

UNITED STATES DISTRICT COURT  
DISTRICT OF KANSAS

FEDERAL TRADE COMMISSION,  
STATES OF ILLINOIS, KANSAS,  
MINNESOTA, and NORTH CAROLINA,

Plaintiffs,

v.

AFFILIATE STRATEGIES, INC., et al.

Defendants.

Case No. 5:09 CV 04104 JAR KGS

CONSENT DECREE AND FINAL  
JUDGMENT ORDER AGAINST  
WEALTH POWER SYSTEMS, LLC,  
AND ARIA FINANCIAL SERVICES  
LLC

On July 20, 2009, original Plaintiffs, the Federal Trade Commission (•FTCŽ), and the States of Kansas, Minnesota and North Carolina filed a Complaint for Injunction and Other Equitable Relief to obtain temporary, preliminary, and permanent injunctive relief. The original Complaint was amended on December 9, 2009. The First Amended Complaint added one new Plaintiff, the State of Illinois (collectively with the original Plaintiffs, •PlaintiffsŽ), several new Defendants and new Counts. A Second Amended Complaint was filed on June 21, 2010, adding several additional facts and citations to evidence. The Second Amended Complaint (the •Amended ComplaintŽ) brings claims pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (•FTC ActŽ), 15 U.S.C. §§ 53(b) and 57b, the Telemarketing and Consumer Fraud and Abuse Prevention

Act (•Telemarketing ActŽ), 15 U.S.C. §§ 6101-6108; the Kansas Consumer Protection Act, K.S.A. 50-623, et seq.; Minn. Stat. §§ 8.01 & 8.31; the Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. §§ 325D.43-325D.48; Minn. Stat. § 325F.67; the Minnesota Prevention of Consumer Fraud Act, Minn. Stat. §§ 325F.68-325F.70; and Minn. Stat. § 325F.71, subd. 2 (2008); the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. §§ 75-1.1 et seq.; and the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2 et seq.

The Plaintiffs and Defendants Wealth Power Systems, LLC, and Aria Financial Services, LLC (collectively •Settling DefendantsŽ) have agreed to settle the instant litigation by joining in this Consent Decree and Final Judgment Order (the •Agreed OrderŽ or •Agreed Final OrderŽ). The Plaintiffs and Settling Defendants, having been represented by counsel and acting by and through said counsel, have consented to the entry of this Agreed Order without trial or adjudication of any issue of law or fact

## FINDINGS

1. This Court has jurisdiction over the subject matter of this case and the parties hereto pursuant to 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), and

5. Settling Defendants waive all rights to seek judicial review or otherwise challenge or contest the validity of this Agreed Final Order.
6. Settling Defendants further waive any claim, including any claim for attorneys' fees under the Equal Access to Justice Act, 28 U.S.C. § 2412, amended by Pub. L. 104 121, 110 Stat. 847, 863 64 (1996), and any claims they may have against the Plaintiffs, their employees, representatives, or agents.
7. The Plaintiffs and the Settling Defendants shall each bear their own costs and attorneys' fees incurred in this action.
8. Settling Defendants enter into this Agreed Final Order freely and without coercion and acknowledge that they have read, understand, and are prepared to abide by the provisions of this Agreed Final Order.
9. Entry of this Agreed Order is in the public interest.

#### DEFINITIONS

For the purpose of this Agreed Final Order, the following definitions shall apply:

1. "Asset" means any legal or equitable interest in, right to, or claim to, any real and personal property, including, but not limited to, "goods," "instruments," "equipment," "fixtures," "general intangibles," "inventory," "checks," "notes" (as these terms are defined in the Uniform Commercial Code), and all chattel, leaseholds, contracts, mail or other deliveries, shares of stock, lists of consumer

names, accounts, credits, premises, receivables, funds, reserve funds, and cash,  
wherever located.

