

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
BOSTON DIVISION**

**ADAM ROVINELLI, JENNIFER CARLOS,
and JUAN VASQUEZ, Individually and on
Behalf of All Other Persons Similarly Situated,**

Plaintiffs,

v.

**TRANS WORLD ENTERTAINMENT
CORPORATION and SYNAPSE GROUP, INC.**

Defendants.

Case No. _____

**CLASS ACTION
COMPLAINT**

Jury Trial Demanded

COMPLAINT

Plaintiffs, Adam Rovinelli (“Rovinelli”), Jennifer Carlos (“Carlos”), and Juan Vasquez (“Vasquez”) (collectively “Plaintiffs”), by their attorneys, allege the following on behalf of themselves and all others similarly situated (the “Subclasses” (defined below)), on information and belief based, *inter alia*, upon the investigation of their counsel, except as to those allegations which pertain to the named Plaintiffs and their attorneys, which are alleged on personal knowledge. Named as Defendants are Trans World Entertainment Corporation (“Trans World”) and Synapse Group, Inc. (“Synapse,” and together with Trans World, “Defendants”).

NATURE OF THE ACTION

Defendants used highly aggressive sales tactics to charge thousands of consumers for, and profit millions of dollars from, bogus “loyalty memberships” and magazine subscriptions, which consumers did not consent to purchase. This class action complaint seeks to remedy Defendants’ design and use of deceptive and misleading “Negative Option Marketing” such as “Free-To-Pay” conversions which lure consumers, such as Plaintiffs and the Subclasses’

members, with free offers, causing consumers to unknowingly and automatically become enrolled in unauthorized monthly charges for worthless subscriptions and memberships, whereby Trans World and its third-party marketing partners, including Synapse, charged consumers' credit cards, debit cards and/or bank accounts without consumers' authorization, knowledge or consent.

Defendants' lucrative scheme and predatory business model utilizes a host of highly misleading, confusing, unlawful, deceptive, and unfair acts and practices that deceive consumers. These acts and practices include, but are not limited to, the following: (1) enrolling and billing consumers for memberships and subscriptions without their authorization, knowledge or consent; (2) failing to provide consumers, such as Plaintiffs and the Subclasses' members, with all the material terms of the "Free-To-Pay" conversion prior to obtaining consumers' signatures; (3) failing to disclose to consumers, such as Plaintiffs and the Subclasses' members, all material terms of the "Free-To-Pay" conversion in a clear and conspicuous manner; (4) failing to clearly and conspicuously disclose to consumers, such as Plaintiffs and the Subclasses' members, all material terms of the transactions before obtaining consumers' billing information; (5) failing to obtain the consent of consumers, such as Plaintiffs and the Subclasses' members, before charging consumers' credit cards, debit cards and/or bank accounts; (6) failing to obtain the consent and authorization of consumers, such as Plaintiffs and the Subclasses' members, before transmitting and sharing consumers' personal and confidential billing information with Defendants' marketing partners; (7) failing to clearly and conspicuously disclose to a consumer, prior to the consummation of a transaction, the exact nature and extent of Defendants' auto-renewal, refund, return, or cancellation policies; (8) misrepresenting the nature and terms of Defendants' auto-renewal, refund, return, or cancellation policy; (9) failing to provide a simple

mechanism for consumers, such as Plaintiffs and the Subclasses' members, to stop recurring charges from being placed on the their credit cards, debit cards and/or bank accounts; (10) failing to clearly and conspicuously disclose to consumers, such as Plaintiffs and the Subclasses' members, that Defendants are passing consumers' personal, financial and billing information to Defendants' third-party marketing partners; and (11) failing to obtain the consent of consumers, such as Plaintiffs and the Subclasses' members, before Defendants' charge consumers' credit cards, debit cards and/or bank accounts.

PARTIES

1. Adam Rovinelli is, and at all relevant times was, a resident of 25 7 Springs Lane, Apartment 306, Burlington, Massachusetts 01803.

2. Jennifer Carlos is, and at all relevant times was, a resident of 79 Maplehurst Avenue, East Longmeadow, Massachusetts 01028.

3. Juan Vasquez is, and at all relevant times was, a resident of 123 Church Street, Enfield, Connecticut 06082.

4. Trans World is a New York corporation and has a principal place of business at 38 Corporate Circle, Albany, New York 12203

5. Trans World's primary business segment is "For Your Entertainment" ("FYE"), one of the largest specialty retailers of entertainment, video and music related products, operating approximately 270 stores in the United States, including 6 in Massachusetts, and the website www.fye.com.

6. Synapse is a subsidiary of Meredith Corporation, an Iowa corporation, and has a principal place of business at 225 High Ridge Road, Stamford, Connecticut 06905.

7. Synapse is the largest magazine marketer in the United States, targeting customers in non-traditional marketing channels such as retail stores, including FYE, airline frequent flyer programs, catalog companies, and credit card issuers.

JURISDICTION AND VENUE

8. This Court has jurisdiction over the subject matter of this action pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(a). Plaintiffs further allege upon information and belief that the number of members of the Subclasses is at least 100 and that the aggregate amount in controversy for Plaintiffs and the Subclasses' members exceeds \$5 million.

9. This Court also has jurisdiction under 28 U.S.C. § 1331, because this action is brought pursuant to the Electronic Funds Transfer Act ("EFTA"), 15 U.S.C. § 1693 *et seq.*

10. Venue and personal jurisdiction in this District are proper pursuant to 28 U.S.C. § 1391(b) because Plaintiff Rovinelli resides within this District and Defendants do or transact business within this District.

DEFENDANTS' DISCLOSURE REQUIREMENTS

FREE-TO-PAY CONVERSIONS

11. Under the Federal Trade Commission's ("FTC") "Guide Concerning the Use of the Word 'Free' and Similar Representations," when a business makes a "Free" or similar offer, "all of the terms and conditions upon which one can receive and retain the 'Free' item should be set forth clearly and conspicuously at the outset of the offer so as to leave no reasonable probability that the terms of the offer might be misunderstood." 16 C.F.R. Part 251.

12. The Attorney General of Massachusetts, along with numerous other states' Attorney Generals, stressed to the FTC the following: "Free to pay conversion marketing uses a form of trickery, and sleight of hand as it were, to reap millions from consumers in a manner flatly

contrary to the ordinary rules of consumer transactions. There is an inherent deception built into these plans by the marketers ...” See Vermont, *et.al.*’s comments to FTC’s “Prenotification Negative Option Rule” (Oct. 13, 2009) at p. 3 (hereinafter “AGs’ Comment Letter”). A copy of the AGs’ Comment Letter is annexed hereto as Exhibit A. The AGs’ Comment Letter highlights the “significant problems inherent in negative option trial conversions ...” The problems include, but are not limited to, the following:

- a. The misleading character of negative options advertised as involving “free” or “trial” offers. The long-term impression created by this type of terminology is that consumers have *no obligation* to do anything, not that their silence after acceptance of the offer will open them to recurrent charges of unlimited duration;
- b. Consumers’ lack of awareness as to the existence of ongoing periodic charges to their credit cards, debit cards and/or bank accounts, in connection with trial conversions; and
- c. The piling up of trial conversion charges over long periods of time, amounting to substantial amounts of money, even where consumers make little or no use of the goods or services offered.

Id. at p. 4 (emphasis in original).

13. Guidance from the Massachusetts Attorney General and other Attorneys General indicate that in a “Free-To-Pay” conversion, informed consent cannot be given at the outset of a trial period “because the trial period is most often touted without obligation or risk free and because it can and does lull customers into a state of forgetfulness; only at the end of the trial does the relationship between consumer and business transform into one in which the consumer is actually being charged.” *Id.* at p. 7

14. The AGs' Comment Letter further states that "[t]he complaints we receive underscore the inherently deceptive nature of trial conversions, render retailers' disclosures meaningless and confuse and dupe even the most sophisticated consumer." *Id.* at p. 5

15. Guidance from the FTC indicates that the "material terms" in "Free-To-Pay" conversions include, but are not limited to, the following:

- a. the fact that the consumer will be charged a specified amount each payment period (*e.g.*, each month) until he or she cancels;
- b. the fact that the amount of the charge may change, if true, and the amount to which it will change, if known;
- c. the date on or about which the consumer will be charged each payment period;
- d. how the consumer may cancel, including necessary contact information, such as an e-mail address or phone number;
- e. the fact that there is a no-refund policy, if true;
- f. the minimum purchase obligation, if any;
- g. the length of the free trial period; and
- h. the date by, or the time period within, which a cancellation request must be received to avoid being charged at all.

See

https://www.ftc.gov/system/files/documents/federal_register_notices/2014/07/140725negativeoptionfrnl.pdf (last visited November 7, 2018).

16. Senator Charles D. Rockefeller IV, Chairman of the U.S. Senate Committee on Commerce, Science, and Transportation (the "Senate Committee"), launched an investigation into e-commerce marketing practices in May, 2009 after thousands of online consumers complained to state Attorneys General, the Better Business Bureau, and other consumer advocates, of misleading and deceptive enrollment in various membership plans. These consumers complained that they did not consent to enrolling in membership plans and only

learned that they were enrolled in membership plans after eventually seeing unauthorized charges on their credit card or checking account statements. *See* <https://www.gpo.gov/fdsys/pkg/CHRG-111shrg54917/pdf/CHRG-111shrg54917.pdf> (last visited November 5, 2018).

17. The Senate Committee found abundant evidence that these aggressive sales tactics use a “free trial” period to automatically enroll members, after which they periodically charged consumers until consumers affirmatively canceled the memberships. These marketing schemes took advantage of consumers’ expectations that they would have an opportunity to accept or reject the membership at the end of the “free trial” period. *Id.*

18. As a result of the investigation and findings, it was determined that “Free-To-Pay” conversions require a heightened level of disclosure to avoid misleading the reasonable consumer. *Id.*

19. A violation of the Federal Trade Commission Act, the Federal Consumer Credit Protection Act or other Federal consumer protection statutes within the purview of M.G.L. c. 93A, s. 2 is considered a *per se* violation of M.G.L. c.93A, s. 2.

20. Under Massachusetts law, it is unlawful and an unfair and deceptive trade practice for a seller: “(a) To fail to clearly and conspicuously¹ disclose to a buyer, prior to the consummation of a transaction, the exact nature and extent of the seller’s refund, return, or cancellation policy (emphasis added); (b) To misrepresent the nature and terms of the seller’s

¹ **“Clear and Conspicuous Disclosure.** Without limiting any other provisions of law, disclosures required by these regulations shall be of such size or color contrast and so placed as to be readily noticeable to purchasers or prospective purchasers reading advertising, sales promotional literature, or invoices containing same, or reading any representation as to content on the container in which the product is packed, or inspecting a product before installation or with a minimum of disassembly after installation. A term is conspicuous when it is so written that a person against whom it is to operate ought to have noticed it. Language in the body of a form is ‘conspicuous’ if it is in larger or contrasting type or color.”

refund, return, or cancellation policy; and (c) To fail to perform any promises made to a buyer in connection with the refund, return, or cancellation privileges.” 940 CMR 3:13(4) (a)-(c) (emphasis added).²

21. It is a violation of the EFTA and Regulation E when the seller debits credit cards, debit cards and/or bank accounts on a recurring basis but (1) fails to obtain consumers’ authorization for pre-authorized electronic transfers or (2) fails to provide consumers a copy of a written authorization signed, or similarly authenticated, for preauthorized electronic fund transfers.

22. Under the Connecticut Unfair Trade Practices Act (“CUTPA”) it is an unfair or deceptive practice to: “Advertise any merchandise or service as free by the use of the word ‘free’ or any other terms of similar import when the merchandise or service is not, in fact, free (see subsection (d) of this section). Failure to disclose any and all terms, conditions and obligations required of the consumer shall be a violation of sections 42-110b-1 to 42-110b-31, inclusive, of the Regulations of Connecticut State Agencies.” Conn. Gen. Stat. § 42-110b.

PLAINTIFFS’ SPECIFIC STATEMENTS OF FACTS

I. ROVINELLI

23. In or around November 2017, Rovinelli made a purchase at an FYE store in Salem, New Hampshire, using his personal credit card (“Rovinelli’s credit card”). At the time of his purchase, an FYE sales representative verbally solicited Rovinelli for a “free” “VIP membership rewards card” (“VIP Backstage Pass”) along with a “free” magazine offer (collectively referred to herein as “free offers” or “free trials”).

² 940 CMR 3.00 (General Regulations) and 940 CMR 6.00 (“Retail Advertising”) are promulgated pursuant to M.G.L. c. 93A, s. 2(c) for purposes of determining whether conduct, terminology or representations involve unfair methods of competition or unfair or deceptive acts or practices, in violation of M.G.L. c. 93A, s. 2(a).

24. Prior to obtaining Rovinelli's consent to the free trials, Defendants failed to clearly and conspicuously disclose the material terms, including but not limited to: the amounts that would be charged to Rovinelli's credit card, the dates of those future charges, the membership and subscription auto-renewal features, the cancellation policies, the refund policies, and that the magazine subscription was with, and would be charged by, Trans World's marketing partner, Synapse.

25. Rovinelli accepted the "free" offers but was not informed that the offers were actually free-to-pay conversions for which his credit card would be automatically billed and the paid subscriptions/membership would auto-renew until he affirmatively and separately cancelled each subscription/membership. Trans World's VIP Backstage Pass membership and Synapse's magazine subscriptions were unwanted, worthless and not authorized by Rovinelli or the Subclasses' members.

26. If Defendants had adequately disclosed the material terms of the magazine subscriptions and VIP Backstage Pass membership, Rovinelli would not have accepted the "free" offers.

27. On or about February 25, 2018, Rovinelli's credit card was charged a total of \$42.00 for an "online, mail or telephone transaction" for magazines by Synapse without Rovinelli's authorization, knowledge or consent.

28. Likewise, on or about March 1, 2018, Rovinelli's credit card was charged \$11.99 for an "in-person transaction" for "FYE Backstage Pass" by Trans World without Rovinelli's authorization, knowledge or consent.

29. Sometime between November 2017 and February 25, 2017, Trans World transmitted Rovinelli's personal and confidential financial information to its marketing partner, Synapse, without Rovinelli's knowledge, authorization or consent.

30. Trans World derived a financial gain from its marketing partner, Synapse, charging Rovinelli for unwanted magazine subscriptions, but Rovinelli derived no benefit from the subscriptions.

31. In or around March 2018, Rovinelli contacted FYE to complain about the unauthorized membership and magazine charges. Trans World later refunded Rovinelli \$11.99 for one month of VIP Backstage Pass membership fees, but Defendants failed to refund Rovinelli interest or issue any refund for any of the unauthorized magazine charges.

II. CARLOS

32. On or about November 10, 2017, Carlos made a purchase at an FYE store in Holyoke, Massachusetts using her personal debit card ("Carlos' debit card"). At the time of her purchase, an FYE sales representative verbally solicited Carlos for the "free" offers.

