Plaintiff, the Federal Trade Commission (FTC), by its undersigned attorneys, 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 secure a permanent injunction, rescission of contracts and restitution, disgorgement of ill-gotten gains, and other equitable relief against Defendants for engaging in deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and for engaging in deceptive and abusive telemarketing acts or practices in violation of the FTC's Telemarketing Sales Rule (TSR), 16 C.F.R. Part 310, in connection with the marketing, offering for sale, and sale of magazine subscriptions and/or a coupon redemption program.

JURISDICTION AND VENUE

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

3. Venue in the Western District of Pennsylvania is proper under 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b) and (c).

THE PARTIES

4. **Plaintiff FTC** is an independent agency of the United States Government created by the FTC Act, 15 U.S.C. §§ 41–58. The FTC enforces the FTC Act, which prohibits unfair or deceptive acts or practices in or affecting commerce. The FTC also enforces the TSR, which prohibits deceptive or abusive telemarketing acts or practices. The FTC may initiate federal district court proceedings, through its attorneys, to enjoin violations of the FTC Act and the TSR, and to

secure such equitable relief, including rescission of contracts and restitution, and disgorgement of ill-gotten gains, as may be appropriate in each case. 15 U.S.C. §§ 53(b), 57b, and 6105(b).

5. **Defendant Magazine Solutions, LLC (Magazine Solutions)**, is a Pennsylvania limited-liability company with its principal place of business at 339 Old Haymaker Road, Parkway Building, Suite 204, Monroeville, Pennsylvania 15146 and a mailing address at 701 Linden Avenue, P.O. Box M, East Pittsburgh, Pennsylvania 15146. Magazine Solutions also does business under the names **MagazineSolutions**, **United Publishers' Service, Read-N-Save America,** and possibly others. Magazine Solutions promotes and sells a magazine subscription service and/or a coupon redemption program. Magazine Solutions transacts or has transacted business in the Western District of Pennsylvania.

6. **United Publishers' Service, Inc. (United Publishers)**, is a Pennsylvania corporation with its principal place of business at 339 Old Haymaker Road, Parkway Building, Suite 204, Monroeville, Pennsylvania 15146 and a mailing address at 701 Linden Avenue, P.O. Box M, East Pittsburgh, Pennsylvania 15146. United Publishers also does business under the names **MagazineSolutions, Magazine Solutions**, **Read-N-Save America**, and possibly others. United Publishers promotes and sells a magazine subscription service and/or a coupon redemption program. United Publishers transacts or has transacted business in the Western District of Pennsylvania.

7. **Defendant Joseph Martinelli (Martinelli)**, is the owner and officer of Defendants Magazine Solutions and United Publishers. At 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. Defendant Martinelli resides in and transacts or has transacted business in the Western District of Pennsylvania.

8. **Defendant Barbara DeRiggi (DeRiggi)**, a/k/a Barbara Nicely, is a manager of Defendants Magazine Solutions and United Publishers. At times relevant to this Complaint, acting individually or in concert with others, she has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. Defendant DeRiggi resides in and transacts or has transacted business in the Western District of Pennsylvania.

9. **Defendant James Rushnock (Rushnock)**, a/k/a Jay Gilbert, is or was a manager of Defendants Magazine Solutions and United Publishers. At 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. Defendant Rushnock resides in and transacts or has transacted business in the Western District of Pennsylvania.

COMMON ENTERPRISE AND INDIVIDUAL PARTICIPATION

10. Since at least 2002, Corporate Defendants Magazine Solutions and United Publishers have operated as a common business enterprise while engaging in the deceptive acts and practices and other violations of law alleged below. Because these Corporate Defendants have operated as a common enterprise, each of them is jointly and severally liable for the deceptive acts and practices and violations of law alleged below.

11. Individual Defendants Martinelli, DeRiggi and Rushnock are also jointly and severally liable for the conduct of the Corporate Defendants because each has had the authority to control and direct the activities of the Corporate Defendants, or has participated in the misrepresentations and other misconduct of the Corporate Defendants, and knew or should have known of the misrepresentations and other misconduct of the Corporate Defendants.

COMMERCE

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

COURSE OF CONDUCT

13. Since at least April 2002, and continuing thereafter, Defendants have telemarketed a package typically consisting of approximately five magazine subscriptions and a coupon certificate booklet. The magazines are published by national publishers of business, professional, and consumer magazines, and include such well-known magazines as *American Baby* and *Reader's Digest.* The magazine subscriptions are of varying lengths, typically lasting between one year and five years. Defendants claim that the coupons are for grocery and household items and are worth at least $1000. The coupons, if actually provided to consumers, are not provided by Defendants but by a third party. Until approximately September 2006, regardless of the magazines provided or the length of the magazine subscriptions, Defendants charged a total of $777 in monthly installments for the package. Starting in approximately September 2006, Defendants began offering some consumers a package consisting of coupons Defendants claim are worth over $1000 and subscriptions to four magazines for $598.50 paid in monthly installments.

14. To sell their goods, Defendants make a series of unm0.0uccitE000 1.00000 0.0000 0.16800 T

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can cancel the subscriptions at any time, can change magazines at any time, and promise a no-risk guarantee.

17. During this second telephone call, Defendants ask the consumer for the name of a relative to whom the Defendants will give a one-year magazine subscription.

18. Defendants then typically call the consumer a third time, often claiming that the purpose of the call is to verify the information of the consumer's relative who is receiving the gift magazine subscription. Defendants claim this information must be confirmed before Defendants can mail the consumer the $

If consumers receive anything at all, they receive a booklet containing certificates that purportedly enable consumers to order coupons from a third party, and all consumers who receive a booklet receive the same booklet of coupon certificates regardless of whether they provided their account information.

20. By this time, some consumers believe Defendants' representations about the value of the coupons and the savings they can realize, and therefore agree to Defendants' program. Because of Defendants' confusing representations regarding the cost of their program, some of these same consumers also are misled about the amount they must pay.

21. Many other consumers refuse Defendants' offer. Instead, during the second or third telephone call, many of these consumers tell Defendants that they will not agree to anything over the telephone, and ask Defendants to send them information about the program that they can review before making any purchase decision. Defendants agree to send the consumers information for their review, and consumers believe they are not creating an obligation to Defendants by receiving the information.

22. Whether the consumer has believed Defendants' representations about the program and its cost, or has refused Defendants' offer and agreed only to receive information in the mail, Defendants ask to tape-record the consumer verifying their mailing and other information. For the consumers who have agreed to the program, Defendants sometimes represent that the recording will be forwarded to the "publishers" so that they have the correct information about the consumer, and presumably, the consumer's magazine selection. For the consumers who have only agreed to receive information, Defendants represent that they need the consumer to select magazines so that the

information will be in the Defendants' computer system should the consumer choose to go ahead with the offer after reviewing the material.

23. Defendants then tape record consumers reaffirming their personal information, such as their name, address, and for those who agreed to the program and previously provided payment information, their credit card or other account number. Consumers are told about the payment plan, and Defendants repeat their promises regarding the value of the coupon book and the savings consumers will realize. Those consumers who asked to receive information believe what Defendants told them off tape—that they are merely reviewing their mailing information and selecting magazines in the event they ultimately decide to accept Defendants' offer. As far as these consumers are concerned, they are merely listening to information about the program, not obligating themselves to a purchase.

24. In numerous instances, Defendants then send consumers written materials. The materials typically include a sample coupon ordering form, a booklet of information about the coupons, various brochures, and a document captioned "mail order agreement" that contains a list of the magazines the consumer will receive and information about the payment plan. The "mail order agreement" doubles as an invoice and shows a due date for the consumer's payment.

25. Some consumers who receive and review the materials learn for the first time that Defend

to cancel, they must complete a written notice of cancellation included in the materials and return it to Defendants, typically within three days of receipt of the package. Although some consumers follow the instructions in the written materials and return the notice of cancellation, they are nevertheless billed, as Defendants often deny receiving the notice of cancellation and refuse to cancel. Defendants continue to bill these consumers and assess late fees and penalties when they refuse to pay.

26. Defendants send the same materials to the consumers who refused to purchase over the telephone but who agreed to receive information in the mail about Defendants' offer. Thus, Defendants have sent these consumers a purported mail order agreement and invoice, and imposed the requirement that these consumers affirmatively cancel the program, usually within three day.0000 dd8v7d98

coupons for certain products, and mail the certificates to a third party called Coupon Connection of America, Inc., along with a self-addressed stamped envelope. More recently, Defendants directed consumers to Grocery

29. Defendants misrepresent that consumers are legally obligated to pay and have entered into a binding contract. When consumers claim that they never purchased Defendants' program but only agreed to receive information about it, Defendants refer to the tape recording of the consumer and represent that it shows the consumer purchased their program. Defendants also refer to the tape recording when consumers try to cancel after they realize Defendants misled them about the program. Defendants tell consumers that the tape recording proves that the consumer orally consented to the program, represent that it is the consumer's "electronic signature" and also represent that this recording legally obligates the consumer to pay. Consumers who ask to hear the tape are told that they must first pay a fee, often $50 or $100, before the company will play the tape. Sometimes, Defendants offer to cancel consumers' alleged "contracts" for a termination fee, which is less than the full fee but often hundreds of dollars. Many consumers make the reduced payment to save their credit rating or because they fear that Defendants will make good on their threats.

30. Notwithstanding Defendants' representations to the contrary, in numerous instances, consumers are not legally obligated to pay Defendants. First, many consumers merely asked to review information and did not agree to enroll in Defendants' program. Second, many states have statute of fraud provisions requiring that any contract for the sale of goods, costing more than a certain amount, which cannot be performed in one year cannot be enforced unless the contract is in writing and signed by the party against whom it is to be enforced. Third, some states require that for a telephone sale to be binding, there must be a written contract signed by the buyer. No consumers signed any written contract with Defendants agreeing to Defendants' program.

THE FEDERAL TRADE COMMISSION ACT

31. 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.

VIOLATIONS OF SECTION 5(a) OF THE FTC ACT

COUNT I

32. In the course of offering for sale and

COUNT III

38. In numerous instances, in the course of offering for sale, selling, and/or attempting to collect money from consumers for a magazine subscription service and/or a coupon redemption program, the Defendants, directly or indirectly, represent, expressly or by implication, that they intend to and will initiate legal action to collect payment for their services.

39. In truth and in fact, Defendants do not, and do not intend to, initiate legal action to collect payment for their services.

40. Therefore, the representations set forth in paragraph 38 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).

THE TELEMARKETING SALES RULE

41. 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. The FTC promulgated the TSR, 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 alleged in this action, the amended TSR became effective March 31, 2003.

42. The TSR requires telemarketers in outbound telephone calls to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call that, among other things, the purpose of the call is to sell goods and services. 16 C.F.R. § 310.4(d)(2).

43. The TSR's Statement of Basis and Purpose explains that, in the case of "multiple purpose" outbound telephone calls, "where the seller or telemarketer plans, in at least some of those calls [to a consumer], to sell goods or services, the disclosures required by this section of the Rule

[§ 310.4(d)] must be made 'promptly,' during the first part of the call, before the non-sales portion of the call takes place. Only in this manner will the Rule assure that a sales call is not being made under the guise of a survey research call, or a call for some other purpose." 60 FED. REG. 43,842, 43,856 (1995).

44. The TSR prohibits sellers or telemarketers from failing to clearly and conspicuously disclose, before the customer pays, the total cost to purchase the goods or services offered. 16 C.F.R. § 310.3(a)(1)(i).

45. Under the TSR, "before the customer pays" means not only before the consumer sends funds to a seller or telemarketer or divulges to a telemarketer or seller credit card information, but also before a seller or telemarketer requests any credit card, bank account or other information that a seller or telemarketer will or could use to obtain payment. In addition, under the TSR, "the disclosure of the number of installment payments and the amount of each must correlate to the billing schedule that will actually be implemented. Therefore, to comply with the Rule's total cost disclosure provision, it would be inadequate to state the cost per week if the installments are to be paid monthly or quarterly." 68 FED. REG. 4580, 4599 (quoting 67 FED. REG. 4492, 4502 (2002)), 4600 (2003).

46. The TSR prohibits sellers or telemarketers from making a false or misleading statement to induce any person to pay for goods or services. 16 C.F.R. § 310.3(a)(4).

47. The TSR prohibits sellers or telemarketers from misrepresenting, directly or by implication, any material aspect of the nature or terms of the seller's refund, cancellation, exchange or repurchase policies. 16 C.F.R. § 310.3(a)(2)(iv).

48. Defendants are “sellers” or “telemarketer

53. Defendants have thereby violated Section 310.3(a)(1)(i) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(1)(i).

COUNT VI

Misrepresentations Designed to Induce Payment

54. In numerous instances, in the course of offering for sale and selling a magazine subscription service and/or a coupon redemption program through

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CONSUMER INJURY

58. Consumers nationwide have suffered or will suffer substantial monetary loss as a result of

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