

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. _____

FEDERAL TRADE COMMISSION and)
STATE OF COLORADO, <i>ex rel.</i>)
JOHN W. SUTHERS, ATTORNEY GENERAL,)
)
Plaintiffs,)
)
v.)
)
RUSSELL T. DALBEY;)
DEI, LLLP;)
DALBEY EDUCATION INSTITUTE, LLC;)
IPME, LLLP;)
CATHERINE L. DALBEY; and)
MARSHA KELLOGG,)
)
Defendants.)

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF

Plaintiffs, the Federal Trade Commission (“FTC” or “Commission”) and the State of Colorado, upon relation of John W. Suthers, Attorney General for Colorado, by their undersigned counsel, allege:

1. The FTC brings this action under Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b), 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101-6108, to secure preliminary and permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief for defendants’ deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C.

§ 45(a), and the FTC's Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310.

2. The State of Colorado brings this action under the Colorado Consumer Protection Act, COLO. REV. STAT. §§ 6-1-101 through 115 ("CCPA"), to enjoin and restrain defendants from engaging in certain unlawful deceptive trade practices, and for disgorgement, restitution, and for other relief as provided in the CCPA.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the FTC's claims pursuant to 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), and 6105(b), and 28 U.S.C. §§ 1331, 1337(a) and 1345, and over the claims of the State of Colorado pursuant to 28 U.S.C. § 1367.

4. Venue in the District of Colorado is proper under 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b) and (c).

PLAINTIFFS

5. Plaintiff **Federal Trade Commission** is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The Commission is charged with, *inter alia*, enforcing Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The FTC is also charged with enforcing the Telemarketing Act, 15 U.S.C. § 6101-6108. Pursuant to the Telemarketing Act, the FTC promulgated and enforces the TSR, 16 C.F.R. Part 310, which prohibits deceptive or abusive telemarketing acts or practices. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and the TSR, and secure such equitable relief as may be appropriate in each case, including rescission of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C.

§§ 53(b), 56(a)(2)(A)-(B), 57b, 6102(c) and 6105(b).

6. Plaintiff **State of Colorado** is one of the fifty sovereign states of the United States. John W. Suthers is the duly elected and qualified Attorney General acting for plaintiff State of Colorado, and is authorized to enforce the CCPA under COLO. REV. STAT. § 6-1-103. This Court has supplemental jurisdiction over plaintiff Colorado's claims under 28 U.S.C. § 1367.

DEFENDANTS

7. Defendant **DEI, LLLP** is a Colorado limited liability limited partnership with its principal place of business at 7233 Church Ranch Boulevard, Westminster, CO 80021. DEI, LLLP is a holding entity and the parent of Dalbey Education Institute, LLC. DEI, LLLP transacts or has transacted business within the District of Colorado.

8. Defendant **Dalbey Education Institute, LLC** ("DEI"), formerly known as America's Note Network, LLC, is a Colorado limited liability company with its principal place of business at 7233 Church Ranch Boulevard, Westminster, CO 80021. DEI, LLC owns the Winning in the Cash Flow Business infomercials. Acting alone or in concert with others, DEI has advertised, marketed, offered for sale, sold, and distributed educational products and services, including the Winning in the Cash Flow Business program, and other programs, classes, services, and workshops. DEI transacts or has transacted business within the District of Colorado.

9. Defendant **IPME, LLLP** is a Colorado limited liability limited partnership with its principal place of business at 7233 Church Ranch Boulevard, Westminster, CO 80021. IPME, LLLP has held the intangible assets, including copyrights, related to the educational

products and services advertised, marketed, offered for sale, sold, and distributed by DEI.

IPME, LLLP transacts or has transacted business within the District of Colorado.

10. Defendant **Russell T. Dalbey** (“Dalbey”) is the founder, majority owner, manager, and partner of DEI, LLLP; the founder and Chief Executive Officer of DEI; and the majority owner and limited partner of IPME, LLLP. He serves as DEI’s spokesperson and is featured in DEI’s infomercials, websites, direct mail advertisements, and marketing materials. Defendant Dalbey resides and transacts or has transacted business within the District of Colorado, and he has formulated, directed, controlled, participated in, assisted in, or facilitated the acts or practices set forth in this complaint.

11. Defendant **Catherine L. Dalbey** (“C. Dalbey”) served as President of DEI until January, 2010, and has previously served as the company’s Chief Operating Officer. Defendant C. Dalbey resides and has transacted business within the District of Colorado, and she has formulated, directed, controlled, participated in, assisted in, or facilitated the acts or practices set forth in this complaint.

12. Defendants DEI, LLLP; DEI; and IPME, LLLP (the “**Corporate Defendants**”) have operated as a common enterprise while engaging in the deceptive acts and practices described below through an interrelated network of companies that have common ownership, officers, managers, business functions, employees, and/or office locations. Because these Corporate Defendants have operated as a common enterprise, each of them is jointly and severally liable for the acts and practices alleged below. Individual defendants Dalbey and C. Dalbey have formulated, directed, controlled, had authority to control, or participated in the acts and practices of the Corporate Defendants that constitute the common enterprise.

