controlled by the Receiver, who shall hold the entire sum for no purpose other than payment to the Commission upon entry of this Order by the Court. Within five (5) days of receipt of notice of entry of this Order, the Receiver shall wire transfer the entire sum plus any interest to the Commission or its agents or representatives, in accordance with directions provided by the Commission.

B. All funds paid pursuant to this Order shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including but not limited to consumer redress, and any attendant expenses for the administration of such equitable relief. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to defendants' practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the United States Treasury as disgorgement. Defendants shall have no

right to challenge the Commission's choice of remedies under this Part. Defendants shall have no right to contest the manner of distribution chosen by the Commission. No portion of any payments under the judgment herein shall be deemed a payment of any fine, penalty, or punitive assessment.

C. Any redress administrator shall destroy all records relating to this matter six (6) years after the transfer of any remaining redress funds to the FTC Treasury account or the closing of the account from which such funds were disbursed, whichever is earlier, *provided* that no records shall be destroyed unless and until a representative of the Commission has received and approved the administrator's final accounting report. Records shall be destroyed in accordance with disposal methods and procedures to be specified by the Commission. The Commission may, in its sole discretion, require that such records, in whole or in part, be transferred, in lieu of destruction, to the Commission.

D. In the event of any default on Defendants' obligation to make payment under this Section, interest, computed pursuant to 28 U.S.C. § 1961, as amended, shall accrue from the date of default to the date of payment, and shall immediately become due and payable.

E. In accordance with 31 U.S.C. § 7701, Defendants are hereby required, unless they already have done so, to furnish to the Commission their respective taxpayer identifying numbers (social security numbers or employer identification numbers), which shall be used for purposes of collecting and reporting on any delinquent amount arising out of Defendants' relationship with the government. Each individual Defendant is further required, unless he already has done so, to provide the Commission with clear, legible and full-size photocopies of all valid driver's licenses that he possesses, which will be used for reporting and compliance purposes.

F. Defendants agree that the facts as alleged in the Complaint filed in this action shall be taken as true, without further proof, in the event of any subsequent proceedings or litigation to enforce this Order or to collect amounts due pursuant to this Section, including, but not limited to, a non-dischargeability complaint in any bankruptcy case.

G. Proceedings instituted under this Section are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings the Commission may initiate to enforce this Order.

IV. LIFTING OF ASSET FREEZE

IT IS FURTHER ORDERED that the freeze on the assets of the 3R Defendants and National United Properties, LLC shall remain in effect until the Commission has received all payments required by Section III above, and all fees and expenses of the Receiver and other professional fees and expenses approved by the Court are paid in full. The freeze on the assets of Defendant John Perton shall lift upon the entry of this Order by the Court.

V. CUSTOMER LISTS

IT IS FURTHER ORDERED that Defendants, and their successors, assigns, officers, agents, servants, employees, and those persons in active concert or participation with them who receive actual notice of this Order by personal service, facsimile, or otherwise, whether acting directly or through any corporation, subsidiary, division, entity, person, name, or other device, are permanently restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, social security number, credit card number, bank account number, e-mail address, or other identifying information of any person who paid any money to or received any product or service from any Defendant, or whose identifying

information was obtained for the purpose of soliciting them to pay money to or receive any product or service from any Defendant, at any time prior to the entry of this Order, in connection with the Telemarketing, offering for sale, or sale of the products or services referenced in the Complaint. *Provided, however,* that Defendants may disclose such identifying information to a law enforcement agency or as required by any law, regulation, court order, or to counsel.

VI. RECEIVERSHIP

IT IS FURTHER ORDERED that the appointment of Nancy A. Ross as Receiver for the Receivership Entities and Interests, pursuant to the Stipulated Order for Preliminary Injunction With Asset Freeze And Other Equitable Relief Against Defendants 3R Bancorp, 3R E-Solutions, Inc., 3R E-Solutions Corporation, 3R Real Estate Corporation, E Three R Info Systems Pvt. Ltd., and Ranbir Sahni, entered on January 6, 2005, and the Order for Preliminary Injunction With Asset Freeze And Other Equitable Relief Against Defendant National United Properties, LLC, entered on January 21, 2005, and as modified by any other orders of this Court, is hereby continued in full force and effect, and the provisions in those orders relating to the Receiver are incorporated into this Order by reference as though fully set forth herein, until such time as the Receiver wire transfers to the Commission the consumer redress funds held in the interest bearing escrow account as set forth in Section III.A above, and is officially discharged under the terms of an order entered by the Court, whereupon the receivership shall be terminated.

VII. COOPERATION WITH FTC COUNSEL

IT IS FURTHER ORDERED that Defendants 3R Bancorp, 3R e-Solutions, Inc., 3R E-Solutions Corporation, National United Properties, LLC, 3R Real Estate Corporation, E Three R Info Systems Pvt. Ltd., Ranbir Sahni, and John Perton shall, in connection with this action or any

subsequent investigations related to or associated with the transactions or the occurrences that are the subject of the FTC's Complaint, cooperate in good faith with the FTC and appear or cause their officers, employees, representatives, or agents to appear at such places and times as the FTC shall reasonably request, after written notice, for interviews, conferences, pretrial discovery, review of documents, and for such other matters as may be reasonably requested by the FTC. If requested in writing by the FTC, Defendants 3R Bancorp, 3R e-Solutions, Inc., 3R E-Solutions Corporation, National United Properties, LLC, 3R Real Estate Corporation, E Three R Info Systems Pvt. Ltd., Ranbir Sahni, and John Perton shall appear or cause their officers, employees, representatives, or agents to appear and provide truthful testimony in any trial, deposition, or other proceeding related to or associated with the transactions or the occurrences that are the subject of the Complaint, without the service of a subpoena.

