

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA

FEDERAL TRADE COMMISSION,  
COMMONWEALTH OF VIRGINIA  
*EX REL.* RANDOLPH A. BEALES,  
ATTORNEY GENERAL OF VIRGINIA,  
STATE OF NORTH CAROLINA *EX REL.* ROY  
COOPER, ATTORNEY GENERAL OF NORTH  
CAROLINA, and  
STATE OF WISCONSIN *EX REL.* JAMES E.  
DOYLE, ATTORNEY GENERAL OF  
WISCONSIN,

Plaintiffs,

v.

THE TUNGSTEN GROUP, INC.,  
a corporation, also doing business as American  
Savings Discount Club, also doing business as  
Auto Services Discount Club, also doing  
business as ASDC

Tc 0.1811 Tw (THE TUNGSTEN GROUP, INC.) Tj T\* -064 Tc 0 Tw Fina TD -0.410 Tc 0.3324iEDiscount

Plaintiffs Federal Trade Commission (“FTC” or “Commission”), the Commonwealth of Virginia *ex rel.* Randolph A. Beales, Attorney General of Virginia (“Commonwealth of Virginia”), the State of North Carolina *ex rel.* Roy Cooper, Attorney General of North Carolina (“State of North Carolina”), and the State of Wisconsin *ex rel.* James E. Doyle, Attorney General of Wisconsin (“State of Wisconsin”), for their Complaint 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 obtain permanent injunctive relief, rescission 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 Trade Regulation Rule entitled “Telemarketing Sales Rule,” 16 C.F.R. Part 310.

2. The Commonwealth of Virginia, by and through Randolph A. Beales, Attorney General of Virginia, brings this action under the Telemarketing Act, 15 U.S.C. § 6101 *et seq.*, the Virginia Consumer Protection Act, Va. Code § 59.1-196 *et seq.*, and the Virginia Home Solicitation Sales Act, Va. Code § 59.1-21.1 *et seq.*, to obtain a permanent injunction, preliminary relief, consumer restitution and other equitable relief, damages, civil penalties, and reimbursement of its costs, expenses and attorneys’ fees against defendants for their violations of the Telemarketing Sales Rule, the Virginia Consumer Protection Act, and the Virginia Home Solicitation Sales Act.

3. The State of North Carolina, by and through Roy Cooper, Attorney General of North Carolina, brings this action under the Telemarketing Act, 15 U.S.C. § 6101 *et seq.*, the North Carolina

Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1 *et seq.*, and the North Carolina Telephonic Seller Registration and Bonding Act, N.C. Gen. Stat. § 66-260 *et seq.*, to obtain a permanent injunction, preliminary relief, consumer restitution and other equitable relief, damages, civil penalties, and attorneys' fees against defendants for their violations of the Telemarketing Sales Rule, the North Carolina Unfair and Deceptive Trade Practices Act, and the North Carolina Telephonic Seller Registration and Bonding Act.

4. The State of Wisconsin, by and through James E. Doyle, Attorney General of Wisconsin, brings this action under the Telemarketing Act, 15 U.S.C. § 6101 *et seq.*, and the Wisconsin Fraudulent Representations Act, Wis. Stat. § 100.18(1) *et seq.*, to obtain a permanent injunction, preliminary relief, consumer restitution and other equitable relief, damages, civil forfeitures, costs and attorneys' fees against defendants for their violations of the Telemarketing Sales Rule and the Wisconsin Fraudulent Representations Act.

#### **JURISDICTION AND VENUE**

5. Subject matter jurisdiction is conferred upon this Court by 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), 6103(a), and 6105(b), and 28 U.S.C. §§ 1331, 1337(a) and 1345 with respect to the federal law claims, and by 28 U.S.C. § 1367 with respect to the supplemental state law claims.

6. Venue in the Eastern District of Virginia is proper under 15 U.S.C. §§ 53(b) and 6103(e), and 28 U.S.C. § 1391(b), (c) and (d).

