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13 **UNITED STATES DISTRICT COURT**
CENTRAL DISTRICT OF CALIFORNIA
14 **WESTERN DIVISION**

15 FEDERAL TRADE COMMISSION,
16 Plaintiff,

17 v.

18 PROMENADE COMMUNICATIONS LLC, a
California corporation,
19 PROMENADE MEMBERSHIP SERVICES, LLC, a
corporation,
20 PROMENADE COMMUNICATIONS LLC, a Florida
corporation,
21 ARCHETYPE COMMUNICATIONS
CORPORATION, a corporation,
22 PRIVCO, LLC, a corporation,
INTERNATIONAL HEALTH GROUP, LLC, a
corporation,
23 TRAVELQUEST INTERNATIONAL LLC, a
corporation,
24 GLOBAL MEDIA HOLDINGS LTD, a corporation,
and
25 GRAIL HOLDINGS, a corporation,
Defendants.

CV-

COMPLAINT FOR INJUNCTION
AND OTHER EQUITABLE RELIEF

1 Plaintiff, the Federal Trade Commission (“Commission”), by its undersigned attorneys,
2 alleges:

3 1. Plaintiff FTC brings this action under Sections 13(b) and 19 of the Federal Trade
4 Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, the Telemarketing and Consumer
5 Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101 *et seq.*, and the
6 Electronic Fund Transfer Act (“EFTA”), 15 U.S.C. §§ 1693-1693r to secure a permanent
7 injunction, rescission of contracts and restitution, disgorgement of ill-gotten gains, and other
8 equitable relief against Defendants for engaging in unfair or deceptive acts or practices in
9 violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), for engaging in deceptive or abusive
10 telemarketing acts or practices in violation of the FTC’s Telemarketing Sales Rule, 16 C.F.R.
11 Part 310, and for engaging in violations Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a);
12 Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b); and Section 205.10(b) of the Federal
13 Reserve Board’s Official Staff Commentary to Regulation E, 12 C.F.R. § 205.10(b), Supp. I.

14 **JURISDICTION AND VENUE**

15 2. This Court has jurisdiction over this matter pursuant to 15 U.S.C. §§ 45(a), 53(b),
16 57b, 6102(c) and 6105(b), and 28 U.S.C. §§ 1331, 1337(a) and 1345.

17 3. Venue in the Central District of California is proper under 15 U.S.C. § 53(b) and
18 28 U.S.C. §§ 1391(b) and (c).

19 **PLAINTIFF**

20 4. Plaintiff, the Federal Trade Commission, is an independent agency of the United
21 States Government created by the FTC Act, 15 U.S.C. §§ 41 *et seq.* The Commission is charged,
22 *inter alia*, with enforcement of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits
23 unfair or deceptive acts or practices in or affecting commerce. The Commission also enforces
24 the Telemarketing Sales Rule, 16 C.F.R. Part 310, which prohibits deceptive or abusive
25 telemarketing acts or practices. In addition, the Commission enforces the EFTA, and violations
26 of the EFTA are violations of the FTC Act, 15 U.S.C. § 1693o(c)). The Commission may
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1 initiate federal district court proceedings, through its attorneys, to enjoin violations of the FTC
2 Act, the Telemarketing Sales Rule and the EFTA and to secure such other equitable relief,
3 including rescission of contracts and restitution, and disgorgement of ill-gotten gains, as may be
4 appropriate in each case, 15 U.S.C. §§ 53(b), 57b and 6105(b).

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6 **DEFENDANTS**

7 5. Promenade Communications LLC (“PCL”) is a California corporation, with its
8 principal place of business in Los Angeles, CA. PCL transacts or has transacted business in this
9 district.

10 6. Promenade Membership Services, LLC (“PMS”), is a California corporation with
11 its principal place of business in Los Angeles, CA. PMS transacts business in this district.

12 7. Archetype Communications Corporation is a Delaware corporation with its
13 principal place of business in Los Angeles, CA. Archetype Communications Corporation
14 transacts business in this district.

15 8. Promenade Communications, LLC (“PCL-Florida”) is a Florida corporation with
16 its principal place of business in Los Angeles, CA. PCL-Florida transacts business in this
17 district.

18 9. Privco, LLC is a Delaware corporation with its principal place of business in Los
19 Angeles, CA. Privco, LLC transacts business in this district.

20 10. International Health Group, LLC is a Delaware corporation with its principal
21 place of business in Los Angeles, CA. International Health Group transacts business in this
22 district.

23 11. Travelquest International, LLC is a Delaware corporation with its principal place
24 of business in Los Angeles, CA. Travelquest International transacts business in this district.