VIII. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring and investigating compliance with any provision of this Order,

A. Within twenty (20) days of receipt of written notice from a representative of the Commission, Defendants each shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in any Defendant's possession or direct or indirect control to inspect the business operation;

B. In addition, the Commission is authorized to monitor compliance with this Order by all other lawful means, including, but not limited to, the following:

1. obtaining discovery from any person, without further leave of court, using

the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;

2. posing as consumers and suppliers to: any Defendant, any Defendant's employees, or any other entity managed or controlled in whole or in part by any Defendant, without the necessity of identification or prior notice; and

C. Defendants shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present.

Provided, however, that nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

IX. COMPLIANCE REPORTING BY DEFENDANTS

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Order may be monitored:

A. For a period of three (3) years from the date of entry of this Order,

1. Defendants Ranbir Sahni and John Perton each shall notify the Commission of the following:

a. Any changes in residence, mailing addresses, and telephone numbers of Defendant, within ten (10) days of the date of such change;

b. Any changes in employment status (including self-employment) of

Defendant, and any change in the ownership of Defendant in any business entity, within ten (10) days of the date of such change. Such notice shall include the name and address of each business that Defendant is affiliated with, employed by, creates or forms, or performs services for; a statement of the nature of the business; and a statement of Defendant's duties and responsibilities in connection with the business or employment; and

c. Any changes in Defendant's name or use of any aliases or fictitious names; and

2. All Defendants shall notify the Commission of any changes in corporate structure of any Defendant or any business entity that a Defendant directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Order, including, but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any proposed change in the corporation about which Defendant learns less than thirty (30) days prior to the date such action is to take place, Defendant shall notify the Commission as soon as is practicable after obtaining such knowledge.

B. One hundred eighty (180) days after the date of entry of this Order, Defendants each shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this Order.

This report shall include, but not be limited to:

1. For Defendants Ranbir Sahni and John Perton:
 - a. The then-current residence address, mailing addresses; and telephone numbers of Defendant;
 - b. The then-current employment and business addresses and telephone numbers of Defendant, a description of the business activities of each such employer or business, and the title and responsibilities of Defendant for each such employer or business; and
 - c. Any other changes required to be reported under Paragraph A of this Section.

2. For all Defendants:
 - a. A copy of each acknowledgment of receipt of this Order, obtained pursuant to Paragraph D of Section XI; and
 - b. Any other changes required to be reported under Paragraph A of this Section.

C. For the purposes of this Order, Defendants shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Associate Director for Enforcement
Federal Trade Commission
601 New Jersey Avenue N.W.
Washington, D.C. 20580
Re: FTC v. 3R Bancorp, et al., Civil Action No. 04-C-7177.

D. For purposes of the compliance reporting and monitoring required by this Order, the Commission is authorized to communicate directly with Defendants.

X. RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of six (6) years from the date of entry of this Order, for any business where (1) a Defendant is the majority owner of the business or directly or indirectly controls the business, and where (2) the business is engaged in telemarketing, or assisting others engaged in telemarketing, Defendants, and their successors, assigns, officers, agents, servants, employees, and those persons in active concert or participation with them who receive actual notice of this Order by personal service, facsimile, or otherwise, whether acting directly or through any corporation, subsidiary, division, entity, person, name, or other device, are hereby restrained and enjoined from failing to create and retain the following records:

A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;

B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;

C. Customer files containing the names, addresses, telephone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;

D. Complaints and refund requests (whether received directly, indirectly, or through any third party) and any responses to those complaints or requests;

E. Copies of all sales scripts, training materials, advertisements, or other marketing

materials; and

F. All records and documents necessary to demonstrate full compliance with each provision of this Order, including, but not limited to, copies of acknowledgments of receipt of this Order, required by Paragraph D of Section XI, and all reports submitted to the Commission pursuant to Section IX.

XI. DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry of this Order, Defendants shall deliver copies of this Order as directed below:

A. Defendants 3R Bancorp, 3R e-Solutions, Inc., 3R E-Solutions Corporation, National United Properties, LLC, 3R Real Estate Corporation, and E Three R Info Systems Pvt. Ltd. must deliver a copy of this Order to all of their principals, officers, directors and managers, and also must deliver copies of this Order to all of their employees, agents and representatives who engage in conduct related to the subject matter of the Order. For current personnel, delivery shall be within (5) days of service of this Order upon Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities.

B. For any business that Defendant Ranbir Sahni or John Perton controls, directly or indirectly, or in which Defendant has a majority ownership interest, Defendant must deliver a copy of this Order to all principals, officers, directors, and managers of that business. Defendant must also deliver copies of this Order to all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the Order. For current personnel, delivery shall be within five (5) days of service of this Order upon Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities.

C. For any business where Defendant Ranbir Sahni or John Perton is not a controlling person of the business but otherwise engages in conduct related to the subject matter of this Order, Defendant must deliver a copy of this Order to all principals and managers of such business before engaging in such conduct.

D. All Defendants must secure a signed and dated statement acknowledging receipt of the Order, within thirty (30) days of delivery, from all persons receiving a copy of the Order pursuant to this Section.

XII. RETENTION OF RIGHTS

IT IS FURTHER ORDERED that nothing herein shall constitute or be construed or applied as a waiver by any Defendant of all rights otherwise accorded under the United States Constitution.

XIII. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that each Defendant, within five (5) business days of receipt of this Order as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Order.

XIV. SEVERABILITY

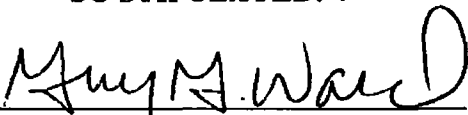
IT IS FURTHER ORDERED that the provisions of this Order are separate and severable from one another. If any provision is stayed or determined to be invalid, the remaining provisions shall remain in full force and effect.

XV. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that the Court shall retain jurisdiction of this matter for purposes of construction, modification and enforcement of this Order.

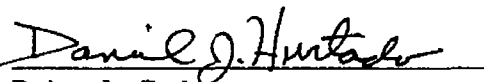
The Commission and Defendants hereby stipulate and agree to entry of the foregoing Order. There being no just reason for delay, the Clerk of Court is hereby directed to enter final judgment as to Defendants 3R Bancorp, 3R e-Solutions, Inc., 3R E-Solutions Corporation, National United Properties, LLC, 3R Real Estate Corporation, E Three R Info Systems Pvt. Ltd., Ranbir Sahni, and John Perton.

SO STIPULATED:



David A. O'Toole
Guy G. Ward
Federal Trade Commission
55 E. Monroe St., Suite 1860
Chicago, IL 60603
(312) 960-5634; Fax: (312) 960-5600
Attorneys for Federal Trade Commission

Dated: 5-09-06



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(312) 923-2645; Fax: (312) 840-7645
Attorneys for Ranbir Sahni,
3R Bancorp, 3R e-Solutions, Inc.,
3R E-Solutions Corporation,
3R Real Estate Corporation, and
E Three R Info Systems Pvt. Ltd.

