

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

FEDERAL TRADE COMMISSION, et al.;

Plaintiffs,

vs.

ASSOCIATED COMMUNITY SERVICES,
INC., a Michigan corporation, also d/b/a
A.C. SERVICES, et al.;

Defendants.

Case No. 2:21-cv-10174-DML-CI

Judge David M. Lawson

Magistrate Judge Curtis Ivy, Jr.

**STIPULATION RE ORDER
FOR PERMANENT
INJUNCTION AND
MONETARY JUDGMENT
AGAINST JOHN LUCIDI**

Plaintiffs, the Federal Trade Commission (“Commission” or “FTC”) and the Attorneys General of the states of Alabama, California, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming, and the District of Columbia; the Secretaries of State of Colorado, Georgia, Maryland, North Carolina, and Tennessee; and the Florida Department of Agriculture and Consumer Services and the Utah Division of Consumer Protection (collectively “Plaintiffs”), have filed

their Complaint in this matter against Associated Community Services, Inc., Central Processing Services, LLC, Community Services Appeal, LLC, The Dale Corporation, Directele, Inc., Robert William Burland, Richard T. Cole, Amy Burland, Barbara Cole, John Lucidi, Nikole Gilstorf, Antonio Lia, and Scot Stepek. The Complaint sought a permanent injunction and other equitable relief in this matter, pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, Section 6 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. § 6105, and the unfair and deceptive acts and practices and charitable solicitation laws of the State Plaintiffs. Plaintiffs and Defendant John Lucidi stipulate to the entry of a Stipulated Order for Permanent Injunction and Monetary Judgment against John Lucidi (“Order”) to resolve all matters in dispute in this action between Plaintiffs and Defendant John Lucidi.

THEREFORE, IT IS STIPULATED as follows:

FINDINGS

1. This Court has jurisdiction over this matter.
2. The Complaint charges that Defendant John Lucidi and others engaged in deceptive acts or practices by making false or misleading claims in charitable solicitations on behalf of numerous nonprofit organizations in violation of Section 5

of the FTC Act, 15 U.S.C. § 45, the state statutes listed below, and Sections 310.3(a)(4), 310.3(b), and 310.3(d)(1), (3), and (4) of the Telemarketing Sales Rule (“TSR”), 16 C.F.R. §§ 310.3(a)(4), 310.3(b), and 310.3(d)(1), (3), and (4), and engaged in abusive telemarketing practices by repeatedly or continuously causing a telephone to ring and by delivering prerecorded messages in outbound telephone calls, in violation of Sections 310.4(b)(1)(i) and 310.4(b) of the TSR.

STATE STATUTES ALLEGEDLY VIOLATED BY DEFENDANTS	
Alabama	ALA. CODE §§ 8-19-1 through -15; and §§ 13A-9-70 through 76.
California	CAL. BUS. & PROF. CODE §§ 17200 through 17206, and §§ 17510 through 17510.95; CAL. GOV. CODE §§ 12580 through 12599.8.
Colorado	COLO. REV. STAT. §§ 6-1-101 through 115; and §§ 6-16-101 through 114.
Connecticut	CONN. GEN. STAT. §§ 21a-175 through 21a-190l; and §§ 42-110a through 42-110q.
Delaware	DEL. CODE ANN. tit. 6, § 2513(a) (1998); tit. 6, § 2532(a) (1995); and tit. 6, §§ 2595(a) – (b) (1995).
Florida	FLA. STAT. ch. 501, pt. II; and ch. 496 (2020).
Georgia	GA. CODE ANN. §§ 10-1-390 through 10-1-408 (2017); and §§ 43-17-1 through 43-17-23 (2016).
Illinois	225 ILL. COMP. STAT. §§ 460/0.01 through 460/23.
Indiana	IND. CODE §§ 24-5-0.5-1 through 12.
Kansas	KAN. STAT. ANN. §§ 17-1759 through 17-1776.
Kentucky	KY. REV. STAT. ANN. §§ 367.110 through 367.993.
Louisiana	LA. REV. STAT. ANN. §§ 51:1401 through 1427; and §§ 51:1901 through 1909.1.
Maine	ME. REV. STAT. ANN. tit. 5, § 207 (2019).
Maryland	MD. CODE ANN., BUS. REG. §§ 6-101 through 6-701 (LexisNexis 2015 and 2020 Suppl.).
Massachusetts	MASS. GEN. LAWS ch. 68 § 32 and ch. 93A § 2.

Michigan	MICH. COMP. LAWS §§ 400.271 through 400.294.
Missouri	MO. REV. STAT. ch. 407.
Montana	MONT. CODE ANN. §§ 30-14-103 and 30-14-111.
Nebraska	NEB. REV. STAT. §§ 21-1901 through 21-19,177; §§ 59-1601 through 59-1622; and §§ 87-301 through 87-306.
Nevada	NEV. REV. STAT. §§ 598.1305, 598.0915(15), 598.096, and 598.0963.
New Hampshire	N.H. REV. STAT. ANN. §§ 7:19; 7:20; 7:21; 7:24; 7:28; 7:28-c; 7:28-f; and 641:8.
New Jersey	N.J. STAT. ANN. §§ 45:17A-18 through 45:17A-40; 56:8-1 through 56:8-226; and N.J. ADMIN. CODE §§ 13:48-1.1 through 13:48-15.1.
New Mexico	N.M. STAT. §§ 57-12-1 through 57-12-22; and §§ 57-22-1 through 57-22-11 (1978).
New York	N.Y. EXEC. LAW §§ 63(12) and 171-a through 175; N.Y. GEN. BUS. LAW § 349; and N.Y. NOT-FOR-PROFIT CORP. LAW § 112.
North Carolina	N.C. GEN. STAT. §§ 75-1.1, 75-102 to 75-104, 131F-20, and 131F-21.
Ohio	OHIO REV. CODE ANN. ch. 1716.
Oklahoma	OKLA. STAT. ANN. tit. 18 §§ 552.1 through 552.22.
Oregon	OR. REV. STAT. §§ 128.886; and 646.605 through 646.636.
Pennsylvania	10 PA. STAT. §§ 162.1 through 162.23.
Tennessee	TENN. CODE ANN. §§ 48-101-501 through 48-101-522.
Texas	TEX. BUS. & COM. CODE ANN. §§ 17.41 through 17.63.
Utah	UTAH CODE ANN. §§13-22-1 through 13-22-23; 13-26-1 through 13-26-11-1; and 13-11 through 13-11-23.
Virginia	VA. CODE ANN. §§ 57-48 through 57-69.
Washington	WASH. REV. CODE §§ 19.86, 19.09, and 80.36.
West Virginia	W.VA. CODE §§ 29-19-1 -15b; and §§ 46A-1-101 through 46A-6-110.
Wisconsin	WIS. STAT. §§ 202.11 through 202.18.
Wyoming	WYO. STAT. ANN. §§ 40-12-101 through 114.

3. Defendant Lucidi neither admits nor denies any of the allegations in the Complaint, except as specifically stated in this Stipulation. Only for purposes of this action, Defendant Lucidi admits the facts necessary to establish jurisdiction.

4. Defendant Lucidi waives any claim that he may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of the Order, and agrees to bear his own costs and attorney fees.

5. Defendant Lucidi waives all rights to appeal or otherwise challenge or contest the validity of the Order.

6. Entry of the Order is in the public interest.

DEFINITIONS

For the purpose of this Stipulation, the following definitions apply:

A. **“Defendant Lucidi”** means the individual defendant John Lucidi.

B. **“Defendants”** means Associated Community Services, Inc., also d/b/a A.C. Services (“ACS”); Central Processing Services, LLC (“CPS”); Community Services Appeal, LLC (“CSA”); The Dale Corporation (“Dale Corp.”); Directele, Inc. (“Directele”); Robert William “Bill” Burland; Richard “Dick” T. Cole; Amy Burland; Barbara Cole; John Lucidi; Nikole Gilstorf (a/k/a Nikole Luton and/or Nikole Dicks); Antonio “Tony” Lia; and Scot Stepek.

C. **“Plaintiffs”** means the Commission and the State Plaintiffs (including each state), individually, collectively, or in any combination.

D. **“State Plaintiffs”** means the Attorneys General of the states of Alabama, California, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming, and the District of Columbia; the Secretaries of State of Colorado, Georgia, Maryland, North Carolina, and Tennessee; and the Florida Department of Agriculture and Consumer Services and the Utah Division of Consumer Protection.

E. **“Clear(ly) and conspicuous(ly)”** means that a required disclosure is difficult to miss (i.e., easily noticeable) and easily understandable by ordinary individuals, including in all of the following ways:

1. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the

communication even if the representation requiring the disclosure is made in only one means.

2. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.

3. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary individuals to easily hear and understand it.

4. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.

5. The disclosure must use diction and syntax understandable to ordinary individuals and must appear in each language in which the representation that requires the disclosure appears.

6. The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications.

7. The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.

8. When the representation, sales practice, or fundraising solicitation impacts a specific audience, such as children, the elderly, or the terminally ill, “ordinary individuals” includes reasonable members of that group.

F. **“Contribution”** means any donation or gift of money or any other thing of value, except that this definition does not include contributions made to support or oppose a specific candidate for public office, a political party, or a ballot measure.

G. **“Donor”** means any Person solicited to make a Contribution to a Nonprofit Organization.

H. **“Fundraising”** means a plan, program, or campaign that is conducted to induce Contributions to Nonprofit Organizations by mail, telephone, electronic mail, social media, or any other means.

I. **“Fundraising Services”** means providing assistance in Fundraising, directly or indirectly, including by advising, assisting, acting as a broker, independent contractor, or fundraising consultant; investing in, planning, supplying or arranging for the supply of contact or Donor lists; arranging for any Person to contract or otherwise affiliate with any Nonprofit Organization for the purpose of Fundraising; or providing or arranging for the provision of marketing services (e.g.,

creating or advising on solicitation materials), printing, customer service, caging, escrow, payment processing, mail processing, or fulfillment services to any Nonprofit Organization.

J. **“Nonprofit Organization”** means any entity or other Person that has, or is represented to have, a benevolent or charitable purpose or operates for the promotion of social welfare without primary regard for profit, including but not limited to any entity or other Person that benefits, or purports to benefit, either in whole or in part, expressly or indirectly, through education, advocacy, lobbying, or otherwise, causes related to law enforcement officers (e.g., police, sheriffs, constables, or agents), firefighters, emergency medical technicians (“EMTs”), or other first responders and their families; members or veterans of the armed forces and their families; individuals suffering from cancer or other diseases or disorders and their families; research or treatment related to cancer or other diseases or disorders; or missing children and their families. The term “Nonprofit Organization” excludes any entity or other Person that i) does not have a charitable purpose and ii) is engaged in political influence campaigns that benefit or purport to benefit causes unrelated to law enforcement officers (e.g., police, sheriffs, constables, or agents), firefighters, emergency medical technicians (“EMTs”), or other first responders, and their families; members or veterans of the armed forces

and their families; individuals suffering from cancer or other diseases or disorders, and their families; research or treatment related to cancer or other diseases or disorders; or missing children and their families.

