

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
ORANGE COUNTY, FLORIDA
CIVIL ACTION**

STATE OF FLORIDA
OFFICE OF THE ATTORNEY GENERAL,
DEPARTMENT OF LEGAL AFFAIRS,

Plaintiff,

v.

CASHBACK AMERICA, INC.,
a Florida Corporation;
and UNITED STATES ADMINISTRATIVE SERVICES, INC.,
a/k/a UNITED STATES ADMINISTRATIVE SERVICES COMPANY,
a/k/a UNITED STATES ASMINISTRATIVE TRUST COMPANY,
a Florida Corporation;
and RICHARD STUPPLE, an individual;
and RONALD GOODING, an individual,

Defendants.

COMPLAINT

Plaintiff, STATE OF FLORIDA, OFFICE OF THE ATTORNEY GENERAL, DEPARTMENT OF LEGAL AFFAIRS sues Defendants, CASHBACK AMERICA INC., a Florida Corporation; UNITED STATES ADMINISTRATIVE SERVICES, INC., aka UNITED STATES ADMINISTRATIVE SERVICES COMPANY, a Florida Corporation; RICHARD STUPPLE, an individual; and RONALD GOODING, an individual; collectively referred to herein as “Defendants” and alleges:

JURISDICTION AND VENUE

1. This is an action for injunctive and other statutory relief, brought pursuant to the Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Fla. Statutes (2007).
2. The Plaintiff is an “enforcing authority” of Chapter 501, Part II, Florida Statutes (2006), and is authorized to bring this action and seek injunctive relief and other statutory relief pursuant to that chapter.
3. This action is also brought pursuant to the following statutes and codes:
 - (a) §817.06(1), Florida Statutes, (2007), False Advertising;
 - (b) §817.41(1)-(2), Florida Statutes, (2007), Misleading Advertising;
 - (c) §736.0801, Florida Statutes, (2007), Duty of Trustee to Administer Trust in Good Faith;
 - (d) §736.0802(1), Florida Statutes, (2007), Duty of Trustee Loyalty;
 - (e) §812.014(1), Florida Statutes, (2007), Theft;
4. The Plaintiff has conducted an investigation of the matters alleged herein and Attorney General Bill McCollum has determined that this enforcement action serves the public interest, as required by Section 501.207(2), Florida Statutes (2006).
5. Defendant Cashback America, Inc. (hereafter referred to as “CBA”) is an active Florida for-profit corporation with its principal address at 6220 Hazeltine National Drive, Orlando, Florida, 32822.
6. Defendant United States Administrative Services, Inc., aka United States Administrative Services Company and United States Administrative Trust Company, (hereafter referred to as “USAS”) is an active Florida for-profit corporation with its principal address at 18950 US Highway 44, Number 306, Mount Dora, Florida, 32757.

7. Defendant Richard Stupple (hereafter referred to as “Stupple”) is a natural person and serves as the president for CBA. As president for CBA, Stupple, presently and at all times material to the allegations of this Complaint, participates in, controls, or possesses the authority to control CBA’s acts and practices, and possesses actual or constructive knowledge of all material acts and practices complained of herein. Stupple resides at 9144 Shadowbrook Trail, Orlando, Florida, 32825.

8. Defendant Ronald Goodling (hereafter referred to as “Gooding”) is a natural person and serves as the president for USAS. As president for USAS, Gooding, presently and at all times material to the allegations of this Complaint, participates in, controls, or possesses the authority to control USAS’s acts and practices, and possesses actual or constructive knowledge of all material acts and practices complained of herein. Gooding resides at 34315 Donna Vista Place, Eustis, Florida, 32736.

9. At all pertinent times Defendants engaged in trade or commerce, as defined by §501.203(8), Florida Statutes (2007), within the State of Florida and within Orange County.

10. This court has jurisdiction pursuant to the provisions of Chapter 501, Part II, Florida Statutes.

11. The statutory violations alleged herein occur in or affect more than one judicial circuit in the State of Florida, including Orange County and the Ninth Judicial Circuit.

12. Venue is proper in Orange County.

13. All actions material to the complaint have occurred within four (4) years of the filing of this Action.

STATEMENT OF FACTS AND
DEFENDANTS' COURSE OF CONDUCT

Generally

14. Plaintiff repeats and realleges Paragraphs 1 through 13 with the same force and effect, as if fully set forth below:

15. Defendant CBA markets a voucher program (hereafter referred to as “Voucher Program”) to merchants across the United States, including the State of Florida.

