

1 54. Payments cleared through the ACH network are subject to oversight by
2 NACHA - The Electronic Payments Association (“NACHA”), a self-regulatory trade
3 association that enforces a system of rules, monitoring, and penalties for noncompliance.
4 NACHA monitors the levels at which ACH debits are returned (or rejected) by consumers
5 or consumers’ banks, among other reasons, because high rates of returned transactions
6 can be indicative of unlawful practices.
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8 55. The credit and debit card networks (“card networks”), such as MasterCard
9 and Visa, also have rules regarding onboarding and monitoring of merchants, and
10 penalties for noncompliance. These include heightened monitoring requirements for
11 merchants designated as high risk, such as telemarketers.
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13 56. The card networks require network participants – including merchants,
14 payment processors, and merchant banks – to monitor transactions for unusual activity
15 indicative of fraud or deception. One prominent indicator is high chargeback rate.
16 Chargebacks occur when customers contact their credit card issuing bank to dispute a
17 charge appearing on their credit card account statement. Merchants with high chargeback
18 rate may be placed in a monitoring program and their sponsoring banks may be subject to
19 fees and fines.
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21 57. Unlike ACH and debit and credit card transactions, RCPOs are not subject
22 to centralized and systemic monitoring.
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24 58. Since June 13, 2016, the TSR has prohibited sellers and telemarketers,
25 whether making outbound calls or accepting inbound calls, from using RCPOs in
26 telemarketing sales. The FTC added this prohibition to the TSR because, after an
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1 more telephones and which involves more than one interstate telephone call. 16 C.F.R. §
2 310.2(gg).

3 115. The TSR prohibits sellers and telemarketers from creating or causing to be
4 created, directly or indirectly, a remotely created payment order (RCPO) as payment for
5 goods or services offered or sold through telemarketing. 16 C.F.R. § 310.4(a)(9). A
6 remotely created payment order includes a remotely created check 16 C.F.R. § 310.2(cc).
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8 116. It is a deceptive telemarketing act or practice and a violation of this Rule
9 for a person to provide substantial assistance or support to any seller or telemarketer
10 when that person knows or consciously avoids knowing that the seller or telemarketer is
11 engaged in any act or practice that violates Section 310.3(a), (c), or (d) or Section 310.4
12 of this Rule. 16 C.F.R.

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14 § 310.3(c).

15 117. The TSR prohibits sellers and telemarketers from making any false or
16 misleading statements to induce a person to pay for goods or services. 16 C.F.R. §
17 310.3(a)(4).
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19 118. The Defendants knew or consciously avoided knowing that a telemarketer
20 made a false or misleading statement to induce a person to pay for goods or services
21 during the time periods set forth in the complaint.

22 119. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c),
23 and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the TSR
24 constitutes an unfair or deceptive act or practice in or affecting commerce, in violation of
25 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).
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30 E. Broad Street, 14th Floor
Columbus, Ohio 43215
(614) 466-8831
jeff.loeser@OhioAttorneyGeneral.gov
erin.leahy@OhioAttorneyGeneral.gov

Attorneys for Plaintiff
STATE OF OHIO