

Sealed

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

06-20168

CASE NO. _____ -Civ (USDJ)

MSMJ ALTONAGA

FEDERAL TRADE COMMISSION,

MAGISTRATE JUDGE
TURNOFF ✓

VS.

GLOBAL-AMERIKASH,
AMERIKHEALTH, and
INSTANT WAY,

ALBERTO SALAMA,

INSTANT WAY CORPORATION, and

GERMAN ESPITIA

11-2-15

preliminary and permanent injunctive relief, rescission of contracts and restitution,
disgorgement of ill-gotten gains, and other equitable relief against Defendants for

engaging in unfair or deceptive acts or practices in violation of Section 5(a) of the FTC
Act 15 U.S.C. § 45(a) for engaging in violations of the FTC's Telemarketing Sales Rule

...and dissemination of all matter which may be appropriate in such case. 15

5. Defendant Remote Response Corporation ("Remote Response") is a Florida corporation with its principal office or place of business in Miami, Florida. At all times relevant to this complaint, acting individually or in concert with others, Remote Response, also doing business as Amerikash, Global-Amerikash, Instant Way, or Amerikhealth, has

all times relevant to this complaint, acting individually or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this complaint. His principal office or place of business is the same as that of Instant Way. Espitia resides in and transacts or has transacted business in this district.

COMMERCE

9. The acts and practices of Defendants alleged in this complaint have been in or affecting

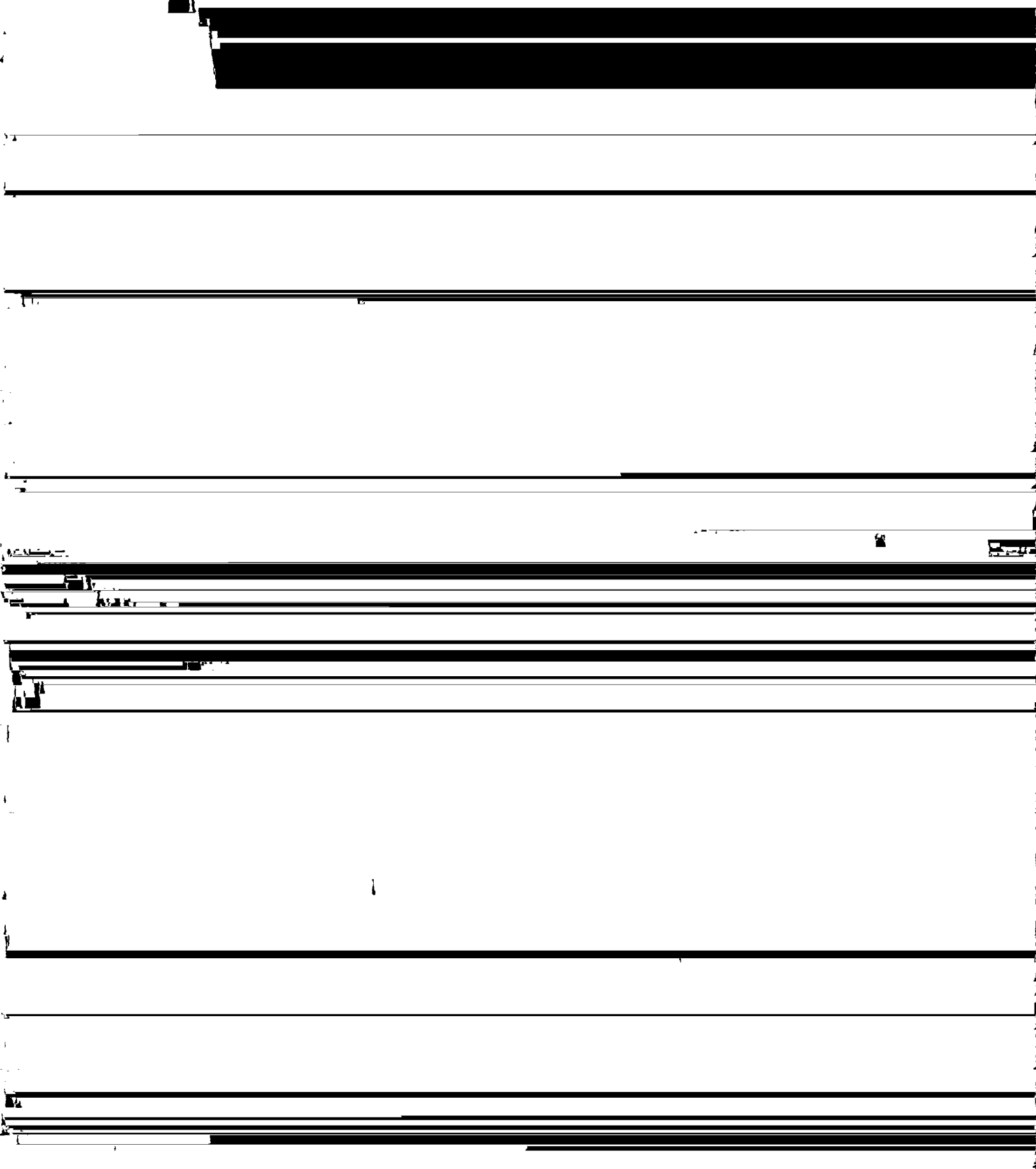
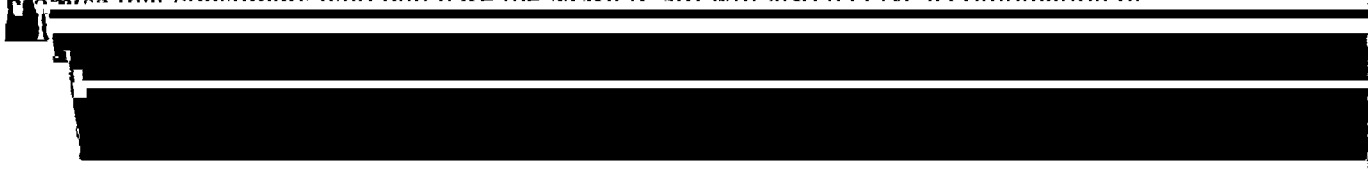
commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' COURSE OF CONDUCT

10. Since at least March 2004 and continuing thereafter, Remote Response, Salama, Instant

~~Way and Espitia (collectively "Defendants") directed, controlled, formulated,~~

promise that consumers who purchase the MasterCard will also receive a combination of



qualified, Defendants' telemarketers congratulate consumers and tell them that they have qualified for the 0% interest and \$2,500 limit. Then, the telemarketers represent that to

payment ranging between \$138 and \$200. To mitigate the high fee, Defendants' telemarketers generally tell consumers that they will receive the equivalent of approximately \$125 in the form of \$20 on the ATM card, \$5 on the phone card, and \$100 worth of airline ticket discount coupons or a free 3-day vacation.

15. Once consumers authorize payment, Defendants' telemarketers sometimes tell consumers they are being transferred to a "recorded verification system." The verification process is conducted by a computer-generated voice that begins by asking consumers to give their

17. Often, after verifying the MasterCard sale, the computer voice or telemarketer “unsells”

the Amerikhealth discount health plan. “Upselling” includes a telemarketing technique where a seller sells goods or services in an initial transaction, then, during the same telephone call, solicits the purchase of additional goods or services.

18. During the upsell, the computer voice or telemarketer tells consumers that, as a “thank-you” for the Amerikash sales transaction, they and their families will receive a 15-day, free trial membership in the Amerikhealth discount health plan. The computer voice or

telemarketer briefly describes the discount health program and states that, after the first fifteen days, consumers’ accounts will be debited approximately \$39.95 for enrollment. The computer voice or telemarketer tells consumers that this fee will be debited unless they call the toll-free number provided and obtain a cancellation number within the first fifteen days.

19. Typically, consumers are asked if they understand and accept the terms. Some consumers decline this offer, and Defendants’ telemarketers, in certain instances, end the call. In other instances, the telemarketers tell consumers who declined the offer to say “yes” to

consumers used to purchase the MasterCard. The computer voice or telemarketer typically completes the “verification” process by giving consumers a “confirmation number” for the transaction, providing Defendants’ customer service telephone number, and telling consumers to “please use the card wisely.”

21. Following the “verification” process, Defendants cause debits and charges to be transmitted to consumers’ bank accounts and credit card accounts. Defendants typically debit consumers’ bank accounts and charge consumers’ credit cards for the MasterCard immediately after the initial sales call. In numerous instances, however, consumers do not receive a MasterCard. In some instances, they receive only some or none of the “free” products Defendants promised would be included with the MasterCard. Of those consumers who do receive some of the “free items,” many indicate that the products do

when they do not receive a MasterCard. When consumers call, Defendants routinely have consumers leave messages, but do not return their calls. In some instances, Defendants' customer service personnel even hang up on consumers. Defendants routinely fail to refund consumers' money.

24. Defendants typically begin to debit consumers' bank accounts and charge consumers' credit cards for the discount health plan around fifteen or more days after the initial sales call. In numerous instances, Defendants cause charges for the health plan to be transmitted to the bank accounts or credit card accounts of consumers who declined the free trial offer. In numerous instances, Defendants also cause charges for the health plan to be transmitted to the bank accounts or credit card accounts of consumers who accept the free trial offer, but do not receive the membership card sufficiently in advance of the debit or charge to use the trial period promised during the call. Defendants even cause charges for the health plan to be transmitted to some consumers' bank accounts or credit card accounts after Defendants' customer service personnel have told these consumers

26. Consumers who attempt to call “customer service” to obtain a cancellation code to cancel their purchase and prevent further debits are frequently unable to do so. Defendants’ customer service representatives frequently hang up on consumers who call to cancel. Many consumers are transferred to answering machines or told that they will be called back, but they are never called. Many consumers who succeed in reaching a customer service representative have been told that they could not cancel.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

27. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts or

practices in or affecting commerce. Misrepresentations or omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

Moreover, under Section 5(n) of the FTC Act, an act or practice is “unfair” if it causes or is likely to cause substantial injury to consumers that is not reasonably avoidable by consumers and is not outweighed by countervailing benefits to consumers or to

15 U.S.C. § 45(n)

Deceptive Practices

COUNT ONE

C. consumers will receive, at no charge, additional specified products or services that can be used in the manner represented by Defendants, for example, Defendants

money by activating the cards;

29. In truth and in fact, in numerous instances in which Defendants have made the representations above:

A. consumers do not receive a MasterCard;

B. consumers do not receive additional specified products or services; or

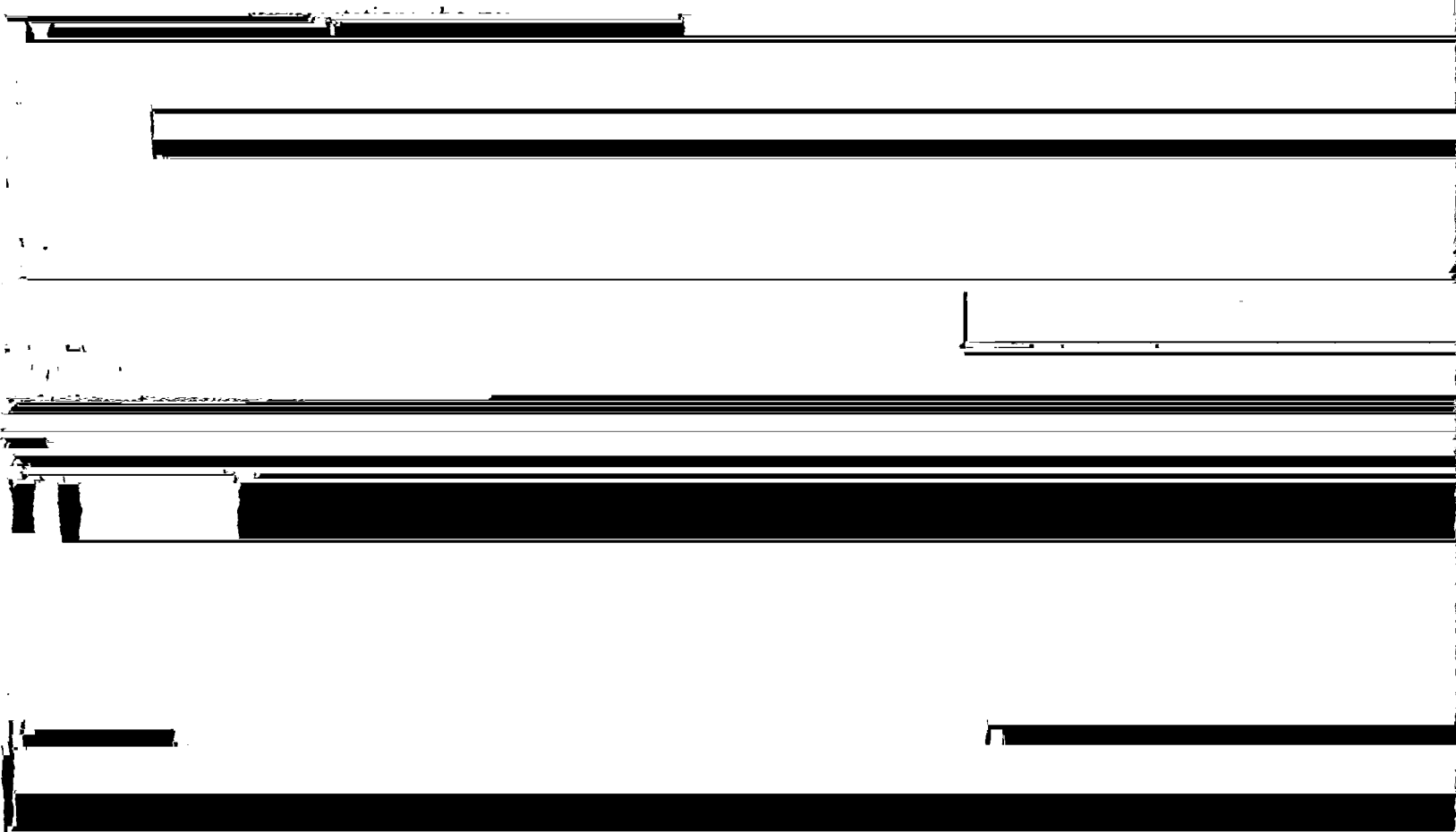
C. consumers do not receive additional specified products or services that can be used in the manner represented by Defendants, for example, in certain

instances, money is not pre-loaded onto the cards and consumers cannot

they may cancel their plan membership;

- B. That consumers will timely receive the membership card and other information necessary to determine, prior to the expiration of the free trial period, whether they wish to keep or cancel membership in the plan;
- C. That consumers can cancel their plan membership by calling to cancel and obtaining a cancellation number as instructed by Defendants;
- D. That consumers will not be charged for the plan if consumers decline or timely cancel the plan as instructed by Defendants; and
- E. That consumers whose plan memberships are not cancelled will be charged an initial fee and then a fee each month thereafter.

32. In truth and in fact, in numerous instances in which Defendants have made the



the plan as instructed by Defendants; or

E. Consumers whose plan memberships are not cancelled are charged multiple monthly fees in a single month.

33. Therefore, the representations set forth in Paragraph 31 are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

Unfair Practices

COUNT THREE

34. In numerous instances, in connection with the marketing of a free trial membership in the Amerikhealth discount health plan, Defendants have caused consumers' bank accounts to

be electronically debited or credit card accounts to be charged.

After consumers declined Defendants' offer of a free trial membership in the

discount health plan;

B. Prior to receipt by the consumers of the membership card authorizing consumers to use the plan;

C. After consumers have asked to cancel the purchase of the plan; or

violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

THE FTC'S TELEMARKETING SALES RULE

37. In 1994, 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 promulgated the TSR, 16 C.F.R. Part 310, which became effective on December 31, 1995. On January 29, 2003, the FTC amended the TSR by issuing a Statement of Basis and Purpose and the final amended TSR. 68 Fed. Reg. 4580, 4669. Except for specific provisions not relevant to this action, the amended TSR became effective March 31, 2003.

38. Since December 31, 1995, except for certain specified types of transactions, the TSR has
~~exempted from the scope of the TSR telephone calls initiated by a customer in response~~

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Page March 21, 2003 - TSP

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account will be charged; and (b) obtain from the customer his or her express agreement to

information. 16 C.F.R. § 310.4(a)(6) (2003).

44. Since March 31, 2003, the TSR has defined "preacquired account information" as "any

information that enables a seller or telemarketer to cause a charge to be placed against a

or telemarketers are engaged in acts or practices that violate 16 C.F.R. §§ 310.3(a) or 310.4.

48. 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).

TSR Violations

COUNT FOUR

49. In numerous instances, in connection with the telemarketing of a free trial membership in the Amerikhealth discount health plan to consumers, in an “upsell” as that term is defined in the TSR, 16 C.F.R. §310.2(dd), Defendants have misrepresented or have assisted and facilitated callers and telemarketers in misrepresenting, directly or by implication, the

obtaining a cancellation number as instructed by Defendants;

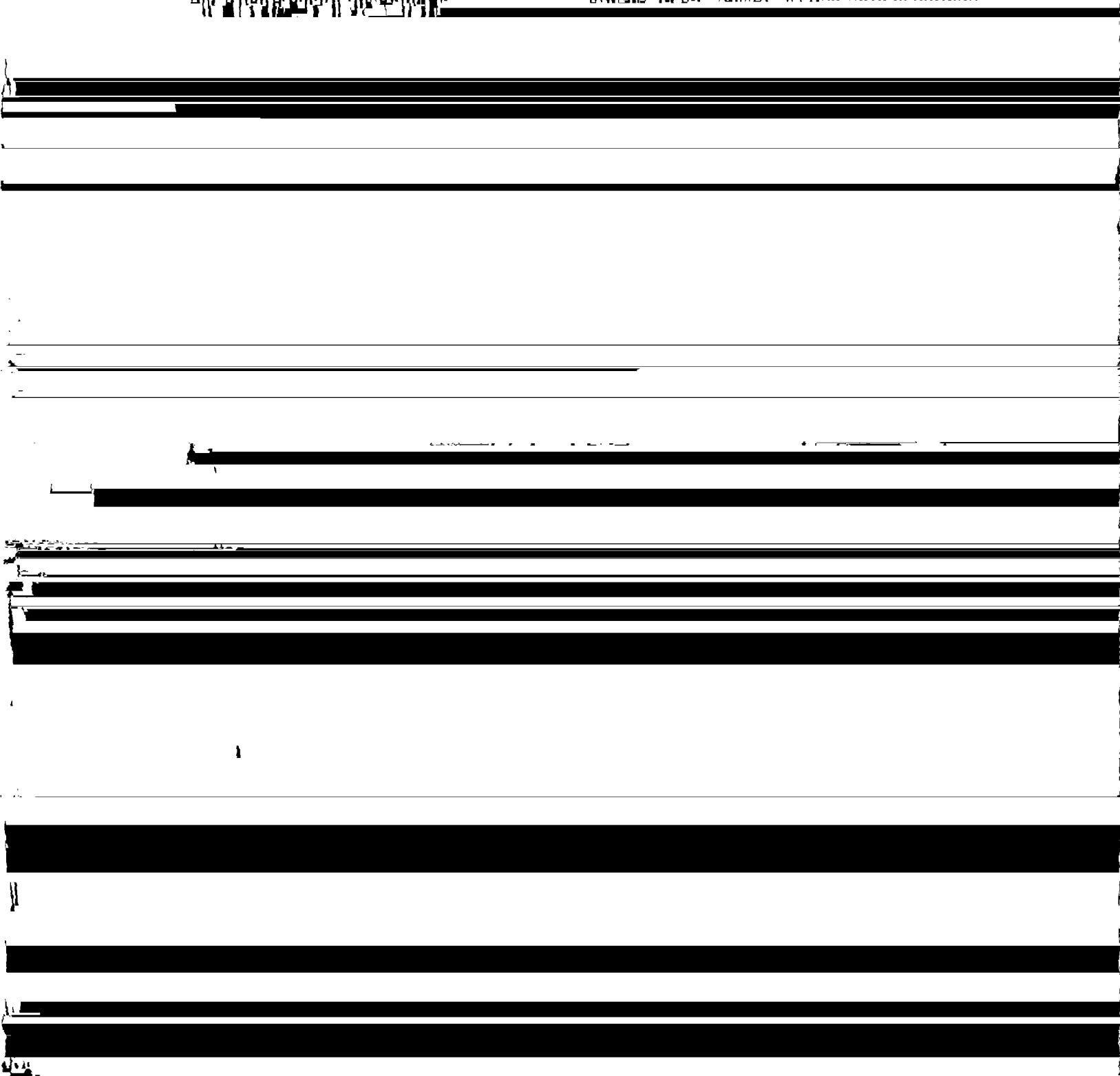
- D. That consumers will not be charged for the plan if consumers decline or timely cancel the plan as instructed by Defendants: and _____

initial fee and then a fee each month thereafter.

50 In truth and in fact, in numerous instances in which Defendants have made the

COUNT FIVE

52. In numerous instances, in connection with the telemarketing of a free trial membership in the American Health Discount Health Plan to consumers in an "uncall" as that term is defined



billing information to be submitted for payment, directly or indirectly, using preacquired account information, without obtaining from consumers the last four (4) digits of consumers' account numbers to be charged or obtaining from consumers their express agreement to be charged for the goods or services and to be charged using the account number for which the last four (4) digits were provided.

55. Defendants have thereby violated Sections 310.4(a)(6)(i)(A) and (B) and 310.3(b) of the TSR. 16 C.F.R. §§ 310.4(a)(6)(i)(A) and (B) and 310.3(b).

THE ELECTRONIC FUND TRANSFER ACT AND REGULATION E

56. Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a), provides that a "preauthorized electronic fund transfer from a consumer's account may be authorized by the consumer

only in writing and a copy of such authorization shall be provided to the consumer when

fund transfers from their accounts, thereby violating Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a); and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b).

59. Pursuant to the EFTA, 15 U.S.C. § 1693o(c), every violation of the EFTA and Regulation E constitutes a violation of the FTC Act.

60. By engaging in violations of the EFTA and Regulation E as alleged in Paragraph 58 above, Defendants have violated the FTC Act.

CONSUMER INJURY

61. Consumers throughout the United States have suffered and continue to suffer substantial

injury as a result of Defendants' unlawful practices. In addition, Defendants have

the Telemarketing Sales Rule, including the rescission of contracts and restitution, and disgorgement of ill-gotten gains.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff FTC, pursuant to 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 the

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