33. Prior to obtaining Carlos' consent to the free trials, Defendants failed to clearly and conspicuously disclose the material terms, including but not limited to: the amounts that would be charged to Carlos' debit card, the dates of those future charges, the membership and subscription auto-renewal features, the cancellation policies, the refund policies, and that the magazine subscriptions included in the free trials would be charged by Synapse.

34. Carlos accepted the "free" offers but was not informed that the offers were actually free-to-pay conversions for which her debit card would be automatically billed and that the paid subscriptions and membership would automatically renew until she affirmatively, and separately, cancelled both the subscriptions and the VIP Backstage Pass membership.

35. The magazine subscriptions were unwanted, worthless and not authorized by Carlos or the Subclasses' members. On or about January 16, 2018, Synapse, without Carlos' authorization, knowledge or consent, charged Carlos' debit card \$14.00 for magazine subscriptions. If Defendants had adequately disclosed the material terms of the magazine subscriptions and membership, Carlos would not have accepted the "free" offers.

36. Trans World derived a financial gain from its marketing partner, Synapse, charging Carlos for unwanted magazine subscriptions, but Carlos derived no benefit from the subscriptions. Trans World transmitted Carlos' personal and confidential financial information to its marketing partner, Synapse, without Carlos' knowledge, authorization or consent.

37. In or around January 2018, Carlos cancelled the magazine subscriptions. Despite Carlos' cancellation, and that fact that she was billed without her knowledge, authorization or consent, Defendants failed to issue any refund to Carlos for the unauthorized magazine charges.

III. VASQUEZ

38. In or around September 2016, Vasquez made a purchase at an FYE store in Massachusetts using his personal debit card ("Vasquez's debit card"). Without his authorization, knowledge or consent, Trans World enrolled him in its VIP Backstage Pass membership and began charging Vasquez's debit card \$11.99 per month around October 2016.

39. Trans World's VIP Backstage Pass membership is worthless, useless, and unwanted by Vasquez and the Subclasses' members.

40. In or around mid-2017, Vasquez noticed unauthorized \$11.99 per month charges for "FYE Backstage Pass" (*i.e.* VIP Backstage Pass) membership to his debit card. In total, Trans World charged Vasquez a total of approximately \$167.00 for the membership without

Vasquez's knowledge, authorization or consent. Vasquez paid approximately \$167.00 but derived no benefit from Trans World's VIP Backstage Pass membership.

41. In or around November 2017, Vasquez called FYE and complained about the unauthorized membership charges and demanded proof that he affirmatively enrolled. Membership Support sent him a letter dated December 7, 2017, wrongly alleging that he had given "a positive response to (their) direct mailing offer" and cancelled his membership. A copy of the letter is annexed hereto as Exhibit B.

42. To date, Vasquez has not received a refund for any of Trans World's unauthorized membership charges.

**DEFENDANTS' LUCRATIVE
"LOYALTY PROGRAM" SCAM TO INCREASE PROFITS**

43. Due to the long-term decline of its brick-and-mortar retail business, in or around 2005, Trans World began exploiting its customer base to increase profits. According to Trans World's 2005 Annual Report, Trans World "launched Backstage Pass, a customer loyalty program aimed at building greater share-of-wallet per customer" boasting "(o)ur unique, customer-driven shopping experience gives us another advantage – and opportunity" and "we have access to over 1 million members." *See* Trans World's 2005 Annual Report, available at http://media.corporate-ir.net/media_files/irol/78/78154/reports/TWEC_2005_AR.pdf (last visited on October 31, 2018).

44. In 2006, Trans World showed further concern over the declining trend in retail sales and the company's need to generate new revenue; then-CEO R.J. Higgins ("Higgins"), in the 2006 Annual Report, stressed that "[t]he key once again is minimizing the impact of the industry-wide decline in music sales [by]...maximizing the growth in our other product lines..."

promising shareholders that the company would “broaden the reach of Backstage Pass, our customer loyalty program, by increasing membership and targeting these core customers – via email and at the point of sale....” In fact, targeting customers “at the point of sale” for the “Backstage Pass” loyalty program was a “Key 07’ initiative” for Trans World.³

45. By 2007, Defendant Trans World’s Backstage Pass loyalty program was a measured success and the company was charging annual membership fees for its Backstage Pass loyalty program, and, according to Higgins, these “Backstage Pass customers...continue to account for an ever increasing share of our total sales” and the company was “poised for a return to profitability.” *See* Trans World’s 2007 Annual Report available at http://library.corporate-ir.net/library/78/781/78154/items/297649/TWEC_2007_Annual_Full.pdf (last visited on October 31, 2018).

46. From approximately 2007 through some time in 2012, Trans World charged about \$25/year for its loyalty card. *See* Trans World Annual Reports available at <http://phx.corporate-ir.net/phoenix.zhtml?c=78154&p=irol-reportsannual> (last visited on October 31, 2018). At some point in 2012, Trans World began charging its customers \$11.99/month for its loyalty card. From 2012 through 2016, according to its 2016 Annual Report, Trans World earned over \$23 million in revenue from “third party commission and management fees” from the FYE segment, including kickbacks from magazine subscriptions, which Trans World deceptively solicited to its customers as being “free” in conjunction with its deceptive “free” VIP Backstage Pass membership offers. Trans World’s 2016 Annual Report available at http://media.corporate-ir.net/media_files/IROL/78/78154/88367_web05232017161551.pdf (last visited on October 31, 2018).

³ Trans World’s 2006 Annual Report available at http://media.corporate-ir.net/media_files/irol/78/78154/reports/TWEC_2006_AR.pdf (last visited on October 31, 2018).

47. Trans World continued to reap increasing profits from its aggressive membership and subscription scam throughout its FYE segment in order to offset its retail demise. Although Trans World's retail operations continued to decline – during fiscal 2016 and 2017 Trans World closed 54 retail stores and anticipated closing more stores – its 2017 Annual Report showed \$5.6 million in revenue “comprised of third-party commission income and management fees related to the FYE segment.” Trans World 2017 Annual Report available at http://www.annualreports.com/HostedData/AnnualReports/PDF/NASDAQ_TWMC_2017.pdf (last visited on October 31, 2018). This represented an increase of nearly \$1 million over the previous year – amounting to a staggering \$29 million in third-party marketing revenue in just 6 years. See Trans World Annual Reports available at <http://phx.corporate-ir.net/phoenix.zhtml?c=78154&p=irol-reportsannual> (last visited on October 31, 2018). This increase is consistent with Trans World's marketing partner, Synapse's, business plan of “helping its marketing partners increase profits through magazine subscriptions...”⁴

48. Defendant Trans World's “Backstage Pass” loyalty card scam, the gateway to its multi-million dollar third-party commission profit scheme, was and continues to be extremely lucrative, generating \$50 million in loyalty card fees over the last three years alone. Trans World's 2017 Annual Report reflects \$17.9 million, \$16.3 million, and \$15.6 million in loyalty card fee revenue in fiscal 2017, 2016 and 2015 respectively, with net revenue (after refunds), of \$7 million, \$6.5 million and \$6.3 million, respectively. See Trans World 2017 Annual Report, *supra*.

EMPLOYEES REVEAL DETAILS OF DEFENDANTS' SCAM

⁴ See <https://synapseretailventures.wordpress.com/> (last visited on October 31, 2018).

49. Defendants' employees have filed many online reviews detailing Defendants' unfair and deceptive marketing scam, which came from the highest levels, in which employees were ordered to sell customers "drivers" or "attachments" (memberships and subscriptions) designed to richly profit Defendants under the guise of the offers being "free." Some examples are listed below:

There is an insane amount of pressure to sell the loyalty card, magazine subscriptions, and to get people's e-mails...The charge is automatically billed to the credit card used to sign up after 30 days if the customer doesn't call to cancel. This 30-day free trial is what you push. The goal is 1 out of every 10 credit card sign-ups, but it's more like 1 out of every 5 for the ever-climbing "company average." ...The company sends about 10 e-mails a day to your store, begging/threatening the managers to get their numbers up. You will be fired if you go two days in a row without signing someone up... people do not want magazine subscriptions. It is 2017... I know CDs and DVDs don't sell like they used to, but there has to be a better way than scamming people...Your desperation shows in the 10 threatening e-mails you send to the managers every day.

https://www.glassdoor.com/Reviews/f-y-e-Reviews-E240923_P4.htm (last visited on September 20, 2018).

the focus on getting company 'drivers' is too intense. Rather than driving the sales of tangible physical products that customers come to the store as a destination for, the company pushes the focus on intangible, company subscription products (i.e. paid membership). Sales can be excellent for the day in terms of dollar amount but it means nothing to the corporate superiors if the driver percentage is low. Driving these intangible products, as heard by regular customers, hurts the business. The focus needs to be on the actual product of the store, the media and the merchandise but it just isn't. Instead the push is on subscription.

https://www.glassdoor.com/Reviews/f-y-e-Reviews-E240923_P8.htm (last visited on September 20, 2018).

Upper management literally expects you to deceive people into getting a discount card and magazines that begins as a free trial but will end up charging them. If you do not meet company's set expectations, you're often belittled and put on a daily conference call or expected to send multiple emails to your district and regional managers each day to report how many sign ups you have so far.

https://www.glassdoor.com/Reviews/f-y-e-Reviews-E240923_P4.htm (last visited on September 20, 2018).

Company hard focused on deceptive sales. This is clearly where DVD, CD, and magazines salesmen came to die. Employees are held over the coals to sell memberships. Employees jobs are held hostage. If you dont make membership and magazine sales goals you face demotion and termination. **Advice to Management** Dont be dishonest when hiring and tell prospective employees that they arent a part of a money scam.

https://www.glassdoor.com/Reviews/f-y-e-Reviews-E240923_P3.htm (last visited on September 20, 2018) (emphasis in original).

Corporate focus is off of the bread and butter of the company. Having to sell magazine subscriptions and discount cards which are both automatic debit scams.

https://www.glassdoor.com/Reviews/f-y-e-Reviews-E240923_P4.htm (last visited on September 20, 2018).

the drivers are so stressful it makes you feel like less of a person. the company wants you to manipulate customers into signing up for things that will charge their credit card, you get screamed at for not scamming enough people and no matter how many you get to sign up it is never good enough.

<https://www.glassdoor.com/Reviews/Employee-Review-f-y-e-RVW2392658.htm> (last visited on September 20, 2018).

unethical. scams customers who don't know any better...heavily pressured to scam customers into signing up for

magazine and rewards card subscriptions that are 1. free at first then charge your card later 2. are very difficult to cancel.

<https://www.glassdoor.com/Reviews/Employee-Review-f-y-e-RVW13575923.htm> (last visited on September 20, 2018) (emphasis in original).

The worst part of the job is what they called 'drivers' the discount card that if not canceled charges the customer \$12 a month, and the magazines that could charge over \$125 if not cancelled. Every credit card transaction we were supposed to pitch both. The pitch that they wanted you to pitch is very misleading. Act like both are totally free until the transaction is over. Then explain that they would have to cancel. I had so many customers get very understandably angry because they felt misled. Pay is also way under industry standards. If you enjoy high stress and want to lie to people this is the job for you.

<https://www.glassdoor.com/Reviews/f-y-e-Reviews-E240923.htm> (last visited on September 20, 2018).

discount card & magazine pitch was a scam and if you didn't meet the 'expectations', you face termination.

https://www.glassdoor.com/Reviews/f-y-e-Reviews-E240923_P2.htm (last visited on September 20, 2018).

I have to promote and sell the cards that are supposed to save people money, yet it charges them. And the dreaded magazines... I have worked at the store for over a year and a half, and I'm happy to finally be quitting.

https://www.glassdoor.com/Reviews/f-y-e-Reviews-E240923_P4.htm (last visited on September 20, 2018).

Having to hard sell loyalty cards, magazine subscriptions, and warranties to every single customer. When you don't make your personal and store goals on these items you get written up and threatened with termination... Let employees just sell the product instead of spending all their time pitching 'drivers' which are really rip offs for the customers. Once someone gets burned, they won't come back, and that's why f.y.e. is struggling right now.

https://www.glassdoor.com/Reviews/f-y-e-Reviews-E240923_P4.htm (last visited on September 20, 2018).

unrealistic sales goals, shady sales practices. Pay is horrible. Management encourages you to lie to customers in order to close sales on discount cards and magazine subscriptions.

https://www.glassdoor.com/Reviews/f-y-e-Reviews-E240923_P6.htm (last visited on September 20, 2018).

required to 'sell' a certain amount of store cards - store cards which basically cheat you out of money! written up if don't meet a sales quota...**Advice to Management** don't require your employees to screw your customers.

https://www.glassdoor.com/Reviews/f-y-e-Reviews-E240923_P6.htm (last visited on September 20, 2018) (emphasis in original).

As a former employee of F. Y. E. (For Your Entertainment), a Entertainment store that sells DVD's, CD's, and other sorts of entertainment to customers is a part of the Company Trans World Entertainment. I am coming on this report that I have certified knowledge that a District Manager for this company has abused his power and has no remorse for firing employees for not lying to customers.. This scum has blatantly went to stores, has told managers that they must tell customers lies and deceptions in order to sell products so he can receive a bonus for his so called 'Hard Work'. For example, the Back Stage Passes and the Magazines. This guy wants all employees to combine the two offers into one, when they are not one offer. If you buy a back stage pass, he wants associates to tell customers because they bought a backstage pass, they get two free months of magazines for free. But the associate has to take your information twice for both offers. And even if you do decide to take this deal. There have been a number of complaints about customers calling and stopping the magazines from coming but are still being charged for the service. And when they try to get ahold of the company, they are either put on extensive holds exceeding more than 15 minutes or they are hung up on.... as a former employee, I deem it necessary to to give the people a little behind the scenes look on how this company and District Manager do business, so they can receive some sort of profit and/or Bonus... This District Managers name is Sean Crowell.

<https://usacomplaints.com/shops-trade/527088-fye-trans-world-entertainment-complaints-reviews.html> (last visited on September 20, 2018).

I have been working at Synapse Group full-time...Morale is low over the past year... It seems as if everyone is about to jump ship. Many people do not think Time Inc or Synapse will be able to find a way to stop the diminishing revenue from poor magazine sales...

<https://www.glassdoor.com/Reviews/Employee-Review-Synapse-Group-RVW6619295.htm> (last visited on September 20, 2018).⁵

CONSUMER COMPLAINTS

50. Despite having received hundreds if not thousands of complaints from consumers over the past decade, Defendants have continued their highly lucrative unfair and deceptive membership and subscription scams. The Internet contains hundreds of consistent consumer complaints about Defendants' subscription and membership scam. For example:

I was very displeased with my encounter with f.y.e. when signing up for the membership. I was told it was free then I started to notice I was getting billed and they told me it was taken out monthly. I called to ask about this and was told when I wanted to cancel I would get a refund which I didn't get because they 'can't do that'.

https://www.consumeraffairs.com/home_electronics/fye.html (last visited September 20, 2018).

