## UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA

Case No	
FEDERAL TRADE COMMISSION, Plaintiff, v.	
AMERICAN VEHICLE PROTECTION CORP., a corporation,	
CG3 SOLUTIONS INC., also d/b/a MY PROTECTION PLAN INC., a corporation,	COMPLAINT FOR PERMANENT INJUNCTION, MONETARY RELIEF, AND OTHER RELIEF
TONY ALLEN GONZALEZ, individually and as an owner, officer, and/or manager of American Vehicle Protection Corp., CG3 Solutions Inc., and Tony Gonzalez Consulting Group, Inc.	
TONY GONZALEZ CONSULTING GROUP, INC., also d/b/a THE GONZALEZ GROUP, a corporation,	
CHARLES GONZALEZ, individually and as an owner, officer, and/or manager of American Vehicle Protection Corp. and of CG3 Solutions Inc.,	
DANIEL KOLE, individually and as an owner, officer, and/or manager of American Vehicle Protection Corp. and of Kole Consulting Group, Inc.	
KOLE CONSULTING GROUP, INC., a corporation,	
Defendants.	

Plaintiff, the Federal Trade Commission (

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, including managing the day-today operations of the companies. Tony is the primary signatory on AVP company checks, which he uses to pay for the telemarketing scam, including paying for telemarketers, telephone service, leads, rent, the accountant, cleaning services, and taxes. He also endorses the remotely created checks from consumers that are deposited into AVP's bank account. Tony Gonzalez 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.

Defendant Tony Gonzalez Consulting Group, Inc., also d/b/a The Gonzalez Group,
 ("TGCG") is a Florida corporation with its principal place of business at 249 NW 79<sup>th</sup> Ave.,
 Margate, Florida 33063. TGCG re84 (s )]TJ79

providing the start-up funds for AVP, reviewing telemarketers' sales scripts and dictating changes to those scripts, and firing employees. Kole 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.

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telemarketer told a consumer that his company handled all of the extended warranty sales for Chevrolet, which was the manufacturer of the consumer's car.

19. Telemarketers transfer consumers interested in purchasing a purported warranty to socalled specialists, making statements such as "So I would like to get you on the line with my

\_\_\_\_\_\_\_\_ specialist." The blank is filled in by stating the name of the car that the consumer owns. Then these specialists make additional misrepresentations that AVP is affiliated with an automobile dealer or manufacturer, such as "I am from Ford."

20. In truth, Defendants are not affiliated in any way with any automobile manufacturers or dealers. When consumers receive the warranty booklets in the mail from Corporate Defendants, after they have paid a down payment, the warranty booklets identify the sellers of the extended warranty as American Vehicle Protection and the claims administrator such as Palmer Administrative Services --- not any automobile manufacturer or dealer.

## Defendants Misrepresent That Their W3 0 Tb.004 Tw -10.6D)2 ef)1 et)6 i)6 o)3.9 (6 o)3.9 es)15 en)7.9 ()1

when the consumer tried to get that part repaired or replaced, coverage was refused. Another consumer was denied coverage for replacement of an oil pump, despite AVP's telemarketing representations about full vehicle coverage.

## Defendants Falsely Promise That Consumers Can Obtain a Refund If They Cancel Within 30 Days

23. Defendants promise consumers that they will be able to get their money refunded if they cancel the warranty within 30 days of either purchasing or receiving the warranty.

24. In numerous instances, upon discovering that the warranty does not come from their auto manufacturers or dealers or upon realizing that the "bumper-to-bumper" or "full vehicle" warranty coverage has major gaps and does not cover the full vehicle, many consumers attempt to cancel the warranty and obtain a refund. However, Defendants do not give the refunds promised to consumers. In some instances, consumers attempt to contact Defendants for a refund but are unable to reach anyone at AVP. Many phone calls go unanswered, and many phone messages do not get returned. In other instances, when purchasers cancel within the 30-day window, Defendants tell consumers that their refund is on the way, but the refund is often never issued. Consumers often do not get refunds until after the Better Business Bureau or a governmental authority contacts Defendants on behalf of consumers who complain about Defendants' refusal to give a refund.

