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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT SEATTLE

11 FEDERAL TRADE COMMISSION and
12 STATE OF WASHINGTON,

13 Plaintiffs,

14 v.

15 DEBT SOLUTIONS, INC., a Florida
16 corporation, also doing business as DSI
17 Financial, Inc., and Accelerated Financial, Inc.;
18 DSI FINANCIAL, INC., a Florida corporation,
19 also doing business as Accelerated Financial,
20 Inc.; DSI DIRECT, INC., a Florida
21 corporation; PACIFIC CONSOLIDATION
22 SERVICES, INC., a Washington corporation,
23 also doing business as DSI Financial, Inc., and
24 Accelerated Financial, Inc.; KENNETH
25 SCHWARTZ, individually and as an officer of
26 Debt Solutions, Inc., DSI Financial, Inc., and
27 DSI Direct, Inc.; JENNIFER RUTH
28 WHALEN, aka Jennifer Ruth Krizan,
individually and as an officer of Pacific
Consolidation Services, Inc., and DSI Direct,
Inc.; DAVID SCHWARTZ, individually and
as a manager of Pacific Consolidation
Services, Inc.; and GREG MOSES,
individually and as a manager of Pacific
Consolidation Services and DSI Direct, Inc.,

Defendants.

Case No.

**COMPLAINT FOR PERMANENT
INJUNCTION AND OTHER RELIEF**

[FILED UNDER SEAL]

Plaintiffs, the Federal Trade Commission ("FTC" or "Commission") and the State of

1 Washington, for their Complaint against Debt Solutions, Inc., DSI Financial, Inc., DSI Direct, Inc.,
2 Pacific Consolidation Services, Inc., Kenneth Schwartz, Jennifer Ruth Whalen, David Schwartz, and
3 Greg Moses (collectively “defendants”), allege:

4 1. The FTC brings this action under Sections 13(b) and 19 of the Federal Trade
5 Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer
6 Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101-6108, to obtain temporary,
7 preliminary, and permanent injunctive relief, rescission or reformation of contracts, restitution,
8 disgorgement, and other equitable relief for defendants’ acts and practices in violation of Section 5(a)
9 of the FTC Act, 15 U.S.C. § 45(a), and in violation of the FTC’s Telemarketing Sales Rule (“TSR”),
10 16 C.F.R. Part 310.

11 2. The State of Washington brings this action under Section 4(a) of the Telemarketing Act,
12 15 U.S.C. § 6103 (a), and under the Washington Unfair Business Practices-Consumer Protection Act,
13 Wash. Rev. Code § 19.86, and the Washington Commercial Telephone Solicitation Act, Wash. Rev.
14 Code § 19.158.

15 16 **JURISDICTION AND VENUE**

17 3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.
18 §§ 1331, 1337(a), 1345, and 1367, and 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), 6103(a), and 6105(b).

19 4. Venue in the United States District Court for the Western District of Washington is
20 proper under 28 U.S.C §1391(b), (c), and (d) and 15 U.S.C. §§ 53(b) and 6103(a).

21 22 **PLAINTIFFS**

23 5. Plaintiff FTC is an independent agency of the United States Government created by
24 statute. 15 U.S.C. §§ 41- 58. The FTC is charged, *inter alia*, with enforcement of Section 5(a) of the
25 FTC Act, 15 U.S.C. § 45(a), which prohibits unfair and deceptive acts or practices in or affecting
26 commerce. The FTC is also charged with enforcement of the Telemarketing Act, 15 U.S.C. §§ 6101-
27 6108. Pursuant to the Telemarketing Act, the FTC promulgated and enforces the TSR, 16 C.F.R. Part
28 310, which prohibits deceptive and abusive telemarketing acts or practices. The FTC also enforces the

1 Do Not Call provisions of the TSR and maintains the National Do Not Call Registry. 16 C.F.R.
2 §§ 310.4(b)(1)(ii)-(iii), 310.4(b)(2)-(3), and 310.8. The FTC is authorized to initiate federal district
3 court proceedings, by its own attorneys, to enjoin violations of the FTC Act and the TSR, and to secure
4 such equitable relief as may be appropriate in each case, including restitution and disgorgement. 15
5 U.S.C. §§ 53(b), 57b, 6102(c), and 6105(b).

