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6 ATTORNEYS FOR PLAINTIFF

7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 _____

11)
12) **FEDERAL TRADE COMMISSION,**

CV-

13)
14) **Plaintiff,**

15) **COMPLAINT FOR INJUNCTIVE AND**
16) **OTHER EQUITABLE RELIEF**

17) **v.**

18) **UNIVERSAL BANCOM, LLC, and**

19)
20) **JOHN SARABIA,**
21) **individually and doing**
22) **business as NISSAN BANCORP.**

23)
24) **Defendants.**
25)

26 Plaintiff, the Federal Trade Commission ("Commission"),
27 for its complaint alleges:

28 1. The Commission brings this action under Sections
13(b) and 19 of the Federal Trade Commission Act ("FTC Act"),

1 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer
2 Fraud Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C.
3 §§ 6101-08, to secure a permanent injunction, rescission of
4 contracts, restitution, disgorgement, and other equitable
5 relief for Defendants' deceptive acts or practices in
6 violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a)
7 and the FTC's
8
9 Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310.

10 **JURISDICTION AND VENUE**

11 2. This Court has jurisdiction over this matter pursuant
12 to 28 U.S.C. §§ 1331, 1337(a), and 1345, as well as 15 U.S.C.
13 §§ 45(a), 53(b), 57b, 6102(c) and 6105(b).

14 3. Venue in the United States District Court for the
15 Central District of California is proper under 28 U.S.C.
16 § 1391(b) and (c), as well as under 15 U.S.C. § 53(b).

17 **THE PARTIES**

18 4. Plaintiff, the Federal Trade Commission, is an
19 independent agency of the United States Government created by
20 statute. 15 U.S.C. §§ 41-58. The Commission is charged,
21 *inter alia*, with enforcement of Section 5(a) of the FTC Act,
22 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or
23 practices in or affecting commerce. The Commission also
24 enforces the TSR, 16 C.F.R. Part 310, which prohibits
25 deceptive or abusive telemarketing practices. The Commission
26 is authorized to initiate federal district court proceedings
27 by its own attorneys to enjoin violations of the FTC Act and
28 the TSR and to secure such equitable relief as is appropriate

1 in each case, including restitution for injured consumers. 15
2 U.S.C. §§ 53(b), 57b, 6105(b).

3 5. Defendant Universal Bancor, LLC ("Universal"), is a
4 California limited liability company whose principal place of
5 business is or was 21220 Devonshire St. #106, Chatsworth,
6 California 91311. Universal transacts or has transacted
7 business in the Central District of California.

8 6. Defendant John Sarabia individually and doing
9 business as Nissan Bancorp ("Nissan") has managed or owned
10 Nissan Bancorp and Defendant Universal. At all times material
11 to this complaint, acting alone or in concert with others, he
12 has formulated, directed, controlled, or participated in the
13 acts and practices of Universal and Nissan, including the acts
14 and practices set forth in this complaint. He resides and
15 transacts or has transacted business in the Central District
16 of California.

COMMERCE

17 7. At all times material to this complaint, Defendants
18 have maintained a substantial course of trade in or affecting
19 commerce, as "commerce" is defined in Section 4 of the FTC
20 Act, 15 U.S.C. § 44.

DEFENDANTS' COURSE OF CONDUCT

21
22 8. In late 1999 through early 2001, Defendant John
23 Sarabia did business as Nissan Bancorp in California. During
24 that time, Defendant Sarabia marketed a purported general use
25 credit card to consumers, most of whom had a negative credit
26 history.

27 9. Nissan initially contacted consumers by either cold
28 calling them or by mailing them a solicitation letter. Both

1 the oral and written solicitations offered consumers with
2 "past credit problems" a pre-approved credit card for a
3 processing fee. The solicitations typically offered consumers
4 a \$3,000 credit limit with a 9.8% annual percentage rate that
5 would not fluctuate for the next five years. The
6 solicitations also represented that consumers would have a low
7 \$5.00 monthly service fee for the next five years, but no
8 annual fee, that their maximum monthly payment would only be
9 \$55.00, and that their credit limit would increase to \$4,000
10 after six months of good standing. The solicitations touted
11 the credit card as a way for consumers to begin a new credit
12 history and restore their credit. The mail solicitation
13 stated that this was a limited time offer, and directed
14 consumers to call a toll-free number if interested.