K. **“Outbound Telephone Call”** means a telephone call initiated to induce the purchase of goods or services or to solicit a Contribution to a Nonprofit Organization.

L. **“Person”** means any individual, group, organization, unincorporated association, limited or general partnership, corporation, or other legal entity.

M. **“Telemarketing”** means any plan, program, or campaign that is conducted to induce the purchase of goods or services or to solicit a Contribution to a Nonprofit Organization by use of one or more telephones and which involves a telephone call, whether or not covered by the Telemarketing Sales Rule.

STIPULATION

I. BAN ON FUNDRAISING

IT IS STIPULATED that Defendant Lucidi is permanently restrained and enjoined from Fundraising or providing Fundraising Services to any Nonprofit Organization, whether directly or indirectly. This includes controlling, directly or indirectly, holding an ownership interest in, or receiving any payment or other

financial benefit from any Person engaged in Fundraising or the provision of Fundraising Services.

II. BAN ON ROBOCALLS

IT IS FURTHER STIPULATED that Defendant Lucidi is permanently restrained and enjoined from:

A. Initiating, causing others to initiate, or assisting others in initiating, any Outbound Telephone Call that plays or delivers a prerecorded message, including, but not limited to, any Outbound Telephone Call that uses soundboard technology to play prerecorded audio clips, whether acting directly or through an intermediary, unless Defendant Lucidi proves that such prerecorded message was delivered for the purpose of compliance with 16 C.F.R. § 310.4(b)(4)(iii);

B. Controlling, holding a managerial post in, consulting for, serving as an officer, having any revenue sharing agreement with, or holding any ownership interest, share, or stock in any company that engages in conduct prohibited in Subsection II.A above. ***Provided, however,*** that it is not a violation of the Order to own a non-controlling interest in a publicly-traded company that engages in such conduct.

III. PROHIBITION AGAINST ABUSIVE CALLING PRACTICES

IT IS FURTHER ORDERED that Defendant Lucidi, Defendant Lucidi's officers, agents, employees, and all other Persons in active concert or participation with him, who receive actual notice of the Order, whether acting directly or indirectly, in connection with Telemarketing, are permanently restrained and enjoined from engaging in, causing others to engage in, or assisting others to engage in, any of the following practices:

A. 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; or

B. Initiating any Outbound Telephone Call to a Person when that Person has previously stated that he or she does not wish to receive a telephone call from the Person initiating the call or the Person on whose behalf the call is initiated.

IV. PROHIBITION AGAINST MISREPRESENTATIONS

IT IS FURTHER ORDERED that Defendant Lucidi, Defendant Lucidi's officers, agents, employees, and all other Persons in active concert or participation with him, who receive actual notice of the Order, whether acting directly or indirectly, in connection with promoting or offering for sale any good or service, or

soliciting a Contribution, are permanently restrained and enjoined from misrepresenting, or assisting others in misrepresenting, expressly or by implication:

A. The nature or purpose of any good, service, or Contribution, or the nature, purpose or mission of any Person on whose behalf Defendant Lucidi is soliciting Contributions;

B. That any Contribution is tax deductible, in whole or in part;

C. The purpose for which any Contribution will be used;

D. The percentage or amount of any Contribution that will go to any Person or to any particular program or activity of the Person on whose behalf Contributions are being solicited; and

E. Any fact material to consumers' decisions concerning any good or service or the use of a Contribution by any Person.

V. MANDATORY DISCLOSURE THAT CONTRIBUTIONS ARE NOT TAX DEDUCTIBLE

IT IS FURTHER STIPULATED that Defendant Lucidi, Defendant Lucidi's officers, agents, employees, and all other Persons in active concert or participation with him, who receive actual notice of the Order, whether acting directly or indirectly, in connection with soliciting for Contributions that are not tax-deductible, are permanently restrained and enjoined from failing to disclose, Clearly and Conspicuously, and prior to requesting any Contribution, orally or in writing,

that any such Contribution is not deductible for federal and/or state income tax purposes as a charitable donation.

VI. PROHIBITION ON VIOLATING THE TELEMARKETING SALES RULE

IT IS FURTHER STIPULATED that Defendant Lucidi, Defendant Lucidi's officers, agents, and employees, and all other Persons in active concert or participation with him, who receive actual notice of the Order, whether acting directly or indirectly, are permanently restrained and enjoined from engaging in, causing others to engage in, or assisting others engaging in violating the Telemarketing Sales Rule, 16 C.F.R. Part 310, a copy of which is attached to the Order as Attachment A.

VII. COMPLIANCE WITH STATE LAW

IT IS FURTHER ORDERED that Defendant Lucidi, Defendant Lucidi's officers, agents, employees, and all other Persons in active concert or participation with him, who receive actual notice of the Order, whether acting directly or indirectly, in connection with the sale of any good or service or soliciting Contributions to Nonprofit Organizations, are permanently restrained and enjoined from violating, causing others to violate, or assisting others in violating any provision of the following state laws:

Alabama	ALA. CODE §§ 8-19-1 through -15; and §§ 13A-9-70 through 76.
California	CAL. BUS. & PROF. CODE §§ 17200 through 17206, and §§ 17510 through 17510.95; CAL. GOV. CODE §§ 12580 through 12599.8.
Colorado	COLO. REV. STAT. §§ 6-1-101 through 115; and §§ 6-16-101 through 114.
Connecticut	CONN. GEN. STAT. §§ 21a-175 through 21a-190l; and §§ 42-110a through 42-110q.
Delaware	DEL. CODE ANN. tit. 6, § 2513(a) (1998); tit. 6, § 2532(a) (1995); and tit. 6, §§ 2595(a) – (b) (1995).
Florida	FLA. STAT. ch. 501, pt. II; and ch. 496 (2020).
Georgia	GA. CODE ANN. §§ 10-1-390 through 10-1-408 (2017); and §§ 43-17-1 through 43-17-23 (2016).
Illinois	225 ILL. COMP. STAT. §§ 460/0.01 through 460/23.
Indiana	IND. CODE §§ 24-5-0.5-1 through 12.
Iowa	IOWA CODE § 714.16.
Kansas	KAN. STAT. ANN. §§ 17-1759 through 17-1776.
Kentucky	KY. REV. STAT. ANN. §§ 367.110 through 367.993.
Louisiana	LA. REV. STAT. ANN. §§ 51:1401 through 1427; and §§ 51:1901 through 1909.1.
Maine	ME. REV. STAT. ANN. tit. 5, § 207 and tit. 10, § 1499-A (2019).
Maryland	MD. CODE ANN., BUS. REG. §§ 6-101 through 6-701 (LexisNexis 2015 and 2020 Suppl.).
Massachusetts	MASS. GEN. LAWS ch. 68 § 32 and ch. 93A § 2.
Michigan	MICH. COMP. LAWS §§ 400.271 through 400.294.
Missouri	MO. REV. STAT. ch. 407.
Montana	MONT. CODE ANN. §§ 30-14-103 and 30-14-111.
Nebraska	NEB. REV. STAT. §§ 21-1901 through 21-19,177; §§ 59-1601 through 59-1622; and §§ 87-301 through 87-306.
Nevada	NEV. REV. STAT. §§ 598.1305, 598.0915(15), 598.096, and 598.0963.
New Hampshire	N.H. REV. STAT. ANN. §§ 7:19; 7:20; 7:21; 7:24; 7:28; 7:28-c; 7:28-f; and 641:8.

New Jersey	N.J. STAT. ANN. §§ 45:17A-18 through 45:17A-40; 56:8-1 through 56:8-226; and N.J. ADMIN. CODE §§ 13:48-1.1 through 13:48-15.1.
New Mexico	N.M. STAT. §§ 57-12-1 through 57-12-22; and §§ 57-22-1 through 57-22-11 (1978).
New York	N.Y. EXEC. LAW §§ 63(12) and 171-a through 175; N.Y. GEN. BUS. LAW § 349; and N.Y. NOT-FOR-PROFIT CORP. LAW § 112.
North Carolina	N.C. GEN. STAT. §§ 75-14, 75-15.1, and 131F-1 to 131F-33.
Ohio	OHIO REV. CODE ANN. ch. 1716.
Oklahoma	OKLA. STAT. ANN. tit. 18 §§ 552.1 through 552.22.
Oregon	OR. REV. STAT. §§ 128.886; and 646.605 through 646.636.
Pennsylvania	10 PA. CONS. STAT. §§ 162.1 through 162.23 (1990).
Tennessee	TENN. CODE ANN. §§ 48-101-501 through 48-101-522.
Texas	TEX. BUS. & COM. CODE ANN. §§ 17.41 through 17.63.
Utah	UTAH CODE ANN. §§ 13-22-1 through 13-22-23; 13-26-1 through 13-26-11; and 13-11-1 through 13-11-23.
Virginia	VA. CODE ANN. §§ 57-48 through 57-69.
Washington	WASH. REV. CODE §§ 19.86, 19.09, and 80.36.
West Virginia	W.VA. CODE §§ 29-19-1 -15b; and §§ 46A-1-101 through 46A-6-110.
Wisconsin	WIS. STAT. §§ 202.11 through 202.18.
Wyoming	WYO. STAT. ANN. §§ 40-12-101 through 114.

VIII. COOPERATION

IT IS FURTHER STIPULATED that Defendant Lucidi:

A. Shall cooperate fully with Plaintiffs' representatives in this case, including in any investigation into compliance by any of the Defendants with the Order, and in any investigation related to or associated with the conduct, transactions, occurrences, telephone calls, pre-recorded messages, or Persons that

are the subject of the Complaint. Defendant Lucidi must provide truthful and complete information, evidence, and testimony. Defendant Lucidi must appear for interviews, discovery, hearings, trials, and any other proceedings that any Plaintiff's representative may reasonably request upon seven days' written notice, or other reasonable notice, at such places and times as each Plaintiff's representative may designate, without the service of a subpoena.

