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2004 SEP 17 AM 8:13

CLERK U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF IOWA

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF IOWA**

STATE OF IOWA ex rel. Thomas J. Miller,  
Attorney General of Iowa

Plaintiff,

v.

TELEDRAFT, INC.,  
a Delaware corporation,

AL SLATEN, individually and in his  
corporate capacity, and

DAN WOLFE, individually and in his  
corporate capacity,

Defendants.

**4:04-CV-90507**

Civil No.

COMPLAINT FOR INJUNCTIVE  
AND OTHER EQUITABLE RELIEF

The State of Iowa ex rel. Thomas J. Miller, Attorney General of Iowa, through the undersigned Assistant Attorney General, for its Complaint against Defendants alleges as follows.

**INTRODUCTION**

Defendants play a vital role in various predatory telemarketing schemes, enabling the telemarketers to extract money from the checking accounts of their typically elderly

victims. Defendants contract with telemarketing operations, many of them in Canada, to provide the telemarketers access to the Automated Clearing House (“ACH”) system, a system through which funds may be withdrawn from consumers’ checking accounts electronically. At the time of contracting, Defendants are provided copies of the telemarketers’ pitches, which reflect deception or other illicit sales techniques, or even the marketing of banned products or services. The telemarketers identify potential victims, whom they may or may not actually call, and then route the victims’ account information to Defendants. Defendants use their connections to the ACH network to grant the telemarketers instantaneous access to consumers’ bank accounts, from which withdrawals of hundreds of dollars at a time are made, often without the victim’s authorization and sometimes without the victim’s realization. Even when the withdrawal is authorized by the consumer, the authorization is typically induced by a misleading sales pitch. Defendants have ample notice of the role they play in these schemes, and have a legal duty to refrain from helping illicit telemarketers gain access to consumers’ bank accounts. In failing to meet that duty Defendants have inflicted injury on many vulnerable consumers, in Iowa and across the United States.

### **CAUSE OF ACTION**

1. Plaintiff brings this action under the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101 *et seq.*, seeking preliminary and permanent injunctive relief, restitution, disgorgement, and other

equitable relief for Defendants' violation of the Federal Trade Commission's Telemarketing Sales Rule, 16 C.F.R. Part 310, in connection with the facilitation of deceptive and unfair acts or practices.

2. Plaintiff also brings this action as part of the same case or controversy under Article III pursuant to the Iowa Consumer Fraud Act, Iowa Code § 714.16 (2003) and the Iowa Loan Broker Act, Iowa Code Ch. 535C (2003).

### **JURISDICTION AND VENUE**

3. Subject matter jurisdiction over the federal claim(s) is conferred upon this Court by 28 U.S.C. §§ 1331 and 1337(a), and by 15 U.S.C. § 6103(a). Supplemental jurisdiction over the state claim is conferred upon this Court by 28 U.S.C. § 1367.
4. Venue in the Southern District of Iowa is proper under 15 U.S.C. § 6103(e), as Defendants transact business in this District, and under 28 U.S.C. § 1391, as a substantial part of the events giving rise to this action occurred in this District and/or property that is the subject of this action is situated in this District.

### **PLAINTIFF**

5. Plaintiff State of Iowa ex rel. Attorney General Thomas J. Miller is authorized by 15 U.S.C. § 6103(a) and by Iowa Code § 714.16 (15) (2003) to file district court actions to enjoin violations of the Telemarketing Rule, enforce compliance with the Rule, and to secure such relief as may be appropriate in each case, including damages, restitution, or other compensation on behalf of the residents of Iowa, or

to obtain such further and other relief as the Court deems appropriate. Plaintiff is also authorized by Iowa Code § 714.16 (7) to bring legal action to enforce the Iowa Consumer Fraud Act, and by Iowa Code § 535C.10 (2) to enforce the Iowa Loan Brokers Act. Acts or positions attributed to “the Attorney General” include the acts and positions of Iowa Department of Justice representatives acting under the Attorney General’s authority.

### **DEFENDANTS**

6. Defendant Teledraft, Inc. (“Teledraft”) is a Delaware corporation with its principal place of business located in Phoenix, Arizona. Teledraft was incorporated February 6, 2003. Teledraft regularly transacts or has regularly transacted business in the Southern District of Iowa and throughout the United States. (Hereafter Defendants are referred to collectively as “Teledraft,” unless the context requires another meaning.)
7. Teledraft operates as an ACH service bureau or third-party processor of electronic fund transfers. Teledraft arranges, directly or indirectly, with merchants to electronically debit funds from consumers’ bank accounts on behalf of those merchants, and provides other services that direct, control, assist or facilitate the acts and practices described in the Complaint.
8. Defendant Al Slaten is the president and an owner of Teledraft. At all relevant times, acting alone or in concert with others, Mr. Slaten has formulated, directed,

controlled, or participated in the acts and practices of Teledraft, including the acts and practices set forth in this Complaint. He is a resident of Arizona and regularly transacts or has regularly transacted business in the Southern District of Iowa and throughout the United States.

9. Defendant Dan Wolfe is an owner of Teledraft and owns a larger share than any other individual. At all relevant times, acting alone or in concert with others, Mr. Wolfe has formulated, directed, controlled, or participated in the acts and practices of Teledraft, including the acts and practices set forth in this Complaint. He is a resident of Arizona and regularly transacts or has regularly transacted business in the Southern District of Iowa and throughout the United States.

#### **THE FTC'S TELEMARKETING SALES RULE**

10. In the Telemarketing Act, 15 U.S.C. §§ 6101-6108, Congress directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices. On August 16, 1995, the FTC promulgated the Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310. The TSR became effective on December 31, 1995. On December 18, 2002, the FTC promulgated amendments to the TSR. The amendments became effective on March 31, 2003.
11. The TSR prohibits telemarketers and sellers from "[r]equesting or receiving payment of any fee or consideration for goods or services represented to remove derogatory information from, or improve, a person's credit history, credit record,

or credit rating” until the period in which the seller has represented the goods or services would be provided has expired and a qualifying credit report from a consumer reporting agency has been provided to the consumer. 16 C.F.R. § 310.4(a)(2).

12. The TSR prohibits telemarketers and sellers from “making a false or misleading statement to induce any person to pay for goods or services.” 16 C.F.R. § 310.3(a)(4). Such conduct constitutes a deceptive telemarketing act or practice and a violation of the TSR. Such conduct constitutes an abusive telemarketing act or practice and a violation of the TSR.
13. The TSR also prohibits telemarketers and sellers from, among other things, requesting or receiving payment of any fee or consideration in advance of obtaining a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit. 16 C.F.R. § 310.4(a)(4). Such conduct constitutes an abusive telemarketing act or practice and a violation of the TSR.
14. The TSR also prohibits a person from providing “substantial assistance or support” to any seller or telemarketer when that person “knows or consciously avoids knowing” that the telemarketer is engaged in acts or practices that violate 16 C.F.R. §§ 310.3(a) or 310.4 of the Rule. 16 C.F.R. § 310.3(b). Such conduct constitutes a deceptive telemarketing act or practice and a violation of the TSR.

15. Defendants have processed ACH transactions and provided related services on behalf of persons who are “sellers” or “telemarketers” engaged in “telemarketing,” as those terms are defined in Sections 310.2(r), (t), and (u) of the TSR as promulgated in 1995, renumbered but unchanged as Sections 310.2(z), (bb), and (cc) of the TSR as amended in 2003.

### **THE IOWA CONSUMER FRAUD ACT**

16. Iowa Code § 714.16(1) provides the following definitions:

(f) “*Deception*” means an act or practice which has the tendency or capacity to mislead a substantial number of consumers as to a material fact or facts.

(n) “*Unfair practice*” means an act or practice which causes substantial, unavoidable injury to consumers that is not outweighed by any consumer or competitive benefits which the practice produces.

17. The Iowa Consumer Fraud Act, Iowa Code § 714.16 (2)(a) (2003) (“the Consumer Fraud Act”) provides in pertinent part:

The act, use or employment by a person of an unfair practice, deception, fraud, false pretense, false promise, or misrepresentation, or the concealment, suppression or omission of a material fact with intent that others rely upon the concealment, suppression, or omission, in connection with the lease, sale, or advertisement of any merchandise or the solicitation of contributions for charitable purposes, whether or not a person has in fact been misled, deceived, or damaged, is an unlawful practice.

18. Iowa Code § 714.16 (7) provides, in pertinent part:

Except in an action for the concealment, suppression, or omission of a material fact with intent that others rely upon it, it is not necessary in an action for reimbursement or an injunction, to allege or to prove reliance,

damages, intent to deceive, or that the person who engaged in an unlawful act had knowledge of the falsity of the claim or ignorance of the truth.