13. Defendant **Marsha Kellogg**, f/k/a Marsha Bowersock, (“Kellogg”) has used and endorsed DEI’s products and services. Her endorsements and substantial earnings claims in the note brokering business have been used with her knowledge and permission in DEI’s infomercials and marketing materials. Defendant Kellogg resides in Ohio and has transacted business with and for DEI within the District of Colorado. Defendant Kellogg has participated in, assisted in, or facilitated some of the acts or practices set forth in this complaint.

14. Unless expressly stated otherwise below, the term “Defendants” excludes Defendant Kellogg.

COMMERCE

15. At all times material to this complaint, Defendants, including Defendant Kellogg, have maintained a substantial course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS’ BUSINESS ACTIVITIES

16. Since at least 1996, Defendant Dalbey has marketed products and services through various entities purporting to teach consumers how to find, broker, and earn commissions on seller-financed promissory notes or cash flow notes (“promissory notes” or “notes”). These promissory notes are privately held mortgages or notes often secured by the real property that is the subject of the loan. Since at least 2002, Defendants have marketed their products and services via infomercials aired nationwide, direct mail, websites, and email.

17. Defendants have disseminated several versions of an infomercial titled, “Winning in the Cash Flow Business” (“WITCFB”), to promote the sale of these products and services. Three illustrative WITCFB infomercials are attached to this complaint in DVD format.

Exhibit 1 attached hereto is a true and correct copy of a WITCFB infomercial that was aired in 2006, 2007, and 2008. **Exhibit 2** attached hereto is a true and correct copy of a WITCFB infomercial that was aired in 2008 and 2009. **Exhibit 3** attached hereto is a true and correct copy of a WITCFB infomercial that was aired in 2009 and 2010. Joy Productions, Inc., where Defendant Dalbey served as president until the company's dissolution in 2010, produced one or more of these WITCFB infomercials.

18. The WITCFB infomercials have been shown tens of thousands of times on broadcast and cable television. Each year between 2002 and 2010, a version of the WITCFB infomercial has been one of the 100 most frequently disseminated infomercials on national cable television stations in the United States.

19. The WITCFB infomercials feature Gary Collins as the "Emmy Award Winning Host," Defendant Dalbey, and numerous testimonialists who appear repeatedly on screen and tout that they purportedly made substantial amounts of money, quickly and easily, finding and brokering promissory notes. Different versions of the WITCFB infomercial have offered various materials for different prices and with different constituent parts. Prices have ranged from approximately \$39.95 to approximately \$159.00. The WITCFB materials have included such items as booklets, CDs, and DVDs that purport to teach consumers how to find and broker notes, free support from advisors, lists of purported promissory note holders, and personalized websites. Hundreds of thousands of consumers across the United States and Canada have purchased the WITCFB materials by calling the toll-free telephone numbers provided in the WITCFB infomercials.

20. The WITCFB infomercials, including but not limited to Exhibits 1, 2, and 3, state

that consumers who purchase Defendants' initial program and materials will quickly and easily earn substantial amounts of money by finding and brokering promissory notes. For example:

- A. GARY COLLINS: Winning In The Cash Flow Business is celebrating ten years of helping good people earn the money they deserve doing what they love. And if you're not already a part of this moving story, now is the time to discover an easier and more financially secure way of life. Russ Dalbey isn't promising that he's going to make you a millionaire tomorrow, but what he is promising is an opportunity for true financial freedom for the rest of your life working only a few hours a month. And, friends, that's incredible and it's exactly what Winning In The Cash Flow Business is all about.

See Exhibit 1 at 02:39 to 03:11 (the figures to the left and right of the colon represent the approximate minute and second respectively where the quoted material appears in the infomercial); *see also* Exhibit 2 at 03:26 to 03:42.

- B. RUSS DALBEY: Now, the truth is anyone can make a ton of money or even become a millionaire and you don't need money or college or even talent to do it.

See Exhibit 1 at 03:34 to 03:42 (scrolling text omitted).

- C. **ON SCREEN: EVERYTHING YOU NEED!**

MALE ANNOUNCER: When you call, you'll get everything you need in one easy-to-use course.

ON SCREEN: 3 Easy to Follow Steps

See Exhibit 1 at 07:41 to 07:47; *see also* Exhibit 2 at 08:11 to 8:18.

- D. RUSS DALBEY: You know, what I'm asking people to do is spend 10 minutes a

day to try my program. I think if you spend 10 minutes a day, you'll find, like so many others, the success that they've had. In fact, you might end up working less with Winning In The Cash Flow Business.

See Exhibit 1 at 13:46 to 13:58; Exhibit 2 at 15:14 to 15:27.