B. Further, to assist the Plaintiffs with any investigation related to or associated with the transactions or the occurrences that are the subject of the Complaint, and with monitoring Defendant Lucidi's compliance with the Order, Defendant Lucidi consents, for purposes of the Electronic Communications Privacy Act, in relevant part at 18 U.S.C. §§ 2701-2712, to the disclosure by electronic communications service providers and remote computing service providers of the contents of his auto-dialed, Telemarketing, or prerecorded telephone communications and records or other information pertaining to his auto-dialed, Telemarketing, or prerecorded telephone communications. Defendant Lucidi further agrees to execute, within five days of a request from any Plaintiff's representative, any forms or other documents evidencing his consent that may be required by such electronic communications service providers or remote computing service providers.

IX. DONOR INFORMATION

IT IS FURTHER STIPULATED that Defendant Lucidi and Defendant Lucidi's officers, agents, employees, and all other Persons in active concert or participation with him, who receive actual notice of the Order, are permanently restrained and enjoined from directly or indirectly:

A. Disclosing, using, or benefitting from any information about any Donor solicited by Defendants ACS, CPS, and CSA, including the name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a Donor's account (including a credit card, bank account, or other financial account);

B. Failing to destroy such Donor information in all forms in their possession, custody, or control within 10 days after entry of the Order; and

C. Failing to provide a sworn statement certifying they have destroyed such Donor information in all forms in their possession, custody, or control within 15 days after entry of the Order.

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

X. MONETARY JUDGMENT AND PARTIAL SUSPENSION

IT IS FURTHER STIPULATED that:

- A. Judgment in the amount of One Hundred Ten Million Sixty-Three Thousand Eight Hundred Forty-Three Dollars and no cents (\$110,063,843.00) be entered in favor of Plaintiffs against Defendant Lucidi as equitable monetary relief.
- B. Defendant Lucidi shall pay Twenty-five Thousand Dollars and no cents (\$25,000.00). This sum will be paid to one or more charities as a Contribution as set forth below, following subsequent motion by the State Plaintiffs and order of this Court.
- C. Defendant Lucidi stipulates that his undersigned counsel holds the monies owed pursuant to Paragraph X.B in a client trust account for no purpose other than payment to the Florida Department of Legal Affairs Escrow Fund ("Florida Escrow Fund").
- D. The monies owed by Defendant Lucidi and held in a client trust account by his undersigned counsel shall be transferred within three (3) days of entry of the Order to the Florida Escrow Fund, which shall hold this amount for no purpose other than future payment to one or more charities as a Contribution, unless otherwise ordered by this Court. This transfer shall be made by wire transfer,

cashier's check, or other certified funds made payable to the Florida Department of Legal Affairs Escrow Fund.

E. Upon completion of all payments and requirements described in Paragraphs X.C and X.D, the remainder of the judgment is suspended, subject to Paragraphs X.F and X.H.

F. Plaintiffs' agreement to the suspension of part of the judgment is expressly premised upon the truthfulness, accuracy, and completeness of Defendant Lucidi's sworn financial statements and related documents (collectively referred to as "Financial Representations") submitted to the Plaintiffs, namely:

1. Financial statement of John Lucidi, executed on February 26, 2020;
2. Supplemental attachments to the February 26, 2020 financial statement, including bank statements and tax returns, produced by Defendant Lucidi's undersigned counsel to the Commission on March 16, 2020;
3. Statements of financial position for Phoenix Outreach Group, Inc., dated December 31, 2019 and April 30, 2020, produced by Defendant Lucidi's undersigned counsel to the Commission on May 19, 2020; and

4. The sworn declaration of Defendant John Lucidi, executed on December 23, 2020.

G. The suspension of the judgment will be lifted if, upon motion by any Plaintiff, the Court finds that Defendant Lucidi failed to disclose any material asset, materially misstated the value of any asset, or made any other material misstatement or omission in the Financial Representations identified above.

H. If the suspension of the judgment is lifted, the judgment becomes immediately due in the amount specified in Paragraph X.A (which the parties stipulate only for purposes of this Section represents the consumer injury that the Complaint alleges was caused by ACS, CPS, and CSA, and for which Defendant Lucidi is jointly and severally liable), less any payment previously made by Defendant Lucidi pursuant to this Section, or by ACS, CPS, CSA, Robert William “Bill” Burland, Richard “Dick” T. Cole, Amy Burland, Barbara Cole, Nikole Gilstorf (a/k/a Nikole Luton and/or Nikole Dicks), Antonio “Tony” Lia, and Scot Stepek pursuant to any other order entered in connection with this matter, plus interest computed from the date of entry of the Order.

I. Payments on the judgment shall be made to the Florida Escrow Fund if the Court has not approved one or more charities to receive the Contribution pursuant to Paragraph X.J. Such payments shall be made by wire transfer, cashier’s

check, or other certified funds made payable to the Florida Department of Legal Affairs Escrow Fund. If the Court has approved one or more charities to receive a Contribution pursuant to Paragraph X.J, then any such payments shall be made to the approved charities.

J. The State Plaintiffs shall identify one or more charities to recommend to this Court as suitable to receive the Contribution. Within ninety days of entry of the Order, the State Plaintiffs shall submit to this Court a motion and proposed order recommending one or more recipients for the Contribution, the amount to be paid to any approved recipient, and the manner and timeframe for such payment. All monies paid by Defendant Lucidi and held in the Florida Escrow Fund shall be distributed only as authorized and directed by this Court. Defendant Lucidi shall have no right to challenge any recommendations regarding any Contribution or monetary distribution made by the State Plaintiffs.

K. Defendant Lucidi understands that any Contribution to a charity described herein is being made in lieu of consumer restitution and not on behalf of Defendant Lucidi. Therefore, Defendant Lucidi stipulates that he will not claim any tax deduction, credit, or other benefit related to any Contribution to a charity discussed in the Order.

XI. ADDITIONAL MONETARY PROVISIONS

IT IS FURTHER STIPULATED that:

A. Defendant Lucidi relinquishes dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to the Order and may not seek the return of any assets.

B. The facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil or administrative litigation by or on behalf of any Plaintiff, including in a proceeding to enforce the right to any payment or monetary judgment pursuant to this Order, such as a nondischargeability complaint in any bankruptcy case, and in any bond enforcement action by any State Plaintiff.

C. The facts alleged in the Complaint establish all elements necessary to sustain an action by any Plaintiff pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and the Order will have collateral estoppel effect for such purposes.

D. Defendant Lucidi acknowledges that his Social Security Number, which he previously submitted to Plaintiffs, may be used for collecting and reporting on any delinquent amount arising out of the Order, in accordance with 31 U.S.C. § 7701.

XII. ORDER ACKNOWLEDGMENTS

IT IS FURTHER STIPULATED that Defendant Lucidi obtain acknowledgments of receipt of the Order:

A. Defendant Lucidi, within seven days of entry of the Order, must submit to Plaintiff Federal Trade Commission an acknowledgment of receipt of the Order sworn under penalty of perjury.

B. For 15 years after entry of the Order, Defendant Lucidi, for any business that he, individually or collectively with any other Defendant named in this matter, is the majority owner or controls directly or indirectly, must deliver a copy of the Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees having managerial responsibilities for Telemarketing and all agents and representatives who participate in Telemarketing; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within seven days of entry of the Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

C. From each individual or entity to which Defendant Lucidi delivered a copy of the Order, Defendant Lucidi must obtain, within 30 days, a signed and dated acknowledgment of receipt of the Order.

XIII. COMPLIANCE REPORTING

IT IS FURTHER STIPULATED that Defendant Lucidi make timely submissions to the FTC and the Office of the Michigan Attorney General on behalf of the other State Plaintiffs:

A. One year after entry of the Order, Defendant Lucidi must submit a compliance report, sworn under penalty of perjury:

1. Defendant Lucidi must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission and the State Plaintiffs may use to communicate with Defendant Lucidi; (b) identify all of Defendant Lucidi's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered or Telemarketing conducted, the means of advertising, marketing, sales, and Telemarketing, and the involvement of any other Defendant (which Defendant Lucidi must describe if he knows or should know due to his own involvement); (d) describe in detail whether and how Defendant Lucidi is in compliance with each Section of the Order; and (e) provide a copy of each Order Acknowledgment

obtained pursuant to the Order, unless previously submitted to the FTC and the Office of the Michigan Attorney General.

2. Additionally, Defendant Lucidi must: (a) identify all telephone numbers and all physical, postal, email and Internet addresses, including all residences; (b) identify all business activities, including any business for which Defendant Lucidi performs services whether as an employee or otherwise, and any entity in which Defendant Lucidi has any ownership interest; and (c) describe in detail Defendant Lucidi's involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership.

B. For 15 years after entry of the Order, Defendant Lucidi must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

1. Defendant Lucidi must report any change in: (a) any designated point of contact; or (b) the structure of any Corporate Defendant or any entity that Defendant Lucidi has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under the Order, including: creation, merger, sale, or dissolution of the entity or any

subsidiary, parent, or affiliate that engages in any acts or practices subject to the Order.

2. Additionally, Defendant Lucidi must report any change in:

- (a) name, including aliases or fictitious name, or residence address; or
- (b) title or role in any business activity, including any business for which Defendant Lucidi performs services whether as an employee or otherwise, and any entity in which Defendant Lucidi has any ownership interest, and identify the name, physical address, and any Internet address of the business or entity.

C. Defendant Lucidi must submit to the Commission and to the Office of the Michigan Attorney General notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Defendant within 14 days of its filing.

D. Any submission required by the Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____” and supplying the date, signatory’s full name, title (if applicable), and signature.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to the Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to:

Associate Director for Enforcement
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580.

The subject line must begin: FTC, et al. v. Associated Community Services, Inc., et al., Case No. _____.

F. Unless otherwise directed by a representative of the Office of the Michigan Attorney General in writing, all submissions to the Office of the Michigan Attorney General pursuant to the Order must be emailed to AG-COD@michigan.gov or sent to:

Michigan Department of Attorney General
Corporate Oversight Division
PO Box 30736
Lansing, MI 48909

The subject line must begin: FTC, et al. v. Associated Community Services, Inc., et al. Case No. _____.

G. Defendant Lucidi expressly consents to the sharing of any and all documents submitted as part of his compliance reporting to any Plaintiff with all other Plaintiffs.

XIV. RECORDKEEPING

IT IS FURTHER STIPULATED that Defendant Lucidi must create certain records for 15 years after entry of the Order, and retain each such record for 5 years. Specifically, for any business that Defendant Lucidi, individually or collectively with any other Defendant, is a majority owner or controls directly or indirectly, must create and retain the following records:

A. Accounting records showing the revenues from all goods or services sold, or Telemarketing;

B. Personnel records showing, for each individual providing services, whether as an employee or otherwise, that individual's name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;

C. Records of all consumer or Donor complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;

D. All records necessary to demonstrate full compliance with each provision of the Order, including all submissions to the Commission and to the Office of the Michigan Attorney General;

E. A copy of each unique advertisement or other marketing material; and

F. Defendant Lucidi shall provide any records created and retained as a result of the Order to any Plaintiff upon request within 10 days of the receipt of such request.

