54. Payments cleared through the ACH network are subject to oversight by NACHA - The Electronic Payments Association ("NACHA"), a self-regulatory trade association that enforces a system of rules, monitoring, and penalties for noncompliance. NACHA monitors the levels at which ACH debits are returned (or rejected) by consumers or consumers' banks, among other reasons, because high rates of returned transactions can be indicative of unlawful practices.

55. The credit and debit card networks ("card networks"), such as MasterCard and Visa, also have rules regarding onboarding and monitoring of merchants, and penalties for noncompliance. These include heightened monitoring requirements for merchants designated as high risk, such as telemarketers.

56. The card networks require network participants – including merchants, payment processors, and merchant banks – to monitor transactions for unusual activity indicative of fraud or deception. One prominent indicator is high chargeback rate. Chargebacks occur when customers contact their credit card issuing bank to dispute a charge appearing on their credit card account statement. Merchants with high chargeback rate may be placed in a monitoring program and their sponsoring banks may be subject to fees and fines.

57. Unlike ACH and debit and credit card transactions, RCPOs are not subject to centralized and systemic monitoring.

58. Since June 13, 2016, the TSR has prohibited sellers and telemarketers, whether making outbound calls or accepting inbound calls, from using RCPOs in telemarketing sales. The FTC added this prohibition to the TSR because, after an

more telephones and which involves more than one interstate telephone call. 16 C.F.R. § 310.2(gg).

115. The TSR prohibits sellers and telemarketers from creating or causing to be created, directly or indirectly, a remotely created payment order (RCPO) as payment for goods or services offered or sold through telemarketing. 16 C.F.R. § 310.4(a)(9). A remotely created payment order includes a remotely created check 16 C.F.R. § 310.2(cc).

116. It is a deceptive telemarketing act or practice and a violation of this Rule for a person to provide substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice that violates Section 310.3(a), (c), or (d) or Section 310.4 of this Rule. 16 C.F.R. § 310.3(c).

117. The TSR prohibits sellers and telemarketers from making any false or misleading statements to induce a person to pay for goods or services. 16 C.F.R. § 310.3(a)(4).

118. The Defendants knew or consciously avoided knowing that a telemarketer made a false or misleading statement to induce a person to pay for goods or services during the time periods set forth in the complaint.

119. 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), a violation of the TSR constitutes an unfair or deceptive act or practice in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

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