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12 FEDERAL TRADE COMMISSION

13 **UNITED STATES DISTRICT COURT**  
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 FEDERAL TRADE COMMISSION,

16 Plaintiff

17 v.

CV No.

18 [REDACTED], a minor, also

19 known as [REDACTED],

20 by his parent [REDACTED],

21 Defendant.

22 **COMPLAINT FOR**  
23 **PERMANENT INJUNCTION**  
24 **AND OTHER EQUITABLE**  
25 **RELIEF**

26 Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), for its  
27 Complaint alleges as follows:

28 1. The Commission brings this action under Section 13(b) of the Federal  
Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b), and Section 522(a) of  
the Gramm-Leach-Bliley Act ("GLB Act"), 15 U.S.C. § 6822(a), to obtain

1 permanent injunctive relief, rescission or reformation of contracts, restitution,  
2 redress, disgorgement, and other equitable relief for Defendant's deceptive and  
3 unfair acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. §  
4 45(a), and Section 521 of the GLB Act, 15 U.S.C. § 6821.

#### 5 JURISDICTION AND VENUE

6 2. Subject matter jurisdiction is conferred upon this Court by 15 U.S.C.  
7 §§ 45(a), 53(b), 1692i, and 6821, and 28 U.S.C. §§ 1331, 1337(a), and 1345.

8 3. Venue in the United States District Court for the Central District of  
9 California is proper under 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b).

#### 10 PLAINTIFF

11 4. Plaintiff, the Federal Trade Commission, is an independent agency of  
12 the United States Government created by statute. 15 U.S.C. § 41 *et seq.* The  
13 Commission is charged, *inter alia*, with enforcement of Section 5(a) of the FTC  
14 Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or  
15 affecting commerce. The Commission is also charged, under Section 522(a) of the  
16 GLB Act, 15 U.S.C. § 6822(a), with enforcing Section 521 of the GLB Act, 15  
17 U.S.C. § 6821, which prohibits, among other things, any person from using false  
18 pretenses to obtain customer information of a financial institution from a  
19 customer. The Commission is authorized to initiate federal district court  
20 proceedings, by its own attorneys, to enjoin violations of the FTC Act and to  
21 secure such other equitable relief as may be appropriate. 15 U.S.C. § 53(b).

#### 22 DEFENDANT

23 5. Defendant [REDACTED] a minor, also known as [REDACTED], at all  
24 times material to this complaint, acting alone or in conjunction with others, has  
25 formulated, directed, controlled, or participated in the acts and practices alleged in  
26 this complaint. Defendant [REDACTED] transacts or has transacted business in the  
27 Central District of California and throughout the United States.

28 //

1 **COMMERCE**

2 6. At all times relevant to this complaint, Defendant [REDACTED] has  
3 maintained a substantial course of trade in or affecting commerce, as "commerce"  
4 is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

5 **DEFINITIONS**

6 7. A "web page" is a single electronic document on the World Wide  
7 Web ("Web"), readily viewable on a computer by anyone with access to the Web  
8 and standard Web browser software. Every web page on the Web is identified by  
9 a unique global address.

10 8. A "Uniform Resource Locator" or "URL" is the unique global  
11 address of a resource, file, or page on the Web. Each web page has a distinct  
12 URL, such as *paymentcenter99.nstemp.com*, that serves as an Internet address for  
13 that web page.

14 9. A "browser" is a software application used to view, download,  
15 upload, surf, or otherwise access documents on the Web. Browsers read coded  
16 documents that reside on servers and interpret the coding into what users see  
17 rendered as a web page on their computer. A user may retrieve and view a web  
18 page by entering the URL of the web page in the address bar of the browser or by  
19 clicking on text in a document that has been coded to link to the URL assigned to  
20 the web page.

21 10. "Unsolicited commercial email" means an electronic mail message  
22 that consists of or contains a communication advertising, promoting, soliciting,  
23 offering, or offering to sell any product or service, or soliciting for consumers'  
24 personal or financial information; and that is not requested by the addressee or  
25 recipient or sent pursuant to a pre-existing business or personal relationship  
26 between the sender and the addressee or recipient of the email.