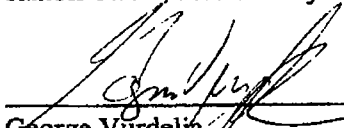
Dated: 2-22-06

Ranbir Sahni, as President and CEO
of 3R Bancorp, 3R e-Solutions, Inc.,
3R E-Solutions Corporation,
3R Real Estate Corporation, and
E Three R Info Systems Pvt. Ltd.

Dated: _____

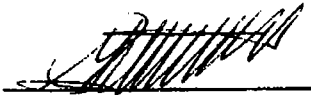
Ranbir Sahni, individually

Dated: _____



George Vurdelja
Vurdelja & Heaphy
120 N. LaSalle Street, Suite 1150
Chicago, IL 60602
(312) 345-2000; Fax: (312) 345-2005
Attorney for National United Properties, LLC

Dated: 2-23-06



Genny R. Alberts, as President of
National United Properties, LLC

Dated: 2-19-06

Steven K. Perrin
101 Moody Court, 2nd Floor
Thousand Oaks, CA 91360
(805) 449-1121; Fax: (805) 449-1135
Attorney for John Perton

Dated: _____

John Perton, individually

Dated: _____

IT IS SO ORDERED.

Dated: _____, 2006

Honorable Joan H. Lefkow
United States District Judge

Ranbir Sahni, as President and CEO
of 3R Bancorp, 3R e-Solutions, Inc.,
3R E-Solutions Corporation,
3R Real Estate Corporation, and
E Three R Info Systems Pvt. Ltd.

Dated: _____

Ranbir Sahni, individually


Dated: _____

George Vurdelja
Vurdelja & Heaphy
120 N. LaSalle Street, Suite 1150
Chicago, IL 60602
(312) 345-2000; Fax: (312) 345-2005
Attorney for National United Properties, LLC

Dated: _____

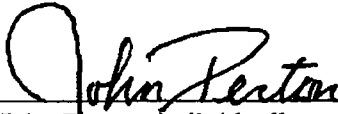
Genny R. Alberts, as President of
National United Properties, LLC

Dated: _____



Steven K. Perrin
101 Moody Court, 2nd Floor
Thousand Oaks, CA 91360
(805) 449-1121; Fax: (805) 449-1135
Attorney for John Perton

Dated: 3/9/06



John Perton, individually

Dated: 3/1/06

IT IS SO ORDERED.

Dated: _____, 2006

Honorable Joan H. Lefkow
United States District Judge

R. Sahni
Ranbir Sahni, as President and CEO
of 3R Bancorp, 3R e-Solutions, Inc.,
3R E-Solutions Corporation,
3R Real Estate Corporation, and
E Three R Info Systems Pvt. Ltd.

Dated: 2-20-06

R. Sahni
Ranbir Sahni, individually

Dated: 2-20-06

George Vurdelja
Vurdelja & Heaphy
120 N. LaSalle Street, Suite 1150
Chicago, IL 60602
(312) 345-2000; Fax: (312) 345-2005
Attorney for National United Properties, LLC

Dated: _____

Genny R. Alberts, as President of
National United Properties, LLC

Dated: _____

Steven K. Perrin
101 Moody Court, 2nd Floor
Thousand Oaks, CA 91360
(805) 449-1121; Fax: (805) 449-1135
Attorney for John Perton

Dated: _____

John Perton, individually

Dated: _____

IT IS SO ORDERED.

Dated: May 17, 2006

Joan H. Lefkowitz
Honorable Joan H. Lefkowitz
United States District Judge

Federal Trade Commission

§310.1

APPENDIX A

PART 310—TELEMARKETING SALES RULE

Sec.

- 310.1 Scope of regulations in this part.
- 310.2 Definitions.
- 310.3 Deceptive telemarketing acts or practices.
- 310.4 Abusive telemarketing acts or practices.
- 310.5 Recordkeeping requirements.
- 310.6 Exemptions.
- 310.7 Actions by states and private persons.
- 310.8 Fee for access to the National Do Not Call Registry.

310.9 Severability.

AUTHORITY: 15 U.S.C. 6101-6108.

SOURCE: 68 FR 4669, Jan. 29, 2003, unless otherwise noted.

§310.1 Scope of regulations in this part.

This part implements the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101-6108, as amended.

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§310.2 Definitions.

(a) Acquirer means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value.

(b) Attorney General means the chief legal officer of a state.

(c) Billing information means any data that enables any person to access a customer's or donor's account, such as a credit card, checking, savings, share or similar account, utility bill, mortgage loan account, or debit card.

(d) Caller identification service means a service that allows a telephone subscriber to have the telephone number, and, where available, name of the calling party transmitted contemporaneously with the telephone call, and displayed on a device in or connected to the subscriber's telephone.

(e) Cardholder means a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued.

(f) Charitable contribution means any donation or gift of money or any other thing of value.

(g) Commission means the Federal Trade Commission.

(h) Credit means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(i) Credit card means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

(j) Credit card sales draft means any record or evidence of a credit card transaction.

(k) Credit card system means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system.

(l) Customer means any person who is or may be required to pay for goods or services offered through telemarketing.

(m) Donor means any person solicited to make a charitable contribution.

(n) Established business relationship means a relationship between a seller and a consumer based on:

(1) the consumer's purchase, rental, or lease of the seller's goods or services or a financial transaction between the consumer and seller, within the eighteen (18) months immediately preceding the date of a telemarketing call; or

(2) the consumer's inquiry or application regarding a product or service offered by the seller, within the three (3) months immediately preceding the date of a telemarketing call.

(o) Free-to-pay conversion means, in an offer or agreement to sell or provide any goods or services, a provision under which a customer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if he or she does not take affirmative action to cancel before the end of that period.

(p) Investment opportunity means anything, tangible or intangible, that is offered, offered for sale, sold, or traded based wholly or in part on representations, either express or implied, about past, present, or future income, profit, or appreciation.

(q) Material means likely to affect a person's choice of, or conduct regarding, goods or services or a charitable contribution.

(r) Merchant means a person who is authorized under a written contract with an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution.

(s) Merchant agreement means a written contract between a merchant and an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution.

