Plaintiff, the Federal Trade Commission ("FTC"), for its Complaint alleges:

1. The FTC brings this action under Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. §§ 6101-6108, to obtain permanent injunctive relief, rescission of contracts, redress, restitution, disgorgement, and other equitable relief for Defendants' acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and violation of the FTC's Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310.

provided for and in accordance with Sections 524(a) and 727 of the Bankruptcy Code, 11 U.S.C. §§ 524(a) and 727. The Commission's action against Defendant Rebecca Phillips is not enjoined by 11 U.S.C. § 524(a) because the Commission is not seeking the entry of a monetary judgment against Defendant Rebecca Phillips for claims that arose prior to August 18, 2003.

6. On July 12, 2004, the Clerk entered a default against Defendant Robert Thompson. On July 12, 2004, the Clerk entered a default against Defendant Alex McKaughn. On November 8, 2004, the Court entered an order granting Defendant McKaughn's motion to set aside entry of default.

7. On October 1, 2004, the Court entered a Stipulated Judgement and Order for Permanent Injunction for Federal Trade Commission against Telephone Protection Agency and Rebecca Phillips.

THE PARTIES

8. Plaintiff, FTC, is an independent agency of the United States Government created

DEFENDANTS

9. Defendant Telephone Protection Agency, Inc. ("Telephone Protection Agency") is a North Carolina corporation with its registered place of business at 336 Lenoir Rhyne Blvd., Suite 9, Hickory, North Carolina 28602. Telephone Protection Agency transacts or has transacted business in the Western District of North Carolina.

10. Defendant Robert Thompson a/k/a Greg Thompson is the Vice President of Telephone Protection Agency. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts or practices set forth in this Complaint. Defendant Thompson resides, transacts, or has transacted business in the Western District of North Carolina.

11. Defendant Rebecca Phillips is the President of Telephone Protection Agency. At all times material to this Complaint, acting alone or in concert with others, she has formulated, directed, controlled, or participated in the acts or practices set forth in this Complaint. Defendant Phillips resides, transacts, or has transacted business in the Western District of North Carolina.

12. Defendant Alex McKaughn is the Controller and Secretary of Telephone Protection Agency. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, participated, or assisted and facilitated in the acts or practices set forth in this Complaint. Defendant McKaughn resides, transacts, or has transacted business in the Western District of North Carolina.

COMMERCE

13. At all times relevant to this Complaint, Defendants have maintained a substantial course of trade or business in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' BUSINESS ACTIVITIES

14. From on or about November 2001 until March 2003, Defendants engaged in telemarketing a nationwide plan, program, or campaign of services that purported to stop unwanted telemarketing solicitations and to protect consumers' personal information. Utilizing one or more telephones, and more than one interstate telephone call, Defendants cold-called consumers to induce the purchase of their purported "do not call" and protection services.

15. In numerous instances, consumers did not agree to purchase the services. Defendants, nevertheless, proceeded to charge consumers' credit cards or withdraw money from consumers' bank accounts.

16. At other times, Defendants did not even contact consumers prior to taking their money. Defendants already had in their possession consumers' credit card numbers, or bank account or debit card numbers, which enabled them to bill consumers without ever contacting them.

17. Defendants billed consumers between $29.95 and $99.95. Defendants billed over 12,000 consumers.

18. Some consumers did not realize that they had been billed by Defendants until charges showed up on their credit card statements or their bank statements, if they noticed the billing at all.

19. Some consumers received a package of

24. Furthermore, on their website, Defendants stated: "Take a second to think how nice it would be to sit at the dinner table uninterrupted or to know that there is someone working at all times to keep your personal information just as it should be: personal. Currently you are more than likely on major list brokers' marketing lists. Your personal information such as your name, phone number, address, and yes, even at times credit and debit banking account information are on these lists as well, and have a price tag attached to it. . . . Our mission is to stop your unwanted telemarketing, mail, email and even fax solicitations as well as the selling of your personal information among those marketing companies."

25. In reality, however, Defendants did not protect consumers' personal information. Defendants instead misused the very consumer

showing the goods or services purchased by consumers or customers, and the date goods or services were actually shipped or provided to consumers or customers.

SECTION 5 OF THE FTC ACT

28. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts or practices in or affecting commerce. An act or practice is unfair if it causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. Misrepresentations or omissions of material fact that are likely to mislead consumers acting reasonably under the circumstances constitute deceptive acts or practices prohibited by Section 5(a) of the Act, 15 U.S.C. § 45(a).