15 10. Nissan representatives advised consumers that for
16 \$287.25, they would receive a major credit card such as a Visa
17 or MasterCard credit card or its functional equivalent.

18 11. The Nissan representatives instructed consumers to
19 send Nissan the \$287.25 fee via overnight delivery to expedite
20 matters. Overnight delivery cost consumers approximately \$12
21 more. In some cases, the representatives asked consumers to
22 call back and give Nissan the tracking number for the
23 overnight package. The representatives promised that the
24 consumers would receive their credit cards within 7-10 days.
25 In many cases consumers did not receive their card from Nissan
26 until months later. In many cases, consumers received nothing
27 at all.

28 12. Neither the solicitation letter nor the Nissan

1 representatives disclosed that the credit card being offered
2 was really a merchant card that could be used only to purchase
3 items from Nissan's designated catalog. Consumers learned
4 this fact only after they had paid the full fee to obtain the
5 card.

6 13. Similarly, neither the solicitation letter nor the
7 Nissan representatives disclosed that consumers could not use
8 the card to pay the entire price of the goods purchased from
9 Nissan's catalog. Consumers had to pay approximately 25-50%
10 of the cost of items purchased from Nissan's catalog by some
11 method other than Nissan's merchant card, e.g., by check or
12 money order. Consumers learned this fact only after they paid
13 the full fee to obtain the card.

14 14. In numerous instances, after sending payment to
15 Nissan, consumers tried to reach Nissan at the phone number on
16 the solicitation letter. These consumers were unable to do
17 so, however, because the number led only to a recorded
18 message, and consumers did not receive a return call.

19 15. In numerous instances, consumers have complained to
20 Nissan that Nissan's solicitation and representations were
21 deceptive and misleading, and for those reasons, among others,
22 requested refunds. Nissan, however, routinely refused to
23 issue refunds.

24 16. In early 2001, Nissan ceased operating under that
25 name and started operating under the name of Universal Bancom
26 LLC.

27 17. Since that time, Universal has operated in the same
28 manner as Nissan. Except for a different name, address and

1 phone number, Universal has sent consumers virtually the same
2 solicitation letter as that sent by Nissan, or has cold called
3 consumers and made the same verbal sales pitch as Nissan.

4 18. Universal has offered consumers with "past credit
5 problems" a pre-approved credit card with essentially the same
6 terms as the one Nissan offered: a \$3,000 credit limit with a
7 9.8% annual percentage rate that will not fluctuate for the
8 next five years; no annual fee; a maximum monthly payment of
9 only \$55.00; and an increased credit limit of \$3,500 after six
10 months of good standing.

11 19. The Universal solicitation letter has also claimed
12 that this was a limited time offer, and has directed consumers
13 to call a toll-free number if interested.

14 20. Universal representatives have advised consumers
15 that for \$287.25, they will receive a major credit card such
16 as a Visa or MasterCard credit card or its functional
17 equivalent.

18 21. The Universal representatives have instructed
19 consumers to send the \$287.25 fee via overnight delivery to
20 expedite matters. Overnight delivery costs consumers
21 approximately \$12 more. In some cases, the representatives
22 have asked consumers to call back and give Universal the
23 tracking number for the overnight delivery package. The
24 representatives have promised that consumers will get their
25 credit cards within two weeks. In many cases consumers do not
26 receive their card from Universal until months later. In many
27 cases, consumers receive nothing at all.

28 22. Neither the solicitation letter nor the Universal

1 representatives have disclosed that the credit card being
2 offered is really a merchant card that can be used only to
3 purchase items from Universal's designated catalog. Consumers
4 learn this fact only after they have paid the full fee to
5 obtain the card.