XV. COMPLIANCE MONITORING

IT IS FURTHER STIPULATED that, for the purpose of monitoring Defendant Lucidi's compliance with the Order, and any failure to transfer any assets as required by the Order:

A. Within 14 days of receipt of a written request from a representative of any Plaintiff, Defendant Lucidi must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents for inspection and copying. Each Plaintiff is also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69. Nothing in the Order limits any

Plaintiff's lawful demand for documents or other evidence pursuant to applicable law.

B. For matters concerning the Order, each Plaintiff is authorized to communicate directly with Defendant Lucidi. Defendant Lucidi must permit representatives of any Plaintiff to interview any employee or other individual affiliated with Defendant Lucidi who has agreed to such an interview. The individual interviewed may have counsel present.

C. Any Plaintiff may use all other lawful means, including posing, through its representatives as consumers, donors, suppliers, or other individuals or entities, to Defendant Lucidi or any individual or entity affiliated with Defendant Lucidi, without the necessity of identification or prior notice. Nothing in the Order limits 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, nor limits State Plaintiffs' lawful use of relevant state laws governing pre-suit investigation and discovery.

D. Upon written request from a representative of any Plaintiff, any consumer reporting agency must furnish consumer reports concerning Individual Defendants, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(1).

XVI. STATE COURT ENFORCEMENT

IT IS FURTHER ORDERED that, without limiting any other provisions of the Order, each State Plaintiff shall have the authority to enforce or seek sanctions for violations of the Order independently in a court of general jurisdiction in its state, if that State Plaintiff has reason to believe that Persons in its state have been or will be affected. No approval from any other Plaintiff is required. Defendant Lucidi consents to any such state court's jurisdiction for purposes of enforcing the terms of the Order.


XVII.RETENTION OF JURISDICTION

IT IS FURTHER STIPULATED that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of the Order.

SO STIPULATED AND AGREED:

FOR DEFENDANT JOHN LUCIDI:

December 23, 2020



Howard L. Teplinsky
Levin Ginsburg
180 North LaSalle Street, Suite 3200
Chicago, IL 60601
Email: hteplinsky@lgattorneys.com
Telephone: (312) 368-0100

Attorney for Defendant John Lucidi

_____, 2020

John Lucidi
On behalf of himself, individually

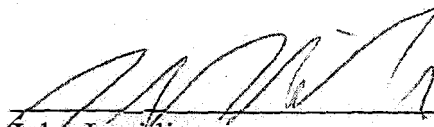
FOR DEFENDANT JOH LUCIDI:

_____, 2020

Howard L. Teplinsky
Levin Ginsburg
180 North LaSalle Street, Suite 3200
Chicago, IL 60601
Email: hteplinsky@lgattorneys.com
Telephone: (312) 368-0100

Attorney for Defendant John Lucidi

12/28, 2020



John Lucidi
On behalf of himself, individually

FOR THE FEDERAL TRADE COMMISSION:

March 1, 2021

By: /s/ Tracy S. Thorleifson

Local Counsel for the
Federal Trade Commission
Pursuant to Local Rule 83.20(g):

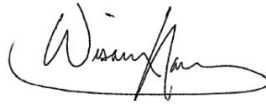
SAIMA MOHSIN
Acting United States Attorney
KEVIN R. ERSKINE
Assistant United States Attorney
Eastern District of Michigan
211 W. Fort Street, Suite 2001
Detroit, MI 48226
Phone (313) 226-9610

Charles A. Harwood
Regional Director
Tracy S. Thorleifson
Colin D. A. MacDonald
Sarah A. Shifley
Federal Trade Commission
915 2nd Ave., Suite 2896
Seattle, WA 98174
Email: tthorleifson@ftc.gov
cmacdonald@ftc.gov
sshifley@ftc.gov
Telephone: (206) 220-6350
Attorneys for Plaintiff Federal Trade
Commission

FOR THE STATE OF MICHIGAN

February 26, 2021

By:

A handwritten signature in black ink, appearing to read 'Wisam E. Naoum', written over a horizontal line.

Wisam E. Naoum
Assistant Attorney General
Michigan Department of Attorney General
P.O. Box 30736
Lansing, MI 48909
(557) 335-7632
NaoumW1@michigan.gov
MI P83335

**FOR JENA GRISWOLD, COLORADO
SECRETARY OF STATE**

February 25, 2021

By: s/ with the consent of Diane R. Hazel

DIANE R. HAZEL*

First Assistant Attorney General
Consumer Protection Section
Colorado Attorney General's Office
1300 Broadway, 7th Floor
Denver, Colorado 80203
Phone: (720) 508-6231
Email: diane.hazel@coag.gov
CO Bar No. 42954

**Counsel of Record*

LEEANN MORRILL

First Assistant Attorney General
State Services Section
Colorado Attorney General's Office
1300 Broadway, 6th Floor
Denver, Colorado 80203
Phone: (720) 508-6159
Email: leeann.morrill@coag.gov
CO Bar No. 38742

**PHILIP J. WEISER, ATTORNEY GENERAL
FOR THE STATE OF COLORADO**

Dated: February 25, 2021

By: s/ with consent of Diane R. Hazel

Diane R. Hazel
First Assistant Attorney General
Colorado Attorney General's Office
1300 Broadway, 7th Floor
Denver, CO 80203
(720) 508-6231
CO Bar No. 42954
diane.hazel@coag.gov

Olivia D. Webster
Acting First Assistant Attorney General
Consumer Protection Section
1300 Broadway, 7th Floor
Denver, Colorado 80203
Phone: (720) 508-6203
Email: libby.webster@coag.gov
CO Bar No. 35867

FOR THE STATE OF DELAWARE

March 3rd, 2021

By: /s/ with consent of Oliver J. Cleary

Oliver J. Cleary
Deputy Attorney General
Delaware Department of Justice
820 N. French Street, 5th Floor
Wilmington, DE 19801
(302) 577-8369
Oliver.Cleary@Delaware.gov
DE #5830

**FOR THE STATE OF GEORGIA AND THE
GEORGIA SECRETARY OF STATE**

February 22, 2021

By: /s/ with the consent of Roger A. Chalmers

ROGER A. CHALMERS

Senior Assistant Attorney General

GA Bar No. 118720

DANIEL S. WALSH

Senior Assistant Attorney General

GA Bar No. 735040

Department of Law

State of Georgia

40 Capitol Square, S.W.

Atlanta, Georgia 30334-1300

(404) 458-3220

rchalmers@law.ga.gov

dwalsh@law.ga.gov

FOR THE STATE OF ILLINOIS



January 19, 2021

By: BARRY S. GOLDBERG – IL Bar No. 6269821
KRISTIN C. LOUIS – IL Bar No. 6255714
Assistant Attorneys General
Office of the Attorney General Kwame Raoul
Charitable Trust Bureau
100 West Randolph Street, 11th Floor
Chicago, Illinois 60601-3175
Telephone: (312) 814-2595
Email: bgoldberg@atg.state.il.us
Email: klouis@atg.state.il.us

FOR THE STATE OF KANSAS

February 11, 2021

By: /s/ with the consent of Kathleen Barceleau
Kathleen Barceleau
Assistant Attorney General
Office of the Kansas Attorney General
120 S.W. 10th Avenue, Ste. 300
Topeka, KS 66612-1597
(785) 296-2215
kathleen.barceleau@ag.ks.gov
MI #83169

FOR THE STATE OF LOUISIANA

Dec. 4th, 2020

By: Cathryn E. Gits
Cathryn E. Gits *
Assistant Attorney General
Office of Attorney General Jeff Landry
1885 N. Third Street
Baton Rouge, LA 70802
225-326-6400
gitsc@ag.louisiana.gov
La. Bar Roll Number:35144

FOR THE STATE OF NEW JERSEY

February 23, 2021

By: s/ with consent of Monisha A. Kumar
Monisha A. Kumar
Deputy Attorney General

State of New Jersey
Office of the Attorney General
Division of Law
124 Halsey Street – 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
(973) 648-3070
Monisha.Kumar@law.njoag.gov
NJ Attorney No. 900212012

FOR THE STATE OF NEW YORK

LETITIA JAMES, ATTORNEY GENERAL OF
THE STATE OF NEW YORK

February 24, 2021

By:


Peggy J. Farber

Assistant Attorney General

New York State Attorney General's Office

Charities Bureau

28 Liberty Street, 19th Floor

New York, New York 10005

(212) 416-8785

Peggy.Farber@ag.ny.gov

NY 4342655

FOR THE STATE OF OREGON

February 17
_____, 2021

By: Brian Marshall
Brian Simmonds Marshall
Heather L. Weigler
Senior Assistant Attorneys General
Oregon Department of Justice
100 SW Market Street, 4th Floor
Portland, Oregon 97201
(971) 673-1880
Brian.S.Marshall@doj.state.or.us
Oregon State Bar No. 196129

FOR THE STATE OF TEXAS

February 11, 2021

By: 

Scot M. Graydon,

Assistant Attorney General

Office of Attorney General of Texas

P.O. Box 12548

Capitol Station

Austin, Texas 78711-2548

(512) 463-2120

scot.graydon@oag.texas.gov

Texas Bar No. 24002175

**FOR THE COMMONWEALTH OF
VIRGINIA, *EX REL.* MARK R. HERRING,
ATTORNEY GENERAL**

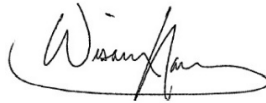
March 3rd, 2021

By: /s/ with consent of Mark S. Kubiak
Mark S. Kubiak
Stephen J. Sovinsky
Assistant Attorneys General
Office of Attorney General of Virginia
202 North 9th Street
Richmond, VA 23219
(804) 786-7364
mkubiak@oag.state.va.us
VA 73119

**FOR THE STATES OF ALABAMA,
CALIFORNIA, CONNECTICUT, FLORIDA,
INDIANA, IOWA, KENTUCKY, MAINE,
MARYLAND, MASSACHUSETTS,
MISSOURI, MONTANA, NEBRASKA,
NEVADA, NEW HAMPSHIRE, NEW
MEXICO, NORTH CAROLINA, OHIO,
OKLAHOMA, PENNSYLVANIA,
TENNESSEE, UTAH, WASHINGTON, WEST
VIRGINIA, WISCONSIN, AND WYOMING,
THE FLORIDA DEPARTMENT OF
AGRICULTURE AND CONSUMER
SERVICES, THE SECRETARIES OF STATE
OF MARYLAND, NORTH CAROLINA, AND
TENNESSEE, THE DIVISION OF
CONSUMER PROTECTION OF THE UTAH
DEPARTMENT OF COMMERCE, AND THE
DISTRICT OF COLUMBIA**

February 26, 2021

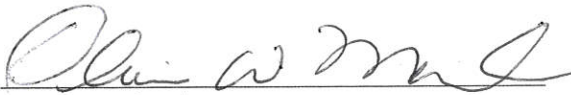
By:



Wisam E. Naoum
Assistant Attorney General
Michigan Department of Attorney General
P.O. Box 30736
Lansing, MI 48909
(557) 335-7632
NaoumW1@michigan.gov
MI P83335

FOR THE STATE OF ALABAMA

February 10, 2021

By: 
Olivia W. Martin *
Assistant Attorney General
Office of Attorney General
501 Washington Avenue
Montgomery, Alabama 36104
(334) 242-7335
Olivia.Martin@AlabamaAG.gov
AL ASB-9038-R780

*Attorney not admitted in this District, co-signing
pursuant to LR 83.20(i)(1)(D)(i).