16. Defendant CBA promotes the Voucher Program to merchants through telephone solicitation, in-person presentations, and the use of promotional brochures, websites, and other materials in an effort to induce merchants to enter into an agreement with CBA.

17. To further this practice, Defendant CBA created and produced a sales manual to assist sales agents with the marketing of the Voucher Program.

18. CBA markets the Voucher Program to merchants by representing that consumers will more willingly purchase merchandise and/or pay full retail price for merchandise offered for sale by those merchants when those consumers are offered a Cashable Voucher through the Voucher Program.

19. The Voucher Program is offered as a promotional tool for merchants to increase their sales of merchandise and their profits. It has been marketed to sellers of a wide variety of merchandise including, but not limited to, pools and spas, pianos, timeshare vacation property, sewing machines, carpet and tile flooring, and mattresses.

20. The Voucher Program is a promotional program purporting to provide customers of participating merchants the right to recover the face value of a cashable voucher (a coupon-like device with a face value that may equal up to the customer's total purchase price).

21. The customer is issued the voucher by the participating merchant upon the customer's purchase of a good or service.

22. Based on Plaintiff's information and belief, the dollar value of these vouchers range in value from one hundred dollars to ten thousand dollars.

23. As a result of the Voucher Program and related representations made by Defendants, consumers are induced to purchase merchandise through the promise of a future refund of the full face value of the voucher.

24. To participate in the Voucher Program, merchants enter into a "Merchant Agreement" between the participating merchant and CBA.

25. Under the terms of the Merchant Agreement, merchants agree to pay USAS a percentage of the face value of each voucher issued to a purchasing customer. The merchants must make those payments on a weekly basis for all sales of merchandise covered by the Merchant Agreement.

26. The Merchant Agreement sets forth numerous other conditions and obligations placed on the participating merchants, included the following:

(a). Merchants must provide a Cashable Voucher to "every qualifying purchaser of Goofs during the Agreement term."

(b). Merchants may not use "any advertising, promotional, or selling materials in relation to the Promotion (Voucher Program), except those supplied or approved in writing by Cashback America."

- (c). Merchants must pay the amount of the non-refundable Advance to USAS before the Commencement Date.
- (d). When the sum of the fees due under the Agreement exceeds the Advance, Merchants must pay to USAS an amount equal to 12.5% of the value of every Cashable Voucher issued on a weekly basis.
- (e). No claims will be validated on any Cashable Voucher submitted if USAS has not received fees from the Merchants.
- (f). Once the sale by the Merchant of Goods has been concluded, the Merchant shall not under any circumstances take any action, direct or indirect, that has the effect of or is intended to remind a check holder of or assist a check holder in fulfilling the qualification of the Promotion.

27. The percentage that the merchant pays to USAS depends on the amount of the voucher and/or the maturation period of the voucher. If the maturation period is 54 months, then the merchant pays 12.5% of the value of the voucher. If the maturation period is 35 months, then the merchant pays 13.5% of the value of the voucher. If maturation period is 11 months, then the merchant pays 14.5% of the value of the voucher.

28. Such funds have been paid by merchants to USAS for the benefit of customers who may later seek to redeem the value of their vouchers.

29. The Agreement between CBA and USAS requires that USAS place “Merchant Cashback Program Payments” in interest bearing financial instruments in certain amounts or percentages, and to provide CBA with monthly written evidence of each such placement. The funds placed must be held as an irrevocable trust for payment of valid claims from CBA voucher holders.

30. Plaintiff has been unable to confirm the percentage of merchant payments that were placed in escrow accounts or investment accounts and whether such amounts will be sufficient to pay the consumer claims.

31. After the customer purchases a product from the merchant, the consumer is given a brochure prepared by CBA and a voucher stub with the Promotion Conditions.

32. In order to be eligible to eventually claim the value of a 54 month voucher, the customer must mail (by registered mail, certified mail, or courier service) the voucher “stub” to USAS within 14 days from the date that the voucher was issued to the customer.

33. The length of time that a customer has to mail the voucher stub varies depending on the maturation period of the voucher but generally is between 11 and 14 days from the date the voucher was issued.

34. The voucher will then “mature” after a period of 11, 35, or 54 months depending on the terms of the specific voucher.

35. Within 30 days from the date that the 54 month voucher matures, the customer must “claim” the value of the voucher by sending the original voucher to USAS (again by registered mail, certified mail, or courier service).