25 12. Global Media Holdings, LTD is a Bermuda corporation with its principal place of
26 business in Los Angeles, CA. Global Media Holdings transacts business in this district.

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1 emphasizing that it is “just for you to take a look at.” Defendants’ telemarketers have stated,
2 often repeatedly, that charges will occur only *if* the consumer decides to continue with the
3 membership after the trial period.

4 19. In numerous other instances, Defendants’ telemarketers have stated that the
5 consumer will receive the “free trial” and have not requested the consumer’s authorization either
6 to send the trial membership package or to charge the consumer’s credit card or checking
7 account for the membership at the end of the trial period.

8 20. In many instances, in their sales calls, Defendants’ telemarketers have not
9 disclosed, in a manner consumers are likely to notice and understand, (a) that at the time of the
10 telemarketing call, Defendants or their telemarketers already have possession of, or access to, the
11 consumer’s credit number or debit card number (that is linked to a checking account) and related
12 billing information; (b) that Promenade will automatically charge the consumer’s credit card or
13 bank account the membership fee at the conclusion of the trial period unless the consumer calls
14 Promenade within the trial period to cancel the membership, and (c) that Promenade will also
15 automatically charge the consumer’s account for “renewal” of the membership in each
16 subsequent year unless the consumer calls Promenade to cancel. In some instances, Defendants’
17 telemarketers completely failed to disclose the above facts regarding the terms of the
18 memberships.

19 21. In addition, in numerous calls, Defendants, through their telemarketers, have
20 offered the consumer a membership that does not include a trial period and for which Promenade
21 will immediately charge the consumer’s credit card or bank account. Defendants, however, have
22 not disclosed, in a manner consumers are likely to notice and understand, that they will charge
23 the consumer’s account immediately for this membership.

24 22. During these outbound calls, Defendants’ telemarketers have not obtained from
25 consumers the consumers’ credit card or debit card numbers that Defendants plan to charge for
26 their membership services. Instead, Defendants’ telemarketers have obtained this account
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1 information from third party marketers who obtained the information from the consumers as
2 payment for goods or services offered by these marketers. In numerous instances, consumers
3 have not authorized these third party marketers to transfer their billing information to any other
4 marketer or to use the information for any purpose other than the original purchase.

5 23. In their sales calls, Defendants, through their telemarketers, have represented that
6 consumers can “simply” call a toll-free number to cancel their membership. In some instances,
7 Defendants have represented that consumers can obtain a “prompt” refund.

8 **INBOUND TELEMARKETING CAMPAIGN**

9 24. Defendants also have telemarketed their membership services through contracts
10 with third-party companies that telemarket their own products via inbound telemarketing calls
11 (*i.e*

1 then typically have stated that “we” would send the consumer a free, no obligation trial
2 membership, sometimes referring to this membership as a “free gift.”

3 28. The telemarketers then have made a statement about the fees for the membership
4 and about cancellation, but have not disclosed clearly that Promenade will automatically charge
5 the membership fee to the consumer’s credit card or bank account at the conclusion of the trial
6 period and periodically thereafter unless the consumer calls Promenade to cancel the
7 membership.

8 29. At the conclusion of the upsell, the telemarketers frequently have not clearly
9 solicited the consumer’s consent to be charged, but have used wording such as “so look for your
10 kit in the mail, ok?”

11 **SIGNUPS, CHARGES, CANCELLATIONS AND REFUNDS**

12 30. If consumers have agreed to accept a trial membership, and in numerous
13 instances, even if consumers have not agreed, the telemarketers, who already have the billing
14 information, have provided the consumers’ names and credit or debit card numbers and related
15 information to the Defendants so that Defendants can enroll these consumers for trial or
16 permanent memberships and to process credit card or debit card/checking account charges to the
17 accounts of consumers.

18 31. Shortly after receiving the consumer’s name and billing information from their
19 telemarketers, Defendants have mailed a membership package to the consumer announcing that
20 the consumer has accepted a trial or permanent membership in one or more of Defendants’ clubs
21 and providing a toll-free number for questions, cancellations and refunds. Many consumers,
22 however, have complained that they did not receive any such package. In many instances,
23 consumers may have received a package, but not opened it because the package appeared to be
24 unsolicited promotional or sales materials from a company with which the consumers are not
25 familiar. Further, in some instances, the packages failed to disclose the amount of the charges or
26 the annual renewal if the membership is not cancelled. Many consumers who did not open the
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1 package first learned of Defendants' toll-free number when they received their credit card
2 statement, where it was printed next to the charge for Defendants' membership.