19. In describing remedies under the Consumer Fraud Act, Iowa Code subsection 714.16(7) provides in pertinent part as follows:

If it appears to the attorney general that a person has engaged in, is engaging in, or is about to engage in a practice declared to be unlawful by this section, the attorney general may seek and obtain in an action in a district court a temporary restraining order, preliminary injunction, or permanent injunction prohibiting the person from continuing the practice or engaging in the practice or doing an act in furtherance of the practice. The court may make orders or judgments as necessary to prevent the use or employment by a person of any prohibited practices, or which are necessary to restore to any person in interest any moneys ... which have been acquired by means of a practice declared to be unlawful by this section ...

In addition to the remedies otherwise provided for in this subsection, the attorney general may request and the court may impose a civil penalty not to exceed forty thousand dollars per violation against a person found by the court to have engaged in a method, act, or practice declared unlawful under this section; provided, however, a course of conduct shall not be considered to be separate and different violations merely because the conduct is repeated to more than one person. In addition, on the motion of the attorney general or its own motion, the court may impose a civil penalty of not more than five thousand dollars for each day of intentional violation of a[n] ... injunction issued under authority of this section.

20. Regarding an award of attorney fees and costs, Iowa Code § 714.16(11) provides:

In an action brought under this section, the attorney general is entitled to recover costs of the court action and any investigation which may have been conducted, including reasonable attorneys' fees, for the use of this state.

21. Iowa Code §§ 714.16A(1) & (3) (2003) provide, respectively:

If a person violates section 714.16, and the violation is committed against an older person, in an action by the attorney general, in addition to any



other civil penalty, the court may impose an additional civil penalty not to exceed five thousand dollars for each such violation.

As used in this section, "*older person*" means a person who is sixty-five years of age or older.

### **THE IOWA LOAN BROKERS ACT**

22. The Iowa Loan Brokers Act provides the following definitions at Iowa Code

§ 535C.2 (1) - (4):

1. "*Advance fee*" means consideration of any type including a payment, fee, pay-per-call charge, or deposit, which is assessed or collected prior to the closing of a loan or the issuing of a credit card.
2. "*Borrower*" means a person who seeks the services of a loan broker.
3. "*Loan*" means an agreement to advance property, including but not limited to money, in return for the promise that payment will be made for the use of the property.
4. "*Loan broker*" or "*broker*" means a person who promises to obtain a loan or credit card or assist in obtaining a loan for another from a third person, or who promises to consider making a loan or offering to issue a credit card to a person. [List of exclusions omitted as inapplicable]

23. The Iowa Loan Brokers Act, Iowa Code § 535C (2003), provides the following prohibition on advance fees at Iowa Code § 535C.2A:

A loan broker shall not directly or indirectly solicit, receive, or accept from a borrower an advance fee as consideration for providing services as a loan broker. A loan broker's fee may only be assessed or collected from a borrower after the successful procurement of a loan or issuance of a credit card.

24. The Iowa Loan Brokers Act provides the following requirement as to written agreements at Iowa Code § 535C.7:

A loan brokerage agreement shall be in writing, contain a description of the services that the broker agrees to perform for the borrower, and the conditions under which the borrower is obligated to pay the broker. The agreement shall be signed by the broker and the borrower. The broker shall give the borrower a copy of the agreement when the borrower signs the agreement.

25. A violation of the Iowa Loan Brokers Act constitutes a violation of the Iowa Consumer Fraud Act (*see* Section 535C.10 (2)).

### **DEFENDANTS' ACH PROCESSING BUSINESS PRACTICES**

#### ***The ACH Network and NACHA***

26. The ACH Network is a nationwide electronic funds transfer system that provides for the interbank clearing of electronic payments. Since at least as early as August 2003, Teledraft has entered into direct contractual agreements to process, directly or indirectly, transactions through the ACH Network on behalf of telemarketers. Teledraft's clients are either the telemarketing businesses themselves, or other processors (also known as "aggregators") that in turn contract directly with telemarketing businesses. A telemarketing business that purportedly engages in the sales transaction that underlies an ACH debit is known as an "originator." In order to effectuate an ACH debit for an originator, processors like Teledraft (also known as "third party processors") must rely upon arrangements with a financial institution, as only financial institutions may make debit entries. A financial institution that initiates ACH debits is known as an "Originating Depository Financial Institution," or "ODFI."

27. The National Automated Clearing House Association (“NACHA”) is a not-for-profit trade association that develops and enforces rules for the ACH Network (“NACHA Rules”). The NACHA Rules specifically prohibit, among other things, the processing of one-time, telephone-initiated ACH debits on behalf of merchants engaged in outbound telemarketing to consumers with whom such merchants have no existing relationship (aka “cold calling”). This Rule, known as the “TEL Rule,” was designed to reduce the risk of telemarketing fraud on consumers.
28. To process ACH transactions for its clients, Teledraft has entered into a contract or contracts with one or more financial institutions and/or third-party ACH processors that participate in the ACH Network. Such contracts require Teledraft to comply with the NACHA Rules. However, since at least August of 2003, Teledraft has processed ACH payments on behalf of merchants engaged in cold calling, in direct violation of those contracts and the NACHA Rules, and Teledraft has done so under circumstances in which Defendants knew or should have known of the objectionable conduct.
29. Under NACHA Rules, a participant in the ACH Network may effect the return of a transaction for certain specified reasons. For instance, a consumer may try to effect a return for an unauthorized debit to the consumer’s account, or a financial institution may return a debit entry if the account has insufficient funds.

30. NACHA and other ACH Network participants have historically advocated the monitoring of return rates as a risk management procedure. Return rates that deviate substantially from normative rates are often indicia of fraud. The routine ACH transactions of legitimate businesses typically generate very low return rates. As an illustration, NACHA Rules require an ODFI to provide a report to NACHA upon request when the return rate for unauthorized TEL entries exceeds 2.5 %.
31. Since at least August 2003, Defendants have knowingly processed ACH transactions on behalf of companies with return rates well in excess of industry risk benchmarks.
32. During the period from August of 2003 through March of 2004, Teledraft's monthly return rates for lack of authorization by the consumer ranged from a low of 10.57 % (September 2003) to a high of 15.67 % (January 2003), as reported by third party processors or banks involved in processing Teledraft's submissions. During that same period, Teledraft's total monthly return rates (whether returned for lack of authorization or any other reason) ranged from a low of 51 % (March 2004) to a high of 77 % (January 2004), as reported by the same processors and banks.

***ACH Processing on Behalf of Deceptive and Abusive Sellers or Telemarketers***

33. Since at least as early as August of 2003, Teledraft has electronically debited consumers' bank accounts through the ACH Network on behalf of numerous

deceptive or abusive telemarketing schemes, many of which have been based in Canada. Of the 20 telemarketing businesses served by Teledraft between August of 2003 and the present for which location information is available to Plaintiff, 14 were located in Canada.

34. Defendants have assisted and facilitated numerous deceptive or abusive telemarketing schemes, including but not limited to:

1. 3842193 Canada, Inc., dba United Publication Center;
2. Universal Processing Services, Inc.;
3. LG Direct, dba LG Benefits and LG Benefits Services;
4. Trek Sales Benefit Services, Inc., dba Consumer Benefits Council; and
5. Services de clients avantage, dba Client Care Solution.

35. In processing ACH transactions on behalf of the businesses identified in the preceding paragraph, and on behalf of numerous other deceptive or abusive telemarketers, Defendants have caused millions of dollars to be electronically withdrawn from the bank accounts of U.S. consumers. A copy of Teledraft's processing agreement with 3842193 Canada, Inc., dba United Publication Center is attached as Exhibit 1; the contracts with the other telemarketing operations identified above are substantially similar.

*United Publication Center Telemarketing Scheme*

36. In May 2003, Defendants entered into a contract with 3842193 Canada Inc. dba "United Publication Center" (hereafter "UPC") and Imran Karmali, UPC's president, to provide ACH processing services. Defendants debited the bank accounts of at least 21 Iowa consumers, and also the accounts of an unknown volume of other United States residents believed to number in the thousands, beginning on August 5, 2003 or earlier. Teledraft was still processing ACH transactions for UPC as of at least April 29, 2004.
37. During the time Defendants processed ACH transactions for UPC, Defendants knew or consciously avoided knowing, and/or should have known, that UPC:
- (a) engaged in cold calling; (b) deceptively marketed a so-called "benefits program;" and (c) generated return rates far in excess of industry risk benchmarks.
38. A copy of the primary script that UPC provided to Teledraft at or about the time of contracting is attached as Exhibit 2.
39. The telemarketing script UPC provided to Teledraft embodies a cold call offer of a "benefits program" designed for people who "have problems with their credit, like to travel, [and] shop for food at grocery stores." At a total cost of \$398.00, this "benefit program" is represented to include:
- a) A "free cell phone offer that has a 99\$ value;"

- b) A “free 3 day 2 night vacation ... to one of over 20 exotic locations (\$150 - \$400 value);”
  - c) Useful information on credit and credit repair that has “helped a lot of people who were refused for credit or fix there [sic] current status;”
  - d) An “e-z hang up system” for discouraging telemarketers;
  - e) Instructions on how to “get a free computer when you get internet services ... a value of \$1500!!!!;”
  - f) “[A]lot of extra bonus’s [sic].”
40. The script put Defendants on notice that UPC’s telemarketers were engaged in cold calling in violation of the ACH rules, and that either: (a) the value of the products and services composing the “benefits program” were substantially exaggerated, (b) the description of the products and services omitted material restrictions, limitations and qualifications, or (c) both.
41. Mildred S., age 79, of Albia, Iowa had \$449.00 extracted from her bank account on April 20, 2004 by Teledraft, acting on behalf of UPC. She never authorized that withdrawal, never received any goods or services in the nature of UPC’s “benefits program,” and has never received reimbursement of the \$449.00.
42. Eleanora C., age 67, of Libertyville, Iowa had \$398.00 extracted from her bank account on January 8, 2004 by Teledraft, acting on behalf of UPC. She never authorized that withdrawal, and did not realize the withdrawal had been made

from her account until receiving an inquiry from the Attorney General's Office in August of 2004. Eleanora C. never received any goods or services for that money and has never received reimbursement. UPC, through Teledraft, had unsuccessfully attempted to make an earlier unauthorized withdrawal of the same amount from Eleanora C.'s bank account on November 19, 2003, but the transaction was caught and reversed.