2. •ASI DefendantsŽ means Affiliate Strategies, Inc., Landmark Publishing Group,  
LLC (d Tc -m6TLe 3i0(Landmark)-250(Publishcubli. s,)twmiGg, PublishcuWritersmeansT\*c -m6

- b. in oral communications, the message shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it;
- c. in communications made through an electronic medium (including but not limited to television, video, radio, and interactive media, including but not limited to the Internet, online services, and software), the message shall be presented simultaneously in both the audio and visual portions of the communication. In any communication presented solely through visual or audio means, the message may be made through the same means in which the communication is presented. In any communication disseminated by means of an interactive electronic medium, including but not limited to software, the Internet, or online services, a disclosure must be unavoidable and presented prior to the consumer incurring any financial obligation. Any audio message shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. Any visual message shall be of a size and shade, with a degree of contrast to the background against which it appears, and shall appear on the screen for a

duration and in a location sufficiently noticeable for an ordinary consumer to read and comprehend it; and

- d. regardless of the medium used to disseminate it, the message shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the message shall be used in any communication.

5. •Corporate DefendantsŽ means Wealth Power Systems, LLC, and Aria Financial Services LLC and their successors and assigns.
6. •Document Ž is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts, Internet sites, WebPages, Websites, electronic correspondence, including e mail and instant messages, photographs, audio and video recordings, contracts, accounting data, advertisements (including, but not limited to, advertisements placed on the World Wide Web), FTP Logs, Server Access Logs, USENET Newsgroup postings, World Wide Web pages, books, written or printed records, handwritten notes, telephone logs, telephone scripts, receipt books, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, computer records, and other data compilations from which information can be obtained and translated. A draft or non identical copy is a separate document within the meaning of the term.





provider automatically ships products to a consumer unless the consumer notifies the seller or provider within a certain time not to ship the products; and (iii) automatic renewal plans in which the seller or provider automatically renews the agreement and charges the consumer unless the consumer cancels before the renewal.

10. •Plaintiffs Ž means the Federal Trade Commission, and the States of Illinois, Kansas, Minnesota, and North Carolina.
11. •RepresentativesŽ shall have the same scope as Federal Rule of Civil Procedure 65(d)(2).
12. •Settling Defendants Ž means the Corporate Defendants agreeing to this Agreed Order, individually, collectively, or in any combination.
13. •Telemarketing Ž means a plan, program, or campaign which is conducted to

ORDER

I.

BAN ON MARKETING GRANT RELATED PRODUCTS AND  
SERVICES AND USING GRANT LEADS

IT IS THEREFORE ORDERED that Settling Defendants, whether acting directly or through any person, corporation, partnership, subsidiary, division, agent, or other device, are hereby permanently restrained and enjoined from:

- A. Advertising, marketing, promoting, offering for sale, or sale of any Grant Related Products and Services;
- B. Assisting others engaged in advertising, marketing, promoting, offering for sale, or sale of any Grant Related Products and Services; and
- C. Using or assisting others to use Grant Leads to advertise, promote, market, offer for sale, sell, or distribute any good or service.

II.

PROHIBITED REPRESENTATIONS

IT IS ORDERED that Settling Defendants and their Representatives, whether acting directly or through any person, corporation, partnership, subsidiary, division, agent, or other device, in connection with the advertising, marketing, promotion, offering for sale, or sale of any good or service, are hereby permanently restrained and

enjoined from misrepresenting or assisting others in misrepresenting, expressly or by implication, any material fact, including but not limited to:

- A. Any material aspect of the nature or terms of any refund, cancellation, exchange, or repurchase policy, including, but not limited to, the likelihood of a consumer obtaining a full or partial refund, or the circumstances in which a full or partial refund will be granted to the consumer;
- B. The total costs to purchase, receive, or use, and the quantity of, the good or service;
- C. Any material restriction, limitation, or condition to purchase, receive, or use the good or service;
- D. Any material term, condition, or limitation, of any offer with a Negative Option Feature; and
- E. Any material aspect of the performance, efficacy, nature, or characteristics of the good or service.

### III.

#### SUBSTANTIATION

IT IS FURTHER ORDERED that Settling Defendants and their Representatives, whether acting directly or through any person, corporation, partnership, subsidiary, division, agent, or other device, in connection with the manufacturing, labeling,

advertising, promotion, offering for sale, sale, or distribution of any good or service, in or affecting commerce are hereby permanently restrained and enjoined from making, or assisting others in making, any representation, in any manner, expressly or by implication, including through the use of a product name, endorsement, depiction, or illustration, about that product or service unless the representation is true, non misleading, and, at the time the representation is made, the Settling Defendants possess and rely upon competent and reliable evidence that substantiates the representation.