#### **Defendants Use Remotely Created Checks, an Illegal Method of Payment**

25. The use of a Remotely Created Payment Order ("RCPO") to obtain money from a

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

## COUNT I

# **Deceptive Representations in Violation of Section 5 of the FTC Act**

34. In numerous instances in connection with the marketing and sale of purported extended automobile warranties, Defendants have represented, directly or indirectly, expressly or by implication, that:

- a. they are, are affiliated with, or represent, the car manufacturer or dealer of the car owned by the consumer;
- b. Defendants' warranties provide comprehensive ("bumper-to-bumper" or "full vehicle") coverage, and/or coverage for specific parts or systems for repair; or
- c. consumers can obtain a refund for any reason if they contact AVP within 30 days.

35. In truth and in fact, in numerous instances in which Defendants have made the representations set forth in Paragraph 34, (a) Defendants are not, are not affiliated with, or do not represent the car manufacturer or dealer of the car owned by the consumer; (b) Defendants' warranties do not provide comprehensive coverage and/or coverage for specific parts or systems that consumers were told would be covered; or (c) Defendants do not refund consumers their money when the consumers cancel, or try to cancel, their warranties within 30 days of purchasing or receiving the warranty.

36. Therefore, Defendants' representations as set forth in Paragraph 34 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).

#### VIOLATIONS OF THE TELEMARKETING SALES RULE

37. 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 adopted the original TSR in 1995, extensively amended it in 2003, and amended certain sections thereafter.

38. Defendants are "sellers" or "telemarketers" engaged in "telemarketing," as defined by the TSR, 16 C.F.R. §310.2(dd), (ff), and (gg).

39. It is a deceptive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in misrepresenting, directly or by implication, in the sale of goods or services, any of the following material information:

a. Any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer, 16 C.F.R.

§310.3(a)(2)(iii);

- b. 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); and
- c. A seller's or telemarketer's affiliation with, or endorsement or sponsorship by, any person or government entity, 16 C.F.R. §310.3(a)(2)(vii).

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

41. The TSR prohibits sellers and telemarketers from creating or causing to be created, directly or indirectly, a remotely created payment order as payment for goods or services offered or sold through telemarketing. 16 C.F.R. §310.4(a)(9). A remotely created payment order includes a remotely created check. 16 C.F.R. §310.2(cc).

42. Among other things, amendments made to the TSR 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 on the internet at <u>www.donotcall.gov</u>.

43. Consumers who receive telemarketing calls to their registered numbers can complain of Registry violations the same way they registered, through a toll-free telephone call or on the internet at <u>www.donotcall.gov</u>, or by otherwise contacting law enforcement authorities.

44. The FTC allows sellers, telemarketers, and other permitted organizations to access the Registry over the Internet at <u>telemarketing.donotcall.gov</u>, to pay the fee(s) if required, and to download the numbers not to call.

45. The TSR prohibits sellers and telemarketers from calling any telephone number within a given area code unless the seller on whose behalf the call is made has paid the annual fee for access to the telephone numbers within that area code that are included in the Registry. 16 C.F.R. §310.8.

46. 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).

47. The TSR prohibits sellers and telemarketers from initiating an outbound telephone call to tontnnuaha(vi)-2 (n(U)2 (nde)4 (r)-2 (he )]TJT<sup>\*</sup>(R)-3 (e)4 (gi)-2 (s))-1 (t)-2 (r)3 (y. 16 C)-3 (.F)6 4Rb §3F

47.

62. Defendants' acts or practices, as set forth in Paragraph 61 above, are abusive

telemarketing acts or practices that violate the TSR, 16 C.F.R. §310.4(a)(9).

## COUNT VI Making Calls in Violation of the National Do Not Call Registry

63. In numerous instances, in connection with telemarketing, Defendants have initiated,

or caused others to initiate, an outbound telephone call to a person's telephone number that is on

B. Grant preliminary injunctive and ancillary relief;

C. Award monetary and other relief within the Court's power to grant, including

rescission or reformation of contracts, the refund of money, the return of property, or other relief

necessary to redress injury to consumers; and

D. Award any additional relief as the Court determines to be just and proper.

Dated: February 8, 2022

Respectfully submitted,

<u>/s/ Harold E. Kirtz</u> HAROLD E. KIRTZ, Trial Counsel Florida Special Bar Number A5500743 HANS CLAUSEN, Trial Counsel Florida Special Bar Number A5502378 Federal Trade Commission Southeast Region 225 Peachtree Street, Suite 1500 Atlanta, Georgia 30303 Phone: 404-656-1357 (Kirtz) 770-789-9378 (Kirtz mobile) 404-656-1361 (Clausen) Fax: 404-656-1379 E-mail: hkirtz@ftc.gov hclausen@ftc.gov

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