**FOR THE ATTORNEY GENERAL OF THE
STATE OF CALIFORNIA**

February 10, 2021

By: 
David K. Eldan*

Deputy Attorney General
Charitable Trusts Section
Office of the Attorney General
Department of Justice
State of California
300 S. Spring St., Suite 1702
Los Angeles CA 90013
(213) 269-6041
David.Eldan@doj.ca.gov
CA 163592

*Attorney not admitted in this District, co-signing
pursuant to LR 83.20(i)(1)(D)(i).

FOR THE STATE OF CONNECTICUT

February 25, 2021

By: _____



Kimberly Carlson McGee
Assistant Attorney General
Office of Attorney General
165 Capitol Avenue
Hartford, CT 06106
(860) 808-5400
Kim.mcgee@ct.gov
CT juris no. 440655

*Attorney not admitted in this District, co-signing
pursuant to LR 83.20(i)(1)(D)(i).

**FOR THE STATE OF FLORIDA
ASHLEY MOODY
Attorney General**

February 11, 2021

By:



Ellen Annaliese Bullock *
Assistant Attorney General



Victoria Ann Butler *
Director of Consumer Protection
Donna Cecilia Valin
Orlando Bureau Chief
Office of Attorney General
State of Florida
Department of Legal Affairs
Consumer Protection Division
135 W. Central Blvd., Suite 1000
Orlando, FL 32801
(407) 316-4840
Ellen.Bullock@myfloridalegal.com
FBN 102980
Donna.Valin@myfloridalegal.com
FBN 96687
Victoria.Butler@myfloridalegal.com
FBN 861250

*Attorney not admitted in this District, co-signing
pursuant to LR 83.20(i)(1)(D)(i).

FOR THE STATE OF INDIANA

February 17, 2021



By:

Tamara Weaver *

Deputy Attorney General

Office of the Indiana Attorney General

Indiana Government Center South – 5th Fl.

302 W. Washington Street

Indianapolis, IN 46204

(317) 234-7122

Tamara.Weaver@atg.in.gov

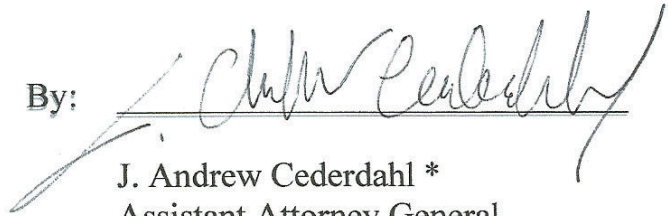
IN 28494-64

*Attorney not admitted in this District, co-signing pursuant to LR 83.20(i)(1)(D)(i).

FOR THE STATE OF IOWA

February 10, 2021

By:

A handwritten signature in black ink, appearing to read "J. Andrew Cederdahl", is written over a horizontal line.

J. Andrew Cederdahl *
Assistant Attorney General
Office of the Attorney General of Iowa
1305 E. Walnut St.
Des Moines, Iowa 50319
(515) 281-5926
Andrew.Cederdahl@ag.iowa.gov
IA AT0012249

*Attorney not admitted in this District, co-signing
pursuant to LR 83.20(i)(1)(D)(i).

**FOR THE COMMONWEALTH OF
KENTUCKY**

February 24, 2021


By: Rebecca Price
Rebecca Price
Assistant Attorney General
Kentucky Office of the Attorney General
Consumer Protection Division
1024 Capital Center Drive, Suite 200
Frankfort, Kentucky 40601
(502) 696-5300
Rebecca.price@ky.gov
KY Bar # 9312

*Attorney not admitted in this District, co-signing
pursuant to LR 83.20(i)(1)(D)(i).

FOR THE STATE OF MAINE

February 18, 2021

By:



Linda Conti*

Assistant Attorney General

Office of Attorney General of Maine

6 State House Station

Augusta, Maine 04333-0006

207-626-8800

linda.conti@maine.gov

ME Bar No. 3638

*Attorney not admitted in this District, co-signing
pursuant to LR 83.20(i)(1)(D)(i).

FOR THE STATE OF MARYLAND

February 24, 2021

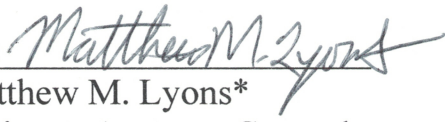
BRIAN E. FROSH
Attorney General of Maryland

By: Josaphine B. Yuzuik
JOSAPHINE B. YUZUIK *
Assistant Attorney General
Office of the Attorney General
Office of the Secretary of State
16 Francis Street
Annapolis, Maryland 21401
(410) 260-3855
josaphine.yuzuik@maryland.gov

*Attorney not admitted in this District, co-signing
pursuant to LR 83.20(i)(1)(D)(i).

**FOR THE COMMONWEALTH
OF MASSACHUSETTS**

February 10, 2021

By: 
Matthew M. Lyons*
Assistant Attorney General
Non-Profit Organizations/
Public Charities Division
Office of Attorney General Maura Healey
One Ashburton Place, 18th Floor
Boston, MA 02108
(617) 727-2200
matthew.lyons@mass.gov
MA BBO No. 657685

*Attorney not admitted in this District, co-signing
pursuant to LR 83.20(i)(1)(D)(i).

FOR THE STATE OF MISSOURI

February 24, 2021

By: Michelle Hinkl
Michelle Hinkl*
Assistant Attorney General
Missouri Attorney General's Office
815 Olive Street, Suite 200
St. Louis, Missouri 63101
(314) 340-7961
Michelle.Hinkl@ago.mo.gov
MO bar #64494

*Attorney not admitted in this District, co-signing pursuant to LR 83.20(i)(1)(D)(i).

FOR THE STATE OF MONTANA

February 24, 2021

By: 

MARK MATTIOLI *

Chief, Office of Consumer Protection

Office of Attorney General Austin Knudsen

P.O. Box 200151

Helena, MT 59620-0151

(406) 444-4500

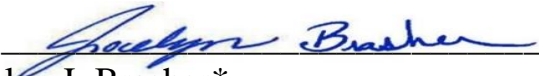
mmattioli@mt.gov

MT #2927

*Attorney not admitted in this District, co-signing pursuant to LR 83.20(i)(1)(D)(i).

FOR THE STATE OF NEBRASKA

February 23, 2021

By: 
Jocelyn J. Brasher*
Assistant Attorney General
Office of Attorney General Douglas J. Peterson
2115 State Capitol
Lincoln, NE 68509-8920
(402) 471-2693
jocelyn.brasher@nebraska.gov
NE, #26011

*Attorney not admitted in this District, co-signing pursuant to LR 83.20(i)(1)(D)(i).

FOR THE STATE OF NEVADA

February 11, 2021

By:



Laura M. Tucker *

Senior Deputy Attorney General
Office of the Nevada Attorney General
Bureau of Consumer Protection
8945 W. Russell Road, Suite 204
Las Vegas, NV 89148
(702) 486-6525
LMTucker@ag.nv.gov.
NV Bar #13268

*Attorney not admitted in this District, co-signing
pursuant to LR 83.20(i)(1)(D)(i).

**FOR THE STATE OF NEW
HAMPSHIRE**

February 12, 2021

By:



Thomas J. Donovan*

Director of Charitable Trusts

New Hampshire Department of Justice

33 Capitol Street

Concord, NH 03301

(603)271-3658

attorneygeneral@doj.nh.gov

NH Bar # 664

*Attorney not admitted in this District, co-signing
pursuant to LR 83.20(i)(1)(D)(i).

FOR THE STATE OF NEW MEXICO

HECTOR H. BALDERAS

Attorney General

February 25, 2021

By: MS

Mark F. Swanson

Assistant Attorney General

Office of the New Mexico Attorney General

408 Galisteo St.

Santa Fe, NM 87504

(505) 490-4885

mswanson@nmag.gov

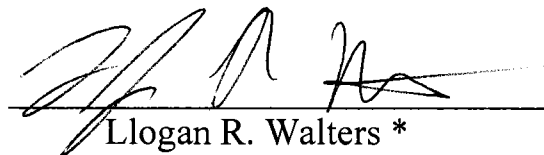
NM#145735

*Attorney not admitted in this District, co-signing
pursuant to LR 83.20(i)(1)(D)(i).

FOR THE STATE OF NORTH CAROLINA

February 24, 2021

By:

A handwritten signature in black ink, appearing to read 'Logan R. Walters', is written over a horizontal line.

Logan R. Walters *

Assistant Attorney General

North Carolina Department of Justice

Post Office Box 629

Raleigh, North Carolina 27602

(919) 716-6000

lwalters@ncdoj.gov

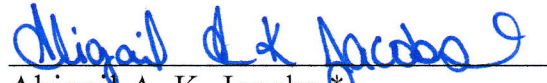
NC State Bar No. 51050

*Attorney not admitted in this District, co-signing pursuant to LR 83.20(i)(1)(D)(i).

FOR THE STATE OF OHIO

February 11, 2021

By:


Abigail A. K. Jacobs *

Senior Assistant Attorney General
Office of Attorney General Dave Yost
30 E. Broad St., 25th Floor
Columbus, OH 43215
(614) 466-3181
Abigail.Jacobs@OhioAttorneyGeneral.gov
OH 0088091

*Attorney not admitted in this District, co-signing
pursuant to LR 83.20(i)(1)(D)(i).

FOR THE STATE OF OKLAHOMA

February 22, 2021

By:

Malisa McPherson *

Deputy Chief Assistant Attorney General

Office of the Oklahoma Attorney General

313 N.E. 21st Street

Oklahoma City, Oklahoma 73105

(405) 521-3921

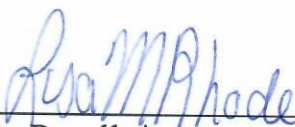
Malisa.McPherson@oag.ok.gov

OK #32070

*Attorney not admitted in this District, co-signing pursuant to LR 83.20(i)(1)(D)(i).