6 6. Plaintiff State of Washington is one of the fifty sovereign states of the United States.
7 The State of Washington is authorized to initiate federal district court proceedings to enjoin
8 telemarketing practices that violate the Commission's Telemarketing Sales Rule and, in each such case,
9 to obtain damages, restitution, and other compensation on behalf of residents of the State of
10 Washington, and to obtain such further and other relief as the Court may deem appropriate. 15 U.S.C.
11 § 6103(a). The State of Washington is also authorized to enjoin violations of the Washington State
12 Unfair Business Practices-Consumer Protection Act, Wash. Rev. Code § 19.86, and the Washington
13 State Commercial Telephone Solicitation Act, Wash. Rev. Code § 19.158, and to obtain such damages,
14 restitution, civil penalties, and other compensation and relief as the Court may deem appropriate.
15

16 DEFENDANTS

17 7. Defendant DEBT SOLUTIONS, INC. ("DSI"), also doing business as DSI Financial,
18 Inc., and Accelerated Financial, Inc., is a Florida corporation with its principal place of business at
19 7300 North Federal Highway, Boca Raton, Florida. Defendant DSI sells a program to consumers that
20 purports to provide consumers with substantial savings by lowering their credit card interest rates.
21 Defendant DSI transacts or has transacted business in the Western District of Washington.

22 8. Defendant DSI FINANCIAL, INC. ("DSI Financial"), also doing business as
23 Accelerated Financial, Inc., is a Florida corporation with its principal place of business at 7300 N.
24 Federal Highway, Boca Raton, Florida. DSI Financial was incorporated in August 2003 to operate the
25 business of defendant DSI. Defendant DSI Financial transacts or has transacted business in the
26 Western District of Washington.

27 9. Defendant DSI DIRECT, INC. ("DSI Direct"), is a Florida corporation with its principal
28 place of business at 7300 N. Federal Highway, Boca Raton, Florida. From June 2004 to October 2004,

1 DSI Direct maintained a sales office located in Federal Way, Washington to market and sell DSI's
2 programs, products, and services. Defendant DSI Direct transacts or has transacted business in the
3 Western District of Washington.

4 10. Defendant PACIFIC CONSOLIDATION SERVICES, INC. ("PCS"), also doing
5 business as DSI Financial, Inc., and Accelerated Financial, Inc., is a Washington corporation
6 incorporated in October 2004. Prior to PCS's incorporation, defendant Jennifer Ruth Whalen operated
7 the same business as a sole proprietorship. Until July 8, 2005, PCS's principal place of business was at
8 1330 N. Washington, Spokane, Washington. Its current principal place of business is at 2505 South
9 320th Street, Federal Way, Washington. PCS provides customer services, sales verifications,
10 scheduling, financial consulting, and prepares financial analyses for consumers who purchase DSI's
11 program, goods, and services. Defendant PCS transacts or has transacted business in the Western
12 District of Washington.

13 11. Defendant KENNETH SCHWARTZ ("Kenneth Schwartz") is president, director, and
14 43.5% shareholder of DSI, president and sole owner of DSI Financial, and president and 50% owner
15 of DSI Direct. In connection with the matters alleged herein, he resides or has transacted business in
16 the Western District of Washington. At all times material to this Complaint, acting alone or in concert
17 with others, he has formulated, directed, controlled, or participated in the acts and practices of DSI,
18 DSI Financial, and DSI Direct, including the acts and practices set forth in this Complaint.

19 12. Defendant JENNIFER RUTH WHALEN ("Whalen"), aka Jennifer Ruth Krizan, is the
20 sole owner of PCS and is a 50 percent owner and the vice-president of DSI Direct. In connection with
21 the matters alleged herein, she resides or has transacted business in the Western District of
22 Washington. At all times material to this Complaint, acting alone or in concert with others, she has
23 formulated, directed, controlled, or participated in the acts and practices of DSI Direct and PCS,
24 including the acts and practices set forth in this Complaint.

25 13. Defendant DAVID SCHWARTZ ("David Schwartz") is a manager of PCS. In
26 connection with the matters alleged herein, he resides or has transacted business in the Western District
27 of Washington. At all times material to this Complaint, acting alone or in concert with others, he has
28 formulated, directed, controlled, or participated in the acts and practices of PCS, including the acts and

1 practices set forth in this Complaint.