#### **PLAINTIFFS**

7. Plaintiff Federal Trade Commission is an independent agency of the United States Government created by statute. 15 U.S.C. § 41 *et seq.* The Commission enforces Section 5(a) of the

FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting

restitution, and other compensation on behalf of North Carolina residents. Plaintiff State of North Carolina, by and through its Attorney General, also brings its state claims against defendants under the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1 *et seq.*, and the North Carolina Telephonic Seller Registration and Bonding Act, N.C. Gen. Stat. § 66-260 *et seq.* This Court has supplemental jurisdiction over the State of North Carolina’s state claims under 28 U.S.C. §1367.

10. Plaintiff State of Wisconsin is one of the fifty sovereign States of the United States. James E. Doyle is the duly elected and qualified Attorney General of Wisconsin acting for plaintiff State of Wisconsin in this action. Pursuant to authority found in 15 U.S.C. § 6103(a), plaintiff State of Wisconsin is authorized to initiate federal district court proceedings to enjoin telemarketing activities which violate the Telemarketing Sales Rule, and in each such case, to obtain damages, restitution, and other compensation on behalf of Wisconsin residents. Plaintiff State of Wisconsin, by and through its Attorney General, also brings its state claims against defendants under the Wisconsin Fraudulent Representations Act, Wis. Stat. § 100.18(1) *et seq.* This Court has supplemental jurisdiction over the State of Wisconsin’s state claims under 28 U.S.C. § 1367.

#### **DEFENDANTS**

11. Defendant The Tungsten Group, Inc. (“Tungsten Group”), is a Florida corporation with its offices and principal place of business located at 800 Loudoun Avenue, in Portsmouth, Virginia. Defendant Tungsten Group transacts or has transacted business in the Eastern District of Virginia.

12. Defendant The Tungsten Group II, Inc. (“Tungsten Group II”), is a Florida corporation with its offices and principal place of business located at 13553 66<sup>th</sup> Street North, Suite #101 in Largo,



whereby they tell consumers that, in exchange for an advance-fee of \$100, including an enrollment fee of \$40 and first and last months' payments of \$30 each, consumers will or are highly likely to receive a loan or other extension of credit.

17. To induce consumers to give out their checking account information for the purposes of transferring the advance fee, defendants' telemarketers on many occasions tell consumers that the loan would be an excellent way to reestablish good credit, that defendants would report loan payments to a credit bureau, or that the consumer's bank suggested that they call. They also often tell consumers that if they are dissatisfied with the transaction they may cancel and obtain a full refund. Defendants' telemarketers also on many occasions ask consumers for their social security numbers and many times tell consumers that they need their social security numbers in order to make favorable reports to credit bureaus on their behalf.

18. Some consumers who pay advance fees to defendants receive in the mail a packet of written materials from defendants. Included are materials describing a plan whereby consumers would qualify for rebates on various purchases, and stating that they might qualify for a loan if they remained in good standing with defendants after 90 days. Only then do many consumers realize that the \$30 monthly payment is a membership fee for defendants' buying club, as defendants' telemarketers often make no mention of defendants' buying club, and often when they do, they present it as an incidental benefit to the loan. Some consumers who pay advance fees to defendants never receive anything from them.

19. Many of the consumers who agree to pay the advance fees decide to cancel once they review the packet of materials defendants send. Many of these consumers have difficulty contacting





- a. After paying defendants a fee, consumers will not or are not highly likely to receive a loan or other extension of credit;
- b. Defendants have not pre-approved that consumer for a loan or other extension of credit;
- c. The monthly membership fee is not the monthly loan repayment amount; and
- d. Defendants will not refund their fee if for any reason a consumer seeks a refund.

24. Therefore, the representations set forth in Paragraph 22 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**

25. 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 Telemarketing Sales Rule, 16 C.F.R. Part 310. The Rule became effective on December 31, 1995.

26. Defendants are “sellers” or “telemarketers” engaged in “telemarketing,” as those terms are defined in the Rule, 16 C.F.R. §§ 310.2(r), (t) and (u).

