

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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FEDERAL TRADE COMMISSION,  
  
STATE OF NEW YORK, and  
  
STATE OF FLORIDA,  
  
Plaintiffs,  
  
v.  
  
THE TAX CLUB, INC., et al.,  
  
Defendants, and  
  
SANDRA C. SAVAGE,  
  
Relief Defendant.

Case No. 13-CV-210 (JMF)

**STIPULATED FINAL JUDGMENT  
AND ORDER FOR PERMANENT  
INJUNCTION AND MONETARY  
RELIEF AS TO DEFENDANT  
EDWARD B. JOHNSON**

Plaintiffs Federal Trade Commission (“FTC” or “Commission”), and the State of New York and State of Florida, through their Attorneys General, filed their Complaint for Permanent Injunction and Other Equitable Relief, subsequently amended as First Amended Complaint for Permanent Injunction and Other Equitable Relief (“Amended Complaint”), for a permanent injunction, civil penalties, and other equitable relief in this matter, pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (the “FTC Act”), 15 U.S.C. §§ 53(b) and 57b, the Telemarketing and Consumer Fraud Abuse Prevention Act (the “Telemarketing Act”), 15 U.S.C. §§ 6101-6108, the Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”), §§ 501.201 *et seq.*, and New York Executive Law § 63(12) (“NY Exec. Law”), in connection with the marketing and sale of business development products and services. Plaintiffs and Individual

Defendant Johnson stipulate to the entry of this Stipulated Final Judgment and Order for Permanent Injunction and Monetary Relief as to Defendant Edward B. Johnson (“Order”) to resolve all matters of dispute between them in this action.

**THEREFORE, IT IS ORDERED** as follows:

**FINDINGS**

1. This Court has jurisdiction over this matter.
2. The Amended Complaint charges that Defendants participated in deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), the FTC’s Trade Regulation Rule entitled Telemarketing Sales Rule (“TSR” or “Rule”), 16 C.F.R. Part 310, the New York Executive Law (“NY Exec. Law”) §63(12), New York General Business Law (“GBL”) §§ 349 and 350, and the Florida Deceptive and Unfair Trade Practices Act (“FDUPTA”), §501.201 *et. seq.*
3. Individual Defendant Johnson neither admits nor denies any of the allegations in the Amended Complaint, except as specifically stated in this Order. Only for purposes of this action, Individual Defendant Johnson admits the facts necessary to establish jurisdiction.
4. Individual Defendant Johnson waives any claim he may have under the Equal Access to Justice Act, 28 U.S.C. §2412, concerning the prosecution of this action through the date of this Order, and agrees to bear his own costs and attorney fees.
5. Individual Defendant Johnson waives all rights to appeal or otherwise challenge or contest the validity of this Order.

## DEFINITIONS

For purposes of this Order, the following definitions apply:

1. **“Business Coaching Services”** means any product or service, including any program or plan, that is represented, expressly or by implication, to train or teach a consumer how to establish a business.
2. **“Business Maximization Services”** means credit development, business plans and planning, and merchant account processing for any business.
3. **“Defendants”** means Individual Defendant Johnson, Michael M. Savage, Brendon A. Pack, Gary J. Milkwick, The Tax Club, Inc., also doing business as Success Merchant Services, Corporate Tax Network, Corporate Credit, and E-tax Hotline 8882790191; Manhattan Professional Group, Inc., also doing business as The Tax Club, Bookkeeping Services, Bookkeeping Services, Ikongo, Essential Planning, Corporate Tax Network, Business Document Center, the Success Planning Group, All Access Books, and Vital Payroll; 5410, Inc., also doing business as Internet Marketing Success, the Success Planning Group, Success Planning Group 2, Success Online, Business Credit, Success Merchant Processing, Real Estate Wire, Day Trade Team, Funding Fasttrack, Corporate Credit, Corporate Credit 2, and Prestige Financing Services; Marble Base, Inc., also doing business as Business Resources, Corporate Solutions, Business Success, Business Services, Online Development, and Jade Seek; 6015, LLC, also doing business as Cypress Corp. Services, My Tax Service, and Accounting Group Services; 1800Accountant, LLC; Ikongo, Inc.; Tahuya, Inc.; Visavis, Inc.; HB Marketing Services, LLC, also doing business as Global Education, Website Services, Cell Phone Coaching,

Maverick MM, and Email Cash; Premier Coaching & Consulting, LLC, also doing business as Premier Coaching, Website Services, AC Secrets: 8774372521, Automatic Profit System, Advanced Profits, VIP Profits, Automatic Profit System VIP, and Automatic Profit System Advanced; Skorpios Holdings, Inc., also known as Skorpios Holding, Inc., and any fictitious business entities or business names created or used by these entities, and their successors and assigns.

4. **“Individual Defendant Johnson”** means the Individual Defendant Edward B. Johnson, also known as Ted Johnson, also known as Tedd Johnson.
5. **“Person”** means a natural person, organization, or other legal entity, including a corporation, partnership, proprietorship, association, cooperative, government or governmental subdivision or agency, or any other group or combination acting as an entity.
6. **“Plaintiffs”** means the Federal Trade Commission (“FTC” or “Commission”), the State of New York, and the State of Florida.
7. **“Telemarketing”** means any plan, program or campaign which is conducted to induce the purchase of goods or services by use of one or more telephones, and which involves a telephone call, whether or not covered by the TSR.
8. **“Work-at-Home Opportunity”** means any product or service, including any program or plan, that is represented, expressly or by implication, to assist a consumer in any manner to earn money while working from home.

**ORDER**

**I. BAN ON MARKETING OR SALE OF BUSINESS COACHING SERVICES, BUSINESS MAXIMAZATION SERVICES, AND WORK-AT-HOME OPPORTUNITIES**

**IT IS ORDERED** that Individual Defendant Johnson is permanently restrained and enjoined from advertising, marketing, promoting, or offering for sale any Business Coaching Services, Business Maximization Services, or Work-at-Home Opportunity.

Provided, however, this provision does not include website design or traffic generation products or services and corporate recordkeeping software.

**II. PROHIBITIONS RELATING TO TELEMARKETING PRACTICES**

**IT IS FURTHER ORDERED** that, in connection with telemarketing, Individual Defendant Johnson, his officers, agents, servants, and employees, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the sale of any product or service, are permanently restrained and enjoined from:

- A. Failing to disclose truthfully, promptly, and in a clear and conspicuous manner:
  - (1) the identity of the seller; (2) that the purpose of the call is to sell goods or services; and (3) the nature of those good or services; and
- B. Violating any provision of the TSR. (A copy of the TSR is attached as Attachment A.)

