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U.S. DISTRICT COURT
DISTRICT OF NEVADA

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2:13-cv-00143-MMD-GWF

15 (*Motion to permit appearance pending)

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17
18 UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

19
20 **Federal Trade Commission,**
21 **Plaintiff,**
22 **v.**
23 **Ideal Financial Solutions, Inc., a**
corporation;
24 **Ascot Crossing, LLC, a limited liability**
company;
25 **Bracknell Shore, Ltd., a limited liability**
company;
26

Case No.:

[Filed Under Seal]

Complaint for
(1) Unfair Billing Practices;
(2) Deceptive Billing Practices;
and
(3) Deceptive Statements that
Consumers Authorized Payment

27

1 **Chandon Group, Inc.**, a corporation;
2 **Avanix, LLC**, a limited liability company;
3 **Fiscal Fitness, LLC**, a limited liability
4 company;
5 **Steven Sunyich**, individually and as an
6 officer and director of the corporate
7 defendants;
8 **Michael Sunyich**, individually and as an
9 officer and director of the corporate
10 defendants;
11 **Christopher Sunyich**, individually and as
12 an officer and director of the corporate
13 defendants;
14 **Shawn Sunyich**, individually and as an
15 officer and director of the corporate
16 defendants;
17 **Melissa Sunyich Gardner**, individually and
18 as an officer and director of the corporate
19 defendants; and
20 **Kent Brown**, individually and as an officer
21 and director of the corporate defendants.
22
23 Defendants.

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

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

26 1. The FTC brings this action under Section 13(b) of the Federal Trade Commission
27 Act (“FTC Act”), 15 U.S.C. § 53(b), to obtain temporary, preliminary, and permanent injunctive
relief, rescission or reformation of contracts, restitution, refund of monies paid, disgorgement of
ill-gotten monies, the appointment of a receiver, and other equitable relief for Defendants’ acts
or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

JURISDICTION AND VENUE

1
2 2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a),
3 and 1345, and 15 U.S.C. §§ 45(a) and 53(b).

4 3. Venue is proper in this district under 28 U.S.C. §1391(b) and (c), and 15 U.S.C. §
5 53(b).

6 **CASE SYNOPSIS**

7 4. Using a network of front companies, Defendants take money from consumers
8 without prior notice or consent, making more than \$ 24,000,000 in unauthorized debits and
9 charges without providing any product or service in exchange for that money. Defendants
10 subsequently tell complaining consumers that they purchased Defendants' phantom products at a
11 website that Defendants will not identify.
12

13 **PLAINTIFF**

14 5. The FTC is an independent agency of the United States Government created by
15 statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a),
16 which prohibits unfair or deceptive acts or practices in or affecting commerce.
17

18 6. The FTC is authorized to initiate federal district court proceedings, by its own
19 attorneys, to enjoin violations of the FTC Act and to secure such equitable relief as may be
20 appropriate in each case, including rescission or reformation of contracts, restitution, the refund
21 of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b) and 56(a)(2)(A).
22

23 **DEFENDANTS**

24 7. Defendant Steven Sunyich is the Chief Executive Officer of Defendant Ideal
25 Financial Solutions, Inc. At all times material to this Complaint, acting alone or in concert with
26 others, he formulated, directed, controlled, had the authority to control, or participated in the acts
27

1 and practices set forth in this Complaint. Steven Sunyich knew of Defendants' unauthorized
2 billing of consumer accounts and deceptive statements to consumers, was recklessly indifferent
3 to these acts, or was aware of a high probability of the fraud and intentionally avoided the truth.
4 In connection with the matters alleged herein, he transacts or has transacted business in this
5 district and throughout the United States.