I got the backstage pass because my cashier insisted I get it but never told me it charges every so often... I called to cancel it...because I saw that it started charging me. They WOULD NOT let me cancel my account... She then basically told me that they aren't letting people canceling their membership because they are 'on a tight budget'.... So def do not get the membership unless you want to be scammed.

https://www.consumeraffairs.com/home_electronics/fye.html (last visited September 20, 2018).

⁵ Additional employee complaints are included in Appendix A annexed hereto.

I was totally scammed by f.y.e... At that time I never picked out or purchased any magazines... just the CD I bought...When I went online to check my credit card account the 3rd of July I find a charge for \$83.50 for magazines. I immediately called my credit card company and disputed the charges... after realizing that I had not used my card for any purchases with automatic billing I traced it back to FYE. Upon calling them they put me through 3 different people who told me that it would be investigated and my money refunded. I still don't have my money back as of today...called FYE and was given another number to call for magazine information...Guess what. NO RECORD of them ever billing my credit card. At this point I am furious and will not rest till I get my money back.

https://www.consumeraffairs.com/home_electronics/fye.html (last visited September 20, 2018).

...They tell you that signing up for a backstage pass is free and doesn't cost money. Then they automatically sign you up for a magazine subscription that you have to cancel separately from the backstage pass (which they never mentioned). The employee in the store flat out lied to me about this and when I contacted customer service they said they had nothing to do with the magazines. They hustled me out of money with their little scam.

https://www.consumeraffairs.com/home_electronics/fye.html (last visited September 20, 2018).

I walked into my local FYE and was asked if I wanted to sign up for a free trial. I was told it would grant me 10% off on my purchases in the future if I created an account, so I did. What they didn't tell me was that they charge you at random for the FYE VIP membership even if you never asked for it. I created my account with FYE over 2 months ago and I randomly got a \$11.99 Fee for this 'membership' that I never signed up for...I'm confused why these FYE scammers are allowed to do business. Why are people allowed to backstab their customers by ** them into "hey if you create an account with us, you'll get 10% off all purchases in the future!" when the truth is, the moment you say "Okay!" they add you onto the trial membership and charge your card you use on a monthly basis without your consent, this is fraud and should be vetted out thoroughly and all money stolen from customers should be returned. For your own privacy and money, don't do business with these ** artists.

https://www.consumeraffairs.com/home_electronics/fye.html (last visited September 20, 2018).

This is the first bad review I have ever written in my life...Fye backstage pass took advantage of a girl like me. Checking out at fye I thought I was getting a rewards card. The clerk never told me it was a free trial and I would actually get charged!... Never told any info about how my card was being sent out to these two companies and the next few days I have these weird charges for these magazines and stuff! Getting this was super easy getting rid of this and I the charges was really hard.... This is the most slimy deceiving thing! Young people mostly shop at fye and the goal for this is tricking people into thinking it's a rewards card rushing them to sign and then taking their money and then when you call they will do anything to keep the money and then confuse you. Fye I swear to goodness this is the most greedy thing ever, you never told me this was going to happen! I thought it was a rewards card! Fye shame on you! I am so young and poor and I can't afford to put up with this! Shame on you. Shame on whoever created this because they know it's a trick. They know this is what is going to happen to young kids. Shame.

https://www.consumeraffairs.com/home_electronics/fye.html (last visited September 20, 2018).

When I was checking out the clerk told me about the Backstage Pass membership and that it was free. Imagine my surprise when I check my bank account today and see they have charged me 11.99. Which means they kept my credit card info without informing me. As I signed no agreement for a month to month plan I will be disputing the charge. Shameful business practice.

https://www.consumeraffairs.com/home_electronics/fye.html (last visited September 20, 2018).

I wish I could give them 0 stars honestly...The cashier rushed through my purchase and asks "do you want to sign up for this discount card, it will save you 10%" and I thought sure, why not - this is an expensive item to begin with. She did NOT explain it was a "free 30 day trial" to their ridiculous membership. She did NOT mention I would later be charged 11.99\$ if I didn't log on and cancel my "subscription" before the 30 days were up. ... I just looked at my monthly bank statement today and saw that 11,99\$ fee and was so confused by it. I literally had to Google what "FYE BACKSTAGE PASS" was because I was positive I didn't make that charge. When I got on the phone with the customer service rep he took at least 5 minutes rambling on about keeping the membership and reducing it to like 4.95\$, saying I can use it towards 3D movies or restaurants or something. Couldn't understand the guy. When I told him I just wanted to CANCEL my

membership, he tried to tell me he was going to reduce it and is there anything else he could help me with. This company is such a scam and I will never be shopping there again.

https://www.consumeraffairs.com/home_electronics/fye.html (last visited September 20, 2018).

'VIP' membership - What an absolute scam, & mistake on my part. They bribe you in store with a 10% discount, asking you to sign without mentioning the fact that it's a \$12 monthly subscription for garbage magazines nobody wants...Hey FYE, if you're so desperate for dollars that you have to trick paying customers into some lame magazine subscription, MAYBE just maybe it's time to call it quits. Nobody buys CDs anymore & nobody wants your garbage merchandise...

https://www.consumeraffairs.com/home_electronics/fye.html (last visited September 20, 2018).

I went into the local F.Y.E. store at the mall because they had turntables on sale, went to the register to pay, and was offered to join the f.y.e. backstage pass club, which was described to me as "free". I was given no membership card, nor was I ever informed I would be charged \$11.99 a month later. This is a blatant scam to try to get money from people. I will NEVER shop here again if they are willing to OPENLY LIE to their customers like this.

https://www.consumeraffairs.com/home_electronics/fye.html (last visited September 20, 2018).

I signed up for a free trial of FYE's backstage pass and the cashier told me I had to select some magazines to get a free issue of. There was a long line and my eyesight is bad so if there was any fine print I was not able to see it. Anyway, They apparently signed me up for a year subscription for time and people magazine for a total cost of \$108.00. I called FYE's backstage pass service line and was told I had to call a third party. I was sent to an automated line that had no discernible option to get a refund on the amount that was already charged to me... FYE essentially scammed me out of what for me is a whole week of pay! The whole process of being assured a refund took me hours and many tears (because I am financially incapable of paying \$108.00 on magazines and I was very frustrated too). I will never shop at FYE again and I will discourage my friends from shopping there too...

https://www.consumeraffairs.com/home_electronics/fye.html (last visited September 20, 2018).

Along with other reviewers here, I too was fraudulently charged for magazine subscriptions I did NOT want! I tried numerous times to correct this and ordered new bank cards twice but they kept charging my account anyway. I ended up closing my account and switching to a new bank altogether over this mess! I will NEVER spend another dime in FYE and if any of you consumers do shop in there, please be safe and use cash... never use a card!

https://www.consumeraffairs.com/home_electronics/fye.html (last visited September 20, 2018).

Made a purchase for my daughter at their store in Altamonte Mall. Asked if I wanted to join their rewards club, I was assured it did not cost anything, I didn't want to pay for anything additional. Lo and behold, my credit card starting getting charged a membership fee and magazine subscriptions, which were not authorized. If you ever buy anything at this store using a credit or debit card you need to pay close attention to fraudulent charges for many months or years, the last time we shopped at this store was 6 months ago.

https://www.consumeraffairs.com/home_electronics/fye.html (last visited September 20, 2018).

My daughter's credit card information was taken without her permission, she was offer the backstage pass, she specifically asked if there was any charge for it, they said 'NO'..., she made a purchase that same day on the store, and they took her credit card information from that purchase. It didn't happen just to my daughter. It has happen to some of her friends too, and the moms had to get involve to get their money back. They charged my daughter from December 2016 to July, twice in May...Shame on this company, this is stealing and lying, it's a big company shame on them. I will never buy from them again and so is my daughter and her friends. It's not the only company to buy stuff. Don't be fooled and don't trust this company.

https://www.consumeraffairs.com/home_electronics/fye.html (last visited September 20, 2018).

I bought a couple of items at this store. The cashier asked if I wanted to enroll in their loyalty program. I said sure thinking it was like my CVS or Kroger card. I was also told that I would receive a free issue of a couple of magazines. Well, this month I noticed a charge for their loyalty card. Looked at my account and it was charged last month as well. In addition, I was charged for the magazines this month. I called their customer service and asked for a refund since I was never

informed by the cashier or the paperwork for the card that I would be charged....What a scam!

https://www.consumeraffairs.com/home_electronics/fye.html (last visited September 20, 2018).⁶

PLAINTIFFS' ALLEGATIONS

51. Trans World's in-store solicitation of "free" and "loyalty" memberships and magazine subscriptions and unauthorized enrollment of unsuspecting consumers into worthless memberships and subscriptions was unfair, deceptive and failed to provide Plaintiffs and the Subclasses with all material terms of the "Free-To-Pay" conversions. The only "loyalty" aspect of the membership was Trans World's "loyalty" to maximize profits in a declining retail market.

52. Defendants failed to disclose to Plaintiffs and the Subclasses all the material terms of the free-to-pay conversions in an effort to induce consumers to accept the "free trials." Despite failing to disclose the material terms, Trans World and its marketing partner, Synapse, charged consumers' credit cards, debit cards and/or bank accounts for bogus memberships and unwanted magazines without consumers' express consent, and continued to do so until consumers affirmatively, and separately, cancelled each membership subscription. These practices resulted in millions of dollars of profit for Defendants through their direct billing and lucrative revenue sharing agreement.

53. Trans World disclosed and transmitted Plaintiffs Rovinelli's, Carlos' and the Subclasses' members' personal, confidential and financial information to its marketing partner, Synapse, without Plaintiffs' and the Subclasses' members' knowledge, authorization, or consent. Defendants knew or should have known that consumers billed for worthless and unwanted memberships and subscriptions was a likely result of the Defendants' failure to disclose all material terms of the free-to-pay conversions.

⁶ Additional consumer complaints are included in Appendix B annexed hereto.

54. Defendants failed to disclose to Plaintiffs and the Subclasses' members all material terms in a clear and conspicuous manner. For example, even if material terms were disclosed, those terms were not properly disclosed, as explained below:

- a. Defendants placed some material terms and conditions in places where a reasonable consumer would not actually perceive and understand the disclosures within the context of the acceptance of the "free trial" offers;
- b. Defendants placed some material terms and conditions in locations where they were not likely to be read or seen;
- c. Defendants placed some material terms in terms and conditions that they knew or should have known that consumers did not and could not typically read;
- d. Defendants prominently featured and highlighted non-material terms and advertisements in large font size and color highlights to distract attention away from the material terms;
- e. Defendants prominently featured and highlighted "free" and failed to properly disclose that consumers had to affirmatively cancel within a period of time or charges would automatically apply to consumers' credit or debit cards;
- f. Defendants failed to clearly and conspicuously inform consumers about how to cancel by putting the cancellation information away from information relating to the "free" offer;
- g. Defendants failed to provide Plaintiffs with an option to decline the ongoing monthly membership or monthly subscription, and/or prevent Defendants from charging them for subsequent memberships or subscriptions at the time of accepting the "free" offer;
- h. Defendants failed to provide the amount of the charges and the date the charges would occur on Plaintiffs' or consumers' credit or debit cards or would be withdrawn from Plaintiff's or consumers' bank accounts; and
- i. Defendants failed to clearly and conspicuously disclose their refund policies.

55. Defendants' failure to disclose the material terms, or intentional concealment of material terms, prevented consumers, including Plaintiffs and the Subclasses' members, from acquiring material information.

56. Defendants failed to clearly and conspicuously disclose to Plaintiffs and the Subclasses' members all material terms before obtaining their billing information. For example, even if all of the material terms were disclosed and they were disclosed in a clear and conspicuous manner, Defendants disclosed those terms only after obtaining their billing information.

57. Defendants failed to obtain the express informed consent of Plaintiffs and the Subclasses' members before charging their credit cards, debit cards, and/or bank accounts. For example:

- a. Defendants did not obtain the express consent of Plaintiffs and the Subclasses' members before charging consumers' credit cards, debit cards, and/or bank accounts and Defendants additionally failed to adequately notify the consumers or otherwise obtain any consent from the consumers at the end of the "free" trial;
- b. Defendants failed to send adequate notice to help prevent the continuation of unknowing or unwanted membership or subscription charges to consumers' credit cards, debit cards, and/or bank accounts even though Defendants had Plaintiffs' and the Subclasses' members' addresses, email addresses, and phone numbers;
- c. Defendants did not obtain the express informed consent of Plaintiffs and the Subclasses' members because the consumers did not agree to purchase the memberships or subscriptions for the prices charged and were not aware that the recurring charges would be billed to their credit cards, debit cards, and/or bank accounts;
- d. Defendants did not obtain the express informed consent of Plaintiffs and the Subclasses' members to charge consumers'

credit cards, debit cards, and/or bank accounts because silence or inaction was not express consent;

- e. Defendants did not obtain the express consent of Plaintiffs and the Subclasses' members to charge consumers' credit cards, debit cards, and/or bank accounts because consumers did not receive all material terms before giving any asserted express consent;
- f. Prior to the consummation of Defendants' free-to-pay conversions, Defendants failed to clearly and conspicuously disclose to Plaintiffs and the Subclasses' members the exact nature and extent of Defendants' billing, refund, return, or cancellation policies and automatically enrolled them into Defendants' membership subscriptions; and
- g. Defendants failed to provide Plaintiffs and the Subclasses' members with a simple mechanism for them to stop recurring charges from being placed on their credit cards, debit cards, and/or bank accounts.

CLASS ACTION ALLEGATIONS

58. Plaintiffs bring this action on behalf of themselves and all other similarly situated members of the Subclasses pursuant to Rule 23 of the Federal Rules of Civil Procedure. This class action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of Rule 23 and the provisions therein.

59. The proposed Subclasses are as follows:

- a. "Debit Card Class:" All persons residing in the United States who had their debit card charged, or bank account debited, by Trans World for a VIP Backstage Pass membership or by Synapse, for magazine subscriptions, without Defendants first obtaining proper written authorization signed, or similarly authenticated, for preauthorized electronic fund transfers within one year prior to filing this Complaint.
- b. "Credit Card Class:" All persons residing in the United States who had their credit card charged by Trans World for a VIP Backstage Pass membership or by Synapse, for magazine subscriptions, without Defendants first obtaining

proper written authorization signed, or similarly authenticated, for preauthorized electronic fund transfers within one year prior to filing this Complaint.