27 **DEFENDANT'S BUSINESS PRACTICES**

28 11. Beginning at least as early as July 2002, Defendant, or agents acting

1 on his behalf, began sending unsolicited commercial email messages ("spam") to  
2 consumers that purported to be from the consumers' Internet service provider,  
3 America Online ("AOL"), in a scheme to trick consumers into divulging personal  
4 and financial information, including credit card and bank account information.

5 12. In numerous instances, Defendant, or agents acting on his behalf,  
6 sent spam messages to United States consumers indicating that there had been a  
7 problem with the billing of the consumers' AOL accounts. Defendant's spam  
8 stated that if the consumers did not respond by providing their billing information,  
9 they risked possible termination and/or deletion of their AOL accounts. The spam  
10 messages stated that consumers needed to go to AOL's "server" and enter their  
11 information "for processing and re-activation." A true and correct copy of one of  
12 Defendant's spam messages is attached hereto as Attachment A. (Consumer email  
13 addresses have been redacted.)

14 13. Defendant's spam messages contained highlighted text labeled  
15 "AOL Billing Center." The spam directed consumers to click on the highlighted  
16 text link. When consumers clicked on the link, their browser software directed  
17 them to one of Defendant's web pages on the Internet that purported to be AOL's  
18 Billing Center web page. A true and correct copy of one of Defendant's web  
19 pages is attached hereto as Attachment B.

20 14. Defendant's web pages contained the heading "AOL Billing  
21 Center," and included AOL's service marks and logos as well as live links to real  
22 AOL web pages. These service marks, logos, and links further deceived  
23 consumers into believing that Defendant's solicitations were legitimate.  
24 Defendant's web pages reiterated the message from the spam regarding the  
25 existence of problems with the consumers' AOL accounts. Defendant's web pages  
26 stated that the consumers' old credit card numbers had failed authorization and  
27 asked the consumers for new credit card information. Defendant's web pages  
28 further stated that if new information was not provided by the end of the day, the

1 consumers' AOL accounts would be cancelled.

2 15. Defendant's web pages asked consumers to type in the credit card  
3 numbers currently used to pay for their AOL service and to enter new card  
4 numbers to correct the problem. Defendant's web pages asked for other personal  
5 and financial information, including the consumers' names, consumers' mother's  
6 maiden names, billing addresses, social security numbers, dates of birth, bank  
7 names, bank telephone numbers, bank account numbers, bank routing numbers,  
8 credit limits, personal identification numbers ("PIN numbers"), and the three-digit  
9 card verification numbers on the back of credit and debit cards ("civ/cvv  
10 numbers"). Defendant's web pages further instructed consumers to validate their  
11 AOL accounts to ensure they were "the rightful owner[s]" by entering their AOL  
12 screen names and passwords.

13 16. After consumers filled in the information requested on Defendant's  
14 web pages, they were directed to click on "Submit" buttons located near the  
15 bottom of the pages. Defendant's web pages assured consumers that their data  
16 was being sent "encrypted using AOL's SSL security."

17 17. In numerous instances, consumers throughout the United States  
18 relying on Defendant's representations submitted their personal and financial data  
19 to Defendant via his web pages.

20 18. The information consumers submitted to Defendant's web pages did  
21 not go to AOL or any authorized affiliate or agent of AOL. Further, the  
22 information was neither sent encrypted nor was it securely transmitted via the  
23 Internet. Rather, Defendant received the consumers' personal and financial  
24 information via plain text email messages generated as a result of the HTML code  
25 contained in Defendant's web pages.

26 19. In numerous instances, Defendant obtained personal and financial  
27 information, including credit card, debit card, and bank account information, from  
28 consumers who submitted information to Defendant via his web pages.

1           20.     In numerous instances, Defendant, or agents acting on his behalf,  
2 used the information that consumers submitted to his web pages to establish new  
3 financial accounts, including online payment accounts with PayPal, Inc., in the  
4 consumers' names. Defendant, or agents acting on his behalf, also used the  
5 information that consumers submitted to his web pages to place orders and make  
6 purchases of goods and/or services by providing the consumers' credit card, debit  
7 card, and/or bank account information to pay for the purchases without the  
8 consumers' knowledge or authorization.