6 8. Defendant Michael Sunyich is President of Defendant Bracknell Shores, Ltd. and
7 Vice-President of Defendant Ideal Financial Solutions, Inc. At all times material to this
8 Complaint, acting alone or in concert with others, he formulated, directed, controlled, had the
9 authority to control, or participated in the acts and practices set forth in this Complaint. Michael
10 Sunyich knew of Defendants' unauthorized billing of consumer accounts and deceptive
11 statements to consumers, was recklessly indifferent to these acts, or was aware of a high
12 probability of the fraud and intentionally avoided the truth. In connection with the matters
13 alleged herein, he transacts or has transacted business in this district and throughout the United
14 States.
15

16 9. Defendant Christopher ("Chris") Sunyich is President of Defendant Ideal
17 Financial Solutions, Inc. At all times material to this Complaint, acting alone or in concert with
18 others, he formulated, directed, controlled, had the authority to control, or participated in the acts
19 and practices set forth in this Complaint. Chris Sunyich knew of Defendants' unauthorized
20 billing of consumer accounts and deceptive statements to consumers, was recklessly indifferent
21 to these acts, or was aware of a high probability of the fraud and intentionally avoided the truth.
22 In connection with the matters alleged herein, he transacts or has transacted business in this
23 district and throughout the United States.
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1 10. Defendant Shawn Sunyich was Director of Business Development for Defendant
2 Ideal Financial Solutions, Inc. until March 2012 and President of Defendant Chandon Group,
3 Inc. in 2011. At times material to this Complaint, acting alone or in concert with others, he
4 formulated, directed, controlled, had the authority to control, or participated in the acts and
5 practices set forth in this Complaint. Shawn Sunyich knew of Defendants' unauthorized billing
6 of consumer accounts and deceptive statements to consumers, was recklessly indifferent to these
7 acts, or was aware of a high probability of the fraud and intentionally avoided the truth. In
8 connection with the matters alleged herein, he transacts or has transacted business in this district
9 and throughout the United States.
10

11 11. Defendant Melissa Sunyich Gardner is the Owner of Defendant Ascot Crossing,
12 LLC. At all times material to this Complaint, acting alone or in concert with others, she
13 formulated, directed, controlled, had the authority to control, or participated in the acts and
14 practices set forth in this Complaint. Melissa Sunyich Gardner knew of Defendants'
15 unauthorized billing of consumer accounts and deceptive statements to consumers, was
16 recklessly indifferent to these acts, or was aware of a high probability of the fraud and
17 intentionally avoided the truth. In connection with the matters alleged herein, she transacts or
18 has transacted business in this district and throughout the United States.
19

20 12. Defendant Kent Brown is Chief Operating Officer and Controller of Defendant
21 Ideal Financial Solutions, Inc., Defendant Bracknell Shore, Ltd., and Defendant Ascot Crossing,
22 LLC. At all times material to this Complaint, acting alone or in concert with others, he
23 formulated, directed, controlled, had the authority to control, or participated in the acts and
24 practices set forth in this Complaint. Kent Brown knew of Defendants' unauthorized billing of
25 consumer accounts and deceptive statements to consumers, was recklessly indifferent to these
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1 acts, or was aware of a high probability of the fraud and intentionally avoided the truth. In
2 connection with the matters alleged herein, he transacts or has transacted business in this district
3 and throughout the United States.

4 13. Defendant Ideal Financial Solutions, Inc. ("Ideal") is a publicly traded Nevada
5 corporation that asserts to the Securities and Exchange Commission that its place of business is
6 at 5940 S. Rainbow Blvd., Suite 3010, Las Vegas, NV 89118. Ideal transacts or has transacted
7 business in this district and throughout the United States.

8 14. Defendant Ascot Crossing, LLC ("Ascot Crossing") is a Nevada limited liability
9 company that has previously asserted in an application to a payment processor that its physical
10 place of business as 8670 W. Cheyenne Ave., Las Vegas, NV 89129. Ascot Crossing transacts
11 or has transacted business in this district and throughout the United States.

12 15. Defendant Bracknell Shore, Ltd. ("Bracknell Shore") is a Nevada limited liability
13 company that asserts on State of Nevada corporate records that its registered agent for service of
14 process is located at 5940 S. Rainbow Blvd., Ste. 3010, Las Vegas, NV 89118-2540. Bracknell
15 Shore transacts or has transacted business in this district and throughout the United States.