E. RUSS DALBEY: You don't have to buy or sell notes yourself. You don't even have to see a note. What makes it so easy is that most people who have these notes are thrilled when you give them a call and give them that opportunity to cash out.

See Exhibit 1 at 14:38 to 14:49; *see also* Exhibit 2 at 22:04 to 22:21.

F. **ON SCREEN: (Scrolling at bottom of screen)**

With Real Estate Foreclosures at an all time

high there's never been a better time to be

Winning in the Cash Flow Business!

See Exhibit 2 at 05:46 to 05:57; *see also* Exhibit 3 at 19:54 to 20:02.

G. MALE ANNOUNCER: You'll quickly see why everyone from the Wall Street Journal to Money Magazine is raving about the cash flow business. And you'll be amazed at just how easy it is to generate a stream of --

ON SCREEN: Extra Income Every Month

MALE ANNOUNCER: -- extra income every month.

ON SCREEN: Build Financial Freedom

MALE ANNOUNCER: Build financial freedom --

ON SCREEN: Better Quality of Life

MALE ANNOUNCER: -- and a better quality of life in just minutes a day.

ON SCREEN: Retire Early

MALE ANNOUNCER: Or even retire earlier than you ever dreamed possible.

Order now and you'll be ready to profit in minutes –

ON SCREEN: Profit in Minutes!

See Exhibit 2 at 24:46 to 25:06 (graphics with text omitted); see also Exhibit 3 at 07:08 to 07:23; 16:07 to 16:23; 24:37 to 24:52.

H. RUSS DALBEY: It's so incredibly easy, you wouldn't believe it. You simply find a cash flow note and there's millions of them out there, and then you list what you just found on my exclusive nationwide buyers network where buyers are ready to buy what you just found.

GARY COLLINS: So, you just find a note, list it on your exclusive network, and when the deal is done, you make money, just like that.

RUSS DALBEY: It doesn't get any easier than my simple three steps.

ON SCREEN: Find 'Em

RUSS DALBEY: You just find cash flow notes -

ON SCREEN: List 'Em

RUSS DALBEY: -- you list them --

ON SCREEN: Make Money!

RUSS DALBEY: -- and make money.

See Exhibit 3 at 03:36 to 04:03; see also Exhibit 1 at 06:54 to 07:09; 07:41 to 07:50; Exhibit 2 at 26:40 to 26:49; Exhibit 3 at 21:30 to 21:40.

I. RUSS DALBEY: There are literally tens of millions of dollars in cash flow notes in every county across America. So, there's virtually no limit to how much money people can make.

GARY COLLINS: But are you concerned at all about by, you know, telling everybody about this, you're going to increase your competition?

RUSS DALBEY: Nope. I mean, there's so many people out there that have never even heard of a cash flow note before. They're everywhere. And with over \$200 billion in cash flow notes across the country, I mean, you can see why I'm so excited about my program.

See Exhibit 3 at 4:32 to 5:00; see also Exhibit 2 at 07:00 to 07:09; 13:39 to 13:53.

J. GARY COLLINS: Russ, what makes Winning in the Cash Flow Business --

ON SCREEN: Gary Collins

EMMY AWARD WINNING HOST

GARY COLLINS: -- different from other money making opportunities that are out there?

ON SCREEN: Russ Dalbey

FOUNDER Winning In the Cash Flow Business

RUSS DALBEY: Gary, it's because it's so easy and it's because it really works. You don't need a college degree. You don't need any investment capital. You don't need any inventory. You don't need employees. In fact, you don't even need to leave home unless you want to. I've simplified it down to three easy steps that anyone, and I mean anyone, can do to achieve financial success.

See Exhibit 3 at 10:47 to 11:14; *see also* Exhibit 1 at 11:22 to 11:52; Exhibit 2 at 12:02 to 12:17; Exhibit 3 at 05:24 to 05:47; 11:56 to 12:17.

K. GARY COLLINS: Russ, you make it all sound so easy.

RUSS DALBEY: It is easy. I've seen my students make \$500, \$5,000, \$50,000 and more on one deal, their first deal, with not a lot of hard work, too, in just a few hours. So, I'd say it's pretty easy, wouldn't you?

See Exhibit 3 at 11:37 to 11:53.

L. RUSS DALBEY: I've seen so many people try my system and they were so surprised to discover how fast and easy it was to make big money all in their spare time. Now, that's the beauty of Winning in the Cash Flow Business.

See Exhibit 3 at 12:05 to 12:16.