27. The Rule prohibits telemarketers and sellers from, among other things, requesting or receiving payment of any fee or consideration in advance of obtaining or arranging 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. 16 C.F.R. § 310.4(a)(4).

28. The Rule prohibits telemarketers and sellers from misrepresenting any material aspect

of the performance, efficacy, nature, or central characteristics of the goods or services that are the subject of the sales offer. 16 C.F.R. § 310.3(a)(2)(iii).

29. The Rule additionally prohibits telemarketers and sellers from “making a false or

implication, that, after paying defendants a fee, consumers will or are highly likely to receive a loan or other extension of credit.

34. In truth and in fact, after paying defendants a fee, consumers will not or are not highly likely to receive a loan or other extension of credit.

35. Therefore, defendants' representations, as alleged in Paragraph 33, are deceptive telemarketing acts or practices in violation of Section 310.3(a)(2)(iii) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(2)(iii).

**COUNT IV**  
(By Each Plaintiff)

36. In numerous instances, in connection with telemarketing offers to obtain or arrange loans or other extensions of credit for consumers, defendants have made various representations, directly or by implication, including but not limited to the following:

- a. Defendants have pre-approved that consumer for a loan or other extension of credit;
- b. The monthly membership fee is the monthly loan repayment amount; or
- c. Defendants will refund their fee if for any reason a consumer seeks a refund.

37. In truth and in fact:

- a. Defendants have not pre-approved that consumer for a loan or other extension of credit;
- b. The monthly membership fee is not the monthly loan repayment amount; and
- c. Defendants will not refund their fee if for any reason a consumer seeks a refund.

38. Therefore, defendants' representations, as alleged in Paragraph 36, 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 Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(4).

## **VIOLATIONS OF THE VIRGINIA CONSUMER PROTECTION ACT**

### **COUNT V**

(By Plaintiff Commonwealth of Virginia)

39. Section 59.1-200(A) of the Virginia Consumer Protection Act prohibits fraudulent acts or practices committed by a supplier in connection with a consumer transaction. Such prohibited acts or practices include, without limitation: misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or benefits, Va. Code § 59.1-200(A)(5); advertising goods or services with intent not to sell them as advertised, or with intent not to sell at the price or upon the terms advertised, Va. Code § 59.1-200(A)(8); and using any other deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction, Va. Code § 59.1-200(A)(14).

40. Defendants are and have been during all relevant times "suppliers" of "goods" and/or "services" in connection with "consumer transactions" as those terms are defined in § 59.1-198 of the Virginia Consumer Protection Act.

41. Defendants' acts and practices as alleged in Paragraphs 1 through 24 were deceptive, fraudulent, and misleading and violate the Virginia Consumer Protection Act. Defendants have violated

the Virginia Consumer Protection Act, Va. Code § 59.1-200(A), by engaging in the acts or practices described herein in connection with consumer transactions, including but not limited to:

- a. misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or benefits, in violation of Virginia Code § 59.1-200(A)(5);
- b. advertising goods or services with intent not to sell them as advertised, or with intent not to sell at the price or upon the terms advertised, in violation of Virginia Code § 59.1-200(A)(8); and
- c. using other deception, fraud, false pretense, false promise, or misrepresentation in connection with consumer transactions, in violation of Virginia Code § 59.1-200(A)(14).

42. Defendants willfully did the acts described herein in violation of the Virginia Consumer Protection Act.

43. Irreparable harm will occur if preliminary injunctive relief and other ancillary relief are not awarded in this action.

#### **VIOLATIONS OF THE VIRGINIA HOME SOLICITATION SALES ACT**

44. Section 59.1-21.4 of the Virginia Home Solicitation Sales Act requires a seller to provide to the buyer a written statement of the buyer's three-day right to cancel a home solicitation sale and a form which the buyer can use to give the seller notice of cancellation of the sale. Pursuant to Virginia Code § 59.1-21.4(3), until the seller has complied with this section, the buyer may cancel the home solicitation sale by notifying the seller in any manner and by any means of his intention to cancel.