#### IV.

#### REQUIRED DISCLOSURES

IT IS FURTHER ORDERED that Settling Defendants and their Representatives,

free goods or services, or goods or services available on a trial basis);

3. All material terms and conditions of any cancellation or refund policy, including but not limited to informing consumers if no cancellations or refunds are permitted; and
4. All material terms and conditions of any offer with a Negative Option Feature, including but not limited to:
  - a. The fact that the customer's account will be charged unless the customer takes affirmative action to avoid the charges;
  - b. The dollar amount of the first payment and when it will be charged, withdrawn, or become due; the dates or frequency (e.g., monthly, quarterly) of all subsequent charges or payment(s); and the dollar amount or range of costs of all subsequent charges or payments;
  - c. When any trial period begins; the length of any trial period; the specific steps and means by which a cancellation request must be submitted; and the date by, or time period within which, a cancellation request must be received to avoid a charge;

- d. The length of any renewal period; the manner in which a notice not to ship or renew must be submitted; the date by or time period within which a notice not to ship or renew must be received to avoid shipment or renewal ( e.g.,two weeks after the consumer is advised of an upcoming shipment or renewal); and the telephone number, email address, or street address to which such a notice must be directed; and
  - e. All material conditions, limitations, and restrictions on the ability of the consumer to use any good or service that is offered as ~~A~~free,Ž •risk free,Ž •without obligation,Ž or •discounted,Ž or offered using words of similar import denoting or implying the absence of any obligation; and
- B. At least thirty (30) days prior to renewing a consumer's membership, subscription, or agreement to purchase for any good or service (in the case of a membership, subscription, or agreement whose term is six (6) months or longer) and prior to the submission for payment of a consumer's billing information for such goods or services, send the consumer written confirmation of such renewal, identified in a clear and conspicuous manner on the outside of the envelope, via first class mail, that includes all of the information required by this Section and a clear and conspicuous

statement of the procedures by which the consumer can cancel such renewal.

V.

the amended Rule, on and after the effective date of any such amended Rule.

VI.

PROHIBITION AGAINST VIOLATION OF CERTAIN STATE LAWS



- D. North Carolina laws, including the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75 1.1 et seq.

VII.

CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Settling Defendants and their Representatives, whether acting directly or through any person, corporation, partnership, subsidiary, division, agent, or device, are permanently restrained and enjoined from:

- 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), of any person which was obtained by any Settling Defendant from any ASI Defendant prior to entry of this Agreed Order in connection with the marketing and sale of grant related goods and services (•ASI CustomersŽ); provided however that ASI Customer information limited to name and telephone number may be preserved for the sole purpose of maintaining a •do not contactŽ list to prevent Settling Defendants and their Representatives from contacting ASI Customers; and
- B. failing to dispose of ASI Customer information in all forms, except as described in Section VII A above, in their possession, custody, or control

within thirty (30) days after entry of this Agreed Order. Disposal shall be by means that protect against unauthorized access to the customer information, such as by burning, pulverizing, or shredding any papers, and by erasing or destroying any electronic media, to ensure that the customer information cannot practicably be read or reconstructed.

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

#### VIII.

#### MONETARY JUDGMENT

IT IS FURTHER ORDERED that:

- A. Judgment is hereby entered in favor of the Plaintiffs and against Settling Defendants, jointly and severally, in the amount of Three Million Four Hundred Seven Thousand Two Hundred Sixty Two Dollars (\$3,407,262) for the payment of equitable monetary relief including, but not limited to consumer restitution and/or disgorgement, and for paying any attendant expenses of administration of any restitution fund. Provided, however, that, upon payment of a total of two hundred and sixty five thousand dollars (\$265,000) by the Settling Defendants, pursuant to the Section of this Order titled "Payment of Judgment," this agreed monetary judgment shall

be suspended as against all Settling Defendants as long as the Court makes no finding, as provided in the Section of this Order titled Right to Reopen, that any Settling Defendant materially misrepresented or omitted the nature, existence or value of any asset.