9           21.     In addition, Defendant, or agents acting on his behalf, used  
10 consumers' AOL account information, including consumers' user names and  
11 passwords, to log into consumers' AOL email accounts without their authorization  
12 and send more of his spam email messages.

13           22.     Moreover, Defendant has engaged others to participate in this scam  
14 by teaching them how he deceived consumers on the Internet or by recruiting them  
15 to receive fraudulently obtained merchandise on his behalf.

#### 16                               **VIOLATIONS OF THE FTC ACT**

17           23.     Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or  
18 deceptive acts or practices affecting commerce. Misrepresentations or omissions  
19 of material fact constitute deceptive acts or practices pursuant to Section 5(a) of  
20 the FTC Act. Under Section 5(n) of the FTC Act, an act or practice is unfair if it  
21 causes or is likely to cause substantial injury to consumers that is not outweighed  
22 by countervailing benefits to consumers or to competition and that is not  
23 reasonably avoidable by consumers. 15 U.S.C. § 45(n).

#### 24                               **COUNT ONE**

25           24.     In numerous instances, in connection with the solicitation of  
26 consumers on the Internet, Defendant represented directly or indirectly, expressly  
27 or by implication, that the email messages he or his agents sent and the web pages  
28 he or his agents operated on the Internet were sent by, operated by, and/or

1 authorized by the consumers' Internet service provider, AOL.

2 25. In truth and in fact, the email messages Defendant or his agents sent  
3 and the web pages he or his agents operated on the Internet were not sent by,  
4 operated by, and/or authorized by the consumers' Internet service provider, AOL.

5 26. Therefore, the representations set forth in Paragraph 24 were false  
6 and deceptive and constituted deceptive acts or practices in violation of Section  
7 5(a) of the FTC Act, 15 U.S.C. § 45(a).

8 **COUNT TWO**

9 27. In numerous instances, in connection with the solicitation of  
10 consumers on the Internet, Defendant represented directly or indirectly, expressly  
11 or by implication, that consumers needed to submit certain personal and financial  
12 information to Defendant's web pages or they would risk termination or  
13 interruption of their AOL Internet service.

14 28. In truth and in fact, consumers did not need to provide any  
15 information to Defendant's web pages, nor did they risk termination or  
16 interruption of their AOL Internet service if they did not comply with Defendant's  
17 requests for information.

18 29. Therefore, the representations set forth in Paragraph 27 were false  
19 and deceptive and constituted deceptive acts or practices in violation of Section  
20 5(a) of the FTC Act, 15 U.S.C. § 45(a).

21 **COUNT THREE**

22 30. In numerous instances, in connection with the solicitation of  
23 consumers on the Internet, Defendant used the credit cards, debit cards, or other  
24 personal or financial information that consumers submitted to his web pages to  
25 establish financial accounts or to pay for or attempt to pay for goods or services  
26 without the consumers' consent.

27 31. By using the credit cards, debit cards, or other personal or financial  
28 information that consumers submitted to his web pages to establish financial

1 accounts or to pay for or attempt to pay for goods or services without the  
2 consumers' consent, Defendant caused charges, debits, and/or liabilities to be  
3 incurred in the consumers' names without the consumers' consent.

4 32. Defendant's practices as set forth in Paragraph 30 caused or were  
5 likely to cause substantial injury to consumers not outweighed by countervailing  
6 benefits to consumers or competition and not reasonably avoidable by consumers.

7 33. Defendant's practices as alleged in Paragraphs 30 and 31 were  
8 unfair practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

### 9 GRAMM-LEACH-BLILEY ACT

10 34. Section 521 of the GLB Act, 15 U.S.C. § 6821, became effective on  
11 November 12, 1999, and has since remained in full force and effect. Section  
12 521(a) of the GLB Act, 15 U.S.C. § 6821(a), prohibits any person from obtaining  
13 or attempting to obtain "customer information of a financial institution relating to  
14 another person . . . (2) by making a false, fictitious, or fraudulent statement or  
15 representation to a customer of a financial institution."

16 35. Section 527(2) of the GLB Act, 15 U.S.C. § 6827(2), defines  
17 *customer information of a financial institution* as "any information maintained by  
18 or for a financial institution which is derived from the relationship between the  
19 financial institution and a customer of the financial institution and is identified  
20 with the customer."