(t) Negative option feature means, in an offer or agreement to sell or provide any goods or services, a provision under which the customer's silence or failure to take an affirmative action to reject goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer.

(u) Outbound telephone marketer means a person who sells goods or services or a charitable contribution to a consumer through a telephone call.

(v) Person means an individual, partnership, group, unit, or other legal entity, including a corporation, trust, or other legal entity.

(w) Prepaid means any amount paid by a consumer to a seller or issuer of a product or service, which is to be used to purchase the product or service from the seller or issuer.

(x) Prize means any item of value, including a cash award, gift, or other item, which is awarded to a consumer as a result of a contest, sweepstakes, or other promotion.

(y) Prizes means prizes awarded to a consumer as a result of a contest, sweepstakes, or other promotion.

(1) A chance; or

(2) An offer or promise of a prize, which is made to a consumer as a result of a contest, sweepstakes, or other promotion.

(z) Sell means to offer or dispose of goods or services, including the right to use goods or services, for consideration.

(aa) State means a State of the United States, the District of Columbia, Puerto Rico, or any other territory or possession of the United States.

(bb) Telemarketer means a person who initiates or solicits a telephone call to a consumer for the purpose of selling goods or services.

(cc) Telemarketing means the use of a telephone call to sell goods or services to a consumer.

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offer.

(u) *Outbound telephone call* means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution.

(v) *Person* means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

(w) *Preacquired account information* means any information that enables a seller or telemarketer to cause a charge to be placed against a customer's or donor's account without obtaining the account number directly from the customer or donor during the telemarketing transaction pursuant to which the account will be charged.

(x) *Prize* means anything offered, or purportedly offered, and given, or purportedly given, to a person by chance. For purposes of this definition, chance exists if a person is guaranteed to receive an item and, at the time of the offer or purported offer, the telemarketer does not identify the specific item that the person will receive.

(y) *Prize promotion* means:

(1) A sweepstakes or other game of chance; or

(2) An oral or written express or implied representation that a person has won, has been selected to receive, or may be eligible to receive a prize or purported prize.

(z) *Seller* means any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration.

(aa) *State* means any state of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.

(bb) *Telemarketer* means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor.

(cc) *Telemarketing* means a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog

which: contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term "further solicitation" does not include providing the customer with information about, or attempting to sell, any other item included in the same catalog which prompted the customer's call or in a substantially similar catalog.

(dd) *Upselling* means soliciting the purchase of goods or services following an initial transaction during a single telephone call. The upsell is a separate telemarketing transaction, not a continuation of the initial transaction. An "external upsell" is a solicitation made by or on behalf of a seller different from the seller in the initial transaction, regardless of whether the initial transaction and the subsequent solicitation are made by the same telemarketer. An "internal upsell" is a solicitation made by or on behalf of the same seller as in the initial transaction, regardless of whether the initial transaction and subsequent solicitation are made by the same telemarketer.

§ 310.3 Deceptive telemarketing acts or practices.

(a) *Prohibited deceptive telemarketing acts or practices.* It is a deceptive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Before a customer pays¹ for goods or services offered, failing to disclose

¹ When a seller or telemarketer uses, or directs a customer to use, a courier to transport payment, the seller or telemarketer must make the disclosures required by § 310.3(a)(1) before sending a courier to pick up payment or authorization for payment, or

Continued

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truthfully, in a clear and conspicuous manner, the following material information:

(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of the sales offer;²

(ii) All material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer;

(iii) If the seller has a policy of not making refunds, cancellations, exchanges, or repurchases, a statement informing the customer that this is the seller's policy; or, if the seller or telemarketer makes a representation about a refund, cancellation, exchange, or repurchase policy, a statement of all material terms and conditions of such policy;

(iv) In any prize promotion, the odds of being able to receive the prize, and, if the odds are not calculable in advance, the factors used in calculating the odds; that no purchase or payment is required to win a prize or to participate in a prize promotion and that any purchase or payment will not increase the person's chances of winning; and the no-purchase/no-payment method of participating in the prize promotion with either instructions on how to participate or an address or local or toll-free telephone number to which customers may write or call for information on how to participate;

(v) All material costs or conditions to receive or redeem a prize that is the subject of the prize promotion;

(vi) In the sale of any goods or services represented to protect, insure, or otherwise limit a customer's liability in the event of unauthorized use of the customer's credit card, the limits on a cardholder's liability for unauthorized use of a credit card pursuant to 15 U.S.C. 1643; and

(vii) If the offer includes a negative option feature, all material terms and

directing a customer to have a courier pick up payment or authorization for payment.

²For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR 226, compliance with the disclosure requirements under the Truth in Lending Act and Regulation Z shall constitute compliance with §310.3(a)(1)(i) of this Rule.

conditions of the negative option feature, including, but not limited to, the fact that the customer's account will be charged unless the customer takes an affirmative action to avoid the charge(s), the date(s) the charge(s) will be submitted for payment, and the specific steps the customer must take to avoid the charge(s).

(2) Misrepresenting, directly or by implication, in the sale of goods or services any of the following material information:

(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of a sales offer;

(ii) Any material restriction, limitation, or condition to purchase, receive, or use goods or services that are the subject of a sales offer;

(iii) Any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer;

(iv) Any material aspect of the nature or terms of the seller's refund, cancellation, exchange, or repurchase policies;

(v) Any material aspect of a prize promotion including, but not limited to, the odds of being able to receive a prize, the nature or value of a prize, or that a purchase or payment is required to win a prize or to participate in a prize promotion;

(vi) Any material aspect of an investment opportunity including, but not limited to, risk, liquidity, earnings potential, or profitability;

(vii) A seller's or telemarketer's affiliation with, or endorsement or sponsorship by, any person or government entity;

(viii) That any customer needs offered goods or services to provide protections a customer already has pursuant to 15 U.S.C. 1643; or

(ix) Any material aspect of a negative option feature including, but not limited to, the fact that the customer's account will be charged unless the customer takes an affirmative action to avoid the charge(s), the date(s) the charge(s) will be submitted for payment, and the specific steps the customer must take to avoid the charge(s).

(3) Causing to be submitted for payment, but not limited to, the fact that the customer's account will be charged unless the customer takes an affirmative action to avoid the charge(s), the date(s) the charge(s) will be submitted for payment, and the specific steps the customer must take to avoid the charge(s).