36. The length of time that a customer has to submit a valid claim depends on the maturation period of the voucher but generally is between 20 and 30 days from the date that the voucher matures.

37. In addition the customer must submit the following items along with the original voucher:

- (a) the original bill of sale and lease or credit agreement obtained from the Merchant or Dealer for the item;

- (b). third-party proof that you have paid for the goods
- (c). a photocopy of your valid passport, or driving license as proof of your identity – you must sign the photocopy to confirm it is a true copy of the original document;
- (d). a copy of a recent utilities bill as proof of current address; and
- (e). proof that the Check stub has been sent to, and received by, USAS within the time limit specified by registered mail. (Return receipt from mail source).

38. If the customer complies with all the requirements listed in Paragraphs 32 through 37, then USAS, acting as the claims administrator for CBA, is supposed to, within six weeks of receiving the customer's claim, issue payment to the customer for up to 100% of the value of the customer's voucher.

39. Any error on the customer's part in submitting a claim on his/her first attempt is grounds for non-payment of the claim by USAS.

40. Defendants anticipate that most consumers will not remember to file a claim or that the claim they do file will be invalid.

Defendants' Fraudulent and Misleading Marketing Activities to Merchants

41. Defendants mislead merchants by marketing the voucher program to merchants as a rebate program instead of a cashable voucher program.

42. CBA's website has a clickable link entitled "Rebates" that explains to prospective merchants how their "rebate" program works.

43. Merchants participating in the program are under the impression that their customers will be able to claim the full value of the voucher.

44. Instead, customer claims, when actually paid, are often reduced in value so that the customer receives substantially less than the full value of the voucher as promised.

45. Defendants mislead merchants by suggesting that all funds paid by the merchant are held in secure trust for the benefit of customer claims.

46. For example, CBA's Website, under the Rebates links, contains language that implies to merchants that all fees paid by the merchant will be used for the purpose of paying claims:

Merchants pay for the issue of Cashback Vouchers during their promotion and, in line with their contract, USAS sets up a series of weekly Cashback claim funds with large financial institutions of repute. The claim funds are held in escrow with the beneficiaries of the funds being "future validly claiming Cashback voucher holders". This means that the funds cannot be used for any other purpose than to pay valid claims.

47. In truth, Defendants only apply 20% to 30% of the fees paid by Merchants towards the possible payment of future claims.

48. Based on the misleading marketing practices of Defendants, merchants are induced into participating in Defendants' Voucher Program.

Defendants' Fraudulent and Misleading Advertising Activities

49. Defendants directly induce consumers to purchase goods from merchants participating in the voucher program (thus incurring a benefit to Defendants) by creating and

approving misleading and fraudulent advertising and promotional materials for the use of participating merchants.

50. As alleged in Paragraph 26(b), per the Merchant Agreement between participating merchants and CBA, Defendants must supply or approve all advertising or promotional materials (hereafter referred to as “advertisements”) used by merchants that include reference to the Defendants’ Voucher Program.

51. CBA’s sales manual includes a section tabbed as “Adverts.” This section contains numerous advertisements that Defendants have previously approved for use by participating merchants.

52. Many of these advertisements are fraudulent and misleading in nature because they do not inform consumers that the value of their “refund” (claims paid through the Voucher Program) may be reduced depending on the availability of funds.

53. Many of these advertisements are fraudulent and misleading in nature because they do not inform consumers that the “rebate” offered is actually a deferred Voucher Program requiring the customer to wait at least either 11 months, 35 months, or 54 months before the voucher matures.

54. The advertisements prepared by the defendants are fraudulent and misleading because they do not disclose to consumers the exact terms and conditions (such as claims policy) that apply before a customer can claim the promised rebate under the Voucher program.

55. In most instances the advertisements only contain a small print disclaimer that states something to the effect that “terms and conditions may apply.”

56. In many instances the advertisements contain no disclaimers or warnings that “terms and conditions” apply to the Voucher Program

57. Defendants further defraud and mislead customers by failing to disclose the actuarial risk inherent in the Voucher Program.

58. The amount of money placed in trust for the future payment of a customer's voucher is only between 3.75% and 4.35% of the face value of the voucher.