16 16. Defendant Chandon Group, Inc. ("Chandon Group") is a Nevada corporation that
17 identifies on domain name records that its place of business is at 8670 W. Cheyenne Ave., Las
18 Vegas, NV 89129 and that identifies on fictitious business name and bank records that its place
19 of business is 2831 St. Rose Parkway, Suite 200, Henderson, NV 89052. Chandon Group
20 transacts or has transacted business in this district and throughout the United States.

21 17. Defendant Avanix LLC ("Avanix") is a Nevada corporation that lists on its
22 corporate letterhead that it is located at 219 Redfield Parkway, #204, Reno, NV 89509. Avanix
23 transacts or has transacted business in this district and throughout the United States.

1 18. Defendant Fiscal Fitness, LLC (“Fiscal Fitness”) is a Nevada limited liability
2 company that asserts on State of Nevada corporate records that it has places of business at 1489
3 W. Warm Springs, Rd, Suite 110, Henderson, NV 89014 and 7327 Ristoro St., Las Vegas, NV
4 89148. Fiscal Fitness transacts or has transacted business in this district and throughout the
5 United States.

6 19. Defendants have operated as a common enterprise while engaging in the
7 deceptive and unfair acts and practices alleged below. Defendants have commingled funds and
8 conducted the business practices described below through an interrelated network of companies
9 that have common ownership, officers, managers, business functions, employees, office
10 locations, phone numbers, websites, and centralized payroll functions. *See infra* paras. 51-59.
11 Because these Defendants have operated as a common enterprise, each of them is jointly and
12 severally liable for the acts and practices alleged below.
13

14 20. Defendants Steven Sunyich, Melissa Sunyich Gardner, Chris Sunyich, Michael
15 Sunyich, Shawn Sunyich, and Kent Brown formulated, directed, controlled, had the authority to
16 control, or participated in the acts and practices of the defendants that constitute the common
17 enterprise.
18

19 21. Defendants regularly use dozens of other corporations as shells that do nothing
20 more than open merchant accounts with payment processors, submit consumer account
21 information to them for billing, and funnel the proceeds to Defendants. On information and
22 belief, in addition to the named defendants, these other participants in the common enterprise
23 include, but are not limited to, Debt Elimination Systems, LLC; US Debt Relief, LLC; Money
24 Mastery, LLC; US Debt Assistance Corp.; IWB Services (St. Kitts); Financial Fitness, LLC;
25 Debt to Wealth, LLC (St. Kitts); Debt to Wealth, LLC (Nevada); Ideal Goodness, LLC; Dollars
26
27

1 West, LLC; Fluidity, LLC; Newport Sails, LLC; Shaw Shank, LLC; Bunker Hillside, LLC;
2 Funding Guarantee, LLC; Newline Cash, LLC; Wealth Fitness, LLC; and Zeal Funding, LLC.

3 **COMMERCE**

4 22. At all times material to this Complaint, Defendants have maintained a substantial
5 course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act,
6 15 U.S.C. § 44.

7 **DEFENDANTS’ BUSINESS PRACTICES**

8 **Defendants Debit and Charge Consumers without Authorization**

9 23. Since at least January 2009, Defendants have taken money from consumers’ bank
10 accounts or billed consumers’ credit cards, without consumers’ knowledge or consent or prior
11 adequate notice.

12 24. Defendants organize their scheme into a series of debiting and billing
13 campaigns. For each campaign, Defendants, directly or through other shell companies, establish
14 merchant accounts with third party payment processors. Defendants use these merchant
15 accounts to debit consumers’ bank accounts and charge their credit cards. When the debit or
16 charge (usually around \$30) appears on a consumers’ bank or credit card statement, a phone
17 number accompanies it, along with a short billing descriptor like DEBT2WEALTH, FUND
18 ASSUR, or AVANIX.

19 25. Prior to the unauthorized debit or credit card charge, consumers have never come
20 into contact with Defendants; therefore, consumers have not authorized Defendants to take their
21 money or charge their credit cards.

22 26. Because Defendants do not have consumer authorization when they debit the
23 bank account or charge the credit card, the transactions are often returned upon consumer
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1 request. The rate of these returns is well above the industry average and reflects the lack of
2 authorization from consumers.