COMMONWEALTH OF PENNSYLVANIA
JOSH SHAPIRO, Attorney General*


February 10, 2021

By: 
Mark A. Pacella*
Chief Deputy Attorney General
Lisa M. Rhode
Senior Deputy Attorney General
Office of the Attorney General
Charitable Trusts and Organizations Section
14TH Fl., Strawberry Square
Harrisburg, PA 17120
717.705.2536
mpacella@attorneygeneral.gov
lrhode@attorneygeneral.gov
PA 42214 (Mark A. Pacella)
PA 64556 (Lisa M. Rhode)

*Attorney not admitted in this District, co-signing
pursuant to LR 83.20(i)(1)(D)(i).

**FOR THE STATE OF TENNESSEE
ATTORNEY GENERAL AND SECRETARY
OF STATE**


Feb. 25, 2021

By: 

JANET M. KLEINFELTER *
Deputy Attorney General
Public Interest Division
Office of Tennessee Attorney General
P.O. Box 20207
Nashville, TN 37202
(615) 741-7403
Janet.kleinfelter@ag.tn.gov
TN # 013889

*Attorney not admitted in this District, co-signing
pursuant to LR 83.20(i)(1)(D)(i).

FOR THE STATE OF UTAH

FEB 24, 2021 By: 
Spencer E. Austin
Chief Criminal Deputy
Office of Attorney General
Utah State Capitol
350 North State Street, Ste 230
Salt Lake City, UT 84114-2320
(801) 281-1267
spenceraustin@agutah.gov
UT 150

*Attorney not admitted in this District, co-signing pursuant to LR 83.20(i)(1)(D)(i).

FOR THE STATE OF WASHINGTON

Feb. 11, 2021

By: 

JOSHUA STUDOR

Assistant Attorney General

Office of Attorney General

800 5th Ave.

Suite 2000

Seattle, WA 98104

(206) 464-6684


Joshua.studor@atg.wa.gov

WA 47183

*Attorney not admitted in this District, co-signing
pursuant to LR 83.20(i)(1)(D)(i).

FOR THE STATE OF WEST VIRGINIA

February 12, 2021

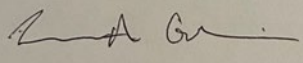
By: 
Tanya L. Godfrey*
Assistant Attorney General
Office of the West Virginia Attorney General
812 Quarrier Street, 1st Floor
PO Box 1789
Charleston, WV 25326
304-558-8986
Tanya.L.Godfrey@wvago.gov
WV Bar No. 7448

*Attorney not admitted in this District, co-signing pursuant to LR 83.20(i)(1)(D)(i).

**FOR THE STATE OF WISCONSIN
JOSHUA L. KAUL
WISCONSIN ATTORNEY GENERAL**

February 15, 2021

By:



Shannon A. Conlin
Assistant Attorney General
State of Wisconsin Department of Justice
17 West Main Street
P.O. Box 7857
Madison, WI 53707-7857
(608) 266-1677
conlinsa@doj.state.wi.us
Wisconsin Bar Number 1089101

*Attorney not admitted in this District, co-signing
pursuant to LR 83.20(i)(1)(D)(i).

FOR THE STATE OF WYOMING

2/24, 2021

By: Bridget Hill
Bridget Hill *
Attorney General
State of Wyoming
WY Bar No. 6-3616

2/24, 2021

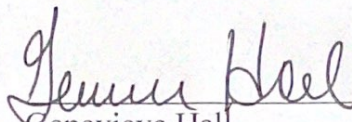
By: Kit Wendtland
Kit Wendtland *
Assistant Attorney General
State of Wyoming
2320 Capitol Av.
Cheyenne, WY 82002
307-777-3795
kit.wendtland@wyo.gov
WY Bar No. 7-6276
Counsel of Record for the State of Wyoming

*Attorneys not admitted in this District, co-signing pursuant to LR 83.20(i)(1)(D)(i).

FOR THE STATE OF FLORIDA

February 11, 2021

By:




Genevieve Hall

Senior Attorney
Florida Department of Agriculture and
Consumer Services
407 S. Calhoun St.
Tallahassee, Florida 32399
(850) 245-1040
Genevieve.Hall@FDACS.Gov
FL Bar #724661

*Attorney not admitted in this District, co-signing
pursuant to LR 83.20(i)(1)(D)(i).

**FOR THE NORTH CAROLINA
DEPARTMENT OF THE SECRETARY
OF STATE**

February 11, 2021

By: _____

Jeremy D. Lindsley *
Assistant Attorney General, on behalf of the
North Carolina Department of the Secretary
of State
North Carolina Department of Justice
P.O. Box 629
Raleigh, NC 27602-0629
(919) 716-6400
jlindsley@ncdoj.gov
NC State Bar No. 26235

*Attorney not admitted in this District, co-signing
pursuant to LR 83.20(i)(1)(D)(i).

**FOR THE DIVISION OF CONSUMER
PROTECTION, UTAH DEPARTMENT
OF COMMERCE**

FEB 25th, 2021

By: 
Sterling R. Corbett
Assistant Attorney General
Counsel for Utah Division of Consumer Protection
Office of Attorney General
160 East 300 South, 5th Floor
P.O. Box 140872
Salt Lake City, UT 84114-0872
(801) 366-0310
sterlingc@agutah.gov
UT 12319

*Attorney not admitted in this District, co-signing
pursuant to LR 83.20(i)(1)(D)(i).

FOR THE DISTRICT OF COLUMBIA

KARL A. RACINE

Attorney General

District of Columbia

February 16, 2021

By:



Kathleen Konopka* (D.C. Bar No. 495257)
Deputy Attorney General

Catherine A. Jackson
(D.C. Bar No. 1005415)
Chief, Public Integrity Section

Leonor Miranda (D.C. Bar No. 1044293)
Assistant Attorney General

Office of Attorney General
for the District of Columbia
400 6th Street N.W., 10th Floor
Washington, D.C. 20001
(202) 724-6610
Kathleen.Konopka@dc.gov
Catherine.Jackson@dc.gov
Leonor.Miranda@dc.gov

*Attorney not admitted in this District, co-signing
pursuant to LR 83.20(i)(1)(D)(i).

ATTACHMENT A

TELEMARKETING SALES RULE

Pt. 309, App. A

16 CFR Ch. I (1–1–19 Edition)

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

Sec.

310.1 Scope of regulations in this part.

310.2 Definitions.

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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.

§310.2 Definitions.

(a) *Acquirer* means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value.

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(b) *Attorney General* means the chief legal officer of a state.

(c) *Billing information* means any data that enables any person to access a customer's or donor's account, such as a credit card, checking, savings, share or similar account, utility bill, mortgage loan account, or debit card.

(d) *Caller identification service* means a service that allows a telephone subscriber to have the telephone number, and, where available, name of the calling party transmitted contemporaneously with the telephone call, and displayed on a device in or connected to the subscriber's telephone.

(e) *Cardholder* means a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued.

(f) *Cash-to-cash money transfer* means the electronic (as defined in section 106(2) of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7006(2))) transfer of the value of cash received from one person to another person in a different location that is sent by a money transfer provider and received in the form of cash. For purposes of this definition, *money transfer provider* means any person or financial institution that provides cash-to-cash money transfers for a person in the normal course of its business, whether or not the person holds an account with such person or financial institution. The term *cash-to-cash money transfer* includes a remittance transfer, as defined in section 919(g)(2) of the Electronic Fund Transfer Act ("EFTA"), 15 U.S.C. 1693a, that is a cash-to-cash transaction; however it does not include any transaction that is:

(1) An electronic fund transfer as defined in section 903 of the EFTA;

(2) Covered by Regulation E, 12 CFR 1005.20, pertaining to gift cards; or

(3) Subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*

(g) *Cash reload mechanism* is a device, authorization code, personal identification number, or other security measure that makes it possible for a person to convert cash into an electronic (as defined in section 106(2) of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7006(2))) form

that can be used to add funds to a general-use prepaid card, as defined in Regulation E, 12 CFR 1005.2, or an account with a payment intermediary. For purposes of this definition, a cash reload mechanism is not itself a general-use prepaid debit card or a swipe reload process or similar method in which funds are added directly onto a person's own general-use prepaid card or account with a payment intermediary.

(h) *Charitable contribution* means any donation or gift of money or any other thing of value.

(i) *Commission* means the Federal Trade Commission.

(j) *Credit* means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(k) *Credit card* means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

(l) *Credit card sales draft* means any record or evidence of a credit card transaction.

(m) *Credit card system* means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system.

(n) *Customer* means any person who is or may be required to pay for goods or services offered through telemarketing.

(o) *Debt relief service* means any program or service represented, directly or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of the debt between a person and one or more unsecured creditors or debt collectors, including, but not limited to, a reduction in the balance, interest rate, or fees owed by a person to an unsecured creditor or debt collector.

(p) *Donor* means any person solicited to make a charitable contribution.

(q) *Established business relationship* means a relationship between a seller and a consumer based on:

(1) the consumer's purchase, rental, or lease of the seller's goods or services or a financial transaction between the

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consumer and seller, within the eighteen (18) months immediately preceding the date of a telemarketing call; or

(2) the consumer's inquiry or application regarding a product or service offered by the seller, within the three (3) months immediately preceding the date of a telemarketing call.

(r) *Free-to-pay conversion* means, in an offer or agreement to sell or provide any goods or services, a provision under which a customer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if he or she does not take affirmative action to cancel before the end of that period.

(s) *Investment opportunity* means anything, tangible or intangible, that is offered, offered for sale, sold, or traded based wholly or in part on representations, either express or implied, about past, present, or future income, profit, or appreciation.

(t) *Material* means likely to affect a person's choice of, or conduct regarding, goods or services or a charitable contribution.

(u) *Merchant* means a person who is authorized under a written contract with an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution.

(v) *Merchant agreement* means a written contract between a merchant and an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution.

(w) *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.

(x) *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.

(y) *Person* means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

(z) *Preacquired account information* means any information that enables a seller or telemarketer to cause a charge to be placed against a customer's or donor's account without obtaining the account number directly from the customer or donor during the telemarketing transaction pursuant to which the account will be charged.

(aa) *Prize* means anything offered, or purportedly offered, and given, or purportedly given, to a person by chance. For purposes of this definition, chance exists if a person is guaranteed to receive an item and, at the time of the offer or purported offer, the telemarketer does not identify the specific item that the person will receive.