43. Margaret L., age 77, of Fort Dodge, Iowa had \$398.00 extracted from her bank account on November 3, 2003 by Teledraft, acting on behalf of UPC. She never authorized that withdrawal, but did receive an unwanted "ez hang up" device in an envelope through the mail, which she does not use. Margaret L. has never received reimbursement of the \$398.00.
44. Teledraft's records relating to transactions involving Iowa consumers indicate that of the 21 ACH withdrawals attempted or performed by Teledraft on behalf of UPC, 15 were rejected at some point in the process or otherwise failed to be consummated, for a total return rate of 71 %. Teledraft's records further indicate that the consumer transactions noted in the three preceding paragraphs were among the 6 "approved" transactions that were in fact consummated. Upon information and belief, the experiences of those three consumers are representative of many "approved" ACH withdrawals performed by Teledraft for UPC, in Iowa and elsewhere.



*Universal Processing Services, Inc.'s Telemarketing Schemes*

45. In April 2003, Defendants entered into a contract with Universal Processing Services, Inc. (hereafter "Universal Processing") and Rey Pasinli, the company's owner, to provide ACH processing services. Defendants debited the bank accounts of at least 85 Iowa consumers, and also the accounts of an unknown volume of other United States residents believed to number in the thousands, from at least as early as August 4, 2003 to at least as late as December 4, 2003.
46. During the time Defendants processed ACH transactions for Universal Processing, Defendants knew or consciously avoided knowing, and/or should have known, that Universal Processing, or the businesses for which Universal Processing performed ACH-related services: (a) engaged in cold calling; (b) engaged in deceptive marketing practices; (c) unlawfully solicited and collected fees in advance of obtaining an extension of credit in the form of a credit card, the obtaining of which was guaranteed or represented to be highly likely; and (d) generated return rates far in excess of industry risk benchmarks.
47. A copy of one of the scripts that Universal Processing provided to Teledraft at or about the time of contracting is attached as Exhibit 3. The script purports to represent what a "verifier" would say at the close of a telephone sale, rather than the sales pitch a consumer would receive at the outset of the telemarketing

contact. Nevertheless, the scheme embodied in the script is unfair and deceptive in many respects, including without limitation the following:

- a) The telemarketer claims to be calling from the “Security Department” of “Premiere Financial,” a dba evidently selected to sound like a financial institution.
- b) The pitch claims that “Premier Financial” will assist the consumer “in obtaining [a] major credit card with a limit of up to \$5,000.” Such schemes purporting to provide or arrange credit for an advance fee violate federal law, Iowa law, and upon information and belief the law of a number of other states.

- 48. Colleen M., age 40, of Spencer, Iowa had \$296.00 extracted from her bank account on August 8, 2003 by Teledraft, acting on behalf of Universal Processing. She had authorized that withdrawal after receiving a telemarketing call offering her a Visa or Mastercard and a chance to repair her credit status for an advance fee of \$296.00. However, she never received a credit card or any other product or service whatsoever, and her attempts to obtain a refund were unsuccessful.
- 49. Timothy M., age 44, of Lucas, Iowa had \$298.00 extracted from his bank account on September 3, 2003 by Teledraft, acting on behalf of Universal Processing. He had authorized that withdrawal after receiving a telemarketing call offering him a credit card upon payment of an advance fee. However, he never received the

promised credit card or any other product or service whatsoever for his \$298.00, and his effort to get a refund was unsuccessful.

50. Plaintiff obtained records from Teledraft relating exclusively to transactions involving Iowa consumers. Those records show that of the 85 ACH withdrawals attempted or performed by Teledraft on behalf of Universal Processing, 65 were rejected at some point in the process or otherwise failed to be consummated, for a total return rate of 76 %. According to Teledraft's records, the consumer transactions noted in the two preceding paragraphs were among the 20 "approved" transactions that were in fact consummated. Upon information and belief, the experiences of those two consumers are representative of many "approved" ACH withdrawals performed by Teledraft for Universal Processing, in Iowa and elsewhere.

#### ***LG Direct Telemarketing Scheme***

51. In September 2003, Defendants entered into a contract with LG Direct dba "LG Benefits" or "LG Benefits Services" (hereafter "LG Direct") and Greg L. Ross, LG Direct's owner, to provide ACH processing services. Defendants debited the bank accounts of at least 63 Iowa consumers, and also the accounts of an unknown volume of other United States residents believed to number in the thousands, from at least as early as October 1, 2003 to at least as late as January 6, 2004.

52. During the time Defendants processed ACH transactions for LG Direct, Defendants knew or consciously avoided knowing, and/or should have known, that LG Direct: (a) engaged in cold calling; (b) deceptively marketed Telemarketing and I.D. Theft Prevention Programs; and (c) generated return rates far in excess of industry risk benchmarks.
53. A copy of the primary script that LG Direct provided to Teledraft at or about the time of contracting is attached as Exhibit 4. At the time Teledraft entered into its contract with LG Direct, the Federal Trade Commission had been publicizing the advent of its free nationwide “Do Not Call” list for several months, and consumers had placed more than 50 million phone numbers on the list. The “Do Not Call” effort was scheduled to begin reducing telemarketing call volume as of October 1, 2003.
54. LG Direct’s official-sounding dba (“LG Benefits”) and script appear well-designed to capitalize on an imperfect understanding on the part of consumers – especially elderly consumers – as to what they needed to do to receive the “Do Not Call” protections. The scheme embodied in the script is unfair and deceptive in many respects, including without limitation the following:
- a) The telemarketer is characterized as an “account officer” calling for the misleadingly named “LG Benefits.”

b) The caller apologizes for delay in responding to the consumer's supposed "request to be taken off all telemarketing lists forever," which delay is supposedly caused by a "high volume of calls." No script provided by LG Direct to Teledraft reflects any procedure for handling the claimed high volume of in-bound calls.

c) LG Direct represents that its service would remove the consumer from "all telemarketing lists forever," an exaggerated result that even the FTC's "Do Not Call" program never purported to achieve.

d) LG Direct represents that its service would ensure that the consumer would "never become a victim" of identity theft, an obviously exaggerated performance claim.

e) LG Direct refers to an inherently contradictory "one-time annual fee of \$469."

f) LG Direct claims that the direct withdrawal from the consumer's bank account is "for [the consumer's] convenience," when in fact that method was chosen to further LG Direct's scheme.

55. Beverly S., age 69, of Des Moines, Iowa had \$469.00 extracted from her bank account on December 22, 2003 by Teledraft, acting on behalf of LG Direct. She never authorized that withdrawal, and her attempt to get her money back was unsuccessful – her calls to an LG Direct 800 number went unanswered.

56. Ruth S., age 95, of Fort Madison, Iowa had \$469.00 extracted from her bank account on January 5, 2004 by Teledraft, acting on behalf of LG Direct. She reports that she never authorized this, and that in fact she was completely unaware that this money had been taken from her account until the Iowa Attorney General's Office contacted her about it in May 2004, and she then confirmed the loss by checking with her bank.
57. Teledraft's records relating to transactions involving Iowa consumers indicate that of the 63 ACH withdrawals attempted or performed by Teledraft on behalf of LG Direct, 52 were rejected at some point in the process or otherwise failed to be consummated, for a total return rate of 83 %. Teledraft's records further indicate that the consumer transactions noted in the two preceding paragraphs were among the 11 "approved" transactions that were in fact consummated. Upon information and belief, the experiences of those two consumers are representative of many "approved" ACH withdrawals performed by Teledraft for LG Direct, in Iowa and elsewhere.

***Trek Sales Benefit Services Telemarketing Scheme***

58. In October 2003, Defendants entered into a contract with Trek Sales Benefit Services, Inc. dba Consumer Benefits Council (hereafter "Trek") and Juanita Ruiz, Trek's owner, to provide ACH processing services. Defendants debited the bank accounts of at least 26 Iowa consumers, and also the accounts of an

unknown volume of other United States residents believed to number in the hundreds or thousands, from at least as early as October 8, 2003 to at least as late as November 14, 2003.

59. During the time Defendants processed ACH transactions for Trek, Defendants knew or consciously avoided knowing, and/or should have known, that Trek:  
(a) engaged in cold calling; (b) deceptively marketed Telemarketing and I.D. Theft Prevention Programs; and (c) generated return rates far in excess of industry risk benchmarks.
60. A copy of the primary script that Trek provided to Teledraft at or about the time of contracting is attached as Exhibit 5. The script is almost the same as the LG Direct script and embodies the same unfair practices and deceptions. However, the Trek telemarketer claims to represent "Consumer Benefits Council" and sells the "product" in question for \$489.
61. Nancy S., age 64, of Logan, Iowa had \$489.00 extracted from her bank account on November 12, 2003 by Teledraft, acting on behalf of Trek. She reported that she had been told by a telephone caller that his operation – Consumer Benefits Council – had taken over security for her bank, and that she had to authorize a withdrawal or all of her accounts would have to be closed. She still refused to authorize a withdrawal but the \$489.00 was taken nevertheless, causing checks to bounce and causing her to incur overdraft charges. Teledraft later extracted funds

from Nancy S.'s account a second time on December 30, 2003, this time withdrawing an unauthorized \$469.00 on behalf of LG Direct. In both instances she was able to work with bank employees to have her money reinstated, limiting her damage to overdraft fees and emotional stress.

62. Helen P., age 84, of Des Moines, Iowa had \$489.00 extracted from her bank account on October 14, 2003 by Teledraft, acting on behalf of Trek. She never authorized that withdrawal, never received any goods or services from Trek, and has never received reimbursement of the \$489.00.
63. Teledraft's records relating to transactions involving Iowa consumers indicate that of the 26 ACH withdrawals attempted or performed by Teledraft on behalf of Trek, 22 were rejected at some point in the process or otherwise failed to be consummated, for a total return rate of 85 %. Teledraft's records further indicate that the consumer transaction noted in the preceding paragraph (Helen P.) was among the 4 "approved" transactions that were in fact consummated. Upon information and belief, the experience of Helen P. is representative of many "approved" ACH withdrawals performed by Teledraft for Trek, in Iowa and elsewhere, and the experience of Nancy S. (paragraph 61) is representative of many returned transactions.



### *Client Care Solution Telemarketing Schemes*

64. In November 2003, Defendants entered into a contract with Services de clients avantage of Montreal, Quebec, dba Client Care Solution (hereafter "Client Care") and Yeboah Kwadwo, the business's owner, to provide ACH processing services. Although the contract is dated November 3, 2003, Defendants debited the bank accounts of at least six Iowa consumers (one of them twice), and also the accounts of an unknown volume of other United States residents believed to number in the hundreds, from at least as early as August 17, 2003 to at least as late as October 23, 2003.
65. During the time Defendants processed ACH transactions for Client Care, Defendants knew or consciously avoided knowing, and/or should have known, that Client Care: (a) engaged in cold calling; (b) engaged in deceptive marketing practices; (c) unlawfully solicited and collected fees in advance of obtaining an extension of credit in the form of a credit card, the obtaining of which was guaranteed or represented to be highly likely; and (d) generated return rates far in excess of industry risk benchmarks.
66. A copy of the "sales script" that Client Care provided to Teledraft at or about the time of contracting or the provision of services by Teledraft is attached as Exhibit 6.

67. The script embodies an initial contact in the nature of a “cold call,” and the telemarketer announces at the outset that “the reason of my call is to let you know that I can assist you in receiving a major credit card with a limit of up to 5000\$ [sic].” The script refers to a “one time fee of 89\$” for a “credit package” that is to arrive in the mail within 15 business days. The script asks the consumer to provide details regarding his or her checking account in order to “complete your application,” as if the consumer were submitting an application for a credit card. As noted above, schemes purporting to provide or arrange credit for an advance fee violate state and federal law.
68. A copy of the “verification script” that Client Care provided to Teledraft at or about the time of contracting or the provision of services by Teledraft is attached as Exhibit 7.
69. A telemarketer using the verification script claims to be a “verification officer” at Client Care, confirms an impending \$89 debit of the consumer’s account, and states that “we are not the bank but an independent credit program between you and the bank that will help you obtain a credit card.”
70. Although the sales script and verification script refer exclusively to a product price of \$89.00, Teledraft made no ACH withdrawals in that amount on behalf of Client Care from the Iowa residents whose bank accounts were accessed. Instead,

the amount extracted was \$189.00 in six instances, and \$239.00 in the seventh instance.

71. Ken S., age 36, of Ottumwa, Iowa had \$189.00 extracted from his bank account on September 4, 2003 by Teledraft, acting on behalf of Client Care. He had authorized that withdrawal after receiving a telemarketing call saying he had been pre-approved for a Mastercard which he could obtain for a total cost of \$189.00. However, he never received a credit card or any other product or service whatsoever, and his attempts to contact the company for a refund were unsuccessful.
72. Michael R., age 64, of Elliot, Iowa had \$239.00 extracted from his bank account on September 11, 2003 by Teledraft, acting on behalf of Client Care. He did not authorize that withdrawal, received nothing in return for the \$239.00, and was unsuccessful in his effort to obtain a refund. Teledraft also withdrew funds from Ryan's account on August 19, 2003 (\$189.00 on behalf of Client Care), on September 23, 2003 (\$200.00 on behalf of a business called Contact Marketing) and on September 30, 2003 (\$200.00 on behalf of an unknown Teledraft client), but in each of these latter instances the withdrawal was blocked or reversed and the funds indicated were not lost.
73. Teledraft's records relating to transactions involving Iowa consumers indicate that of the seven ACH withdrawals attempted or performed by Teledraft on behalf of

Client Care, four were rejected at some point in the process or otherwise failed to be consummated, for a total return rate of 57%. Teledraft's records further indicate that the consumer transactions noted in the two preceding paragraphs were among the 3 "approved" transactions that were in fact consummated. Upon information and belief, the experiences of those two consumers are representative of many "approved" ACH withdrawals performed by Teledraft for Client Care, in Iowa and elsewhere.

### **COUNT I**

#### **VIOLATIONS OF THE TELEMARKETING SALES RULE**

##### ***Assisting and Facilitating Telemarketing Sales Rule Violations***

74. Paragraphs 1 through 73 are incorporated herein by reference.
75. In numerous instances, in connection with processing ACH transactions and providing related services for sellers or telemarketers, Defendants have provided substantial assistance or support to sellers or telemarketers whom Defendants knew or consciously avoided knowing:
  - A. induced consumers to pay for goods and services through the use of false or misleading statements in violation of Section 310.3(a)(4) of the TSR; or
  - B. falsely represented that after paying an advance fee, consumers are guaranteed or highly likely to receive a credit card or obtain a loan, in violation of Section 310.4(a)(4) of the TSR.

76. Defendants' acts or practices alleged herein constitute deceptive and/or abusive telemarketing acts or practices in violation of Section 310.3(b) of the TSR.

## **COUNT II**

### **IOWA CONSUMER FRAUD ACT**

77. Paragraphs 1 through 76 are incorporated herein by reference.

#### ***Facilitating Consumer Fraud***

78. Defendants knew or should have known that their acts and practices facilitated conduct that violated the Consumer Fraud Act, Iowa Code § 714.16(2)(a) (2003) and the Iowa Loan Brokers Act, Iowa Code Ch. 535C (2003); such facilitation constitutes a violation of the Consumer Fraud Act's prohibition against misleading, deceptive, unfair, and omissive acts and practices, and otherwise violates that provision of Iowa law.

#### ***Harming Consumers by Violating Commitments to Comply with NACHA Rules***

79. Defendants, in their contracts with one or more financial institutions and third-party ACH processors that have access to the ACH Network, promised that in processing debits of consumers' bank accounts they would comply with the NACHA Rules, including the TEL Rule, which was designed to reduce the risk of telemarketing fraud by prohibiting the processing of one-time, telephone-initiated debits on behalf of merchants who initiate telemarketing calls to consumers with whom such merchants have no existing relationship.

80. In fact, Defendants breached their contracts to abide by the NACHA Rules, by processing just such telephone-initiated debits to consumers' bank accounts through the ACH Network.
81. Defendants' contractual promise to comply with the NACHA Rules, and their subsequent systematic breach of that promise by processing on behalf of outbound telemarketers engaged in deceptive marketing practices, caused the debiting of the bank accounts of a large number of consumers who either never authorized the telemarketers to debit their accounts, or who were induced to authorize debits by the telemarketers' deceptive practices. Adherence to Teledraft's contractual promise to comply with the TEL Rule would have prevented this victimization. In addition, these consumers' banks have incurred substantial economic harm as a result of processing a substantial increase in requests by consumers seeking refunds for unauthorized charges. These increased customer servicing costs in turn get passed on to consumers in the form of higher fees for basic checking account products.
82. Defendants' false contractual promise, and systematic breach of that contractual promise, therefore caused and is likely to cause substantial injury to consumers that is not reasonably avoidable by consumers and not outweighed by countervailing benefits to consumers or competition, and as such is an unfair

practice; the conduct in question is also a deceptive practice, a false promise, and/or is otherwise in violation of Iowa Code § 714.16 (2)(a) (2003).

