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WESTERN DISTRICT OF WASHINGTON
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FEDERAL TRADE COMMISSION, and
STATE OF WASHINGTON,

Plaintiffs,

v.

WESTCAL EQUIPMENT, INC., dba
PIONEER FIRST, PF MEMBER SERVICES,
INC., ROBERT BARR, CANDACE
RODRIGUEZ, CHARLES SCHMIDT, and
WAYNE WRATH,

Defendants.

Case No. 002-1783

COMPLAINT FOR PERMANENT
INJUNCTION AND OTHER
EQUITABLE RELIEF

002-1783

Plaintiffs, the Federal Trade Commission ("FTC" or "Commission"), and the State of Washington for their complaint against Westcal Equipment, Inc., dba Pioneer First, PF Member Services, Inc., Robert Barr, Candace Rodriguez, Charles Schmidt, and Wayne Wrath (collectively, "Defendants") allege:

1. The FTC brings this action under Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. § 6101 *et seq.*, to secure preliminary and permanent injunctive relief, restitution, rescission or reformation of contracts, disgorgement, and other equitable relief for Defendants' deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC's Trade Regulation Rule entitled

1 "Telemarketing Sales Rule" (the "Telemarketing Sales Rule"), 16 C.F.R. Part 310.

2 2. Plaintiff, the State of Washington, brings this action under Section 4(a) of the
3 Telemarketing Act, 15 U.S.C. § 6103(a), the Telephone Solicitation Act, RCW 19.158, and the
4 Consumer Protection Act, RCW 19.86.

5
6 **JURISDICTION AND VENUE**

7 3. This Court has subject matter jurisdiction pursuant to 15 U.S.C. §§ 45(a), 53(b), 57b,
8 6102(c), and 6105(b), and 28 U.S.C. §§ 1331, 1337(a), and 1345.

9 4. Venue in the Western District of Washington is proper under 15 U.S.C. § 53(b).

10
11 **PLAINTIFFS**

12 5. Plaintiff Federal Trade Commission is an independent agency of the United States
13 Government created by statute. 15 U.S.C. §§ 41-58, as amended. The Commission is charged, *inter*
14 *alia*, with enforcement of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or
15 deceptive acts or practices in or affecting commerce. The Commission also enforces the
16 Telemarketing Sales Rule, 16 C.F.R. Part 310, which prohibits deceptive or abusive telemarketing acts
17 or practices. The Commission is authorized to initiate federal district court proceedings, by its own
18 attorneys, to enjoin violations of the FTC Act and the Telemarketing Sales Rule, and to secure such
19 equitable relief as may be appropriate in each case, including restitution for injured consumers.
20 15 U.S.C. §§ 53(b), 57b, 6102(c), and 6105(b).

21 6. Plaintiff, the State of Washington, is one of the fifty sovereign states of the United
22 States. The State of Washington is authorized to initiate federal district court proceedings to enjoin
23 telemarketing practices that violate the Commission's Telemarketing Sales Rule, and, in each such
24 case, to obtain damages, restitution, and other compensation on behalf of residents of the State of
25 Washington, and to obtain such further and other relief as the court may deem appropriate. 15 U.S.C.
26 § 6103(a). The State of Washington is also authorized to enjoin violations of the Telephone
27 Solicitation Act, RCW 19.158, and the Consumer Protection Act, RCW 19.86, and to obtain such
28 damages, restitution, civil penalties and other compensation and relief as the court may deem

1 appropriate.

2
3 **DEFENDANTS**

4 7. Defendant Westcal Equipment, Inc., is a Nevada corporation and has maintained offices
5 at 120 Corporate Park Drive, Henderson, Nevada, and at 14870 S. Pony Express Drive, Bluffdale,
6 Utah. Doing business as Pioneer First, Westcal Equipment, Inc., transacts or has transacted business in
7 the Western District of Washington.

8 8. Defendant PF Member Services, Inc., is a Utah corporation and has maintained an office
9 at 14870 S. Pony Express Drive, Bluffdale, Utah. PF Member Services, Inc., transacts or has
10 transacted business in the Western District of Washington.

11 9. Defendant Robert Barr, aka Robert Hall, is the owner and an officer of Westcal
12 Equipment, Inc., and PF Member Services, Inc. At all times material to this Complaint, acting alone or
13 in concert with others, he has formulated, directed, controlled, or participated in the acts and practices
14 of Westcal Equipment, Inc., dba Pioneer First, and PF Member Services, Inc., set forth in this
15 Complaint. He transacts or has transacted business in the Western District of Washington.