(bb) *Prize promotion* means:

(1) A sweepstakes or other game of chance; or

(2) An oral or written express or implied representation that a person has won, has been selected to receive, or may be eligible to receive a prize or purported prize.

(cc) *Remotely created payment order* means any payment instruction or order drawn on a person's account that is created by the payee or the payee's agent and deposited into or cleared through the check clearing system. The term includes, without limitation, a "remotely created check," as defined in Regulation CC, Availability of Funds and Collection of Checks, 12 CFR 229.2(fff), but does not include a payment order cleared through an Automated Clearinghouse (ACH) Network or subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR part 1026.

(dd) *Seller* means any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration.

(ee) *State* means any state of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.

(ff) *Telemarketer* means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor.

(gg) *Telemarketing* means a plan, program, or campaign which is conducted

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to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog which: contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term “further solicitation” does not include providing the customer with information about, or attempting to sell, any other item included in the same catalog which prompted the customer’s call or in a substantially similar catalog.

(hh) *Upselling* means soliciting the purchase of goods or services following an initial transaction during a single telephone call. The upsell is a separate telemarketing transaction, not a continuation of the initial transaction. An “external upsell” is a solicitation made by or on behalf of a seller different from the seller in the initial transaction, regardless of whether the initial transaction and the subsequent solicitation are made by the same telemarketer. An “internal upsell” is a solicitation made by or on behalf of the same seller as in the initial transaction, regardless of whether the initial transaction and subsequent solicitation are made by the same telemarketer.

[75 FR 48516, Aug. 10, 2010, as amended at 80 FR 77557, Dec. 14, 2015]

§ 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 pay⁶⁵⁹ 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;⁶⁶⁰

(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;

⁶⁵⁹ 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.

⁶⁶⁰ 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.

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(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 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, the odds of being able to receive a prize, the nature or value of a prize, or that a purchase or payment is required to win a prize or to participate in a prize promotion;

(vi) Any material aspect of an investment opportunity including, but not limited to, risk, liquidity, earnings potential, or profitability;

(vii) A seller's or telemarketer's affiliation with, or endorsement or sponsorship by, any person or government entity;

(viii) That any customer needs offered goods or services to provide protections a customer already has pursuant to 15 U.S.C. 1643;

(ix) Any material aspect of a 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); or

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(x) Any material aspect of any debt relief service, including, but not limited to, the amount of money or the percentage of the debt amount that a customer may save by using such service; the amount of time necessary to achieve the represented results; the amount of money or the percentage of each outstanding debt that the customer must accumulate before the provider of the debt relief service will initiate attempts with the customer's creditors or debt collectors or make a bona fide offer to negotiate, settle, or modify the terms of the customer's debt; the effect of the service on a customer's creditworthiness; the effect of the service on collection efforts of the customer's creditors or debt collectors; the percentage or number of customers who attain the represented results; and whether a debt relief service is offered or provided by a non-profit entity.

(3) Causing billing information to be submitted for payment, or collecting or attempting to collect payment for goods or services or a charitable contribution, directly or indirectly, without the customer's or donor's express verifiable authorization, except when the method of payment used is a credit card subject to protections of the Truth in Lending Act and Regulation Z,⁶⁶¹ or a debit card subject to the protections of the Electronic Fund Transfer Act and Regulation E.⁶⁶² Such authorization shall be deemed verifiable if any of the following means is employed:

(i) Express written authorization by the customer or donor, which includes the customer's or donor's signature;⁶⁶³

(ii) Express oral authorization which is audio-recorded and made available upon request to the customer or donor, and the customer's or donor's bank or other billing entity, and which evidences clearly both the customer's or

donor's authorization of payment for the goods or services or charitable contribution that are the subject of the telemarketing transaction and the customer's or donor's receipt of all of the following information:

(A) An accurate description, clearly and conspicuously stated, of the goods or services or charitable contribution for which payment authorization is sought;

(B) The number of debits, charges, or payments (if more than one);

(C) The date(s) the debit(s), charge(s), or payment(s) will be submitted for payment;

(D) The amount(s) of the debit(s), charge(s), or payment(s);

(E) The customer's or donor's name;

(F) The customer's or donor's billing information, identified with sufficient specificity such that the customer or donor understands what account will be used to collect payment for the goods or services or charitable contribution that are the subject of the telemarketing transaction;

(G) A telephone number for customer or donor inquiry that is answered during normal business hours; and

(H) The date of the customer's or donor's oral authorization; or

(iii) Written confirmation of the transaction, identified in a clear and conspicuous manner as such on the outside of the envelope, sent to the customer or donor via first class mail prior to the submission for payment of the customer's or donor's billing information, and that includes all of the information contained in §§310.3(a)(3)(ii)(A)-(G) and a clear and conspicuous statement of the procedures by which the customer or donor can obtain a refund from the seller or telemarketer or charitable organization in the event the confirmation is inaccurate; provided, however, that this means of authorization shall not be deemed verifiable in instances in which goods or services are offered in a transaction involving a free-to-pay conversion and preacquired account information.

(4) Making a false or misleading statement to induce any person to pay for goods or services or to induce a charitable contribution.

⁶⁶¹ Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR part 226.

⁶⁶² Electronic Fund Transfer Act, 15 U.S.C. 1693 *et seq.*, and Regulation E, 12 CFR part 205.

⁶⁶³ 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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(b) *Assisting and facilitating.* 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 §§310.3(a), (c) or (d), or §310.4 of this Rule.

(c) *Credit card laundering.* Except as expressly permitted by the applicable credit card system, it is a deceptive telemarketing act or practice and a violation of this Rule for:

(1) A merchant to present to or deposit into, or cause another to present to or deposit into, the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant;

(2) Any person to employ, solicit, or otherwise cause a merchant, or an employee, representative, or agent of the merchant, to present to or deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant; or

(3) Any person to obtain access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement or the applicable credit card system.

(d) *Prohibited deceptive acts or practices in the solicitation of charitable contributions.* It is a fraudulent charitable solicitation, a deceptive telemarketing act or practice, and a violation of this Rule for any telemarketer soliciting charitable contributions to misrepresent, directly or by implication, any of the following material information:

(1) The nature, purpose, or mission of any entity on behalf of which a charitable contribution is being requested;

(2) That any charitable contribution is tax deductible in whole or in part;

(3) The purpose for which any charitable contribution will be used;

(4) The percentage or amount of any charitable contribution that will go to

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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.

[75 FR 48516, Aug. 10, 2010, as amended at 80 FR 77558, Dec. 14, 2015]

§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 recover or otherwise assist in the return of money or any other item of value paid for by, or promised to, that person in a previous transaction, until seven (7) business days after such money or other item is delivered to that person. This provision shall not

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apply to goods or services provided to a person by a licensed attorney;

(4) Requesting or receiving payment of any fee or consideration in advance of obtaining a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit for a person;

(5)(i) Requesting or receiving payment of any fee or consideration for any debt relief service until and unless:

(A) The seller or telemarketer has renegotiated, settled, reduced, or otherwise altered the terms of at least one debt pursuant to a settlement agreement, debt management plan, or other such valid contractual agreement executed by the customer;

(B) The customer has made at least one payment pursuant to that settlement agreement, debt management plan, or other valid contractual agreement between the customer and the creditor or debt collector; and

(C) To the extent that debts enrolled in a service are renegotiated, settled, reduced, or otherwise altered individually, the fee or consideration either:

(I) Bears the same proportional relationship to the total fee for renegotiating, settling, reducing, or altering the terms of the entire debt balance as the individual debt amount bears to the entire debt amount. The individual debt amount and the entire debt amount are those owed at the time the debt was enrolled in the service; or

(2) Is a percentage of the amount saved as a result of the renegotiation, settlement, reduction, or alteration. The percentage charged cannot change from one individual debt to another. The amount saved is the difference between the amount owed at the time the debt was enrolled in the service and the amount actually paid to satisfy the debt.

(ii) Nothing in § 310.4(a)(5)(i) prohibits requesting or requiring the customer to place funds in an account to be used for the debt relief provider's fees and for payments to creditors or debt collectors in connection with the renegotiation, settlement, reduction, or other alteration of the terms of payment or other terms of a debt, provided that:

(A) The funds are held in an account at an insured financial institution;

(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)(7)(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

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charged using the account number pursuant to paragraph (a)(7)(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)(7)(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)(7)(ii)(A) of this section;

(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;

(9) Creating or causing to be created, directly or indirectly, a remotely created payment order as payment for goods or services offered or sold through telemarketing or as a charitable contribution solicited or sought through telemarketing; or

(10) Accepting from a customer or donor, directly or indirectly, a cash-to-cash money transfer or cash reload mechanism as payment for goods or services offered or sold through telemarketing or as a charitable contribution solicited or sought through telemarketing.

(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 paragraph (b)(1)(iii)(A) of this section, including, but not limited to, harassing any person who makes such a request; hanging up on that person; failing to honor the request; requiring the person to listen to a sales pitch before accepting the request; assessing a charge or fee for honoring the request; requiring a person to call a different number to submit the request; and requiring the person to identify the seller making the call or on whose behalf the call is made;

(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 on behalf of the seller whose goods or services are being offered or made on behalf of the charitable organization for which a charitable contribution is being solicited; or

(B) That person's telephone number is on the "do-not-call" registry, maintained by the Commission, of persons who do not wish to receive outbound telephone calls to induce the purchase of goods or services unless the seller or telemarketer:

(1) Can demonstrate that the seller has obtained the express agreement, in writing, of such person to place calls to that person. Such written agreement shall clearly evidence such person's authorization that calls made by or on behalf of a specific party may be placed to that person, and shall include the telephone number to which the calls may be placed and the signature⁶⁶⁴ of that person; or

⁶⁶⁴ 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

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(2) Can demonstrate that the seller has an established business relationship with such person, and that person has not stated that he or she does not wish to receive outbound telephone calls under paragraph (b)(1)(iii)(A) of this section; or

(iv) Abandoning any outbound telephone call. An outbound telephone call is “abandoned” under this section if a person answers it and the telemarketer does not connect the call to a sales representative within two (2) seconds of the person’s completed greeting.