2 14. Defendant GREG MOSES (“Moses”) is a manager of PCS and DSI Direct. In
3 connection with the matters alleged herein, he resides or has transacted business in the Western District
4 of Washington. At all times material to this Complaint, acting alone or in concert with others, he has
5 formulated, directed, controlled, or participated in the acts and practices of PCS and DSI Direct,
6 including the acts and practices set forth in this Complaint.

7
8 **DEFENDANTS’ BUSINESS PRACTICES**

9 15. Since at least 2002, defendants’ telemarketers have made unsolicited telephone calls to
10 consumers nationwide from telemarketing rooms located throughout the United States and in the
11 Phillippines to market and sell what defendants have labeled a “debt elimination program.”
12 Defendants also market their program via the Internet on several Web sites, including
13 www.debt2wealth.com and www.acceleratedfinancialinc.com. While telemarketing their program,
14 defendants did not pay necessary fees to access telephone numbers that consumers have placed on the
15 National Do Not Call Registry (“Registry”) and, consequently, have made numerous calls to telephone
16 numbers on the Registry. Only DSI has accessed the Registry and only for a single area code in
17 California, despite calling consumers outside of that area code. Further, defendants’ telemarketers
18 have called consumers who have specifically requested not to receive calls by or on behalf of
19 defendants.

20 16. In the unsolicited telephone calls, defendants’ telemarketers tell consumers that
21 defendants can negotiate substantially lower interest rates for them on their credit cards and other
22 loans. Defendants’ telemarketers tell consumers that if they purchase defendants’ program, they will
23 be assigned a financial consultant who will use special relationships and contacts with consumers’
24 creditors to negotiate substantially lower interest rates for them, for example, as low as 6.9 percent,
25 save them thousands of dollars, reduce their monthly debt payments, and enable them to pay off their
26 debt three to five times faster without increasing their monthly payments. Defendants’ telemarketers
27 also assure consumers that the program includes a lifetime membership they can use at any time for
28 financial consulting. Consumers also are guaranteed a full refund if they do not save \$2500 as a result

1 of the lowered interest rates. To further persuade consumers to purchase the program, defendants'
2 telemarketers tell consumers that their program is endorsed by two organizations, the Financial
3 Standards Council in Canada and the Registered Financial Planners Institute. These endorsements also
4 appear on defendants' Web sites. Consumers pay from \$399 to \$629 for the program.

5 17. After consumers purchase defendants' "debt elimination" program, they receive forms
6 in the mail on which to list their creditors' names, balances, and interest rates. This form can also be
7 filled out on the Internet at defendants' Web sites. Consumers are instructed to return the form to
8 defendants. Using this form, defendants' financial consultants purport to contact consumers' creditors
9 and seek to reduce consumers' interest rates.

10 18. Defendants also send consumers a "financial analysis" informing consumers which, if
11 any, of their credit card and loan interest rates were lowered. The "financial analysis" also includes a
12 computer-generated statement that compares two possible payment options for consumers. The first
13 option assumes the consumer will pay the minimum payment due each month on each credit card or
14 other debt. The second option assumes the consumer will pay a higher amount than the monthly
15 payment due on each debt. Not surprisingly, under the second option, the consumer will pay off the
16 debts years ahead of the first option and save thousands of dollars in interest payments. The "financial
17 analysis" recommends the second option to consumers and, based on this recommendation, defendants
18 claim they have saved consumers thousands of dollars. Because defendants do not ask consumers what
19 they actually pay each month on their debts, the savings projected in the "financial analysis" may bear
20 no relation to consumers' actual financial situation.

21 19. Contrary to defendants' representations, defendants' purported financial consultants do
22 not have special relationships or contacts with creditors and lenders and usually are unable to negotiate
23 substantially lower interest rates for consumers. When defendants' purported financial consultants
24 actually are able to negotiate lower rates on consumers' credit cards, the new rates are rarely more than
25 one percentage point lower than what consumers already have. Further, consumers do not save
26 thousands of dollars, their monthly debt payments are not reduced, and they are unable to pay off their
27 debts three to five times faster as a result of the promised reduction of their credit card and loan interest
28 rates.

1 20. Although defendants promise that consumers can obtain a full refund if they do not save
2 at least \$2500, defendants do not honor this money-back guarantee. Defendants reject refund requests
3 because they claim their “financial analysis” shows how the promised savings could occur. Defendants
4 do not disclose to consumers, prior to their purchase of the program, that contrary to defendants’
5 representations, the promised savings may take decades to achieve. Neither do defendants disclose that,
6 for the most part, the savings are not based on promised lowered interest rates, but rather are based
7 simply on making monthly payments higher than the minimum allowed by consumers’ creditors. Few
8 consumers have received the guaranteed refund from defendants.

9 21. Also contrary to defendants’ representations, the Financial Planners Standards Council
10 in Canada and the Registered Financial Planners Institute, although legitimate organizations, have never
11 endorsed or otherwise approved defendants’ “debt elimination” program.

12 22. At all times material to this Complaint, defendants have maintained a substantial course
13 of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C.
14 § 44.

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

16 23. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or deceptive acts or
17 practices in or affecting commerce.”

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

20
21 **COUNT ONE (Misrepresentations)**
22 **(By Plaintiff Federal Trade Commission)**

23 25. In connection with the marketing, offering for sale, or sale of defendants’ “debt
24 elimination” program, defendants represent, expressly or by implication, that:

- 25 A. Consumers who purchase defendants’ “debt elimination” program will have their
26 credit card and loan interest rates reduced substantially, for example, as low as
27 6.9 percent, as a result of defendants negotiating reduced interest rates with
28 consumers’ creditors;

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- B. Consumers who purchase defendants' "debt elimination program" will save thousands of dollars in a short time as a result of defendants negotiating reduced interest rates with consumers' creditors;
- C. Consumers who purchase defendants' "debt elimination" program will be able to pay off their debt three to five times faster without increasing their monthly payments as a result of defendants negotiating reduced interest rates with consumers' creditors;
- D. Consumers who purchase defendants' "debt elimination" program will be able to reduce their monthly payments on their credit cards and loans as a result of defendants negotiating reduced interest rates with consumers' creditors;
- E. Defendants have special relationships and contacts with consumers' credit card companies and lenders that enable them to negotiate lower interest rates for consumers; and
- F. Defendants' "debt elimination" program is endorsed or approved by the Financial Planners Standards Council in Canada and the Registered Financial Planners Institute.

26. In truth and in fact, in numerous instances:

- A. Consumers who purchase defendants' "debt elimination program" do not have their credit card and loan interest rates reduced substantially, for example, as low as 6.9 percent, as a result of defendants negotiating reduced interest rates with consumers' creditors;
- B. Consumers who purchase defendants' "debt elimination" program do not save thousands of dollars in a short time as a result of defendants negotiating reduced interest rates with consumers' creditors;
- C. Consumers who purchase defendants' "debt elimination" program are not able to pay off their debt three to five times faster without increasing their monthly payments as a result of defendants negotiating reduced interest rates with consumers' creditors;

- 1 D. Consumers who purchase defendants' "debt elimination" program are not able to
2 reduce their monthly payments on their credit cards and loans as a result of
3 defendants negotiating reduced interest rates with consumers' creditors;
4 E. Defendants do not have special relationships and contacts with consumers' credit
5 card companies and lenders that enable them to negotiate lower interest rates for
6 consumers; and
7 F. Defendants' "debt elimination" program is not endorsed or approved by the
8 Financial Planners Standards Council in Canada and the Registered Financial
9 Planners Institute.

10 27. Therefore, the representations set forth in Paragraph 25 above are false and misleading
11 and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).
12

13 **COUNT TWO (Failure to Disclose Material Refund Condition)**
14 **(By Plaintiff Federal Trade Commission)**

15 28. In connection with the marketing, offering for sale, or sale of defendants' "debt
16 elimination" program, defendants represent, expressly or by implication, that consumers who purchase
17 defendants' "debt elimination" program are guaranteed a full refund if they do not save at least \$2500.

18 29. Defendants fail to disclose that, in most instances, the savings guaranteed to consumers
19 are not the result of defendants negotiating reduced interest rates with consumers' creditors but, instead,
20 purportedly are achieved if consumers follow a computer-generated debt reduction payment schedule
21 that shows how they can save at least \$2500 over the life of their debt.