### **COUNT III**

#### **CONSUMER FRAUDS COMMITTED AGAINST OLDER PERSONS**

83. Paragraphs 1 through 82 above are incorporated herein by reference.
84. Many, and perhaps most, of the Consumer Fraud Act violations for which Defendants are responsible were committed against older persons and give rise to the additional civil penalty provided for in Iowa Code § 714.16A.

#### **CONSUMER INJURY**

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

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

86. Section 4(a) of the Telemarketing Act, 15 U.S.C. § 6103(a), empowers this Court to grant injunctive relief and such other relief as the Court may deem appropriate to halt and redress violations of the FTC Telemarketing Rule. This Court, in the exercise of its equitable jurisdiction, may award other ancillary relief to remedy injury caused by Defendants' violations of law.

87. Section 7 of the Iowa Consumer Fraud Act, Iowa Code § 714.16 (2003), empowers this Court to grant injunctive relief, award consumer restitution, require disgorgement, award Plaintiff attorney fees and costs, and impose a civil penalty of up to \$40,000 per violation against each person found to have engaged in a method, act or practice declared unlawful by the Act. In addition, Iowa Code § 714.16A empowers the Court to impose upon each Defendant an additional civil penalty of up to \$5,000.00 for each violation of the Iowa Consumer Fraud Act committed against a person 65 years of age or older.

**PRAYER FOR RELIEF**

88. WHEREFORE, Plaintiff prays that this Court, as authorized by Section 6103 of the Telemarketing Act, 15 U.S.C. § 6101 *et seq.* and by Iowa Code §§ 714.16 and .16A, and pursuant to the Court's own equitable powers:
- A. 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;
  - B. Permanently enjoin Defendants from violating the Telemarketing Sales Rule, as alleged herein;
  - C. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the TSR, including, but




not limited to, damages, the refund of monies paid, and the disgorgement of ill-gotten monies;

- D. Award a civil penalty of up to \$40,000 per Defendant for each violation of the Iowa Consumer Fraud Act;
- E. Award an additional civil penalty of up to \$5,000.00 against each Defendant for each violation of the Consumer Fraud Act committed against an older person within the meaning of Iowa Code § 714.16A (2003); and
- F. Award Plaintiff the costs of bringing this action, including attorney fees, as well as such other and additional equitable relief as the Court may determine to be just and proper.

Dated: September 17, 2004.

Respectfully submitted,

THOMAS J. MILLER  
ATTORNEY GENERAL OF IOWA

By:   
Steve St. Clair IA Bar No. PK2715271  
Assistant Attorney General  
Consumer Protection Division  
1305 East Walnut  
Des Moines, Iowa 50319  
Phone: (515) 281-5926  
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Attorneys for Plaintiff

/18/03 Teledraft Application form

**Merchant Services Agreement**  
**Between Teledraft, Inc., and (Merchant) 3842193 CANADA INC.**

This Merchant Services Agreement (this "Agreement") is entered into as of 28th May, 2003 (the "Effective Date"), by and between Teledraft, Inc., a Delaware Corporation ("Teledraft"), and 3842193 CANADA INC. CANADIAN corporation ("Merchant"), with regard to Merchant's integration of the Teledraft, Inc., Payment Services or the Merchant Web Site.

The parties hereto agree as follows:

1. Definitions.

"Teledraft Interfaces" or "Software" means the protocols, software components and other interfaces and software that permit data transfers between Teledraft and Merchant for the purpose of fulfilling the product, technical and functional specifications of the integrated product.

"Teledraft Payment Service" or "TPS" means the Internet-based payment system offered to Merchant by Teledraft which enables Users to effect payment for Goods from an existing checking account (or other ACH-enabled account), and includes any Web site, computer hardware, equipment and software operated by Teledraft and its agents and designees, whether located on Teledraft's or a third party's premises, used to facilitate the payment by users for Goods, and a the authentication of Users. Teledraft retains the right to materially redesign, modify, update or upgrade the organization, navigation, structure, branding, features, functionality and look and feel of the TPS at any time without prior notice.

"TPS SALE", means any sale of Goods that Merchant makes to a User through the TPS on the Integrated Product. TPS Sales will be denominated in U.S. dollars.

"TPS Transaction" includes any TPS Sale, Credit Slip or Chargeback (as defined in Section 3.5 below).

"Credit Slip" means evidence of a refund or price adjustment to a previous TPS Sale to be credited to a User and transmitted to Teledraft by Merchant in the form and within the time period specified by Teledraft.

"Goods" MEANS GOODS AND SERVICES AVAILABLE FOR PURCHASE ON Merchant Web Site.

"Integrated Product" means a Merchant product (such as a the Merchant Web Site) that has been integrated with the Software and any derivative works for the sole and limited purpose of incorporating the TPS as an available feature of the Merchant product.

"Merchant Administrator" is the person or persons designated by merchant who will have access to, and full rights to change, Merchant account information. The Merchant Administrator may change from time to time upon written notice to Teledraft.

"Merchant Web Site" means any world wide web page(s) or site(s) (whether located on Merchant's or a third party's servers) operated or maintained by or on behalf of Merchant from which Users may purchase Goods through the TPS.

"User" or "TPS User" means a person or entity who has successfully registered their checking account (or other ACH-enabled account) and has executed a User Agreement with Teledraft or a designee of Teledraft, which enables such person or entity to use the TPS.

"User Agreement" means the agreement between Teledraft or a designee of Teledraft and a User allowing the User to use the TPS. Teledraft has established various transaction limits for Users, which are subject to change from time to time in Teledraft's sole discretion.

2. TPS Integration.

Subject to the terms and conditions herein, Teledraft and Merchant will accept the TPS as payment for Goods on the Merchant Web Site through the Integrated Product in those instances in which a User chooses to pay for Goods using the TPS. The parties anticipate that and each party will use commercially reasonable efforts to launch the Integrated Product on the Merchant Web Site/or Teledraft Web Site as soon as possible (the actual date of launch is the "Launch Date").

3. Authorization and Settlement: Chargebacks.

**Exhibit 1**

3.2 Settlement: Merchant Authorization of Account. For TPS Sales accepted by Teledraft, Teledraft will, on behalf of Merchant, initiate ACH entries to merchant's Account from Users' accounts as authorized by each User and as directed by merchant. For any amounts due under this Agreement, Merchant authorizes Teledraft or Teledraft's designee to initiate credit entries, debit entries and adjustments to the Merchant Account by ACH or other funds transfer, and authorizes Teledraft or Teledraft designee to credit or deposit funds to the Merchant Account in accordance with such credit entries and to debit, withdraw and transfer funds from the Merchant Account to Teledraft to Teledraft's designee in accordance with such debit entries and adjustments. This authority shall remain in effect until seven Business Days (any day other than a Saturday, Sunday or federal public holiday on which commercial banks are generally open for business) after Teledraft receives written notice from Merchant of its cancellation of such authorization. Teledraft shall not be liable to merchant for any delays in receipt or transmittal of funds or errors in credit or debit entries caused by third parties, including without limitation the ACH, Depository, or any agent of Merchant.

2/18/03 Teledraft Agreement  
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3.6 **Fraud.** To the extent allowed by law, Teledraft and Merchant agree to share personally identifiable information of Users (including without limitation name, shipping address, and billing address) with each other in the event of fraud or suspected fraud. In addition, the parties will cooperate in good faith to minimize fraudulent transactions and fraud-related losses.

#### 4. Pricing, Fees, and Payments

Merchant shall pay Teledraft the fees and rates set forth on the attached Rate Schedule. For each TPS Transaction (including without limitation TPS Sales, Credit Slips and Chargebacks). Teledraft may deduct the Merchant Fee ("Merchant Fee") set forth on the Rate Schedule attached hereto, whether or not Teledraft accepts said transaction for settlement. Teledraft may, alternatively, invoice Subscriber for fees and other charges under this Agreement and such fees and charges are due and payable upon receipt of invoice. A delinquency charge of 1 1/4% per month or the highest amount permitted by law, whichever is lower, shall be added to the outstanding balance of any account at least 30 days delinquent. Teledraft reserves the right to suspend its service and obligations to Subscribe during any period in which Subscriber's account is delinquent.