**III. PROHIBITED PRACTICES RELATING TO ANY PRODUCTS OR SERVICES**

**IT IS FURTHER ORDERED** that Individual Defendant Johnson, his officers, agents, servants, and employees, and all other persons in active concert or participation with any of

them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the sale of any products or services, are permanently restrained and enjoined from misrepresenting or assisting others in misrepresenting, expressly or by implication, any material fact, including, but not limited to:

- A. That consumers will recoup the cost of any of Individual Defendant Johnson's products and services through the provision of any product or service Individual Defendant Johnson offers, and/or provision of a tax deduction, tax refund, or tax credit;
- B. That consumers will be able to transfer the cost of any of Individual Defendant Johnson's products and services to their future businesses;
- C. That consumers will have unlimited access to advisors;
- D. That any advisors will provide specialized expert advice tailored to the consumers' specific needs;
- E. That consumers will recoup the money they already paid to other companies if they purchase additional products and services from Individual Defendant Johnson;
- F. That any person or entity is affiliated or associated with, under contract with, acting in partnership with, endorsed or approved by, or otherwise connected to any other person, business entity, or government entity;
- G. The cost of any product or service;
- H. Any material restriction, limitation, or condition on the product or service;

- I. Any material aspect of the nature or terms of any refund, cancellation, exchange, or repurchase policy for the product or service; and
- J. Any material aspect of the performance, efficacy, nature, or central characteristics of the product or service.

#### **IV. MONETARY JUDGMENT**

**IT IS FURTHER ORDERED** that:

- A. Judgment in the amount of ONE HUNDRED FIFTEEN MILLION DOLLARS (\$115,000,000) is entered in favor of the Plaintiffs against Individual Defendant Johnson, as equitable monetary relief. This judgment shall be reduced by funds turned over to the Commission by Individual Defendant Johnson and Venable LLP as set forth below. All taxes and fees assessed against Individual Defendant Johnson resulting from the sale or transfer of assets shall not reduce the amount of the judgment. Upon payments and transfer of all assets specified in Subsections B, D, E, F, and G below, the remainder of the judgment is suspended, subject to Subsections K, L, M, and N below.
- B. In partial satisfaction of the monetary judgment set forth above, within seven (7) days of entry of this Order:
  - 1. Individual Defendant Johnson shall transfer to the Commission by electronic fund transfer in accordance with instructions to be provided by counsel for the Commission:
    - a) all funds held in the Charles Schwab account ending in 3386;
    - b) all funds held in the Charles Schwab account ending in 8378; and

c) all funds held in the Wells Fargo brokerage account ending in 5519 if Individual Defendant Johnson has sold and closed on the sale of the Real Property set forth in Subsection D for fair market value at the time of entry of this Order. If Individual Defendant Johnson has not sold and closed on the sale, at fair market value, of the Real Property set forth in Subsection D at the time of entry of this Order, then Individual Defendant Johnson shall transfer the funds held in the Wells Fargo brokerage account ending in 5519 as follows:

- i.) \$100,000 to the Liquidator appointed in Section V; and
- ii.) all other funds to the Commission by electronic fund transfer in accordance with instructions to be provided by counsel for the Commission.

C. In partial satisfaction of the monetary judgment set forth above, Individual Defendant Johnson waives all rights and title to any funds remaining in an escrow account at Venable LLP under the client/matter titled Edward B. Johnson/FTC v. Tax Club, Inc. (“Venable escrow”) when the litigation in this matter has concluded with regard to all parties. Any and all remaining funds in the Venable escrow at the time this Order is entered shall only be used for purposes related to this litigation. Upon the entry of final judgment in this matter as to all Defendants, within seven (7) days, Venable LLP shall transfer the remaining



balance in the Venable escrow to the Commission, by electronic fund transfer, in accordance with instructions provided by counsel for the Commission.

- D. In partial satisfaction of the monetary judgment set forth above, within seven (7) days after the date of entry of this Order, but no later than June 30, 2014, Individual Defendant Johnson shall offer for sale the property located at 5026 Linea Del Cielo, Rancho Santa Fe, CA, 92067, including, but not limited to, the land, buildings and any and all fixtures, appurtenances, and improvements (“Real Property”); for fair market value, and shall transfer all proceeds of that sale, after the payment of all Real Property-related priority liens, debts, and mortgages, real estate commissions, and fees associated with the sale of the Real Property, to the Commission by electronic fund transfer in accordance with instructions to be provided by counsel for the Commission. With regard to the Real Property:

1. Individual Defendant Johnson represents that he is the sole owner of the Real Property. Individual Defendant Johnson represents and warrants that since February 1, 2014, he has not directly encumbered the Real Property with any other lien, mortgage, deed of trust, assignment, pledge, security interest, or other interest, and that no other lien, mortgage, deed of trust, assignment, security or other interest or encumbrance exists with respect to the Real Property, except for the liens, mortgages, or security interests identified in the sworn financial statement submitted to the FTC on March 31, 2014.

2. Individual Defendant Johnson shall in no way profit from the sale of the Real Property, including by sharing in any sales commission or fee, or by receiving anything of value in kind.
  3. Individual Defendant Johnson shall take no action to diminish the value of and shall maintain the Real Property, including any structures, fixtures, and appurtenances thereto, in good working order.
  4. Individual Defendant Johnson shall purchase and maintain insurance on the Real Property for at least its replacement value through June 30, 2014, and shall name the Commission as an additional beneficiary on said insurance within seven (7) days after the entry of this Order, in an amount equivalent to the listing price of the Real Property minus any mortgage.
  5. Upon the sale of the Real Property, Individual Defendant Johnson forever waives, releases, discharges, and disclaims all right, title, and interest, including any homestead, in the Real Property.
- E. In partial satisfaction of the monetary judgment set forth above, Individual Defendant Johnson agrees to the following with regard to all funds held in the Wells Fargo account ending in 8788:
1. Funds from the Wells Fargo account 8788 shall only be used for the following Real Property expenses: taxes, mortgage, utilities, reasonable and necessary maintenance, insurance, homeowner's assessments, sewer and/or water use charges and similar fees. Individual Defendant Johnson

shall promptly upon request provide the Plaintiffs with written evidence of said payments and any accounting from the Wells Fargo account 8788.