22 30. These facts are material to consumers in deciding whether to purchase defendants' "debt
23 elimination" program. In light of the representations set forth in Paragraph 28 above, the failure to
24 disclose these facts is a material omission and constitutes a deceptive act or practice in violation of
25 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).
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1 **VIOLATIONS OF THE TELEMARKETING SALES RULE**

2 **THE TELEMARKETING SALES RULE**
3 **AND THE NATIONAL DO NOT CALL REGISTRY**

4 31. Congress directed the FTC to prescribe rules prohibiting abusive and deceptive
5 telemarketing acts or practices pursuant to the Telemarketing Act, 15 U.S.C. §§ 6101-6108, in 1994.
6 On August 16, 1995, the FTC adopted the Telemarketing Sales Rule, 16 C.F.R. Part 310, which became
7 effective on December 31, 1995. On January 29, 2003, the FTC amended the TSR by issuing a
8 Statement of Basis and Purpose (“SBP”) and an amended TSR. 68 Fed. Reg. 4580, 4669.

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

12 33. The TSR also prohibits telemarketers and sellers from misrepresenting, directly or by
13 implication, a seller’s or telemarketer’s affiliation with, or endorsement or sponsorship by, any person
14 or government entity. 16 C.F.R. § 310.3(a)(2)(vii).

15 34. The TSR also prohibits sellers and telemarketers from failing to disclose truthfully, and
16 in a clear and conspicuous manner, before a customer pays for goods and services offered, all the
17 material terms and conditions of a refund, cancellation, exchange, or repurchase policy, if the seller or
18 telemarketer has such a policy and informs the consumers about such policy. 16 C.F.R.
19 § 310.3(a)(1)(iii).

20 35. Among other things, the 2003 amendments to the TSR established a “do-not-call”
21 registry (the “National Do Not Call Registry” or “Registry”), maintained by the FTC, of consumers who
22 do not wish to receive certain types of telemarketing calls. Consumers can register their telephone
23 numbers on the Registry without charge either through a toll-free telephone call or over the Internet at
24 donotcall.gov.

25 36. Consumers who receive telemarketing calls to their registered numbers can complain of
26 Registry violations the same way they registered, through a toll-free telephone call or over the Internet
27 at donotcall.gov, or by otherwise contacting law enforcement authorities.

28 37. On or after September 2, 2003, the FTC allowed sellers, telemarketers, and other

1 permitted organizations to access the Registry over the Internet at telemarketing.donotcall.gov, pay the
2 required fees, and download the registered numbers by area code.

3 38. Since October 17, 2003, sellers and telemarketers subject to the FTC's jurisdiction have
4 been prohibited from calling numbers on the Registry in violation of the TSR. 16 C.F.R.
5 § 310.4(b)(1)(iii)(B).

6 39. Since October 17, 2003, sellers and telemarketers have been prohibited from calling any
7 telephone number within a given area code unless the seller first has paid the annual fee for access to
8 the telephone numbers within that area code that are included in the Registry. 16 C.F.R. § 310.8(a) and
9 (b). There is no charge for the first five area codes of data. Further, sellers or telemarketers accessing
10 the Registry may not participate in any arrangement to share the cost of accessing the Registry,
11 including an arrangement where one seller pays a fee and accesses the Registry for other sellers, the
12 other sellers do not pay fees to the Registry, and the cost of accessing the Registry is thereby divided
13 among the various sellers. 16 C.F.R. § 310.8(c).

14 40. Since December 31, 1995, sellers and telemarketers have been prohibited from initiating
15 an outbound telephone call to any person when that person previously has stated that he or she does not
16 wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services
17 are being offered. 16 C.F.R. § 310.4(b)(1)(iii)(A).

18 41. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c) and Section
19 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the TSR constitutes an unfair or
20 deceptive act or practice in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15
21 U.S.C. § 45(a).

22 42. Pursuant to Section 6103(a) of the TSR, 15 U.S.C. § 6103(a), the State of Washington is
23 authorized to initiate a civil action in this Court to enjoin a pattern or practice of violating the TSR and
24 to obtain damages, restitution, and other compensation on behalf of residents of the State of
25 Washington, and to obtain such further and other relief as the Court may deem appropriate.

26 43. Defendants are "sellers" or "telemarketers" engaged in "telemarketing," as defined by
27 the TSR, 16 C.F.R. § 310.2, as amended.
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COUNT THREE (Misrepresentations)
(By Plaintiffs Federal Trade Commission and the State of Washington)

44. In connection with the telemarketing, offering for sale, or sale of defendants' "debt elimination" program, defendants represent, expressly or by implication, that:

- A. Consumers who purchase defendants' "debt elimination" program will have their credit card and loan interest rates reduced substantially, for example, as low as 6.9 percent, as a result of defendants negotiating reduced interest rates with consumers' creditors;
- B. Consumers who purchase defendants' "debt elimination" program will save thousands of dollars in a short time as a result of defendants negotiating reduced interest rates with consumers' creditors;
- C. Consumers who purchase defendants' "debt elimination" program will be able to pay off their debt three to five times faster without increasing their monthly payments as a result of defendants negotiating reduced interest rates with consumers' creditors;
- D. Consumers who purchase defendants' "debt elimination" program will be able to reduce their monthly payments on their credit cards and loans as a result of defendants negotiating reduced interest rates with consumers' creditors;
- E. Defendants have special relationships and contacts with consumers' credit card companies and lenders that enable them to negotiate lower interest rates for consumers;
- F. Defendants' "debt elimination" program is endorsed or approved by the Financial Planners Standards Council in Canada and the Registered Financial Planners Institute.

45. In truth and in fact, in numerous instances:

- A. Consumers who purchase defendants' "debt elimination" program do not have their credit card and loan interest rates reduced substantially, for example, as low as 6.9 percent, as a result of defendants negotiating reduced interest rates with

1 consumers' creditors;

2 B. Consumers who purchase defendants' "debt elimination" program do not save
3 thousands of dollars in a short time as a result of defendants negotiating reduced
4 interest rates with consumers' creditors;

5 C. Consumers who purchase defendants' "debt elimination" program are not able to
6 pay off their debt three to five times faster without increasing their monthly
7 payments as a result of defendants negotiating reduced interest rates with
8 consumers' creditors;

9 D. Consumers who purchase defendants' "debt elimination" program are not able to
10 reduce their monthly payments on their credit cards and loans as a result of
11 defendants negotiating reduced interest rates with consumers' creditors;

12 E. Defendants do not have special relationships and contacts with consumers' credit
13 card companies and lenders that enable them to negotiate lower interest rates for
14 consumers;

15 F. Defendants' "debt elimination" program is not endorsed or approved by the
16 Financial Planners Standards Council in Canada and the Registered Financial
17 Planners Institute.

18 46. Therefore, defendants' acts and practices, as set forth in Paragraph 44 above, violate
19 Section 310.3(a)(2)(iii) and (vii) of the TSR, 16 C.F. R. § 310.3(a)(2)(iii) and (vii).
20

21 **COUNT FOUR (Failure to Disclose)**
22 **(By Plaintiffs Federal Trade Commission and the State of Washington)**

23 47. In connection with the telemarketing, offering for sale, or sale of defendants' "debt
24 elimination" program, defendants represent, expressly or by implication, that consumers who purchase
25 defendants' "debt elimination" program are guaranteed a full refund if they do not save \$2500.

26 48. Defendants fail to disclose that, in most instances, the savings guaranteed to consumers
27 are not the result of defendants negotiating reduced interest rates with consumers' creditors but, instead,
28 purportedly are achieved if consumers follow a computer-generated debt reduction payment schedule

1 that shows how they can save \$2500 over the life of their debt.