- c. “Membership Class:” All persons residing in the United States who were enrolled via in-store application and charged for VIP Backstage Pass memberships.
- d. “Magazine Subscription Class:” All persons residing in the United States who were charged for magazine subscriptions by Synapse, Trans World, or FYE, or by any other company authorized to do so by either Defendants or FYE.
- e. “Connecticut Class or CUTPA Class:” All persons residing in Connecticut who were enrolled via in-store application and charged for VIP Backstage Pass membership and/or were charged for magazine subscriptions by Synapse, Trans World, or FYE, or by any other company authorized to do so by either Defendants or FYE (together with the Debit Card Class, Credit Card Class, Membership Class and Magazine Subscription Class, collectively, the “Subclasses”).

60. Plaintiffs reserve the right to modify the Subclasses’ definitions before moving for class certification, including a reservation of the right to seek certification of additional subclasses, if discovery reveals that modifying the definitions and/or seeking additional subclasses would be appropriate.

61. The Class Period is limited to the applicable statute of limitations for claims at issue and runs until the date of entry of final judgment in this action.

62. The Subclasses are, collectively, composed of at least several thousand people, the joinder of whom is impracticable except by means of a class action. The disposition of their claims in a class action will benefit the parties and the Court. Defendants sell hundreds of memberships and subscriptions per month, or more, and the members of the Subclasses are so numerous and geographically dispersed across the United States that joinder of all Subclasses’ members is impracticable, if not impossible.

63. Defendants have acted with respect of the Subclasses in a manner applicable to each Subclass member. There is a well-defined community of interest in the questions of law and fact involving and affecting the parties to be represented. Common questions of law and fact exist and such common questions predominate over any questions of law or fact which may affect only individual members of the Subclasses. Such common questions include but are not limited to the following:

- a. Whether Defendants omitted, concealed or misrepresented facts concerning enrollment in the membership and subscription programs and whether such omissions, concealments, or misrepresentations were intended to and did mislead and deceive consumers;
- b. Whether Plaintiffs and the Subclasses' members' credit card, debit card and/or bank account information was wrongfully accessed or caused to be accessed by a party who was not authorized to access Plaintiffs' and the Subclasses' members' private credit card, debit card and/or bank account information;
- c. Whether the members of the Subclasses did not execute written agreements properly detailing the terms, amounts, and dates of the automatic or recurring electronic payments;
- d. Whether the members of the Subclasses did not provide either a written ("wet") or electronic signature authorizing the automatic or recurring electronic payments and Defendants did not provide the Subclasses' members with such authorization;
- e. Whether Defendants took unauthorized payments from the Subclasses' members' accounts even though Defendants did not have the required written or electronic authorization for such payments;
- f. Whether Defendants obtained the bank account, credit card or debit card information of Plaintiffs and the Subclasses' members through fraud, misrepresentation or deceptive practices;
- g. Whether Defendants committed unfair and deceptive acts and practices in surreptitiously charging Plaintiffs and the

Subclasses for enrollment in VIP Backstage Pass and magazine subscriptions;

- h. Whether Plaintiffs and the Subclasses have sustained damages and loss as a result of Defendants' actions, and the nature and extent of damages to which Plaintiffs and the members of the Subclasses are entitled;
- i. Whether Defendants have been unjustly enriched at the expense of Plaintiffs and the Subclasses;
- j. Whether the acts and omissions of Defendants violated Connecticut General Statutes §§ 42-110a, *et seq.*; and
- k. Whether Defendants' omissions, concealments or misrepresentations violate the EFTA.

64. Plaintiff Vasquez's bank account was debited on a recurring basis by Trans World, and Plaintiffs Rovinelli's and Carlos' accounts were debited on a recurring basis by Synapse without Defendants obtaining signed written authorization, or similar authentication, for preauthorized electronic fund transfers. As such, Plaintiffs are asserting claims that are typical of the Subclasses. Moreover, Plaintiffs asserted claims are typical of the claims of the other members of the Subclasses in that all members have been harmed in substantially the same way by Defendants' acts and omissions.

65. Plaintiffs will fairly and adequately represent and protect the interest of the Subclasses. Plaintiffs have no interests antagonistic or adverse to other members of the Subclasses. Plaintiffs have retained counsel who are competent and experienced in class action litigation.

66. Defendants have acted or refused to act on grounds generally applicable to all members of the Subclasses, thereby making final relief concerning the Subclasses in their totality appropriate.

67. Plaintiffs and the Subclasses have suffered injury and damages as a result of Defendants' wrongful conduct as alleged herein. Absent a class action, the Subclasses will continue to suffer injury, thereby allowing these alleged violations of law to proceed without remedy, and allowing Defendants to retain the proceeds of their ill-gotten gains.

68. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The prosecution of separate actions by individual members of the Subclasses would create the risk of inconsistent or varying adjudications with respect to individual members of the Subclasses. Moreover, litigation on an individual basis could be dispositive of the interests of absent members of the Subclasses and substantially impair or impede their ability to protect their interests.

69. In view of the complexity of the issues presented and the expense that an individual plaintiff would incur if he or she attempted to obtain relief from Defendants, the individual claims of the Subclasses' members are monetarily insufficient to support separate actions. Because of the size of the individual Subclasses' members' claims, few, if any, members of the Subclasses could afford to seek legal redress for the wrongs complained of in this Complaint.

70. Plaintiffs do not anticipate any difficulty in managing this action as a class action. The identities of the Subclasses' members are known by Defendants, and the measure of monetary damages can be calculated from Defendants' records. This action poses no unusual difficulties that would impede its management by the Court as a class action.

COUNT I

(For Violations of the Electronic Funds Transfer Act – On Behalf of Plaintiffs and the Subclasses)

71. The preceding paragraphs are incorporated by reference as if the same were fully set forth herein.

72. Pursuant to 15 U.S.C. § 1693e(a), (Section 907(a) of the EFTA), a “preauthorized electronic transfer from a customer’s account may be authorized by the consumer only in writing, and a copy of such authorization shall be provided to the consumer when made.”

73. “Preauthorized electronic fund transfer” is defined as “an electronic fund transfer authorized in advance to recur at substantially regular intervals.” 15 U.S.C. § 1693a(10), Section 903(10) of the EFTA.

74. Pursuant to 12 C.F.R. § 205.10(b), Section 205.10(b) of Regulation E, “[p]reauthorized electronic fund transfers from a customer’s account may be authorized only by a writing signed, or similarly authenticated, by the customer. The person that obtains the authorization shall provide a copy to the consumer.”

75. “The authorization process should evidence the consumer’s identity and assent to the authorization” and “[a]n authorization is valid if it is readily identifiable as such and the terms of the preauthorized transfer are clear and readily understandable.” Section 205.10(b), Supp I. of the Federal Reserve Board’s Official Staff Commentary to Regulation E, 12 C.F.R. § 205.10(b), Comments 5 and 6 (emphasis added).

76. Defendants have violated the EFTA and Regulation E by and through several acts and omissions, including, without limitation the following: (i) failing to obtain Plaintiffs’ and members of the Subclasses authorization for pre-authorized electronic transfers to Defendants; and (ii) failing to provide a copy of such authorization to Plaintiffs and members of the Subclasses. For example, Defendants repeatedly debited Plaintiffs’ and the Subclasses’ members’ credit cards, debit cards and/or bank accounts on a recurring basis without obtaining a valid written authorization signed, or similarly authenticated, for preauthorized electronic fund transfers from Plaintiffs’ and the Subclasses’ members’ accounts.

77. Thus, Defendants failed to comply with 15 U.S.C. § 1693e(a) (EFTA) and 12 C.F.R. § 205.10(b) (Regulation E) when they debited Plaintiffs' and Subclasses' members' credit cards, debit cards and/or bank accounts on a recurring basis but failed to provide a copy of a written authorization signed, or similarly authenticated, by Plaintiffs or the Subclasses' members for preauthorized electronic fund transfers.

78. Based upon Defendants' EFTA and Regulation E violations, Defendants are liable to Plaintiffs and the Subclasses for actual damages, statutory damages pursuant to 15 U.S.C. § 1693m, and reasonable attorneys' fees and costs.

COUNT II
(For Violations of CUTPA (Conn. Gen. Stat. §§ 42-110a, *et seq.*) – On behalf of Plaintiff Vasquez and the CUTPA Class)⁷

79. Plaintiff Vasquez realleges and incorporates by reference the allegations contained in the foregoing paragraphs as if fully set forth herein.

80. Plaintiff Vasquez and members of the proposed CUTPA Class are consumers within the meaning of the CUTPA, and Defendants' memberships and subscriptions are goods within the meaning of the CUTPA. Defendants, through their conduct, are engaged in trade or commerce within the meaning of the CUTPA, and the "free-to-pay" membership/subscriptions offered by Defendants to Plaintiff Vasquez and Class members constitutes consumer transactions within the meaning of the CUTPA.

81. Defendants engaged in unfair and deceptive acts or practices in the conduct of trade or commerce in violation of the CUTPA through the following acts and omissions regarding its "free-to-pay" conversion of memberships/subscriptions: (i) Defendants made false and/or

⁷ A copy of this Complaint shall be mailed to the Attorney General, Administrators, Commissioners, or other officers, as required by the laws of Connecticut, upon and at the time of the filing of the Complaint pursuant to Conn. Gen. Stat. § 42-110g(c).

misleading statements of material fact, which statements were likely to deceive the public; (ii) Defendants omitted and concealed material facts from Plaintiff Vasquez and the CUTPA Class; and (iii) Defendants knew, or were reckless in not knowing, that its representations were false and/or misleading.

82. Defendants knew or should have known that these acts and omissions violated the CUTPA and public policy, and were unfair, unethical, oppressive, unscrupulous and caused substantial injury to consumers, including Plaintiff Vasquez and other members of the CUTPA Class.

83. Defendants' actions, misrepresentations and omissions were done in willful or knowing violation of the CUTPA.

84. As a result of Defendants' unfair and deceptive conduct, Plaintiff Vasquez and members of the CUTPA Class have suffered ascertainable losses under Conn. Gen. Stat. § 42-110(a) in the form money or property. Those ascertainable losses include the loss of monies taken from Plaintiff Vasquez and the CUTPA Class members' bank accounts or charged to their credit cards or debit cards for the memberships/subscriptions. Plaintiff and members of the CUTPA Class have also otherwise been damaged by Defendants' unfair and deceptive conduct.

85. Plaintiff Vasquez and members of the proposed Connecticut Class are entitled to compensatory damages from Defendants for the economic and non-economic damages identified herein, together with equitable and declaratory relief and other appropriate damages, including punitive damages, attorneys' fees, and costs of suit.

COUNT III
(Unjust Enrichment – On Behalf of the Subclasses)

86. Plaintiffs reassert and incorporate herein each and every allegation in the preceding paragraphs of this Complaint (excluding ¶¶ 79-85) as if set forth fully herein.

87. As a result of Defendants' fraudulent, deceptive and wrongful conduct, Plaintiffs and members of the Subclasses have conferred benefits upon Defendants in the form of payment for Defendants' memberships and subscriptions. Defendants received and accepted from Plaintiffs, and members of the Subclasses, benefits in the form of unauthorized fees and charges for VIP Backstage Pass memberships and magazine subscriptions, which were not authorized or consented to by Plaintiffs and the Subclasses' members, and have little, if any, value.

88. Defendants were at all times aware that the benefits conferred upon them by Plaintiffs and members of the Subclasses were the result of Defendants' fraudulent, deceptive and wrongful conduct. Defendants voluntarily accepted and retained the benefits conferred upon them.

89. Plaintiffs and the Subclasses' members sustained damages when Defendants assessed unauthorized fees and charges for VIP Backstage Pass and magazine subscriptions.

90. Allowing Defendants to retain these unjust profits and other benefits would offend traditional notice of justice and fair play. Under these circumstances, it would be inequitable for Defendants to retain the benefits and allowing them to do so would induce companies to fraudulently conceal, mislead, and/or misrepresent key characteristics and obligations of their products to increase sales and profits.

91. Plaintiffs on behalf of themselves and all others similarly situated, seek restitution from Defendants and an order of this Court proportionally disgorging all profits, benefits, and other compensation obtained by Defendants from their wrongful conduct.

COUNT IV
(Money Had and Received – On behalf of Plaintiffs and the Subclasses)

92. Plaintiffs reassert and incorporate herein each and every allegation in the preceding paragraphs of this Complaint (excluding ¶¶ 79-85) as if set forth fully herein.

93. Defendants received monies from consumers to which they were not legally entitled.

94. Consumers have a claim for the monies Defendants collected in credit card, debit card and/or bank account charges via the VIP Backstage Pass membership and/or magazine subscriptions.

95. Equity and good conscience requires that Defendants pay back those monies.

96. Defendants' practices caused Plaintiffs and the Subclasses' members to suffer injury. They are entitled to reimbursement, restitution, and disgorgement in the amount necessary to restore them to the position they would have been in if Defendants had not improperly collected and retained the abovementioned monies.

COUNT V
(Conversion – On behalf of Plaintiffs and the Subclasses)

97. Plaintiffs reassert and incorporate herein each and every allegation in the preceding paragraphs of this Complaint (excluding ¶¶ 79-85) as if set forth fully herein.

98. Consumers have a right to retain the money Defendants took from consumers' credit card, debit card and/or bank accounts.

99. Defendant wrongfully converted the monies obtained from consumers' credit cards, debit cards and/or bank accounts, which consumers provided for a limited purpose – to purchase items in-store at FYE – and used it beyond the scope of what was authorized.

100. Defendants touted the “free” offers as legitimate and then used the offer as a means to charge consumers' credit cards, debit cards and/or bank accounts without authorization. Defendants converted the monies for their own use. The conversion caused consumers to suffer damages because they lost money due to the unauthorized charges.

101. Consumers are entitled to damages in an amount sufficient to compensate them for their losses, including the amount Defendants wrongfully converted from the unauthorized charges and interest in an amount to be proven at trial.

102. Based on Defendants' wrongful conversion of the funds assessed and/or charged to Plaintiffs and the members of the Subclasses for VIP Backstage Pass and/or the magazine subscriptions, Defendants are liable for damages, including all amounts wrongfully converted, and costs permitted by law.

CLAIMS FOR RELIEF

Wherefore, Plaintiffs and members of the Subclasses respectfully request that the Court:

- A. Certify this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure and designate Plaintiffs as the representatives of the Subclasses;
- B. Award statutory damages of \$1,000.00, per member of the Subclasses, pursuant to the Electronic Fund Transfer Act, §916(a)(2)(A);
- C. Award actual damages;
- D. Award costs and reasonable attorneys' fees pursuant to the Electronic Fund Transfer Act, §916(a)(3);
- E. Award prejudgment interest at the legal rate;
- F. Determine the damages sustained by Plaintiff Vasquez and the Connecticut Class as a result of Defendants' violations of Conn. Gen. Stat. §§ 42-110a, *et seq.* and award any actual and punitive damages;
- G. A judgment awarding Plaintiffs and members of the Subclasses restitution of all improper fees assessed and/or charged by Defendants;

- H. Award Plaintiffs and the Subclasses' members their costs and disbursements of this suit, including, without limitation, reasonable attorneys' fees, expenses and costs;
- I. An Order declaring that Defendants are obligated to pay both prejudgment and post-judgment interest on any amounts awarded; and
- J. An Order granting such other and further relief as the Court deems just and proper under the circumstances.