2. Any funds remaining in the Wells Fargo account 8788 after the closing of the sale of the Real Property or June 30, 2014, whichever is earlier, shall be transferred within seven (7) days of the closing to the Commission by electronic funds transfer in accordance with instructions to be provided by counsel for the Commission.

F. In partial satisfaction of the monetary judgment set forth above, if, by entry of this Order, Individual Defendant Johnson has not received and accepted an offer at fair market value for the sale of the Real Property with the closing of that sale to take place on or before June 30, 2014, then the following steps shall occur:

1. Individual Defendant Johnson shall immediately take all steps necessary to assist and cooperate with the Liquidator, appointed by the Court in the Section titled "Appointment of Liquidator," in the sale of the Real Property, including the provision of all documents, contracts, and mortgages related to the Real Property, including any contracts related to any real estate agents used to list or sell the Real Property, and any utility bills and account information, including any passwords necessary to change such accounts. Individual Defendant Johnson shall sign any documents necessary for the sale of the Real Property, including, but not limited to, any powers of attorney that the Liquidator may request him to sign in connection with the sale of the Real Property and any documents

necessary for the transfer of the Real Property to new buyers, as well as any documents necessary to transfer any accounts, mail, or notices related to the Real Property to the Liquidator;

2. The Liquidator has sole discretion regarding the continued use of any real estate agents hired by Individual Defendant Johnson. Individual Defendant Johnson shall cooperate fully and not interfere in any way with the Liquidator's efforts to enter onto, market, and sell the Real Property, including, but not limited to, the Liquidator's efforts to gain access to and show the property to prospective purchasers or brokers or to evaluate or cause his agents, representatives or contractors to maintain, repair, restore and evaluate the condition of the property from the entry of this Order and thereafter;
3. Individual Defendant Johnson shall transfer to the Commission, by electronic funds transfer in accordance with instructions to be provided by counsel for the Commission, any buyer's sale deposit that is not returned to said buyer in the event that the sale is not completed;
4. Individual Defendant Johnson shall provide a set of all keys and/or codes used for the Real Property to the Liquidator and/or his agent(s);
5. Individual Defendant Johnson and any other person using and occupying the Real Property shall have until June 30, 2014 to vacate the Real Property. Individual Defendant Johnson shall, until he vacates the Real Property, remain current on all amounts due and payable on the Real

Property, including, but not limited to, taxes, mortgage, utilities, reasonable and necessary maintenance, homeowner's assessments, sewer and/or water use charges and similar fees, and shall promptly upon request provide the Plaintiffs and the Liquidator with written paid receipts or other evidence of said payments to the satisfaction of the Plaintiffs and Liquidator. After June 30, 2014, the Liquidator shall pay and remain current on all amounts due and payable on the Real Property, including, but not limited to, insurance, taxes, mortgage, utilities, reasonable and necessary maintenance, homeowner's assessments, sewer and/or water use charges and similar fees; and

6. Individual Defendant Johnson shall provide the Liquidator with fourteen (14) days' written notice of the exact date he and any other persons using and occupying the Real Property intend to vacate the property.

G. In partial satisfaction of the monetary judgment set forth above, within seven (7) days of the date of entry of this Order, Individual Defendant Johnson shall promptly take all steps necessary to sell the following personal property: (a) 2010 Porsche Panamera, (b) 2008 Chaparral Sunsetta (28') boat, and (c) Two Honda Wave Runners, (collectively "Personal Properties"), for fair market value to a third-party buyer:

1. Individual Defendant Johnson shall keep the Personal Properties in conditions suitable for showing to prospective purchasers; sign the contracts for sale of the Personal Properties; sign all documents necessary

or appropriate for the transfer of the Personal Properties to new buyers; and comply with any reasonable requests from Plaintiffs related to those sales.

2. Individual Defendant Johnson shall immediately transfer, by electronic funds transfer, the proceeds from the sale of each of the Personal Properties to the Commission.
3. If, after four (4) months from the date of entry of this Order, any of the Personal Properties have not been sold, Individual Defendant Johnson shall immediately retain an auction company, and direct such auction company to sell each property at a public auction. Any and all costs associated with the auction of the Personal Properties shall be deducted from the proceeds of such sales.
4. As long as any of the Personal Properties are owned by Individual Defendant Johnson, he shall maintain them in good working order and in the same condition as of March 31, 2014, and shall take no action to diminish their value.
5. Until Individual Defendant Johnson transfers the proceeds of the sale of the Personal Properties to the Commission, he shall remain current on all amounts due and payable on the Personal Properties, including but not limited to tax, insurance, reasonable and necessary maintenance, registration, and similar fees. Individual Defendant Johnson shall cause

existing insurance coverage for the Personal Properties to remain in force until the transfer of ownership.

6. Individual Defendant Johnson shall in no way profit from the sale of the Personal Properties, including by sharing in any sales commission or fee, or by receiving anything of value in kind.
- H. Individual Defendant Johnson's spouse, Christina Johnson, waives all claims to the assets specified in Sections IV.B, IV.C, IV.D, IV.E, IV.F, and IV.G above. In the event that the Real Property is not sold for fair market value prior to the appointment of the Liquidator, Christina Johnson shall cooperate fully with the Liquidator and take such other steps as the Liquidator may require in connection with the listing, marketing, and sale of the Real Property. Christina Johnson shall take no action to diminish or encumber the value of any asset to be transferred or sold.
- I. Individual Defendant Johnson shall maintain and take no action to diminish or encumber the value of any asset to be transferred or sold.
- J. All payments made under this Section shall be made by electronic fund transfer in accordance with instructions provided by a representative of the Commission. Any financial institution with control over any account identified in Subsections IV.B and IV.E above is directed to cooperate with the Commission in facilitating the transfer of funds in the account to the Commission.
- K. Plaintiffs' agreement to the suspension of part of the judgment is expressly premised upon the truthfulness, accuracy, and completeness of Individual

Defendant Johnson's sworn financial statement and related documents

(collectively, "Financial Attestations") submitted to the Plaintiffs, namely:

1. the Financial Statement of Individual Defendant Johnson signed on March 31, 2014, including the attachments;
  2. Tax Returns for 2008, 2009, 2010, 2011, and 2012;
  3. Bank statements for the Charles Schwab account ending in 3386 for the period January 2010 through October 2013;
  4. Bank statements for the Wells Fargo account ending in 5519 for the period January 2010 through February 2014;
  5. Bank statements for Wells Fargo accounts ending in 8964 and 9818 for the period March 2010 through December 2012;
  6. Bank statements for the Wells Fargo account ending in 8378 for the period April 2010 through February 2013;
  7. Bank statements for the Wells Fargo account ending in 5976 for the period January 2008 through February 2013;
  8. Homeowner insurance policies on the Real Property; and
  9. Personal credit card statements for November 2012 through October 2013.
- L. Plaintiffs' agreement to suspend part of the judgment is also expressly premised on the material representation that Individual Defendant Johnson will comply with a separate agreement he has entered into with First Tennessee National Bank which provides that after the Court's entry of this Order, the real and personal properties located at 57-20 Kuilima Drive, Units F103 and D114, Kahuku, Oahu,



Hawaii will be transferred to the First Tennessee Bank for complete and full satisfaction of any and all claims in law or equity that the First Tennessee National Bank and First Victoria National Bank, now merged with Prosperity Bank, have against Individual Defendant Johnson.

- M. The suspension of the judgment will be lifted as to Individual Defendant Johnson if, upon motion by any of the Plaintiffs, the Court finds that Individual Defendant Johnson failed to disclose any material asset, materially misstated the value of any asset, or made any other material misstatement or omission in the financial representations identified above.
- N. If the suspension of the judgment is lifted, the judgment becomes immediately due as to Individual Defendant Johnson in the amount specified in Subsection A, above, which the parties stipulate only for purposes of this Section represents the consumer injury, less any payment previously made pursuant to this Section, plus interest computed from the date of entry of this Order.
- O. Individual Defendant Johnson relinquishes dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets.
- P. The facts alleged in the Amended Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of any Plaintiff, including in a proceeding to enforce such Plaintiff's rights to any payment or monetary judgment pursuant to this Order, such as a nondischargeability complaint in any bankruptcy case.

- Q. The facts alleged in the Amended Complaint establish all elements necessary to sustain an action by any of the Plaintiffs pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral estoppel effect for such purposes.
- R. Individual Defendant Johnson acknowledges that his Social Security Number, which Individual Defendant Johnson previously submitted to the Plaintiffs, may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. § 7701.
- S. All money paid to Plaintiffs pursuant to this Order may be deposited into a fund administered by the Commission or its designee to be used for equitable relief, including consumer redress and any attendant expenses for the administration of any redress fund. If a representative of the Commission decides that direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, Plaintiffs may apply any remaining money for such other equitable relief (including consumer information remedies) as they determine to be reasonably related to Defendants' practices alleged in the Amended Complaint. Plaintiffs shall retain authority and sole discretion over the division among Plaintiffs of any funds not used for equitable relief. Any funds paid to the Commission not used for equitable relief shall be deposited to the U.S. Treasury as disbursement. Any funds paid to the State of Florida or the State of New York not used for equitable relief may be used by the State to the full extent authorized by the State's laws, including but not limited to, as payment for the State's costs

of investigating and litigating the instant case. Individual Defendant Johnson has no right to challenge any actions the Plaintiffs or their representatives may take pursuant to this Subsection.

**V. APPOINTMENT AND DUTIES OF LIQUIDATOR**

**IT IS FURTHER ORDERED** that, if Individual Defendant Johnson has not, at the time of entry of this Order, sold and closed on the sale of the Real Property, at fair market value, then Peter B. Zlotnick, Esq., a partner in the Litigation Department at the New York law firm of Farrell Fritz, P.C., is appointed as Liquidator (“Liquidator”) with regard to the Real Property.

- A. The Liquidator shall immediately assume the duties of a Liquidator for the purpose of overseeing and monitoring the sale of the Real Property. If the Real Property has not sold by June 30, 2014, the Liquidator shall have full authority to liquidate, market and sell the Real Property.
- B. The Liquidator shall have the full power of an equity receiver of the Real Property; shall be solely the agent of this Court; and shall be accountable directly to the Court acting as the liquidating equity receiver under this Order. The Liquidator shall comply with all Local Rules of this Court governing equity receivers.
- C. In his capacity as a full equity receiver, the Liquidator shall have all necessary powers and authority, within his sole discretion, in consultation with the Plaintiffs and subject to Court approval, to own, maintain, and sell the Real Property including, without limitation, the following powers and responsibilities:

1. to take possession, custody, and control of the Real Property in order to sell it, including the removal of Individual Defendant Johnson and his family members if they have not vacated the Real Property by June 30, 2014;
2. to employ such counsel, real estate agents, auctioneers, appraisers, accountants, contractors, other professionals, and other such persons as may be necessary in order to carry out his duties as Liquidator and to preserve, maintain, and protect the Real Property until it is sold;
3. to open new accounts with, or negotiate, compromise, or otherwise modify Individual Defendant Johnson's existing obligations with third parties, including utility companies, other service providers, or suppliers of goods and services related to the Real Property;
4. to retain, hire, or fire any employees, brokers, consultants, real estate agents, or others who are currently employed or have any agreement with regard to the Real Property;
5. to otherwise enter into such agreements, contracts, or understandings with such third parties as are necessary to maintain, preserve, and protect the Real Property prior to its sale;
6. to collect, marshal, and take possession of all accounts, mail, and other documents in the possession, custody, or control of Individual Defendant Johnson that relate to the Real Property. The Liquidator shall have the power to change the mailing address of Individual Defendant Johnson

solely with respect to items in connection with the Real Property and the sale of the Real Property, including, but not limited to any items arising out of or in connection with the ownership, maintenance, or sale of the Real Property;

7. to take any steps which the Liquidator deems necessary or advisable to secure the Real Property, including changing any locks on any structures or buildings on the Real Property after Individual Defendant Johnson and his family have vacated the property, or, at the latest, by June 30, 2014, if the Real Property is not sold by that date;
8. to take any and all steps which the Liquidator deems necessary or advisable to transfer all legal, beneficial and equitable rights, title and interest in and to the Real Property from Individual Defendant Johnson to the Liquidator or any entity created by the Liquidator for that purpose for the purpose of facilitating the marketing and sale of the Real Property; provided, however, that the Liquidator shall be under no obligation to cause the title or deed of the Real Property to be transferred into his name, in his capacity as Liquidator, or an entity which he may form for that purpose;
9. to open new bank accounts, including, but not limited to, the Liquidator's Operating Account, to facilitate the Liquidator's ownership, management, maintenance, and sale of the Real Property;

