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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

Case No.

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

PACT, INC., a Delaware corporation,
YIFAN ZHANG, individually and as an officer of Pact,
Inc.,

and

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COMPLAINT

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1 Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), for its Complaint
2 alleges:

3 1. The FTC brings this action under Section 13(b) of the Federal Trade Commission
4 Act (“FTC Act”), 15 U.S.C. § 53(b), and Section 5 of the Restore Online Shoppers’ Confidence
5 Act (“ROSCA”), 15 U.S.C. § 8404, to obtain preliminary and permanent injunctive relief,
6 rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-
7 gotten monies, and other equitable relief for Defendants’
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1 12. Users have signed up for Defendants' services through the company's mobile app,
2 which was available for download on mobile devices running the iOS operating system (such as
3 the iPhone) and Android operating system. Defendants began distributing their app for use on
4 the iOS operating system in January 2012 and on the Android operating system in December
5 2012.

6 13. When a consumer first opened the Pact app, it has displayed a series of screens
7 that describe the app. These screens have represented that consumers will earn money if they
8 satisfy their pacts, and they will pay money only if they fail to do so. For example, these screens
9 have stated:
10

- 11 a. "Earn cash for living healthy, paid by members who don't";
- 12 b. "Set a weekly goal, and what you'll pay other members if you don't reach it";
- 13 and
- 14 c. "You earn cash rewards from the Pact community every week you complete your
15 pact."
16

17 **Defendants' Representations About Specific Pacts**

18 14. Since 2012, Defendants have th wa th ew (0 . 2) - 2 (

1 15. Within the Pact app, Defendants have represented how consumers could complete
2 pacts, th[04]e[06] have

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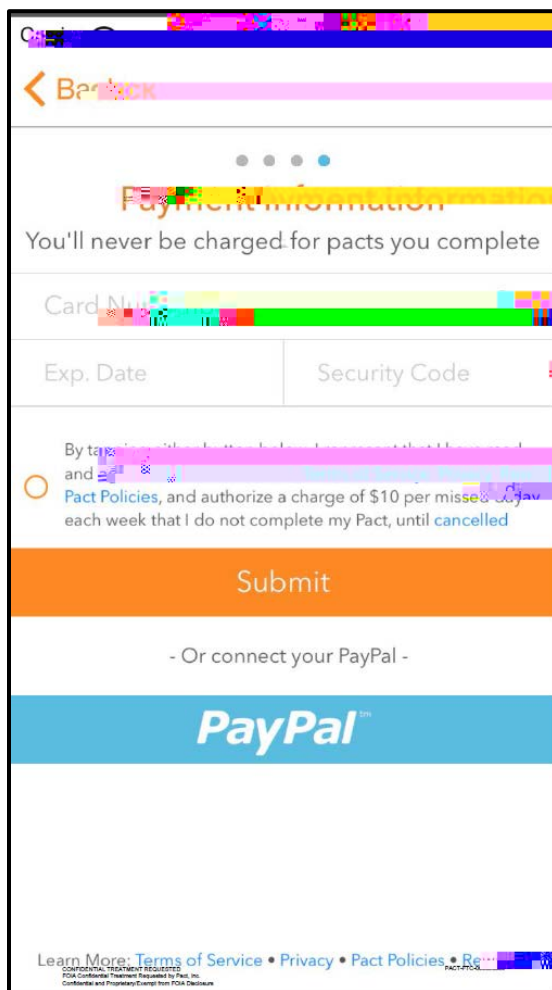
represented the amount of “rewards” money users would receive for each weekly pact completed.

20. On the next screen,

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1 consumers' payment information, Defendants again have represented, "You'll never be charged
2 for pacts you complete." A representative sample of such a screen follows:



19 22. In statements described in the paragraphs above and in other statements,
20 Defendants repeatedly have represented to consumers that the company would charge them only
21 if they failed to meet the weekly goal and that it would pay them if they succeeded.

22 **Defendants' Practice Of Charging Consumers For Completed Pacts Without Authorization**
23 **Instead Of Paying As Promised**

24 23. In many instances, consumers have fulfilled the terms of their pacts, but
25 Defendants have failed to pay them as promised and have charged them instead.

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1 24. For example, despite Defendants’ claim that consumers could complete their
2 pacts and avoid charges by working out “anywhere,” in many instances, Defendants have
3 charged consumers when they exercised outside of gyms, such as when consumers went for a run
4 outdoors or worked out on a military base.

5 25. Similarly, in the case of FoodLoggingPacts, in many instances, Defendants have
6 charged consumers even when they met their FoodLoggingPacts.

7 26. At least tens of thousands of consumers have complained to Defendants that they
8 were charged rather than paid for completing a pact. A payment processor and a bank with
9 which Defendants worked warned Defendants about the app’s high chargeback rate, and the
10 company was fined by a financial institution for exceeding Visa’s permitted chargeback rate for
11 six consecutive months. Nevertheless, in many instances, Defendants have continued to charge
12 consumers who completed pacts, despite their ongoing representations that they would not
13 charge such consumers and would instead pay them for completing the pacts.