2 49. These terms or conditions are material to consumers in deciding whether to purchase
3 defendants' "debt elimination" program. In light of the representations set forth in Paragraph 47 above,
4 the failure to disclose these terms or conditions, in a clear and conspicuous manner, violates Section
5 310.3(a)(1)(iii) of the TSR, 16 C.F.R. § 310.3(a)(1)(iii).
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7 **COUNT FIVE (Violating the National Do Not Call Registry)**
8 **(By Plaintiffs Federal Trade Commission and the State of Washington)**

9 50. Since October 17, 2003, in numerous instances, in connection with telemarketing,
10 defendants engaged in or caused others to engage in initiating an outbound telephone call to a person's
11 telephone number on the National Do Not Call Registry in violation of the TSR, 16 C.F.R.
12 § 310.4(b)(1)(iii)(B).
13

14 **COUNT SIX (Failing to Pay National Registry Fees)**
15 **(By Plaintiffs Federal Trade Commission and the State of Washington)**

16 51. Since October 17, 2003, in numerous instances, in connection with telemarketing,
17 defendants have initiated or caused others to initiate an outbound telephone call to a telephone number
18 within a given area code without the seller first paying, either directly or through another person, the
19 required annual fee for access to the telephone numbers within that area code that are included in the
20 National Do Not Call Registry, in violation of the TSR, 16 C.F.R. § 310.8.

21 **COUNT SEVEN (Ignoring Entity-Specific Do Not Call Requests)**
22 **(By Plaintiffs Federal Trade Commission and the State of Washington)**

23 52. In numerous instances, in connection with telemarketing, defendants engaged in or
24 caused others to engage in initiating an outbound telephone call to a person who has previously stated
25 that he or she does not wish to receive such a call made by or on behalf of the seller whose goods or
26 services are being offered in violation of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(A).
27
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1 **VIOLATIONS OF UNFAIR BUSINESS PRACTICES-CONSUMER PROTECTION ACT**
2 **AND THE COMMERCIAL TELEPHONE SOLICITATION ACT**

3 **COUNT EIGHT (Unfair or Deceptive Telemarketing)**
4 **(By Plaintiff State of Washington)**

5 53. In connection with the marketing, offering for sale, or sale of defendants' debt
6 elimination program, defendants have made false or misleading representations that include but are not
7 limited to the misrepresentations alleged in Paragraphs 25 and 26 above.

8 54. The conduct described in Paragraph 53 above constitutes unfair or deceptive acts or
9 practices and unfair methods of competition in violation of Wash. Rev. Code § 19.86.020 and also
10 constitutes a violation of Wash. Rev. Code § 19.158.040, which proscribes unfair or deceptive
11 commercial telephone solicitation. Pursuant to Wash. Rev. Code § 19.158.030, the violation of Wash.
12 Rev. Code § 19.158.040 constitutes a *per se* violation of the Consumer Protection Act, Wash. Rev.
13 Code § 19.86.020.

14 **-COUNT NINE (Unfair or Deceptive Telemarketing Refund)**
15 **(By Plaintiff State of Washington)**

16 55. In connection with the marketing, offering for sale, or sale of defendants' "debt
17 elimination" program, defendants represent, expressly or by implication, that consumers who purchase
18 defendants' "debt elimination" program are guaranteed a full refund if they do not save at least \$2500.

19 56. Defendants fail to disclose that, in most instances, the savings guaranteed to consumers
20 are not the result of defendants negotiating reduced interest rates with consumers' creditors but, instead,
21 purportedly are achieved if consumers follow a computer-generated debt reduction payment schedule
22 that shows how they can save at least \$2500 over the life of their debt.

23 57. The conduct described above constitutes unfair and deceptive acts or practices and unfair
24 methods of competition in violation of Wash. Rev. Code § 19.86.020 and also constitutes a violation of
25 Wash. Rev. Code § 19.158.040, which proscribes unfair or deceptive commercial telephone solicitation.
26 Pursuant to Wash. Rev. Code § 19.158.030, the violation of Wash. Rev. Code § 19.158.040 constitutes
27 a *per se* violation of the Consumer Protection Act, Wash. Rev. Code § 19.86.020.
28

1 **CONSUMER INJURY**

2 58. Consumers in the United States have suffered and will suffer injury as a result of
3 defendants' violations of the FTC Act, the TSR, the Washington State Unfair Business Practices-
4 Consumer Protection Act, and the Washington State Commercial Telephone Solicitation Act. Absent
5 injunctive relief by this Court, defendants are likely to continue to injure consumers and harm the
6 public interest.

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

8 59. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant
9 injunctive and such other relief as the Court may deem appropriate to halt and redress violations of the
10 FTC Act. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including
11 rescission of contracts and restitution, and the disgorgement of monies, to prevent and remedy any
12 violation of any provision of law enforced by the FTC.