Defendants' Management of Consumer Claims under the Voucher Program

59. As part of the Voucher Program, Defendants promise payment of valid claims made under the Voucher Program.

60. Defendants deceptively represent to merchants and customers that the claims process under the Voucher Program is easy. See for examples:

(a). With Cashback every voucher holder has the opportunity to claim a significant amount of money back just by following simple instructions which are written in plain English (*emphasis added*)

(b). We don't wish to hide anything from the consumer and the full terms and conditions are printed in plain English beneath the Voucher for their convenience.

61. Defendants regularly and systematically deny customer claims based on any perceived violation of the listed terms and conditions.

62. Defendants intentionally impose unreasonable terms and conditions in order to frustrate customers' attempts to claim money under the Voucher Program.

63. Additionally Defendants knowingly and intentionally mislead customers as to the requirements to make a successful claim. For example CBA's Website under the "Claims Information" link states:

How to Claim?

There are two steps to take in order to claim your Cashback and these are explained in detail on your Cashback voucher for your convenience.

1) Register your Cashback voucher within the time limit specified on the voucher (usually 14 days) by completing the voucher stub section and mailing it to the address shown on the voucher.

2) Make your claim within the time specified on your voucher by sending the original voucher to the address shown along with the original bill of sale, proof of your identity and address and proof that you paid for the goods.

Don't forget to use registered or recorded mail when registering and claiming as this will be your proof that they arrived within the time limits specified.

64. Customers acting in reliance on the above instructions would have their claim denied because they failed to:

(a). Include a copy of their driver's license or US Passport as proof of identification.

(b). Sign the photocopy listed in Subparagraph A.

(c). Include a recent utilities bill as proof of address. (Other forms of proof are rejected by Defendants)

(d). Third-party proof of payment for goods

(e). Return receipt showing that original voucher stub was mailed to USAS

(f). Failure to meet the postage or courier requirements.

65. If the customer actually files a successful claim, the claim may still be denied due to circumstances outside the control of the customer.

66. Customers claims have been denied because the participating merchant from whom the customer received the voucher filed for bankruptcy or failed to pay all fees required to Defendants.

67. Many customers' claims were denied because the merchant issuing the voucher did not return the original voucher to the consumer.

68. The Defendants will also deny customers attempting to redeem more than one voucher from the same merchant by claiming that the purchases arose from the same transaction, even though the merchant issued the customer more than one voucher.

69. Defendants will also notify consumers (generally after contact has been initiated by the consumer) that their claim is being processed and that a check will be sent to the consumer in a stated period of weeks or months. At the end of the stated period of time the consumer generally has not received payment from the defendants.

70. When defendants do make payments under the Voucher Program, the payments are usually at an amount that is substantially less than the face value of the issued voucher.

Defendants' Trust Administration Activities

71. Individual Defendant Gooding is currently the President and Incorporator for USAS. USAS was incorporated in 2001.

72. CBA was incorporated in 2002. Gooding also served as Incorporator, Initial Registered Agent, and President of CBA at the time of incorporation.

73. Per the terms of the Agreement between USAS and CBA, USAS is to hold "claims funds" in escrow (hereafter referred to as "the Trust") for the payment of valid claims by customers participating in the Voucher Program.

74. Merchants pay fees to USAS to fund the Trust. Merchants anticipate that USAS will hold the money in the Trust for the benefit of the merchants' customers.

75. Under the Trust created as a result of the agreement between USAS and CBA, and as a result of the practices of participating merchants and USAS, the actual and intended beneficiaries of the Trust are consumers submitting claims under Defendants' Voucher Program (hereafter referred to as "Beneficiaries").

76. USAS acts as trustee over the Trust created by Defendants for the benefit of Voucher Program customers.

77. To date, Plaintiff has received 250 consumer complaints against CBA and USAS.

78. To date, the aggregate sum of unpaid rebates from the total consumer complaints received by Plaintiff is around \$520,050.

COUNT ONE
FRAUDULENT AND MISLEADING MARKETING TO MERCHANTS
VIOLATIONS OF CHAPTER 501, PART II, FLORIDA STATUTES
DECEPTIVE AND UNFAIR TRADE PRACTICES

79. Plaintiff repeats and realleges Paragraphs 1 through 78 with the same force and effect, as if fully set forth below:

80. The Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes, provides that “unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.”

81. At all times material hereto, Defendants engaged in “trade or commerce” as defined in Section 501.203(8), Florida Statutes.

82. Defendants marketing activities as set forth in paragraphs 41 through 48 above, were designed and conducted by Defendants as well as the employees and agents thereof to mislead merchants and induce those merchants into participating in Defendants’ Voucher Program, to the financial benefit of Defendants.