JURY DEMAND

Plaintiffs, on behalf of themselves and all others similarly situated, hereby demand a trial by jury on all issues so triable.

Dated: November 14, 2018

By their attorneys,

/s/ Angela M. Edwards, Esq.

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STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
109 STATE STREET
MONTPELIER, VT
05609-1001

October 13, 2009

BY FEDERAL EXPRESS AND EMAIL

The Honorable Donald S. Clark
Secretary, Federal Trade Commission
Room H-135 (Annex Q)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Prenotification Negative Option Rule Review
Matter No. PO64202

Dear Secretary Clark:

On behalf of the Attorneys General of the States of Arkansas, Illinois, Kansas, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Mexico, Ohio, Oregon, Tennessee, Vermont, and West Virginia ("the States"), and in response to an Advance Notice of Proposed Rulemaking published in the Federal Register, 74 Fed. Reg. 22720 (May 14, 2009), we are writing to comment on the Federal Trade Commission ("FTC") rule on Use of Prenotification Negative Option Plans, 16 C.F.R. Part 425 (hereinafter referred to as "the PNOR"). The Attorneys General are the officials charged with enforcing the laws of the States designed to protect consumers from unfair and deceptive business practices.

The existing PNOR was originally promulgated in 1973, with technical amendments being made in 1998. The rule currently regulates only one type of negative option marketing—the so-called "prenotification negative option plan"—which involves an arrangement whereby consumers receive periodic announcements that merchandise will be delivered to them unless they decline to accept it within a set time frame. Importantly, the Commission seeks input on whether to extend the scope of the rule to regulate other forms of negative option marketing, most notably "trial conversions." *See* 74 Fed. Reg. at 22721.

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For the reasons stated below, we strongly encourage the FTC to expand the rule, but only if the revisions are adequate to ensure that consumer protections are put into place with respect to consent to be charged after the trial period, periodic notification of charges, maximum duration of charges, method of cancellation, and applicability of the rule to services.

Much of the public discussion of the PNOR has focused on improving *disclosure* as a way of protecting consumers from being harmed by trial conversion negative option marketing. *See, e.g.*, FTC, NEGATIVE OPTIONS, A REPORT BY THE STAFF OF THE FTC'S DIVISION OF ENFORCEMENT (Jan. 2009) (hereinafter "NEGATIVE OPTIONS"). However, in the context of free to pay conversions, it is our firm view that improved disclosure of terms will *not* adequately protect consumers. Rather, there is a need for *substantive* regulatory provisions to ameliorate the harmful aspects of this form of negative option plan.

Therefore, we strongly encourage the FTC to add new provisions to the PNOR to regulate trial conversions, and, with respect to that form of negative option, to (1) prohibit charges following a "free" trial without receiving the affirmative consent of the consumer at the end of the trial; (2) mandate periodic notification to consumers of charges to their accounts in trial conversions; (3) set a cap on the number of months that a consumer may be charged and require an affirmative opt-in by the consumer to exceed that time limit; (4) require companies to permit consumers to cancel in the same method of communication as the solicitation to the consumer; and (5) include "services" under the PNOR.

I. BACKGROUND

The FTC uses the term "negative option marketing" broadly, to refer to those commercial transactions in which sellers interpret a consumer's failure to take affirmative action—either to reject an offer or to cancel an agreement—as affirmative assent to be charged. As the FTC has recognized, these kinds of transactions "change the typical relationship between the buyer and seller," in which the buyer is bound only if she responds affirmatively to an offer made by the seller. *See* NEGATIVE OPTIONS at 2.

The common law of the States reflects this basic proposition, that in order for a binding contract to exist, the offeree must affirmatively accept the terms of the offer. *See* 2 Samuel Williston & Richard Lord, A TREATISE ON THE LAW OF CONTRACTS 6:50 (4th ed. 2007); *see also* *Adams v. State Capital Life Ins. Co.*, 182 S.E.2d 250, 252 (N.C. App. 1971) ("Silence and inaction do not amount to an acceptance of an offer."); *Gov't Employees Ins. Co. v. Group Hospitalization Med. Services, Inc.*, 589 A.2d 464, 468-69 (Md. App. 1991) (silence and inaction can operate as acceptance of offer in only a few, limited circumstances). Ordinarily, consumers govern their behavior based on the idea that they must in effect say "yes" before a deal is made. Negative option marketing ignores this commonly-understood principle by deeming silence to be acceptance. *See In re Baum's Estate*, 117 A. 684, 685 (Pa. 1922) (offeree has a right to make no reply to offers and his silence and inaction cannot be construed as assent to offer).

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Accordingly, consumers customarily do business based on the premise that they will not be bound, or incur any monetary obligations, unless and until there is a full “meeting of the minds” and genuine assent between the parties. Rooted in the concepts of offer and acceptance, consumers base their behavior on the notion that they are not “on the hook” until a “deal” is done, be it in the form of a handshake or a fully executed written contract. Free to pay conversion marketing turns those rules on their head, contrary to reasonably understood consumer expectations and assumptions. Lured by catch phrases such as “risk free” or “trial offer,” consumers ultimately find themselves bound in some fashion to take affirmative steps, all because their silence was deemed to be acquiescence.

Consequently, consumers are stuck with terms and monetary obligations to which they did not knowingly assent. By their comments, the States do not mean to suggest that consumers do not have an obligation to read and understand all material terms and conditions; the reality, though, is that free to pay conversion marketing uses a form of trickery, and sleight of hand as it were, to reap millions from consumers in a manner flatly contrary to the ordinary rules of consumer transactions. There is an inherent deception built into these plans by the marketers such that the rule of “caveat emptor” cannot control this marketplace.

As evidenced by consumer data gathered by the States, negative option marketing of the trial conversion type is an area ripe for deception and abuse, consistent with the FTC staff’s observation that “some negative option practices generate significant consumer dissatisfaction.” NEGATIVE OPTIONS at ii. The States have taken steps to combat these abuses through a number of enforcement actions, both at the multistate and individual state level. *See, e.g., Minnesota ex. rel. Hatch v. US Bank, NA, et al.*, No. 99-872 (D. Minn. 2000) (Amended Final Judgment and Order for Injunctive and Consumer Relief); *Minnesota ex rel. Hatch v. Fleet Mortgage Corp.*, 158 F. Supp. 2d 962 (D. Minn. 2001); *Minnesota ex rel. Hatch v. Fleet Mortgage Corp.* 181 F. Supp. 2d 995 (D. Minn. 2001); *In re Citibank* (N.Y.S. Dept. of Law filed Feb. 22, 2002) (Assurance of Discontinuance); *People v. Chase Bank*, No. GIC850483 (Cal. Super. Ct. for San Diego County filed July 12, 2005) (Complaint); *AT&T Mobility*, No. 09-2-00463-1 (Wash. Dist. Ct. for Thurston County filed Feb. 26, 2009) (Assurance of Discontinuance); *Iowa ex rel. Miller v. Vertrue, Inc.*, No. EQ53486 (Iowa Dist. Ct. for Polk County filed May 15, 2006) (Petition in Equity).

II. STATES’ OBSERVATIONS

The States have identified a number of significant problems in negative option trial conversions, the most troublesome of which involve the sale of services like discount membership programs. These include:

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- The misleading character of negative options advertised as involving “free” or “trial” offers. The long-term impression created by this type of terminology is that consumers have *no obligation* to do anything, not that their silence after acceptance of the offer will open them to recurrent charges of unlimited duration.¹
- Consumers’ lack of awareness as to the existence of ongoing periodic charges to their credit card or bank account, in connection with trial conversions. The reality is that many consumers do not scrutinize their account statements and thus can go for long periods of time without realizing that they are being charged. Modest charges, like \$19.95 per month, can “fly under the radar.” This is particularly true with respect to bank account charges, the details of which, on an account statement, can be inscrutable to even well-educated consumers.
- The piling up of trial conversion charges over long periods of time, amounting to substantial amounts of money, even where consumers make little or no use of the goods or services offered. With no time cap on charges, consumers can incur hundreds of dollars worth of charges, or more.
- The difficulty faced by consumers in contacting the seller of the goods or services in order to cancel a trial conversion. There is no reason why a consumer who is bound by consent communicated in a particular way—electronically, for example—should not be able to cancel in the same manner.

Examples of consumer complaints. Reflective of the kind of frustration experienced by consumers are the following examples of consumer complaints received by the States:

- A professional couple in Vermont paid over \$750.00 through a joint credit card payment, and \$49.95 monthly increments, for a discount plan that neither of them authorized, wanted, or knew they had purchased. The periodic charge was small enough that the couple did not question the bill.
- An Oregon woman ordered what was advertised on the internet as a “Free Trial Offer” of a teeth whitening product for only \$4.87 shipping and handling and ended up getting charged \$78.41 and enrolled in an auto-ship program.

¹ Under the FTC’s Guide Concerning Use of the Word “Free” and Similar Representations, 16 C.F.R. § 251.1(a)(2), in using the word “free,” an offeror must exert “extreme care so as to avoid any possibility that consumers will be misled or deceived.”

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- A Maryland consumer reported ordering a “free” bottle of Resveratrol by internet and agreeing to pay shipping charges of \$3.95. After the consumer received the shipment, his account was charged \$87.13. The company reported to the consumer that because he did not cancel he was charged full price.
- A Hawaii man reported that he signed up on the internet for “free trial” samples of an acai berry supplement and authorized a nominal shipping charge. The company sent him a two-month supply and enrolled him in an auto-ship program. His credit card was charged \$79.90 once a month for three months until he noticed the charges.
- In 2003, an Iowa couple discovered what they believed to be an unauthorized charge on their MasterCard in the amount of \$89.95 for Simple Escapes. Indeed, they ultimately discovered that such charges stretched back to 1998, and totaled \$489.70.
- In 2003, another Iowa couple discovered a \$96.00 charge for “MWI Connections” on their AT&T MasterCard, and complained that the charge was unauthorized. They stated they had no idea what the charge was for until they contacted the company and were told it had to do with entertainment coupons.
- In 2005, an Iowa couple reviewed their bank statement and discovered that \$199.95 had been withdrawn on their debit card the previous month for something called “Essentials.” As it turns out, the wife had placed a call to order an unrelated product in 2002, had agreed to join the Essentials program, and had subsequently been charged hundreds of dollars over the course of four years.

These consumer complaints offer a snapshot of the substantial numbers of complaints that our offices receive about trial conversions each year. The complaints we receive underscore the fact that the inherently deceptive nature of trial conversions render retailers’ disclosures meaningless and confuse and dupe even the most sophisticated consumer.

Trial conversions in telemarketing and on the internet. As outlined above, negative option plans, especially trial conversions, present particular problems and obstacles to consumers. While some such offers are currently the subject of regulation by the FTC (that is, those that are telemarketed and involve preacquired account information, *see* Telemarketing Sales Rule (“TSR”), 16 C.F.R. § 310.4(a)(6)(i)), other trial conversions are not similarly regulated, whether presented on the telephone or over the internet. Under these plans, sellers seek to entice consumers with words like “free” and “trial period,” inherently implying that the trial comes with no obligation on the part of the consumer. The TSR, as it pertains to only that telemarketing involving preacquired account information, has focused on disclosures, and not attacked head-on the substantive problems in these kinds of sales, leaving room for continued abuse of consumers.

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Whereas in continuity sales plans, consumers receive regular notification with every shipment of merchandise, prompting them to take affirmative steps to cancel the plan if that is their preference, with trial conversions the recurrent charges are the subject of no notification from the seller and continue on silently and without limit.

To further illustrate the use of trial conversions on the internet, we have attached Exhibit 1, which is a redacted screen shot of a retailer's home page and an order page.

Compounding the problems for consumers is their inability to cancel once they realize their accounts have been charged. Consumers who have accepted the offer through the internet or by email may learn that such mechanisms are not available as a means of cancellation. Consumers may be forced to call a telephone number instead, which is not always toll-free, and they complain of being put on hold for unreasonable lengths of time. They also often find it difficult to get confirmation of a cancellation in writing from the seller. Such difficulties in cancellation compound the frustration caused by this type of negative option plan.

Data from the States. Confirming the need for greater substantive regulation of trial conversions is consumer data gathered by the States.

For example, in May of 2006, the Office of the Iowa Attorney General announced the results of a survey and the commencement of its suit against Memberworks, Inc., now known as Vertrue, Inc., which markets discount membership plans through trial conversions. With a response rate of 88 surveys returned of 400 originally mailed, 67 percent of responding consumers were unaware of their membership in the negative option sales plan. Additionally, almost all of the remaining consumers had never used the plan, or believed they had previously cancelled their membership. No responding consumer expressed satisfaction with their membership.²

Similarly, in 2007, the Vermont Attorney General's Office surveyed state residents by mail who had been billed for one of several discount plan memberships involving a "trial conversion" negative option and sold by a major over-the-phone purveyor of such plans. There were 100 respondents. Of that number, 33 recalled having signed up for a membership, and 67 did not; 53 expressly answered that they had not agreed to be billed. In addition, only 6 responded that they had ever used the plan. When the Attorney General's Office asked the seller to substantiate that the 53 "non-agreeing" consumers had consented on the phone to be billed, the company produced documentation for some, but not all, consumers, including 19 tape recordings that reflected some degree of consumer consent (albeit in a number of cases after the consumers had initially indicated a reluctance to sign up).

² The Iowa Attorney General's news release announcing his action against Vertrue, Inc., can be found at www.state.ia.us/government/ag/latest_news/releases/may_2006/MemberWorks.html.

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Data from Colorado also shows that a company can make a great deal of money from early billings under a trial conversion, even when consumers who later discover the recurrent charges cancel their participation. That is, the revenue generated from the early charges levied against consumers in such plans can be great enough to favor using this form of negative option marketing. Thus, an investigation by the Colorado Attorney General identified a company that grossed more than \$8 million in only six months, even with an attrition rate above 75 percent after the first charge, which consumers discovered when they received their credit card bills. (The discovery might not have been even that quick if the charge had been to the consumers' *bank* accounts.)

Even more telling is a comparison of this same company's total number of shipments of its product before and after implementing the trial conversion plan. In 2004, the business reported approximately 1,500 shipments; one year later, after implementing its trial conversion plan to market the same product, the company reported more than 19,500 shipments.

By way of summary, if, as in the Vermont survey, a large majority of trial conversion participants do not recall ever having consented to be charged, and a majority of them affirmatively deny having given such agreement, then there is a clear need for better regulation of these offers. The issue is less the lack of up-front disclosure and consent-giving. The problem is rather that it is unreasonable to expect consumers enticed by a free trial offer both to remember, over an unlimited period of time, a spur-of-the-moment assent to be billed periodically, and to scrutinize (and decipher) their account statements month after month in order to recognize the charges. In light of these realities, the best, and perhaps the only, way to ensure that consumers understand why and in what amount they are being billed, and agree to such billing, is to ensure that they affirmatively consent to the charges after the trial period, receive periodic notice of future charges, and as a "backstop" safeguard, are protected by an outer limit on the duration of the billing.