14 27. Indeed, even as complaints poured in, Defendants continued to sign up new
15 customers and even expanded the app to include new types of pacts – the FoodLogging and
16 VeggiePacts – and make additional promises, such as claiming consumers would get paid for
17 logging activities through *additional* partner apps and through wearable devices. And as with
18 the initial promises, in many instances these promises have not panned out – Defendants charged
19 consumers who completed these pacts, instead of paying them. Defendants acknowledged to
20 consumers that their failure to record information from approved apps was a “known issue.”
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24 **Defendants Have Charged Consumers On A Recurring Basis Without Clearly Disclosing A**
25 **Method Of Stopping the Charges And Without Authorization**

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responding to the requests until after the consumers were enrolled in a new pact and, therefore, subject to another charge by Defendants.

34. In many instances where consumers complained to Defendants that their pacts had been renewed without the consumers' authorization, Defendants have continuedh a v
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a. Defendants would never charge consumers' financial accounts if consumers satisfied their pacts; and

b. Consumers who satisfied their pacts would receive payments.

42. In truth and in fact, in numerous instances in which Defendants have made the representations set forth in paragraph 41 of this complaint,

a. Defendants have charged consumers' financial accounts even when consumers have satisfied their pacts; and

b. C

1 Internet must provide consumers with clear, accurate information and give sellers an opportunity
2 to fairly compete with one another for consumers' business." Section 2, of ROSCA, 15 U.S.C. §
3 8401.

4 48. Section 4 of ROSCA, 15 U.S.C. § 8403, generally prohibits charging a consumer
5 for goods or services sold in transactions effected on the Internet through a negative option
6 feature, as that term is defined in the Commission's Telemarketing Sales Rule ("TSR"), 16
7 C.F.R. § 310.2(w), unless the seller (1) clearly and conspicuously discloses all material terms of
8 the transaction before obtaining the consumer's billing information, (2) obtains the consumer's
9 express informed consent before making the charge, and (3) provides a simple mechanism to
10 stop recurring charges. *See* 15 U.S.C. § 8403.

12 49. The TSR defines a negative option feature as: "an offer or agreement to sell or
13 provide any goods or services, a provision under which the consumer's silence or failure to take
14 an affirmative action to reject goods or services or to cancel the agreement is interpreted by the
15 seller as acceptance of the offer." 16 C.F.R. § 310.2(w).

17 50. As described in Paragraphs 11-37 above, Defendants have advertised and sold
18 their service through a negative option feature as defined by the TSR. 16 C.F.R. § 310.2(w).

19 51. Pursuant to Section 5 of ROSCA, 15 U.S.C. § 8404, a violation of ROSCA is a
20 violation of a rule promulgated under Section 18 of the FTC Act, 15 U.S.C. §57a.

21 **COUNT THREE**

22 **(Failure to Disclose All Material Terms)**

23
24 52. In numerous instances, Defendants have charged consumers for Defendants'
25 service through a negative option feature while failing to clearly and conspicuously disclose all
26 material terms of the transaction – including the mechanism for consumers to stop recurring

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1 charges from being placed on their credit card, debit card, bank account, or other financial
2 account – before obtaining consumers’ billing information.

3 53. Defendants’ acts or practices, as described in Paragraph 51, above, constitute a
4 violation of Section 4(1) of ROSCA, 15 U.S.C. § 8403(1), and are therefore a violation of a rule
5 promulgated under Section 18 of the FTC Act, 15 U.S.C. § 57a.

6 **CONSUMER INJURY**

7
8 54. Consumers have suffered substantial injury as a result of Defendants’ violations
9 of the FTC Act and ROSCA. In addition, Defendants have been unjustly enriched as a result of
10 its unlawful acts or practices. Absent injunctive relief by this Court, Defendants are likely to
11 continue to injure consumers, reap unjust enrichment, and harm the public interest.

12 **THIS COURT’S POWER TO GRANT RELIEF**

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

19
20 56. Section 5 of ROSCA, 15 U.S.C. § 8404, authorizes this Court to grant such relief
21 as the Court finds necessary to redress injury to consumers resulting from Defendants’ violations
22 of ROSCA, including the rescission or reformation of contracts, and the refund of money.

23 **PRAYER FOR RELIEF**

24
25 Wherefore, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b),
26 Section 5 of ROSCA, 15 U.S.C. § 8404, and the Court’s own equitable powers, requests that the

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1 Court:

2 A. Award Plaintiff such preliminary injunctive and ancillary relief as may be
3 necessary to avert the likelihood of consumer injury during the pendency of this action and to
4 preserve the possibility of effective final relief, including but not limited to, a preliminary
5 injunction;

6 B. Enter a permanent injunction to prevent future violations of the FTC Act and

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