10. to make payments and disbursements from the Liquidator's Operating Account or upon the sale of the Real Property that are necessary or advisable to carry out the directions of, or exercise the authority granted to the Liquidator pursuant to this Order; and
  11. to apply to this Court for such other or further directions, powers, and authority as may be necessary to enable the Liquidator to fulfill his duties.
- D. As soon as reasonably possible, the Liquidator shall, at a reasonable cost and in a commercially reasonable fashion, liquidate, market and sell the Real Property, together with any and all fixtures, appurtenances, and improvements. After the Real Property has been liquidated and sold, the Liquidator shall account for the net sale proceeds derived therefrom, and transfer all such net proceeds to the Commission. The Liquidator shall make the transfer required by this Subsection by electronic fund transfer or certified bank or cashier's check in accordance with instructions provided by counsel for the Commission.
- E. Upon transfer of legal, beneficial, and equitable title or the possession, custody or control of the Real Property to the Liquidator, the Liquidator is authorized to assume responsibility for ownership, maintenance, or sale of the Real Property, including but not limited to, making disbursements for operating expenses as may be appropriate, undertaking repairs, and taking any other actions necessary to efficiently manage the Real Property and to maintain its value.
- F. The Liquidator shall take all necessary action to procure appropriate insurance for the Real Property naming the Liquidator and the Plaintiffs as insureds. The

Liquidator may as an option keep in force the existing insurance coverage(s), each of which shall name the Plaintiffs and the Liquidator as additional insureds thereunder.

- G. After June 30, 2014, the Liquidator shall pay and remain current on all amounts due and payable on the Real Property, including, but not limited to, insurance, taxes, mortgage, utilities, reasonable and necessary maintenance, homeowner's assessments, sewer and/or water use charges and similar fees.
- H. The Liquidator shall keep a true and accurate account of any and all receipts and expenditures and periodically file with the Court a Liquidator's Report under oath, accurately identifying all such revenues received and expenditures made, including adequately detailed information concerning income, expenses, payables and receivables. These periodic filings shall be served by the Liquidator on the counsel for the Commission, FL AG, and NY AG.
- I. The Liquidator and all personnel hired by the Liquidator as herein authorized, including any accountants or other professionals employed or engaged by him, are entitled to reasonable compensation for the performance of duties undertaken pursuant to this Order and for the cost of actual out-of-pocket expenses incurred by them. The Liquidator's compensation and the compensation of any persons hired by him shall be paid from the following: (a) certain proceeds of the monetary judgment entered in this action pursuant to this Order in favor of the Plaintiffs and against Individual Defendant Johnson as set forth in greater detail above and transferred to a Liquidator's Operating Account, which account shall

be opened by the Liquidator, *inter alia*, for the purpose of paying the compensation and other reasonable expenses of the Liquidator and his professionals and for paying any other reasonable expenses necessary to maintain the Real Property until it is sold; and/or (b) from the proceeds of the sale of the Real Property. Such payments for the compensation of the Liquidator and the Liquidator's professionals shall have priority over all other distributions except for any transfer fees, recording fees, or other payments owed through the transfer of the Real Property at the time of its sale. The Liquidator shall file with the Court and serve on the parties a request for the payment of reasonable compensation at the time of the filing of periodic reports and no less than every sixty (60) days. The Liquidator shall not increase the fees or rates used as the basis for such fee applications without prior approval of the Plaintiffs and the Court. Individual Defendant Johnson shall have no right to object to the Liquidator's fees or compensation. Absent a violation of this Order by Individual Defendant Johnson or any of his family members that causes the Liquidator to incur fees or expenses, Individual Defendant Johnson shall not be liable for the Liquidator's fees or expenses.

**VI. WITHDRAWAL AND TERMINATION OF LIQUIDATOR**

**IT IS FURTHER ORDERED** that:

- A. The Liquidator and any professionals retained by the Liquidator are hereby authorized to withdraw from their respective appointments or representations at any time after the date of this Order, for any reason in their sole and absolute



discretion, by sending written notice seven (7) days prior to the date the Liquidator intends to withdraw to the Court and to the parties; and such Liquidator and professionals shall be relieved of all liabilities and responsibilities seven (7) days from the date of such notice of withdrawal. The written notice shall include an interim report indicating the Liquidator's actions and shall reflect the knowledge and information obtained through the date of the report by the Liquidator concerning the ownership, management, maintenance, and/or sale of the Real Property, as well as recommendations of the Liquidator, if any, with respect thereto.

- B. Upon the final transfer of all funds to the Commission pursuant to the Section titled "Appointment and Duties of Liquidator," the duties of the Liquidator shall terminate. The Liquidator shall file his final application for fees, complete liquidation, and terminate his service within one year of the execution of this Order, unless good cause is shown to extend beyond one year. At the termination of the Liquidator's duties, the Liquidator shall transfer any unliquidated right, title, and interest in the Real Property to the Commission, as well as any amounts remaining in the Liquidator's Operating Account.

## VII. CUSTOMER INFORMATION

**IT IS FURTHER ORDERED** that Individual Defendant Johnson, his officers, agents, servants, and employees, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, are permanently restrained and enjoined from directly or indirectly:

- A. disclosing, using, or benefitting from customer information, including the name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a customer's account, including a credit card, bank account, or other financial account, that any Defendant obtained prior to entry of this Order in connection with the marketing and sale of business development products and services; and
- B. failing to destroy such customer information in all forms in their possession, custody, or control within 30 days after receipt of written direction to do so from a representative of the Commission.

Provided, however, that customer information need not be disposed of, and may be disclosed, to the extent requested by a government agency or required by law, regulation, or court order.

#### VIII. COOPERATION

**IT IS FURTHER ORDERED** that Individual Defendant Johnson must fully cooperate with Plaintiffs' representatives in this case and in any investigation related to or associated with the transactions or the occurrences that are the subject of the Amended Complaint. Individual Defendant Johnson must provide truthful and complete information, evidence, and testimony. Individual Defendant Johnson must appear for interviews, discovery, hearings, trials, and any other proceedings that Plaintiffs' representatives may reasonably request upon 5 days written notice, or other reasonable notice, at such places and times as Plaintiffs' representatives may designate, without the service of a subpoena.