3 27. Defendants falsely tell consumers who call their phone numbers (as listed on
4 consumers' bank statements and credit cards statements) that the consumers authorized the debit
5 or charge.

6 28. Defendants make use of dozens of shell companies to evade detection.

7 29. Over the last four years, Defendants have debited or charged more than \$24
8 million from consumers without authorization.

9 30. For example, in numerous campaigns, Defendants have made hundreds of
10 thousands of debits on consumer accounts without authorization, including but not limited to
11 these three campaigns:
12

13 A. **Debt2Wealth Campaign:** In 2010, Defendants debited consumer bank
14 accounts, using the billing descriptor "Debt2Wealth" and similar names. In the campaign,
15 Defendants' debited approximately \$30 to \$40 from thousands of consumer accounts without the
16 consumers' authorization. When consumers called the phone number listed next to the billing
17 descriptor, Defendants falsely told those consumers that they had purchased financial counseling
18 services.
19

20 B. **Funding Assurance Campaign:** In 2011, Defendants debited consumer
21 bank accounts with the billing descriptor "Funding Assurance" and similar names. In the
22 campaign, Defendants' debited approximately \$30 from thousands of consumer accounts without
23 authorization. When consumers called the phone number listed next to the billing descriptor,
24 Defendants falsely told those consumers that they had purchased payday loan matching services
25 from Defendants.
26
27

1 C. **Avanix Campaign:** In 2012, Defendants debited consumer bank accounts
2 with the billing descriptor “Avanix Lending” and similar names. In the campaign, Defendants’
3 debited approximately \$31.96 from thousands of consumer accounts without the consumers’
4 authorization. When consumers called the phone number listed next to the billing descriptor,
5 Defendants falsely told those consumers that they had purchased assistance in completing a
6 payday loan application.

7 D. Defendants have launched many additional campaigns with a panoply of
8 billing descriptors or phony products, such Payment Assistance, Payment Protection 101, Payday
9 Loan Protection, ILender Assistance, ILender Network, SS LendFast, Debt Elimination Systems,
10 IBuild Wealth, IWB Club, and Cash Club.

11 31. Defendants’ source (“lead provider”) for consumers’ financial information is
12 unknown. However, many of Defendants’ victims recently had applied for payday loans through
13 the Internet. Consumers apply for payday loans directly (via lenders’ websites) or indirectly (via
14 third-party broker websites, which purport to connect applicants with lenders). To apply for a
15 payday loan, consumers provide personal information, including bank account numbers, so that
16 the loan, if approved, can be deposited into their account. Entities that receive payday loan
17 applications (whether directly or indirectly) frequently sell the information (including financial
18 information) to additional parties.
19
20

21 32. By targeting financially vulnerable consumers, Defendants’ debits regularly cause
22 consumers to incur bank penalty fees or overdraft charges due to insufficient funds.
23

24 **Defendants’ High Return Rates Indicate a Lack of Consumer Authorization**

25 33. Defendants access the banking system and credit card networks via third-party
26 payment processors. Defendants submit consumer account information to the payment
27

1 processors, which initiate debits from the consumers' accounts or bill consumers' credit card
2 accounts. The payment processors send the proceeds of the debits and charges to Defendants,
3 after deducting their fees.

4 34. For debits, payment processors rely on either remotely created checks ("RCCs")
5 or direct electronic withdrawals. Direct electronic withdrawals are processed through the ACH
6 network, a nationwide inter-bank electronic network monitored by NACHA – The Electronic
7 Payments Association ("NACHA"), a private regulatory trade association. RCCs are payment
8 mechanisms that are (like a traditional paper check) drawn against a consumer's checking
9 account; there is no entity like NACHA that monitors RCCs.
10

11 35. Many of Defendants' debits and charges are never noticed by the targeted
12 consumers and therefore are never challenged. Those consumers who do notice often complain
13 to their financial institution, credit card issuer, or Defendants. Consumer complaints to
14 Defendants are described in Paragraphs 43 – 50.
15