Merchant is solely responsible and liable for any and all applicable federal, state and/or local sales, use, excise or similar taxes in connection with the sale or distribution of Goods to Users through the TPS and any services provided by Teledraft hereunder (other than taxes on Teledraft's income). Teledraft will deduct all fees from the amounts collected for each transaction prior to settlement of funds or, alternatively, Teledraft may at its option invoice Subscriber for said fees as provided herein. Teledraft will deduct the face amount of any Credit Slip or Chargeback from amounts payable to Merchant hereunder, or from the Merchant Account, at Teledraft's option; or, upon Teledraft's demand, Merchant will immediately make payment to Teledraft in the face amount of any such Credit Slip or Chargeback. The Merchant Fees may be withheld from each TPS Transaction or withheld or assessed from the Merchant Account or other accounts, or from TPS Sales settled hereunder, on a periodic basis, at the option of Teledraft. Teledraft may suspend or hold any funds to be paid to Merchant for any reasonable period of time if deemed necessary by Teledraft, and Teledraft may offset any indebtedness of Merchant to Teledraft against any such funds. It is acknowledged that any payment to Merchant hereunder is provisional and may be revoked in case of any Credit Slip or Chargeback under this Agreement, in case of refusal of any TPS Sale by Teledraft, or for any other reason deemed necessary by Teledraft.

#### 5. License Grants: User Information

5.1 Software License. Subject to the terms and conditions herein, Teledraft hereby grants, and Merchant hereby accepts, a non-exclusive, non-transferable license, without right to sublicense, to use the Software for the sole and limited purpose of creating the Integrated Product as set forth herein.

5.2 Ownership in Modifications and Derivative Works. Teledraft shall own all right, title, and interest in any modifications, derivatives, improvements, enhancements or extensions of or to the Software, including any related intellectual property rights throughout the world, regardless of which party creates such derivative work. Merchant hereby irrevocably transfers, conveys and assigns to Teledraft in perpetuity all right, title, and interest in such derivative works of the Software, including without limitation all copyrights, including the right to make derivative works and collective works with respect thereto, it being understood, however, that Merchant has, and transfers, no rights with respect to the Merchant product (exclusive of the Software and derivative works of the Software). Teledraft will have the exclusive right to apply for or register copyrights and such other proprietary protections as it wishes with respect to the derivative works of the Software. Merchant agrees to execute such documents, render such assistance, and take such other action as Teledraft may reasonably request, at Teledraft's expense to apply for, register, perfect, confirm, and protect Teledraft's rights in the derivative works of the Software including (without limitation) an assignment of copyright. Without limiting the foregoing, Teledraft will have the exclusive right to commercialize, prepare and sell products based upon, sublicense, prepare derivative works from, or otherwise use or exploit the derivative works of the Software. Merchant hereby waives any and all moral rights, including any right to identification of authorship or limitation on subsequent modification, that Merchant (or its employees, agents or consultants) has or may have in any derivative works of the Software. Merchant will not remove, modify, or obscure any copyright or other proprietary notices on the Teledraft Materials.

5.3 User Information. Teledraft, its agents and designees shall be solely responsible for requesting information needed for the purchase and delivery of Goods from Users through the TPS. All information solicited, received, or otherwise collected from Users by Teledraft, its agents and designees is and shall remain solely the property of Teledraft. Notwithstanding the foregoing, Teledraft, its agents and designees shall not be responsible for the accuracy or completeness of any User information.

#### 6. Trademarks.

Each party may use the trademarks, trade names, service marks and logos of the other party (collectively, the "Trademarks") in connection with this Agreement (including without limitation on its Web sites, and in its packaging, marketing, promotional and advertising materials); provided, however, that nothing herein will grant a party any right, title or interest in Trademarks of the other party. Any and all good will arising from use of the Trademarks of the other party or good will associated therewith. Neither party will challenge the validity of or attempts to register any Trademark of the other party, nor will it adopt any derivative or confusingly similar trademarks, brands or marks or create any combination marks with any Trademark of the other party. Each party will use the Trademarks of the other party only in accordance with such party's trademark usage policies as such may be in effect from time to time and only in connection with the provision of the terms of this Agreement. If at any time a party reasonably believes that the use of its Trademarks by the other party fails to otherwise comply with such party's trademark usage guidelines, such party shall so notify the other party in writing. Upon receipt of such notification, the notified party shall immediately initiate steps to conform with the trademark usage guidelines and shall effect such conformance or cure within 15 days.

2/18/03 Teledraft agreement  
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#### 7. Term and Termination.

7.1 Term. This Agreement shall have an initial term of three years and, unless 30 days' prior written notice is provided by either party, shall be automatically extended for successive one-year periods on the same terms and conditions expressed herein, or as be amended by the parties. Teledraft shall be entitled to terminate this Agreement at any anytime with or without cause upon at least 30 days prior written notice. If Merchant cancels this Agreement before its natural term for no breach by Teledraft, then Teledraft shall have the right to retain all deposits/reserves then held by Teledraft.

7.2 Termination: Survival. If either party defaults in the performance of any of its obligations hereunder, and if any such default is not

corrected within 30 days after notice in writing, the non-defaulting party may terminate this Agreement upon written notice. This Agreement may be terminated by either party, upon written notice: (i) upon the institution by the other party of insolvency, receivership or bankruptcy proceedings or any other proceeding for the settlement of its debts, which are not dismissed or otherwise resolved in its favor within 60 days thereafter; (ii) upon the other party's making a general assignment for the benefit of creditors; or (iii) upon the other party's dissolution or ceasing to conduct business in the ordinary course. Teledraft may terminate this Agreement at any time without notice if Merchant has become inactive, engaged in, or Teledraft reasonably believes that Merchant has engaged in, any type of dishonesty, fraud or misrepresentation in connection with making or processing of TPS Transactions. In the event of termination or cancellation of this Agreement, Section 1, 3, 5.2, 5.3, 6, 7.2, 8, 9, 10 and 11 shall survive and shall continue to apply in accordance with their terms. The termination of this Agreement shall not affect the rights and obligations of the parties with respect to transactions and occurrences which take place prior to the effective date of termination, except as otherwise provided herein.

#### 8. Confidentiality.

The parties will cooperate issuing jointly approved press releases concerning this Agreement, including without limitation an initial such release within 30 days of the Effective Date of this Agreement. After such press releases, each party may disclose the existence of this Agreement, but agrees that the terms and conditions of this Agreement will be treated as confidential information; provided, however, that each party may disclose the terms and conditions of this Agreement: (i) as required by any court or other governmental body; (ii) as otherwise required by law; (iii) to legal counsel of the parties; (iv) in confidence, to accountants, banks, and financing sources and their advisors; (v) in connection with the enforcement of this Agreement or rights under this Agreement; or (vi) in confidence, in connection with an actual or proposed merger, acquisition or similar transaction. Teledraft and Merchant may designate each other as a reference account.

#### 9. Indemnity.

10.1 Merchant/Teledraft Indemnity. Merchant agrees to indemnify, defend and hold Teledraft, and its officers, directors, agents and employees, harmless from and against any liability, claims, demands, costs, loss, damages and reasonable attorney's fees incurred or suffered by Teledraft as a result of or arising from Merchant's conduct of its business, any TPS Transactions processed under this Agreement, Merchant's breach of any obligations or provisions under this Agreement or Merchant's violation of applicable law, regulation or rule, except to the extent the result of Teledraft's breach of obligations or provisions under this Agreement or Teledraft's violation of applicable law, regulation or rule. Teledraft agrees to indemnify and hold Merchant, and its officers, directors, agents and employees harmless from and against any liability, claims, demands, costs, loss, damages and reasonable attorney's fees incurred or suffered by Merchant as a result of or arising from Teledraft's breach of any obligations or provisions under this Agreement or Teledraft's violation of applicable law, regulation or rule, except to the extent the result of Merchant's breach of obligations or provisions under this Agreement or Merchant's violation of applicable law, regulation or rule.

10.2 Procedure. In the event that a party receives any claim or demand or becomes subject to any suit, proceeding or other action under which a claim or indemnification may be made against the other party under this Agreement, such party (the "indemnified party") shall: (a) promptly notify the other party (the "indemnifying party") of the claim or legal action, (b) reasonably cooperate with the indemnifying party in the making of any claims or defenses, and (c) provide information, assist in the resolution of the claim and make available at least one employee or agent who can testify regarding said claims or defenses. The indemnifying party shall, upon written notice from the indemnified party, immediately undertake the defense of any such claim or action by counsel reasonably satisfactory to the indemnified party. In any event, the indemnifying party shall be entitled to defend the claim or action and direct the settlement thereof with counsel reasonably satisfactory to the indemnified party, provided, however, that the indemnifying party shall not compromise or settle any claim or action affecting the indemnified party to the extent that it involves more than the payment of money by the indemnifying party without the indemnified party's written consent.