**IX. ORDER ACKNOWLEDGMENTS**

**IT IS FURTHER ORDERED** that Individual Defendant Johnson obtain acknowledgments of receipt of this Order:

- A. Individual Defendant Johnson, within 7 days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.
- B. For 10 years after entry of this Order, for any business that Individual Defendant Johnson, individually or collectively with any other Defendant, is the majority owner or controls directly or indirectly, Individual Defendant Johnson must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives who participate in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Section titled "Compliance Reporting." Delivery must occur within 7 days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.
- C. From each individual or entity to which Individual Defendant Johnson delivered a copy of this Order, Individual Defendant Johnson must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

**X. COMPLIANCE REPORTING**

**IT IS FURTHER ORDERED** that Individual Defendant Johnson make timely submissions to the Commission:

- A. One year after entry of this Order, Individual Defendant Johnson must submit a compliance report, sworn under penalty of perjury:
1. Individual Defendant Johnson must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with Defendant; (b) identify all of Individual Defendant Johnson's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant; (d) describe in detail whether and how Individual Defendant Johnson is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.
  2. Additionally, Individual Defendant Johnson must: (a) identify all telephone numbers and all physical, postal, email and Internet addresses, including all residences; (b) identify all business activities, including any business for which Individual Defendant Johnson performs services whether as an employee or otherwise and any entity in which Individual Defendant Johnson has any ownership interest; and (c) describe in detail Individual Defendant Johnson's involvement in each such business,

including title, role, responsibilities, participation, authority, control, and any ownership.

B. For 20 years after entry of this Order, Individual Defendant Johnson must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

1. Individual Defendant Johnson must report any change in: (a) any designated point of contact; or (b) the structure of any entity that Individual Defendant Johnson has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

2. Additionally, Individual Defendant Johnson must report any change in: (a) name, including aliases or fictitious name, or residence address; or (b) title or role in any business activity, including any business for which Individual Defendant Johnson performs services whether as an employee or otherwise and any entity in which Individual Defendant Johnson has any ownership interest, and identify the name, physical address, and any Internet address of the business or entity.

C. Individual Defendant Johnson must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against him within 14 days of its filing.

- D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: \_\_\_\_\_” and supplying the date, signatory’s full name, title (if applicable), and signature.
- E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: FTC, et al. v. Edward B. Johnson, X130019.

**XI. RECORDKEEPING**

**IT IS FURTHER ORDERED** that Individual Defendant Johnson must create certain records for 20 years after entry of the Order, and retain each such record for 5 years. Specifically, Individual Defendant Johnson, for any business that he, individually or collectively with any other Defendant, is a majority owner or controls directly or indirectly, must create and retain the following records:

- A. accounting records showing the revenues from all goods or services sold;
- B. personnel records showing, for each person providing services, whether as an employee or otherwise, that person’s: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;

- C. records of all consumer complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;
- D. all records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Plaintiffs; and
- E. a copy of each unique: (1) contract with any payment processor or list broker; (2) solicitation or advertisement; and (3) marketing material related to the provision of goods or services to consumers.

## **XII. COMPLIANCE MONITORING**

**IT IS FURTHER ORDERED** that, for the purpose of monitoring Individual Defendant Johnson's compliance with this Order, including the financial representations upon which part of the judgment was suspended and any failure to transfer any assets as required by this Order:

- A. Within 14 days of receipt of a written request from a representative of any Plaintiff, Individual Defendant Johnson must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents for inspection and copying. The Plaintiffs are also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.
- B. For matters concerning this Order, the Plaintiffs are authorized to communicate directly with Individual Defendant Johnson. Individual Defendant Johnson must permit representatives of the Plaintiffs to interview any employee or other person

affiliated with him who has agreed to such an interview. The person interviewed may have counsel present.

C. The Plaintiffs may use all other lawful means, including posing, through their representatives as consumers, suppliers, or other individuals or entities, to Individual Defendant Johnson or any individual or entity affiliated with Individual Defendant Johnson, without the necessity of identification or prior notice.

Nothing in this Order limits 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.

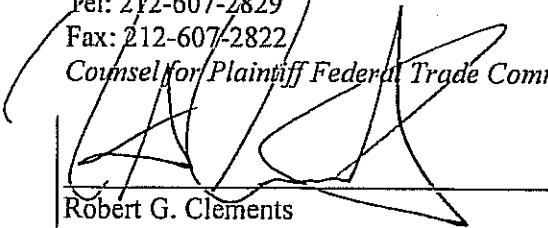
**XIII. RETENTION OF JURISDICTION**

**IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for purposes of enforcing this Order.



Darren Lubetzky  
Ann F. Weintraub  
Savvas Diacosavvas  
Federal Trade Commission  
Northeast Region  
1 Bowling Green, Suite 318  
New York, New York 10004  
Tel: 212-607-2829  
Fax: 212-607-2822  
*Counsel for Plaintiff Federal Trade Commission*

Dated: 5/23/14



Robert G. Clements  
Office of the Attorney General  
135 W. Central Blvd., Suite 1000  
Orlando, Florida 32801  
Tel: 407-245-0833  
Fax: 407-245-0365  
*Counsel for Plaintiff State of Florida*

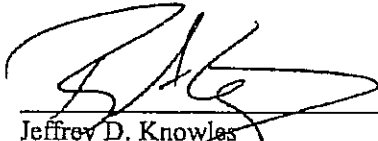
Dated: 5/23/14





Judy S. Prosper  
Office of the Attorney General  
Westchester Regional Office  
101 East Post Road  
White Plains, New York 10601  
Tel: 914-422-8824  
Fax: 914-422-8706  
*Counsel for Plaintiff State of New York*

Dated: 5-23-14



Jeffrey D. Knowles  
Roger A. Colajizzi  
Michael C. Hartmere  
Venable LLP  
575 7<sup>th</sup> Street, N.W.  
Washington, DC 20004  
Tel: 202-344-4000  
Fax: 202-344-8300  
*Counsel for Defendant Edward B. Johnson*

Dated: 4/24/14

\_\_\_\_\_  
Edward B. Johnson, *Defendant*

Dated: \_\_\_\_\_

\_\_\_\_\_  
Christina Rae Johnson, as to Section IV.H  
only

Dated: \_\_\_\_\_

IT IS SO ORDERED.