VIOLATIONS OF SECTION 5 OF THE FTC ACT

COUNT I - Section 5 - Unauthorized Billing

29. Paragraphs 1 through 28 are incorporated by reference.

30. In numerous instances, in connection with the marketing of "do not call" or personal information protection services, Defendants caused charges to be billed to consumers' credit cards, or caused consumers' bank accounts to be debited without the consumers' authorization.

31. Defendants' practice caused or is likely to have caused substantial injury to consumers that was not reasonably avoidable by the consumers and was not outweighed by countervailing benefits to consumers or to competition.

32. Therefore, Defendants' practice, as alleged in Paragraph 30, is unfair and violates Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

<u>COUNT II - Section 5 - False Representations</u>

33. Paragraphs 1 through 28 are incorporated by reference.

34. In numerous instances, in connection with the marketing of “do not call” or personal information protection services, Defendants represented, directly or indirectly, expressly or by implication, that:

a. Defendants would register consumers with the FCC’s National **NO CALL** List;

b. Defendants would provide a monthly list to telemarketing and direct and electronic mail companies nationwide of consumers’ demands for privacy; and

c. Defendants would notify every known telephone and mailing list company

36. Therefore, each of Defendants' representations, as set forth in Paragraph 34, is false and misleading and constitutes a deceptive practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

THE TELEMARKETING SALES RULE

37. Congress directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15 U.S.C. §§ 6101-6108. On August 16, 1995, the FTC adopted the TSR, 16 C.F.R. Part 310, which became effective on December 31, 1995 ("Original TSR"). On January 29, 2003, the FTC issued a Statement of Basis and Purpose and an amended TSR (henceforth "Amended TSR") with most amendments becoming effective on March 31, 2003. 68 Fed. Reg. 4580, 4669.

38. Defendants are "seller[s]" or "telemarketer[s]" engaged in "telemarketing," as those terms are defined in the Original TSR, 16 C.F.R. §§ 310.2(r), (t) and (u), and/or persons who provide substantial assistance or support to "sellers" or "telemarketers" who know or consciously avoid knowing that the sellers or telemarketers are engaged in acts or practices that violate 16 C.F.R. §§ 310.3(a), 310.3(c) or 310.4, as defined in 16 C.F.R. § 310.3(b) of the Original TSR.

39. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c), and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), violations of the TSR constitute unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

VIOLATIONS OF THE TELEMARKETING SALES RULE

COUNT III - TSR Violations - Misrepresentations

40. Paragraphs 1 through 27, and 37 through 39, are incorporated by reference.

41. In numerous instances, in connection with the marketing of "do not call" or personal information protection services, Defendants made a number of representations about the material aspects of the performance, efficacy, nature, or central characteristics of products or services that are the subject of their sales offers, including but not limited to claims that:

a. Defendants would register consumers with the FCC's National **NO CALL** List;

b. Defendants would provide a monthly list to telemarketing and direct and electronic mail companies nationwide of consumers' demands for privacy; and

c. Defendants would notify every known telephone and mailing list company not to sell or lease consumers' information to anyone or company, under any circumstances.

42. In truth and in fact,

a. Defendants could not and did not register consumers with the FCC's National **NO CALL** List;

b. Defendants did not provide a monthly list to telemarketing and direct and electronic mail companies nationwide of consumers' demands for privacy; and

c. Defendants did not notify every known telephone and mailing list company not to sell or lease consumers' information.

43. Therefore, each of Defendants' acts and practices, as set forth in paragraph 41, violates Section 310.3(a)(2) of the Original TSR, 16 C.F.R. § 310.3(a)(2).

<u>COUNT IV - TSR Violations - Failure To Keep Required Records</u>

44. Paragraphs 1 through 27, and 37 through 39, are incorporated by reference.

45. Defendants have failed to keep records required by § 310.5 of the TSR for a period of 24 months from the date the records were produced. Defendants failed to keep records showing 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 acoad40e9 sduced. rd-3 -2.25. the

CONSUMER INJURY

50. Consumers in many areas of the United States have suffered, and continue to suffer, substantial monetary loss as a result of Defendants' unlawful acts and practices. In addition, Defendants have been unjustly enriched as a result of their unlawful practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public.

THIS COURT'S POWER TO GRANT RELIEF

51. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other ancillary relief, including consumer redress, disgorgement, and restitution, to prevent and remedy violations of any provisions of law enforced by the FTC.

52. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), authorize this Court to grant such relief as the Court finds appropriate to halt and redress injury resulting from Defendants' violations of the TSR, including the rescission and reformation of contracts, and the refund of monies.

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests this Court, as authorized by Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), and pursuant to its own equitable powers, to:

1. Permanently enjoin Defendants from violating the FTC Act and the TSR;

2. Award such relief as the Court finds necessary to redress injury to