6 23. Similarly, neither the solicitation nor the
7 Universal representatives have disclosed that the card cannot
8 be used to pay the entire cost of goods purchased from
9 Universal's catalog. Rather, consumers must pay approximately
10 25-50% of the cost of items purchased from Universal's catalog
11 by some method other than Universal's merchant card, e.g., by
12 check or money order. Consumers learn this fact only after
13 they have paid the full fee to obtain the card.

14 24. In numerous instances, after sending payment to
15 Universal, consumers have tried to reach Universal at the
16 phone number listed in the solicitation letter. The consumers
17 are unsuccessful, however, because the number leads only to a
18 recorded message, and consumers do not receive a return call.

19 25. In numerous instances, consumers have complained to
20 Universal that Universal's solicitation and representations
21 are deceptive and misleading, and for those reasons, among
22 others, request refunds. Universal has routinely rejected
23 these requests.

24 **VIOLATIONS OF SECTION 5 OF THE FTC ACT**

25 **COUNT ONE**

26 26. In numerous instances, in connection with the
27 marketing of their cards, Defendants have represented,
28 expressly or by implication, that the cards offered by

1 Defendants are MasterCard credit cards, Visa credit cards, or
2 other functionally similar credit cards.

3 27. In truth and in fact the cards Defendants offer are
4 not MasterCard credit cards, Visa credit cards, or other
5 functionally similar credit cards.

6 28. Therefore, the representation set forth in Paragraph
7 26 is false and misleading and constitutes a deceptive act or
8 practice in or affecting commerce in violation of Section 5(a)
9 of the FTC Act, 15 U.S.C. § 45(a).

10 **COUNT TWO**

11 29. In numerous instances, in connection with the
12 marketing of their cards, Defendants have represented,
13 expressly or by implication, that consumers can use the
14 offered cards to make purchases from a wide variety of
15 merchants, and that consumers can use the cards to pay the
16 entire cost of their purchases.

17 30. Before consumers have paid the fee required to
18 obtain Defendants' cards, Defendants have failed to disclose
19 or to disclose adequately that:

20 a. consumers can only use the cards to purchase
21 items from designated catalogs; and

22 b. the cards cannot be used to pay the entire cost
23 of the items purchased with the cards.

24 These facts would be material to a consumer's decision to
25 purchase Defendants' cards.

26 31. In light of the representation set forth in
27 Paragraph 29, Defendants' failure to disclose or to disclose
28 adequately the material information set forth in Paragraph 30

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

4 **VIOLATIONS OF THE TELEMARKETING SALES RULE**

5 32. The Commission promulgated the TSR pursuant to
6 Section 6102(a) of the Telemarketing Act, 15 U.S.C. § 6102(a).
7 The TSR became effective on December 31, 1995.

8 33. The TSR prohibits telemarketers and sellers from,
9 *inter alia*, requesting or receiving payment of any fee or
10 consideration in advance of obtaining or arranging a loan or
11 other extension of credit when the seller or telemarketer has
12 guaranteed or represented a high likelihood of success in
13 obtaining or arranging a loan or other extension of credit.

14 16 C.F.R.
15 § 310.4(a)(4).

16 34. The TSR additionally prohibits telemarketers and
17 sellers from misrepresenting any material aspect of the
18 performance, efficacy, nature, or central characteristics of
19 goods or services that are the subject of a sales offer. 16
20 C.F.R. § 310.3(a)(2)(iii).

21 35. The TSR additionally prohibits telemarketers and
22 sellers from failing to disclose in a clear and conspicuous
23 manner all material restrictions, limitations or conditions on
24 using the offered good or service. 16 C.F.R.
25 § 310.3(a)(1)(ii).

