

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK

|                                 |   |                            |
|---------------------------------|---|----------------------------|
| _____                           | ) |                            |
| FEDERAL TRADE COMMISSION,       | ) |                            |
|                                 | ) |                            |
| Plaintiff,                      | ) | CIVIL ACTION NO.:          |
|                                 | ) |                            |
| v.                              | ) |                            |
|                                 | ) |                            |
| FORUM MARKETING SERVICES, INC., | ) | COMPLAINT FOR INJUNCTIVE   |
|                                 | ) | AND OTHER EQUITABLE RELIEF |
| EDWARD VELASQUEZ, JR.,          | ) |                            |
| a.k.a. EDWARD VELASQUEZ,        | ) |                            |
|                                 | ) |                            |
| and                             | ) |                            |
|                                 | ) |                            |
| WILLIAM JOHN VELASQUEZ,         | ) |                            |
|                                 | ) |                            |
| Defendants.                     | ) |                            |
| _____                           | ) |                            |

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), for its complaint alleges:

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 obtain permanent injunctive relief, rescission or reformation of contracts, restitution, 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 Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310.

## **JURISDICTION AND VENUE**

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 45(a), 1331, 1337(a), and 1345, and 15 U.S.C. §§ 53(b), 57b, 6102(c), and 6105(b).
3. Venue in the Western District of New York is proper under 28 U.S.C. §§ 1391(b) and (c), and 15 U.S.C. §§ 53(b), and 6103(e).

## **PLAINTIFF**

4. Plaintiff FTC is an independent agency of the United States Government created by statute. 15 U.S.C. § 41 *et seq.* The Commission is charged, *inter alia*, with enforcement of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The Commission also enforces the TSR which prohibits deceptive or abusive telemarketing practices. The Commission is authorized to initiate federal district court proceedings by its own attorneys to enjoin violations of the FTC Act and the TSR and to secure such equitable relief as may be appropriate in each case, including consumer redress. 15 U.S.C. §§ 53(b), 57b, 6102(c), and 6105(b).

## **DEFENDANTS**

5. Defendant Forum Marketing Services, Inc. (“Forum”) is a New York corporation. Forum transacts or has transacted business in this district.
6. Defendant Edward Velasquez, Jr., a.k.a. Edward Velasquez, is the president of Forum. Individually, or in concert with others, he formulates, directs, participates, or controls the acts and practices of Forum, including the acts and practices complained of herein.

Edward Velasquez, Jr. transacts or has transacted business in this district.

7. Defendant William John Velasquez is the vice-president of Forum. Individually, or in concert with others, he formulates, directs, participates, or controls the acts and practices of Forum, including the acts and practices complained of herein. William John Velasquez transacts or has transacted business in this district.

### **COMMERCE**

8. At all times relevant to this complaint, defendants have maintained a substantial course of trade in the offering for sale and sale, through telemarketing, of credit card protection services, in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

### **DEFENDANTS' BUSINESS PRACTICES**

9. Since at least 1999, defendants, directly or through their representatives, have telemarketed credit card protection services to consumers throughout the United States. Defendants have engaged in these practices under the names Forum Marketing Services, Inc., Forum Fraud Division, Forum Credit Card Service, and Forum Security Card Services.
10. In numerous instances, defendants have represented, either expressly or by implication, that defendants are calling from or are affiliated with Visa International ("Visa"), MasterCard International ("MasterCard"), or the consumer's credit card issuer.
11. Defendants have told consumers that criminals are stealing consumers' credit card

numbers via computer technology, and that consumers need to purchase defendants' credit card protection service because consumers are not currently protected against unauthorized use of their credit card accounts by such criminals. In numerous instances, defendants have claimed that, if a consumer's credit card number is stolen or misappropriated, a consumer can be held liable for all unauthorized charges to the consumer's credit card account.

12. In numerous instances, defendants have claimed that purchase of their credit card protection service protects consumers from liability for unauthorized credit card charges.
13. In numerous instances, defendants have obtained consumers' credit card account numbers and, without consumers' authorization, have caused charges to be posted on those accounts.
14. Defendants charge consumers fees ranging from \$199 to \$299 for their services.

#### **SECTION 5 OF THE FTC ACT**

15. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), provides that "unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful."