#### 10. Warranty.

10.1 Disclaimer. Merchant acknowledges and agrees that Teledraft has no control over the conditions under which Users use the TPS, and does not and cannot warrant the results obtained by such use. TELEDRAFT DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, RELATING TO THE TPS AND/OR TELEDRAFT'S SERVICES, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. TELEDRAFT DOES NOT WARRANT THAT OPERATION OF THE TPS WILL BE UNINTERRUPTED, ERROR-FREE, OR SECURE. MERCHANT ACKNOWLEDGES THAT THE TPS IS PROVIDED FOR USE BY MERCHANT "AS IS". MERCHANT FURTHER ACKNOWLEDGES THAT TELEDRAFT BEARS NO RESPONSIBILITY FOR THE MERCHANT WEB SITE(S), FOR ANY GOODS OR SERVICES SOLD OR DISTRIBUTED (OR SOUGHT TO BE SOLD OR DISTRIBUTED) THROUGH THE INTEGRATED PRODUCT OR THE TPS, FOR ANY USER'S PURCHASE OF (OR INABILITY TO PURCHASE) GOODS THROUGH THE TPS. MERCHANT ACKNOWLEDGES THAT AN AUTHORIZATION IS NEITHER A WARRANTY THAT THE PERSON PRESENTING THE AUTHORIZATION IS THE RIGHTFUL TELEDRAFT ACCOUNT HOLDER NOR A PROMISE OR GUARANTEE BY TELEDRAFT THAT IT WILL PAY OR ARRANGE FOR PAYMENT TO MERCHANT FOR THE AUTHORIZED TRANSACTION, MERCHANT ACKNOWLEDGES THAT AN AUTHORIZATION DOES NOT PREVENT A SUBSEQUENT CHARGEBACK OF AN AUTHORIZED TRANSACTION PURSUANT TO THIS AGREEMENT.

10.2 Limitation of Liability. IN NO EVENT SHALL TELEDRAFT'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FROM ANY CAUSE EXCEED THE TOTAL MERCHANT FES PAID BY MERCHANT TO TELEDRAFT UNDER THIS AGREEMENT FOR THE SIX-MONTH PERIOD IMMEDIATELY PRECEDING THE DATE ON WHICH THE CAUSE OF ACTION AROSE. IN ADDITION, IN NO EVENT SHALL TELEDRAFT, ITS AFFILIATES, OR EACH OF THEIR DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS BE RESPONSIBLE OR LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, PUNITIVE OR OTHER DAMAGES (INCLUDING BUT NOT LIMITED TO LOSS OF REVENUES OR LOSS OF PROFITS), EVEN IF TELEDRAFT, ITS AFFILIATES, OR ANY OF THEIR DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY ARISING OUT OF OR RELATING IN ANY WAY TO THE TPS, TELEDRAFT'S SERVICES, OR ANY OTHER SUBJECT MATTER OF THIS AGREEMENT. TELEDRAFT SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY DELAY IN FURNISHING SERVICES TO MERCHANT OR ANY OTHER PERFORMANCE UNDER THIS AGREEMENT. It is agreed that in no event will Teledraft be liable for any claim, loss, billing error, damage, or expense caused by Teledraft's performance or failure to perform hereunder which is not reported in writing by Merchant to Teledraft within 30 days of such failure to perform or, in the event of a billing error, within 60 days of the date of the invoice or applicable statement. Teledraft will not be liable to Merchant for delays in data transmission.

#### 11. General.

11.1 **Miscellaneous.** Teledraft reserves the right to amend at any time and from time to time any term or condition of this Agreement including, without limitation, transaction fees by providing Merchant written notice, and such amendments shall be effective 30 days following said notice. If Teledraft so amends this Agreement, Merchant shall have the right to terminate this Agreement if it provides written notice to Teledraft within said thirty (30) day period. Teledraft may use designees to assist in the performance of Teledraft's obligations hereunder and, notwithstanding any other provision of this Agreement, Teledraft may delegate any of its obligations hereunder to such designees. Nonperformance of either party will be excused to the extent that performance is rendered impossible by any force majeure event and not caused by the gross negligence or willful misconduct of the non-performing party. The relationship of the parties established by this Agreement is that of independent contractors. This Agreement will be governed by and construed under the laws of the State of Arizona without reference to conflict of law principles. The Parties will endeavor to settle amicably by mutual discussions any disputes,

2/18/03 Teledraft Agreement  
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11.2 differences or claims whatsoever related to this Agreement. This Agreement, together with all exhibits and attachments hereto, sets forth the entire agreement and understanding of the parties relating to the subject matter herein (other than agreements relating to confidentiality) and merges all prior discussions between them. Except as otherwise specifically provided in this Agreement, no modification or amendment to this Agreement, nor any waiver of any rights under this Agreement, will be effective unless in writing signed by both parties, and the waiver of any breach or default will not constitute a waiver of any other right hereunder or any subsequent breach or default. Neither party may assign this Agreement, or assign or delegate any right or obligation hereunder without the prior written consent of the other party, except in the case of a sale or other transfer of substantially all of such party's assets or equity, whether by sale of assets or stock or by merger or other reorganization, provided that the assignee has agreed in writing to be bound by all the terms and conditions of this Agreement. Subject to the foregoing sentence, this Agreement shall be binding on each party's respective successors and assigns. If any provision in this Agreement is found invalid then such provision will be construed, if feasible, so as to render the provision enforceable, and if no feasible interpretation would save such provision, it will be severed from the remainder of this Agreement, and the parties will negotiate, in good faith, a substitute, valid and enforceable provision that most nearly effects the parties' intent in entering into this Agreement. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which when taken together shall constitute a single instrument. All statements made by Merchant to Teledraft, including without limitation statements contained in applications, are true and correct. Merchant will immediately notify Teledraft of any changes to any fact previously stated to Teledraft.

11.3 **Notices.** Any notice required or permitted to be given by either party under this Agreement will be in writing and will be deemed given: (i) one day after pre-paid deposit with a commercial courier service (e.g. FedEx, DHL), (ii) upon receipt, if personally delivered, (iii) three days after deposit, postage pre-paid, with first class airmail (certified or registered if available), or (iv) upon receipt, when sent by facsimile to the other party at its address below, or to such new address as may from time to time be supplied hereunder the parties hereto:

**Notice Address for Teledraft:**

Teledraft, Inc.

6340 S. Rural Road, Suite 118-130

Tempe, Arizona 85283

Attn:

Attn:

Phone: 480 755-7750

Fax: 480 755-7677

**Notice Address for Merchant:**

3842193 CANADA  
1564 HERRON Rd Suite  
Dorval, Quebec H9S  
CANADA

Phone: 514-633-108

Fax: 514-636-40

I (we) understand that a consumer Report of each of the officers/partners/proprietors/owners of the applicant may be requested from a Consumer Reporting Agency. A Consumer Report is a routine report on credit worthiness, frequently used by creditors. If the business is approved for Internet Check Acceptance and/or Checks By Phone, subsequent Consumer Reports may be required or used in connection with the maintenance, updating, renewal or extension of the service. I (we) agree that all business reference, including banks, may release any and all credit and financial information to Teledraft. I (we) agree and acknowledge that the information provided in this Merchant Agreement/Application Form and other relevant credit data, may be supplied to Teledraft.

If your application for business credit is denied you have the right to a written statement of the specific reason for the denial. To obtain the statement, please contact credit initiation at Teledraft, 6340 S. Rural Road, Suite 118-130, Tempe, AZ 85283, 480 755-7750 within 60 days from the date you are notified of our decision. We will send you a written statement of reason for the denial within 30 days of receiving your request.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by duly authorized officers or representatives as of the Effective Date.

## MERCHANT

Signature

Print Name TADLER FARAG

Title:

VICE-President

Date:

28th May / 2003

Signature

Print Name

IMRAN KARIMALI

Title:

President

Date:

28/May/03

Note: Signature required for each Owner/ Officer listed on this Merchant Agreement/Application Form

TELEDRAFT, INC.

Signature

Print Name

Title:

Date:

DT CharlesDT CHARLESS.VP5/30/03

## PERSONAL GUARANTY

In exchange for Teledraft's acceptance of this Agreement, the undersigned unconditionally guarantees performance of the Merchants obligations under the Agreement, and payment of all sums due thereunder, and in event of default agrees to indemnify the other parties for any and all amounts due from Merchant under Agreement. I understand that this is a Guaranty of payment and not of collection and that Teledraft, Inc. is relying upon this Guaranty in entering into the Agreement.

X

2/18/03 Teledraft Agreement

## united publication center

Hello, this is \_\_\_\_\_ from U.P.Center the reason we're calling you is because we have a great new benefits program available to you. People having been spending alot of unnecessary money for such products. We now offer all of these products in one package. so if you have problems with your credit, like to travel shop for food at grocery stores and alot more then we have good news for you. first of all let me tell you about our free cell phone offer that has a 99 \$ value you can choose from 2 top of the line phones!!! Do you have a cell phone now? *if yes, got to next paragraph* Great so you can see how this already benefiets you in addition, while you'r chating to your friends you can tell them that your going to go a on a free 3day 2 night vacation. that's because.....

your next benefit is a vacation to one of over 20 exotic locations (\$150-\$400 dollar value). these benefits seem to change peoples lives imagine being on the beach calling all your friends back home!!!!

Also in your package will be some useful information on credit and credit repair this information will proove to be very usefull when it comes to repairing your credit. these methods have helped alot of people who were refused for credit obtain credit or fix there current status. (customer will not get a credit card from us) Its great information!!!!

-- in your package will also be an e-z hang up system which can be used for getting rid of unwanted telemarketer's who are unfriendly and decieving unlike me!!!!!! when you press the button on thesystem the e-z hangup will tell the other person on the line that tey are not allowed to call this number for ten years as per U.S law!!!! after using this product you should notice that you will not be disturbed too often while you sit down with your familly for diner!!!!

you will also receive a bonus pack which tells you how you can get a free computer when you get internet services! imagine that! being hooked up to the net with a free P.C that alone is a value of \$1500!!!!

There are alot of extra bonus's so you can see how this package can have a great impact on your lives We especially hope that you enjoy the travelling benfeits, and a nice introduction to the computer world with the purchase of internet also, remember there are alot of other benefiets that i havent mentioned.

So we hope you will enjoy this package the cost to you today will be \$398 So if your interested you can simply have a draft done to your account .so the payment will simply be taken out of your checking account. you can get your check book and a paper and pen I'll take down the information to take care of this today? would that be ok with you? ok ill wait on hold for you to get a paper and pen with your check book..... Start by writing down our customer service number it is 1-866-662-7626 did you get that down? great now i need to get the information form the bottom of your check so we can take payment



Hello, Mr/Mrs \_\_\_\_\_, this is \_\_\_\_\_ with the Security Dept. at PREMIERE Financial, for quality assurance this portion of the call will be recorded - is that OK with you? (MUST GET A YES)

Please state your name and address.

are you between the ages of 18 and 70?

do you earn at least \$1000.00 // month?

have you filed for bankruptcy in the last 6 months?

If you have answered these qualifying questions accurately, through our program we will assist you in obtaining your major credit card with a limit of up to \$5000. Now, you understand that there is a one-time fee for the credit repair program of \$199.00 (MUST GET A YES)

Do you authorize PREMIERE Financial Group to debit \$199.00 on the \_\_\_\_\_ (draft date) -

Do you confirm that there will be sufficient funds in your account on that date? (MUST GET A YES)

You do understand that we are not affiliated with your bank and we are not the company VISA or the company MASTERCARD correct? (MUST GET A YES)

Finally, just to verify your account information:

Your bank's name is \_\_\_\_\_

Your routing number is \_\_\_\_\_

Your Account number is \_\_\_\_\_

Is all that info correct?

Once the transaction has been authorized, your checking account will be debited electronically through the regular banking system. Your order will be processed by Teledraft Inc. The name Teledraft Inc. will appear on your bank statement. Should this draft of EFT be returned unpaid, a returned item fee may also be debited from your account, or electronically drafted. You will be charged the amount allowed by your state. Do you authorize this transaction?"

You will be receiving your package in 10-15 business days after your debit date.

And you have our customer service number, which is 1-866-448-6666, right?

Customer Service is open from 10am-5pm EST.

Well, thank you very much Mr. / Mrs. \_\_\_\_\_ for doing business with us again, and I hope you have a nice day/evening.

ATTN LAURA  
SALES SCRIPT

1

Change script

Hello can I speak to Mr./Mrs. (Customer Name)?

This is YOUR NAME I'm an account officer from LG BENEFITS I'm calling with regards to your request to be taken off all telemarketing lists forever. I want to apologise for the delay in calling you, it's just that we've been having a high volume of calls.

Before we proceed I just need to verify that we do have your correct information.  
 (Verify spelling of name and address, get middle initial and apt # if any.)

<FNAME>, <INITIAL>, <LNAME>

<ADDRESS>, <APT>

<CITY>, <STATE>, <ZIP>

May I also get your date of birth? If born before 1930 inform customer we cannot provide the service and end the call politely.

Great! Now Mr./Mrs. Customer Name, we are making the process of stopping all the unwanted telemarketing calls a very simple, All you have to do is fill out and sign the authorisation form you will be receiving and mail it back to the return address. This will remove your name from the lists telemarketing companies use to contact you saving you time and money. As added protection, due to the link between Telemarketing and Identity Theft, we have included a complete Identity Theft prevention program so you will never become a victim to what the "National Institute on Crime" calls the fastest growing crime in America!

Mr./Mrs. CUSTOMER'S NAME, other benefits include

- A full year of Legal Benefits - free in-office or telephone consultations with an attorney, at **no cost** to you. Just pick up the phone or walk in to an office, of one of our network's top rated attorneys local to your area.
- Over \$600 in Privacy and Safety Software
- Many other exciting benefits.

We also include the EZ hang up anti-telemarketing device that allows you to hang-up on telemarketers when they call you. This automatically puts you on their "Do Not Call" list for the next 10 years. I'm sure you'll enjoy the peace of mind that eliminating those annoying calls will give you.

Now Mr./Mrs. CUSTOMER'S NAME, let me give you my name, so please get a pen and a piece of paper? My name and number, is \_\_\_\_\_ here at LG BENEFITS

Now, like most programs, there is a one-time annual fee of \$469.00 which covers all of the many and important benefits we've discussed and because we know how peace of mind and the prevention of the theft of your identity is and to get you started *immediately*... we have waived the \$89 set-up fee So please take down your personal reference number \_\_\_\_\_.

For your convenience, we have set up the billing directly through your bank account. So that I may immediately process and authorize shipment of your Privacy Program, I'm going to need some additional information from your Checking or Savings account, so I'll hold on while you grab your checkbook or bank statement. Thank you!

ok. advised

Exhibit 4

## CONSUMER BENEFITS COUNCIL SALES SCRIPT

Hello can I speak to Mr./Mrs. (Customer Name)?

This is YOUR NAME I'm an account officer from Consumer Benefits Council I'm calling with regards to your request to be taken off all telemarketing lists forever. I want to apologise for the delay in calling you, it's just that we've been having a high volume of calls.

Before we proceed I just need to verify that we do have your correct information.  
(Verify spelling of name and address, get middle initial and apt # if any.)

<FNAME>, <INITIAL>, <LNAME>

<ADDRESS>, <APT>

<CITY>, <STATE>, <ZIP>

Great! Now Mr./Mrs. Customer Name, we are making the process of stopping all the unwanted telemarketing calls a very simple, All you have to do is fill out and sign the authorisation form you will be receiving and mail it back to the return address. This will remove your name from the lists telemarketing companies use to contact you saving you time and money. **As added protection, due to the link between Telemarketing and Identity Theft**, we have included a complete Identity Theft prevention program so you will never become a victim to what the "National Institute on Crime" calls the fastest growing crime in America!

Mr./Mrs. CUSTOMER'S NAME, other benefits include

- A full year of Legal Benefits - free in-office or telephone consultations with an attorney, at **no cost** to you. Just pick up the phone or walk in to an office, of one of our network's top rated attorneys local to your area.
- Over \$600 in Privacy and Safety Software
- Many other exciting benefits.

We also include the EZ hang up anti-telemarketing device that allows you to hang-up on telemarketers when they call you. This automatically puts you on their "Do Not Call" list for the next 10 years. I'm sure you'll enjoy the peace of mind that eliminating those annoying calls will give you.

Now Mr./Mrs. CUSTOMER'S NAME, let me give you my name, so please get a pen and a piece of paper? My name and number, is \_\_\_\_\_ here at Consumer Benefits Council

Now, like most programs, there is a one-time annual fee of **\$489.00** which covers all of the many and important benefits we've discussed and because we know how peace of mind and the prevention of the theft of your identity is and to get you started *immediately*....

For your convenience, we have set up the billing directly through your bank account. So that I can immediately process and authorize shipment of your Privacy Program, I'm going to need some additional information from your Checking or Savings account, so I'll hold on while you grab your checkbook or bank statement. Thank you!

## Sales script

Hello my name is \_\_\_\_\_ from client care  
solution the reason of my call is to let you know that I can assist you in  
receiving a major credit card with a limit up to 5 000\$

Now, before I can go further I need to ask you a couple of questions:

- Are you over the age of 18?
- Do you make at least 1000\$ a month?
- Have you filed for bankruptcy in the last six Months?
- Do you have an active checking or savings account?

Good! You are eligible to receive our services because you answered  
correctly to these questions. There will be a one time fee of 89\$ that will  
be debited out of your account. Your credit package will arrive at your  
house 15 business days after your date of payment, ok.

o complete your application I will be needing your bank information.

What is the name of your bank? What is the routing? The account  
number is? And the check number is?

Your application is complete. You can contact us at our customer  
services at (866) 248-7999

I will transfer you to the verification, department please hold

## Verification script

Hello this \_\_\_\_\_ verification officer at Client Care Solution I will be doing a quick verification. Is that ok with you? Can you spell your last name for me please? And your full mailling adress ? What is your phone number ? you understant that we will be submitting a debit of 89\$ out of your account on the \_\_\_\_\_. If you do understand and agree I will need to go over your bank information.

What is the name of your bank please?

The routing number is?

The account number is?

You understant that we are not the bank but an independent credit program between you and the bank that will help you obtain a credit card. Make sure that you have the money at your bank or your bank will charge you an nsf fee of 25\$. Our customer service number is 1866-248-7999. Now with your permission I'll be ending the recoding. Please hold the line for your contract number.