

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

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Federal Trade Commission, and
**State of Ohio ex rel. Attorney General
Dave Yost**,
Plaintiffs,

v.

EP-19-CV-196-KC

Educare Centre Services, Inc., a New Jersey corporation, also dba Credit Card Services, Card Services, Credit Card Financial Services, Care Net, Tripletel Inc., Revit Educ Srvc, L.L. Vision, Care Value Services, and Card Value Services,
Tripletel, Inc., a Delaware corporation,
Prolink Vision, S.R.L., a Dominican Republic limited liability company,
9896988 Canada Inc., a Canadian company,
Globex Telecom, Inc., a Nevada corporation,
9506276 Canada, Inc., dba Globex Telecom, Inc., a Canadian company,
Sam Madi, individually and as an owner, officer, member, and/or manager of Educare Centre Services, Inc.,
Mohammad Souheil a/k/a Mohammed Souheil and Mike Souheil, individually and as an owner, officer, member, and/or manager of Educare Centre Services, Inc., 9896988 Canada, Inc., Globex Telecom, Inc.,

**STIPULATED ORDER FOR
PERMANENT INJUNCTION AS TO
DEFENDANTS MOHAMMAD
SOUHEIL, PROLINK VISION,
S.R.L., 9896988 CANADA, INC.,
GLOBEX TELECOM, INC., AND
9506276 CANADA, INC.**

1 9506276 Canada, Inc., and
2 Prolink Vision, S.R.L.,
3 **Wissam Abedel Jalil a/k/a Sam**
4 **Jalil**, individually and as an
5 owner, officer, member, and/or
6 manager of Tripletel, Inc., and
7 Prolink Vision, S.R.L.,
8 **Charles Kharouf**, individually
9 and as an owner, officer, member,
10 and/or manager of Educare
11 Centre Services, Inc., and
12 Prolink Vision, S.R.L.,
13
14 **Defendants.**

15 Plaintiffs, the Federal Trade Commission (“FTC” or “Commission”) and the State
16 of Ohio (collectively, “Plaintiffs”) filed their First Amended Complaint for Permanent
17 Injunction and Other Equitable Relief (ECF No. 81) pursuant to Section 13(b) of the FTC
18 Act, 15 U.S.C. § 53(b), the Telemarketing and Consumer Fraud and Abuse Prevention
19 Act (“Telemarketing Act”), 15 U.S.C. §§ 6101-6108, the Ohio Consumer Sales Practices
20 Act (“CSPA”), O.R.C. 1345.07, and the Ohio Telephone Solicitation Sales Act
21 (“TSSA”), O.R.C. 4719.01 *et seq.* Plaintiffs and Defendants Mohammad Souheil,
22 Prolink Vision, S.R.L., 9896988 Canada, Inc., Globex Telecom, Inc., and 9506276
23 Canada, Inc. (collectively, “Stipulating Defendants”) stipulate to the entry of this
24 Stipulated Order for Permanent Injunction and Monetary Judgment (“Order”) to resolve
25 all matters in dispute in this action between them.

26 THEREFORE, IT IS ORDERED as follows:

27 **FINDINGS**

28 1. This Court has jurisdiction over this matter.

1 2. The First Amended Complaint charges that the Stipulating Defendants
2 participated in acts or practices that violated Section 5(a) of the FTC Act, 15 U.S.C.
3 § 45(a), the Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310, the Ohio CSPA,
4 O.R.C. 1345.01 *et seq.*, and the Ohio TSSA, O.R.C. 4719.01 *et seq.*

5 3. The Stipulating Defendants neither admit nor deny any of the allegations in the
6 First Amended Complaint, except as specifically stated in this Order. Only for purposes
7 of this action, the Stipulating Defendants admit the facts necessary to establish
8 jurisdiction.
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10 4. The Stipulating Defendants waive any claim that they may have under the Equal
11 Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action
12 through the date of this Order, and agree to bear their own costs and attorney fees.
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14 5. In his second report to the Court, submitted on June 3, 2020, the Receiver
15 concluded that, based on the measures and procedures implemented by the Receiver, the
16 Globex Defendants and Subsidiaries could operate lawfully.

17 6. The Stipulating Defendants and Plaintiffs waive all rights to appeal or otherwise
18 challenge or contest the validity of this Order.
19

20 DEFINITIONS

21 For the purpose of this Order, the following definitions shall apply:

22 A. **“Cooperative Voice Service Provider”** means a voice service provider or VoIP
23 provider that has agreed, in writing, to abide by USTelecom’s Industry Traceback Group
24 policies and procedures, and is fully cooperative with Traceback Requests.
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1 B. **“Corporate Defendants”** means Prolink Vision, S.R.L., 9896988 Canada, Inc.,
2 and the Globex Defendants, and each of their subsidiaries, affiliates, successors, and
3 assigns.

4 C. **“Debt Relief Product or Service”** means any product, service, plan, or program
5 represented, expressly or by implication, to renegotiate, settle, or in any way alter the
6 terms of payment or other terms of the debt or obligation between a consumer and one or
7 more creditors or debt collectors, including a reduction in the balance, interest rate, or
8 fees owed by a consumer to a creditor or debt collector.

9 D. **“Defendants”** means Prolink Vision, S.R.L., 9896988 Canada, Inc., Educare
10 Centre Services, Inc., Tripletel, Inc., Mohammad Souheil, Sam Madi, Charles Kharouf,
11 Wissam Jalil, Globex Telecom, Inc., and 9506276 Canada, Inc., individually,
12 collectively, or in any combination.

13 E. **“Document”** is synonymous in meaning and equal in scope to the usage of
14 “document” and “electronically stored information” in Federal Rule of Civil Procedure
15 34(a), Fed. R. Civ. P. 34(a), and includes writings, drawings, graphs, charts, photographs,
16 sound and video recordings, images, Internet sites, web pages, websites, electronic
17 correspondence, including e-mail and instant messages, contracts, accounting data,
18 advertisements, FTP Logs, Server Access Logs, books, written or printed records,
19 handwritten notes, telephone logs, telephone scripts, receipt books, ledgers, personal and
20 business canceled checks and check registers, bank statements, appointment books,
21 computer records, customer or sales databases and any other electronically stored
22 information, including Documents located on remote servers or cloud computing
23 systems, and other data or data compilations from which information can be obtained
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1 directly or, if necessary, after translation into a reasonably usable form. A draft or non-
2 identical copy is a separate Document within the meaning of the term.

3 F. **“Globex Defendants”** means Globex Telecom, Inc. and 9506276 Canada, Inc.

4 G. **“Globex Defendants and Subsidiaries”** means the Globex Defendants, and their
5 subsidiaries, including InitPro Technologies, Inc. (“InitPro”) and its subsidiaries.

6 H. **“High Risk Customer”** means any (1) Telemarketer, wherever located, or (2)
7 voice service provider or Voice Over Internet Protocol (“VoIP”) provider not domiciled
8 in the United States.

9 I. **“International Premium Rate Number”** means any number that is invalid under
10 the North American Numbering Plan that has an additional interconnection fee, similar to
11 “900” or “976” numbers in North America, which always incur a recipient-defined
12 charge in excess of regular call charges.

13 J. **“Outbound Telephone Call”** means a telephone call initiated by a Telemarketer
14 to induce the purchase of goods or services or to solicit a charitable contribution.

15 K. **“Person”** means any natural person or any entity, corporation, partnership, or
16 association of persons.

17 L. **“Receiver”** means the receiver appointed in Section XV of this Order and any
18 deputy receivers that shall be named by the Receiver.

19 M. **“Seller”** means any Person who, in connection with a Telemarketing transaction,
20 provides, offers to provide, or arranges for others to provide goods or services to a
21 customer in exchange for consideration.

22 N. **“Shareholders of the Globex Defendants”** means all Persons owning shares of
23 the Globex Defendants as of December 3, 2019, including 9504591 Canada Inc.,
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1 10471500 Canada Inc., the Souheil Family Trust, the 2017 Souheil Family Trust, F.I.T.
2 Ventures, LP, 9671447 Canada Inc., and their officer, agents, and employees.

3 O. **“Soft Switch or Hosted Switch Services”** means the services of a call switching
4 node provided by the Globex Defendants and Subsidiaries.

5 P. **“Souheil Related Individual”** means Mohammad Souheil, any member of
6 Souheil’s family, including, sisters, brothers, children, common law partners, and in-
7 laws; and defendants Charles Kharouf and Sam Madi.

8 Q. **“Souheil Defendants”** means Mohammad Souheil, Prolink Vision, S.R.L., and
9 9896988 Canada, Inc.

10 R. **“Spoofing”** means failing to transmit or cause to be transmitted the accurate
11 telephone number, and, when made available by the caller’s carrier, the accurate name of
12 the caller, to any caller identification service in use by a recipient of a telephone call.
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14 S. **“STIR/SHAKEN Authentication Framework”** means the Secure Telephone
15 Identity Revisited and Signature-based Handling of Asserted Information Using Tokens
16 standards. See 47 U.S.C. § 227b.
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18 T. **“Subscription Account Number”** means the identification number provided by
19 the Commission to Persons with access to the National Do Not Call Registry.
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21 U. **“Supermajority of the Shareholders of the Globex Defendants and**
22 **Subsidiaries”** means the Shareholders of the Globex Defendants and Subsidiaries
23 holding, in the aggregate, voting rights in the Globex Defendants and Subsidiaries in
24 excess of 66 2/3%.
25

26 V. **“Telemarketer”** means any Person who, in connection with Telemarketing,
27 initiates or receives telephone calls to or from a customer or donor.
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1 W. **“Telemarketing”** means any plan, program, or campaign that is conducted to
2 induce the purchase of goods or services or a charitable contribution by use of one or
3 more telephones.

4 X. **“Traceback Request”** means any request, complaint, or inquiry from:

- 5 1. A telecommunications carrier or voice service provider,
- 6 2. A consortium that conducts private-led efforts to trace back the
7 origin of suspected unlawful robocalls, as contemplated under
8 Section 13 of the TRACED Act, Pub. L. No. 116-105 § 13(d), 133
9 Stat. 3274, 3287-88 (2019); or
- 10 3. Any other industry organization comprised of telecommunications
11 carriers and/or voice service providers who seek to combat and
12 reduce unlawful robocalls;
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15 to disclose information in order to protect the rights or property of such entity, or to
16 protect users of telecommunications and voice services and others from fraudulent,
17 abusive, or unlawful use of, or subscription to, telecommunications services.
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19 **ORDER**

20 **I. DEBT RELIEF PRODUCT OR SERVICE BAN**

21 **IT IS THEREFORE ORDERED** that the Souheil Defendants are permanently
22 restrained and enjoined from advertising, marketing, promoting, or offering for sale, or
23 assisting in the advertising, marketing, promoting, or offering for sale of any Debt Relief
24 Product or Service, including any credit card interest rate reduction service.
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II. TELEMARKETING BAN

IT IS FURTHER ORDERED that the Souheil Defendants are permanently restrained and enjoined from participating in Telemarketing to the United States, whether directly or through an intermediary.

III. PROHIBITED MISREPRESENTATIONS AND OMISSIONS

IT IS THEREFORE ORDERED that the Souheil Defendants and their officers, agents, and employees, and all other Persons in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or indirectly, in connection with the advertising, marketing, promoting, or offering for sale of any goods or services, are restrained and enjoined from misrepresenting or assisting others in misrepresenting, expressly or by implication, any material fact, including, but not limited to:

A. Misrepresenting, or assisting others in misrepresenting, expressly or by implication, any of the following:

1. Any material aspect of the nature or terms of the Seller's refund, cancellation, exchange, or repurchase policies, or
2. Any other fact material to consumers concerning any good or service, such as: the total costs; any material restrictions, limitations or conditions; or any material aspect of its performance, efficacy, nature, or central characteristics;

B. Representing, or assisting others in representing, expressly or by implication, the benefits, performance, or efficacy of any good or service, unless the representation is non-misleading, and, at the time such representation is made, the Souheil Defendants possess and rely upon competent and reliable evidence to substantiate that the

1 representation is true.

2 **IV. PROHIBITION ON SOUHEIL INVOLVEMENT WITH U.S. GLOBEX**
3 **DEFENDANTS AND SUBSIDIARIES**

4 **IT IS FURTHER ORDERED** that Defendant Mohammad Souheil is
5 permanently prohibited from serving as an officer, manager or employee, or *de facto*
6 officer, manager or employee, of any Globex Defendants and Subsidiaries located in the
7 United States. *Furthermore*, the Globex Defendants and Subsidiaries, Defendant
8 Mohammad Souheil, and the Shareholders of the Globex Defendants and Subsidiaries are
9 permanently prohibited from nominating or having any Souheil Related Individual serve
10 as an officer or manager or *de facto* officer or manager of any of the Globex Defendants
11 and Subsidiaries located in the United States.
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14 **V. PROHIBITIONS ON VIOLATING THE TSR**

15 **IT IS FURTHER ORDERED** that the Souheil Defendants and the Globex
16 Defendants and Subsidiaries, their officers, agents, and employees, and all other Persons
17 in active concert or participation with them, who receive actual notice of this Order by
18 personal service or otherwise, whether acting directly or indirectly, in connection with
19 Telemarketing of any product or service, are restrained and enjoined from violating, or
20 assisting others in violating, as defined by § 310.3(b) of the TSR, any provision of the
21 Telemarketing Sales Rule, 16 C.F.R. Part 310, attached as Attachment A.
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23 **VI. PROHIBITIONS ON VIOLATING THE OHIO CSPA AND TSSA**

24 **IT IS FURTHER ORDERED** that the Souheil Defendants and the Globex
25 Defendants and Subsidiaries, and their officers, agents, and employees, and all other
26 Persons in active concert or participation with them, who receive actual notice of this
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1 Order by personal service or otherwise, whether acting directly or indirectly, are
2 permanently restrained and enjoined from engaging in unfair or deceptive acts or
3 practices in violation of the Ohio CSPA, R.C. 1345.01 *et seq.* and the Ohio TSSA, O.R.C.
4 4719.01 *et seq.*

5 **VII. PROHIBITION ON THE GLOBEX DEFENDANTS AND SUBSIDIARIES**
6 **PROVIDING SERVICES TO CERTAIN CUSTOMERS**
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8 **IT IS FURTHER ORDERED** that the Globex Defendants and Subsidiaries and
9 their officers, agents, and employees, are permanently restrained and enjoined from
10 providing interconnected VoIP telephony services, Soft Switch or Hosted Switch
11 Services, or telephone numbers to any Person who:

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- 13 A. Pays for services via stored-value cards, cryptocurrency, or money-transfer
14 businesses;
 - 15 B. Does not have a website or social media page providing public information about
16 the Person's business;
 - 17 C. Is a High Risk Customer and does not have an email address at the same domain
18 name as the Person's website; or
 - 19 D. The Globex Defendants and Subsidiaries have notice of having been the subject
20 of any formal written request from a government agency, subpoena, civil investigative
21 demand, Traceback Request, or line carrier complaint, unless the Person bound by this
22 Order:
 - 23 1. Repeats the procedures provided for by Subsections X.B, C, D and F of
24 this Order to review and assess the accuracy of information provided by the
25 customer; and
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2. Assigns an employee to monitor the customer’s calling activity on a daily basis for 120 days to ensure the customer’s compliance with all federal and state telemarketing rules and laws, taking steps including but not limited to:

- a) Evaluating the customer’s answered call rate to determine whether the rate indicates illegal calling activity;
- b) Evaluating the proportion of the customer’s calls routed, delivered, transmitted, originated, or terminated to numbers that were disconnected or out of service to determine whether the rate indicates illegal calling activity; and
- c) Evaluating the proportion of the customer’s calls that last less than six (6) seconds to determine whether the rate indicates illegal calling activity.

VIII. PROHIBITION ON GLOBEX DEFENDANTS AND SUBSIDIARIES ASSISTING CERTAIN TELEPHONE CALLS

IT IS FURTHER ORDERED that the Globex Defendants and Subsidiaries are permanently restrained and enjoined from dialing, routing, transmitting, originating, terminating, or assisting in the dialing, routing, transmission, origination, or termination of any telephone call:

- A. Displaying as a caller ID number:
 - 1. 911, 1911, or 10911;
 - 2. Any known unassigned telephone number;
 - 3. Any International Premium Rate Number;

1 4. Any telephone number that is invalid under the International
2 Telecommunication Union’s Recommendation ITU-T E.164, “The international
3 public telecommunication numbering plan,” or a successor recommendation; or

4 5. Any telephone number that is invalid under the North American
5 Numbering Plan if the telephone call is from a customer that is a Telemarketer; or

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7 B. Transmitted after June 30, 2021, unless changed pursuant to applicable
8 legislation, that is not compliant with the STIR/SHAKEN Authentication Framework, or
9 a successor authentication framework if subsequently mandated by applicable federal law
10 or regulation.

11 **IX. GLOBEX DEFENDANTS AND SUBSIDIARIES MONITORING**
12 **PROCEDURES**

13 **IT IS FURTHER ORDERED** that the Globex Defendants and Subsidiaries and
14 their officers, agents, and employees, are permanently restrained and enjoined from
15 providing interconnected VoIP telephony services, Soft Switch or Hosted Switch
16 Services, or telephone numbers without having ongoing procedures in place to monitor
17 its customers’ activities, including procedures to:

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19 A. Block any calls attempting to use as a caller ID number:

- 20 1. 911, 1911, or 10911;
- 21 2. Any known unassigned telephone number;
- 22 3. Any International Premium Rate Number;
- 23 4. Any telephone number that is invalid under the International
24 Telecommunication Union’s Recommendation ITU-T E.164, “The international
25 public telecommunication numbering plan,” or a successor recommendation; or
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1 Services, or telephone numbers to any customer, or new or prospective customer, without
2 first engaging in a reasonable screening and review of that customer. For new customers,
3 such screening must occur and be completed before beginning to provide services to the
4 new customer. For existing customers, such screening must occur and be completed
5 within sixty (60) days of the entry of this Order. For all High Risk Customers, such
6 screening must recur annually. Such screening and review must include, but not be
7 limited to:
8

9 A. Obtaining from each customer:

- 10 1. The name(s) of contact person responsible for the customer's account;
- 11 2. A description of the nature of the customer's business;
- 12 3. Whether or not the customer engages in Telemarketing, and, if so, whether
13 the customer uses telephone calls that deliver prerecorded messages;
- 14 4. If a customer's business involves Telemarketing or making telephone calls
15 to solicit the purchase of goods or services or charitable contributions: the
16 customer's Subscription Account Number for accessing the National Do Not Call
17 Registry;
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- 19 5. If a customer's business involves Telemarketing or making telephone calls
20 to solicit the purchase of goods or services or charitable contributions using
21 telephone calls that deliver prerecorded messages:
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 - 23 a. A written certification from the customer that for each telephone
24 call that delivers a prerecord message to induce the purchase of
25 any good or service, the customer has evidence of an express
26 written agreement that complies with Section 16 C.F.R.
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§310.4(b)(1)(v)(A)(i) through (iv) of the TSR that the customer obtained from each Person called; and

b. For any telephone call that delivered a prerecorded message to induce the purchase of any good or service that is the subject of a consumer complaint, formal written inquiry from a government agency, civil investigative demand, subpoena, Traceback Request, or line carrier complaint shared with the Globex Defendants and Subsidiaries, actual evidence of the express written agreement that the customer certified that it had under Subsection A.5.a of this Section;

6. If a customer’s business involves the resale or offering of interconnected VoIP telephony services, the resale or licensing of telephone numbers, or any other telecommunications or information services: the customer’s Universal Service Fund registration number and a copy of the customer’s FCC Form 499 or FCC Form 214, as applicable;

7. A list of each physical address at which the customer has conducted business or will conduct the business(es) identified pursuant to Subsection A.1 of this Section;

8. The billing address and email address associated with the customer’s means of payment for services, as well as the name of the Person paying for services;

9. The customer’s federal Taxpayer Identification Number or equivalent(s) thereof, as applicable;

1 10. The customer’s state or country of incorporation or equivalent thereof, as
2 applicable; and

3 11. The names of at least two trade or bank references;

4 B. Determining whether the customer, or calls dialed by that customer, has been the
5 subject of: (1) any formal written request from a government agency, subpoena, civil
6 investigative demand, or other complaint shared with the Globex Defendants and
7 Subsidiaries; or (2) any lawsuit filed by the Commission, or any other law enforcement
8 action by any other state or federal agency;

9 C. Obtaining from each High Risk Customer:

10 1. The name of the principal(s) and controlling Person(s) of the customer,
11 and for any privately-held entity, the name(s) of Person(s) who have a majority
12 ownership interest in the customer;
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15 2. The name of the customer’s employee responsible for compliance with the
16 Telemarketing Sales Rule and other state and federal laws governing
17 Telemarketing and automated dialing;

18 3. A list of all corporate, business, trade, and fictitious names, aliases, and
19 websites under or through which the following have transacted business in the last
20 three (3) years: (1) the customer, (2) the principal(s) and controlling Person(s) of
21 the customer, and (3) if the customer is a privately-held entity, the Person(s) with
22 a majority ownership interest in the customer;
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25 D. If the customer is a Telemarketer:

26 1. A description of the nature of the goods and services sold;
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1 2. A list of all caller ID numbers and callback numbers the High Risk
2 Customer uses, substantiated by proof that the High Risk Customer has a
3 valid license to use each such phone number;

4 E. For each High Risk Customer, determining:

5 1. Whether any corporate, business, trade, or fictitious name or alias under
6 which such High Risk Customer conducts or has conducted the business has ever
7 been the subject of: (a) any formal written request from a government agency,
8 subpoena, civil investigative demand, or other complaint shared with the Globex
9 Defendants and Subsidiaries; or (b) any lawsuit filed by the Commission, or any
10 other law enforcement action by any other state or federal agency; and

11 2. Whether any of the principal(s) and controlling Person(s) of the High Risk
12 Customer, and if the High Risk Customer is a privately-held entity, the Person(s)
13 with a majority ownership interest in the High Risk Customer, has been the
14 subject of: (a) any formal written request from a government agency, subpoena,
15 civil investigative demand, or other complaint shared with the Globex Defendants
16 and Subsidiaries; or (b) any lawsuit filed by the Commission, or any other law
17 enforcement action by any other state or federal agency;

18 F. Taking reasonable steps to review and assess the accuracy of the information
19 provided pursuant to Subsections A, B, C, and D of this Section (as necessary), including
20 but not limited to:

21 1. Reviewing the websites and/or social media pages used by the customer;
22 2. Reviewing free public databases hosted by state governments that contain
23 information about the incorporation of business entities;

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3. Reviewing the Federal Communications Commission’s website that publishes Universal Service Fund registration numbers and confirming any FCC Form 214 or 499, as applicable;

4. Performing internet searches about the customer; and

5. For a High Risk Customer, performing internet searches about the corporate, business, trade, or fictitious names and aliases under which the following conduct business: (1) the High Risk Customer, (2) the principal(s) and controlling Person(s) of the High Risk Customer, and (3) if the High Risk Customer is a privately-held entity, the Person(s) with a majority ownership interest in the High Risk Customer.

XI. GLOBEX DEFENDANTS AND SUBSIDIARIES TERMINATION AND DECLINATION OF CUSTOMERS

IT IS FURTHER ORDERED that the Globex Defendants and Subsidiaries and their officers, agents, and employees are permanently restrained and enjoined from providing interconnected VoIP telephony services, Soft Switch or Hosted Switch Services, or telephone numbers to any existing or new customer, and must immediately terminate or decline any business relationship with a customer if information obtained in a review under Section X above, or by any other means, including receipt of any formal written request from a government agency, subpoena, civil investigative demand, Traceback Request, or line carrier complaint shared with the Globex Defendants and Subsidiaries reveals that the customer:

A. Is a High Risk Customer that has been the subject of, or calls dialed or routed by the High Risk Customer have been the subject of, a total of three (3) or more subpoenas

1 or civil investigative demands from government agencies during any twelve (12) month
2 period that have been shared with the Globex Defendants and Subsidiaries;

3 B. Is a High Risk Customer, who is not a Cooperative Voice Service Provider, that
4 has been the subject of, or calls dialed or routed by that High Risk Customer have been
5 the subject of, a total of three (3) or more Traceback Requests or line carrier complaints
6 shared with the Globex Defendants and Subsidiaries during any sixty (60) day period;

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8 C. Is a High Risk Customer and is initiating, causing the initiation of, or transmitting,
9 routing, originating, or terminating any telephone call that displays as a caller ID number:

- 10 1. 911, 1911, or 10911;
- 11 2. Any known unassigned telephone number;
- 12 3. Any International Premium Rate Number;
- 13 4. Any telephone number that is invalid under the International
14 Telecommunication Union's Recommendation ITU-T E.164, "The international
15 public telecommunication numbering plan," or a successor recommendation;
16 provided however that terminating the High Risk Customer is not necessary if,
17 upon reasonable investigation, the Globex Defendants and Subsidiaries determine
18 that the High Risk Customer's use of any of the numbers listed in Subsections
19 C.2-4 above was unintentional or a mistake;

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22 D. Is a customer who is a Telemarketer and is initiating, causing the initiation of, or
23 transmitting, routing, originating, or terminating any telephone call that:

- 24 1. Displays any phone number with an invalid caller ID number under the
25 North American Numbering Plan, provided however that terminating the High
26 Risk Customer is not necessary if, upon reasonable investigation, the Globex
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1 Defendants and Subsidiaries determine that the customer’s use of invalid numbers
2 was unintentional or a mistake; or

3 2. Delivers a message that misrepresents that the call is from a government
4 agency or law enforcement;

5 E. Is engaging in Telemarketing without a Subscription Account Number for
6 accessing the National Do Not Call Registry;

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8 F. Is offering interconnected VoIP telephony services, the resale or licensing of
9 telephone numbers, or any other telecommunications or information services, without a
10 required current and valid Universal Service Fund registration number;

11 G. Does not have a Taxpayer Identification Number or equivalent(s) thereof;

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13 H. That the Globex Defendants and Subsidiaries know or should know, has reported
14 and not corrected false, inaccurate, or misleading information in the screening process or
15 elsewhere, including, but not limited to:

16 1. Mismatching material information across sources including the customer’s
17 website, state incorporation records, and FCC forms, as applicable; and

18 2. Inactive or false means of contact including email addresses, phone
19 numbers, and mailing addresses;

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21 I. Refuses to provide any of the information required by this Order;

22 J. Is engaging in or assisting violations of the TSR, of which the Globex Defendants
23 and Subsidiaries know or should know.

24 **XII. EQUITABLE MONETARY JUDGMENT AND PARTIAL SUSPENSION**

25 **IT IS FURTHER ORDERED** that:

26
27 A. Judgment in the amount of **\$1.95 Million Dollars (\$1,950,000.00)** is entered in
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1 favor of Plaintiffs against the Globex Defendants and Subsidiaries, jointly and severally,
2 as equitable monetary relief, the payment of which is to be satisfied in accordance with
3 Subsection C below.

4 B. Judgment in the amount of **\$7.5 Million Dollars (\$7,500,000.00)** is entered in
5 favor of Plaintiffs against the Souheil Defendants, jointly and severally, as equitable
6 monetary relief. Full payment of the foregoing amount shall be suspended upon
7 satisfaction of the obligations set forth in Subsection C of this Section, and subject to the
8 conditions set forth in Subsections C-E of this Section.

9 C. Within ten (10) days of the entry of this Order, the Stipulating Defendants shall
10 transfer to the Commission, through the Receiver, **\$2.1 Million Dollars (\$2,100,000.00)**
11 by electronic fund transfer in accordance with instructions previously provided to the
12 Receiver by a representative of the Commission, in full satisfaction, among other things,
13 of the amount referenced above under Subsection A.

14 D. To finance the payment detailed in Subsection C of this Section, the Stipulating
15 Defendant may use funds held in Receivership bank accounts and funds delivered to the
16 Receiver by Defendant Mohammad Souheil.

17 E. Plaintiffs' agreement to the suspension of part of the judgment as to the Souheil
18 Defendants is expressly premised upon the truthfulness, accuracy, and completeness of
19 the following sworn financial statements and related documents (collectively, "financial
20 representations") submitted to the Commission by the Souheil Defendants, including:
21

- 22 1. The Financial Statement of Mohammad Souheil as last updated on March
23 8, 2020, including the attachments; and
- 24 2. The Financial Statement of 9896988 Canada, Inc. signed on August 29,
25

1 2019, including the attachments.

2 F. The suspension of the judgment will be lifted as to any Souheil Defendant if,
3 upon motion by the Plaintiffs, the Court finds that a Souheil Defendant failed to disclose
4 any material asset, materially misstated the value of any asset, or made any other material
5 misstatement or omission in the financial representations identified above.

6
7 G. If the suspension of the judgment is lifted, the judgment becomes immediately
8 due as to that Souheil Defendant in the amount of **\$7.5 Million Dollars (\$7,500,000.00)**
9 specified in Subsection B, above, which the parties stipulate represents the consumer
10 injury alleged in the First Amended Complaint, less any payment previously made
11 pursuant to this Section, including any payment made by the Globex Defendants and
12 Subsidiaries, plus interest computed from the date of entry of this Order.
13

14 **XIII. ADDITIONAL MONETARY PROVISIONS**

15 **IT IS FURTHER ORDERED** that:

16 A. The Stipulating Defendants relinquish dominion and all legal and equitable right,
17 title, and interest in all assets transferred pursuant to this Order and may not seek the
18 return of any assets.

19
20 B. The facts alleged in the First Amended Complaint will be taken as true, without
21 further proof, in any subsequent civil litigation by or on behalf of the Plaintiffs, including
22 in a proceeding to enforce their rights to any payment or monetary judgment pursuant to
23 this Order, such as a nondischargeability complaint in any bankruptcy case.

24
25 C. The facts alleged in the First Amended Complaint establish all elements necessary
26 to sustain an action by the Plaintiffs pursuant to Section 523(a)(2)(A) of the Bankruptcy
27 Code, 11 U.S.C. §523(a)(2)(A), and this Order will have collateral estoppel effect for
28 such purposes.

1 D. The Stipulating Defendants acknowledge that their Taxpayer Identification
2 Numbers (Social Security Numbers or Employer Identification Numbers) or equivalent,
3 which the Stipulating Defendants previously submitted to the Commission, may be used
4 for collecting and reporting on any delinquent amount arising out of this Order, in
5 accordance with 31 U.S.C. §7701.

6
7 E. All money paid to the Plaintiffs pursuant to this Order may be deposited into a
8 fund administered by the Commission or its designee on behalf of the Commission and
9 the State of Ohio to be used for equitable relief, including consumer redress and any
10 attendant expenses for the administration of any redress fund. If a representative of the
11 Plaintiffs decides that direct redress to consumers is wholly or partially impracticable or
12 money remains after redress is completed, the Plaintiffs may apply any remaining money
13 for such other equitable relief (including consumer information remedies) as it
14 determines to be reasonably related to the Stipulating Defendants' practices alleged in the
15 First Amended Complaint. Any money not used for such equitable relief shall be divided
16 between the Commission and the State of Ohio to be deposited to the U.S. Treasury as
17 disgorgement and to the Ohio Attorney General's Telemarketing Fraud Enforcement
18 Fund. The Stipulating Defendants have no right to challenge any actions the Plaintiffs or
19 their representatives may take pursuant to this Subsection.
20
21

22 **XIV. CUSTOMER INFORMATION**

23 **IT IS FURTHER ORDERED** that the Stipulating Defendants and their officers,
24 agents, and employees, and all other Persons in active concert or participation with them,
25 who receive actual notice of this Order by personal service or otherwise, are permanently
26 restrained and enjoined from directly or indirectly:
27
28

1 A. Failing to provide sufficient customer information to enable the Commission to
2 efficiently administer consumer redress. If Plaintiffs' representative requests in writing
3 any information related to redress, Stipulating Defendant must provide it, in the form
4 prescribed by Plaintiffs' representative, within fourteen (14) days; and

5 B. Disclosing, using, or benefitting from customer information, including the name,
6 address, telephone number, email address, Social Security number, other identifying
7 information, or any data that enables access to a customer's account (including a credit
8 card, bank account, or other financial account), that any Stipulating Defendant obtained
9 prior to entry of this Order in connection with any activity that pertains to marketing
10 credit card interest rate reduction services; and

11 C. Failing to destroy such customer information in all forms in their possession,
12 custody, or control within thirty (30) days after receipt of written direction to do so from
13 a representative of the Plaintiffs.
14

15
16 Provided, however, that customer information need not be disposed of, and may
17 be disclosed, to the extent requested by a government agency or required by law,
18 regulation, or court order.
19

20 **XV. APPOINTMENT OF RECEIVER**

21 **IT IS FURTHER ORDERED** that **Robb Evans & Associates LLC** is appointed
22 as receiver of the Corporate Defendants with full powers of an equity receiver. The
23 Receiver shall be solely the agent of this Court in acting as Receiver under this Order,
24 with obligation to consult with F.I.T. Ventures Lending in carrying out its duties under
25 this Order. In carrying out these duties, the Receiver shall be the agent of this Court,
26 shall be accountable directly to this Court, and is authorized and directed to:
27
28

1 A. Perform all acts necessary to protect, conserve, preserve, and prevent waste or
2 dissipation of the Corporate Defendants assets until the control of the Globex Defendants
3 and Subsidiaries is transferred to the officers and managers elected by the Supermajority
4 of the Shareholders of the Globex Defendants and Subsidiaries. In transferring the
5 operations and control of the Globex Defendants and Subsidiaries to the officers and
6 managers, the Receiver shall act in good faith to ensure that all transition matters be
7 handled efficiently and in the best interests of the Globex Defendants and Subsidiaries,
8 and that any and all access to relevant software and accounts required for the operations
9 be transitioned to management swiftly. The Receiver shall also notify, but only to the
10 extent requested by management, relevant third parties that the receivership has ended
11 and that the operations have been transferred over to management. Furthermore, and
12 without limiting the generality of the foregoing, the Receiver shall notify in writing any
13 and all financial institutions that are currently providing services to the Globex
14 Defendants and Subsidiaries of the specific terms of this agreement that are required to
15 transfer banking authority back to the Globex Defendants and Subsidiaries.
16

17
18 B. After transferring \$2.1 Million Dollars to the Commission pursuant to Section
19 XII.C, the Receiver shall file a notice of the transfer with the Court within five (5) days
20 thereof;
21

22 C. Within five (5) days of transferring the \$2.1 Million Dollars to the Commission
23 pursuant to Subsection XII.C, the Receiver and the Supermajority of the Shareholders of
24 the Globex Defendants and Subsidiaries shall file a joint notice with the Court identifying
25 the Globex Defendants and Subsidiaries' officers and managers elected by the
26 Supermajority of the Shareholders of the Globex Defendants and Subsidiaries;
27
28

1 D. Unless objected to by the Plaintiffs, the Receiver shall transfer control of the
2 Globex Defendants and Subsidiaries to the officers and managers elected by the
3 Supermajority of the Shareholders of the Globex Defendants and Subsidiaries within five
4 (5) days of the filing of the joint notice by the Receiver and the Supermajority of the
5 Shareholders of the Globex Defendants and Subsidiaries. On the day the Receiver
6 transfers control of the Globex Defendants and Subsidiaries, the Receiver shall file a
7 notice with the Court memorializing the transfer of control of the Globex Defendants and
8 Subsidiaries; and

10 E. The Receiver shall file its final report and request for fees within ten (10) days of
11 transferring control of the Globex Defendants and Subsidiaries to the officers and
12 managers elected by the Supermajority of the Shareholders of the Globex Defendants and
13 Subsidiaries. Furthermore, in the report the Receiver shall confirm that it no longer has
14 any confidential information obtained from the Globex Defendants and Subsidiaries in its
15 possession.
16

17 **XVI. COOPERATION**

18 **IT IS FURTHER ORDERED** that the Stipulating Defendants must fully
19 cooperate with representatives of the Plaintiffs in this case and in any investigation
20 related to or associated with the transactions or the occurrences that are the subject of the
21 First Amended Complaint. The Stipulating Defendants must provide truthful and
22 complete information, evidence, and testimony. The Stipulating Defendants must appear
23 in person, telephonically, or via videoconference for interviews, discovery, hearings,
24 trials, and any other proceedings that Plaintiffs' representative may reasonably request
25 upon ten (10) days written notice, or other reasonable notice, at such places and times as
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1 Plaintiffs' representative may designate, without the service of a subpoena.

2 **XVII. ORDER ACKNOWLEDGMENTS**

3 **IT IS FURTHER ORDERED** that the Stipulating Defendants obtain
4 acknowledgments of receipt of this Order:

5 A. Each Stipulating Defendant, within seven (7) days of entry of this Order, must
6 submit to the Plaintiffs an acknowledgment of receipt of this Order sworn under penalty
7 of perjury.

8
9 B. For five (5) years after entry of this Order, Defendant Mohammad Souheil for
10 any business that he, individually or collectively with any other Defendant, is the
11 majority owner or controls directly or indirectly, and each Corporate Defendant, must
12 deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers
13 and members; (2) all employees having managerial responsibilities for conduct related to
14 the subject matter of the Order and all agents and representatives who participate in
15 conduct related to the subject matter of the Order; and (3) any business entity resulting
16 from any change in structure as set forth in the Section titled Compliance Reporting.
17 Delivery must occur within seven (7) days of entry of this Order for current personnel.
18 For all others, delivery must occur before they assume their responsibilities.

19
20 C. From each individual or entity to which a Stipulating Defendant delivered a copy
21 of this Order, that Defendant must obtain, within thirty (30) days, a signed and dated
22 acknowledgment of receipt of this Order.
23

24 **XVIII. COMPLIANCE REPORTING**

25 **IT IS FURTHER ORDERED** that the Stipulating Defendants make timely
26 submissions to the Plaintiffs:
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A. One year after entry of this Order, each Stipulating Defendant must submit a compliance report, sworn under penalty of perjury:

1. Each Stipulating Defendant must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Plaintiffs may use to communicate with Stipulating Defendant; (b) identify all of that Stipulating Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant (which Defendant Mohammad Souheil must describe if he knows or should know due to his own involvement); (d) describe in detail whether and how that Stipulating Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Plaintiffs.

2. Additionally, Defendant Mohammad Souheil must: (a) identify all telephone numbers and all physical, postal, email and Internet addresses, including all residences; (b) identify all business activities, including any business for which he performs services whether as an employee or otherwise and any entity in which he has any ownership interest; and (c) describe in detail his involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership.

1 B. For ten (10) years after entry of this Order, each Stipulating Defendant must
2 submit a compliance notice, sworn under penalty of perjury, within fourteen (14) days of
3 any change in the following:

4 1. Each Stipulating Defendant must report any change in: (a) any designated
5 point of contact; or (b) the structure of any Corporate Defendant or any entity that
6 Stipulating Defendant has any ownership interest in or controls directly or
7 indirectly that may affect compliance obligations arising under this Order,
8 including: creation, merger, sale, or dissolution of the entity or any subsidiary,
9 parent, or affiliate that engages in any acts or practices subject to this Order.
10

11 2. Additionally, Defendant Mohammad Souheil must report any change in:
12 (a) name, including aliases or fictitious names, or residence address; or (b) title or
13 role in any business activity, including any business for which he performs
14 services whether as an employee or otherwise and any entity in which he has any
15 ownership interest, and identify the name, physical address, and any Internet
16 address of the business or entity.
17

18 C. Each Stipulating Defendant must submit to the Plaintiffs notice of the filing of
19 any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such
20 Defendant within fourteen (14) days of its filing.
21

22 D. Any submission to the Plaintiffs required by this Order to be sworn under penalty
23 of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by
24 concluding: “I declare under penalty of perjury under the laws of the United States of
25 America that the foregoing is true and correct. Executed on: _____” and supplying the
26 date, signatory’s full name, title (if applicable), and signature.
27
28

1 E. Unless otherwise directed by a Plaintiffs' representative in writing, all
2 submissions to the Commission pursuant to this Order must be emailed to
3 DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate
4 Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission,
5 600 Pennsylvania Avenue NW, Washington, DC 20580; the subject line must begin:
6 *FTC et al. v. Educare Centre Services, Inc.* X190039.
7

8 F. Unless otherwise directed by a Plaintiffs' representative in writing, all
9 submissions to the Ohio Attorney General pursuant to this Order must be mailed to: Ohio
10 Attorney General's Office, Consumer Protection Section, Attn: Compliance Unit, 30 East
11 Broad Street, 14th Floor, Columbus, Ohio 43215; the subject line must begin: *FTC/Ohio*
12 *v. Educare Centre Services, Inc.*
13

14 **XIX. RECORDKEEPING**

15 **IT IS FURTHER ORDERED** that the Stipulating Defendants must create
16 certain records for ten (10) years after entry of the Order, and retain each such record for
17 five (5) years. Specifically, Corporate Defendants and Defendant Mohammad Souheil
18 for any business that such Stipulating Defendant, individually or collectively with any
19 other Defendant, is a majority owner or controls directly or indirectly, must create and
20 retain the following records:
21

22 A. Accounting records showing the revenues from all goods or services sold;

23 B. Personnel records showing, for each Person providing services, whether as an
24 employee or otherwise, that Person's: name; addresses; telephone numbers; job title or
25 position; dates of service; and (if applicable) the reason for termination;
26
27
28

1 C. Records of all consumer complaints and refund requests, whether received
2 directly or indirectly, such as through a third party, and any response; and

3 D. All records necessary to demonstrate full compliance with each provision of this
4 Order, including all submissions to the Plaintiffs.

5 **XX. COMPLIANCE MONITORING**

6 **IT IS FURTHER ORDERED** that, for the purpose of monitoring the Stipulating
7 Defendants' compliance with this Order, including the financial representations upon
8 which part of the judgment was suspended and any failure to transfer any assets as
9 required by this Order:
10

11 A. Within fourteen (14) days of receipt of a written request from a representative of
12 the Plaintiffs, each Stipulating Defendant must: submit additional compliance reports or
13 other requested information, which must be sworn under penalty of perjury; appear for
14 depositions; and produce documents for inspection and copying. The Plaintiffs are also
15 authorized to obtain discovery, without further leave of court, using any of the procedures
16 prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions),
17 31, 33, 34, 36, 45, and 69.
18

19 B. For matters concerning this Order, the Plaintiffs are authorized to communicate
20 directly with each Stipulating Defendant. Stipulating Defendant must permit
21 representatives of the Plaintiffs to interview any employee or other Person affiliated with
22 any Stipulating Defendant who has agreed to such an interview. The Person interviewed
23 may have counsel present
24

25 C. The Plaintiffs may use all other lawful means, including posing, through its
26 representatives as consumers, suppliers, or other individuals or entities, to Stipulating
27 Defendants or any individual or entity affiliated with Stipulating Defendants, without the
28

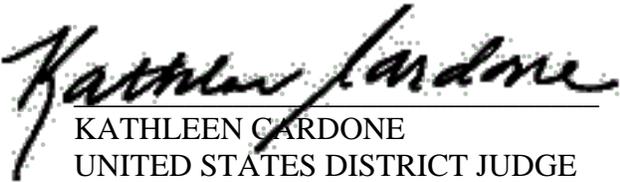
1 necessity of identification or prior notice. Nothing in this Order limits the Plaintiffs'
2 lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15
3 U.S.C. §§ 49, 57b-1.

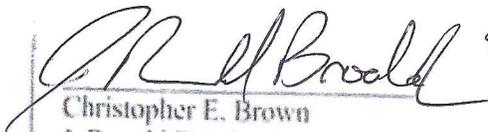
4 D. Upon written request from a representative of the Plaintiffs, any consumer
5 reporting agency must furnish consumer reports concerning Defendant Mohammad
6 Souheil, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C.
7 §1681b(a)(1).
8

9 **XXI. RETENTION OF JURISDICTION**

10 **IT IS FURTHER ORDERED** that this Court retains jurisdiction of this matter
11 for purposes of construction, modification, and enforcement of this Order.

12
13
14 **SO ORDERED**, this 22nd day of September, 2020.

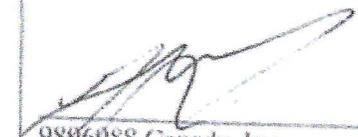
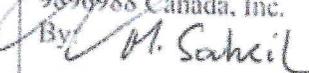
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17 KATHLEEN CARDONE
18 UNITED STATES DISTRICT JUDGE
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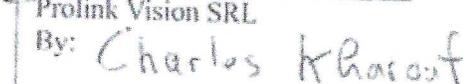
1  9-21-20

2 Christopher E. Brown
3 J. Ronald Brooke, Jr.
4 Federal Trade Commission
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7 Washington, DC 20580
8 (202) 326-2825 / cbrown3@ftc.gov
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11 Attorneys for Plaintiff
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Attorneys for Plaintiff
STATE OF OHIO

10
11 
12 9896988 Canada, Inc.
13 By: 

14
15 
16 Prolink Vision SRL
17 By: 

18 
19 Mohammad Souheil
20 
21 Mitchell N. Roth, Esq.
22 ROTH JACKSON
23 Attorney for Defendants Mohammad Souheil, Prolink Vision, S.R.L., and 9896988
24 Canada, Inc.,

25 Globex Telecom, Inc.
26 By:
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FEDERAL TRADE COMMISSION

Erin Leahy 9/21/2020

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By:

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By:

Mohammad Souheil

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Attorney for Defendants Mohammad Souheil, Prolink Vision, S.R.L., and 9896988
Canada, Inc.,

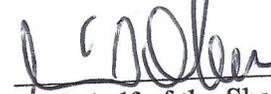
Globex Telecom, Inc.
By:

9506276 Canada, Inc.

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9506276 Canada, Inc.

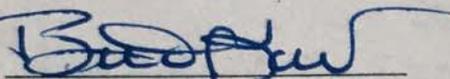
By:

 (IN CAPACITY AS ATTORNEY)

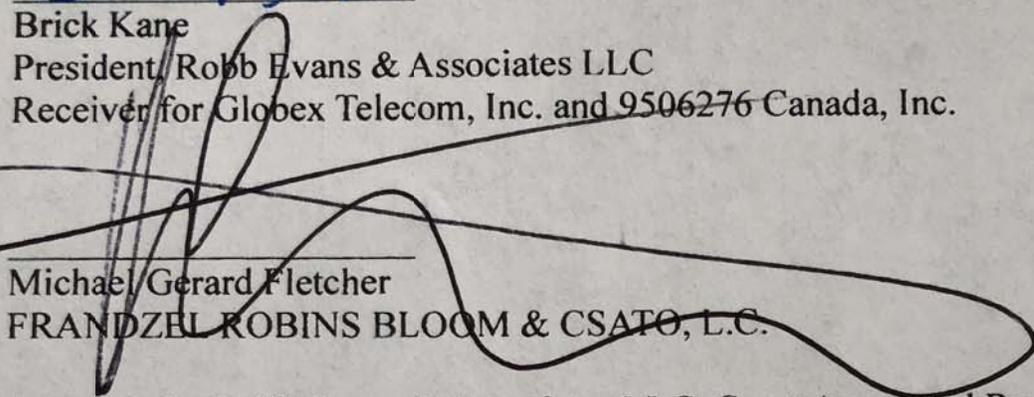
On behalf of the Shareholders of Globex Telecom, Inc. and 9506276 Canada, Inc. pursuant to Shareholder Resolution of June 12, 2020, a copy of which was provided to Plaintiffs on June 12, 2020.

Per: Neil G. Oberman, LL.M., Attorney. (authorized under the resolution)

1 **For Globex Telecom, Inc. and 9506276 Canada, Inc.**

2 

3 **Brick Kane**
4 **President, Robb Evans & Associates LLC**
5 **Receiver for Globex Telecom, Inc. and 9506276 Canada, Inc.**

6 
7 **Michael Gerard Fletcher**
8 **FRANZEL ROBINS BLOOM & CSATO, L.C.**

9 **Attorney for Robb Evans & Associates LLC, Court Appointed Receiver for Defendants**
10 **Globex Telecom, Inc. and 9506276 Canada, Inc.**

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ATTACHMENT A

**PART 310—TELEMARKETING SALES
RULE 16 CFR PART 310**

Sec.

- 310.1 Scope of regulations in this part.
- 310.2 Definitions.
- 310.3 Deceptive telemarketing acts or practices.
- 310.4 Abusive telemarketing acts or practices.
- 310.5 Recordkeeping requirements.
- 310.6 Exemptions.
- 310.7 Actions by states and private persons.
- 310.8 Fee for access to the National Do Not Call Registry.
- 310.9 Severability.

AUTHORITY: 15 U.S.C. 6101-6108.

SOURCE: 75 FR 48516, Aug. 10, 2010, unless otherwise noted.

§ 310.1 Scope of regulations in this part.

This part implements the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101-6108, as amended.

§ 310.2 Definitions.

(a) *Acquirer* means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value.

Federal Trade Commission

§ 310.2

(b) *Attorney General* means the chief legal officer of a state.

(c) *Billing information* means any data that enables any person to access a customer's or donor's account, such as a credit card, checking, savings, share or similar account, utility bill, mortgage loan account, or debit card.

(d) *Caller identification service* means a service that allows a telephone subscriber to have the telephone number, and, where available, name of the calling party transmitted contemporaneously with the telephone call, and displayed on a device in or connected to the subscriber's telephone.

(e) *Cardholder* means a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued.

(f) *Charitable contribution* means any donation or gift of money or any other thing of value.

(g) *Commission* means the Federal Trade Commission.

(h) *Credit* means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(i) *Credit card* means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

(j) *Credit card sales draft* means any record or evidence of a credit card transaction.

(k) *Credit card system* means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system.

(l) *Customer* means any person who is or may be required to pay for goods or services offered through telemarketing.

(m) *Debt relief service* means any program or service represented, directly or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of the debt between a person and one or more unsecured creditors or debt collectors, including, but not limited to, a reduction in the balance, interest rate, or fees owed by a person to an unsecured creditor or debt collector.

(n) *Donor* means any person solicited to make a charitable contribution.

(o) *Established business relationship* means a relationship between a seller and a consumer based on:

(1) the consumer's purchase, rental, or lease of the seller's goods or services or a financial transaction between the consumer and seller, within the eighteen (18) months immediately preceding the date of a telemarketing call; or

(2) the consumer's inquiry or application regarding a product or service offered by the seller, within the three (3) months immediately preceding the date of a telemarketing call.

(p) *Free-to-pay conversion* means, in an offer or agreement to sell or provide any goods or services, a provision under which a customer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if he or she does not take affirmative action to cancel before the end of that period.

(q) *Investment opportunity* means anything, tangible or intangible, that is offered, offered for sale, sold, or traded based wholly or in part on representations, either express or implied, about past, present, or future income, profit, or appreciation.

(r) *Material* means likely to affect a person's choice of, or conduct regarding, goods or services or a charitable contribution.

(s) *Merchant* means a person who is authorized under a written contract with an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution.

(t) *Merchant agreement* means a written contract between a merchant and an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution.

(u) *Negative option feature* means, in an offer or agreement to sell or provide any goods or services, a provision under which the customer's silence or failure to take an affirmative action to reject goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer.

§ 310.3

16 CFR Ch. I (1-1-14 Edition)

(v) *Outbound telephone call* means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution.

(w) *Person* means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

(x) *Preacquired account information* means any information that enables a seller or telemarketer to cause a charge to be placed against a customer's or donor's account without obtaining the account number directly from the customer or donor during the telemarketing transaction pursuant to which the account will be charged.

(y) *Prize* means anything offered, or purportedly offered, and given, or purportedly given, to a person by chance. For purposes of this definition, chance exists if a person is guaranteed to receive an item and, at the time of the offer or purported offer, the telemarketer does not identify the specific item that the person will receive.

(z) *Prize promotion* means:

(1) A sweepstakes or other game of chance; or

(2) An oral or written express or implied representation that a person has won, has been selected to receive, or may be eligible to receive a prize or purported prize.

(aa) *Seller* means any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration.

(bb) *State* means any state of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.

(cc) *Telemarketer* means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor.

(dd) *Telemarketing* means a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog

which; contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term "further solicitation" does not include providing the customer with information about, or attempting to sell, any other item included in the same catalog which prompted the customer's call or in a substantially similar catalog.

(ee) *Upselling* means soliciting the purchase of goods or services following an initial transaction during a single telephone call. The upsell is a separate telemarketing transaction, not a continuation of the initial transaction. An "external upsell" is a solicitation made by or on behalf of a seller different from the seller in the initial transaction, regardless of whether the initial transaction and the subsequent solicitation are made by the same telemarketer. An "internal upsell" is a solicitation made by or on behalf of the same seller as in the initial transaction, regardless of whether the initial transaction and subsequent solicitation are made by the same telemarketer.

§ 310.3 Deceptive telemarketing acts or practices.

(a) *Prohibited deceptive telemarketing acts or practices.* It is a deceptive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Before a customer consents to pay⁶⁵⁹ for goods or services offered,

⁶⁵⁹ When a seller or telemarketer uses, or directs a customer to use, a courier to transport payment, the seller or telemarketer must make the disclosures required by § 310.3(a)(1) before sending a courier to pick up payment or authorization for payment, or directing a customer to have a courier pick up payment or authorization for payment. In

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failing to disclose truthfully, in a clear and conspicuous manner, the following material information:

(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of the sales offer;⁶⁶⁰

(ii) All material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer;

(iii) If the seller has a policy of not making refunds, cancellations, exchanges, or repurchases, a statement informing the customer that this is the seller's policy; or, if the seller or telemarketer makes a representation about a refund, cancellation, exchange, or repurchase policy, a statement of all material terms and conditions of such policy;

(iv) In any prize promotion, the odds of being able to receive the prize, and, if the odds are not calculable in advance, the factors used in calculating the odds; that no purchase or payment is required to win a prize or to participate in a prize promotion and that any purchase or payment will not increase the person's chances of winning; and the no-purchase/no-payment method of participating in the prize promotion with either instructions on how to participate or an address or local or toll-free telephone number to which customers may write or call for information on how to participate;

(v) All material costs or conditions to receive or redeem a prize that is the subject of the prize promotion;

(vi) In the sale of any goods or services represented to protect, insure, or otherwise limit a customer's liability in the event of unauthorized use of the customer's credit card, the limits on a cardholder's liability for unauthorized use of a credit card pursuant to 15 U.S.C. 1643;

the case of debt relief services, the seller or telemarketer must make the disclosures required by §310.3(a)(1) before the consumer enrolls in an offered program.

⁶⁶⁰ For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR 226, compliance with the disclosure requirements under the Truth in Lending Act and Regulation Z shall constitute compliance with §310.3(a)(1)(i) of this Rule.

(vii) If the offer includes a negative option feature, all material terms and conditions of the negative option feature, including, but not limited to, the fact that the customer's account will be charged unless the customer takes an affirmative action to avoid the charge(s), the date(s) the charge(s) will be submitted for payment, and the specific steps the customer must take to avoid the charge(s); and

(viii) In the sale of any debt relief service:

(A) the amount of time necessary to achieve the represented results, and to the extent that the service may include a settlement offer to any of the customer's creditors or debt collectors, the time by which the debt relief service provider will make a bona fide settlement offer to each of them;

(B) to the extent that the service may include a settlement offer to any of the customer's creditors or debt collectors, the amount of money or the percentage of each outstanding debt that the customer must accumulate before the debt relief service provider will make a bona fide settlement offer to each of them;

(C) to the extent that any aspect of the debt relief service relies upon or results in the customer's failure to make timely payments to creditors or debt collectors, that the use of the debt relief service will likely adversely affect the customer's creditworthiness, may result in the customer being subject to collections or sued by creditors or debt collectors, and may increase the amount of money the customer owes due to the accrual of fees and interest; and

(D) to the extent that the debt relief service requests or requires the customer to place funds in an account at an insured financial institution, that the customer owns the funds held in the account, the customer may withdraw from the debt relief service at any time without penalty, and, if the customer withdraws, the customer must receive all funds in the account, other than funds earned by the debt relief service in compliance with §310.4(a)(5)(i)(A) through (C).

(2) Misrepresenting, directly or by implication, in the sale of goods or

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services any of the following material information:

(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of a sales offer;

(ii) Any material restriction, limitation, or condition to purchase, receive, or use goods or services that are the subject of a sales offer;

(iii) Any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer;

(iv) Any material aspect of the nature or terms of the seller's refund, cancellation, exchange, or repurchase policies;

(v) Any material aspect of a prize promotion including, but not limited to, the odds of being able to receive a prize, the nature or value of a prize, or that a purchase or payment is required to win a prize or to participate in a prize promotion;

(vi) Any material aspect of an investment opportunity including, but not limited to, risk, liquidity, earnings potential, or profitability;

(vii) A seller's or telemarketer's affiliation with, or endorsement or sponsorship by, any person or government entity;

(viii) That any customer needs offered goods or services to provide protections a customer already has pursuant to 15 U.S.C. 1643;

(ix) Any material aspect of a negative option feature including, but not limited to, the fact that the customer's account will be charged unless the customer takes an affirmative action to avoid the charge(s), the date(s) the charge(s) will be submitted for payment, and the specific steps the customer must take to avoid the charge(s); or

(x) Any material aspect of any debt relief service, including, but not limited to, the amount of money or the percentage of the debt amount that a customer may save by using such service; the amount of time necessary to achieve the represented results; the amount of money or the percentage of each outstanding debt that the customer must accumulate before the provider of the debt relief service will initiate attempts with the customer's

creditors or debt collectors or make a bona fide offer to negotiate, settle, or modify the terms of the customer's debt; the effect of the service on a customer's creditworthiness; the effect of the service on collection efforts of the customer's creditors or debt collectors; the percentage or number of customers who attain the represented results; and whether a debt relief service is offered or provided by a non-profit entity.

(3) Causing billing information to be submitted for payment, or collecting or attempting to collect payment for goods or services or a charitable contribution, directly or indirectly, without the customer's or donor's express verifiable authorization, except when the method of payment used is a credit card subject to protections of the Truth in Lending Act and Regulation Z,⁶⁶¹ or a debit card subject to the protections of the Electronic Fund Transfer Act and Regulation E.⁶⁶² Such authorization shall be deemed verifiable if any of the following means is employed:

(i) Express written authorization by the customer or donor, which includes the customer's or donor's signature;⁶⁶³

(ii) Express oral authorization which is audio-recorded and made available upon request to the customer or donor, and the customer's or donor's bank or other billing entity, and which evidences clearly both the customer's or donor's authorization of payment for the goods or services or charitable contribution that are the subject of the telemarketing transaction and the customer's or donor's receipt of all of the following information:

(A) The number of debits, charges, or payments (if more than one);

(B) The date(s) the debit(s), charge(s), or payment(s) will be submitted for payment;

⁶⁶¹ Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR part 226.

⁶⁶² Electronic Fund Transfer Act, 15 U.S.C. 1693 *et seq.*, and Regulation E, 12 CFR part 205.

⁶⁶³ For purposes of this Rule, the term "signature" shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

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(C) The amount(s) of the debit(s), charge(s), or payment(s);

(D) The customer's or donor's name;

(E) The customer's or donor's billing information, identified with sufficient specificity such that the customer or donor understands what account will be used to collect payment for the goods or services or charitable contribution that are the subject of the telemarketing transaction;

(F) A telephone number for customer or donor inquiry that is answered during normal business hours; and

(G) The date of the customer's or donor's oral authorization; or

(iii) Written confirmation of the transaction, identified in a clear and conspicuous manner as such on the outside of the envelope, sent to the customer or donor via first class mail prior to the submission for payment of the customer's or donor's billing information, and that includes all of the information contained in §§310.3(a)(3)(ii)(A)-(G) and a clear and conspicuous statement of the procedures by which the customer or donor can obtain a refund from the seller or telemarketer or charitable organization in the event the confirmation is inaccurate; provided, however, that this means of authorization shall not be deemed verifiable in instances in which goods or services are offered in a transaction involving a free-to-pay conversion and preacquired account information.

(4) Making a false or misleading statement to induce any person to pay for goods or services or to induce a charitable contribution.

(b) *Assisting and facilitating.* It is a deceptive telemarketing act or practice and a violation of this Rule for a person to provide substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice that violates §§310.3(a), (c) or (d), or §310.4 of this Rule.

(c) *Credit card laundering.* Except as expressly permitted by the applicable credit card system, it is a deceptive telemarketing act or practice and a violation of this Rule for:

(1) A merchant to present to or deposit into, or cause another to present

to or deposit into, the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant;

(2) Any person to employ, solicit, or otherwise cause a merchant, or an employee, representative, or agent of the merchant, to present to or deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant; or

(3) Any person to obtain access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement or the applicable credit card system.

(d) *Prohibited deceptive acts or practices in the solicitation of charitable contributions.* It is a fraudulent charitable solicitation, a deceptive telemarketing act or practice, and a violation of this Rule for any telemarketer soliciting charitable contributions to misrepresent, directly or by implication, any of the following material information:

(1) The nature, purpose, or mission of any entity on behalf of which a charitable contribution is being requested;

(2) That any charitable contribution is tax deductible in whole or in part;

(3) The purpose for which any charitable contribution will be used;

(4) The percentage or amount of any charitable contribution that will go to a charitable organization or to any particular charitable program;

(5) Any material aspect of a prize promotion including, but not limited to: the odds of being able to receive a prize; the nature or value of a prize; or that a charitable contribution is required to win a prize or to participate in a prize promotion; or

(6) A charitable organization's or telemarketer's affiliation with, or endorsement or sponsorship by, any person or government entity.

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§ 310.4 Abusive telemarketing acts or practices.

(a) *Abusive conduct generally.* It is an abusive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Threats, intimidation, or the use of profane or obscene language;

(2) Requesting 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:

(i) The time frame in which the seller has represented all of the goods or services will be provided to that person has expired; and

(ii) The seller has provided the person with documentation in the form of a consumer report from a consumer reporting agency demonstrating that the promised results have been achieved, such report having been issued more than six months after the results were achieved. Nothing in this Rule should be construed to affect the requirement in the Fair Credit Reporting Act, 15 U.S.C. 1681, that a consumer report may only be obtained for a specified permissible purpose;

(3) Requesting or receiving payment of any fee or consideration from a person for goods or services represented to recover or otherwise assist in the return of money or any other item of value paid for by, or promised to, that person in a previous telemarketing transaction, until seven (7) business days after such money or other item is delivered to that person. This provision shall not apply to goods or services provided to a person by a licensed attorney;

(4) 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 for a person;

(5)(i) Requesting or receiving payment of any fee or consideration for any debt relief service until and unless:

(A) The seller or telemarketer has renegotiated, settled, reduced, or otherwise altered the terms of at least one

debt pursuant to a settlement agreement, debt management plan, or other such valid contractual agreement executed by the customer;

(B) The customer has made at least one payment pursuant to that settlement agreement, debt management plan, or other valid contractual agreement between the customer and the creditor or debt collector; and

(C) To the extent that debts enrolled in a service are renegotiated, settled, reduced, or otherwise altered individually, the fee or consideration either:

(1) Bears the same proportional relationship to the total fee for renegotiating, settling, reducing, or altering the terms of the entire debt balance as the individual debt amount bears to the entire debt amount. The individual debt amount and the entire debt amount are those owed at the time the debt was enrolled in the service; or

(2) Is a percentage of the amount saved as a result of the renegotiation, settlement, reduction, or alteration. The percentage charged cannot change from one individual debt to another. The amount saved is the difference between the amount owed at the time the debt was enrolled in the service and the amount actually paid to satisfy the debt.

(ii) Nothing in § 310.4(a)(5)(i) prohibits requesting or requiring the customer to place funds in an account to be used for the debt relief provider's fees and for payments to creditors or debt collectors in connection with the renegotiation, settlement, reduction, or other alteration of the terms of payment or other terms of a debt, provided that:

(A) The funds are held in an account at an insured financial institution;

(B) The customer owns the funds held in the account and is paid accrued interest on the account, if any;

(C) The entity administering the account is not owned or controlled by, or in any way affiliated with, the debt relief service;

(D) The entity administering the account does not give or accept any money or other compensation in exchange for referrals of business involving the debt relief service; and

(E) The customer may withdraw from the debt relief service at any time without penalty, and must receive all

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funds in the account, other than funds earned by the debt relief service in compliance with § 310.4(a)(5)(i)(A) through (C), within seven (7) business days of the customer's request.

(6) Disclosing or receiving, for consideration, unencrypted consumer account numbers for use in telemarketing; provided, however, that this paragraph shall not apply to the disclosure or receipt of a customer's or donor's billing information to process a payment for goods or services or a charitable contribution pursuant to a transaction;

(7) Causing billing information to be submitted for payment, directly or indirectly, without the express informed consent of the customer or donor. In any telemarketing transaction, the seller or telemarketer must obtain the express informed consent of the customer or donor to be charged for the goods or services or charitable contribution and to be charged using the identified account. In any telemarketing transaction involving preacquired account information, the requirements in paragraphs (a)(7)(i) through (ii) of this section must be met to evidence express informed consent.

(i) In any telemarketing transaction involving preacquired account information and a free-to-pay conversion feature, the seller or telemarketer must:

(A) Obtain from the customer, at a minimum, the last four (4) digits of the account number to be charged;

(B) Obtain from the customer his or her express agreement to be charged for the goods or services and to be charged using the account number pursuant to paragraph (a)(7)(i)(A) of this section; and,

(C) Make and maintain an audio recording of the entire telemarketing transaction.

(ii) In any other telemarketing transaction involving preacquired account information not described in paragraph (a)(7)(i) of this section, the seller or telemarketer must:

(A) At a minimum, identify the account to be charged with sufficient specificity for the customer or donor to understand what account will be charged; and

(B) Obtain from the customer or donor his or her express agreement to

be charged for the goods or services and to be charged using the account number identified pursuant to paragraph (a)(7)(ii)(A) of this section; or

(8) Failing to transmit or cause to be transmitted the telephone number, and, when made available by the telemarketer's carrier, the name of the telemarketer, to any caller identification service in use by a recipient of a telemarketing call; provided that it shall not be a violation to substitute (for the name and phone number used in, or billed for, making the call) the name of the seller or charitable organization on behalf of which a telemarketing call is placed, and the seller's or charitable organization's customer or donor service telephone number, which is answered during regular business hours.

(b) *Pattern of calls.* (1) It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in, or for a seller to cause a telemarketer to engage in, the following conduct:

(i) Causing any telephone to ring, or engaging any person in telephone conversation, repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number;

(ii) Denying or interfering in any way, directly or indirectly, with a person's right to be placed on any registry of names and/or telephone numbers of persons who do not wish to receive outbound telephone calls established to comply with § 310.4(b)(1)(iii);

(iii) Initiating any outbound telephone call to a person when:

(A) That person previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered or made on behalf of the charitable organization for which a charitable contribution is being solicited; or

(B) That person's telephone number is on the "do-not-call" registry, maintained by the Commission, of persons who do not wish to receive outbound telephone calls to induce the purchase of goods or services unless the seller:

(i) Has obtained the express agreement, in writing, of such person to place calls to that person. Such written agreement shall clearly evidence such

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person's authorization that calls made by or on behalf of a specific party may be placed to that person, and shall include the telephone number to which the calls may be placed and the signature⁶⁶⁴ of that person; or

(ii) Has an established business relationship with such person, and that person has not stated that he or she does not wish to receive outbound telephone calls under paragraph (b)(1)(iii)(A) of this section; or

(iv) Abandoning any outbound telephone call. An outbound telephone call is "abandoned" under this section if a person answers it and the telemarketer does not connect the call to a sales representative within two (2) seconds of the person's completed greeting.

(v) Initiating any outbound telephone call that delivers a prerecorded message, other than a prerecorded message permitted for compliance with the call abandonment safe harbor in § 310.4(b)(4)(iii), unless:

(A) In any such call to induce the purchase of any good or service, the seller has obtained from the recipient of the call an express agreement, in writing, that:

(i) The seller obtained only after a clear and conspicuous disclosure that the purpose of the agreement is to authorize the seller to place prerecorded calls to such person;

(ii) The seller obtained without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service;

(iii) Evidences the willingness of the recipient of the call to receive calls that deliver prerecorded messages by or on behalf of a specific seller; and

(iv) Includes such person's telephone number and signature;⁶⁶⁵ and

(B) In any such call to induce the purchase of any good or service, or to

induce a charitable contribution from a member of, or previous donor to, a non-profit charitable organization on whose behalf the call is made, the seller or telemarketer:

(i) Allows the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call; and

(ii) Within two (2) seconds after the completed greeting of the person called, plays a prerecorded message that promptly provides the disclosures required by § 310.4(d) or (e), followed immediately by a disclosure of one or both of the following:

(A) In the case of a call that could be answered in person by a consumer, that the person called can use an automated interactive voice and/or keypress-activated opt-out mechanism to assert a Do Not Call request pursuant to § 310.4(b)(1)(iii)(A) at any time during the message. The mechanism must:

(1) Automatically add the number called to the seller's entity-specific Do Not Call list;

(2) Once invoked, immediately disconnect the call; and

(3) Be available for use at any time during the message; and

(B) In the case of a call that could be answered by an answering machine or voicemail service, that the person called can use a toll-free telephone number to assert a Do Not Call request pursuant to § 310.4(b)(1)(iii)(A). The number provided must connect directly to an automated interactive voice or keypress-activated opt-out mechanism that:

(1) Automatically adds the number called to the seller's entity-specific Do Not Call list;

(2) Immediately thereafter disconnects the call; and

(3) Is accessible at any time throughout the duration of the telemarketing campaign; and

(iii) Complies with all other requirements of this part and other applicable federal and state laws.

(C) Any call that complies with all applicable requirements of this paragraph (v) shall not be deemed to violate § 310.4(b)(1)(iv) of this part.

⁶⁶⁴ For purposes of this Rule, the term "signature" shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

⁶⁶⁵ For purposes of this Rule, the term "signature" shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

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(D) This paragraph (v) shall not apply to any outbound telephone call that delivers a prerecorded healthcare message made by, or on behalf of, a covered entity or its business associate, as those terms are defined in the HIPAA Privacy Rule, 45 CFR 160.103.

(2) It is an abusive telemarketing act or practice and a violation of this Rule for any person to sell, rent, lease, purchase, or use any list established to comply with § 310.4(b)(1)(iii)(A), or maintained by the Commission pursuant to § 310.4(b)(1)(iii)(B), for any purpose except compliance with the provisions of this Rule or otherwise to prevent telephone calls to telephone numbers on such lists.

(3) A seller or telemarketer will not be liable for violating § 310.4(b)(1)(ii) and (iii) if it can demonstrate that, as part of the seller's or telemarketer's routine business practice:

(i) It has established and implemented written procedures to comply with § 310.4(b)(1)(ii) and (iii);

(ii) It has trained its personnel, and any entity assisting in its compliance, in the procedures established pursuant to § 310.4(b)(3)(i);

(iii) The seller, or a telemarketer or another person acting on behalf of the seller or charitable organization, has maintained and recorded a list of telephone numbers the seller or charitable organization may not contact, in compliance with § 310.4(b)(1)(iii)(A);

(iv) The seller or a telemarketer uses a process to prevent telemarketing to any telephone number on any list established pursuant to § 310.4(b)(3)(iii) or 310.4(b)(1)(iii)(B), employing a version of the "do-not-call" registry obtained from the Commission no more than thirty-one (31) days prior to the date any call is made, and maintains records documenting this process;

(v) The seller or a telemarketer or another person acting on behalf of the seller or charitable organization, monitors and enforces compliance with the procedures established pursuant to § 310.4(b)(3)(i); and

(vi) Any subsequent call otherwise violating § 310.4(b)(1)(ii) or (iii) is the result of error.

(4) A seller or telemarketer will not be liable for violating § 310.4(b)(1)(iv) if:

(i) The seller or telemarketer employs technology that ensures abandonment of no more than three (3) percent of all calls answered by a person, measured over the duration of a single calling campaign, if less than 30 days, or separately over each successive 30-day period or portion thereof that the campaign continues.

(ii) The seller or telemarketer, for each telemarketing call placed, allows the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call;

(iii) Whenever a sales representative is not available to speak with the person answering the call within two (2) seconds after the person's completed greeting, the seller or telemarketer promptly plays a recorded message that states the name and telephone number of the seller on whose behalf the call was placed⁶⁶⁶; and

(iv) The seller or telemarketer, in accordance with § 310.5(b)-(d), retains records establishing compliance with § 310.4(b)(4)(i)-(iii).

(c) *Calling time restrictions.* Without the prior consent of a person, it is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in outbound telephone calls to a person's residence at any time other than between 8:00 a.m. and 9:00 p.m. local time at the called person's location.

(d) *Required oral disclosures in the sale of goods or services.* It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer in an outbound telephone call or internal or external upsell to induce the purchase of goods or services to fail to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call, the following information:

- (1) The identity of the seller;
- (2) That the purpose of the call is to sell goods or services;
- (3) The nature of the goods or services; and
- (4) That no purchase or payment is necessary to be able to win a prize or

⁶⁶⁶ This provision does not affect any seller's or telemarketer's obligation to comply with relevant state and federal laws, including but not limited to the TCPA, 47 U.S.C. 227, and 47 CFR part 64.1200.

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participate in a prize promotion if a prize promotion is offered and that any purchase or payment will not increase the person's chances of winning. This disclosure must be made before or in conjunction with the description of the prize to the person called. If requested by that person, the telemarketer must disclose the no-purchase/no-payment entry method for the prize promotion; provided, however, that, in any internal upsell for the sale of goods or services, the seller or telemarketer must provide the disclosures listed in this section only to the extent that the information in the upsell differs from the disclosures provided in the initial telemarketing transaction.

(e) *Required oral disclosures in charitable solicitations.* It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer, in an outbound telephone call to induce a charitable contribution, to fail to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call, the following information:

(1) The identity of the charitable organization on behalf of which the request is being made; and

(2) That the purpose of the call is to solicit a charitable contribution.

[75 FR 48516, Aug. 10, 2010, as amended at 76 FR 58716, Sept. 22, 2011]

§ 310.5 Recordkeeping requirements.

(a) Any seller or telemarketer shall keep, for a period of 24 months from the date the record is produced, the following records relating to its telemarketing activities:

(1) All substantially different advertising, brochures, telemarketing scripts, and promotional materials;

(2) The name and last known address of each prize recipient and the prize awarded for prizes that are represented, directly or by implication, to have a value of \$25.00 or more;

(3) The name and last known address of each customer, the goods or services purchased, the date such goods or services were shipped or provided, and the amount paid by the customer for the goods or services;⁶⁶⁷

⁶⁶⁷ For offers of consumer credit products subject to the Truth in Lending Act, 15

(4) The name, any fictitious name used, the last known home address and telephone number, and the job title(s) for all current and former employees directly involved in telephone sales or solicitations; provided, however, that if the seller or telemarketer permits fictitious names to be used by employees, each fictitious name must be traceable to only one specific employee; and

(5) All verifiable authorizations or records of express informed consent or express agreement required to be provided or received under this Rule.

(b) A seller or telemarketer may keep the records required by § 310.5(a) in any form, and in the same manner, format, or place as they keep such records in the ordinary course of business. Failure to keep all records required by § 310.5(a) shall be a violation of this Rule.

(c) The seller and the telemarketer calling on behalf of the seller may, by written agreement, allocate responsibility between themselves for the recordkeeping required by this Section. When a seller and telemarketer have entered into such an agreement, the terms of that agreement shall govern, and the seller or telemarketer, as the case may be, need not keep records that duplicate those of the other. If the agreement is unclear as to who must maintain any required record(s), or if no such agreement exists, the seller shall be responsible for complying with §§ 310.5(a)(1)-(3) and (5); the telemarketer shall be responsible for complying with § 310.5(a)(4).

(d) In the event of any dissolution or termination of the seller's or telemarketer's business, the principal of that seller or telemarketer shall maintain all records as required under this section. In the event of any sale, assignment, or other change in ownership of the seller's or telemarketer's business, the successor business shall maintain all records required under this section.

U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR 226, compliance with the recordkeeping requirements under the Truth in Lending Act, and Regulation Z, shall constitute compliance with § 310.5(a)(3) of this Rule.

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(a) Solicitations to induce charitable contributions via outbound telephone calls are not covered by § 310.4(b)(1)(iii)(B) of this Rule.

(b) The following acts or practices are exempt from this Rule:

(1) The sale of pay-per-call services subject to the Commission's Rule entitled "Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992," 16 CFR part 308, *provided*, however, that this exemption does not apply to the requirements of §§ 310.4(a)(1), (a)(7), (b), and (c);

(2) The sale of franchises subject to the Commission's Rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising," ("Franchise Rule") 16 CFR part 436, and the sale of business opportunities subject to the Commission's Rule entitled "Disclosure Requirements and Prohibitions Concerning Business Opportunities," ("Business Opportunity Rule") 16 CFR part 437, *provided*, however, that this exemption does not apply to the requirements of §§ 310.4(a)(1), (a)(7), (b), and (c);

(3) Telephone calls in which the sale of goods or services or charitable solicitation is not completed, and payment or authorization of payment is not required, until after a face-to-face sales or donation presentation by the seller or charitable organization, *provided*, however, that this exemption does not apply to the requirements of §§ 310.4(a)(1), (a)(7), (b), and (c);

(4) Telephone calls initiated by a customer or donor that are not the result of any solicitation by a seller, charitable organization, or telemarketer, *provided*, however, that this exemption does not apply to any instances of upselling included in such telephone calls;

(5) Telephone calls initiated by a customer or donor in response to an advertisement through any medium, other than direct mail solicitation, *provided*, however, that this exemption does not apply to calls initiated by a customer or donor in response to an advertisement relating to investment opportunities, debt relief services, business opportunities other than business arrangements covered by the Franchise

Rule or Business Opportunity Rule, or advertisements involving goods or services described in §§ 310.3(a)(1)(vi) or 310.4(a)(2)-(4); or to any instances of upselling included in such telephone calls;

(6) Telephone calls initiated by a customer or donor in response to a direct mail solicitation, including solicitations via the U.S. Postal Service, facsimile transmission, electronic mail, and other similar methods of delivery in which a solicitation is directed to specific address(es) or person(s), that clearly, conspicuously, and truthfully discloses all material information listed in § 310.3(a)(1) of this Rule, for any goods or services offered in the direct mail solicitation, and that contains no material misrepresentation regarding any item contained in § 310.3(d) of this Rule for any requested charitable contribution; *provided*, however, that this exemption does not apply to calls initiated by a customer in response to a direct mail solicitation relating to prize promotions, investment opportunities, debt relief services, business opportunities other than business arrangements covered by the Franchise Rule or Business Opportunity Rule, or goods or services described in §§ 310.3(a)(1)(vi) or 310.4(a)(2)-(4); or to any instances of upselling included in such telephone calls; and

(7) Telephone calls between a telemarketer and any business, except calls to induce the retail sale of non-durable office or cleaning supplies; *provided*, however, that § 310.4(b)(1)(iii)(B) and § 310.5 of this Rule shall not apply to sellers or telemarketers of non-durable office or cleaning supplies.

§ 310.7 Actions by states and private persons.

(a) Any attorney general or other officer of a state authorized by the state to bring an action under the Telemarketing and Consumer Fraud and Abuse Prevention Act, and any private person who brings an action under that Act, shall serve written notice of its action on the Commission, if feasible, prior to its initiating an action under this Rule. The notice shall be sent to the Office of the Director, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, and

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shall include a copy of the state's or private person's complaint and any other pleadings to be filed with the court. If prior notice is not feasible, the state or private person shall serve the Commission with the required notice immediately upon instituting its action.

(b) Nothing contained in this Section shall prohibit any attorney general or other authorized state official from proceeding in state court on the basis of an alleged violation of any civil or criminal statute of such state.

§ 310.8 Fee for access to the National Do Not Call Registry.

(a) It is a violation of this Rule for any seller to initiate, or cause any telemarketer to initiate, an outbound telephone call to any person whose telephone number is within a given area code unless such seller, either directly or through another person, first has paid the annual fee, required by § 310.8(c), for access to telephone numbers within that area code that are included in the National Do Not Call Registry maintained by the Commission under § 310.4(b)(1)(iii)(B); provided, however, that such payment is not necessary if the seller initiates, or causes a telemarketer to initiate, calls solely to persons pursuant to §§ 310.4(b)(1)(iii)(B)(i) or (ii), and the seller does not access the National Do Not Call Registry for any other purpose.

(b) It is a violation of this Rule for any telemarketer, on behalf of any seller, to initiate an outbound telephone call to any person whose telephone number is within a given area code unless that seller, either directly or through another person, first has paid the annual fee, required by § 310.8(c), for access to the telephone numbers within that area code that are included in the National Do Not Call Registry; provided, however, that such payment is not necessary if the seller initiates, or causes a telemarketer to initiate, calls solely to persons pursuant to §§ 310.4(b)(1)(iii)(B)(i) or (ii), and the seller does not access the National Do Not Call Registry for any other purpose.

(c) The annual fee, which must be paid by any person prior to obtaining

access to the National Do Not Call Registry, is \$59 for each area code of data accessed, up to a maximum of \$16,228; *provided*, however, that there shall be no charge to any person for accessing the first five area codes of data, and *provided further*, that there shall be no charge to any person engaging in or causing others to engage in outbound telephone calls to consumers and who is accessing area codes of data in the National Do Not Call Registry if the person is permitted to access, but is not required to access, the National Do Not Call Registry under this Rule, 47 CFR 64.1200, or any other Federal regulation or law. Any person accessing the National Do Not Call Registry may not participate in any arrangement to share the cost of accessing the registry, including any arrangement with any telemarketer or service provider to divide the costs to access the registry among various clients of that telemarketer or service provider.

(d) Each person who pays, either directly or through another person, the annual fee set forth in § 310.8(c), each person excepted under § 310.8(c) from paying the annual fee, and each person excepted from paying an annual fee under § 310.4(b)(1)(iii)(B), will be provided a unique account number that will allow that person to access the registry data for the selected area codes at any time for the twelve month period beginning on the first day of the month in which the person paid the fee ("the annual period"). To obtain access to additional area codes of data during the first six months of the annual period, each person required to pay the fee under § 310.8(c) must first pay \$59 for each additional area code of data not initially selected. To obtain access to additional area codes of data during the second six months of the annual period, each person required to pay the fee under § 310.8(c) must first pay \$30 for each additional area code of data not initially selected. The payment of the additional fee will permit the person to access the additional area codes of data for the remainder of the annual period.

(e) Access to the National Do Not Call Registry is limited to telemarketers, sellers, others engaged in or causing others to engage in telephone

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calls to consumers, service providers acting on behalf of such persons, and any government agency that has law enforcement authority. Prior to accessing the National Do Not Call Registry, a person must provide the identifying information required by the operator of the registry to collect the fee, and must certify, under penalty of law, that the person is accessing the registry solely to comply with the provisions of this Rule or to otherwise prevent telephone calls to telephone numbers on the registry. If the person is accessing the registry on behalf of sellers, that person also must identify each of the sellers on whose behalf it is accessing the registry, must provide each seller's unique account number for access to the national registry, and must certify, under penalty of law, that the sellers will be using the information gathered from the registry solely to comply with the provisions of this Rule or otherwise to prevent telephone calls to telephone numbers on the registry.

[75 FR 48516, Aug. 10, 2010; 75 FR 51934, Aug. 24, 2010, as amended at 77 FR 51697, Aug. 27, 2012; 78 FR 53643, Aug. 30, 2013]

§ 310.9 Severability.

The provisions of this Rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.