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CLERK U S DISTRICT COURT DISTRICT OF ARIZONA	
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7 UNITED STATES DISTRICT COURT

8 DISTRICT OF ARIZONA

9 Federal Trade Commission,

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11 Plaintiff,

12 v.

13 National Card Monitor LLC, also d/b/a
14 Nationwide Card Monitor; and
James Eric Cox,

15 Defendants.
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CV-12-2521-PHX-JAT

COMPLAINT FOR PERMANENT
INJUNCTION AND OTHER
EQUITABLE RELIEF

1 Plaintiff, the Federal Trade Commission (“FTC”), for its Complaint alleges:

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

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JURISDICTION AND VENUE

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2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331,
1337(a), and 1345, and 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), and 6105(b).

3. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c), and 15
U.S.C. § 53(b).

PLAINTIFF

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

5. The FTC is authorized to initiate federal district court proceedings, by its
own attorneys, to enjoin violations of the FTC Act and the TSR and to secure such
equitable relief as may be appropriate in each case, including rescission or reformation of
contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten

1 monies. 15 U.S.C. §§ 53(b), 56(a)(2)(A), 56(a)(2)(B), 57b, 6102(c) and 6105(b).

2
3 **DEFENDANTS**

4 6. National Card Monitor LLC, which also does business as Nationwide Card
5 Monitor (“National”), is an Arizona limited liability company with its principal place of
6 business at 500 West Southern Ave., Suites 15, 16, and 17, Mesa, Arizona 85210.
7 National transacts or has transacted business in this district and throughout the United
8 States.

9 7. James Eric Cox is the sole member, statutory agent, and CEO of National.
10 He also was responsible for the registration of a National website,
11 nationalcardmonitor.com, and pays for its web hosting. He is the lone signer on a
12 National checking account. He has responded on National’s behalf to Better Business
13 Bureau and Arizona Attorney General complaints. At all times material to this
14 Complaint, acting alone or in concert with others, he has formulated, directed, controlled,
15 had the authority to control, or participated in the acts and practices set forth in this
16 Complaint. Cox resides in this district and, in connection with the matters alleged herein,
17 transacts or has transacted business in this district and throughout the United States.

18
19 **COMMERCE**

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

23
24 **DEFENDANTS’ BUSINESS PRACTICES**

25 9. Since approximately early 2011, Defendants have telemarketed credit card
26 interest rate reduction services to consumers throughout the United States. Defendants
27 also market these services via the Internet on several websites, including
28 nationalcardmonitor.com and nationwidecardmonitor.com.

1 10. During telemarketing calls, Defendants claim to have the ability to reduce
2 substantially consumers' credit card interest rates by obtaining for the consumers one or
3 more low interest rate credit cards onto which the consumers can transfer their credit card
4 balances. In many instances, Defendants claim that they can obtain very low interest
5 rates, such as 7 percent or even zero percent, for consumers. Thus, consumers think they
6 will save money as a result of using Defendants' service.

7 11. In numerous instances, Defendants claim they have a money-back
8 guarantee, and that if consumers do not receive the low interest rate card(s) that
9 Defendants represented that they would obtain for the consumers, the consumers will
10 receive a full refund of the cost of Defendants' services.

11 12. Defendants charge consumers a fee for their services, typically ranging from
12 \$499 to \$599. Defendants typically place this charge on consumers' credit cards the same
13 day as the telemarketing calls.

14 13. After consumers pay Defendants' fee, Defendants usually send consumers a
15 booklet of materials that include forms to complete and return listing all of the consumers'
16 credit card account information and other sensitive personal information such as date of
17 birth and Social Security Number. The booklet also re-states Defendants' "100% money-
18 back guarantee," promising to refund the fee if consumers do not receive the low interest
19 rate credit card(s).

20 14. In some instances, Defendants use the information they obtained from
21 consumers to apply for new credit cards on the consumers' behalf.

22 15. In most instances, Defendants fail to obtain any credit card at all for
23 consumers. In the few instances where consumers do receive a credit card, it is not the
24 low interest rate credit card that was promised during the initial telephone calls.
25 Consequently, in numerous instances, consumers are not able to save any money by using
26 Defendants' services.

27 16. Despite Defendants' failure to obtain a low interest rate credit card for
28 consumers, in numerous instances Defendants fail to refund the fee charged to consumers.

1 17. While telemarketing their program, Defendants, acting directly or through
2 one or more intermediaries, have made numerous calls to telephone numbers on the
3 National Do Not Call Registry (“Registry”).

4 18. Defendants have called telephone numbers in various area codes without
5 first paying the annual fee for access to the telephone numbers within such area codes that
6 are included in the Registry.