45. Section 59.1-21.5(1) of the Virginia Home Solicitation Sales Act requires that within ten days after a home solicitation sale has been canceled, the seller must return to the buyer any payments made by the buyer.

46. Section 59.1-21.2(A) of the Virginia Home Solicitation Sales Act defines a “home solicitation sale” as:

1. A consumer sale or lease of goods or services in which the seller or a person acting for him engages . . . in a solicitation of the sale or lease by telephonic or other electronic means at any residence other than that of the seller; and
2. The buyer’s agreement or offer to purchase or lease is there given to the seller or a person acting for him.

47. Pursuant to Virginia Code §§ 59.1-21.7:1 and 59.1-200(A)(19), violations of the Virginia Home Solicitation Sales Act are considered *per se* violations of the Virginia Consumer Protection Act and are subject to enforcement proceedings under the Virginia Consumer Protection Act.

48. Defendants are and have been during all relevant times “sellers” who have made “home



canceled as required by § 59.1-21.5 of the Virginia Home Solicitation Sales Act. In other instances, defendants have failed to return all payments to a purported buyer of defendants' goods and/or services after being notified that the transaction has been canceled, as required by § 59.1-21.5 of the Virginia Home Solicitation Sales Act, thereby making only a partial refund of the payments.

55. In addition, defendants have failed to make the return of payments to purported buyers of defendants' goods and/or services who have canceled the transaction within ten days after cancellation as required by § 59.1-21.5 of the Virginia Home Solicitation Sales Act.

56. In each instance of defendants' failure to return all payments to a purported buyer of defendants' goods and/or services within ten days after the transaction has been canceled, defendants have committed a separate violation of Virginia Code §§ 59.1-21.5 and 59.1-200(A)(19).

57. Defendants willfully did the acts described herein in violation of the Virginia Home Solicitation Sales Act.

58. Irreparable harm will occur if preliminary injunctive relief and other ancillary relief are not awarded in this action.

**VIOLATIONS OF THE NORTH CAROLINA  
UNFAIR AND DECEPTIVE TRADE PRACTICES ACT**

**COUNT VIII**

(By Plaintiff State of North Carolina)

59. North Carolina General Statute §75-1.1(a) declares unlawful all unfair and deceptive acts or practices in or affecting commerce.

60. Defendants' acts, representations and practices as alleged in Paragraphs 1 through 24 were false, misleading and unfair to consumers in North Carolina, and therefore violate the North



Carolina Unfair and Deceptive Trade Practices Act.

61. Defendants had actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that their acts and representations, as described above, were unfair and deceptive.

**VIOLATIONS OF THE NORTH CAROLINA  
TELEPHONIC SELLER REGISTRATION AND BONDING ACT**

**COUNT IX**

(By Plaintiff State of North Carolina)

62. The North Carolina Telephonic Seller Registration and Bonding Act, at N.C. Gen. Stat. § 66-261, requires that persons and commercial entities register themselves as telephonic sellers with the North Carolina Secretary of State prior to using the telephone to solicit North Carolina residents, or residents of other states if they are soliciting over the telephone from locations within North Carolina, to purchase goods or services.

63. None of the defendants have registered as telephonic sellers with the North Carolina Secretary of State.

64. Defendants' solicitations of North Carolina consumers using the telephone, as well as telephone solicitations of consumers residing outside of North Carolina which were initiated by defendants' agents from call centers within North Carolina, violate the North Carolina Telephonic Seller Registration and Bonding Act. Under N.C. Gen. Stat. § 66-266(a), any violation of the Telephonic Seller Registration and Bonding Act is an unfair and deceptive trade practice in violation of N.C. Gen. Stat. § 75-1.1.

## **COUNT X**

(By Plaintiff State of Wisconsin)

65. Wisconsin Stat. § 100.18(1) declares unlawful any untrue, misleading or deceptive statement or representation related to the sale of a product or service to the public.

66. Defendants' acts, representations and practices as alleged in Paragraphs 1 through 24 were untrue, misleading and deceptive to consumers in Wisconsin and therefore violate the Wisconsin Fraudulent Representations Act.

### **COMMON ENTERPRISE**

67. The defendants have operated as a common enterprise while engaging in the deceptive acts and practices and Telemarketing Sales Rule violations alleged above.

### **CONSUMER INJURY**

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

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

69. 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.

70. 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 grant such relief as the Court finds necessary to redress injury to consumers or other persons resulting from defendants' violations of the Telemarketing Sales Rule, including the rescission and reformation of contracts and the refund of monies.

71. Section 4(a) of the Telemarketing Act, 15 U.S.C. § 6103(a), empowers this Court to grant the Commonwealth of Virginia, the State of North Carolina, and the State of Wisconsin injunctive and such other relief as the Court may deem appropriate to halt violations of the Telemarketing Sales Rule and to redress injury to consumers, including the award of damages, restitution, or other compensation.

72. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction to allow plaintiff Commonwealth of Virginia to enforce its state law claims against defendants in this Court for violations of the Virginia Consumer Protection Act, Va. Code § 59.1-196 *et seq.*, and the Virginia Home Solicitation Sales Act, Va. Code § 59.1-21.1 *et seq.*, and to grant such relief as provided under state law, including injunctive relief, a civil penalty of up to \$2,500.00 per violation, restitution, an award to restore to any person any money or property which may have been acquired from such person by means of an act or practice in violation of the Virginia Consumer Protection Act or the Virginia Home Solicitation Sales Act, costs, reasonable expenses incurred in investigating and preparing the case up to \$1,000.00 per violation, and attorneys' fees. Va. Code §§ 59.1-21.7:1, 59.1-203, 59.1-205, and 59.1-206.

73. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction to allow plaintiff State of North Carolina to enforce its state law claims against defendants in this Court for violations of the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1 *et seq.*, and

the North Carolina Telephonic Seller Registration and Bonding Act, N.C. Gen. Stat. § 66-260 *et seq.*, and to grant such relief as provided under state law, including injunctive relief, restoration of any moneys or property and the cancellation of any contract obtained by any defendant as a result of such violation under N.C. Gen. Stat. § 75-15.1, a civil penalty of up to \$5,000.00 for each violation under

21.7:1, and the Court's own equitable powers; plaintiff State of North Carolina pursuant to Section 4(a) of the Telemarketing Act, 15 U.S.C. § 6103(a), the North Carolina Unfair and Deceptive Trade

Act, including but not limited to, rescission of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies;

- d. Award plaintiff Commonwealth of Virginia a civil penalty of up to \$2,500.00 (two thousand five hundred dollars) per violation of the Virginia Consumer Protection Act and the Virginia Home Solicitation Sales Act, its costs, reasonable expenses incurred in investigating and preparing the case up to \$1,000.00 (one thousand dollars) per violation, and its attorneys' fees pursuant to Va. Code § 59.1-206;
- e. Award plaintiff State of North Carolina, pursuant to N.C. Gen. Stat. § 75-15.2, a civil penalty of up to \$5,000.00 (five thousand dollars) for each violation found and further award plaintiff State of North Carolina attorneys' fees and costs pursuant to N.C. Gen. Stat. § 75-16.1; further award plaintiff State of North Carolina an enhanced civil penalty of up to \$25,000 (twenty-five thousand dollars) for each violation involving victims or intended victims over 65 years of age, pursuant to N.C. Gen. Stat. § 66-266(b);
- f. Award plaintiff State of Wisconsin, pursuant to Wis. Stat. § 100.26(4), a civil forfeiture of up to \$200.00 (two hundred dollars) for each violation found of the Wisconsin Fraudulent Representations Act and further award plaintiff State of Wisconsin attorneys' fees and costs pursuant to Wis. Stat. § 100.263;
- g. Award plaintiffs the costs of bringing this action and reasonable attorneys' fees, as well as such other and additional relief as the Court may determine to be just and proper.

Respectfully Submitted this \_\_\_\_\_ day of \_\_\_\_\_, 2001

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Federal Trade Commission General Counsel

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STATE OF WISCONSIN *EX REL.* JAMES E.  
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