21. The WITCFB infomercials and other marketing materials, including but not limited to Exhibits 1, 2, and 3, Defendants' websites, follow-up emails to consumers, and promotional booklets, make frequent use of testimonialists who describe how quickly and easily they earned thousands of dollars using the methods they learned from Defendants' WITCFB program. During testimonials in Exhibits 1, 2, and 3, the disclaimer "[u]nique experience, results will vary" is displayed on screen while the testimonialist is speaking. The disclaimers appear in white lettering and in a significantly smaller font than all other words on the screen. The background color on the screen varies from light to dark, sometimes offering minimal contrast with the white lettering of the disclaimers. Examples of testimonials include:

A. RUSS DALBEY: How much did you make?

ON SCREEN: DON B. New York

\$1.2 MILLION IN 30 DAYS

Unique experience, results will vary.

DON B.: In less than 30 days, I closed two transactions and I netted 1 point -- a little bit over \$1.2 million.

See Exhibit 1 at 00:36 to 00:43; see also Exhibit 2 at 22:40 to 22:45; 25:29 to 25:35.

B. VEDETTA H.: You don't need experience, you don't. You don't need -- I don't have any experience in real estate. So, the only thing I did was read -- read *Winning In The Cash Flow Business*, followed the steps, step by step --

ON SCREEN: VEDETTA H. Illinois

\$17,578 PART TIME

Unique experience, results will vary.

VEDETTA H.: -- and I did it.

UNIDENTIFIED MALE: And what happened?

VEDETTA H.: And I made money.

UNIDENTIFIED MALE: How much?

VEDETTA H.: Over \$17,000.

See Exhibit 1 at 04:49 to 05:14; see also Exhibit 2 at 07:26 to 07:39.

C. **ON SCREEN: RORY W. Colorado**

\$70,000 IN 2 MONTHS

Unique experience, results will vary.

RORY W.: So far, we've turned five note deals. It took us about two months to do that and we will net \$70,000.

ON SCREEN: ANNETTE D. Canada

\$6,689 WITHOUT LEAVING HOME

Unique experience, results will vary.

ANNETTE D.: My first note I found on the Internet and I made \$6,689 bucks.

ON SCREEN: DAN B. New York

\$48,000 AND CLIMBING

Unique experience, results will vary.

DAN B.: So far, I've done 21 deals and I've made over \$48,000.

See Exhibit 2 at 07:09 to 07:26.

D. **ON SCREEN: MARSHA B. Ohio**

\$79,000 IN A FEW HOURS

Unique experience, results will vary.

MARSHA B.: How many people can honestly say that they have made \$79,000 and done it in just a few hours?

See Exhibit 3 at 00:42 to 00:48; see also Exhibit 3 at 15:43 to 15:49.

E. **ON SCREEN: DARLYS S. Michigan**

\$262,216 PART TIME

Unique experience, results will vary.

DARLYS S.: I've made over a quarter million dollars very easily, part-time.

See Exhibit 3 at 04:16 to 04:19; see also Exhibit 2 at 17:33 to 17:44 (testimonial of Darlys S.)

("This business has been a dream for both me and my family. I have made over a quarter of a

million dollars. And anybody can do the same as I have done. All they've got to do is pick up that phone and call you.”).

F. **ON SCREEN: (Scrolling at bottom of screen)**

**UPDATE: PENNSYLVANIA HOUSEWIFE, BARBARA G.
MAKES OVER \$622,000.00, SAYS, “ANYONE CAN.”
STUDENTS ARE EARNING MILLIONS!**

See Exhibit 3 at 04:27 to 04:39.

G. **ON SCREEN: MARSHA B. Ohio**

\$134,573 IN EARNINGS

Unique experience, results will vary.

MARSHA B.: There are cash notes everywhere you go and they are literally created every day of the week, probably every hour, maybe every minute.

They're just everywhere.

ON SCREEN: DARRELL S. Washington

\$23,006 IN EARNINGS

Unique experience, results will vary.

DARRELL S.: I looked in my home state, one zip code, 150,000 notes available.

ON SCREEN: EDEN A. Oklahoma

\$14,902 IN EARNINGS

Unique experience, results will vary.

EDEN A.: I never leave my home and I can find notes anywhere in the United States.

ON SCREEN: DAN B. New York

\$166,271 IN EARNINGS

Unique experience, results will vary.

DAN B.: So far I've done 21 deals and I've made over \$48,000.

See Exhibit 3 at 05:00 to 05:24; see also Exhibit 2 at 05:10 to 05:14 (testimonial of Garland J.).

H. ON SCREEN: EDEN A. Oklahoma

\$6,000 IN 20 MINUTES

Unique experience, results will vary.

EDEN A.: I was worried at first that it might be difficult, but the first day, in the first 20 minutes, I listed three notes. I'm not intimidated. It's very easy.

See Exhibit 3 at 11:23 to 11:33; see also Exhibit 3 at 22:26 to 22:33.

I. ON SCREEN: MIKE & BETTY C. Iowa

\$219,921 IN EARNINGS

Unique experience, results will vary.

Winning-2009.com

MIKE C.: We have made over \$200,000 in the Winning In the Cash Flow Business.

See Exhibit 3 at 20:06 to 20:09; see also Exhibit 2 at 15:32 to 15:39.