#### **VIOLATIONS OF SECTION 5 OF THE FTC ACT**

##### **COUNT I**

16. In numerous instances, in connection with the telemarketing of credit card protection services to consumers, or in the course of billing, attempting to collect, and collecting money from consumers, defendants have represented, expressly or by implication, that:

- a. Defendants are affiliated with, or are calling from, or on behalf of, the consumer's credit card issuer;
- b. If consumers do not purchase defendants' services, consumers can be held fully liable for any unauthorized charges made to their credit card accounts; and
- c. Consumers purchased or agreed to purchase goods or services from defendants, and therefore owe money to defendants.

17. In truth and in fact:

- a. Defendants are not affiliated with, or calling from, or on behalf of, the consumer's credit card issuer;
- b. Under Section 226.12(b) of Regulation Z, 12 C.F.R. § 226.12(b), and Section 133 of the Truth in Lending Act, 15 U.S.C. § 1643, a consumer cannot be held liable for more than \$50 for any unauthorized charges to a credit card account; and
- c. In numerous instances, consumers did not purchase or agree to purchase goods or services from defendants, and therefore do not owe money to defendants.

18. Therefore, defendants' representations, as set forth in paragraph 16, are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

## **THE FTC'S TELEMARKETING SALES RULE**

19. In the Telemarketing Act, 15 U.S.C. § 6101, *et seq.*, Congress directed the Commission to prescribe rules prohibiting deceptive and abusive telemarketing acts or practices. On August 16, 1995, the Commission promulgated the TSR, 16 C.F.R. Part 310. The TSR became effective on December 31, 1995.
20. Defendants are "sellers" or "telemarketers" engaged in "telemarketing," as those terms are defined in the TSR, 16 C.F.R. §§ 310.2(r), (t), and (u).
21. The TSR prohibits telemarketers and sellers from "making a false or misleading statement to induce any person to pay for goods or services." 16 C.F.R. § 310.3(a)(4).
22. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c), and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), violations of the TSR constitute unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

## **VIOLATIONS OF THE TELEMARKETING SALES RULE**

### **COUNT II**

23. In numerous instances, in connection with the telemarketing of credit card protection services, or in the course of billing, attempting to collect, and collecting money from consumers, defendants have represented, directly or by implication, that:
  - a. Defendants are affiliated with, or are calling from, or on behalf of, the consumer's credit card issuer;
  - b. If consumers do not purchase defendants' services, consumers can be held

fully liable for any unauthorized charges made to their credit card accounts;  
and

- c. Consumers purchased or agreed to purchase goods or services from defendants, and therefore owe money to defendants.

24. In truth and in fact:

- a. Defendants are not affiliated with, or calling from, or on behalf of, the consumer's credit card issuer;
- b. Under Section 226.12(b) of Regulation Z, 12 C.F.R. § 226.12(b), and Section 133 of the Truth in Lending Act, 15 U.S.C. § 1643, a consumer cannot be held liable for more than \$50 for any unauthorized charges to a credit card account; and
- c. In numerous instances, consumers did not purchase or agree to purchase goods or services from defendants, and therefore do not owe money to defendants.

25. Therefore, defendants' representations, as alleged in paragraph 23, constitute false or misleading statements to induce a person to pay for goods or services, and are deceptive telemarketing acts or practices in violation of Section 310.3(a)(4) of the TSR, 16 C.F.R. § 310.3(a)(4).

### **CONSUMER INJURY**

26. Consumers in many areas of the United States have suffered substantial monetary loss as a result of defendants' unlawful acts or practices. Absent injunctive relief by this Court,

defendants are likely to continue to injure consumers and harm the public interest.

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

27. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other ancillary relief, including consumer redress, disgorgement and restitution, to prevent and remedy any violations of any provision of law enforced by the Commission.
28. 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 this Court to issue a permanent injunction and grant such relief as the Court finds appropriate to halt and redress injury resulting from defendants' violations of the Telemarketing Sales Rule, including the rescission and reformation of contracts, and the refund of money.
29. This Court, in the exercise of its equitable jurisdiction, may award other ancillary relief to remedy injury caused by defendants' law violations.

**PRAYER FOR RELIEF**

WHEREFORE, plaintiff requests this Court, pursuant to Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), and pursuant to its own equitable powers:

1. Permanently enjoin defendants from violating the FTC Act and the TSR as alleged herein;
2. Award such relief as the Court finds necessary to redress injury to consumers resulting from defendants' violations of the FTC Act and the TSR, including but not limited to,



rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and

3. Award plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Respectfully submitted,

DEBRA A. VALENTINE  
GENERAL COUNSEL

DATED: \_\_\_\_\_

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