\_\_\_\_\_  
HON. JESSE M. FURMAN  
UNITED STATES DISTRICT COURT JUDGE

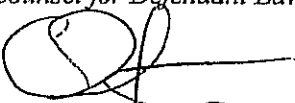
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Judy S. Prosper  
Office of the Attorney General  
Westchester Regional Office  
101 East Post Road  
White Plains, New York 10601  
Tel: 914-422-8824  
Fax: 914-422-8706  
*Counsel for Plaintiff State of New York*

Dated: \_\_\_\_\_

\_\_\_\_\_  
Jeffrey D. Knowles  
Roger A. Colaizzi  
Michael C. Hartmere  
Venable LLP  
575 7<sup>th</sup> Street, N.W.  
Washington, DC 20004  
Tel: 202-344-4000  
Fax: 202-344-8300  
*Counsel for Defendant Edward B. Johnson*

Dated: \_\_\_\_\_

  
\_\_\_\_\_  
Edward B. Johnson, *Defendant*

Dated: 4/24/2014

\_\_\_\_\_  
Christina Rae Johnson, as to Section IV.H  
only

Dated: \_\_\_\_\_

**IT IS SO ORDERED.**

\_\_\_\_\_  
HON. JESSE M. FURMAN  
UNITED STATES DISTRICT COURT JUDGE

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judy S. Prosper  
Office of the Attorney General  
Westchester Regional Office  
101 East Post Road  
White Plains, New York 10601  
Tel: 914-422-8824  
Fax: 914-422-8706  
*Counsel for Plaintiff State of New York*

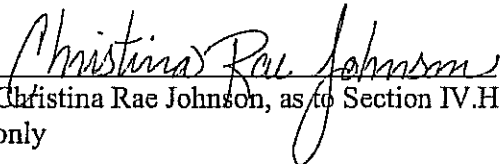
Dated: \_\_\_\_\_

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Roger A. Colaizzi  
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Venable LLP  
575 7<sup>th</sup> Street, N.W.  
Washington, DC 20004  
Tel: 202-344-4000  
Fax: 202-344-8300  
*Counsel for Defendant Edward B. Johnson*

Dated: \_\_\_\_\_

\_\_\_\_\_  
Edward B. Johnson, *Defendant*

Dated: \_\_\_\_\_

  
Christina Rae Johnson, as to Section IV.H  
only

Dated: 4-22-2014

**IT IS SO ORDERED.**



The Clerk of Court is directed to terminate Docket No. 138.

\_\_\_\_\_  
HON. JESSE M. FURMAN  
UNITED STATES DISTRICT COURT JUDGE

Dated: June 2, 2014

## ELECTRONIC CODE OF FEDERAL REGULATIONS

**e-CFR Data is current as of March 31, 2014**

Title 16: Commercial Practices

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### PART 310—TELEMARKETING SALES RULE 16 CFR PART 310

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#### Contents

- [§310.1 Scope of regulations in this part.](#)
  - [§310.2 Definitions.](#)
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  - [§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: 75 FR 48516, Aug. 10, 2010, unless otherwise noted.

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#### §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) *Debt relief service* means any program or service represented, directly or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of the debt between a person and one or more unsecured creditors or debt collectors, including, but not limited to, a reduction in the balance, interest rate, or fees owed by a person to an unsecured creditor or debt collector.

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

(o) *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.

(p) *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.

(q) *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.

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

(s) *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.

(t) *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.

(u) *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.

(v) *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.

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

(x) *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.

(y) *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.

(z) *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.

(aa) *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.

(bb) *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.

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

(dd) *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.

(ee) *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.

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### §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 consents to pay<sup>659</sup> for goods or services offered, failing to disclose truthfully, in a clear and conspicuous manner, the following material information:

<sup>659</sup> 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 directing a customer to have a courier pick up payment or authorization for payment. In the case of debt relief services, the seller or telemarketer must make the disclosures required by §310.3(a)(1) before the consumer enrolls in an offered program.

(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;<sup>660</sup>

<sup>660</sup> For 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.

(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;

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

(viii) In the sale of any debt relief service:

(A) the amount of time necessary to achieve the represented results, and to the extent that the service may include a settlement offer to any of the customer's creditors or debt collectors, the time by which the debt relief service provider will make a bona fide settlement offer to each of them;

(B) to the extent that the service may include a settlement offer to any of the customer's creditors or debt collectors, the amount of money or the percentage of each outstanding debt that the customer must accumulate before the debt relief service provider will make a bona fide settlement offer to each of them;

(C) to the extent that any aspect of the debt relief service relies upon or results in the customer's failure to make timely payments to creditors or debt collectors, that the use of the debt relief service will likely adversely affect the customer's creditworthiness, may result in the customer being subject to collections or sued by creditors or debt collectors, and may increase the amount of money the customer owes due to the accrual of fees and interest; and

(D) to the extent that the debt relief service requests or requires the customer to place funds in an account at an insured financial institution, that the customer owns the funds held in the account, the customer may withdraw from the debt relief service at any time without penalty, and, if the customer withdraws, the customer must receive all funds in the account, other than funds earned by the debt relief service in compliance with §310.4(a)(5)(i)(A) through (C).

(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;

(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); or

(x) Any material aspect of any debt relief service, including, but not limited to, the amount of money or the percentage of the debt amount that a customer may save by using such service; the amount of time necessary to achieve the represented results; the amount of money or the percentage of each outstanding debt that the customer must accumulate before the provider of the debt relief service will initiate attempts with the customer's creditors or debt collectors or make a bona fide offer to negotiate, settle, or modify the terms of the customer's debt; the effect of the service on a customer's creditworthiness; the effect of the service on collection efforts of the customer's creditors or debt collectors; the percentage or number of customers who attain the represented results; and whether a debt relief service is offered or provided by a non-profit entity.

(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,<sup>661</sup> or a debit card subject to the protections of the Electronic Fund Transfer Act and Regulation E.<sup>662</sup> Such authorization shall be deemed verifiable if any of the following means is employed:

<sup>661</sup> Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR part 226.



<sup>662</sup> Electronic Fund Transfer Act, 15 U.S.C. 1693 *et seq.*, and Regulation E, 12 CFR part 205.

(i) Express written authorization by the customer or donor, which includes the customer's or donor's signature;<sup>663</sup>

<sup>663</sup> 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.

(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;

(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 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.