J. Russ Dalbey: "You made \$712,000 on one deal. . . And it's not a fluke, because now I've also seen documentation that you just closed another deal for over \$500,000!"

Don B: "Sometimes I'm so excited I can't go to sleep at night. . . Your

first deal out of the gate you could make \$60,000!”

See DEI Booklet, “The Overnight Millionaire,” at page 2, Mailing # 44(BY), distributed Apr. 7, 2007; *see also* “The Overnight Millionaire,” at page 2, Mailing # 67(DD), distributed Feb. 22, 2008.

K. I’ve made \$745,900.58 so far!

“The hardest part is ordering the program. . . after that the rest is pretty easy. I’ve made \$745,900.58.”

Barbara G

PA

[Photograph of Barbara Graff]

See WITCFB Website, <http://www.winning-2009.com>, disseminated in 2009 & 2010 (dollar figures may vary); *see also* DEI Direct Mail Booklet, “DISCOVER A SURPRISING WAY TO MAKE MONEY IN REAL ESTATE Without Ever Buying, Selling or Investing in Property,” Mailing # 76(DT), distributed Aug. 29, 2008.

L. Made \$79,975.01 on ONE deal!

“So many people try to make this hard and it’s not. It’s a lot of fun if you go into it with the right attitude.”

Marsha G [*sic*]

OH

[Photograph of Marsha Kellogg]

See WITCFB Website, <http://www.winning-2009.com>, disseminated in 2009 & 2010 (dollar figures may vary); *see also* DEI Direct Mail Booklet, “Are You Millionaire Fit?,” Mailing #

85(EE), distributed Feb. 20, 2009.

22. The WITCFB infomercials and other marketing materials, including but not limited to Exhibits 1 and 2 and Defendants' websites, represent that Defendant Dalbey has earned a substantial amount of money from brokering promissory notes. For example:

A. Russ Dalbey is a self-made, self-educated multi-millionaire who made his fortune using the same principles now taught at the Dalbey Education Institute.

DEI's WITCFB Website, at https://www.witcfb.com/who_is.aspx, captured Nov. 2, 2010 ("Who is Russ Dalbey?").

B. ON SCREEN: GARY COLLINS

GARY COLLINS: When I first hosted this program a few years ago, I had the opportunity to speak with Russ Dalbey, a man who started poor and discovered the secret to incredible wealth and financial freedom. Since then, thousands of people have used his easy-to-learn system to make money in the real estate business without ever buying it. Folks, this is way beyond the no money down real estate programs you've heard about.

See Exhibit 1 at 01:18 to 01:39; *see also* Exhibit 2 at 01:24 to 01:43.

C. MALE ANNOUNCER: In a minute, you'll meet Russ Dalbey, the creator of this highly acclaimed system, a man who single-handedly unlocked the potential of what just may be the greatest money-making opportunity of our time. Better than anyone else, Russ Dalbey can show you how to do this and succeed beyond your wildest dreams because he doesn't just teach it, he actually follows his own system, too.

See Exhibit 1 at 02:18 to 02:38 (graphics with text omitted); *see also* Exhibit 2 at 02:25 to 02:54.

D. ON SCREEN: KIRSTEN GUM

KIRSTEN GUM: So, Russ, if it's so easy, why isn't everybody doing it?

RUSS DALBEY: I'm really not sure. When I started doing this, only banks made money this way, and they made a lot of money.

ON SCREEN: RUSS DALBEY

RUSS DALBEY: And I figured we all should be able to profit like those guys.

So what I did is I took everything I learned from my mentor and from the years of doing this business myself and I simplified it into just three easy steps that anyone can use to achieve financial freedom.

See Exhibit 1 at 11:59 to 12:22; *see also* Exhibit 2 at 04:38 to 05:07.

23. In numerous instances, Defendants promote additional products and services, including coaching programs, web-based and multi-day training programs, workshops, seminars, boot camps, lists of purported promissory note holders, and personalized websites. Some of the programs come with guarantees, including that consumers will have a note deal in progress before the end of the program. Defendants' additional products and services range in price from a few hundred dollars to several thousand dollars. Defendants advertise these products and services through their websites, emails to consumers, direct mail, and during inbound and outbound calls. In some instances, consumers who have called Defendants in response to the WITCFB infomercial are offered and sold the initial program and the additional products and services during the same call. In other instances, Defendants' telemarketers call consumers soon after they have purchased the initial WITCFB program in an effort to sell them additional

products and services. In numerous other instances, consumers call the toll-free assistance number included in their WITCFB materials and speak with Defendants' telemarketers, who try to sell them additional products and services.

24. Defendants represent to consumers that these additional products and services will materially increase the likelihood that consumers will succeed in finding, listing, and brokering promissory notes and quickly and easily earn substantial amounts of money. For example:

A. Russ would really like you to hear about the Protégé Program that can help you jump-start your note business.

* * * *

Now can you see how with the Protégé program it is realistic to set a goal of not only closing your 1st note deal within 2 to 3 months after starting the program but also closing note deals month after month?

DEI Telephone Script (Outbound), Suggested Sales Pitch for Promotion of the Advanced Protégé Course, used in 2006 & 2007.

B. (Increase you [*sic*] voice volume) Here is the exciting part (name), in the New Year, Russ is introducing a completely new way to market you [*sic*] note business – it's easy and simple. In fact, we are offering this to our protégé students, first, because space is so limited. The best part about this marketing is that not only are you going to be working with Russ' very own Marketing Directors here Winning in the Cash Flow Business [*sic*], you are going to be empowered – let us empower you to have the ability to have note sellers find you, let us empower you so you

know exactly how to create good, (pause), effective, (pause) marketing for your note business. . . . These guys know how to get you making money with the fastest and most effective ways

DEI Telephone Script (Outbound), Suggested Sales Pitch for Promotion of the Advanced Protégé Course, used in 2006 & 2007.

- C. People new to the Cash Flow business walk into our Boot Camp nervous and unsure of themselves – but they walk out a short three days later, with a note deal in hand – confident and ready to close more deals the moment they get home.

* * * *

Give Me 3 Days and I GUARANTEE

You'll Be Working On a Note Deal

I'll personally guarantee in three days or less you'll have a deal in the works.

It's that simple. The average Boot Camp student gets more than 2 deals!

See DEI Direct Mail Booklet, "Russ Dalbey's NOTE DEALS ON SPEED Boot Camp," at pages 2-3, distributed Oct. 07, 2008 (Sales Offer for DEI's Boot Camp).

- D. [L]et me tell you about one of Russ's most remarkable programs, it's your very own Customized Cash Flow Web Site designed to attract the exact people you are looking for!!! This website gives you instant credibility and a professional image which could generate thousands of dollars from just one deal!!!

* * * *

There are places you can go to get the names and addresses of thousands of people who currently own real estate notes who may be looking to sell them for

cash. . . . This is a special limited time offer. It's the most exciting thing we offer to help you skyrocket your note business!

DEI Telephone Script (Inbound) for Calls Generated by WITCFB TV Infomercial, used in 2006, 2007 & 2008.

E. **In the next few minutes you'll get your chance to . . . RETIRE this year. . . . and still make more money than most doctors! Now it's possible -- Because my team of 10 highly paid, battle-proven cash flow geniuses are going to work on YOUR financial future. You just sit back and smile as cash flow deals stream in by the DOZEN – even while you're sleeping.**

DEI Email from Russ Dalbey to Consumers (with link to a DEI website), Sales Offer for 2-Day Master Marketing Seminar, distributed in 2006. (Emphasis and ellipses in original.)

F. ***Who Says the Cash Flow Business Takes Months of Studying? I can Show You EVERYTHING You Need to Make Money in This Business in Just 3 Days . . .*** The **“Note Deals on Speed” Boot Camp** was created to get YOU up to speed and working on your first note deal in days! The Boot Camp is exclusively for people new to the Cash Flow business who don't have extra time or simply want a short cut to success.

See DEI Direct Mail Booklet, “Russ Dalbey's NOTE DEALS ON SPEED Boot Camp,” at page 2, distributed Oct. 07, 2008 (Sales Offer for DEI's Boot Camp) (emphasis in the original).

25. Few consumers who use the initial WITCFB products and services purchased in response to the infomercials and websites, and few consumers who use the additional products and services purchased through Defendants' telemarketers, have been able to quickly and easily

broker any promissory notes or earn substantial amounts of money from brokering promissory notes. In fact, most consumers who purchase Defendants' products or services have not brokered any promissory notes or earned any money using Defendants' products and services.

26. In numerous instances, Defendants advertise inaccurate earnings claims for testimonialists. For example, some testimonialists paid out substantial portions of their earnings to co-brokers, employees, independent contractors, or other third parties, thereby yielding substantially lower earnings than what is stated in their testimonials. In addition, some testimonialist earnings claims were total earnings figures accumulated over several years rather than in one year.

27. Defendant Dalbey has not earned millions of dollars from brokering promissory notes. Most of Defendant Dalbey's note-related income for the past two decades has come from the marketing and selling of products and services purporting to teach consumers how to find and broker promissory notes.

28. Since January 2006, Defendants have sold their WITCFB materials to over 500,000 consumers located throughout the United States and Canada.

29. DEI, LLLP, DEI, and IPME, LLLP's gross sales (i.e., total revenues without subtracting costs) from January 1, 2006, through September 30, 2010, exceeds \$312,000,000. This figure deducts refunds and chargebacks.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

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

constitute deceptive acts or practices pursuant to Section 5(a) of the FTC Act.

COUNT ONE

31. In connection with the advertising, marketing, promotion, offering for sale, or sale of the WITCFB products and services, Defendants have represented, directly or indirectly, expressly or by implication, that

- A. Consumers are likely to quickly and easily find, list, and broker promissory notes;
- B. Consumers are likely to quickly and easily earn substantial amounts of money;
- C. Consumers are likely to earn substantial amounts of money;
- D. DEI's coaching programs, workshops, seminars, boot camps, note holder leads, and/or personalized websites will materially increase the likelihood that consumers will succeed in finding, listing, and brokering promissory notes and quickly and easily earn substantial amounts of money;
- E. Defendant Dalbey has earned substantial money from finding, listing, and brokering promissory notes; and
- F. Consumer testimonials in DEI's advertising, marketing, and promotional materials are accurate and reflect the results that consumers can generally expect to achieve through use of the WITCFB products and services.

32. The representations set forth in Paragraph 31 are false or were not substantiated at the time the representations were made. Therefore, the making of the representations in

Paragraph 31 constitutes a deceptive practice in or affecting commerce in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

VIOLATIONS OF THE TELEMARKETING SALES RULE

33. Congress directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15 U.S.C. §§ 6101-6108, resulting in the FTC's promulgation of the Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310.

34. Defendants are "sellers" or "telemarketers" engaged in "telemarketing," as those terms are defined in the TSR, 16 C.F.R. §§ 310.2(z), (bb), and (cc).

35. DEI goods and services, including the initial WITCFB program, coaching programs, workshops, seminars, and boot camps, are "Investment opportunit[ies]," as defined in the TSR, 16 C.F.R. § 310.2(p). The TSR defines an investment opportunity as, *inter alia*, anything, tangible or intangible, that is offered, offered for sale, or sold based wholly or in part on representations, either express or implied, about past, present, or future income or profit. 16 C.F.R. § 310.2(p).

36. Inbound calls made by consumers to Defendants in order to purchase DEI's goods and services, including the initial WITCFB program, coaching programs, workshops, seminars, and boot camps, are not exempt from the TSR because such calls fall within the TSR's investment opportunity or business opportunity exception to the customer-initiated call exemption. 16 C.F.R. § 310.6(b)(5).

37. The TSR prohibits telemarketers and sellers from, *inter alia*, misrepresenting,

directly or by implication, “[a]ny material aspects of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer.” 16 C.F.R.

§ 310.3(a)(2)(iii).

38. The TSR also prohibits telemarketers and sellers from, *inter alia*, misrepresenting, directly or by implication, “any material aspect of an investment opportunity including, but not limited to, risk, liquidity, earnings potential, or profitability.” 16 C.F.R.

§ 310.3(a)(2)(vi).

39. The TSR further prohibits sellers or telemarketers from “[m]aking a false or misleading statement to induce any person to pay for goods or services.” 16 C.F.R.

§ 310.3(a)(4).

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

COUNT TWO

Misrepresentations of Material Aspects of Goods or Services Sold

41. In connection with the telemarketing and sale of Defendants’ initial goods and services advertised in the WITCFB infomercials, Defendants have misrepresented, directly or indirectly, expressly or by implication, material aspects of the WITCFB goods and services, including that consumers are likely to:

A. Quickly and easily find, list, and broker promissory notes;

- B. Quickly and easily earn substantial amounts of money; and
- C. Earn substantial amounts of money.

42. In connection with the telemarketing and sale of Defendants' additional WITCFB goods and services, such as coaching programs, workshops, seminars, boot camps, note holder leads, and/or personalized websites, Defendants have misrepresented, directly or indirectly, expressly or by implication, material aspects of the goods and services, including that:

- A. Consumers will materially increase the likelihood that they will find, list, and broker promissory notes;
- B. Consumers will materially increase the likelihood that they will quickly and easily earn substantial amounts of money brokering promissory notes; and
- C. Consumers will materially increase the likelihood that they will earn substantial amounts of money brokering promissory notes.

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

COUNT THREE

Misrepresentations of Material Aspects of an Investment Opportunity

44. Plaintiff incorporates by reference paragraphs 41 and 42 of this Complaint as if fully set forth herein.

45. Defendants have thereby violated Section 310.3(a)(2)(vi) of the TSR, 16 C.F.R. § 310.3(a)(2)(vi).

COUNT FOUR

Misrepresentations to Induce Payment for Goods or Services

46. Plaintiff incorporates by reference paragraphs 41 and 42 of this Complaint as if fully set forth herein.

47. Defendants and their employees have made these false or misleading statements to induce consumers to pay for Defendants' goods and services.

48. Defendants have thereby violated Section 310.3(a)(4) of the TSR, 16 C.F.R. § 310.3(a)(4).

TESTIMONIALIST MARSHA KELLOGG

COUNT FIVE

49. Defendant Marsha Kellogg has represented, directly or indirectly, expressly or by implication, that she earned \$79,975.01 in one promissory note brokering transaction and that her total earnings were \$134,573.