16 10. Defendant Candace Rodriguez, aka Candace Gingles, at all times material to this
17 Complaint, acting alone or in concert with others, has formulated, directed, controlled, or participated
18 in the acts and practices of Westcal Equipment, Inc., dba Pioneer First, and PF Member Services, Inc.,
19 set forth in this Complaint. She transacts or has transacted business in the Western District of
20 Washington.

21 11. Defendant Charles Schmidt, at all times material to this Complaint, acting alone or in
22 concert with others, has formulated, directed, controlled, or participated in the acts and practices of
23 Westcal Equipment, Inc., dba Pioneer First, and PF Member Services, Inc., set forth in this Complaint.
24 He transacts or has transacted business in the Western District of Washington.

25 12. Defendant Wayne Wrath is the sales manager for Westcal Equipment, Inc., dba Pioneer
26 First. At all times material to this Complaint, acting alone or in concert with others, he has formulated,
27 directed, controlled, or participated in the acts and practices of Westcal Equipment, Inc., dba Pioneer
28 First, and PF Member Services, Inc., set forth in this Complaint. He transacts or has transacted

1 business in the Western District of Washington.

2
3 **COMMERCE**

4 13. At all times relevant to this complaint, Defendants have maintained a substantial course
5 of trade in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C.
6 § 44.

7
8 **DEFENDANTS' BUSINESS PRACTICES**

9 14. Since at least May 2001, Defendants, acting alone or in concert with others, have
10 solicited consumers throughout the country and falsely promised to provide credit cards to consumers
11 in exchange for an advance fee of \$189.

12 15. Defendants have placed advertisements on cable television and the Internet. The
13 television advertisements invite consumers to call a toll free number for information about obtaining a
14 guaranteed credit card, the Pioneer First Platinum credit card. The television ads and the Internet web
15 site have displayed a Visa or MasterCard logo, and state that issuance of the Pioneer First Platinum
16 credit card, with a \$5000 credit limit and 0% interest for twelve months, is guaranteed so long as the
17 applicant is 18 years of age, is a legal United States resident and has a checking account.

18 16. When consumers call in response to the television advertising, Defendants' sales
19 representatives substantially repeat the claims made in the advertising. Defendants offer to provide the
20 consumer with an unsecured, major credit card, such as a Visa or MasterCard, with absolutely no
21 security deposit, regardless of the consumer's credit history. Defendants represent to consumers that
22 they are pre-approved for a credit card and assure them that if they pay the required fee, they will
23 receive the Pioneer First Platinum credit card. In fact, the Pioneer First Platinum credit card is not a
24 major credit card, but a catalog card, good only for the purchase of merchandise through the Pioneer
25 First catalog. Defendants, however, have not provided consumers with a mail order catalog, and until
26 November 2001, they did not have an online catalog. Moreover, an undisclosed and substantial down
27 payment is required in order to purchase merchandise from Pioneer First, and orders made by those
28 consumers who have received the Pioneer First Platinum card and attempted to use it to order

1 merchandise from Pioneer First's website have often not been filled.

2 17. In connection with taking applications over the telephone, Defendants persuade
3 consumers to divulge their checking account information, including their name as it appears on the
4 account and the account number.

5 18. Defendants routinely debit the bank accounts of consumers, in advance of providing
6 those consumers with the major credit card promised during the telephone calls. Defendants do not
7 obtain the consumer's express verifiable authorization for payment via check debiting by obtaining
8 either written authorization, oral authorization which is tape recorded, or sending a written
9 confirmation to the consumer before submitting the check draft for payment, as required by the
10 Telemarketing Sales Rule. On several occasions, Defendants have made withdrawals in addition to the
11 one-time \$189 fee disclosed to consumers from the consumers' checking accounts, or have used
12 different check numbers from those given them by the consumer.

13 19. After debiting the funds from consumers' bank accounts, Defendants do not provide
14 consumers with the promised major credit card. Many consumers do not even receive the Pioneer First
15 Platinum catalog card from Defendants. Consumers who have tried to obtain a refund have been
16 unable to get their money back from Defendants.

17
18 **VIOLATIONS OF SECTION 5 OF THE FTC ACT**

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

21 21. Misrepresentations or omissions of material fact constitute deceptive acts or practices
22 prohibited by Section 5(a) of the FTC Act.

23
24 **COUNT ONE**

25 22. In numerous instances, in connection with the telemarketing of advance fee credit cards,
26 Defendants or their employees or agents have represented, expressly or by implication, that, after
27 paying Defendants a fee, consumers will, or are highly likely to, receive an unsecured major credit
28 card, such as a Visa or MasterCard credit card.

1 23. In truth and in fact, in numerous instances, after paying Defendants a fee, consumers do
2 not receive an unsecured major credit card, such as a Visa or MasterCard credit card.