16 36. When consumers complain about unauthorized charges and debits to their
17 financial institution or credit card issuers, those entities often process a reversal to refund the
18 consumer. (In the debit context, the terminology is "return"; in the credit card context, the
19 terminology is "chargeback"). Financial institutions and credit card issuers can process reversals
20 for any number of reasons, including insufficient funds, a closed account, a non-existent account,
21 or notice by the consumer that the transaction was unauthorized.
22

23 37. High reversal rates (relative to industry average) are indicia that the merchant is
24 engaged in illegal unauthorized billing/debiting schemes. To guard against this, NACHA and
25 financial institutions monitor the Total Return Rate and Unauthorized Return Rate for debits.
26
27

1 For debits in 2011, the Average Total Return Rate for the ACH network was 1.52 % and the
2 Average Unauthorized Return Rate was 0.03 %.

3 38. In numerous instances, Defendants' campaigns far exceeded the Average Total
4 Return Rate and the Average Unauthorized Return Rate for debits, as reflected in the following
5 two examples:

6 A. **Debt2Wealth Campaign:** For transactions processed between August
7 2010 and March 2011 by one payment processor, Defendants' Total Return Rate was more than
8 54 % — more than 35 times the Average Total Return Rate.

9
10 B. **Funding Assurance Campaign:** For transactions processed between
11 August 2011 and September 2011 by one payment processor, Defendants' Unauthorized Return
12 Rate was approximately 2.7 % — approximately 90 times the Average Unauthorized Return
13 Rate.

14 39. As a result of Defendants' high return rates, at least some payment processors
15 terminated Defendants' merchant accounts. For example, in 2011, Fifth Third Bank conducted a
16 separate fraud investigation into Defendants' merchant accounts and, as a result, yet another
17 payment processor terminated another merchant account.

18
19 40. Likewise, credit card networks and banks monitor chargeback rates for credit card
20 charges. High chargeback rates, and especially those that exceed one percent (1 %), are indicia
21 of unauthorized/illegal billing. In 2009 and 2010, Defendants charged credit cards with
22 chargeback rates that reached 12.3 %. Because of high chargeback rates, Visa conducted an
23 investigation of Defendants' merchant accounts in 2010, and Defendant Ideal's payment
24 processor terminated at least one merchant account as a result.

25
26 41. Defendants cannot bill or debit consumers without merchant accounts. However,
27

1 Defendants will lose these merchant accounts if they have high return rates. In order to prevent
2 this from happening, Defendants manipulate their return rates by taking multiple unauthorized
3 debits from consumer bank accounts of \$0.01, \$0.03, and \$0.04. They immediately refund them
4 prior to Defendants' much larger unauthorized debit of approximately \$30. By doing so,
5 Defendants inflate the number of total debits and thereby reduce their Total Return Rate and
6 Total Unauthorized Return Rate; thus, Defendants can forestall fraud investigations and
7 merchant account termination.

8
9 42. For example, if Defendants debit ten consumer accounts for \$31.96 each, and five
10 consumers challenge the debits with their bank (which "returns" the debits), Defendants have a
11 return rate of 50%. However, Defendants can reduce that rate by taking two additional penny
12 debits from the account and automatically refunding those debits as a direct deposit, not as a
13 "return." In such case, Defendants would make three debits for each account (two separate
14 penny debits and a \$31.96 debit), resulting in 30 individual debits. If five of the \$31.96 debits
15 were returned, the return rate would be only 16.7 %.

16
17 **Misrepresentations to Complaining Consumers through Call Center Agents**

18 43. Defendants also lower their return rates by falsely telling consumers that they
19 authorized the debits or charges and should not challenge them with their bank.

20 44. Specifically, Defendants place toll-free phone numbers alongside billing
21 descriptors on victims' bank and credit card statements.

22 45. Defendants received tens of thousands of calls to these phone numbers from
23 consumers complaining about the unauthorized charges and debits.

24 46. To handle this volume of consumer complaints, Defendants established a call
25 center in St. George, Utah. They also retained a firm which provided additional capacity at call
26
27

1 centers in the United States, the Philippines, and El Salvador.