- B. Upon entry of this Agreed Order this monetary judgment shall become immediately due and payable by Settling Defendants and interest, computed pursuant to 28 U.S.C. § 1961(a), as amended, immediately shall begin to accrue upon the unpaid balance.
- C. Funds paid to the Plaintiffs pursuant to this Section shall be deposited into a fund or funds administered by the Plaintiffs or their designated representatives to be used for equitable relief, including, but not limited to, consumer restitution and any attendant expenses for the administration any restitution fund. Settling Defendants will cooperate fully to assist the Plaintiffs in identifying consumers who may be entitled to restitution from the funds paid to the Plaintiffs pursuant to this Section.
- D. In the event that direct restitution to consumers is wholly or partially impracticable or funds remain after restitution is completed, the Plaintiffs may apply funds for any other equitable relief (including consumer

funds paid to the Commission not used for equitable relief shall be deposited into the U.S. Treasury as disgorgement. Any funds paid to any State Plaintiff not used for equitable relief may be used by that State Plaintiff to the full extent authorized by that State's laws, including, but not limited to, as payment for that State's costs of investigating and litigating the instant case. Settling Defendants shall have no right to challenge Plaintiffs' choice of remedies under this Section.

- E. Settling Defendants relinquish all dominion, control, and title to the funds paid to the fullest extent permitted by law. Settling Defendants shall make no claim to or demand return of the funds, directly or indirectly, through counsel or otherwise.
- F. Settling Defendants agree that the facts as alleged in the Amended Complaint in this action shall be taken as true without further proof in any bankruptcy case or subsequent civil litigation pursued by Plaintiffs to enforce their rights to any payment or money judgment pursuant to this Agreed Order, including but not limited to a nondischargeability complaint in any bankruptcy case. Settling Defendants further stipulate and agree that the facts alleged in the Amended Complaint establish all elements necessary to sustain an action by Plaintiffs pursuant to Section

523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and that this Agreed Order shall have collateral estoppel effect for such purpose.

G. Settling Defendants acknowledge and agree that the judgment payment entered pursuant to this Section in the FTC's favor is equitable monetary relief, solely remedial in nature, and is not a fine, penalty, punitive assessment, or forfeiture.

H. Settling Defendants are hereby required, in accordance with 31 U.S.C. § 7701, to furnish to the Commission their taxpayer identifying numbers (social security number or employer identification number), which shall be used for purposes of collecting and reporting on any delinquent amount arising out of Settling Defendants' relationship with the government.

#### IX.

#### PAYMENT OF JUDGMENT

IT IS FURTHER ORDERED that, within ten (10) business days of the entry of this Agreed Order, Settling Defendants shall satisfy the Monetary Judgment in Section VIII by transferring two hundred sixty five thousand dollars (\$265,000) by authorizing electronic fund transfers to accounts identified by representatives of Plaintiffs, or by delivering certified or cashier's checks to Plaintiffs, in the following amounts: \$53,000 to

the FTC, \$53,000 to the State of Illinois, \$53,000 to the State of Kansas, \$53,000 to the State of Minnesota, and \$53,000 to the State of North Carolina.

X.

#### RIGHT TO REOPEN

IT IS FURTHER ORDERED that:

- A. Within ten (10) days after the date of entry of this Order by the Court, Defendants Wealth Power Systems and Aria Financial Services each shall submit to the Commission a truthful sworn statement (in the form shown on Attachment B of this Order), that shall reaffirm and attest to the truthfulness, accuracy, and completeness of the sworn financial statements previously provided to the Commission and dated July 18, 2011 (•Financial StatementsŽ) respectively. The Plaintiffs agreement to this Order is expressly premised upon the truthfulness, accuracy, and completeness of Settling Defendants financial condition, as represented in the Financial Statements referenced above, which contain material information upon which Plaintiffs relied in negotiating and agreeing to the terms of this Order;
- B. If, upon motion by the Commission to the Court, the Court finds that any Settling Defendant failed to disclose any material asset, materially misrepresented the value of any asset, or made any other material

misrepresentation or omission in Settling Defendants' financial statements, the suspension of the monetary judgment as to such Settling Defendant will be terminated and the entire judgment amount of Three Million Four Hundred Seven Thousand Two Hundred Sixty Two Dollars (\$3,407,262) less any amounts paid by Settling Defendants, shall become immediately due and payable by that Settling Defendant, and interest computed at the rate prescribed under 28 U.S.C. § 1961, as amended, shall begin immediately to accrue on the unpaid balance, provided however that if such amount becomes due and payable from both Settling Defendants pursuant to this provision, the Settling Defendants shall be jointly and severally liable for payment of such amount; and

- C. Proceedings instituted under this Section are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings the Plaintiffs may initiate to enforce this Order.

