

255. As set forth below, the Nudge Defendants have violated the BODA by failing to file required information with the Division, and by failing to provide required disclosures to prospective purchasers of the Nudge Defendants' assisted marketing plans.

**COUNT TEN – FAILURE TO FILE REQUIRED INFORMATION
WITH THE DIVISION**

(By Plaintiff Utah Division of Consumer Protection Against All Nudge Defendants)

256. During the five years preceding this action, the Nudge Defendants have offered and sold multiple different assisted marketing plans through a variety of corporate entities.

257. For each assisted marketing plan offered and sold by the Nudge Defendants, the Nudge Defendants were required to file annually with the Division the information described by Utah Code § 13-15-4.

258. During the five years preceding this action, the Nudge Defendants have failed to file with the Division the information required by Utah Code § 13-15-4 with respect to any of the assisted marketing plans the Nudge Defendants offered, sold, and continue to offer and sell.

259. As described in Paragraphs 256 to 258, the Nudge Defendants violated the BODA by failing to file with the Division the information required by Utah Code § 13-15-4 for each assisted marketing plan the Nudge Defendants offered, and for each year the Nudge Defendants failed to file the required information while offering a given assisted marketing plan.

**COUNT ELEVEN - FAILURE TO PROVIDE REQUIRED
DISCLOSURES TO PROSPECTIVE PURCHASERS**

(By Plaintiff Utah Division of Consumer Protection Against All Nudge Defendants)

260. During the five years preceding this action, the Nudge Defendants have sold thousands of assisted marketing plans to consumers.

261. The Nudge Defendants were required to provide certain disclosures to prospective purchasers of its assisted marketing plans in a single disclosure statement or prospectus at least ten business days prior to the execution of a consumer's agreement to purchase one of the Nudge Defendants' plans, or ten business days prior to payment by the consumer of any consideration in exchange for the assisted marketing plan. Utah Code § 13-15-5.

262. The Nudge Defendants did not provide the required disclosure statement or prospectus to any of the thousands of consumers who purchased one of the Nudge Defendants' assisted marketing plans.

263. As described in Paragraphs 260 to 262, the Nudge Defendants violated the BODA each time they sold an assisted marketing plan to a consumer without providing the required disclosure statement or prospectus.

VIOLATIONS OF THE TFP

264. The TFP prohibits telephone soliciting businesses and solicitors from making or causing to be made any untrue material statements, or failing to disclose material facts necessary to make a statement not misleading. Utah Code § 13-26-11(1)(c).

265. The TFP also prohibits any telephone soliciting business from causing or permitting any solicitor to violate the TFP. Utah Code § 13-26-11(2)(a).

266. The Nudge Defendants operate a telephone soliciting business as defined by Utah Code §13-26-2(8).

267. The Nudge Defendants are solicitors because they make telephone solicitations, and cause telephone solicitations to be made. Utah Code §§ 13-26-2(9)(a), (b).

COUNT TWELVE – UNTRUE MATERIAL STATEMENTS OR FAILURE TO DISCLOSE MATERIAL FACTS

(By Plaintiff Utah Division of Consumer Protection Against All Nudge Defendants)

268. In numerous instances, in connection with telephone solicitations to sell the Inner Circle program, the Nudge Defendants have misrepresented, directly or indirectly, expressly or by implication, material aspects of the performance, efficacy, nature, or central characteristics of the Inner Circle one-on-one coaching services, such as by representing that consumers who purchase the Inner Circle program are likely to earn substantial income.

269. The Nudge Defendants' acts or practices, as described in Paragraph 268 above, are unlawful practices that violate the TFPA. Utah Code §§ 13-26-11(1)(c); 13-26-11(2)(a).

CONSUMER INJURY

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

THIS COURT'S POWER TO GRANT RELIEF

271. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of any provision of law enforced by the FTC. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts,

restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

272. Section 19 of the FTC Act, 15 U.S.C. § 57b and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b) authorize this Court to grant such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the TSR, including the rescission or reformation of contracts and the refund of money.

273. The UCSPA authorizes this Court to enter a declaratory judgment that the Nudge Defendants' acts or practices violate the UCSPA, to enjoin, in accordance with the principles of equity, any person who has violated, is violating, or is otherwise likely to violate the UCSPA, to award damages or relief on behalf of consumers for the Nudge Defendants' violations of the UCSPA, to award a fine against the Nudge Defendants for violations of the UCSPA in an amount determined by the Court, and to award the Division reasonable attorney's fees, court costs, and costs of investigation. Utah Code §§ 13-11-17(1)(a)-(d); 13-11-17.5.

274. The BODA authorizes this Court, in addition to any other relief granted by the Court, to grant judgment and injunctive relief in favor of the Division, and to award the Division reasonable attorney's fees, costs of court, and investigative fees for the Nudge Defendants' violations of the BODA. Utah Code § 13-15-6(3).

275. The TFPA authorizes this Court to impose a civil penalty not exceeding \$2,500 against the Nudge Defendants for each of the Nudge Defendants' transactions that violated the TFPA. Utah Code § 13-26-8(2).

PRAYER FOR RELIEF

Wherefore, Plaintiff FTC, pursuant to Sections 13(b) and 19 of the FTC Act, 15 U.S.C.

§§ 53(b), 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), and Plaintiff Utah Division of Consumer Protection, pursuant to the UCSPA, the BODA, the TFPA, and the TSR, and as authorized by the Court's own equitable powers, request that the Court:

A. Award Plaintiffs such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief, including temporary and preliminary injunctions, an order freezing assets and immediate access;

B. Enter a permanent injunction to prevent future violations of the FTC Act, the TSR, the UCSPA, the BODA, and the TFPA by Defendants;

C. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act, the TSR, the UCSPA, the BODA, and the TFPA, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies;

D. Award civil penalties in an amount up to \$2,500 for each violation of the UCSPA, the BODA, and the TFPA; and

E. Award Plaintiffs the costs of bringing this action as well as such other and additional relief as the Court may determine to be just and proper.

Respectfully submitted,

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Dated: _____

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