3 32. Once Defendants have enrolled consumers in one or more of their clubs,
4 Defendants have automatically charged consumers' credit card or debit card/checking accounts
5 on a monthly or yearly basis without further authorization.

6 33. Defendants have not obtained written authorization from consumers who pay by
7 debit card for such recurring automatic monthly or annual charges from the consumers' bank
8 accounts.

9 34. Defendants have received a large number of complaints from consumers who
10 have stated that they were signed up for memberships without their authorization or complained
11 that they did not understand that they had to call and cancel the membership to avoid charges to
12 their accounts. Despite this, Defendants have continued their practices without taking adequate
13 and timely steps to ensure that their third party telemarketers have obtained authorization from
14 consumers for such charges and disclosed the terms of the automatic charges. Further, numerous
15 consumers have complained to Defendants that they did not know how Defendants got their
16 billing information and that they had never authorized Defendants to obtain and use their billing
17 information. Despite this, Defendants have continued to obtain consumers' credit and debit card
18 numbers and to use this information to charge consumers without ensuring that proper
19 authorization has been obtained.

20 35. In some instances, consumers have not received a sales pitch for the trial
21 memberships, yet Defendants have placed charges for the memberships on their credit card or
22 checking accounts.

23 36. During the course of Defendants' marketing and sale of membership services,
24 through third party telemarketers, numerous consumers who have been signed up by Defendants
25 have not agreed to accept trial or permanent memberships and do not recall receiving necessary
26 information about automatic charges. Many of these consumers did not understand that
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1 Defendants already had their account information, and that charges would automatically be
2 placed on their credit card or checking accounts. Consumers were often particularly surprised
3 and upset to find money withdrawn from their checking accounts, which resulted in bounced
4 checks and overdraft fees.

5 37. In some instances, consumers have had to call repeatedly Defendants' toll-free
6 number, or, having reached the number, have been put on hold for extended periods of time,
7 before being able to reach an operator to cancel their memberships or to obtain refunds.

8 38. In some instances, consumers have been charged for a membership despite
9 having called Defendants' toll-free number and communicated their desire to cancel within the
10 free trial period. In some instances, consumers have had to make repeated requests for a refund
11 before finally receiving one. Other consumers never received a refund, despite Defendants'
12 repeated assurances that they would receive one.

13 **THE FEDERAL TRADE COMMISSION ACT**

14 39. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), provides that "unfair or deceptive
15 acts or practices in or affecting commerce are hereby declared unlawful."

16 **VIOLATIONS OF SECTION 5(a) OF THE FTC ACT**

17 **COUNT I**

18 **DECEPTIVE FAILURE TO DISCLOSE**

19 40. In numerous instances, in connection with the advertising, promotion, marketing,
20 offering for sale, sale or distribution of membership services, Defendants, through third-party
21 telemarketers, have represented, expressly or by implication, that consumers who agree to their
22 offer will receive information about a membership service or will receive a trial membership in
23 such service without risk or obligation.

24 41. Defendants have failed to disclose or to disclose adequately to consumers:
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1 a. in outbound calls: that, at the time of the telemarketing call, Defendants
2 or their telemarketers already have possession of, or access to, the consumer's credit or
3 debit card number and related billing information;

4 b. in inbound and outbound calls: that Promenade will automatically enroll a
5 consumer who fails to contact Defendants within the trial period and cancel the trial
6 membership and will charge an initial membership fee to the consumer's credit card or
7 checking account;

8 c. in inbound and outbound calls: that Promenade will automatically charge
9 a periodic membership fee to the consumer's credit card or bank account if the consumer
10 fails to contact Defendants and cancel the membership.

11 These facts would be material to consumers in their decision to accept an offer of membership
12 services.

13 42. In light of the representations set forth in paragraph 40, the failure of Defendants
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1 a. that, at the time of the telemarketing call, Defendants or their
2 telemarketers already have possession of, or access to, the consumer's credit or debit card
3 number and related billing information;

4 b. that Promenade will automatically enroll a consumer who fails to contact
5 Defendants within the trial period and cancel the trial membership and will charge an
6 initial membership fee to the consumer's credit card or checking account; and

7 c. that Promenade will automatically charge a periodic membership fee to
8 the consumer's credit card or bank account if the consumer fails to contact Defendants
9 and cancel the membership.

10 56. Therefore, Defendants' acts and practices as set forth in paragraph 55 violate

1 3. Award the Plaintiff the costs of bringing this action and such other equitable relief
2 as the Court may determine to be just and proper.

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4 DATE:

Respectfully submitted,

5 WILLIAM E. KOVACIC
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