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#### **§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 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)(i) Requesting or receiving payment of any fee or consideration for any debt relief service until and unless:

(A) The seller or telemarketer has renegotiated, settled, reduced, or otherwise altered the terms of at least one debt pursuant to a settlement agreement, debt management plan, or other such valid contractual agreement executed by the customer;

(B) The customer has made at least one payment pursuant to that settlement agreement, debt management plan, or other valid contractual agreement between the customer and the creditor or debt collector; and

(C) To the extent that debts enrolled in a service are renegotiated, settled, reduced, or otherwise altered individually, the fee or consideration either:

(1) Bears the same proportional relationship to the total fee for renegotiating, settling, reducing, or altering the terms of the entire debt balance as the individual debt amount bears to the entire debt amount. The individual debt amount and the entire debt amount are those owed at the time the debt was enrolled in the service; or

(2) Is a percentage of the amount saved as a result of the renegotiation, settlement, reduction, or alteration. The percentage charged cannot change from one individual debt to another. The amount saved is the difference between the amount owed at the time the debt was enrolled in the service and the amount actually paid to satisfy the debt.

(ii) Nothing in §310.4(a)(5)(i) prohibits requesting or requiring the customer to place funds in an account to be used for the debt relief provider's fees and for payments to creditors or debt collectors in connection with the renegotiation, settlement, reduction, or other alteration of the terms of payment or other terms of a debt, provided that:

(A) The funds are held in an account at an insured financial institution;

(B) The customer owns the funds held in the account and is paid accrued interest on the account, if any;

(C) The entity administering the account is not owned or controlled by, or in any way affiliated with, the debt relief service;

(D) The entity administering the account does not give or accept any money or other compensation in exchange for referrals of business involving the debt relief service; and

(E) The customer may withdraw from the debt relief service at any time without penalty, and must receive all funds in the account, other than funds earned by the debt relief service in compliance with §310.4(a)(5)(i)(A) through (C), within seven (7) business days of the customer's request.

(6) 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;

(7) 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 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)(7)(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)(7)(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)(7)(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)(7)(ii)(A) of this section; or

(8) 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<sup>664</sup> of that person; or

<sup>664</sup> 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.

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

(v) Initiating any outbound telephone call that delivers a prerecorded message, other than a prerecorded message permitted for compliance with the call abandonment safe harbor in §310.4(b)(4)(iii), unless:

(A) In any such call to induce the purchase of any good or service, the seller has obtained from the recipient of the call an express agreement, in writing, that:

(i) The seller obtained only after a clear and conspicuous disclosure that the purpose of the agreement is to authorize the seller to place prerecorded calls to such person;

(ii) The seller obtained without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service;

(iii) Evidences the willingness of the recipient of the call to receive calls that deliver prerecorded messages by or on behalf of a specific seller; and

(iv) Includes such person's telephone number and signature;<sup>665</sup> and

<sup>665</sup> 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.

(B) In any such call to induce the purchase of any good or service, or to induce a charitable contribution from a member of, or previous donor to, a non-profit charitable organization on whose behalf the call is made, the seller or telemarketer:

(i) Allows the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call; and

(ii) Within two (2) seconds after the completed greeting of the person called, plays a prerecorded message that promptly provides the disclosures required by §310.4(d) or (e), followed immediately by a disclosure of one or both of the following:

(A) In the case of a call that could be answered in person by a consumer, that the person called can use an automated interactive voice and/or keypress-activated opt-out mechanism to assert a Do Not Call request pursuant to §310.4(b)(1)(iii)(A) at any time during the message. The mechanism must:

(1) Automatically add the number called to the seller's entity-specific Do Not Call list;

(2) Once invoked, immediately disconnect the call; and

(3) Be available for use at any time during the message; and

(B) In the case of a call that could be answered by an answering machine or voicemail service, that the person called can use a toll-free telephone number to assert a Do Not Call request pursuant to §310.4(b)(1)(iii)(A). The number provided must connect directly to an automated interactive voice or keypress-activated opt-out mechanism that:

(1) Automatically adds the number called to the seller's entity-specific Do Not Call list;

(2) Immediately thereafter disconnects the call; and

(3) Is accessible at any time throughout the duration of the telemarketing campaign; and

(iii) Complies with all other requirements of this part and other applicable federal and state laws.

(C) Any call that complies with all applicable requirements of this paragraph (v) shall not be deemed to violate §310.4(b)(1)(iv) of this part.

(D) This paragraph (v) shall not apply to any outbound telephone call that delivers a prerecorded healthcare message made by, or on behalf of, a covered entity or its business associate, as those terms are defined in the HIPAA Privacy Rule, 45 CFR 160.103.

(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 over the duration of a single calling campaign, if less than 30 days, or separately over each successive 30-day period or portion thereof that the campaign continues.

(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 placed<sup>666</sup>; and

<sup>666</sup> This 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.

(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 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.

[75 FR 48516, Aug. 10, 2010, as amended at 76 FR 58716, Sept. 22, 2011]

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### **§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;<sup>667</sup>

<sup>667</sup> For 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.

(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 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.

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### §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 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," ("Franchise Rule") 16 CFR part 436, and the sale of business opportunities subject to the Commission's Rule entitled "Disclosure Requirements and Prohibitions Concerning Business Opportunities," ("Business Opportunity Rule") 16 CFR part 437, *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, debt relief services, business opportunities other than business arrangements covered by the Franchise Rule or Business Opportunity 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 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, debt relief services, business opportunities other than business arrangements covered by the Franchise Rule or Business Opportunity 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 nondurable 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 nondurable office or cleaning supplies.

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### **§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, DC 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.

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### **§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 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 \$59 for each area code of data accessed, up to a maximum of \$16,228; *provided*, however, that there shall be no charge to any person for accessing the first five area codes of data, 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 area codes of data in the

National Do Not Call Registry if the person is permitted to access, but is not required to access, the National Do Not Call Registry under this Rule, 47 CFR 64.1200, or any other Federal regulation or 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) Each person who pays, either directly or through another person, the annual fee set forth in §310.8(c), each person excepted under §310.8(c) from paying the annual fee, and each person excepted from paying an annual fee under §310.4(b)(1)(iii)(B), will be provided a unique account number that will allow that person to access the registry data for the selected area codes at any time for the twelve month period beginning on 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, each person required to pay the fee under §310.8(c) must first pay \$59 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, each person required to pay the fee under §310.8(c) must first pay \$30 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.

[75 FR 48516, Aug. 10, 2010; 75 FR 51934, Aug. 24, 2010, as amended at 77 FR 51697, Aug. 27, 2012; 78 FR 53643, Aug. 30, 2013]

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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.

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