UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
v.	)	**Case No. _____**
BUSINESS RECOVERY SERVICES, LLC, a limited liability corporation; and	)	
BRIAN HESSLER, individually, and as owner, officer, or manager of Business Recovery Services, LLC,	)	
Defendants.	)	

COMPLAINT FOR CIVIL PENALTIES,
PERMANENT INJUNCTION,
AND OTHER EQUITABLE RELIEF

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission ("FTC" or "Commission"), pursuant to Section 16(a)(1) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 56(a)(1), for its complaint alleges:

1. Plaintiff brings this action under Sections 5(a), 5(m)(1)(A), 13(b), 16(a), and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b),

56(a), and 57b, and Section 6 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (the "Telemarketing Act"), 15 U.S.C. § 6105, to obtain monetary civil penalties, temporary, preliminary, and permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief for the Defendants' violations of the FTC's Telemarketing Sales Rule (the "TSR" or the "Rule"), 16 C.F.R. Part 310, as amended, and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), in connection with the offering for sale and sale of recovery goods and services.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and 15 U.S.C. §§ 45(m)(1)(A), 53(b), 56(a), and 57b. This action arises under 15 U.S.C. § 45(a).

3. Venue in the United States District Court for the District of Arizona is proper under 28 U.S.C. §§ 1391(b)-(c) and 1395(a), and 15 U.S.C. § 53(b).

PLAINTIFF

4. This action is brought by the United States of America on behalf of the Federal Trade Commission. The Commission is an independent agency of the United States government given statutory authority and responsibility by the FTC Act, *as amended*, 15 U.S.C. §§ 41-58. The Commission is charged, *inter alia*, with enforcing Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair and deceptive acts or practices in or affecting commerce.

DEFENDANTS

5. Defendant Business Recovery Services, LLC, ("BRS") is an Arizona limited liability company with its principal place of business at 1551 W. Crescent Avenue, Mesa, Arizona, 85210. BRS is a seller of goods and services that purportedly allow consumers to recover funds that consumers have previously lost in work-at-home and business opportunity transactions ("recovery goods and services"). BRS is also a telemarketer that initiates outbound telephone calls and receives inbound telephone calls to induce consumers to purchase its recovery goods and services. BRS transacts or has transacted business in the District of Arizona and throughout the United States.

6. Defendant Brian Scott Hessler is the Member/Manager of Defendant BRS. Defendant Hessler resides in the District of Arizona or, in connection with the matters alleged herein, transacts or has transacted business in the District of Arizona and throughout the United States. At all times material to this Complaint, acting alone or in concert with others, Defendant Hessler has had the authority and responsibility to prevent or correct unlawful telemarketing practices of BRS, and has formulated, directed, controlled, or participated in the acts and practices of Defendant BRS, including the acts and practices set forth in this Complaint.

COMMERCE

7. At all times relevant to this Complaint, Defendants have maintained a substantial course of trade in the offering for sale and sale of recovery goods and services, in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' BUSINESS ACTIVITIES

8. Defendants have engaged in telemarketing by a plan, program, or campaign conducted to induce the purchase of goods or services by the use of one or more telephones and which involves more than one

interstate call.

9. Specifically, since at least September 2008, Defendants have telemarketed recovery goods and services to consumers. Defendants engage in outbound telemarketing and also receive inbound calls from consumers who have seen Defendants' Web site or have otherwise become aware of Defendants' recovery goods and services. Defendants' Web site states the following:

> Our mission is simple . . . to recover every last penny for each and every Business Recovery Services, LLC client who has spent his or her hard-earned money on the many ill-fated home-based businesses available in the market, whether or not the home-based businesses are operational today.

10. During inbound and outbound calls with consumers, Defendants' telemarketers represent that, if the consumers purchase and use a do-it-yourself recovery kit from BRS, the consumers will recover or are highly likely to recover a substantial portion of monies that the consumers previously paid to third-party business opportunity and work-at-home ventures. In numerous instances, the monies that consumers seek to recover were paid in the context of a telemarketing transaction.

11. Defendants market and sell hundreds of variations of their kits, with

each variation directed to consumer victims of a particular business opportunity or work-at-home venture. Some of Defendants' kits are directed to consumer victims of business opportunity or work-at-home ventures that are defunct or otherwise unable to return funds to consumers. Defendants charge between $99 to $499 for each of their kits, which include complaint letters and related materials.

12. When a consumer agrees to the purchase of one or more of Defendants' kits, Defendants do not wait until seven (7) business days after the consumer has successfully recovered funds to charge or bill the consumer for the kit(s). Instead, Defendants immediately charge or bill the consumer for the kit(s). In numerous instances, Defendants have charged or billed consumers for kits despite that the consumers did not recover any funds.

13. In numerous instances, consumers who buy and use Defendants' kits are unable to recover funds.

THE TELEMARKETING SALES RULE

14. Congress directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts and practices pursuant to the Telemarketing Act, 15 U.S.C. §§ 6101-6108, which resulted in the

adoption of the Telemarketing Sales Rule. 16 C.F.R. Part 310.

15. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c), and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the TSR constitutes an unfair or deceptive act or practice in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

16. The TSR states, inter alia, that it is an abusive telemarketing act or practice and a violation of the Rule for any seller or telemarketer to

> request or receive payment of any fee or consideration from a person for goods or services represented to recover or otherwise assist in the return of money or any other item of value paid for by, or promised to, that person in a previous telemarketing transaction, until seven (7) business days after such money or other item is delivered to that person. 16 C.F.R. § 310.4(a)(3).

17. The TSR also prohibits any seller or telemarketer from misrepresenting, directly or by implication, 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).

18. Defendants are "sellers" and "telemarketers" engaged in "telemarketing," as those terms are defined in the TSR, 16 C.F.R.

§§ 310.2(z), (bb), and (cc).

VIOLATIONS OF THE TELEMARKETING SALES RULE

COUNT I

Unlawful Advance Fees

19. In numerous instances, in connection with the telemarketing of recovery goods and services, Defendants have requested or received payment of a fee from a person for goods represented to recover or otherwise assist in the return of money paid by that person in a previous telemarketing transaction, without waiting seven (7) business days after such money is delivered to that person.

20. Defendants' acts or practices, as described in Paragraph 19, violate Section 310.4(a)(3) of the Telemarketing Sales Rule, 16 C.F.R. § 310.4(a)(3).

COUNT II

Misrepresentations Regarding Material Aspects of the Performance, Efficacy, Nature, or Central Characteristics of the Goods Offered by Defendants

21. In numerous instances, in connection with the telemarketing of recovery goods and services, Defendants have misrepresented, directly or by implication, material aspects of the performance,

efficacy, nature, or central characteristics of the goods that are the subject of their sales offer, including that consumers who purchase and use Defendants' do-it-yourself recovery kits will recover or are highly likely to recover a substantial portion of monies that the consumers previously paid to third-party business opportunity and work-at-home ventures.

22. Defendants' acts or practices, as described in Paragraph 21, violate Section 310.3(a)(2)(iii) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(2)(iii).

VIOLATIONS OF THE FTC ACT

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

24. Misrepresentations or omissions of material facts constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

COUNT III

False and Unsubstantiated Representations Regarding the Likelihood of a Successful Recovery By Using Defendants' Kits

25. In numerous instances, in connection with the advertising, marketing, promotion, offering for sale, or sale of recovery goods and services, Defendants have represented, directly or indirectly, expressly or by

implication, that consumers who purchase and use Defendants' do-it-yourself recovery kits will recover or are highly likely to recover a substantial portion of monies that the consumers previously paid to third-party business opportunity and work-at-home ventures.

26. The representations set forth in Paragraph 25 are false and misleading and/or were not substantiated at the time the representations were made.

27. Therefore, Defendants' representations as set forth in Paragraph 25 constitute deceptive acts or practices, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

CONSUMER INJURY

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

THIS COURT'S POWER TO GRANT RELIEF

29. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as

modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended, and as implemented by 16 C.F.R. § 1.98(d), authorizes this Court to award civil penalties of not more than $11,000 for each violation of the TSR prior to February 10, 2009, and $16,000 for each violation of the TSR on or after February 10, 2009. Defendants have violated the TSR as described above with knowledge as set forth in Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

30. Each offer of sale and each sale of the recovery goods in which Defendants have violated the Rule, in one or more ways described above, constitutes a separate violation for which Plaintiff seeks monetary civil penalties.

31. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other ancillary relief to halt and redress any violation 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.

32. Sections 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 United States of America, pursuant to Sections 5(a), 5(m)(1)(A), 13(b), 16(a), and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), 56(a), and 57b, Section 6 of the Telemarketing Act, 15 U.S.C. § 6105, and the Court's own equitable powers, requests judgment against Defendants as follows:

(1) 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, a preliminary injunction;

(2) Enter judgment against Defendants and in favor of Plaintiff for each violation of the Telemarketing Sale Rule alleged in this

Complaint;

(3) Award Plaintiff monetary civil penalties and disgorgement of ill-gotten monies from each Defendant for each violation of the Telemarketing Sale Rule;

(4) Enter a permanent injunction to prevent future violations of the Telemarketing Sales Rule and the FTC Act by Defendants;

(5) Award such relief as this Court finds necessary to redress injury to consumers resulting from Defendants' violations of the Telemarketing Sales Rule and the FTC Act, including, but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and

(6) Award Plaintiff the costs of bringing this action, as well as such other and additional relief the Court may determine to be just and proper.

Dated: _____, 2011

Respectfully submitted,

OF COUNSEL:

HAROLD E. KIRTZ
Attorney
Federal Trade Commission
225 Peachtree Street
Suite 1500
Atlanta, Georgia 30303
404-656-1357 (voice)
404-656-1379 (fax)
hkirtz@ftc.gov

FOR THE UNITED STATES OF AMERICA:

TONY WEST
Assistant Attorney General
Civil Division
U.S. Department of Justice

EUGENE M. THIROLF
Director
Office of Consumer Litigation

KENNETH L. JOST
Deputy Director
Office of Consumer Litigation

By: _____
JESSICA GUNDER
Trial Attorney
Office of Consumer Litigation
U.S. Department of Justice
Washington, D.C.