XI.

COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of (i) monitoring and investigating compliance with any provision of this Agreed Order, and (ii) investigating

the accuracy of any Settling Defendants' financial statements upon which the Plaintiffs' agreement to this Agreed Order is expressly premised:

- A. Within ten (10) business days of receipt of written notice from a representative of the Commission, Settling Defendants each shall submit additional written reports, which are true and accurate and sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and provide entry during normal business hours to any business location in each Settling Defendant's possession or direct or indirect control to inspect the business operation;
- B. In addition, the Commission is authorized to use all other lawful means, including but not limited to:
  1. Obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, 45 and 69;
  2. Having its representatives pose as consumers and suppliers to Settling Defendants, their employees, or any other entity managed or controlled in whole or in part by any Settling Defendant, without the necessity of identification or prior notice; and
- C. Within ten (10) business days of receipt of written notice from a representative of the Commission, Settling Defendants each shall permit



representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Agreed Order. The person interviewed may have counsel present.

Provided however, that nothing in this Agreed Order shall limit 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, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

## XII.

### COMPLIANCE REPORTING

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Agreed Order may be monitored:

- A. For a period of four (4) years from the date of entry of this Agreed Order, the Settling Defendants shall notify the Commission of any changes in structure of any Corporate Defendant or any business entity that any Settling Defendant directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Agreed Order, including but not limited to: incorporation or other organization; a dissolution, assignment, sale, merger, or other action; the

creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Agreed Order; or a change in the business name or address, at least thirty (30) days prior to such change, provided that, with respect to any such change in the business entity about which a Settling Defendant learns less than thirty (30) days prior to the date such action is to take place, such Defendant shall notify the Commission as soon as is practicable after obtaining such knowledge.

- B. One hundred eighty (180) days after the date of entry of this Agreed Order and annually thereafter for a period of four (4) years, Settling Defendants each shall provide a written report to the FTC, which is true and accurate and sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this Agreed Order. This report shall include, but not be limited to:
1. A copy of each acknowledgment of receipt of this Agreed Order, obtained pursuant to the Section titled "Distribution of Order;" and
  2. Any other changes required to be reported under Subsection A of this Section.
- C. Each Settling Defendant shall notify the Commission of the filing of a bankruptcy petition by such Defendant within fifteen (15) days of filing.

- D. For the purposes of this Agreed Order, Settling Defendants shall, unless otherwise directed by the Commission's authorized representatives, send by overnight courier all reports and notifications required by this Agreed Order to the Commission, to the following address:

Associate Director for Enforcement  
Bureau of Consumer Protection  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Re: FTC v. Affiliate Strategies et al., FTC case no. X090073

Provided that, in lieu of overnight courier, Settling Defendants may send such reports or notifications by first class mail, but only if Settling Defendants contemporaneously send an electronic version of such report or notification to the Commission at: [DEBrief@ftc.gov](mailto:DEBrief@ftc.gov).

- E. For purposes of the compliance reporting and monitoring required by this Agreed Order, the Commission is authorized to communicate directly with each Settling Defendant.

### XIII.

#### RECORDKEEPING

- A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
- B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;
- C. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;
- D. Complaints and refund requests (whether received directly or indirectly, such as through a third party,) and any responses to those complaints or requests;
- E. Copies of all sales scripts, training materials, advertisements, or other marketing materials; and
- F. All records and documents necessary to demonstrate full compliance with each provision of this Agreed Order, including but not limited to, copies of acknowledgments of receipt of this Agreed Order required by the Sections titled •Distribution of OrderŽ and •Acknowledgment of Receipt

of OrderŽ and all reports submitted to the FTC pursuant to the Section titled •Compliance Reporting.Ž

XIV.