7
8 **VIOLATIONS OF THE FTC ACT**

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

11 20. Misrepresentations or deceptive omissions of material fact constitute
12 deceptive acts or practices prohibited by Section 5(a) of the FTC Act. 15 U.S.C. § 45(a).

13
14 **COUNT ONE**

15 **Misrepresenting Material Facts**

16 21. In numerous instances, in connection with the advertising, marketing,
17 promotion, offering for sale, or sale of credit card interest rate reduction services,
18 Defendants have represented, directly or indirectly, expressly or by implication, that
19 consumers who purchase Defendants’ credit card interest rate reduction services will
20 receive a low interest rate credit card and have their credit card interest rates reduced
21 substantially.

22 22. In truth and in fact, in numerous instances in which Defendants have made
23 the representations set forth in Paragraph 21 of this Complaint, consumers who purchased
24 Defendants’ credit card interest rate reduction services have not received a low interest
25 rate credit card and have not had their credit card interest rates reduced substantially.

26 23. Defendants’ representations as set forth in Paragraph 21 of this Complaint
27 are false or unsubstantiated and constitute deceptive acts or practices in violation of
28 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

1 **COUNT TWO**

2 **Refund Misrepresentations**

3 24. In numerous instances, in connection with the advertising, marketing,
4 promotion, offering for sale, or sale of credit card interest rate reduction services,
5 Defendants have represented, directly or indirectly, expressly or by implication, that
6 Defendants will provide full refunds if consumers do not receive the low interest rate
7 credit cards that Defendants represented that they would obtain for the consumers.

8 25. In truth and in fact, in numerous instances in which Defendants have made
9 the representation set forth in Paragraph 24 of this Complaint, Defendants do not provide
10 full refunds when consumers do not receive the low interest rate credit cards that
11 Defendants represented that they would obtain for the consumers.

12 26. Therefore, Defendants' representation as set forth in Paragraph 24 of this
13 Complaint is false and misleading and constitutes a deceptive act or practice in violation
14 of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

15
16 **THE TELEMARKETING SALES RULE**

17 27. Congress directed the FTC to prescribe rules prohibiting abusive and
18 deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15 U.S.C.
19 §§ 6101-6108. The FTC adopted the original Telemarketing Sales Rule in 1995,
20 extensively amended it in 2003, and amended certain provisions thereafter. 16 C.F.R.
21 Part 310.

22 28. Defendants are "seller[s]" and/or "telemarketer[s]" engaged in
23 "telemarketing," and Defendants have initiated, or have caused telemarketers to initiate,
24 "outbound telephone call[s]" to consumers to induce the purchase of goods or services, as
25 those terms are defined in the TSR, 16 C.F.R. § 310.2(v), (aa), (cc), and (dd).

26 29. Under the TSR, an "outbound telephone call" means a telephone call
27 initiated by a telemarketer to induce the purchase of goods or services or to solicit a
28 charitable contribution. 16 C.F.R. § 310.2(v).

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

5 31. The TSR prohibits sellers and telemarketers from misrepresenting, directly
6 or by implication, in the sale of goods or services, any material aspect of the nature or
7 terms of the seller's refund, cancellation, exchange, or repurchase policies. 16 C.F.R.
8 § 310.3(a)(2)(iv).

9 32. The TSR, as amended in 2003, established a "do-not-call" registry (the
10 "National Do Not Call Registry" or "Registry"), maintained by the FTC, of consumers
11 who do not wish to receive certain types of telemarketing calls. Consumers can register
12 their telephone numbers on the Registry without charge either through a toll-free
13 telephone call or over the Internet at www.donotcall.gov.

14 33. Consumers who receive telemarketing calls to their registered numbers can
15 complain of Registry violations the same way they registered, through a toll-free
16 telephone call or over the Internet at www.donotcall.gov, or by otherwise contacting law
17 enforcement authorities.

18 34. The FTC allows sellers, telemarketers, and other permitted organizations to
19 access the Registry over the Internet at www.telemarketing.donotcall.gov, to pay any
20 required fee(s), and to download the numbers not to call.

21 35. The TSR prohibits sellers and telemarketers from calling any telephone
22 number within a given area code unless the seller on whose behalf the call is made has
23 paid the annual fee for access to the telephone numbers within that area code that are
24 included in the Registry. 16 C.F.R. § 310.8.

25 36. The TSR prohibits sellers and telemarketers from initiating an outbound
26 telephone call to telephone numbers on the Registry. 16 C.F.R. § 310.4(b)(1)(iii)(B).