(i) Expressly informing the customer of the customer's

(ii) Expressly informing the customer of the audio-recording upon request and the other billing practices clearly donor's authorization of the goods or services to be distributed through telemarketing or direct mail.

(A) The number of payments (if any)

(B) The amount of the charge(s), or the amount of the payment (if any)

(C) The amount of the charge(s), or the amount of the payment (if any)

(D) The customer's name

(E) The customer's address, specificity of the donor under the contract law, goods or services to be distributed through telemarketing

²Truth in Lending Act, and Regulation Z

³Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 *et seq.*, at 7001.

⁴For purposes of this section, the term "signature" shall mean any form of symbol or mark that is used to identify the person and to indicate the person's intent to authenticate the contract law.

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(3) Causing billing information to be submitted for payment, or collecting or attempting to collect payment for goods or services or a charitable contribution, directly or indirectly, without the customer's or donor's express verifiable authorization, except when the method of payment used is a credit card subject to protections of the Truth in Lending Act and Regulation Z,³ or a debit card subject to the protections of the Electronic Fund Transfer Act and Regulation E.⁴ Such authorization shall be deemed verifiable if any of the following means is employed:

(i) Express written authorization by the customer or donor, which includes the customer's or donor's signature;⁵

(ii) Express oral authorization which is audio-recorded and made available upon request to the customer or donor, and the customer's or donor's bank or other billing entity, and which evidences clearly both the customer's or donor's authorization of payment for the goods or services or charitable contribution that are the subject of the telemarketing transaction and the customer's or donor's receipt of all of the following information:

(A) The number of debits, charges, or payments (if more than one);

(B) The date(s) the debit(s), charge(s), or payment(s) will be submitted for payment;

(C) The amount(s) of the debit(s), charge(s), or payment(s);

(D) The customer's or donor's name;

(E) The customer's or donor's billing information, identified with sufficient specificity such that the customer or donor understands what account will be used to collect payment for the goods or services or charitable contribution that are the subject of the telemarketing transaction;

³Truth in Lending Act, 15 U.S.C. 1601 et seq., and Regulation Z, 12 CFR part 226.

⁴Electronic Fund Transfer Act, 15 U.S.C. 1693 et seq., and Regulation E, 12 CFR part 205.

⁵For purposes of this Rule, the term "signature" shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

(F) A telephone number for customer or donor inquiry that is answered during normal business hours; and

(G) The date of the customer's or donor's oral authorization; or

(iii) Written confirmation of the transaction, identified in a clear and conspicuous manner as such on the outside of the envelope, sent to the customer or donor via first class mail prior to the submission for payment of the customer's or donor's billing information, and that includes all of the information contained in §§310.3(a)(3)(ii)(A)-(G) and a clear and conspicuous statement of the procedures by which the customer or donor can obtain a refund from the seller or telemarketer or charitable organization in the event the confirmation is inaccurate; provided, however, that this means of authorization shall not be deemed verifiable in instances in which goods or services are offered in a transaction involving a free-to-pay conversion and preacquired account information.

(4) Making a false or misleading statement to induce any person to pay for goods or services or to induce a charitable contribution.

(b) *Assisting and facilitating.* It is a deceptive telemarketing act or practice and a violation of this Rule for a 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 act or practice that violates §§310.3(a), (c) or (d), or §310.4 of this Rule.

(c) *Credit card laundering.* Except as expressly permitted by the applicable credit card system, it is a deceptive telemarketing act or practice and a violation of this Rule for:

(1) A merchant to present to or deposit into, or cause another to present to or deposit into, the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant;

(2) Any person to employ, solicit, or otherwise cause a merchant, or an employee, representative, or agent of the merchant, to present to or deposit into

§310.4

the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant; or

(3) Any person to obtain access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement or the applicable credit card system.

(d) *Prohibited deceptive acts or practices in the solicitation of charitable contributions.* It is a fraudulent charitable solicitation, a deceptive telemarketing act or practice, and a violation of this Rule for any telemarketer soliciting charitable contributions to misrepresent, directly or by implication, any of the following material information:

(1) The nature, purpose, or mission of any entity on behalf of which a charitable contribution is being requested;

(2) That any charitable contribution is tax deductible in whole or in part;

(3) The purpose for which any charitable contribution will be used;

(4) The percentage or amount of any charitable contribution that will go to a charitable organization or to any particular charitable program;

(5) Any material aspect of a prize promotion including, but not limited to: the odds of being able to receive a prize; the nature or value of a prize; or that a charitable contribution is required to win a prize or to participate in a prize promotion; or

(6) A charitable organization's or telemarketer's affiliation with, or endorsement or sponsorship by, any person or government entity.

§310.4 Abusive telemarketing acts or practices.

(a) *Abusive conduct generally.* It is an abusive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Threats, intimidation, or the use of profane or obscene language;

(2) Requesting or receiving payment of any fee or consideration for goods or services represented to remove derogatory information from, or improve, a

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person's credit history, credit record, or credit rating until:

(i) The time frame in which the seller has represented all of the goods or services will be provided to that person has expired; and

(ii) The seller has provided the person with documentation in the form of a consumer report from a consumer reporting agency demonstrating that the promised results have been achieved, such report having been issued more than six months after the results were achieved. Nothing in this Rule should be construed to affect the requirement in the Fair Credit Reporting Act, 15 U.S.C. 1681, that a consumer report may only be obtained for a specified permissible purpose;

(3) Requesting or receiving payment of any fee or consideration from a person for goods or services represented to recover or otherwise assist in the return of money or any other item of value paid for by, or promised to, that person in a previous telemarketing transaction, until seven (7) business days after such money or other item is delivered to that person. This provision shall not apply to goods or services provided to a person by a licensed attorney;

(4) Requesting or receiving payment of any fee or consideration in advance of obtaining a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit for a person;

(5) Disclosing or receiving, for consideration, unencrypted consumer account numbers for use in telemarketing; *provided*, however, that this paragraph shall not apply to the disclosure or receipt of a customer's or donor's billing information to process a payment for goods or services or a charitable contribution pursuant to a transaction;

(6) Causing billing information to be submitted for payment, directly or indirectly, without the express informed consent of the customer or donor. In any telemarketing transaction, the seller or telemarketer must obtain the express informed consent of the customer or donor to be charged for the

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story, credit record, and other information:

(i) In any transaction in which the seller or telemarketer is not the provider of the goods or services to that person:

(A) provided the person is not acting in the form of a consumer representative, the seller or telemarketer must demonstrate that the person has been achieved, and the seller or telemarketer must have been issued more than one report after the results were reported in this Rule should affect the requirement of the Reporting Act, 15 U.S.C. 1692a, a consumer report is required for a specified purpose;

(B) for receiving payment consideration from a person for services represented to be used to assist in the purchase of any other item of value or promised to, that person in previous telemarketing transactions; seven (7) business days or other item is not a person. This provision does not apply to goods or services provided by a licensed attorney or other person.