(v) Initiating any outbound telephone call that delivers a prerecorded message, other than a prerecorded message permitted for compliance with the call abandonment safe harbor in § 310.4(b)(4)(iii), unless:

(A) In any such call to induce the purchase of any good or service, the seller has obtained from the recipient of the call an express agreement, in writing, that:

(i) The seller obtained only after a clear and conspicuous disclosure that the purpose of the agreement is to authorize the seller to place prerecorded calls to such person;

(ii) The seller obtained without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service;

(iii) Evidences the willingness of the recipient of the call to receive calls that deliver prerecorded messages by or on behalf of a specific seller; and

(iv) Includes such person’s telephone number and signature;⁶⁶⁵ and

(B) In any such call to induce the purchase of any good or service, or to induce a charitable contribution from a member of, or previous donor to, a non-profit charitable organization on whose behalf the call is made, the seller or telemarketer:

(i) Allows the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call; and

(ii) Within two (2) seconds after the completed greeting of the person called, plays a prerecorded message that promptly provides the disclosures required by § 310.4(d) or (e), followed immediately by a disclosure of one or both of the following:

(A) In the case of a call that could be answered in person by a consumer, that the person called can use an automated interactive voice and/or keypress-activated opt-out mechanism to assert a Do Not Call request pursuant to § 310.4(b)(1)(iii)(A) at any time during the message. The mechanism must:

(1) Automatically add the number called to the seller’s entity-specific Do Not Call list;

(2) Once invoked, immediately disconnect the call; and

(3) Be available for use at any time during the message; and

(B) In the case of a call that could be answered by an answering machine or voicemail service, that the person called can use a toll-free telephone number to assert a Do Not Call request pursuant to § 310.4(b)(1)(iii)(A). The number provided must connect directly to an automated interactive voice or keypress-activated opt-out mechanism that:

(1) Automatically adds the number called to the seller’s entity-specific Do Not Call list;

(2) Immediately thereafter disconnects the call; and

(3) Is accessible at any time throughout the duration of the telemarketing campaign; and

(iii) Complies with all other requirements of this part and other applicable federal and state laws.

(C) Any call that complies with all applicable requirements of this paragraph (v) shall not be deemed to violate § 310.4(b)(1)(iv) of this part.

(D) This paragraph (v) shall not apply to any outbound telephone call that delivers a prerecorded healthcare message made by, or on behalf of, a covered entity or its business associate, as those terms are defined in the HIPAA Privacy Rule, 45 CFR 160.103.

(2) It is an abusive telemarketing act or practice and a violation of this Rule for any person to sell, rent, lease, purchase, or use any list established to comply with § 310.4(b)(1)(iii)(A), or

valid signature under applicable federal law or state contract law.

⁶⁶⁵ 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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maintained by the Commission pursuant to § 310.4(b)(1)(iii)(B), for any purpose except compliance with the provisions of this Rule or otherwise to prevent telephone calls to telephone numbers on such lists.

(3) A seller or telemarketer will not be liable for violating § 310.4(b)(1)(ii) and (iii) if it can demonstrate that, as part of the seller's or telemarketer's routine business practice:

(i) It has established and implemented written procedures to comply with § 310.4(b)(1)(ii) and (iii);

(ii) It has trained its personnel, and any entity assisting in its compliance, in the procedures established pursuant to § 310.4(b)(3)(i);

(iii) The seller, or a telemarketer or another person acting on behalf of the seller or charitable organization, has maintained and recorded a list of telephone numbers the seller or charitable organization may not contact, in compliance with § 310.4(b)(1)(iii)(A);

(iv) The seller or a telemarketer uses a process to prevent telemarketing to any telephone number on any list established pursuant to § 310.4(b)(3)(iii) or 310.4(b)(1)(iii)(B), employing a version of the "do-not-call" registry obtained from the Commission no more than thirty-one (31) days prior to the date any call is made, and maintains records documenting this process;

(v) The seller or a telemarketer or another person acting on behalf of the seller or charitable organization, monitors and enforces compliance with the procedures established pursuant to § 310.4(b)(3)(i); and

(vi) Any subsequent call otherwise violating paragraph (b)(1)(ii) or (iii) of this section is the result of error and not of failure to obtain any information necessary to comply with a request pursuant to paragraph (b)(1)(iii)(A) of this section not to receive further calls by or on behalf of a seller or charitable organization.

(4) A seller or telemarketer will not be liable for violating § 310.4(b)(1)(iv) if:

(i) The seller or telemarketer employs technology that ensures abandonment of no more than three (3) percent of all calls answered by a person, measured over the duration of a single calling campaign, if less than 30 days, or separately over each successive 30-

day period or portion thereof that the campaign continues.

(ii) The seller or telemarketer, for each telemarketing call placed, allows the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call;

(iii) Whenever a sales representative is not available to speak with the person answering the call within two (2) seconds after the person's completed greeting, the seller or telemarketer promptly plays a recorded message that states the name and telephone number of the seller on whose behalf the call was placed⁶⁶⁶; and

(iv) The seller or telemarketer, in accordance with § 310.5(b)-(d), retains records establishing compliance with § 310.4(b)(4)(i)-(iii).

(c) *Calling time restrictions.* Without the prior consent of a person, it is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in outbound telephone calls to a person's residence at any time other than between 8:00 a.m. and 9:00 p.m. local time at the called person's location.

(d) *Required oral disclosures in the sale of goods or services.* It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer in 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

⁶⁶⁶ This provision does not affect any seller's or telemarketer's obligation to comply with relevant state and federal laws, including but not limited to the TCPA, 47 U.S.C. 227, and 47 CFR part 64.1200.

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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.

[75 FR 48516, Aug. 10, 2010, as amended at 76 FR 58716, Sept. 22, 2011; 80 FR 77559, Dec. 14, 2015]

§ 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;⁶⁶⁷

(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 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:

⁶⁶⁷ 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.

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(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 upselling included in such telephone calls;

(5) Telephone calls initiated by a customer or donor in response to an advertisement through any medium, other than direct mail solicitation, *provided*, however, that this exemption does not apply to:

(i) Calls initiated by a customer or donor in response to an advertisement relating to investment opportunities, debt relief services, business opportunities other than business arrangements covered by the Franchise Rule or Business Opportunity Rule, or advertisements involving offers for goods or services described in §310.3(a)(1)(vi) or §310.4(a)(2) through (4);

(ii) The requirements of §310.4(a)(9) or (10); or

(iii) Any instances of upselling included in such telephone calls;

(6) Telephone calls initiated by a customer or donor in response to a direct mail solicitation, including solicitations via the U.S. Postal Service, facsimile transmission, electronic mail, and other similar methods of delivery in which a solicitation is directed to specific address(es) or person(s), that clearly, conspicuously, and truthfully discloses all material information listed in §310.3(a)(1), for any goods or services offered in the direct mail solicitation, and that contains no material misrepresentation regarding any item contained in §310.3(d) for any requested charitable contribution; *provided*, however, that this exemption does not apply to:

(i) Calls initiated by a customer in response to a direct mail solicitation relating to prize promotions, investment opportunities, debt relief services, business opportunities other than business arrangements covered by the Franchise Rule or Business Opportunity Rule, or goods or services described in §310.3(a)(1)(vi) or §310.4(a)(2) through (4);

(ii) The requirements of §310.4(a)(9) or (10); or

(iii) Any instances of upselling included in such telephone calls; and

(7) Telephone calls between a telemarketer and any business to induce the purchase of goods or services or a charitable contribution by the business, except calls to induce the retail sale of nondurable office or cleaning supplies; *provided*, however, that §§310.4(b)(1)(iii)(B) and 310.5 shall not apply to sellers or telemarketers of nondurable office or cleaning supplies.

[75 FR 48516, Aug. 10, 2010, as amended at 80 FR 77559, Dec. 14, 2015]

§ 310.7 Actions by states and private persons.

(a) Any attorney general or other officer of a state authorized by the state to bring an action under the Telemarketing and Consumer Fraud and 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

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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, the state or private person shall serve the Commission with the required notice immediately upon instituting its action.

(b) Nothing contained in this Section shall prohibit any attorney general or other authorized state official from proceeding in state court on the basis of an alleged violation of any civil or criminal statute of such state.

§ 310.8 Fee for access to the National Do Not Call Registry.

(a) It is a violation of this Rule for any seller to initiate, or cause any telemarketer to initiate, an outbound telephone call to any person whose telephone number is within a given area code unless such seller, either directly or through another person, first has paid the annual fee, required by § 310.8(c), for access to telephone numbers within that area code that are included in the National Do Not Call Registry maintained by the Commission under § 310.4(b)(1)(iii)(B); provided, however, that such payment is not necessary if the seller initiates, or causes a telemarketer to initiate, calls solely to persons pursuant to §§ 310.4(b)(1)(iii)(B)(i) or (ii), and the seller does not access the National Do Not Call Registry for any other purpose.

(b) It is a violation of this Rule for any telemarketer, on behalf of any seller, to initiate an outbound telephone call to any person whose telephone number is within a given area code unless that seller, either directly or through another person, first has paid the annual fee, required by § 310.8(c), for access to the telephone numbers within that area code that are included in the National Do Not Call Registry; provided, however, that such payment is not necessary if the seller initiates, or causes a telemarketer to initiate, calls solely to persons pursuant to §§ 310.4(b)(1)(iii)(B)(i) or (ii), and the seller does not access the National Do

Not Call Registry for any other purpose.

(c) The annual fee, which must be paid by any person prior to obtaining access to the National Do Not Call Registry, is \$63 for each area code of data accessed, up to a maximum of \$17,406; *provided*, however, that there shall be no charge to any person for accessing the first five area codes of data, and *provided further*, that there shall be no charge to any person engaging in or causing others to engage in outbound telephone calls to consumers and who is accessing area codes of data in the National Do Not Call Registry if the person is permitted to access, but is not required to access, the National Do Not Call Registry under this Rule, 47 CFR 64.1200, or any other Federal regulation or law. No person may participate in any arrangement to share the cost of accessing the National Do Not Call Registry, including any arrangement with any telemarketer or service provider to divide the costs to access the registry among various clients of that telemarketer or service provider.

(d) Each person who pays, either directly or through another person, the annual fee set forth in paragraph (c) of this section, each person excepted under paragraph (c) from paying the annual fee, and each person excepted from paying an annual fee under § 310.4(b)(1)(iii)(B), will be provided a unique account number that will allow that person to access the registry data for the selected area codes at any time for the twelve month period beginning on the first day of the month in which the person paid the fee ("the annual period"). To obtain access to additional area codes of data during the first six months of the annual period, each person required to pay the fee under paragraph (c) of this section must first pay \$63 for each additional area code of data not initially selected. To obtain access to additional area codes of data during the second six months of the annual period, each person required to pay the fee under paragraph (c) of this section must first pay \$32 for each additional area code of data 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.

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(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, as amended at 77 FR 51697, Aug. 27, 2012; 78 FR 53643, Aug. 30, 2013; 79 FR 51478, Aug. 29, 2014; 80 FR 77560, Dec. 14, 2016; 81 FR 59845, Aug. 31, 2016; 82 FR 39534, Aug. 21, 2017; 83 FR 46640, Sept. 14, 2018]

§ 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.