

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
Case No. \_\_\_\_\_ -- CIV

U.S. District Judge \_\_\_\_\_ / U.S. Magistrate Judge \_\_\_\_\_

**Federal Trade Commission,**  
Plaintiff,

v.

**Capital Choice Consumer Credit, Inc.,**  
a corporation, *also doing business as*  
**National Credit Shopper,**  
*also doing business as NCS,*

**Millennium Communications and Fulfillment, Inc.,**  
a corporation, *also doing business as*  
**National Research Group,**

**E-Credit Solutions, Inc.,**  
a corporation,

**Ricardo E. Martinez,**  
individually and as an officer of

**Capital Choice Consumer Credit, Inc.,**  
and **Millennium Communications and Fulfillment,**  
**Inc.,** and

**Scott A. Burley,**  
individually and as an officer of  
**E-Credit Solutions, Inc.,**

Defendants.

### COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF

Plaintiff Federal Trade Commission ("FTC" or "Commission") for its complaint alleges:

1. The FTC brings this action under Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. §§ 6101-6108, to obtain permanent injunctive relief, rescission of contracts, restitution, disgorgement, and other equitable relief for defendants' deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC's Trade Regulation Rule entitled "Telemarketing Sales Rule," 16 C.F.R. Part 310.

### JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 53(b), 57b, 6102(c), and 6105(b). This action arises under 15 U.S.C. § 45(a)(1).

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

### THE PARTIES

4. Plaintiff Federal Trade Commission is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58, as amended. The Commission enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The Commission also enforces the Telemarketing Sales Rule ("TSR" or "the

Rule"), 16 C.F.R. Part 310, which prohibits deceptive or abusive telemarketing practices. The Commission may initiate federal district court proceedings by its own attorneys to enjoin violations of the FTC Act and the TSR to secure such equitable relief as may be appropriate in each case, including restitution for injured consumers. 15 U.S.C. §§ 53(b), 57b, and 6105(b).

5. Defendant Capital Choice Consumer Credit, Inc. ("Capital Choice"), is a Florida corporation with its offices and principal place of business located at 9590 NW 25<sup>th</sup> Street, Miami, Florida. Capital Choice transacts business in the Southern District of Florida. Capital Choice also does business as National Credit Shopper and NCS.

6. Defendant Millennium Communications and Fulfillment, Inc. ("Millennium"), is a Florida corporation with its offices and principal place of business located at 9590 NW 25<sup>th</sup> Street, Miami, Florida. Millennium transacts business in the Southern District of Florida. Millennium also does business as National Research Group.

7. Defendant E-Credit Solutions, Inc. ("E-Credit"), is a Nevada corporation with its principal place of business located at 1400 Colorado Avenue, Boulder City, Nevada. E-Credit transacts business in the Southern District of Florida at 9590 NW 25<sup>th</sup> Street, Miami, Florida.

8. Defendant Ricardo E. Martinez is an owner, officer and director of defendants Capital Choice and Millennium. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices set forth in this Complaint. Defendant Martinez resides and transacts business in the Southern District of Florida.

9. Defendant Scott A. Burley is an officer and director of defendant E-Credit. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices set forth in this Complaint. Defendant Burley transacts business in the Southern District of Florida.

### **COMMERCE**

10. At all times relevant to this Complaint, defendants' course of business, including the acts and practices alleged herein, has been in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

### **DEFENDANTS' BUSINESS PRACTICES**

11. Since at least 2000, defendants have marketed advance-fee credit cards to consumers, many of whom have negative or meager credit histories. Often using lists of consumers who have been denied credit in the past, defendants send direct mail solicitations to consumers. One such solicitation carries the title "Credit Approval Notification" and informs the consumer that "your credit card has not been activated" and "this may be your final notification." The solicitations typically state that the consumer has been approved for a \$4,000 line of credit and urge the consumer to call a toll-free number to activate his or her credit card.

12. When consumers call the number, they are typically told that there is an advance fee of \$199.95 to activate the credit card. Defendants' telemarketers, in conjunction with the direct mail solicitations, lead consumers to believe that they will receive a major credit card, such as a MasterCard or Visa, that can be used to make purchases at most retail establishments. Defendants' telemarketers often tell consumers that they are guaranteed to receive a MasterCard or Visa credit card.

13. Defendants also send other direct mail solicitations to consumers. One such solicitation states that the consumer is already approved to receive a "platinum card" with a \$5,000 credit limit. To receive the card, the consumer must first send a check or money order for \$39, or \$43 for rush processing, to defendants.

14. Consumers who pay advance fees to defendants receive a packet of written materials in the mail from defendants several weeks later. The package includes a thin, plastic "merchandise card," a merchandise catalog about the size of a magazine, and a brochure describing how to order merchandise from the catalog. Some consumers also receive a booklet on how to repair their credit.

15. Consumers do not receive a MasterCard or Visa credit card in defendants' package. Instead, defendants' brochure explains that defendants' "merchandise card" entitles the consumer to purchase only items from defendants' catalog. A 35% down payment is required with each order, along with a shipping and handling fee of 15%. Thus, the consumer must pay 50% of the total order before defendants will ship the merchandise.

16. The brochure sent to consumers who respond to defendants' solicitation by telephone also states that, if the consumer orders \$99 of merchandise (excluding the down payment and shipping and handling fees) and makes three monthly payments of \$33 each, the consumer will receive a MasterCard or Visa credit card. However, the MasterCard or Visa is a secured credit card with a credit limit of just \$240, not the unsecured credit card with a credit limit of \$4,000 or more that the consumer expects.

17. Many consumers who pay the advance fees decide to cancel once they review the packet of materials defendants send. Many of these consumers have difficulty contacting defendants to cancel. If they do get through, consumers who responded to defendants' solicitation by telephone are often told that defendants have a tape recording of the sales call, during which the telemarketer explained the program. Defendants say they will review the tape to determine whether the consumer understood what he or she had paid for. Defendants tell most consumers that defendants' program was carefully explained to them and that they are not entitled to a refund.

18. Defendants sometimes debit consumers' bank accounts without their authorization a second and even a third time. Such debits are supposedly to pay for services, such as voice mail or auto club membership, that consumers did not agree to purchase.

19. Defendants Capital Choice and Millennium share common ownership. Using the fictitious name National Research Group, defendant Millennium has issued refund checks to consumers who paid advance fees for credit cards to defendant Capital Choice. Defendants Capital Choice, Millennium and E-Credit operate from the same business address. Defendants Capital Choice and E-Credit use nearly identical marketing materials. Capital Choice sends its catalog and instructions for ordering to consumers who respond to direct mail solicitations sent by E-Credit.

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

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

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

#### **COUNT ONE**

22. In numerous instances, in connection with the marketing of advance fee credit cards, defendants or their employees or agents have represented, expressly or by implication, that after paying defendants a fee, consumers will, or are highly likely to, receive an unsecured major credit card, such as a VISA or MasterCard credit card.

23. In truth and in fact, in numerous instances, after paying defendants a fee, consumers do not receive an unsecured major credit card, such as a VISA or MasterCard credit card.

24. Therefore, the representation set forth in Paragraph 22 is false and misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

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

25. The Commission promulgated the Telemarketing Sales Rule pursuant to Section 6102(a) of the Telemarketing Act, 15 U.S.C. § 6102(a). The Rule became effective on December 31, 1995.

26. The FTC Telemarketing Sales Rule prohibits telemarketers and sellers from misrepresenting any

material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer. 16 C.F.R. § 310.3(a)(2)(iii).

27. The Telemarketing Sales Rule also prohibits telemarketers and sellers from, among other things, requesting or receiving payment of any fee or consideration in advance of obtaining or arranging 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).

28. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c), and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), violations of the Telemarketing Sales Rule constitute unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

29. Defendants are "sellers" or "telemarketers" engaged in "telemarketing," as those terms are defined in the FTC Telemarketing Sales Rule. 16 C.F.R. §§ 310.2(r), (t) & (u).

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

### **COUNT TWO**

30. In numerous instances, in connection with the telemarketing of advance fee credit cards, defendants or their employees or agents have misrepresented, directly or by implication, that after paying defendants a fee, consumers will, or are highly likely to, receive an unsecured major credit card, such as a VISA or MasterCard credit card.

31. Defendants have thereby violated Section 310.3(a)(2)(iii) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(2)(iii).

### **COUNT THREE**

32. In numerous instances, in connection with the telemarketing of advance fee credit cards, defendants or their employees or agents have requested and received payment of a fee in advance of consumers obtaining a credit card when defendants have guaranteed or represented a high likelihood of success in obtaining or arranging for the acquisition of an unsecured credit card, such as a VISA or MasterCard credit card, for such consumers.

33. Defendants have thereby violated Section 310.4(a)(4) of the Telemarketing Sales Rule, 16 C.F.R. § 310.4(a)(4).

## **COMMON ENTERPRISE**

34. The defendants have operated as a common enterprise while engaging in the deceptive acts and practices and Telemarketing Sales Rule violations alleged above.

## **CONSUMER INJURY**

35. Consumers throughout the United States have suffered and continue to suffer substantial monetary loss 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, the defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

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

36. Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), empower this Court to issue a permanent injunction against defendants' violations of the FTC Act and the Telemarketing Sales Rule, and, in the exercise of its equitable jurisdiction, to order such ancillary relief as preliminary injunction, rescission, restitution, disgorgement of profits resulting from defendants' unlawful acts or practices, and other remedial

measures.

### PRAYER FOR RELIEF

WHEREFORE, plaintiff Federal Trade Commission, pursuant to Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), and the Court's own equitable powers, request that this Court:

1. award plaintiff such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief;
2. permanently enjoin the defendants from violating the FTC Act and the Telemarketing Sales Rule;
3. award such relief as the Court finds necessary to redress injury to consumers resulting from the defendants' violations of the FTC Act and the Telemarketing Sales Rule, including but not limited to, rescission of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies;
4. award plaintiff the costs of bringing this action and reasonable attorneys' fees, as well as such other and additional relief as the Court may determine to be just and proper.

**DATED** \_\_\_\_\_, 2002

Respectfully submitted,

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