(C) for receiving payment consideration in advance of the performance of services or other extension of credit by the seller or telemarketer, the seller or telemarketer must guarantee the reliability of success in obtaining a loan or other financial benefit for a person;

(D) for receiving, for a person, a consumer report, or for a person, a consumer report for use in telemarketing, however, that this section does not apply to the disclosure of a customer's or donor's information to process a transaction or services or a transaction pursuant to a

request for information to be provided; directly or indirectly, the seller or telemarketer must obtain the express informed consent of the customer or donor. In any transaction, the seller or telemarketer must obtain the express informed consent of the customer or donor to be charged for the

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goods or services or charitable contribution and to be charged using the identified account. In any telemarketing transaction involving preacquired account information, the requirements in paragraphs (a)(6)(i) through (ii) of this section must be met to evidence express informed consent.

(i) In any telemarketing transaction involving preacquired account information and a free-to-pay conversion feature, the seller or telemarketer must:

(A) obtain from the customer, at a minimum, the last four (4) digits of the account number to be charged;

(B) obtain from the customer his or her express agreement to be charged for the goods or services and to be charged using the account number pursuant to paragraph (a)(6)(i)(A) of this section; and,

(C) make and maintain an audio recording of the entire telemarketing transaction.

(ii) In any other telemarketing transaction involving preacquired account information not described in paragraph (a)(6)(i) of this section, the seller or telemarketer must:

(A) at a minimum, identify the account to be charged with sufficient specificity for the customer or donor to understand what account will be charged; and

(B) obtain from the customer or donor his or her express agreement to be charged for the goods or services and to be charged using the account number identified pursuant to paragraph (a)(6)(ii)(A) of this section; or

(7) Failing to transmit or cause to be transmitted the telephone number, and, when made available by the telemarketer's carrier, the name of the telemarketer, to any caller identification service in use by a recipient of a telemarketing call; *provided* that it shall not be a violation to substitute (for the name and phone number used in, or billed for, making the call) the name of the seller or charitable organization on behalf of which a telemarketing call is placed, and the seller's or charitable organization's customer or donor service telephone number, which is answered during regular business hours.

(b) *Pattern of calls.* (1) It is an abusive telemarketing act or practice and a

violation of this Rule for a telemarketer to engage in, or for a seller to cause a telemarketer to engage in, the following conduct:

(i) Causing any telephone to ring, or engaging any person in telephone conversation, repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number;

(ii) Denying or interfering in any way, directly or indirectly, with a person's right to be placed on any registry of names and/or telephone numbers of persons who do not wish to receive outbound telephone calls established to comply with § 310.4(b)(1)(iii);

(iii) Initiating any outbound telephone call to a person when:

(A) that person previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered or made on behalf of the charitable organization for which a charitable contribution is being solicited; or

(B) that person's telephone number is on the "do-not-call" registry, maintained by the Commission, of persons who do not wish to receive outbound telephone calls to induce the purchase of goods or services unless the seller

(i) has obtained the express agreement, in writing, of such person to place calls to that person. Such written agreement shall clearly evidence such person's authorization that calls made by or on behalf of a specific party may be placed to that person, and shall include the telephone number to which the calls may be placed and the signature* of that person; or

(ii) has an established business relationship with such person, and that person has not stated that he or she does not wish to receive outbound telephone calls under paragraph (b)(1)(iii)(A) of this section; or

(iv) Abandoning any outbound telephone call. An outbound telephone call is "abandoned" under this section if a person answers it and the telemarketer

*For purposes of this Rule, the term "signature" shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

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does not connect the call to a sales representative within two (2) seconds of the person's completed greeting.

(2) It is an abusive telemarketing act or practice and a violation of this Rule for any person to sell, rent, lease, purchase, or use any list established to comply with §310.4(b)(1)(iii)(A), or maintained by the Commission pursuant to §310.4(b)(1)(iii)(B), for any purpose except compliance with the provisions of this Rule or otherwise to prevent telephone calls to telephone numbers on such lists.

(3) A seller or telemarketer will not be liable for violating §310.4(b)(1)(ii) and (iii) if it can demonstrate that, as part of the seller's or telemarketer's routine business practice:

(i) It has established and implemented written procedures to comply with §310.4(b)(1)(ii) and (iii);

(ii) It has trained its personnel, and any entity assisting in its compliance, in the procedures established pursuant to §310.4(b)(3)(i);

(iii) The seller, or a telemarketer or another person acting on behalf of the seller or charitable organization, has maintained and recorded a list of telephone numbers the seller or charitable organization may not contact, in compliance with §310.4(b)(1)(iii)(A);

(iv) The seller or a telemarketer uses a process to prevent telemarketing to any telephone number on any list established pursuant to §310.4(b)(3)(iii) or 310.4(b)(1)(iii)(B), employing a version of the "do-not-call" registry obtained from the Commission no more than thirty-one (31) days prior to the date any call is made, and maintains records documenting this process;

(v) The seller or a telemarketer or another person acting on behalf of the seller or charitable organization, monitors and enforces compliance with the procedures established pursuant to §310.4(b)(3)(i); and

(vi) Any subsequent call otherwise violating §310.4(b)(1)(ii) or (iii) is the result of error.

(4) A seller or telemarketer will not be liable for violating 310.4(b)(1)(iv) if:

(i) the seller or telemarketer employs technology that ensures abandonment of no more than three (3) percent of all calls answered by a person, measured per day per calling campaign;

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(ii) the seller or telemarketer, for each telemarketing call placed, allows the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call;

(iii) whenever a sales representative is not available to speak with the person answering the call within two (2) seconds after the person's completed greeting, the seller or telemarketer promptly plays a recorded message that states the name and telephone number of the seller on whose behalf the call was placed⁷; and

(iv) the seller or telemarketer, in accordance with §310.5(b)-(d), retains records establishing compliance with §310.4(b)(4)(i)-(iii).