3 24. Therefore, the representation set forth in Paragraph 22 is false and misleading and
4 constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

5
6 **THE FTC'S TELEMARKETING SALES RULE**

7 25. The Commission promulgated the Telemarketing Sales Rule pursuant to Section 3(a) of
8 the Telemarketing Act, 15 U.S.C. § 6102(a). The Rule became effective on December 31, 1995.

9 26. The FTC Telemarketing Sales Rule prohibits telemarketers and sellers from
10 misrepresenting any material aspect of the performance, efficacy, nature, or central characteristics of
11 goods or services that are the subject of a sales offer. 16 C.F.R. § 310.3(a)(2)(iii).

12 27. The Telemarketing Sales Rule also prohibits telemarketers and sellers from, among
13 other things, requesting or receiving payment of any fee or consideration in advance of obtaining or
14 arranging a loan or other extension of credit when the seller or telemarketer has guaranteed or
15 represented a high likelihood of success in obtaining or arranging a loan or other extension of credit.
16 16 C.F.R. § 310.4(a)(4).

17 28. The Telemarketing Sales Rule also prohibits obtaining or submitting for payment a
18 check, draft, or other form of negotiable paper drawn on a person's checking, saving, share, or similar
19 account without that person's express verifiable authorization. Such authorization shall be deemed
20 verifiable if any of the following means are employed:

- 21 (i) Express written authorization by the customer, which may include the
22 customer's signature on the negotiable instrument; or
- 23 (ii) Express oral authorization which is tape recorded and made available upon
24 request to the customer's bank and which evidences clearly both the customer's
25 authorization of the payment for the goods or services that are the subject of the
26 sales offer and the customer's receipt of the following information:
- 27 (A) The date of the draft(s);
- 28 (B) The amount of the draft(s);

- 1 (C) The payor's name;
- 2 (D) The number of draft payments (if more than one);
- 3 (E) A telephone number for customer inquiry that is answered during normal
- 4 business hours; and
- 5 (F) The date of the customer's oral authorization; or
- 6 (iii) Written confirmation of the transaction, sent to the customer prior to submission
- 7 for payment of the customer's check, draft, or other form of negotiable paper,
- 8 that includes:
- 9 (A) All of the information contained in §§ 310.3(a)(3)(ii)(A)-(F); and
- 10 (B) The procedures by which the customer can obtain a refund from the seller
- 11 or telemarketer in the event the confirmation is inaccurate. 16 C.F.R. §
- 12 310.3(a)(3).

13 29. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c), and Section

14 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), violations of the Telemarketing Sales Rule constitute

15 unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5(a) of the FTC

16 Act, 15 U.S.C. § 45(a).

17 30. Defendants are "sellers" or "telemarketers" engaged in "telemarketing," as those terms

18 are defined in the FTC Telemarketing Sales Rule, 16 C.F.R. §§ 310.2(r), (t), and (u).

19

20 VIOLATIONS OF TELEMARKETING SALES RULE

21 **COUNT TWO**

22 31. In numerous instances, in connection with the telemarketing of advance fee credit cards,

23 Defendants or their employees or agents have misrepresented, directly or by implication, that after

24 paying Defendants a fee, consumers will, or are highly likely to, receive an unsecured major credit

25 card, such as a Visa or MasterCard credit card.

26 32. Defendants have thereby violated Section 310.3(a)(2)(iii) of the Telemarketing Sales

27 Rule, 16 C.F.R. § 310.3(a)(2)(iii).

28

1 **COUNT THREE**

2 33. In numerous instances, in connection with telemarketing of advance fee credit cards,
3 Defendants or their employees or agents have requested and received payment of a fee in advance of
4 consumers obtaining a credit card when Defendants have guaranteed or represented a high likelihood
5 of success in obtaining or arranging for the acquisition of an unsecured credit card, such as a Visa or
6 MasterCard credit card, for such consumers.

7 34. Defendants have thereby violated Section 310.4(a)(4) of the Telemarketing Sales Rule
8 16 C.F.R. § 310.4(a)(4).

9
10 **COUNT FOUR**

11 35. In numerous instances, in connection with telemarketing of advance fee credit cards,
12 Defendants or their employees or agents have submitted for payment a check drawn on a person's
13 checking account without that person's express verifiable authorization.

14 36. Defendants have thereby violated Section 310.3(a)(3) of the Telemarketing Sales Rule,
15 16 C.F.R. § 310.3(a)(3).

16
17 **VIOLATIONS OF THE COMMERCIAL TELEPHONE SOLICITATION ACT**

18 **COUNT FIVE**

19 (By Plaintiff State of Washington)

20 37. Defendants' business constitutes commercial telephone solicitation as defined in RCW
21 19.158.020. Defendants are not registered as commercial telephone solicitors with the Washington
22 State Department of Licensing as required by RCW 19.158.050.