13 60. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 6(b) of the Telemarketing Act,
14 15 U.S.C. § 6105(b), authorize this Court to grant such relief as the Court finds necessary to redress
15 injury to consumers or other persons resulting from defendants' violations of the TSR, including the
16 rescission and reformation of contracts and the refund of money.

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

21 62. The Washington State Unfair Businesses-Consumer Protection Act, Wash. Rev. Code
22 Chapter 19.86, and the Washington State Commercial Telephone Solicitation Act, Wash. Rev. Code
23 Chapter 19.158, may be enforced by this Court through its pendent or supplemental jurisdiction
24 pursuant to 28 U.S.C. § 1367. This Court is empowered to grant injunctive and such other relief as it
25 may deem appropriate to halt and redress violations of the Washington State Unfair Business Practices-
26 Consumer Protection Act and the Washington State Commercial Telephone Solicitation Act.

27 63. This Court, in the exercise of its equitable jurisdiction, may award other ancillary relief
28 to remedy injury caused by the defendants' law violations.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, plaintiff Federal Trade Commission, pursuant to Sections 13(b) and 19 of the
3 FTC Act, 15 U.S.C. §§ 53(b) and 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b),
4 and the Court's own equitable powers, and plaintiff State of Washington, pursuant to Section 4(a) of the
5 Telemarketing Act, 15 U.S.C. § 6103(a), the Washington State Unfair Business Practices-Consumer
6 Protection Act, the Washington State Commercial Telephone Solicitation Act, and the Court's own
7 equitable powers, request that the Court:

- 8 a. Award plaintiffs such preliminary injunctive and ancillary relief as may be
9 necessary to avert the likelihood of consumer injury during the pendency of this
10 action and to preserve the possibility of effective final relief, including, but not
11 limited to, temporary and preliminary injunctions and an order freezing assets;
- 12 b. Permanently enjoin defendants from violating the FTC Act and the TSR, as
13 alleged herein;
- 14 c. Permanently enjoin defendants from violating the Washington State Unfair
15 Business Practices-Consumer Protection Act and the Washington State
16 Commercial Telephone Solicitation Act as alleged herein;
- 17 d. Award such relief as the Court finds necessary to redress injury to consumers
18 resulting from defendants' violations of the FTC Act, the TSR, the Washington
19 State Unfair Business Practices-Consumer Protection Act, and the Washington
20 State Commercial Telephone Solicitation Act, including, but not limited to,
21 rescission or reformation of contracts, restitution, refund of monies paid, and the
22 disgorgement of ill-gotten monies;
- 23 e. Assess a civil penalty, pursuant to Wash. Rev. Code § 19.86.140 and Wash. Rev.
24 Code § 19.158.140, of from \$500 to \$2,000 per violation against each defendant
25 for each and every violation of Wash. Rev. Code § 19.86.020 caused by the
26 conduct alleged herein; and
- 27 d. Award plaintiffs the costs of investigating and bringing this action and
28 reasonable attorneys' fees, as well as such other and additional relief as the Court

1 may determine to be just and proper.
2

3 Dated: March 6, 2006

4 Respectfully Submitted,

5 WILLIAM BLUMENTHAL
6 General Counsel

7 CHARLES A. HARWOOD
8 Regional Director

9 s/ Nadine Samter

10 NADINE S. SAMTER, WSBA # 23881
11 DAVID M. HORN, WSBA # 13514
12 ELEANOR DURHAM, Member MD Bar

13 915 Second Avenue, Suite 2896
14 Seattle, Washington 98174
15 (206) 220-6350
16 Fax: (206) 220-6366
17 Email: nsamter@ftc.gov; edurham@ftc.gov;
18 dhorn@ftc.gov

19 Attorneys for Plaintiff
20 Federal Trade Commission

21 ROBERT M. MCKENNA
22 Attorney General

23 s/Jack G. Zurlini, Jr.

24 JACK G. ZURLINI, JR., WSBA # 30621

25 Assistant Attorney General
26 Consumer Protection Division
27 1116 West Riverside Avenue
28 Spokane, WA 99201
(509) 458-3538
Fax: (509) 458-3548
Email: jackz@atg.wa.gov

Attorney for Plaintiff
State of Washington