(c) *Calling time restrictions.* Without the prior consent of a person, it is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in outbound telephone calls to a person's residence at any time other than between 8:00 a.m. and 9:00 p.m. local time at the called person's location.

(d) *Required oral disclosures in the sale of goods or services.* It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer in an outbound telephone call or internal or external upsell to induce the purchase of goods or services to fail to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call, the following information:

(1) The identity of the seller;

(2) That the purpose of the call is to sell goods or services;

(3) The nature of the goods or services; and

(4) That no purchase or payment is necessary to be able to win a prize or participate in a prize promotion if a prize promotion is offered and that any purchase or payment will not increase the person's chances of winning. This disclosure must be made before or in conjunction with the description of the prize to the person called. If requested by that person, the telemarketer must disclose the no-purchase/no-payment

⁷This provision does not affect any seller's or telemarketer's obligation to comply with relevant state and federal laws, including but not limited to the TCPA, 47 U.S.C. 227, and 47 CFR part 64.1200.

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or telemarketer, for a call placed, allows ringing for at least five or four (4) rings before an unanswered call;

a sales representative to speak with the person called within two (2) minutes after the person's completed call; or a telemarketer who leaves a recorded message with the name and telephone number of the person on whose behalf the call is made;

and a telemarketer, in accordance with §310.5(b)-(d), retains records to ensure compliance with

restrictions. Without the consent of a person, it is an abusive telemarketing act or practice in violation of this Rule for a telemarketer to call a person's residence at any time between 8:00 a.m. and 8:00 p.m. local time at the called

person's residence. In the sale of a person, it is an abusive telemarketing practice and a violation of this Rule for a telemarketer in a telephone call or internal telemarketing call to induce the purchaser to fail to disclose, promptly, and in a conspicuous manner to the person called, the following

information of the seller; the purpose of the call is to induce the purchase of the goods or services;

and that a purchase or payment is required to be able to win a prize or other benefit offered and that any purchase or payment will not increase the chances of winning. This information must be made before or in the description of the prize or benefit. If requested, the telemarketer must disclose whether a purchase/no-payment

is required. These rules do not affect any seller's obligation to comply with other applicable federal laws, including the TCPA, 47 U.S.C. 227, 228, and 230.

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entry method for the prize promotion; *provided*, however, that, in any internal upsell for the sale of goods or services, the seller or telemarketer must provide the disclosures listed in this section only to the extent that the information in the upsell differs from the disclosures provided in the initial telemarketing transaction.

(e) *Required oral disclosures in charitable solicitations.* It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer, in an outbound telephone call to induce a charitable contribution, to fail to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call, the following information:

(1) The identity of the charitable organization on behalf of which the request is being made; and

(2) That the purpose of the call is to solicit a charitable contribution.

[68 FR 4669, Jan. 29, 2003, as amended at 69 FR 16373, Mar. 29, 2004]

§310.5 Recordkeeping requirements.

(a) Any seller or telemarketer shall keep, for a period of 24 months from the date the record is produced, the following records relating to its telemarketing activities:

(1) All substantially different advertising, brochures, telemarketing scripts, and promotional materials;

(2) The name and last known address of each prize recipient and the prize awarded for prizes that are represented, directly or by implication, to have a value of \$25.00 or more;

(3) The name and last known address of each customer, the goods or services purchased, the date such goods or services were shipped or provided, and the amount paid by the customer for the goods or services;²

(4) The name, any fictitious name used, the last known home address and telephone number, and the job title(s) for all current and former employees

²For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR 226, compliance with the recordkeeping requirements under the Truth in Lending Act, and Regulation Z, shall constitute compliance with §310.5(a)(3) of this Rule.

directly involved in telephone sales or solicitations; *provided*, however, that if the seller or telemarketer permits fictitious names to be used by employees, each fictitious name must be traceable to only one specific employee; and

(5) All verifiable authorizations or records of express informed consent or express agreement required to be provided or received under this Rule.

(b) A seller or telemarketer may keep the records required by §310.5(a) in any form, and in the same manner, format, or place as they keep such records in the ordinary course of business. Failure to keep all records required by §310.5(a) shall be a violation of this Rule.

(c) The seller and the telemarketer calling on behalf of the seller may, by written agreement, allocate responsibility between themselves for the recordkeeping required by this Section. When a seller and telemarketer have entered into such an agreement, the terms of that agreement shall govern, and the seller or telemarketer, as the case may be, need not keep records that duplicate those of the other. If the agreement is unclear as to who must maintain any required record(s), or if no such agreement exists, the seller shall be responsible for complying with §§310.5(a)(1)-(3) and (5); the telemarketer shall be responsible for complying with §310.5(a)(4).

(d) In the event of any dissolution or termination of the seller's or telemarketer's business, the principal of that seller or telemarketer shall maintain all records as required under this Section. In the event of any sale, assignment, or other change in ownership of the seller's or telemarketer's business, the successor business shall maintain all records required under this Section.

§310.6 Exemptions.

(a) Solicitations to induce charitable contributions via outbound telephone calls are not covered by §310.4(b)(1)(iii)(B) of this Rule.