27 37. The TSR prohibits sellers and telemarketers from requesting or receiving
28 payment of any fee or consideration in advance of obtaining a loan or other extension of

1 credit when the seller or telemarketer has guaranteed or represented a high likelihood of
2 success in obtaining or arranging a loan or other extension of credit for a person. 16
3 C.F.R. § 310.4(a)(4).

4 38. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c), and
5 Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the TSR constitutes
6 an unfair or deceptive act or practice in or affecting commerce, in violation of Section
7 5(a) of the FTC Act, 15 U.S.C. § 45(a).

8
9 **VIOLATIONS OF THE TELEMARKETING SALES RULE**

10 **COUNT THREE**

11 **Misrepresentations in Violation of the TSR**

12 39. In numerous instances, in connection with the telemarketing of goods and
13 services, Defendants have misrepresented, directly or by implication, material aspects of
14 the performance, efficacy, nature, or central characteristics of such goods and services,
15 including, but not limited to, that consumers who purchase Defendants' credit card
16 interest rate reduction services will receive a low interest rate credit card.

17 40. Defendants' acts and practices, as described in Paragraph 39 above, are
18 deceptive telemarketing acts or practices that violate the TSR, 16 C.F.R. § 310.3(a)(2)(iii).

19
20 **COUNT FOUR**

21 **Refund Misrepresentations in Violation of the TSR**

22 41. In numerous instances, in the course of telemarketing goods and services,
23 Defendants have misrepresented, directly or by implication, that Defendants will provide
24 full refunds if consumers do not receive the low interest rate credit cards that Defendants
25 represented that they would obtain for the consumers.

26 42. Defendants' acts and practices, as described in Paragraph 41 above, are
27 deceptive telemarketing acts or practices that violate the TSR, 16 C.F.R. § 310.3(a)(2)(iv).

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COUNT FIVE

Violating the National Do Not Call Registry

43. In numerous instances, in connection with telemarketing, Defendants have engaged, or caused a telemarketer to engage, in initiating an outbound telephone call to a person's telephone number on the National Do Not Call Registry in violation of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B).

COUNT SIX

Failing to Pay National Registry Fees

44. In numerous instances, in connection with telemarketing, Defendants have initiated, or caused others to initiate, an outbound telephone call to a telephone number within a given area code when Defendants had not, either directly or through another person, paid the required annual fee for access to the telephone numbers within that area code that are included in the National Do Not Call Registry, in violation of the TSR, 16 C.F.R. § 310.8.

COUNT SEVEN

Advance Fee for New Lower Interest Rate Credit Card

45. In numerous instances, in the course of telemarketing goods and services, Defendants have requested or received payment of a fee or consideration in advance of consumers obtaining an extension of credit when Defendants have guaranteed or represented a high likelihood of success in obtaining or arranging an extension of credit for such consumers.

46. Defendants' acts and practices, as described in Paragraph 45 above, are abusive telemarketing acts or practices that violate the TSR, 16 C.F.R. § 310.4(a)(4).

CONSUMER INJURY

47. Consumers have suffered and will continue to suffer substantial injury as a

1 result of Defendants' violations of the FTC Act and the TSR. In addition, Defendants
2 have been unjustly enriched as a result of their unlawful acts or practices. Absent
3 injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap
4 unjust enrichment, and harm the public interest.

5
6 **THIS COURT'S POWER TO GRANT RELIEF**

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

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

18
19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff FTC, pursuant to Sections 13(b) and 19 of the FTC Act,
21 15 U.S.C. §§ 53(b) and 57b, Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b),
22 and the Court's own equitable powers, requests that the Court:

23 A. Award Plaintiff such preliminary injunctive and ancillary relief as may be
24 necessary to avert the likelihood of consumer injury during the pendency of this action
25 and to preserve the possibility of effective final relief, including, but not limited to,
26 temporary and preliminary injunctions, an order freezing assets, immediate access, and
27 the appointment of a receiver;

28 B. Enter a permanent injunction to prevent future violations of the FTC Act

1 and the TSR by Defendants;

2 C. Award such relief as the Court finds necessary to redress injury to
3 consumers resulting from Defendants' violations of the FTC Act and the TSR, including,
4 but not limited to, rescission or reformation of contracts, restitution, the refund of monies
5 paid, and the disgorgement of ill-gotten monies; and

6 D. Award Plaintiff the costs of bringing this action, as well as such other and
7 additional relief as the Court may determine to be just and proper.

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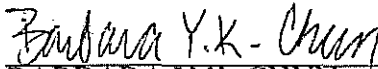
Respectfully Submitted,

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DAVID SHONKA
Acting General Counsel

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12 Dated: November 20, 2012



BARBARA Y.K. CHUN
JOHN D. JACOBS
Attorneys for Plaintiff
FEDERAL TRADE COMMISSION

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