VOICEONYX CORP.
a Florida corporation,

HAL E. SMITH, aka H.E. Smith, Harold E. Smith, and Howell E. Smith, individually and as an officer of HES Merchant Services Company, Inc.,

JONATHON E. WARREN, aka Jon Warren,
individually and as an officer of Business First Solutions, Inc., and VoiceOnyx Corp.,

RAMON SANCHEZ-ORTEGA, aka Ramon Sanchez and Ramon Ortega, individually,

UNIVERSAL PROCESSING SERVICES OF WISCONSIN, LLC,
a New York limited liability company, also dba Newtek Merchant Solutions,

DEREK DEPUYDT,
individually and as an officer of Universal Processing Services of Wisconsin, LLC,

Defendants.

Plaintiff, the Federal Trade Commission ("FTC"), for its Complaint alleges:
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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 in violation of the FTC's Trade Regulation Rule entitled "Telemarketing Sales Rule" ("TSR"), 16 C.F.R. Part 310.

JURISDICTION AND VENUE

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

DEFENDANTS

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participated in the acts and practices of BFS and VoiceOnyx as set forth in this Complaint. Warren resides in this district and, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States. In connection with the matters alleged herein, Warren has also used the name "Jon Warren."

16. Ramon Sanchez-Ortega ("Sanchez") is a provider of telemarketing services. Sanchez resides in this district and, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States. In connection with the matters alleged herein, Sanchez has also used the name "Ramon Sanchez" and "Ramon Ortega."

17. Universal Processing Services of Wisconsin, LLC, also doing business as Newtek Merchant Solutions, ("Newtek") is a New York limited liability company with its principal place of business at 744 North Fourth Street, Suite 500, Milwaukee, Wisconsin 53203. Newtek transacts or has transacted business in this district and throughout the United States.

18. Derek Depuydt ("Depuydt"), at times relevant to the complaint, was the president of Newtek. He had the authority to control and did control Newtek. He personally participated in the acts and practices of Newtek alleged in this complaint and transacted business in this district and throughout the United States.

19. Together, WVUM, GFA, LP, Plancher, Toska, HES, BFS, VoiceOnyx, Smith, and Warren shall be referred to as "the TYS Defendants."

20. Defendants BFS and VoiceOnyx have operated as a common enterprise while engaging in the acts and practices set forth below

telemarketing scheme access to a "Customer Portal" or "User Portal" in order to check the purported progress of their accounts.

26. Warren and BFS created and made available to consumers the email account, cs@treasureyoursucces.com, which consumers used generally for customer support purposes, such as getting updates on their accounts and requesting refunds, among other things.

27. Warren personally monitored the business and was frequently on the business premises, especially during the initial set up phase of the sales room when he was on the premises every day. After setting up the sales room, he periodically showed up on the premises to inspect the business, including how Plancher and Toska were managing the operations.

28. In furtherance of the telemarketing scheme, Warren and VoiceOnyx provided the telephone equipment and services used by TYS to solicit and communicate with consumers. TYS made available to consumers several telephone numbers, including (888) 816-8966 and (302) 857-0302, which consumers used generally for customer support purposes, such as getting updates on their accounts and requesting refunds, among other things.

29. For their contributions to the telemarketing scheme, Warren and BFS took payment every month equal to one percent (1%) of the gross sales for the month. For their contributions to the telemarketing scheme, Warren and VoiceOnyx took payment, also on a monthly basis, by charging Plancher, Toska, and WVUM for the equipment and services.

Role of Defendant Sanchez

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35. When a consumer requested a chargeback (*i.e.* a return credit of a previously charged amount) from the bank or credit card issuer, Smith and HES disputed the request by claiming that the charge was valid. Through their win-back or chargeback recovery efforts, Smith and HES successfully reversed many chargebacks obtained by consumers.

36. Smith personally monitored the business and was periodically on the business premises, giving advice and establishing requirements for Plancher and Toska. Even when he was not personally on the premises, he often sent his representatives to monitor the business.

37. One of the requirements that Smith imposed was for Plancher and Toska to provide consumers a computer tablet as part of the CCIRRS. The purpose of providing the computer tablets was to help prevent or reverse chargebacks by characterizing the CCIRRS transaction as a sale of goods which had been delivered as promised. Plancher and Toska had to purchase these computer tablets, which were of low quality and frequently did not work, from another company that Smith owns.

38. For their contributions to the telemarketing scheme, Smith and HES took payment every month equal to up to forty-two percent (42%) of the gross sales made by TYS in that month. During the period between November 2011 and July 2012, Smith and HES took payments in an estimated total of $1.18 million. Further, Smith and HES took additional payment for each chargeback that they successfully reversed, equal to ten percent (10%) of the amount of the reversed chargeback. Finally, Smith took additional payments for the computer tablets, on a per order basis.

39. Warren and Smith had complete access to TYS's CRM and merchant accounts. This enabled them to monitor and control the flow of money into the business and ultimately

to take their respective payments automatically and from the business'

46. When a merchant obtains a merchant account through a payment processor, it typically enters into a merchant processing agreement with a merchant bank and the payment processor.

47. Before entering into a credit card processing agreement with a merchant, payment processors typically perform an underwriting of the account to determine the merchant's risk profile.

48.

payment processor then typically collects the amount of the chargeback from the merchant.

54. Credit card associations – such as Visa and MasterCard – have rules regarding the chargeback process. Those rules provide that merchants may dispute an attempted chargeback by arguing that the charge was, in fact, valid. If the merchant disputes the attempted chargeback, the credit card association rules govern the manner in which the dispute is resolved. If the merchant is successful in disputing the chargeback, the issuing bank reverses any provisional credit issued to the consumer and the consumer becomes financially responsible for the disputed charge. When a consumer's chargeback is successful, the disputed charge is removed from the consumer's account or an offsetting credit is issued.

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63. In May 2012, Plancher and Toska applied for another merchant account using the name "Treasure Your Success 2." Again, Newtek and Depuydt obtained and reviewed individual credit reports showing substantial delinquent debts and specifically labeling Plancher and Toska as high risk for fraud. Again, Newtek and Depuydt failed to obtain and review the applicants' telemarketing scripts and contracts as required by Newtek's company procedures. Despite these indicia of fraud and the pattern of excessive chargebacks from the first TYS merchant account, Newtek and Depuydt approved the application again. Newtek never took any action in response to TYS's fraudulent activities other than to increase the amount it withheld from TYS's revenue.

DEFENDANTS' BUSINESS PRACTICES

64. From at least November 2011 until July 2012, the TYS Defendants and Sanchez telemarketed CCIRRS to consumers nationwide in the United States. After TYS disbanded around August 2012, Plancher and Toska formed LP and continued to telemarket CCIRRS until the Court issued its temporary restraining order in this matter.

65. In many instances, the TYS Defendants' and Sanchez's telemarketing calls were initiated using prerecorded voice messages or robocalls. The robocalls often offered consumers the purported opportunity to secure substantially lower credit card interest rates and instructed consumers to press a number on their phone to be connected to a live representative. When consumers pressed the number, they were connected to a live representative who worked for the TYS Defendants. The TYS Defendants also marketed their CCIRRS via the Internet on a website, www.treasureyoursuccess.com.

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and other sensitive personal information, such as date of birth and Social Security number. The TYS Defendants also, or instead, sent the consumer a computer tablet purportedly to record and keep track of their financial situation as TYS Defendants improved it. In fact, if the consumer received a computer tablet, it was of very low quality and frequently did not work.

70. In numerous instances, the TYS Defendants failed to provide consumers with the significant reductions in credit card interest rate and the minimum savings promised during the initial telemarketing calls. Typically, the TYS Defendants failed to provide any reduction in consumers' credit card interest rate or any savings at all. Consequently, consumers were not able to pay their credit card debts faster than they could have without the CCIRRS.

71. Despite failing to deliver on their promises to consumers, the TYS Defendants rarely refunded the fee charged to consumers for purchasing the CCIRRS. Consumers who discovered that the TYS Defendants had placed a charge on their credit card accounts before providing any service, but who called to cancel, were often promised a refund but did not receive one.

72. While telemarketing their program, the TYS Defendants and Sanchez, acting directly or through one or more intermediaries, made numerous calls to telephone numbers listed on the National Do Not Call Registry ("Registry") and to consumers who previously asked the TYS Defendants not to call them again.

73. In numerous instances, the TYS Defendants and Sanchez, acting directly or through one or more intermediaries, initiated telemarketing calls that failed to disclose truthfully,

promptly, and in a clear and conspicuous manner to the person receiving the call: (A) the identity of the seller; (B) that the purpose of the call is to sell goods or services; or (C) the nature of the goods or services.

74. In numerous instances, the TYS Defendants and Sanchez, acting directly or through one or more intermediaries, initiated prerecorded telemarketing calls to consumers that failed to promptly make such disclosures, or to immediately thereafter disclose the mechanism for consumers to assert a Do Not Call request.

75. In numerous instances, the TYS Defendants and Sanchez, acting directly or through one or more intermediaries, made outbound prerecorded calls that delivered messages to induce the sale of goods or services when the persons to whom these telephone calls were made had not expressly agreed, in writing, to authorize the seller to place prerecorded calls to such persons.

76. The TYS Defendants and Sanchez have called telephone numbers in various area codes without first paying the annual fee for access to the telephone numbers within such area codes that are included in the National Do Not Call Registry.

VIOLATIONS OF THE FTC ACT

77. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or deceptive acts or practices in or affecting commerce."

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

COUNT TWO

Misrepresentations in Violation of Section 5

83. In numerous instances, in connection with the advertising, marketing, promotion, offering for sale, or sale of credit card interest rate reduction services, the TYS Defendants have represented, directly or indirectly, expressly or by implication, that they will not charge consumers for their services until:

A. After consumers have realized the promised savings; or

B.

87. The TYS Defendants' actions cause or are likely to cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition.

88. Therefore, the TYS Defendants' practice, as described in Paragraph 86, constitutes an unfair act or practice in violation of Section 5 of the FTC Act, 15 U.S.C. §§ 45(a) and 45(n).

THE TELEMARKETING SALES RULE

89. 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-

Defendants and Sanchez also are sellers or telemarketers of "debt relief service[s]," as defined by the TSR, 16 C.F.R. § 310.2(m).

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

93. As amended, effective September 27, 2010, the TSR prohibits sellers and telemarketers from misrepresenting, directly or by implication, in the sale of goods or services, any material aspect of any debt relief service. 16 C.F.R. § 310.3(a)(2)(x).

94. The TSR prohibits sellers and telemarketers from causing billing information to be submitted for payment, directly or indirectly, without the express informed consent of the consumer. 16 C.F.R. § 310.4(a)(7).

95. As amended, effective October 27, 2010, the TSR prohibits sellers and telemarketers from requesting or receiving payment of any fee or consideration for any debt relief service until and unless:

A. The seller or telemarketer has renegotiated, settled, reduced, or otherwise altered the terms of at least one debt pursuant to a settlement agreement, debt management plan, or other such valid contractual agreement executed by the customer;

B. The consumer has made at least one payment pursuant to that settlement agreement, debt management plan, or other valid contractual agreement between the customer and the creditor or debt collector; and

C. To the extent that debts enrolled in a service are renegotiated, settled, reduced, or otherwise altered individually, the fee or consideration either (1) bears the same proportional relationship to the total fee for renegotiating, settling, reducing, or altering the terms of the entire debt balance as the individual debt amount bears to the entire debt amount; or (2) is a percentage of the amount saved as a result of the renegotiation, settlement, reduction, or alteration.

16 C.F.R. § 310.4(a)(5)(i).

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

97.

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

101.The TSR prohibits sellers and telemarketers from initiating an outbound telephone call to any person when that person previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered. 16 C.F.R. § 310.4(b)(1)(iii)(A).

102.The TSR requires telemarketers in an outbound telephone call to disclose truthfully, promptly, and in a clear and conspicuous manner, the following information:

A. The identity of the seller;

B. That the purpose of the call is to sell goods or services; and

C. The nature of the goods or services.

16 C.F.R. § 310.4(d).

103.As amended, effective December 1, 2008, the TSR prohibits a telemarketer from engaging, and a seller from causing a telemarketer to engage, in initiating an outbound telephone call that delivers a prerecorded message to induce the purchase of any good or service unless the message promptly discloses:

A. The identity of the seller;

B. That the purpose of the call is to sell goods or services; and

C. The nature of the goods or services.

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or by implication, material aspects of the debt relief services, including, but not limited to, that:

A. Consumers, who purchase the TYS Defendants' credit card interest rate reduction services

COUNT FIVE

Charging or Receiving a Fee in Advance of Providing Debt Relief Services

109. In numerous instances on or after October 27, 2010, in the course of telemarketing debt relief services, the TYS Defendants have requested or received payment of a fee or consideration for a debt relief service before:

A. They have renegotiated, settled, reduced, or otherwise altered the terms of at least one debt pursuant to a settlement agreement, debt management plan, or other such valid contractual agreement executed by the customer; and

B. The customer has made at least one payment pursuant to that agreement.

110. The TYS Defendants' acts or practices, as described in Paragraph 109, are abusive telemarketing acts or practices that violate the TSR, 16 C.F.R. § 310.4(a)(5)(i).

COUNT SIX

Violating the National Do Not Call Registry

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

COUNT SEVEN

Failing to Honor Do Not Call Requests

112. In numerous instances, in connection with telemarketing, the TYS Defendants and Defendant Sanchez have engaged, or caused a telemarketer to engage, in initiating an outbound telephone call to a person who previously has stated that he or she does not

wish to receive an outbound telephone call made by or on behalf of the

COUNT TEN

Failing to Pay National Registry Fees

116. In numerous instances, in connection with telemarketing, the TYS Defendants and Defendant Sanchez have initiated, or caused others to initiate, an outbound telephone call to a telephone number within a given area code when neither TYS Defendants nor Defendant Sanchez had, 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 ELEVEN

Unauthorized Billing

117. In numerous instances, in the course of telemarketing goods and services, the TYS Defendants have caused billing information to be submitted for payment without the

120. Defendant Newtek's and Defendant Depuydt's acts or practices alleged in Paragraph 119 constitute deceptive telemarketing acts or practices, in violation of the TSR, 16 C.F.R. § 310.3(b).

CONSUMER INJURY

121. Consumers have suffered and will continue to suffer substantial injury as a result of Defendants' violations of the FTC Act and the TSR. In addition, Defendants have been unjustly enriched as a result of their unlawful acts or practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

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

123. 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 necessary to redress injury to consumers resulting from Defendants' violations of the TSR, including the rescission or reformation of contracts, and the refund of money.

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, Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), and the Court’s own equitable powers, requests that the Court:

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

B. Enter a permanent injunction to prevent future violations of the FTC Act and the TSR by Defendants;

C. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants’ violations of the FTC Act and the TSR, including, but not limited to, rescission or reformation of conat2(ons7 8 not) b aimheci

Respectfully Submitted,

DAVID C. SHONKA
Acting General Counsel

JON MILLER STEIGER
Regional Director
East Central Region

Dated: June 18, 2013

/s/ Michael Milgrom

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CERTIFICATE OF SERVICE

I certify that I electronically filed the forgoing PLAINTIFF FEDERAL TRADE COMMISSION'S FIRST AMENDED COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF