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18 **UNITED STATES DISTRICT COURT**
 19 **CENTRAL DISTRICT OF CALIFORNIA**

20 FEDERAL TRADE COMMISSION,

21 Plaintiff,

22 v.

23 IMPETUS ENTERPRISE, INC., a
 24 California corporation, also d/b/a
 25 Aiding Student Relief, Aiding Students
 26 & Teachers, Aidnest, AVEC Staffing,
 27 National Education Student and
 28 Teacher, Studora, and U.S. Debt Relief;
 FIG TREE & CO., LLC, a California
 limited liability company, also d/b/a
 Aiding Student Relief, Aiding Students

Case No. 8:18-cv-01987-JLS-KES

**FIRST AMENDED COMPLAINT
 FOR PERMANENT
 INJUNCTION AND OTHER
 EQUITABLE RELIEF**

1 & Teacher, and Aiding Students &
2 Teachers; CAPITAL SUN
3 INVESTMENTS, LLC, a Wyoming
4 limited liability company, also d/b/a
5 Studora; TUAN DINH DUONG, a/k/a
6 Thomas Duong, a/k/a Thomas Dinh,
7 individually and as an officer of
8 IMPETUS ENTERPRISE, INC.;
9 BRENDA AVITIA-PENA, individually
10 and as an officer of IMPETUS
11 ENTEPRISE, INC. and FIG TREE &
12 CO., LLC; BRIAN COLOMBANA
13 d/b/a FUTERO, individually and as an
14 officer of FIG TREE & CO., LLC; and
15 JIMMY CALDERON, individually and
16 as an officer of CAPITAL SUN
17 INVESTMENTS, LLC,

18
19 Defendants, and

20 NOEL SOLUTIONS, LLC, a Wyoming
21 limited liability company;

22 Relief Defendant.

23
24 Plaintiff, the Federal Trade Commission (“FTC”), for its Complaint alleges:

25 1. The FTC brings this action under Section 13(b) of the Federal Trade
26 Commission Act (“FTC Act”), 15 U.S.C. § 53(b), and the Telemarketing and
27 Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§
28 6101-6108, to obtain temporary, 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’ 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, in connection with

1 their deceptive marketing and sale of student loan debt relief services.

2 **JURISDICTION AND VENUE**

3 2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§
4 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a), 53(b), 6102(c), and 6105(b).

5 3. Venue is proper in this district under 28 U.S.C. § 1391(b)(1), (b)(2),
6 (c)(1), (c)(2), (c)(3), and (d), and 15 U.S.C. § 53(b).

7 **PLAINTIFF**

8 4. The FTC is an independent agency of the United States Government
9 created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC
10 Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or
11 affecting commerce. The FTC also enforces the Telemarketing Act, 15 U.S.C. §§
12 6101-6108. Pursuant to the Telemarketing Act, the FTC promulgated and enforces
13 the TSR, 16 C.F.R. Part 310, which prohibits deceptive and abusive telemarketing
14 acts or practices in or affecting commerce.

15 5. The FTC is authorized to initiate federal district court proceedings, by
16 its own attorneys, to enjoin violations of the FTC Act and the TSR, and to secure
17 such equitable relief as may be appropriate in each case, including rescission or
18 reformation of contracts, restitution, the refund of monies paid, and the
19 disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b) and 6102(c).

20 **DEFENDANTS**

21 6. Defendant Impetus Enterprise, Inc. (“Impetus”), also doing business
22 as Aiding Student Relief, Aiding Students & Teachers, Aidnest, Avec Staffing,
23 National Education Student and Teacher, Studora, and U.S. Debt Relief, is a
24 California corporation with its principal place of business at 18100 Von Karman
25 Ave., Suite 850, Irvine, California 92612. Impetus transacts or has transacted
26 business in this district and throughout the United States. At all times material to
27 this Complaint, acting alone or in concert with others, or as part of the common
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1 enterprise described in paragraph 14, Impetus has advertised, marketed, offered to
2 provide, provided, offered for sale, or sold student loan debt relief services to
3 consumers throughout the United States.

4 7. Defendant Fig Tree & Co., LLC (“Fig Tree LLC”), also doing
5 business as Aiding Student Relief, Aiding Students & Teacher, and Aiding
6 Students & Teachers, is a California limited liability company with its principal
7 place of business at 18100 Von Karman Ave., Suite 850, Irvine, California 92612.
8 Fig Tree LLC transacts or has transacted business in this district and throughout
9 the United States. At all times material to this Complaint, acting alone or in
10 concert with others, or as part of the common enterprise described in paragraph 14,
11 Fig Tree LLC has advertised, marketed, offered to provide, provided, offered for
12 sale, or sold student loan debt relief services to consumers throughout the United
13 States.

14 8. Defendant Capital Sun Investments, LLC (“Capital Sun”), also doing
15 business as Studora, is a Wyoming limited liability company with its principal
16 place of business at 1651 East Fourth Street, Suite 124, Santa Ana, California
17 92701. Capital Sun transacts or has transacted business in this district and
18 throughout the United States. At times material to this Complaint, acting alone or
19 in concert with others, as part of the common enterprise described in paragraph 14,
20 or as a successor in interest to defendant Impetus, Capital Sun has advertised,
21 marketed, offered to provide, provided, offered for sale, or sold student loan debt
22 relief services to consumers throughout the United States.

23 9. Defendant Tuan Dinh Duong, also known as Thomas Duong and
24 Thomas Dinh (“Duong”), has identified himself as or served as the President,
25 director, general manager, sales manager, owner, co-owner, and principal
26 shareholder of Impetus. At all times material to this Complaint, acting alone or in
27 concert with others, he has formulated, directed, controlled, had the authority to
28

1 control, or participated in the acts and practices set forth in this Complaint.
2 Defendant Duong resides in this district and, in connection with the matters alleged
3 herein, transacts or has transacted business in this district and throughout the
4 United States.

5 10. Defendant Brenda Avitia-Pena (“Avitia-Pena”) has identified herself
6 as or served as the President, CEO, Secretary, CFO, director, and owner of
7 Impetus, and the manager of Fig Tree LLC. At all times material to this
8 Complaint, acting alone or in concert with others, she has formulated, directed,
9 controlled, had the authority to control, or participated in the acts and practices set
10 forth in this Complaint. Defendant Avitia-Pena resides in this district and, in
11 connection with the matters alleged herein, transacts or has transacted business in
12 this district and throughout the United States.

13 11. Defendant Brian Colombana (“Colombana”), who has also done
14 business under the fictitious business name “Futero,” has identified himself as or
15 served as co-owner of Impetus (and CIO of its d/b/a, Avec Staffing), and manager
16 of Fig Tree LLC. At times material to this Complaint, through at least January
17 2018, acting alone or in concert with others, Colombana formulated, directed,
18 controlled, had the authority to control, or participated in the acts and practices set
19 forth in this Complaint. Defendant Colombana resides in this district and, in
20 connection with the matters alleged herein, transacts or has transacted business in
21 this district and throughout the United States.

22 12. Defendant Jimmy Calderon (“Calderon”) has identified himself as and
23 has served as manager of Capital Sun. At times material to this Complaint, since at
24 least September 2017, acting alone or in concert with others, Calderon formulated,
25 directed, controlled, had the authority to control, or participated in the acts and
26 practices set forth in this Complaint. Defendant Calderon resides in this district
27 and, in connection with the matters alleged herein, transacts or has transacted
28

1 business in this district and throughout the United States.

2 **RELIEF DEFENDANT**

3 13. Relief Defendant Noel Solutions, LLC (“Noel”) has received funds
4 that can be traced directly to Defendants’ deceptive acts or practices alleged below,
5 for which it has no legitimate claim. Noel is a Wyoming limited liability company
6 that reported in a public document that its principal place of business is 1623
7 Central Ave., Suite 201, Cheyenne, Wyoming 82001. Noel also incorporated as a
8 California limited liability company in January 2018, listing its address as 18997
9 Barroso St., Rowland Heights, California 91748. Noel transacts or has transacted
10 business in this district and in the district of Wyoming.

11 **COMMON ENTERPRISE**

12 14. Defendants Impetus, Fig Tree LLC, and Capital Sun (“Corporate
13 Defendants”) have operated as a common enterprise while engaging in the
14 unlawful acts and practices alleged below. Defendants have conducted the
15 business practices described below through interrelated companies that have
16 common ownership, officers, managers, business functions, employees, and office
17 locations, and routinely transfer funds amongst themselves. Because the Corporate
18 Defendants have operated as a common enterprise, each is jointly and severally
19 liable for the acts and practices alleged below. Defendants Duong, Avitia-Pena,
20 Colombana, and Calderon have formulated, directed, controlled, had the authority
21 to control, or participated in the acts and practices of the Corporate Defendants that
22 constitute the common enterprise.

23 **COMMERCE**

24 15. At all times material to this Complaint, Defendants have maintained a
25 substantial course of trade in or affecting commerce, as “commerce” is defined in
26 Section 4 of the FTC Act, 15 U.S.C. § 44.
27
28

1 **DEFENDANTS’ UNLAWFUL STUDENT LOAN DEBT RELIEF**
2 **OPERATION**

3 16. Since at least December 2014 through at least the filing of the FTC’s
4 Complaint in this matter in November 2018, Defendants have operated an unlawful
5 debt relief scheme that preys on consumers with student loan debt. In telephone
6 calls, on websites, and in mailed advertising, Defendants promise to reduce
7 consumers’ monthly student loan payments and eliminate all, or a portion of, their
8 student loan debt through enrollment in student loan forgiveness or repayment
9 programs. In many instances, however, Defendants failed to obtain debt
10 forgiveness or monthly payment reductions. In fact, some consumers owed more
11 on their student loans after enrolling in Defendants’ program.

12 17. In exchange for the promised student loan debt relief services,
13 Defendants have charged illegal upfront fees of \$499 or more.

14 **Background on Student Loan Forgiveness and Repayment Programs**

15 18. Student loan debt is the second largest class of consumer debt; more
16 than 42 million Americans collectively owe nearly \$1.5 trillion in student loan
17 debt. The student loan market shows elevated levels of distress relative to other
18 types of consumer debt.

19 19. To address this mounting level of distressed debt, the U.S.
20 Department of Education (“USDE”) and state government agencies administer a
21 limited number of student loan forgiveness and discharge programs. Most
22 consumers, however, do not qualify for these programs because of strict eligibility
23 requirements. For example, one program requires the consumer to demonstrate a
24 total and permanent disability; another applies only to consumers whose school
25 closed while the consumer was still enrolled. A third program, the Borrower
26 Defense to Repayment (“BDR”), may provide a loan discharge if the school,
27 through an act or omission, violated state law directly related to the borrower’s
28

1 federal student loan or to the educational services for which the loan was provided.

2 20. Other forgiveness programs require borrowers to work in certain
3 professions for a period of years. For example, Teacher Loan Forgiveness applies
4 to teachers who have worked full-time for five years in a low-income elementary
5 or secondary school or educational service agency. Public Service Loan
6 Forgiveness (“PSLF”) applies to employees of governmental units or non-profit
7 organizations who make timely monthly payments for a period of ten years while
8 employed in the public sector.

9 21. The federal government also offers loan forgiveness through income-
10 driven repayment (“IDR”) programs that enable borrowers to reduce their monthly
11 payments and have portions of their loans forgiven. IDR programs allow eligible
12 borrowers to limit their monthly payments based on a percentage of their
13 discretionary monthly income. To remain in an IDR program, borrowers must
14 recertify their income and family size annually. Obtaining forgiveness through
15 IDR programs requires a minimum of 20 or 25 years of qualifying payments,
16 depending on whether borrowers received their first loans on July 1, 2014 or
17 before that date. Because a borrower’s income is likely to fluctuate over the life of
18 the loan, monthly payments under the IDR programs can vary considerably from
19 year to year. If a borrower’s income were to increase over the repayment period,
20 for example, the monthly payment amount could correspondingly increase to the
21 point where those payments would pay off the loan before any amount could be
22 forgiven at the end of the repayment term. No loans have been forgiven yet under
23 any of the IDR programs because the programs have not existed long enough for
24 borrowers to make the minimum number of years of qualifying payments.

25 22. Consumers can apply for BDR, PSLF, IDR, and other loan repayment
26 and forgiveness or discharge programs through USDE or their student loan
27 servicers at no cost; these programs do not require the assistance of a third-party
28

1 company or payment of application fees.

2 23. USDE will grant forbearance while processing applications for an
3 alternative repayment plan, and in some cases of hardship. During forbearance,
4 unpaid interest is added to the principal balance.

5 **Defendants’ Deceptive Marketing of Student Loan Debt Relief Services**

6 24. To lure consumers into purchasing their purported student loan debt
7 relief services, Defendants have made false promises to eliminate or reduce
8 consumers’ student loan balances or monthly payments through loan forgiveness
9 or other programs.

10 25. To induce consumers to purchase their purported student loan debt
11 relief services, Defendants have disseminated websites such as aidingstudents.com,
12 aidnest.com, and studora.com, including, but not necessarily limited to, the
13 attached exhibits A through F. Defendants’ websites have contained the following
14 statements, among others:

15 **Free Assessment**

16
17 Our experts will assess
18 your current student loan
19 program, and determine
20 which programs are
21 available in your
22 situation. We will help
23 you decide which
24 program can help you
25 achieve your goals. Call
26 us today!

15 **Service Guarantee**

16
17 We are committed to
18 helping customers get
19 lower rates and monthly
20 payments, and we will
21 make the process
22 seamless and
23 straightforward. You will
24 be satisfied with our
25 service and our
26 commitment to your
27 success. That’s our
28 guarantee.

15 **Success Rate**

16
17 Our 96% success rate is
18 one of the top ratings in
19 the industry. Our process
20 has been tested, and our
21 success rate proves that it
22 works. We can help you
23 reduce and simplify your
24 payments. Call us today!

26 Ex. A at 1 (aidingstudents.com, 2015).

1 **“We can help you reduce and simplify your payments. Contact one of**
2 **our specialists today for a free evaluation.”**

3
4 Ex. A at 2 (emphasis in original).

5 **““Aiding Student Relief has helped countless people reduce their student**
6 **debt. Their proven business plan has led to one of the highest success rates in the**
7 **industry.””**

8
9 Ex. A at 4.

10 **100% Customer Satisfaction**

11 We can help you reduce and simplify your payments. Call one of our specialists
12 today.

13 Ex. B at 1 (aidingstudents.com, 2016) (emphasis in original).

14 **Meet some of our members who have saved big on their student loan debt.**
15 **Helping You Save Big**

16 -----
17 **“Thanks to Aiding Student Relief, I am savings [sic] \$250 per month.”**
18 Michael Martin
19 Entrepreneur

20 Ex. B at 2 (emphasis in original).

21 **“We can help you reduce and simplify your payments”**

22 Ex. C at 1 (aidingstudents.com, 2018) (emphasis in original).

23 **Student Loan**
24 **Forgiveness**

25 **Loan Forgiveness**

26 **Student Loan**
27 **Forgiveness**

28 If you have Federal Student Loans, you’re in the right place to get those consolidated
Get your multiple Student Loans consolidated into one
Federal Loans going through some hardship, and that’s why
We understand if you’re

1 loans reduced, forgiven or forget about increasing with us you'll be able to
 2 completely discharged interests [sic] and pay make monthly payments
 3 through our student loan month to month at the based on your
 4 forgiveness programs. lowest possible cost. affordability, for as low as
 \$0.00, depending on your
 5 situation.

6 Ex. D at 2 (aidnest.com, 2016).

7 **Lower your loan payments**
 8 **by getting in touch with**
 9 **one of our professionals**

10 We design a customized repayment plan that will allow you to make
 11 payments based on your monthly income, family size, and spending.
 12 Get rid of the hassle of extensive paperwork and get the help you
 13 deserve.

14 What we can help you achieve [is] a lower payment or lower rate.

15 Ex. E at 6 (aidnest.com, 2018) (emphasis in original).

STUDENT LOAN FORGIVENESS	INCOME BASED PAYMENTS	LOAN CONSOLIDATION
We'll help you get your loans reduced, forgiven or discharged.	Make monthly payments based on your affordability.	Get multiple Federal Student Loans consolidated into one low monthly payment!

16 Ex. F at 1 (studora.com, 2018) (emphasis in original).

17 26. In some instances, consumers view the Defendants' online advertising
 18 and call Defendants' telemarketers for more information. Defendants also make
 19 outbound telemarketing calls and send texts to consumers to offer their services
 20 and convince student loan borrowers to sign up for Defendants' debt relief
 21 services.
 22
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1 27. In calls with consumers, Defendants’ telemarketers have told
2 consumers that Defendants can cause consumers’ student loan balances to be
3 reduced, or that consumers’ loan balances would be forgiven after making lower
4 monthly payments. Defendants’ telemarketers have told some consumers that over
5 half their loan balance would be forgiven. Moreover, Defendants’ telemarketers
6 have told some consumers that their loan payments could or would be rapidly
7 reduced to \$19 per month, or promptly forgiven.

8 28. Defendants have made other representations concerning loan
9 reduction or forgiveness to consumers in telemarketing their debt relief services.
10 For example, Defendants’ telemarketers have told one or more consumers that
11 “family size,” a metric for determining the amount borrowers pay each month
12 under IDR plans, includes “anyone you help out throughout the year[,] they don’t
13 have to live with you,” even claiming that helping with “gas money, three times
14 out of the year” is enough to include a person in “family size.” Further,
15 Defendants’ telemarketers have offered one or more consumers “basically a
16 guarantee to remain” in an IDR plan, and warned one or more consumers that
17 signing up for an IDR plan with a lender instead would result in a higher loan
18 payment.

19 29. Defendants have not been likely to achieve the lower monthly
20 payments or student loan forgiveness they have advertised, marketed, and
21 promoted to consumers. In many instances, Defendants have failed to obtain the
22 promised lower monthly payments or student loan forgiveness.

23 30. Defendants have charged consumers fees for purported debt relief
24 services before achieving lower monthly payments or student loan forgiveness,
25 and, in many instances, have failed to achieve those results at all on behalf of
26 consumers.

1 31. Defendants’ telemarketers have sought and obtained consumers’
2 payment information by phone or the Internet.

3 32. Defendants’ total advance fees typically have been in the range of
4 \$300-500. Defendants also have charged consumers recurring monthly fees for
5 purported debt relief services, typically charging \$19 per month.

6 **THE FTC ACT**

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

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

11 **VIOLATIONS OF THE FTC ACT**

12 **Count One**

13 **(Deceptive Student Loan Debt Relief Representations)**

14 35. In numerous instances in connection with the advertising, marketing,
15 promotion, offering for sale, or sale of student loan debt relief services, Defendants
16 have represented, directly or indirectly, expressly or by implication, that consumers
17 who purchase Defendants’ debt relief services will or likely will have their
18 monthly payments reduced or their loan balances forgiven in whole or in part.

19 36. In truth and in fact, in numerous instances in which Defendants have
20 made the representations set forth in Paragraph 35 of this Complaint, such
21 representations were false or not substantiated at the time Defendants made them.

22 37. Therefore, Defendants’ representations as set forth in Paragraph 35 of
23 this Complaint are false or misleading and constitute deceptive acts or practices in
24 violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

25 **THE TELEMARKETING SALES RULE**

26 38. Congress directed the FTC to prescribe rules prohibiting abusive and
27 deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15
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1 U.S.C. §§ 6101-6108, in 1994. The FTC adopted the original TSR in 1995,
2 extensively amended it in 2003, and amended certain sections thereafter. 16
3 C.F.R. Part 310.

4 39. Defendants are “seller[s]” or “telemarketer[s]” engaged in
5 “telemarketing” as defined by the TSR, 16 C.F.R. § 310.2(dd), (ff), and (gg). A
6 “seller” means any person who, in connection with a telemarketing transaction,
7 provides, offers to provide, or arranges for others to provide goods or services to a
8 customer in exchange for consideration. 16 C.F.R. § 310.2(dd). A “telemarketer”
9 means any person who, in connection with telemarketing, initiates or receives
10 telephone calls to or from a customer or donor. 16 C.F.R. § 310.2(ff).

11 “Telemarketing” means a plan, program, or campaign which is conducted to
12 induce the purchase of goods or services or a charitable contribution, by use of one
13 or more telephones and which involves more than one interstate telephone call. 16
14 C.F.R. § 310.2(gg).

15 40. Defendants are sellers or telemarketers of “debt relief services” as
16 defined by the TSR, 16 C.F.R. § 310.2(o). Under the TSR, a “debt relief service”
17 means any program or service represented, directly or by implication, to
18 renegotiate, settle, or in any way alter the terms of payment or other terms of the
19 debt between a person and one or more unsecured creditors or debt collectors,
20 including, but not limited to, a reduction in the balance, interest rate, or fees owed
21 by a person to an unsecured creditor or debt collector. 16 C.F.R. § 310.2(o).

22 41. The TSR prohibits sellers and telemarketers from requesting or
23 receiving payment of any fees or consideration for any debt relief service until and
24 unless:

- 25 a. The seller or telemarketer has renegotiated, settled, reduced, or
26 otherwise altered the terms of at least one debt pursuant to a
27
28

1 settlement agreement, debt management plan, or other such
2 valid contractual agreement executed by the customer; and

3 b. The customer has made at least one payment pursuant to that
4 settlement agreement, debt management plan, or other valid
5 contractual agreement between the customer and the creditor;
6 and

7 c. To the extent that debts enrolled in a service are renegotiated,
8 settled, reduced, or otherwise altered individually, the fee or
9 consideration either:

10 i. Bears the same proportional relationship to the total fee
11 for renegotiating, settling, reducing, or altering the terms
12 of the entire debt balance as the individual debt amount
13 bears to the entire debt amount. The individual debt
14 amount and the entire debt amount are those owed at the
15 time the debt was enrolled in the service; or

16 ii. Is a percentage of the amount saved as a result of the
17 renegotiation, settlement, reduction, or alteration. The
18 percentage charged cannot change from one individual
19 debt to another. The amount saved is the difference
20 between the amount owed at the time the debt was
21 enrolled in the service and the amount actually paid to
22 satisfy the debt. 16 C.F.R. § 310.4(a)(5)(i).

23 42. The TSR prohibits sellers and telemarketers from misrepresenting
24 directly or by implication, any material aspect of any debt relief service, including,
25 but not limited to, the amount of money or the percentage of the debt amount that a
26 customer may save by using the service. 16 C.F.R. § 310.3(a)(2)(x).

1 43. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C
2 § 6102(c), and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation
3 of the TSR constitutes an unfair or deceptive act or practice in or affecting
4 commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

5 **VIOLATIONS OF THE TELEMARKETING SALES RULE**

6 **Count Two**

7 **(Advance Fee for Debt Relief Services)**

8 44. In numerous instances, in connection with the telemarketing of
9 student loan debt relief services, Defendants have requested or received payment
10 of a fee or consideration for debt relief services before:

11 a. Defendants have renegotiated, settled, reduced, or otherwise
12 altered the terms of at least one debt pursuant to a settlement
13 agreement, debt management plan, or other such valid contractual
14 agreement executed by the customer; and

15 b. The customer has made at least one payment pursuant to that
16 settlement agreement, debt management plan, or other valid
17 contractual agreement between the customer and the creditor.

18 45. Defendants' acts or practices, as described in Paragraph 44 of this
19 Complaint, are abusive telemarketing acts or practices that violate Section
20 310.4(a)(5)(i) of the TSR, 16 C.F.R. § 310.4(a)(5)(i).

21 **Count Three**

22 **(Material Debt Relief Misrepresentations)**

23 46. In numerous instances, in connection with the telemarketing of
24 student loan debt relief services, Defendants have misrepresented, directly or
25 indirectly, expressly or by implication, material aspects of their debt relief services,
26 including, but not limited to that consumers who purchase Defendants' debt relief
27 services will or likely will have their monthly payments reduced or their loan
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1 balances forgiven in whole or in part.

2 47. Defendants' acts and practices, as described in Paragraph 46 of this
3 Complaint, are deceptive telemarketing acts or practices that violate Section
4 310.3(a)(2)(x) of the TSR, 16 C.F.R. § 310.3(a)(2)(x).

5 **Count Four**

6 **(Disgorgement of Ill-Gotten Gains of Relief Defendant)**

7 48. Relief Defendant Noel has received, directly or indirectly, funds or
8 other assets from Defendants that are traceable to funds obtained from Defendants'
9 customers through the unlawful acts or practices described herein.

10 49. Relief Defendant Noel has no legitimate claim to Defendants'
11 customers' funds or other assets and will be unjustly enriched if it is not required to
12 disgorge the assets or the value of benefits received as a result of Defendants'
13 unlawful acts or practices.

14 50. By reason of the foregoing, Relief Defendant Noel holds funds and
15 assets in constructive trust for the benefit of Defendants' customers.

16 **CONSUMER INJURY**

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

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

23 52. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court
24 to grant injunctive and such other relief as the Court may deem appropriate to halt
25 and redress violations of any provision of law enforced by the FTC. The Court, in
26 the exercise of its equitable jurisdiction, may award ancillary relief, including
27 rescission or reformation of contracts, restitution, the refund of monies paid, and
28

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

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

7 **PRAYER FOR RELIEF**

8 Wherefore, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act, 15
9 U.S.C. § 53(b), Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), and
10 the Court's own equitable powers, requests that the Court:

- 11 A. Award Plaintiff such preliminary injunctive and ancillary relief as
12 may be necessary to avert the likelihood of consumer injury during
13 the pendency of this action and to preserve the possibility of effective
14 final relief, including but not limited to, temporary and preliminary
15 injunctions, orders freezing assets, immediate access to business
16 premises, appointment of a receiver, and expedited discovery;
- 17 B. Enter a permanent injunction to prevent future violations of the FTC
18 Act and the TSR;
- 19 C. Award such relief as the Court finds necessary to redress injury to
20 consumers resulting from Defendants' violations of the FTC Act and
21 the TSR, including but not limited to, rescission or reformation of
22 contracts, restitution, the refund of monies paid, and the disgorgement
23 of ill-gotten monies;
- 24 D. Enter an order requiring Relief Defendant to disgorge all funds and
25 assets, or the value of the benefit it received from the funds and assets,
26 which are traceable to funds obtained from Defendants' customers
27 through the unlawful acts or practices described herein; and
28

1 E. Award Plaintiff the costs of bringing this action, as well as such other
2 and additional relief as the Court may determine to be just and proper.
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4 Dated: April 3, 2019
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6 Respectfully submitted,

7 ALDEN F. ABBOTT
8 General Counsel

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10 _____
11 Joshua S. Millard
12 Brian M. Welke
13 Barbara Chun (Local Counsel)
14 Attorneys for Plaintiff
15 FEDERAL TRADE COMMISSION
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