21 36. Section 522(a) of the GLB Act, 15 U.S.C. § 6822(a), empowers the  
22 Commission to enforce Section 521 of the GLB Act, 15 U.S.C. § 6821, "in the  
23 same manner and with the same power and authority as the Commission has under  
24 the Fair Debt Collection Practices Act ["FDCPA"] to enforce compliance with  
25 such Act." Section 814 of the FDCPA, 15 U.S.C. § 1692l(a), provides that "[a]ll  
26 of the functions and powers of the Commission under the [FTC Act] are available  
27 to the Commission to enforce compliance" with the FDCPA. Section 814 of the  
28 FDCPA also provides that a violation of the FDCPA "shall be deemed an unfair or



1 deceptive act or practice in violation of' the FTC Act. Therefore, violations of  
2 Section 521 of the GLB Act, 15 U.S.C. § 6821, constitute unfair or deceptive acts  
3 or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

#### 4 **COUNT FOUR**

5 37. In numerous instances, in connection with the sending of spam  
6 messages and the operation of web pages, Defendant induced consumers to  
7 divulge their personal financial information by representing that his spam  
8 messages and web pages were sent by, operated by, or authorized by the  
9 consumers' Internet service provider, AOL.

10 38. In truth and in fact, Defendant's spam messages and web pages  
11 were not sent by, operated by, or authorized by the consumers' Internet service  
12 provider, AOL.

13 39. By making these false, fictitious, or fraudulent representations to  
14 customers of financial institutions, Defendant obtained "customer information of a  
15 financial institution," including credit card numbers, debit card numbers, card  
16 limits, PIN numbers, civ/cvv numbers, bank account numbers, and/or bank  
17 account routing numbers.

18 40. Therefore, Defendant's acts or practices violated Section 521 of the  
19 GLB Act, 15 U.S.C. § 6821.

20 41. Therefore, Defendant's acts or practices were false and misleading  
21 and constituted deceptive acts or practices in violation of Section 5(a) of the FTC  
22 Act, 15 U.S.C. § 45(a).

#### 23 **CONSUMER INJURY**

24 42. Defendant's violations of Section 5 of the FTC Act, 15 U.S.C. § 45,  
25 and Section 521 of the GLB Act, 15 U.S.C. § 6821, as set forth above, have  
26 caused and are likely to continue to cause substantial injury to consumers across  
27 the United States. Absent injunctive relief by this Court, Defendant is likely to  
28 continue to injure consumers and harm the public interest.

1                                   **THIS COURT’S POWER TO GRANT RELIEF**

2           43.     Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this  
3 Court to grant injunctive and other ancillary relief, including consumer redress,  
4 disgorgement of ill-gotten gains, rescission or reformation of contracts, and  
5 restitution to prevent and remedy any violations of any provision of law enforced  
6 by the Commission.

7           44.     This Court, in the exercise of its equitable jurisdiction, may award  
8 other ancillary relief as is necessary or appropriate to remedy injury caused by  
9 Defendant’s law violations.

10                                   **PRAYER FOR RELIEF**

11           WHEREFORE, Plaintiff, the Federal Trade Commission, requests that this  
12 Court, as authorized by Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), Section  
13 522(a) of the GLB Act, 15 U.S.C. § 6822(a), and pursuant to its own equitable  
14 powers:

15           1.     Permanently enjoin Defendant from violating Section 5 of the FTC  
16 Act, 15 U.S.C. § 45, and Section 521 of the GLB Act, 15 U.S.C. § 6821, as alleged  
17 in this complaint;

18           2.     Enter judgment against Defendant and in favor of Plaintiff for each  
19 violation alleged in this complaint;

20           3.     Award such relief as the Court finds necessary or appropriate to  
21 redress injury to consumers or others resulting from Defendant’s violations of  
22 Section 5 of the FTC Act and Section 521 of the GLB Act, including, but not  
23 limited to, rescission or reformation of contracts, restitution, disgorgement of  
24 ill-gotten gains, and the refund of monies paid;

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1           4.       Award Plaintiff such additional relief as the Court may deem just  
2 and proper.

3  
4 Dated:

Respectfully Submitted,

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General Counsel

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