III. SPECIFIC SUGGESTIONS

Based on their experience with consumers in this area, and with an eye toward protecting the public, the States strongly recommend that the FTC amend the PNOR in the following ways:

A. **Require Affirmative Written Consent to Bind Consumers at the End of Free Trials.**

The PNOR should be revised so as to require consumers' affirmative written consent following the "free" trial period in a trial conversion. That is, before a company may charge a consumer for a product or service previously received during a trial period, the company should be required to obtain written consent from the consumer to be charged in the future. Consent given at the outset of the trial period is not sufficient, because the trial period is most often touted as being without obligation and because it can and does lull consumers into a state of forgetfulness; only at the end of the trial does the relationship

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between consumer and business transform into one in which the consumer is actually being charged. This change would do much to reveal the true market for these services and substantially reduce the possibility that the services are being sold to consumers who do not want them or are unaware of their purchase of them.

B. Require Periodic Notices.

The States are of the view that while up-front disclosures in trial conversions offer limited protection to consumers, *periodic* disclosures accompanying recurrent charges would be of significant value. These should be provided at no less than quarterly intervals. Periodic notice would make consumers aware of, or remind them of, the recurring charges and help prevent the continuation of unknowing or unwanted enrollment in these plans.

C. Impose Contract Maximum Time Limits.

Because it is unreasonable to assume that most consumers intend to be charged in perpetuity in connection with trial conversions, the States recommend the setting of an outer time limit on such charges, as a “backup” safeguard. Our suggested time limit is 18 months. At the expiration of that time limit, the company offering the negative option plan would be required to seek new written consent from the consumer. If no new consent is obtained, the contract would be terminated.

D. Require Fair Cancellation Processes.

Cancellation of negative option plans is made difficult for consumers when they are required by the seller to cancel using a different method of communication than the method by which they agreed to the offer. To reduce this difficulty, the States propose requiring that consumers be allowed to cancel their memberships by the same method as their enrollment (as well as by other methods, at the business’ option). For example, if a consumer enrolled through an internet website, the company should provide an internet cancellation option.

E. Include “Services” Under the Negative Option Rule.

Currently, the PNOR only regulates negative option marketing “in connection with the sale, offering for sale, or distribution of goods and merchandise.” 16 C.F.R. § 425.1(a). However, many of the offerings promoted by negative option plan companies could be considered *services*, thus circumventing the rule’s current provisions, if they were expanded to include trial conversions. To guard against the dangers of negative option marketing, the States recommend that this definition be broadened to include “services.”

The limited scope and provisions of the PNOR are insufficient to protect consumers from the pitfalls of trial conversions. By instituting the States’ recommendations, the dangers of this common form of negative option marketing can be mitigated.

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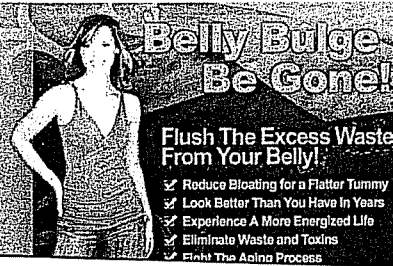
We thank the Federal Trade Commission for its consideration of these comments.

Sincerely yours,

Elliot Burg
Assistant Attorney General

Enc.

Exhibit 1



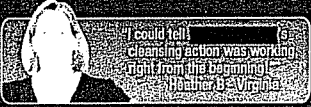
Because of the prominent use of the terms "FREE" or "RISK-FREE TRIAL OFFER" in the ads and the small print used to disclose the continuity and delayed billing features, consumers do not realize that upon the expiration of the limited trial period, they will be enrolled in a program that purports to provide a web-based service or ongoing shipments of the "free" product and will be charged on a continuing, periodic basis.

Claim Your Risk-FREE Trial Offer Now

Are Toxins And Waste Clogging Your System And Making You Fat?

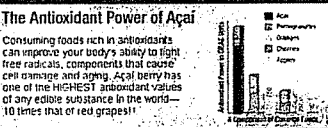
- Do you have low energy?
• Irregular bowel habits?
• Bloating and gas?
• Do you feel stressed and fatigued?
• Do you have a lower abdominal bulge that just won't go away?

You could be suffering from pounds of excess waste stuck in the walls of your colon. This buildup can stay in your body for years and wreak all kinds of havoc.



Stop the bleed and discomfort now with this cleansing solution with the abundant power of açai. Cleansing can help you feel better instantly and ready to take on each day with renewed vigor. Plus, watch as your bloated abdomen returns to a flatter, more natural shape. Cleanse and purify your body now and feel the difference!

Click Here to Claim Your Risk-FREE Bottle of [Product] Today!



WARNING: Don't Be Fooled by "Açai Berry" Fraud!

- 1. By LAW, ingredients must be listed in order of quantity (ingredients with the highest amount come first). Some expensive "açai cleanses" have açai listed LAST on the label.
2. [Product] has 260 mg of top-quality Açai Berry Extract in each serving.
3. Some "açai" drinks have açai FLAVORING, but no actual açai in them.
4. Many "açai cleanses" formulas don't even let you know what's in them before you buy. We don't think that's right. Here's Our Label.

Do You Love Your Liver? The liver is one of the most important and most complex organs in the body, yet few people know about their own liver health. You see, taking care of your liver is more important than ever with all of the pesticides, artificial ingredients, and other environmental toxins that you are exposed to daily. Milk thistle, one of the ingredients in [Product], has been used for over 2,000 years to support liver health and gallbladder function, and this use is supported by scientific studies.

Are You Ready To Experience The Radiant, Healthy Look You Deserve?

- Feel more healthy, energetic and vibrant than you have in years.
• Lose the unattractive bloated look by removing waste from your digestive tract.
• Fight the effects of aging with the anti-oxidant power of açai.

100% Money-Back Guarantee. If you're not 100% satisfied, we'll give you a full refund. No questions asked. No hidden fees. No catch.

Click Here to Claim Your Risk-FREE Bottle of [Product] Today!

References: 1. Sofianos A, Van N, Poon R, Ou B, Huang D, Owens J, Aggarwal A, Prasad S, Hill A, Davidson E (2007). "Antioxidant capacity and other bioactivities of the freeze-dried açai berry pulp (Laguncularia patersonii) 'Açai'." J. Agric. Food Chem. 55 (2): 500-10.
2. Luciani M, Andrade AJ, de la Cruz JP, et al. Effects of silybin M2-00 on oxidative stress in patients with alcoholic cirrhosis. Results of a randomized, double-blind, placebo-controlled clinical study. J Clin Pharm Ther. 2002; 27(1):2-9.

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*Allison Farrell. As individuals only, so will their results. We'd like to see your results! If you're not 100% satisfied, we'll give you a full refund. No questions asked. No hidden fees. No catch.
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Limited Trials Left! Sign Up in the Next 5 Minutes! 02:08:95

"I could tell! Cleansing action was working, right from the beginning!" Heather B - Virginia

Where Do We Send Your Risk-Free Trial? First Name, Last Name, Address, City, State, Country, Zip Code, Phone Number, Email, Address.

Check Availability!



What's Inside the Açai Berry?

On the planet that's home to the world's largest and most diverse rainforest, there is Açai (ah-sigh-EE), a purplish fruit of the palm family that's completely covered in more antioxidants than red wine and has a tangy taste like blueberries with intense chocolate overtones.

Found in the Brazilian Amazon, the açai berry (ah-sigh-EE) packs 100 times the amount of antioxidants of red wine and contains essential fatty acids and vitamins C and E.

CBS NEWS

"Açai berries are among the most nutritious foods of the Amazon, rich in B vitamins, minerals, fiber, protein and Omega-3 fatty acids. Açai berries also contain chlorogenic acid (Omega-3), a beneficial fatty acid (often mistakenly referred to as saturated fat) and antioxidants."

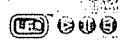
Studies show that the Açai berry is one of the most nutritious foods in the world. The high-energy berry of an Amazonian palm tree, açai is harvested in the rainforests of Brazil and tastes like a vibrant blend of berries and chocolate.

"Açai is the berry of a special Amazonian palm tree. Hidden within its royal purple pigment is the magic that makes it nature's perfect energy food. A synergy of nutrients in the açai berry (vitamin E, dietary fiber and phytochemicals) help promote cardiovascular and digestive health."

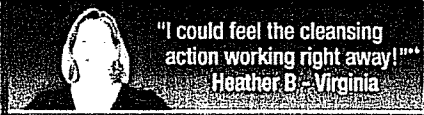
THE WALL STREET JOURNAL "At juice bars and health stores around the country, the hip new fad is açai (pronounced ah-sigh-EE) a grape-size, deep-purple berry that grows atop a pine cone in the Brazilian jungle."

It's time to claim your Risk-Free Trial of [Product] today! You've got nothing to lose but the toxic waste that is holding you back.

Most consumers agree to free trials without any intention to be enrolled in auto-ship programs or web-based clubs and or to be charged in perpetuity.



FINAL STEP What's Sacred HURRY! Trials Are Going Quickly... Act Now!



"I could feel the cleansing action working right away!"
Heather B. - Virginia

FREE Trial Bottles - 60 Capsules

Shipping:

Is your billing address EXACTLY the same as this shipping address?
 YES NO

Credit Card:

Card Type:

Card Number:

CVV: [What's This?](#)

Expires:

I agree to the [Terms & Conditions](#) and [Privacy Policy](#)



Congratulations!

Today we'd like to rush you two full size, 60-capsule bottles of _____ (for a Risk-FREE 21-Day Trial. This way you can try _____ before you buy it!

All we ask is that you invest just \$3.97 today to help cover the cost of shipping and handling. Your order is backed by a 100% Money-Back Guarantee.

Claim Your Risk-FREE Trial Offer Now
Just \$3.97 S&H Today. See offer for details.

Try out two 60-capsule bottles of _____ with no risk during the trial period. If satisfied, do nothing and the credit card you provided will be charged as I _____ the low rate of \$39.95 per bottle, for a total of \$79.90 twenty one days from your purchase date. To avoid billing call _____ or email us at _____ for a return authorization number, return the unused portion of the product within the 21 day trial period and never be charged. If you do not cancel shipments of two 60-count bottles will automatically continue every 45 days from the date of your purchase, and the same credit card will be billed a total of \$79.90 plus \$3.97 S&H for a total of \$83.87. All purchases are protected with a 30-day money-back guarantee. (Less S&H charges) from the day you are charged; and you can call _____ or email us at _____ to cancel future auto-shipments at any time with no further obligation.

Money-Back Guarantee

Here's our full refund promise to you: Use _____ as directed and if you aren't absolutely satisfied with your results, take up to 7 days to receive a 100% refund of the purchase price (minus S&H) with no questions asked. There's simply no risk to you at all. Why? We stand by _____ because we know that it works.

[About Us](#) | [Privacy Policy](#) | [Terms of Use](#) | [Terms & Conditions](#) | [Contact Us](#) | [Refund Policy](#) | [FAQ](#)

(M-F 7a-7p MT, Sat-Sun 8a-5p MT)

† The statements made on this website have not been evaluated by the Food & Drug Administration. (The FDA only evaluates foods and drugs, not supplements like these products.) This product is not intended to diagnose, prevent, treat, or cure any disease.

** Atypical results. As individuals vary so will their results. Weight loss reported is from water weight and digestive system waste, not from body fat. Acai has no scientific data showing that it reduces body fat.

Throughout the transaction, the consumer is under the impression that the only charge he or she is authorizing is the shipping charge for the free sample.

Consumers fail to realize that they will automatically incur a charge or will pay an even greater amount within 20 to 30 days if they do not take affirmative action to return the unused portion of the "free" product or otherwise cancel the plan. Consumers are almost never not reminded of this obligation after the initial online transaction.

The consumer's consent given at the outset of a trial period is not sufficient because the trial period can and does lull consumers into a state of forgetfulness.

Consumers are met with busy signals on retailers' phone lines and auto-response emails when they try to return unwanted product and cancel unwanted memberships, making it very difficult to meet the return deadlines set by the retailer.

EXHIBIT B

December 7, 2017

Juan Vasquez
123 Church St
Enfield, CT 06082

Re: FYE Backstage Pass Membership 22584007

Dear Juan Vasquez:

Thank you for your inquiry regarding your FYE Backstage Pass membership.

Our records indicate you were offered a membership in FYE Backstage Pass. In order to join the service, we required a positive response to our direct mailing offer. In accordance with the terms and conditions of the service, the credit card fee was billed to the account provided at the time of the enrollment.

You have been a member of FYE Backstage Pass for 14 consecutive 5 week terms. We are not able to process your request.

Please be assured that we comply with a member's request to cancel the service. According to the terms and conditions of the service, you can cancel your membership at any time during your membership period by phone, mail, or email, which prevents any additional charges. To simplify this process, we also include our toll free number next to the charge on your billing statement. As you requested, the membership has been cancelled on November 06, 2017 and any credit due will be applied back to your account within the next 7 business days. The refund will reflect on your next 1-2 billing statements depending on your billing cycle.

We apologize for any confusion or inconvenience you may have experienced. If you have any questions, please do not hesitate to call us at 1-877-346-8803, Monday through Friday between 8 AM and 11 PM EST or Saturday between 9 AM and 8 PM EST.

Sincerely,

Membership Support
FYE Backstage Pass

APPENDIX A

[I] was disgusted by the expectations corporate had in place to selling subscriptions and club cards to customers. The club cards were a rip off, and customers were charged monthly until they cancel.

https://www.glassdoor.com/Reviews/f-y-e-Reviews-E240923_P8.htm (last visited on September 20, 2018).

This company is a complete scam! **Advice to Management** Corporate Office, Stop the VIPs and Magazine scam. No one wants it!

https://www.glassdoor.com/Reviews/f-y-e-Reviews-E240923_P8.htm (last visited on September 20, 2018) (emphasis in original).

The corporate expectations are ridiculous, leading to managers having to fire or give low hours to people that can't sell discount cards/magazines but are good workers, and keeping on staff that can sell that but just won't work unless constantly given tasks.

https://www.glassdoor.com/Reviews/f-y-e-Reviews-E240923_P9.htm (last visited on September 20, 2018).

Selling the 25\$ yearly membership to save 10% on purchases was a joke and so were the magazines and monthly membership that automatically renews at the end of the free trial.

https://www.glassdoor.com/Reviews/f-y-e-Reviews-E240923_P10.htm (last visited on September 20, 2018).