DISTRIBUTION OF ORDER

IT IS FURTHER ORDERED that, for a period of four (4) years from the date of entry of this Agreed Order, Settling Defendants shall deliver copies of the Agreed Order as directed below:

- A. Each Settling Defendant must deliver a copy of this Order to (1) all of its principals, officers, directors, and managers; (2) all of its employees, agents, and representatives who engage in telemarketing; and (3) any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled •Compliance Reporting.Ž For current personnel, delivery shall be within five (5) business days of service of this Order upon such Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities. For any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled •Compliance Reporting,Ž delivery shall be at least ten (10) business days prior to the change in structure.

- B. Settling Defendants must secure a signed and dated statement acknowledging receipt of the Order, within thirty (30) days of delivery, from all persons receiving a copy of the Order pursuant to this Section.

XV.

ACKNOWLEDGMENT OF RECEIPT OF ORDER

IT IS FURTHER ORDERED that each Settling Defendant, within five (5) days of receipt of this Agreed Order as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Agreed Order.

XVI.

COOPERATION WITH PLAINTIFFS• COUNSEL

IT IS FURTHER ORDERED that Settling Defendants, and each of them, shall, in connection with this action or any subsequent investigations related to or associated with the transactions or the occurrences that are the subject of the Amended Complaint, cooperate in good faith with Plaintiffs• counsel and appear, or cause its officers, employees, representatives, or agents to appear, at such places and times as any Plaintiff shall reasonably request, after written notice, for interviews, conferences, pretrial discovery, review of documents, and for such other matters as may be reasonably requested by any Plaintiff. If requested in writing by a Plaintiff, a Settling Defendant shall appear, or cause its officers, employees, representatives, or agents to appear, and provide truthful testimony in any trial, deposition, or other proceeding

related to or associated with the transactions or the occurrences that are the subject of the Amended Complaint, without the service of a subpoena.

XVII.

ENTRY OF ORDER

IT IS FURTHER ORDERED that there is no just reason for delay, and the Clerk of Court is hereby directed to enter this Agreed Order immediately.

XVIII.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Agreed Order.

SO ORDERED, this 12<sup>th</sup> day of August, 2011.

s/ Julie A. Robinson  
JULIE A. ROBINSON  
UNITED STATES DISTRICT JUDGE

Signatures continue

S/ D. Brad Baile

S/ Gary L. Iven

S/ J. Phillip Gagso

S/ Meghan E. Stdppe



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David N. Kirkman, Esq.

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ATTACHMENT A THE TELEMARKETING SALES RULE

Pt. 310

16 CFR Ch. I (1...1...11 Edition)

**PART 310, TELEMARKETING SALES  
RULE 16 CFR PART 310**

Sec.

310.1 Scope of regulations in this part.

310.2 Definitions.

310.3 Deceptive telemarketing acts or practices.

310.4 Abusive telemarketing acts or practices.

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.

§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.

Federal Trade Commission

§ 310.2

§ 310.2

16 CFR Ch. I (1...1...11 Edition)

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,

## Federal Trade Commission

## § 310.3

§ 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:

(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>

(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

<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.

<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.

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

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<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.

<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.

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(ii) Express oral authorization which is audio-recorded and made available upon request to the customer or donor,

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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.

§ 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

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(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)(6)(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)(6)(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)(6)(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)(6)(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





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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.

## § 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>

(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

<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.

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.

#### § 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

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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,

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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]

#### § 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.

ATTACHMENT B

UNITED STATES DISTRICT COURT  
DISTRICT OF KANSAS

<p>FEDERAL TRADE COMMISSION et al.,</p> <p>Plaintiffs,</p> <p>v.</p> <p>AFFILIATE STRATEGIES, INC., et al.</p> <p>Defendants.</p>
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Case No. 5:09-CV-04104-JAR-KGS

AFFIDAVIT OF DEFENDANT  
ATTESTING TO  
TRUTHFULNESS OF  
INDIVIDUAL FINANCIAL  
STATEMENTS

I, \_\_\_\_\_, hereby state that the information contained in the  
Financial Statement of Defendant \_\_\_\_\_, dated \_\_\_\_\_, was  
to the best of my information, knowledge, and belief, true, accurate, and complete at  
such time.

I declare under penalty of perjury under the laws of the United States that the  
foregoing is true and correct.

Executed on \_\_\_\_\_ [date] at \_\_\_\_\_ [city and state].

[Signature of Defendant]

[Print Full Name]

State of \_\_\_\_\_, City of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

Notary Public

My Commission Expires: