

AMENDED COMPLAINT FOR

DEFENDANTS

6. Defendant SubscriberBASE Holdings, Inc. is a South Carolina corporation with its principal place of business at 3830 Forest Drive, Suite 207, Columbia, South Carolina 29204. SubscriberBASE Holdings, Inc. transacts or has transacted business in this district and throughout the United States.

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8. Defendant Jeffery French is or has been an owner and the Chairman of the Board of SubscriberBASE Holdings, Inc. At all times material to this Complaint, acting alone or in concert with others, French has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. Defendant French, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

9. Defendant Jason Liester is or has been an owner and the Chief Executive Officer of SubscriberBASE Holdings, Inc. At all times material to this Complaint, acting alone or in concert with others, Liester has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. Defendant Liester, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

10. Defendant All Square Marketing, LLC (“All Square”) is a California limited liability company with its registered address at 24000 Alicia Parkway Suite 17-433, Mission

in concert with others, Nicolosi has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. Defendant Nicolosi, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

16. Defendant Christopher McVeigh, who also does business as CMB Marketing, Inc., , i

enterprise, each of them is jointly and severally liable for the acts and practices alleged below. Defendants French and Liester have formulated, directed, controlled, had the authority to control, or participated in the acts and practices of the SubscriberBASE Defendants that constitute the common enterprise.

19. Defendants All Square, Threadpoint, PC Global, and Slash 20 (collectively, the “All Square Defendants”) have operated as a common enterprise while engaging in the deceptive and unfair acts and practices alleged below. The All Square Defendants have conducted the business practices described below through an interrelated network of companies that have common ownership, officers, managers, business functions, employees, and office locations, and that commingled funds. Because the All Square Defendants have operated as a common enterprise, each of them is jointly and severally liable for the acts and practices alleged below. Defendants Cook, Nicolosi, McVeigh, and Mazzella have formulated, directed, controlled, had the authority to control, or participated in the acts and practices of the All Square Defendants that constitute the common enterprise.

COMMERCE

20. At all times material to this complaint, Defendants have maintained a substantial course of trade in or affecting commerce,

herein as “promised free merchandise.”) The SubscriberBASE Defendants advertise the promised free merchandise on various websites they operate, including mywebrewardsclub.com and bestdigitalrewards.com (the “SubscriberBASE websites”).

22. Since at least July 2011, and continuing to the present, the All Square Defendants have marketed, on behalf and for the benefit of the SubscriberBASE Defendants, the promised free merchandise through various means, including on various websites that they operate, including thetopoffersforu.com, thebestsiteforgiftcards.com, bestgiftcardsforu.com, and mygiftcardsnow.com (the “All Square websites”). The All Square websites contain links that lead consumers to the SubscriberBASE websites to claim the promised free merchandise.

25. The text message spam contains links that, when clicked on, take consumers to one of the websites described below.

Text Message

“Congratulations! You Qualify for a Free \$1,000 Best Buy Gift Card” and asks consumers to submit their email address. Consumers who submit their email address and click “Continue” are taken to a second page on the All Square websites (the “registration page”).

29. At the top of the registration page, in bold type, is a message such as “Congratulations! Tell us where to send your \$1000 Best Buy Gift Card.” The registration page then directs consumers to fill out an online form eliciting personal information, including the consumer’s gender, name, mailing address, e-mail address, date of birth, cell phone number, and home phone number. In many instances, consumers provide the requested personal information, believing they are doing so to enable Defendants to ship the promised free merchandise. The registration page also commonly asks consumers to answer questions such as “Are you a diabetic?,” “Are you interested in going back to school?,” and “Would you like FREE STUFF for you and your baby (or baby on the way) from babyfreepromos.com?” Under the form on the registration page is a button labeled “Continue” or “Go,” which consumers must click to proceed.

The SubscriberBASE Websites

30. Once consumers have submitted their personal information on the registration page and clicked on the “Continue” or “Go” button, they are led to a page on a SubscriberBASE website, which elicits their name and home address with a message such as, “Tell us where to ship your \$1000 BestBuy Gift Card” or “Tell us where to ship your Apple new iPad [*sic*]” (the “offer pages”). As with the registration page, the offer pages lead consumers to believe that they are submitting their personal information in order to receive the promised free merchandise. The

consumer is then required to fill out a form with his or her name and shipping address, or verify that pre-populated shipping information is accurate, and click on a button labeled “Send It!”