(b) The following acts or practices are exempt from this Rule:

(1) The sale of pay-per-call services subject to the Commission's Rule entitled "Trade Regulation Rule Pursuant

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to the Telephone Disclosure and Dispute Resolution Act of 1992," 16 CFR Part 308, provided, however, that this exemption does not apply to the requirements of §§310.4(a)(1), (a)(7), (b), and (c);

(2) The sale of franchises subject to the Commission's Rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures," ("Franchise Rule") 16 CFR Part 436, provided, however, that this exemption does not apply to the requirements of §§310.4(a)(1), (a)(7), (b), and (c);

(3) Telephone calls in which the sale of goods or services or charitable solicitation is not completed, and payment or authorization of payment is not required, until after a face-to-face sales or donation presentation by the seller or charitable organization, provided, however, that this exemption does not apply to the requirements of §§310.4(a)(1), (a)(7), (b), and (c);

(4) Telephone calls initiated by a customer or donor that are not the result of any solicitation by a seller, charitable organization, or telemarketer, provided, however, that this exemption does not apply to any instances of upselling included in such telephone calls;

(5) Telephone calls initiated by a customer or donor in response to an advertisement through any medium, other than direct mail solicitation, provided, however, that this exemption does not apply to calls initiated by a customer or donor in response to an advertisement relating to investment opportunities, business opportunities other than business arrangements covered by the Franchise Rule, or advertisements involving goods or services described in §§310.3(a)(1)(vi) or 310.4(a)(2)-(4); or to any instances of upselling included in such telephone calls;

(6) Telephone calls initiated by a customer or donor in response to a direct mail solicitation, including solicitations via the U.S. Postal Service, facsimile transmission, electronic mail, and other similar methods of delivery in which a solicitation is directed to specific address(es) or person(s), that clearly, conspicuously, and truthfully discloses all material information listed in §310.3(a)(1) of this Rule, for any

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goods or services offered in the direct mail solicitation, and that contains no material misrepresentation regarding any item contained in §310.3(d) of this Rule for any requested charitable contribution; provided, however, that this exemption does not apply to calls initiated by a customer in response to a direct mail solicitation relating to prize promotions, investment opportunities, business opportunities other than business arrangements covered by the Franchise Rule, or goods or services described in §§310.3(a)(1)(vi) or 310.4(a)(2)-(4); or to any instances of upselling included in such telephone calls; and

(7) Telephone calls between a telemarketer and any business, except calls to induce the retail sale of non-durable office or cleaning supplies; provided, however, that §310.4(b)(1)(iii)(B) and §310.5 of this Rule shall not apply to sellers or telemarketers of non-durable office or cleaning supplies.

§310.7 Actions by states and private persons.

(a) Any attorney general or other officer of a state authorized by the state to bring an action under the Telemarketing and Consumer Fraud and Abuse Prevention Act, and any private person who brings an action under that Act, shall serve written notice of its action on the Commission, if feasible, prior to its initiating an action under this Rule. The notice shall be sent to the Office of the Director, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, and shall include a copy of the state's or private person's complaint and any other pleadings to be filed with the court. If prior notice is not feasible, the state or private person shall serve the Commission with the required notice immediately upon instituting its action.

(b) Nothing contained in this Section shall prohibit any attorney general or other authorized state official from proceeding in state court on the basis of an alleged violation of any civil or criminal statute of such state.

§310.8 Fee for access to the National Do Not Call Registry.

(a) It is a violation of this Rule for any seller to initiate, or cause any

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ny general or other of- uthorized by the state tion under the Tele- Consumer Fraud and n Act, and any private :s an action under that written notice of its ommission, if feasible, ating an action under otice shall be sent to e Director, Bureau of ction, Federal Trade ashington, D.C. 20580, e a copy of the state's n's complaint and any to be filed with the notice is not feasible, vate person shall serve with the required no- ly upon instituting its

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access to the National Registry. olation of this Rule for initiate, or cause any

telemarketer to initiate, an outbound telephone call to any person whose telephone number is within a given area code unless such seller, either directly or through another person, first has paid the annual fee, required by §310.8(c), for access to telephone numbers within that area code that are included in the National Do Not Call Registry maintained by the Commission under §310.4(b)(1)(iii)(B); provided, however, that such payment is not necessary if the seller initiates, or causes a telemarketer to initiate, calls solely to persons pursuant to §§310.4(b)(1)(iii)(B)(i) or (ii), and the seller does not access the National Do Not Call Registry for any other purpose.

(b) It is a violation of this Rule for any telemarketer, on behalf of any seller, to initiate an outbound telephone call to any person whose telephone number is within a given area code unless that seller, either directly or through another person, first has paid the annual fee, required by §310.8(c), for access to the telephone numbers within that area code that are included in the National Do Not Call Registry; provided, however, that such payment is not necessary if the seller initiates, or causes a telemarketer to initiate, calls solely to persons pursuant to §§310.4(b)(1)(iii)(B)(i) or (ii), and the seller does not access the National Do Not Call Registry for any other purpose.

(c) The annual fee, which must be paid by any person prior to obtaining access to the National Do Not Call Registry, is \$40 per area code of data accessed, up to a maximum of \$11,000; provided, however, that there shall be no charge for the first five area codes of data accessed by any person, and provided further, that there shall be no charge to any person engaging in or causing others to engage in outbound telephone calls to consumers and who is accessing the National Do Not Call Registry without being required under this Rule, 47 CFR 64.1200, or any other federal law. Any person accessing the National Do Not Call Registry may not participate in any arrangement to share the cost of accessing the registry, including any arrangement with any telemarketer or service provider to

divide the costs to access the registry among various clients of that telemarketer or service provider.

(d) After a person, either directly or through another person, pays the fees set forth in §310.8(c), the person will be provided a unique account number which will allow that person to access the registry data for the selected area codes at any time for twelve months following the first day of the month in which the person paid the fee ("the annual period"). To obtain access to additional area codes of data during the first six months of the annual period, the person must first pay \$40 for each additional area code of data not initially selected. To obtain access to additional area codes of data during the second six months of the annual period, the person must first pay \$20 for each additional area code of data not initially selected. The payment of the additional fee will permit the person to access the additional area codes of data for the remainder of the annual period.

(e) Access to the National Do Not Call Registry is limited to telemarketers, sellers, others engaged in or causing others to engage in telephone calls to consumers, service providers acting on behalf of such persons, and any government agency that has law enforcement authority. Prior to accessing the National Do Not Call Registry, a person must provide the identifying information required by the operator of the registry to collect the fee, and must certify, under penalty of law, that the person is accessing the registry solely to comply with the provisions of this Rule or to otherwise prevent telephone calls to telephone numbers on the registry. If the person is accessing the registry on behalf of sellers, that person also must identify each of the sellers on whose behalf it is accessing the registry, must provide each seller's unique account number for access to the national registry, and must certify, under penalty of law, that the sellers will be using the information gathered from the registry solely to comply with the provisions of this Rule or otherwise to prevent telephone calls to telephone numbers on the registry.

[68 FR 45144, July 31, 2003, as amended at 69 FR 45585, July 30, 2004]

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§310.9 Severability.

The provisions of this Rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.