2 47. At these call centers, agents answer phone calls with the name of the billing
3 descriptor matching the phone number called (as listed on the victims' credit card or bank
4 account statement). The agents misrepresent to consumers that they authorized the debits and
5 charges while applying for an online payday loan. These agents falsely assert that the payment
6 was for a particular product, usually related to financial management, financial counseling, or a
7 payday loan application.

8 48. When complaining consumers ask the call center agents how Defendants obtained
9 their account information, the call center agents are unwilling or unable to tell them. On
10 occasion, the call center agent will tell a consumer that his or her information may have been
11 obtained from a website (which the agent does not identify). Sometimes, the call center agents
12 tell consumers that Defendants know their computer's IP (Internet Protocol) address, which they
13 falsely claim establishes authorization for the debits or charges.

14 49. In one instance, a call center agent told the complaining consumer that: "I would
15 like to make it clear that we do not have a copy of your application [for a payday loan or other
16 services], but the IP addresses and information that was submitted, in your name, as an
17 application." Another consumer reports that Defendants' agent told him that "she had no
18 information other than the IP address to give me as evidence that I had authorized a debit from
19 my checking account."

20 50. Many complaining consumers are unconvinced by Defendants'
21 misrepresentations and demand refunds. Defendants often promise a refund to consumers who
22 persistently demand one.
23
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An Interrelated Maze of Shell Companies Shields Defendants

1
2 51. In addition to lying to consumers about their fraud, Defendants use a labyrinth of
3 shell companies, merchant accounts, mail drops, and websites to evade detection.

4 52. Defendants have incorporated dozens of companies that open merchant accounts
5 for their campaigns. In addition, Defendants have operated under dozens of fictitious business
6 names to hide their identity from the victims of their campaigns.

7 53. Defendants have opened multiple merchant accounts with payment processors.

8 54. Defendants have used over 50 billing descriptors for their campaigns.

9 55. Defendants have used multiple mail drops and numerous addresses for their
10 campaigns.
11

12 56. Defendants have registered over 230 domain names (often using identity-hiding
13 services and auto-forward features), including debt2wealthclub.com, fundingassurance.com, and
14 avanixlending.com.

15 57. Corporate defendants share officers. Kent Brown is an officer of Ideal Financial,
16 Bracknell Shore, and Ascot Crossing. Michael Sunyich is an officer of Ideal Financial and
17 Bracknell Shore. Shawn Sunyich is an officer of Ideal Financial and served as president of
18 Chandon Group. Steven Sunyich, Christopher Sunyich, and Kent Brown have check writing
19 privileges for bank accounts held by Ideal Financial, Ascot Crossing, and Chandon Group.
20

21 58. Corporate defendants share employees. For example, the same Ideal Financial
22 employee responds to BBB complaints, whether lodged against Fiscal Fitness or Avanix.
23 Likewise, Ascot Crossing, Bracknell Shore, Chandon Group, and Fiscal Fitness use deceptive
24 email addresses that auto-forward to Ideal Financial employees. Similarly, corporate defendants'
25 call center agents answer the phone as a representative of whatever campaign the victim called
26
27

1 about, rather than identifying the company or companies responsible for that campaign. Finally,
2 while Ideal Financial hires certain employees, Bracknell Shore issues their paychecks.

3 59. Defendants also commingle assets and funnel monies paid to them by payment
4 processors to multiple corporate and personal accounts.

5 **VIOLATIONS OF THE FTC ACT**

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

8 61. Misrepresentations or deceptive omissions of material fact constitute deceptive
9 acts or practices prohibited by Section 5(a) of the FTC Act. Acts or practices are unfair under
10 Section 5 of the FTC Act if they cause substantial injury to consumers that consumers cannot
11 reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers
12 or competition. 15 U.S.C. § 45(n).

13 **COUNT I - Unfair Billing Practices**

14 62. As described in Paragraphs 4 - 59, in numerous instances, Defendants obtain
15 consumers’ bank account and credit card account information and have caused billing
16 information to be submitted for payment on those accounts without consumers’ express informed
17 consent.
18

19 63. Defendants’ actions cause or are likely to cause substantial injury to consumers
20 that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing
21 benefits to consumers or competition.
22

23 64. Therefore, Defendants’ practices as described in Paragraph 62 of this Complaint
24 constitute unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. §§ 45(a)
25 and 45(n).
26
27

COUNT II – Deceptive Billing Practices

1
2 65. As described in paragraphs 4 - 59, in numerous instances, Defendants represent,
3 directly or indirectly, expressly or by implication, that consumers have authorized Defendants'
4 charges on consumers' credit cards.

5 66. As described in paragraphs 4 - 59, in truth and in fact, in numerous of these
6 instances, consumers have not authorized Defendants' charges on their credit cards.

7 67. Therefore, Defendants' representations set forth in Paragraph 65 of this
8 Complaint are false or misleading and constitute deceptive acts or practices in violation of
9 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).
10

11 **COUNT III – Deceptive Statements That Consumers Authorized Payment**

12 68. As described in paragraphs 4 - 59, in numerous instances, when consumers
13 contact Defendants to seek refunds, Defendants represent, directly or indirectly, expressly or by
14 implication, that consumers are not entitled to a refund because they agreed:

- 15 a. to purchase Defendants' products or services, and
16 b. to authorize Defendants to debit money from consumers' bank accounts to
17 pay for Defendants' products or service.
18

19 69. As described in paragraphs 4 - 59, in truth and in fact, in numerous instances in
20 which Defendants make these representations, consumers did not agree:

- 21 a. to purchase Defendants' products or services, and
22 b. to authorize Defendants to debit money from consumers' bank accounts to
23 pay for Defendants' products or services.
24

25 70. Therefore, Defendants' representations set forth in Paragraph 68 of this
26 Complaint are false or misleading and constitute deceptive acts or practices in violation of
27

1 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

2 **CONSUMER INJURY**

3 71. Consumers have suffered and will continue to suffer substantial injury as a result
4 of Defendants' violations of the FTC Act. In addition, Defendants have been unjustly enriched
5 as a result of their unlawful acts or practices. Absent injunctive relief by this Court, Defendants
6 are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

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

8 72. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant
9 injunctive and such other relief as the Court may deem appropriate to halt and redress violations
10 of any provision of law enforced by the FTC. The Court, in the exercise of its equitable
11 jurisdiction, may award ancillary relief, including rescission or reformation of contracts,
12 restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and
13 remedy any violation of any provision of law enforced by the FTC.
14

15 **PRAYER FOR RELIEF**

16
17 Wherefore, the Federal Trade Commission, pursuant to Section 13(b) of the FTC Act, 15
18 U.S.C. § 53(b), and the Court's own equitable powers, requests that the Court:

19 A. Award Plaintiff such preliminary injunctive and ancillary relief as may be
20 necessary to avert the likelihood of consumer injury during the pendency of this action and to
21 preserve the possibility of effective final relief, including but not limited to, temporary and
22 preliminary injunctions, an order freezing assets, immediate access, and the appointment of a
23 receiver;
24

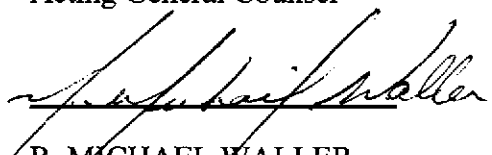
25 B. Enter a permanent injunction to prevent future violations of the FTC Act by
26 Defendants;
27

1 C. Award such relief as the Court finds necessary to redress injury to consumers
2 resulting from Defendants' violations of the FTC Act, including but not limited to, rescission or
3 reformation of contracts, restitution, the refund of monies paid, and the disgorgement of
4 ill-gotten monies; and

5 D. Award Plaintiff the costs of bringing this action, as well as such other and
6 additional relief as the Court may determine to be just and proper.
7

8 Respectfully submitted,
9 DAVID SHONKA
Acting General Counsel

10 Dated: 1/25/2013



11
12 R. MICHAEL WALLER
MEGAN E. GRAY
13 Attorneys for Plaintiff
FEDERAL TRADE COMMISSION
14 Bureau of Consumer Protection
15 Division of Enforcement
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