31. After consumers complete the first offer page, the SubscriberBASE websites lead them through a series of web pages containing offers for various goods and services from third parties. A consumer must accept (and often pay for) – in the parlance of the SubscriberBASE websites, “complete” or “participate in” – a certain number of offers made by third parties to qualify for the promised free merchandise. The SubscriberBASE websites do not clearly and conspicuously disclose the costs and obligations associated with participating in the third-party promotions, such as applying and qualifying for credit cards.

32. The consumer usually must complete a total of thirteen (13) offers in order to qualify for the promised free merchandise. In addition to completing their own offers, consumers also must often refer three other persons to complete thirteen (13) offers each to qualify for the promised free merchandise. Clicking on each offer reveals what the consumer must do to “complete” or “participate in” the offer. In most cases, completing an offer entails paying money or incurring some other obligation, such as applying and qualifying for credit cards.

33. Some of the offers have free trial periods, but require consumers to participate for a minimum period of time to qualify for the promised free merchandise and to pay an initial shipping and handling charge. Moreover, many of these offers also contain negative option components in which consumers who do not cancel will be billed automatically and indefinitely.

34. In many instances, consumers stop trying to qualify for the promised free merchandise, whether because of the cost involved, because of the time and effort required, or

because consumers thought that, by inputting their contact information and completing the landing page, registration page, or offer page, they qualified for the promised free merchandise. Consumers have expended money, provided sensitive personal information, or incurred other obligations in the pursuit of the promised free merchandise. However, because they have not completed all of the required third-party promotions, consumers do not receive the promised free merchandise.

35. In most if not all instances, it is impossible for a consumer to qualify for the promised free merchandise without spending money.

36. The All Square websites, SubscriberBASE websites, and other websites operated by and for the benefit of the Defendants, including the landing pages, registration pages, and offer pages, do not clearly and conspicuously disclose that, to obtain the promised free merchandise, consumers must pay money or incur other costs or obligations. These websites also do not clearly and conspicuously disclose that, to obtain the promised free merchandise, consumers must refer other persons to incur similar expenses or obligations. Instead, the All Square and SubscriberBASE websites attempt to qualify the representations about the promised free merchandise only in separate hyperlinked pages or in print not of a type, size, or location sufficiently noticeable for an ordinary consumer to read and comprehend it.

37. The All Square websites, SubscriberBASE websites, and other websites operated by and for the benefit of the Defendants, including the landing pages, registration pages, and offer pages, represent that Defendants collect consumers' personal information to send them the promised free merchandise. However, few if any consumers ever receive the promised free merchandise, and Defendants instead proceed to sell or otherwise share with third parties the

personal information they have collected. These websites refer to sharing consumers' personal information only in separate hyperlinked pages or in print not of a type, size, or location sufficiently noticeable for an ordinary consumer to read and comprehend it.

The Recipients of Defendants' Text Message Spam

constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT II

49. In numerous instances, in connection with the advertising, marketing, promotion, or distribution of advertised offers, Defendants have represented, directly or indirectly, expressly or by implication, that they collect consumers' personal information to send consumers the promised free merchandise.

50. In truth and in fact, in numerous instances in which Defendants have made the representation set forth in Paragraph 49 of this Complaint, they collect consumers' personal information not to send consumers the promised free merchandise, but instead to sell or otherwise share that information with third parties.

51. Therefore, Defendants' representation as set forth in Paragraph 49 of this Complaint is false or misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT III

52. In numerous instances, Defendants' practice of procuring for their benefit the transmission of unauthorized or unsolicited commercial electronic text messages to the mobile telephones and other wireless devices of consumers in the United States has caused or is 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.

53. Therefore, Defendants' practice as described in Paragraph 52 is unfair and violates Section 5 of the FTC Act, 15 U.S.C. §§ 45(a) and 45(n).

CONSUMER INJURY

54. Consumers have suffered and will continue to suffer substantial injury as a result of Defendants' violations of the FTC Act. 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

55. 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