50. In truth and in fact, Defendant Kellogg earned only approximately \$29,975.01 from that one promissory note brokering transaction, and her total earnings were no more than \$84,573. Therefore, the representation in Paragraph 49 was, and is, false or misleading and constitutes a deceptive act or practice in or affecting commerce in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

VIOLATIONS OF THE COLORADO CONSUMER PROTECTION ACT

COUNT SIX

**Knowingly Making False Representations as to the
Characteristics, Uses, and Benefits of Goods or Services**

51. Plaintiff Colorado incorporates herein by reference all of the allegations contained in paragraph 31 of this Complaint.

52. Through the above-described conduct, Defendants have knowingly made false representations in the course of their business as to the characteristics, uses, and benefits of goods or services, in violation of COLO. REV. STAT. § 6-1-105(1)(e).

53. By means of the above-described unlawful deceptive trade practices, Defendants have deceived, misled, and unlawfully acquired money from consumers.

COUNT SEVEN

**Knowingly Making False Representations
That Goods, Food, Services, or Property Are of a Particular
Standard, Quality, or Grade, or That Goods Are of a Particular Style or Model**

54. Plaintiff Colorado incorporates herein by reference all of the allegations contained in paragraph 31 of this Complaint.

55. Through the above-described conduct, Defendants have made false representations in the course of their business as to the standard, quality, grade or style of goods, services or property when they knew or should have known that they were of another standard, quality, grade or style, in violation of COLO. REV. STAT. § 6-1-105(1)(g).

56. By means of the above-described unlawful deceptive trade practices, Defendants have deceived, misled, and unlawfully acquired money from consumers.

COUNT EIGHT

Knowingly Making False Representations as to the Characteristics, Uses, and Benefits of Goods or Services – Marsha Kellogg

57. Defendant Marsha Kellogg represented directly or indirectly, expressly or by implication, in the course of her business, that she earned \$79,975.01 in one promissory note brokering transaction and \$134,573 in total from all of her promissory note brokering transactions.

58. In truth and in fact, Defendant Kellogg earned only approximately \$29,975.01 from that one promissory note brokering transaction, and her total earnings were no more than \$84,573. Therefore, Defendant Kellogg knowingly made a false representation as to the characteristics, uses, and benefits of goods or services, in violation of COLO. REV. STAT. § 6-1-105(1)(e).

CONSUMER INJURY

59. Consumers throughout the United States and Canada have suffered and continue to suffer substantial injury as a result of the Defendants' and Defendant Kellogg's unlawful acts or practices as set forth in this Complaint. In addition, Defendants have been unjustly enriched as a result of their and Defendant Kellogg's unlawful acts or practices. Absent injunctive relief by this Court, the Defendants and Defendant Kellogg are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THE COURT'S POWER TO GRANT RELIEF

60. 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.

61. 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 rescission or reformation of contracts, and the refund of money.

62. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction to allow Plaintiff, State of Colorado, to enforce its state law claims under the Colorado Consumer Protection Act, COLO. REV. STAT. §§ 6-1-101 through 115, against Defendants and Defendant Kellogg in this Court.

FTC PRAYER FOR RELIEF

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

A. Award Plaintiff Federal Trade Commission 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 but not limited to an order freezing assets;

B. Enter permanent injunctions to prevent future violations of the FTC Act and the TSR by Defendants;

C. Enter a permanent injunction to prevent future violations of the FTC Act by Defendant Kellogg;

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

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

COLORADO PRAYER FOR RELIEF

64. Plaintiff, State of Colorado, prays for judgment against Defendants and Defendant Kellogg and the following relief:

A. An order declaring Defendants' above-described conduct to be in violation of the Colorado Consumer Protection Act, COLO. REV. STAT. § 6-1-105(1)(e), (g), (i) and (u);

B. An order permanently enjoining Defendants, their officers, directors, successors, assigns, agents, employees, and anyone in active concert or participation with Defendants with notice of such injunctive orders, from engaging in any deceptive trade practices

as defined in and proscribed by the CCPA and as set forth in this Complaint;

C. Appropriate orders necessary to prevent Defendants' continued or future deceptive trade practices;

D. A judgment in an amount to be determined at trial for restitution, disgorgement, or other equitable relief pursuant to COLO. REV. STAT. § 6-1-110(1);

E. An order enjoining Defendant Kellogg from any future violations of the CCPA;

F. An order requiring Defendants to pay the costs and expenses of this action incurred by the Attorney General, including, but not limited to, Plaintiff's attorneys fees, pursuant to COLO. REV. STAT. § 6-1-113(4); and

G. Any such further orders as the Court may deem just and proper to effectuate the purposes of the CCPA.

Dated: May 25, 2011

Respectfully submitted,

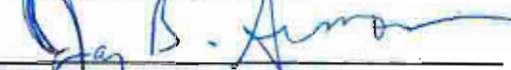
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