Your tasks never end ever... sell attachments at the register such as magazines, prps, discount cards (two varieties) and giftcards. Your store is graded more on that than anything else. Your store could be a complete unorganized mess but if you succeed at drivers upper management does not even care.

https://www.glassdoor.com/Reviews/f-y-e-Reviews-E240923_P12.htm (last visited September on 20, 2018).

“Advice to Management” “VIP, backstage passes and mags that you force us to sell is criminal. Your ship is sinking.

https://www.glassdoor.com/Reviews/f-y-e-Reviews-E240923_P12.htm (last visited on September 20, 2018) (emphasis in original).

Upper mgmt just cares about profit, not people or integrity. Want you to do whatever it takes to get drivers including scamming the customers.

https://www.glassdoor.com/Reviews/f-y-e-Reviews-E240923_P13.htm (last visited on September 20, 2018).

EXTREME push on add on sales - stuff nobody wants to buy...Upper management is extremely shady and do not realize that their buyers do not want extra product...The reality is, the consumers do NOT want magazines, PRPs, etc...Someone walking in to purchase a \$7.00 cd does not want to pay \$25.00 extra for a membership. It doesn't matter who you have offering these items to customers, they most likely will not want them unless they aren't being told the full truth about what they are buying. Instead of risking people's jobs and stressing them out, try getting rid of the magazines and finding something people actually want.

https://www.glassdoor.com/Reviews/f-y-e-Reviews-E240923_P14.htm (last visited on September 20, 2018).

For management, the bonuses are a joke...OH WOW, the store was 3x as profitable this year than it was last...but...wait...your VIP conversion rate was only 6%....sorry, you're getting written up...Sure, signing a customer up for a VIP (discount card) makes the store \$28 while also saving the customer money, but, there is so much pressure to perform well on these profit "drivers" a lot of people are deceived in to believing the "free" discount card will not cost them anything...until they don't cancel it, then it's \$11.99 a month (non-refundable, sorry, you signed saying you knew what it was) until they cancel. I really enjoyed working here, I truly did, but your focus on the drivers is insanely misled. When a cashier has to say, "Did you find everything all right? What's your email?"

Do you have our discount card? No? Well buy our club card for only 25 bucks to save 10% off everything for the next year!! No? WELL, I'm going to save you 10% right now FOR FREE with our other discount card (only to cost you \$11.99 a month until you cancel), also, I'm going to give you three magazines free for 2 months (then find the \$75 charge on your card after the 2 months)...**Advice to Management** For management, the pressure is unreal. I understand how much money the drivers make the store, but to judge a store or management solely based upon how they perform on this one aspect of a business is absurd. If you continue down this path, this company will not survive...

https://www.glassdoor.com/Reviews/f-y-e-Reviews-E240923_P16.htm (last visited on September 20, 2018) (emphasis in original).

Advice to Management DO AWAY WITH DISCOUNT CARDS AND MAGAZINES. It's not fun feeling like you have to scam people all day at work. Focus more on sales and less on drivers...I am good at sales, I should not be in trouble for being adamant about scamming customers.

https://www.glassdoor.com/Reviews/f-y-e-Reviews-E240923_P17.htm (last visited on September 20, 2018) (emphasis in original).

Advice to Management Don't make us focus so much on ripping off customers with loyalty cards and magazines that we know they don't want to pay for monthly.

https://www.glassdoor.com/Reviews/f-y-e-Reviews-E240923_P18.htm (last visited on September 20, 2018) (emphasis in original).

you are forced to shovel 7 different "drivers" down the throat of every customer. Every employee is now expected to reach a specific goal with each driver, and if the goal isn't met, you're written up until you're fired...Everything is about pushing the discount card to the most customers as possible...

https://www.glassdoor.com/Reviews/f-y-e-Reviews-E240923_P18.htm (last visited on September 20, 2018) (emphasis in original).

[T]he drivers are so stressful it makes you feel like less of a person. the company wants you to manipulate customers into signing up for things that will charge their credit card, you get screamed at for not scamming enough people and no matter how many you get to sign up it is never good enough.

https://www.glassdoor.com/Reviews/f-y-e-Reviews-E240923_P19.htm (last visited on September 20, 2018).

Pushing backstage passes, magazines, and other items that cost extra for the customer if they forget to cancel. I personally felt like I was lying to the customer when I was forced, by the management, to say that they were getting something free...

https://www.glassdoor.com/Reviews/f-y-e-Reviews-E240923_P21.htm (last visited on September 20, 2018).

The constant sales goals are ridiculous. I was raised to be a person who refused to lie and scam people. I feel like the VIP cards ARE scamming customers if they're sold the way my fellow employees sell them.

https://www.glassdoor.com/Reviews/f-y-e-Reviews-E240923_P22.htm (last visited on September 20, 2018).

The industry's dying...Employees are pressured to sell the Backstage Pass discount card, "free" magazine subscriptions and other shams that most customers realize aren't very good deals. Upper management doesn't care about anything but selling Backstage Passes and magazine subscriptions... regional managers will openly make threats to fire people if BSP or magazine goals aren't met. **Advice to Management** ...focus more on pushing customer service rather than magazine subscription scams and overpriced membership cards.

https://www.glassdoor.com/Reviews/f-y-e-Reviews-E240923_P24.htm (last visited on September 20, 2018) (emphasis in original).

Employees are forced to pitch shady magazine subscriptions and membership cards and performance is judged on these more than

actual in store responsibilities and customer service...If you can't afford to pay your employees more, at least treat them better and stop making them sell shady product, especially without commission.

https://www.glassdoor.com/Reviews/Trans-World-Entertainment-Reviews-E1963_P3.htm (last visited on September 20, 2018).

The dang VIP memberships and magazine sign ups. Scams to get your money and email. That is the main focus. You get in trouble if you dont sell a certain number of each in a day.

https://www.glassdoor.com/Reviews/Trans-World-Entertainment-Reviews-E1963_P3.htm (last visited on September 20, 2018).

Corporate focuses too much on getting subscriptions to magazines and loyalty cards... employees are judged based on their conversion rates rather than their sales volume or customer appreciation, and even when associates do their best to perform, upper management still criticizes them on their lack of subscriptions...

https://www.glassdoor.com/Reviews/Trans-World-Entertainment-Reviews-E1963_P5.htm (last visited on September 20, 2018).

I took moral and ethical issue with the company's business practices when it came to shilling store cards, subscription services, and the like. Because of this, I refused to participate in these promotions, which would often result in constant 're-training' and critique--despite the fact that my work, in all other aspects, was considered beyond stellar.

https://www.glassdoor.com/Reviews/Trans-World-Entertainment-Reviews-E1963_P10.htm (last visited on September 20, 2018).

From a senior assistant manager: "Nazi-like attitude regarding company policy, procedures, etc... Customer service isn't part of the equation. Seriously. A recent email read 'Being generous to customers does not help the company.'

https://www.glassdoor.com/Reviews/Trans-World-Entertainment-Reviews-E1963_P10.htm (last visited on September 20, 2018).

I have never heard of a company that was more fixated on plan-ograms and magazine subscriptions than actual sales dollars and profit margin.

https://www.glassdoor.com/Reviews/Trans-World-Entertainment-Reviews-E1963_P10.htm (last visited on September 20, 2018).

Cons- ATTACHMENTS. All the company cares about is how many people you can get to sign up for discount cards, warranties, magazines, emails, etc.

<https://www.glassdoor.com/Reviews/Employee-Review-f-y-e-RVW13575923.htm> (last visited on September 20, 2018) (emphasis in original).

FYE employees are now given job warnings, are having their hours punitively cut back, some have been fired, and some are under threat to be fired, when their sales of certain trick incentive items fall below ever-increasing target numbers. Most egregious and lucrative for FYE among these are the so-called 'free' subscriptions, which are automatically billed to the customer if they don't opt out in time to cancel.

Employees are literally instructed by managers-in a deniable way, of course-to withhold and/or parse out information (emphasizing the free and not volunteering any information about what's going to happen later) about how it works so that customers are lulled into giving consent and surprised by the (almost irreversible) automatic deduction later. Those who don't cooperate by being too honest with customers and/or consequently fail to meet the sales quotas are then pushed down the path to constructive discharge and out the door. When the misled consumers come into the store to complain, employees who refer them back to the manager rather than give them the brush-off themselves are also subjected to negative review.

<https://usacomplaints.com/shops-trade/412386-fyetrans-world-entertainment-complaints-reviews.html> (last visited on September 20, 2018).

‘A dinosaur graveyard’ ...Cons This business model is dying slowly and this business is failing miserably at adapting. No viable plan for digital, no desire to be a respectable consumer-facing brand. They trumpet their BBB rating but all their complaints are under separate dba’s. The upper management at this company loathe their customers, which is not how you succeed in 2004, nevermind 2014. Can’t crack the digital code? Let’s roll out another membership plan with five breakage points and a prorated refund starting on day 1. The work environment here is toxic. Tons of egos and no collaboration. Zero sense of shared purpose. Everyone afraid of being a target in the next round of Time Inc. layoffs. You can’t do good work when your main motivation is fear.

<https://www.glassdoor.com/Reviews/Employee-Review-Synapse-Group-RVW6619295.htm> (last visited on September 20, 2018) (emphasis in original).

APPENDIX B

If after you start with promo make sure you cancel it afterwards cause they will continue to bill you and even after you cancel the subscription make sure you check your account because I had to cancel it 3 times and they will continue to charge you even with reference numbers. I hope this review is helpful to someone. This company is full of crooks who will try and find any way to scam anyone they can....

https://www.consumeraffairs.com/home_electronics/fye.html?page=2 (last visited September 20, 2018).

In November 2016 I purchased something from this company. The cashier asked me if I wanted to sign up for their FYE VIP membership. I asked him if it cost anything and he said "There is no fee, it just gives you some perks." Well, I've worked in retail before so I know many times they'll have a goal for this sort of thing. I never shop here but I figured that it's free, so I'll just sign up to be nice. I paid for my purchase with my credit card and left. So now, in March 2017, I checked my bank statement (linked to the credit card I used at FYE). I noticed a charge I hadn't seen before labeled FYE VIP Backstage Pass. So I google it and I realize what it is. Except I NEVER agreed to pay any money for this, and I certainly did NOT give them my credit card number for this purpose. I google it some more, and I find out that I am not NEARLY the only person this has happened to....

https://www.consumeraffairs.com/home_electronics/fye.html?page=2 (last visited September 20, 2018).

After my experience and reading all these horrible accounts of them scamming money I don't understand how they are still able to do this!! Almost four months after cancelling they are taking random amounts of money out of my account! I've been trying to reach a live person and all I get is more 'special promotions'. Now I get a recording that says the number is no longer taking incoming calls! Hopefully my bank will get somewhere and the hundreds of dollars can be returned to me! You, as a company, should be ashamed!

https://www.consumeraffairs.com/home_electronics/fye.html?page=2 (last visited September 20, 2018).

They charged me for a backstage pass I never even bought. They didn't even refund me the money they stole from my account. So

now I'm short money and charged 12 dollars for nothing. Never going back to this store again.

https://www.consumeraffairs.com/home_electronics/fye.html?page=2 (last visited September 20, 2018).

FYE has stores all over the country and online. Back in Jan., I was shopping in my local store...When I was checking out, the Sales/Associate asked me if I liked to save on this purchase and savings offers throughout the year at this store and many others by getting a BSP VIP card. She said it costs nothing to join. I like to save money so I said yes. She never said that if I didn't cancel this membership after 30 days I would be charged a monthly fee. Well, fast forward 5 months and I notice a transaction for \$11.99 posting to my credit card for FYE. I wasn't shopping or did not buy anything from FYE on 6/23. So I called my credit card to report a transaction I didn't make. That is when my credit card rep told me that FYE had been recurring a monthly fee for \$11.99 since Feb. I called FYE and they refused to refund my money. They said, "You should have read the little booklet they gave to you explaining your membership." No, they should tell you upfront that there is a stipulation. I am very angry as I lost almost \$60. I told them I will never purchase another thing from FYE. The merchandise they sell is available through other merchants who do not use deception to make money off their customers. I think all of us who have been ripped off should file a class action suit. This should be illegal!

https://www.consumeraffairs.com/home_electronics/fye.html?page=2 (last visited September 20, 2018).

I did not authorize or sign up for Backstage Pass. I rarely shop at FYE, and would NEVER have agreed to a monthly charge for a place I do not shop at. I buy something for my nephew the day they state I made the agreement, which is how they had my credit card information. I did not have a card or anything else from them to show I was a member nor did I receive anything in the mail...

https://www.consumeraffairs.com/home_electronics/fye.html?page=2 (last visited September 20, 2018).

So I purchased something from FYE in August 2013. While there I was offered a VIP Backstage pass for free and I accepted. They did NOT make me aware that I would be charged 11.99 thereafter on a monthly basis!!! What's worse is that a misrepresent themselves by getting your credit/debit card info while you make that initial purchase and start charging without letting you know at all!!

https://www.consumeraffairs.com/home_electronics/fye.html?page=2 (last visited September 20, 2018).

First. I have no idea who F.Y.E. is. Today we received a letter in the mail addressed to my wife with the subject on the envelope of 'Payment Due Notice'. Opening and reading it tells us they tried to process a payment for our 'membership' and were unable to collect the funds.. thank goodness. Since they couldn't automatically charge any account, they ask us to fill out the attached page with our account number and send it back so they could charge our account and activate our \$11.99 / month billing for ...what? Think how many of us 'older folks would just put all the info on the sheet and mail it back without questioning it?

https://www.consumeraffairs.com/home_electronics/fye.html?page=2 (last visited September 20, 2018).

I was able to track down the charges on my credit card for the PAST 4 YEARS from this company. I didn't even know what company was because of the cryptic listing on my credit card bill. They should have their customer service number on there like many other service companies list on credit card statements. However, being that this company is a scam, I can see why they don't. Like the many other complaints on this company I do not remember signing up for this program nor was I told that I needed to call and cancel within 30 days. They have taken over \$575.32 from me. I called and was able to get a year's refund but that is still only 25% of what was taken without my consent. I wish I could take legal recourse with them. If anyone is going in on a class action lawsuit let me know.

https://www.consumeraffairs.com/home_electronics/fye.html?page=2 (last visited September 20, 2018).

Fye is charging me 12\$ a month for a product I did not ask for or want. I have emailed customer service seven times and called twice. I was told on my last email that I was removed from VIP. Today I was charged again and back to the email process over again. I have posted on FYE Facebook and Twitter with no response. Someone help please!

https://www.consumeraffairs.com/home_electronics/fye.html?page=2 (last visited September 20, 2018).

Last week I bought a Blu-ray on Bloomington IL store. I used to pay with my credit card. I was dealing with my child so I just sign

for the payment for this Movie... WRONG! I got a surprise when I was reviewing my week Transactions and seems I also sign for some kind of monthly SUBSCRIPTION... of \$11.09... **! I extremely recommend not to use Credit Card (better not to go there) on this store because you will not know if you a signing for what you are buying or a 'subscription' you are not looking for Regards! An Angry Customer that WON'T ever put a step on this store!

https://www.consumeraffairs.com/home_electronics/fye.html?page=2 (last visited September 20, 2018).

During my sale transaction, the clerk offered me a rewards card. He did not mention they would charge me \$11.99 monthly and automatically from the card i paid with during my sale transaction. I never received a statement from FYE, I simply discovered these charges on my account for the past... several months. This is very dishonest business practice. Further [sic] inquiry online, I see this has happened to many people.

<https://www.bbb.org/upstate-new-york/business-reviews/family-entertainment/trans-world-entertainment-corporation-in-albany-ny-50016440/reviews-and-complaints?section=complaints> (last visited September 20, 2018).

About a year ago I had to get a USB A to USB mini connector on short notice....While I was checking out, the clerk tried to sell me on their 'VIP' program. I thanked him, but didn't sign up. And that was the last of it, or so I thought...the last couple of months I noticed charges appearing on my credit card that I hadn't authorized. Some googling on '**fye vip**' revealed the culprit - apparently FYE has been signing up people for this program either without disclosing the monthly charges, or (my case) signing them up without their knowledge and hoping they don't notice the charges appearing on their statements. I fall into the later category...The most intriguing aspect of this scam is the 'prove a negative' aspect. I called them to try and cancel the membership. After refusing several times, the rep eventually agreed to close the account. But wait - having never signed up, I have no membership card. So I can't close the account. Nice scam - if they sign you up using your credit card information you only have one option - report the card as missing so that the number is changed. That's what I'm doing now...

<https://boingboing.net/2010/04/27/beware-of-fyes-vip-b.html> (last visited September 20, 2018) (emphasis in original).

In March I was with my family shopping at a FYE store in ***** NJ. The store clerk offered me 10% off if we joined the FYE loyalty program. When I asked what it required she said only an email account. I just noticed that FYE has been charging me 11.99 a month since May to be a member of the loyalty program. I was never advised that there was a fee and was never given any benefits for the fee. I believe they are intentionally misrepresenting the program at the point of sale to dupe customers into paying a monthly fee hoping they won't notice the charges. This constitutes fraud.

<https://www.bbb.org/upstate-new-york/business-reviews/family-entertainment/transworld-entertainment-corporation-in-albany-ny-50016440/reviews-and-complaints?section=complaints> (last visited September 20, 2018).

I went to a local FYE store and was signed up to their VIP pass without my consent. I have been charged \$11.99 for a service i did not consent to, want or use. I have been charged for a total of \$83.93 without my consent. They refuse to refund.

<https://www.bbb.org/us/ny/albany/profile/family-entertainment/trans-world-entertainment-corporation-0041-50016440/complaints> (last visited September 20, 2018).

I used a credit card to purchase something in their store over a year ago and and was told that I could sign up for a free discount card and get 10% off. Then I was signed up for a magazine subscription that I did not want and was stuck paying for that was nearly impossible to cancel. After that was over, nearly a year later monthly charges started showing up on the credit card that I used to make the purchase. I did not authorize them to use my credit card number for anything except the original purchase I made in the store yet they decided to use it for anything they could think to charge me for.

<https://www.bbb.org/us/ny/albany/profile/family-entertainment/trans-world-entertainment-corporation-0041-50016440/complaints> (last visited September 20, 2018).

had went the fye store in novembver i think and they asked me if i wanted a free magazine, which i didnt recieve, so i said yes and without them telling me fye and tme have both been taking money with out my consent from my bank account. i had never gave them my debit card information but when i check my statments i have both fye and tme both taking money monthly since novembver of

2017 .. i didnt really realize they were doing it ungtill my card almost got over drafted ...

<https://www.bbb.org/us/ny/albany/profile/family-entertainment/trans-world-entertainment-corporation-0041-50016440/complaints> (last visited September 20, 2018).

After shopping for Christmas presents in the store on 11/7/2017 and offered a store rewards card I've been charged \$11.99 for the month of December and January for a program I never agreed to. Called customer service and was told they do not refund for this even though I never agreed or sign up for this. My debit card was charged \$11.99 on 12/7/2017. My debit card was charged \$11.99 on 1//2018.

<https://www.bbb.org/us/ny/albany/profile/family-entertainment/trans-world-entertainment-corporation-0041-50016440/complaints> (last visited September 20, 2018).

Fye illegal charged my credit card. Cashier stated you get 10% off today and we are giving you a reward membership for discounts off your next purchase. I said thank you then he put the reward card in my bag. I just noticed a recurring 11.99 charged illegal on my account. I won't this reimbursed and cancelled. I will never do business with a company that manipulate their customers.

<https://www.bbb.org/us/ny/albany/profile/family-entertainment/trans-world-entertainment-corporation-0041-50016440/complaints> (last visited September 20, 2018).

I visited FYE in Florida while on vacation on Aug 16 2017. The lady asked me to sign twice on the pin pad but assured me the first transaction didn't take. She did also say I would get a 10% discount on the discount card. I asked her is it would cost me anything and she said no. Fast forward 2 months. & I am noticing charges on my card and received a magazine in the mail. I called the bank and spoke with rep stating I didn't make those charges. The rep provided phone numbers for the places charged. I called. Food network magazine had charged me \$14 but I didn't order. I asked how they got my info. They said fye promotion signed me up and charged me without my permission..." I feel I should be refunded and they should not be allowed to use people's debit cards randomly. Thank you so much for your help!

<https://www.bbb.org/us/ny/albany/profile/family-entertainment/trans-world-entertainment-corporation-0041-50016440/complaints> (last visited September 20, 2018).

FYE signed me up for their Backstage Pass VIP program without properly informing me that they would be charging \$11.99 per month. Instead, I was verbally told by an employee that it was a free program. I was told that it only required my email. They must have received my payment info when I paid for an in store purchase. Once I noticed the \$11.99 periodically being taken from bank account, I did a little more research. I noticed that the charges were not simply monthly, or even every 30 days, it at times jumps to less than 30 days, which over time would make it more than once per month. I also noticed in my research that I did not even receive a VIP card that was meant to be used to receive the benefits, thus I made further purchases at the store before knowing I was being charged and did not receive the benefits of the program I was supposedly signed up for. While trying to cancel my membership once I discovered it, the employee seemed to read a script which ended with indicating they would not cancel my membership despite my request, and acted as if it were a favor to me. I had to demand several times to have it cancelled. I'm still not fully convinced they cancelled it because of minimum information they received from me, so I'm not convinced they confirmed my account before telling me it was cancelled.

<https://www.bbb.org/us/ny/albany/profile/family-entertainment/trans-world-entertainment-corporation-0041-50016440/complaints> (last visited September 20, 2018).

...Our daughter made a purchase in an F.Y.E. store and unbeknownst to her a magazine subscription for **** which she does not read was attached to her purchase as a trial. We were then surprised to see magazines begin to arrive and we tried to figure out why they were coming to us and if it was a holiday gift from someone. In May we finally traced it to F.Y.E. and a purchase she had made in their store some**** before the holidays. I called and could only access an automated complaintcancel system. I opted out of the subscription. Unfortunately we continue to see a charge of 17.50 being applied to her account and most recently it seemed to be associated with another subscription...**** magazine. The subscriptions seem to begin as a trial but F.Y.E. does not call with the trial end date info or to get permission to use the credit card for the subscription. This is an extremely questionable practice which should be stopped. It is very difficult to stop the subsc

<https://www.bbb.org/us/ny/albany/profile/family-entertainment/trans-world-entertainment-corporation-0041-50016440/complaints> (last visited September 20, 2018).

We signed up for Fye's discount program. The trial period and fees were not disclosed by the cashier. After the trial period the monthly charge is \$11.99 was deducted from our bank account each month. We have called them more than once to cancel the membership. The last time we called was on 5/30/17. They said it was cancelled. Today, we just got hit with another \$11.99 fee. (6/27/17) We would like all monthly fees refunded.

<https://www.bbb.org/us/ny/albany/profile/family-entertainment/trans-world-entertainment-corporation-0041-50016440/complaints> (last visited September 20, 2018).

When shopping for Christmas last November, we purchased an item or two, and evidently, the sales clerk used our debit card number to enroll us in FYE Backstage Pass without our knowledge or authorization. We have been charged \$11.99 a month ever since then for a service we did not wish to enroll in, or had any knowledge that we were enrolled in. We have no account number for this service, so we are unable to cancel. We have since canceled our debit card, but I think this practice is terrible if not criminal.

<https://www.bbb.org/us/ny/albany/profile/family-entertainment/trans-world-entertainment-corporation-0041-50016440/complaints> (last visited September 20, 2018).

I found that I am being billed for something called 'FYE Backstage VIP membership,' which I had previously cancelled. I contacted customer service to attempt to resolve the issue, and I was told that they cannot cancel my membership because they cannot find my account number, despite the fact that they are collecting money from my bank account and applying it to my FYE membership account. They also refused to take my information and have someone call me back. I cannot cancel via the FYE online portal because doing so requires either a login ID or account number, neither of which I have, due to having discarded such information when I cancelled the membership in the past, and which I cannot obtain from FYE.

<https://www.bbb.org/us/ny/albany/profile/family-entertainment/trans-world-entertainment-corporation-0041-50016440/complaints> (last visited September 20, 2018).

FYE employee had offered a free members club to me under the impression that was free after I made a purchase during the holidays. I just now seen that since December of 2016, I have been charged \$11.99 per month for their membership. I did not authorize or give them my bank account information to charge my account. They have been charging my card as a ATM with draw with FYE Backstage Pass and the number is *****. They should not be able to make debits without my consent or without me providing them with my bank account information.

<https://www.bbb.org/us/ny/albany/profile/family-entertainment/trans-world-entertainment-corporation-0041-50016440/complaints> (last visited September 20, 2018).

On 11/7/2015 I purchased 2 CD's from this store. I have since been getting billed \$11.99 per month for some service called 'Backstage [sic] Pass Vip' that I never intentionally .signed up for. At the least this is a deceptive practice as there was never any discussion of this service as I would have never accepted this offer if it was ever presented. At worst it is an intentional scam to get additional profit.

<https://www.bbb.org/us/ny/albany/profile/family-entertainment/trans-world-entertainment-corporation-0041-50016440/complaints> (last visited September 20, 2018).

After a purchase at FYE in the Eastgate mall, I discovered that I had been signed up for a VIP Service using my credit card information. I do not recall agreeing to any such service and I always turn down such offers. They have been routinely charging my checking account 11.99 for the past six months. The charge was small enough not to notice.

<https://www.bbb.org/us/ny/albany/profile/family-entertainment/trans-world-entertainment-corporation-0041-50016440/complaints> (last visited September 20, 2018).

The whole FYE company scammed me with some VIP card that i never signed up for and [sic] the last time i shopped there was more than a year ago and since then i have been getting charged 11.99 a month and they will only give me back 4 months worth of it back. They said i agreed to the terms which i never did. Their employees take your info and do it themselves while you are not looking and then you end up getting charged for a service you will never use.

<https://www.bbb.org/us/ny/albany/profile/family-entertainment/trans-world-entertainment-corporation-0041-50016440/complaints> (last visited September 20, 2018).

I signed up for the backstage pass program under the guise that it was free. Months later I noticed an auto deposit coming out of my bank account. I signed up for the backstage pass program after being told it was free. I even double checked with the sales rep to make sure. A few months later I noticed charges being withdrawn from my account. I did not give them my card information nor authorize this. I merely signed up for a card thinking after being told it was free. Nowhere on the papers I signed did it mention being a paid service or being just a free trial. I would have opted out had I known about that.

<https://www.bbb.org/us/ny/albany/profile/family-entertainment/trans-world-entertainment-corporation-0041-50016440/complaints> (last visited September 20, 2018).

My 72 year old Mom bought two video games for my son on 9/16/13 for \$53.43. She just realized that she has been charged \$11.99 for something she didn't agree to since then. A total of 25 months, totaling \$299.75. My Mom is a senior citizen who is also deaf. I feel she was taken advantage of and I want a full refund all of monies *** took from her bank account. It's bad enough to do this to their customers, let alone a 72 y/o deaf woman.

<https://www.bbb.org/us/ny/albany/profile/family-entertainment/trans-world-entertainment-corporation-0041-50016440/complaints> (last visited September, 2018).

This business is a scam. I cannot believe a national business behaves in this manner. I purchased a few items in this store a few months ago. Upon checkout the clerk ask if I would care to enroll in a free rewards program explaining that I would save some small percentage off of the purchase that day. I trustingly said if it is free...sure. The lady seemed nice and even a guy I presumed to be the manager was behind the counter. So I made the purchase and went on my way. I now notice that there had been a charge of \$11.99 per month deducted from my credit card for the past four months listed as FYE VIP. I go online to research this and basically everyone explains that this is a scam that FYE is running. The clerk uses your credit card information to enroll you in this program without your consent. This is fraudulent activity. I gave no approval to charge my card anything. Upon looking at what the benefits of a program that \$143.88 per year is...It seems you get a whopping 10% discount on items at the store. I will be refuting these charges with my credit card company, calling the store to file a complaint, reporting this to the better business bureau and calling

to complain at the national level. I highly warn anyone against shopping at this store and providing a credit or debit card. According to online comments this scam is run at other locations as well.

<https://www.yelp.com/biz/fye-charleston-4> (last visited September 20, 2018).

I did have the unfortunate experience of buying something in the store and somehow got signed up for their VIP program. \$11.99 every month (sometimes two charges in one month).

<https://www.sitejabber.com/reviews/fye.com> (last visited September 20, 2018).

[F]ound out I have at least 18 months' worth of VIP membership that I NEVER signed up for and when I went to cancel (877.351.2131) the woman actually tried to sell me on keeping it! I went straight to the bank after I got off the phone with her and canceled my card and disputed all the charges that I could. I was told I can send a letter to them asking for a refund so they're going to get a fax, too, but I am not giving them the opportunity to do more damage. I never ever sign up for memberships. I shop at FYE once in a blue moon (I see no legit charges for this company in the same timeframe) so why would I want a membership? If it's not a scam/issue/smarmy practices, then why are so many people having problems?

<https://800notes.com/Phone.aspx/1-877-351-2131/4> (last visited September 20, 2018).

Hey everyone! Be warned that if you are offered a "discount card" at F.Y.E. do not sign up. It's not a free discount/loyalty card like at some stores, it's a paid membership card that will start charging you \$12 a month after 30 days. So even though you were just given the card at the cash register and didn't sign anything or agree to pay any monthly fees you will get charged on whatever credit/debit card you made the purchase on. As soon as the offices open tomorrow, FYE will definitely be hearing my complaints.

<https://www.facebook.com/FYE/posts/1150491768310496> (last visited September 20, 2018).

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Not So Free Trial: Trans World Entertainment Corp., Synapse Group Hit with Class Action Over 'Free Trial' Subscriptions](#)