26 36. Pursuant to Section 3(c) of the Telemarketing Act,
27 15 U.S.C. § 6102(c), and Section 18(d)(3) of the FTC Act, 15
28 U.S.C. § 57a(d)(3), violations of the TSR constitute unfair or

1 deceptive acts or practices in or affecting commerce, in
2 violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

3 37. Defendants Universal and Sarabia, individually and
4 doing business as Nissan Bancorp, are "sellers" or
5 "telemarketers" engaged in "telemarketing," as those terms are
6 defined in the TSR. 16 C.F.R. §§ 310.2(r), (t) & (u).

7 **COUNT THREE**

8 38. In numerous instances, in connection with the
9 telemarketing program offering their cards to consumers,
10 Defendants have requested and received payment of a fee or
11 consideration in advance of consumers obtaining an extension
12 of credit when Defendants have guaranteed or represented a
13 high likelihood of success in obtaining an extension of credit
14 for such consumers.

15 39. Defendants have thereby violated Section 310.4(a)(4)
16 of the TSR, 16 C.F.R. § 310.4(a)(4).

17 **COUNT FOUR**

18 40. In numerous instances, in connection with the
19 telemarketing program offering their cards to consumers,
20 Defendants have misrepresented, directly or by implication,
21 that after paying the requested fee, consumers will receive
22 Visa or MasterCard credit cards or their functional
23 equivalent.

24 41. Defendants have thereby violated Section
25 310.3(a)(2)(iii) of the TSR, 16 C.F.R. § 310.3(a)(2)(iii).

26 **COUNT FIVE**

27 42. In numerous instances, in connection with the
28 telemarketing program offering their cards to consumers,

1 Defendants have failed to disclose clearly and conspicuously
2 that consumers can only use the offered cards to purchase
3 items from designated catalogs, and that consumers cannot use
4 Defendants' credit cards to pay the entire cost of items
5 purchased with the cards, but must pay 25-50% of the cost by
6 some other method.

7 43. Defendants have thereby violated Section
8 310.3(a)(1)(ii) of the TSR, 16 C.F.R. § 310.3(a)(1)(ii).

9 **CONSUMER INJURY**

10 44. Consumers throughout the United States have suffered
11 and continue to suffer substantial monetary loss as a result
12 of Defendants' unlawful acts or practices. In addition,
13 Defendants have been unjustly enriched as a result of their
14 unlawful practices. Absent injunctive relief by this Court,
15 Defendants are likely to continue to injure consumers, reap
16 unjust enrichment, and harm the public interest.

17 **THIS COURT'S POWER TO GRANT RELIEF**

18 45. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b),
19 empowers this Court to grant injunctive and other ancillary
20 relief, including consumer redress, disgorgement, and
21 restitution, to prevent and remedy any violations of any
22 provision of law enforced by the Commission.

23 46. Section 19 of the FTC Act, 15 U.S.C. § 57b,
24 authorizes this Court to award such relief as is necessary to
25 redress the injury to consumers or others resulting from
26 Defendants' violations of the TSR, including the rescission
27 and reformation of contracts and the refund of monies.

28 47. This Court, in the exercise of its equitable

1 jurisdiction, may award other ancillary relief to remedy
2 injury caused by Defendants' law violations.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff, the Federal Trade Commission,
5 requests that this Court, as authorized by Section 13(b) of
6 the FTC Act, 15 U.S.C. § 53(b), and pursuant to its own
7 equitable powers:

8 1. Permanently enjoin Defendants from violating the FTC
9 Act and the TSR as alleged herein;

10 2. Award such relief as the Court finds necessary to
11 redress injury to consumers resulting from Defendants'
12 violations of the FTC Act and the TSR, including but not
13 limited to rescission of contracts, restitution, the refund of
14 monies paid, and the disgorgement of ill-gotten monies; and

15 3. Award Plaintiff the costs of bringing this action,

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23 as well as such other and additional relief as the Court may
24 determine to be just and proper.

25 Respectfully submitted,

26 WILLIAM E. KOVACIC
27 General Counsel

28 April 11, 2002

BARBARA Y.K. CHUN
Attorneys for Plaintiff
Federal Trade Commission

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