23 38. Defendants are in violation of RCW 19.158.050(1) which requires a commercial
24 telephone solicitor to be registered with the Department of Licensing. Pursuant to RCW
25 19.158.050(4)(a) and RCW 19.150.030, the violation of RCW 19.158.050(1) constitutes a *per se*
26 violation of the Consumer Protection Act, RCW 19.86.

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28 **VIOLATIONS OF UNFAIR BUSINESS PRACTICES-CONSUMER PROTECTION ACT**

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COUNT SIX

(By Plaintiff State of Washington)

39. In numerous instances, in connection with the telemarketing of advance fee credit cards, Defendants or their employees or agents have represented, expressly or by implication, that, after paying Defendants a fee, consumers will, or are highly likely to, receive an unsecured major credit card, such as a Visa or MasterCard credit card.

40. In truth and in fact, in numerous instances, after paying Defendants a fee, consumers do not receive an unsecured major credit card, such as a Visa or MasterCard credit card.

41. The conduct described above constitutes unfair and deceptive acts or practices and unfair methods of competition in violation of RCW 19.86.020 and also constitutes a violation of RCW 19.158.040, which proscribes unfair or deceptive commercial telephone solicitation. Pursuant to RCW 19.158.030, the violation of RCW 19.158.040 constitutes a *per se* violation of the Consumer Protection Act, RCW 19.86.

CONSUMER INJURY

42. Consumers throughout the United States have suffered, and continue to suffer, substantial monetary loss as a result of Defendants' unlawful acts and practices. In addition, Defendants have been unjustly enriched as a result of their unlawful practices. Absent injunctive relief, the Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public.

THIS COURT'S POWER TO GRANT RELIEF

43. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes this Court to issue a permanent injunction against Defendants' violations of the FTC Act and, in the exercise of its equitable jurisdiction, to order such ancillary relief, as temporary and preliminary injunctions, consumer redress, rescission, restitution, and disgorgement of profits resulting from Defendants' unlawful acts or practices, and other remedial measure.

44. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), authorize the Court to grant to the FTC such relief as the Court finds necessary to

1 redress injury to consumers or other persons resulting from Defendants' violations of the
2 Telemarketing Sales Rule, including the rescission and reformation of contracts and the refund of
3 money.

4 45. Section 4(a) of the Telemarketing Act, 15 U.S.C. § 6103(a), authorizes the Court to
5 grant to the State of Washington, on behalf of its residents, injunctive and other relief, including
6 damages, restitution, other compensation, and such further and other relief as the Court deems
7 appropriate.

8 46. The Washington statutes may be enforced by this Court through pendent jurisdiction
9 pursuant to 28 U.S.C. § 1367. This Court is empowered to grant injunctive and such other relief as it
10 may deem appropriate to halt and redress violations of the state statutes.

11
12 **PRAYER FOR RELIEF**

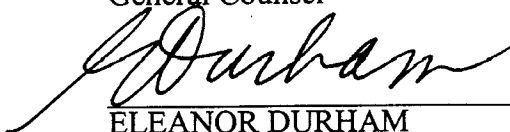
13 WHEREFORE, Plaintiff, the Federal Trade Commission, pursuant to Sections 13(b) and 19 of
14 the FTC Act, 15 U.S.C. §§ 53(b) and 57b, Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b),
15 and plaintiff State of Washington pursuant to Section 4(a) of the Telemarketing Act, 15 U.S.C.
16 § 6103(a), and the Court's own equitable powers, requests that the Court:

- 17 a. Award Plaintiffs such preliminary injunctive and ancillary relief as may be
18 necessary to avert the likelihood of consumer injury during the pendency of this
19 action and to preserve the possibility of effective final relief, including but not
20 limited to, temporary and preliminary injunctions, and an order freezing assets;
- 21 b. Permanently enjoin the Defendants from violating the FTC Act and the
22 Telemarketing Sales Rule, as alleged herein;
- 23 c. Award such relief as the Court finds necessary to redress injury to consumers
24 resulting from Defendants' violations of the FTC Act and the Telemarketing
25 Sales Rule, including but not limited to, rescission or reformation of contracts,
26 refund of monies paid, and the disgorgement of ill-gotten monies; and
- 27 d. Award Plaintiffs the costs of bringing this action, as well as such other and
28 additional relief as the Court may determine to be just and proper.

1 Dated: 8-19, 2002

2 Respectfully Submitted,

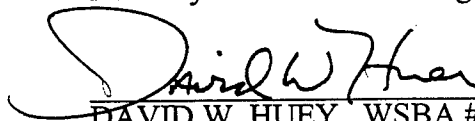
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14 Dated: 8-16, 2002

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