83. As set forth in paragraphs 1 through 78 above (particularly in paragraphs 41 through 48), Defendants have engaged in representations, acts, practices or omissions which are material and likely to mislead consumers acting reasonably under the circumstances; and have committed acts or practices in trade or commerce which offend established public policy and are unethical, unscrupulous or injurious to consumers in violation of §501.204(1), Florida Statutes.

84. These above-described acts and practices of Defendants have injured and will likely continue to injure and prejudice the public.

85. Defendants willfully engaged in acts and practices when they knew or should have known that the acts and practices were unfair or deceptive or prohibited by law.

86. Unless the Defendants are permanently enjoined from engaging further in the acts and practices complained of herein, the continued activities of the Defendants will result in irreparable injury to the public for which there is no adequate remedy at law.

COUNT TWO
FRAUDULENT AND MISLEADING ADVERTISING TO CONSUMERS
VIOLATIONS OF CHAPTER 501, PART II, FLORIDA STATUTES
DECEPTIVE AND UNFAIR TRADE PRACTICES

87. Plaintiff repeats and realleges Paragraphs 1 through 78 with the same force and effect, as if fully set forth below:

88. The Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes, provides that “unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.”

89. At all times material hereto, Defendants engaged in “trade or commerce” as defined in Section 501.203(8), Florida Statutes.

90. Defendants advertising activities as set forth in paragraphs 48 through 58 above were designed and conducted by Defendants, as well as employees and agents thereof to mislead consumers and induce those consumers into purchasing goods from merchants participating in Defendants’ Voucher program, thus incurring financial benefit to the Defendants.

91. As set forth in paragraphs 1 through 78 above (particularly in paragraphs 48 through 58), Defendants have engaged in representations, acts, practices or omissions which are material and likely to mislead consumers acting reasonably under the circumstances; and have

committed acts or practices in trade or commerce which offend established public policy and are unethical, unscrupulous or injurious to consumers in violation of §501.204(1), Florida Statutes.

92. These above-described acts and practices of Defendants have injured and/or were directed at Senior Citizens (persons who are 65 years of age or older) in violation of §501.2077(2).

93. These above-described acts and practices of Defendants have injured and will likely continue to injure and prejudice the public.

94. Defendants willfully engaged in acts and practices when they knew or should have known that the acts and practices were unfair or deceptive or prohibited by law.

95. Unless the Defendants are permanently enjoined from engaging further in the acts and practices complained of herein, the continued activities of the Defendants will result in irreparable injury to the public for which there is no adequate remedy at law.

COUNT THREE
VIOLATIONS OF §817.06(1), FLORIDA STATUTES
FALSE ADVERTISING
VIOLATIONS OF CHAPTER 501, PART II, FLORIDA STATUTES
DECEPTIVE AND UNFAIR TRADE PRACTICES

96. The Plaintiff repeats and realleges Paragraphs 1 through 78 with the same force and effect, as if fully set forth below:

97. Section 817.06(1), Florida Statutes, prohibiting fraudulent or misleading advertising, proscribes unfair, deceptive, and unconscionable acts and practices, provides:

No person... shall, with intent to offer or sell or in anywise dispose of merchandise, . . . service or anything offered by such person... directly or indirectly, to the public, for sale or distribution or issuance, or with intent to increase the consumption or use thereof, or with intent to induce the public in any manner to enter into any obligation relating thereto, . . .

knowingly or intentionally make, publish, disseminate, circulate or place before public, or cause, directly or indirectly, to be made, published, disseminated or circulated or placed before the public in this state in a newspaper or other publication or in the form of a book, notice handbill, poster, bill, circular, pamphlet or letter or in any other way, an advertisement of any sort regarding such . . . service or anything so offered to the public, which advertisement contains any assertion, representation or statement which is untrue, deceptive, or misleading.

98. Pursuant to Section 501.203(3)(c), Florida Statutes, a violation of Chapter 501, Part II, may be based upon “[a]ny law, statute, rule, regulation, or ordinance which proscribes unfair methods of competition, or unfair, deceptive, or unconscionable acts or practices.”

99. As set forth in paragraphs 1 through 78 above, Defendants have engaged in representations, acts, practices or omissions which are material and likely to mislead consumers acting reasonably under the circumstances; and have committed acts or practices in trade or commerce which offend established public policy and are unethical, unscrupulous or injurious to consumers in violation of Section 501.204(1), Florida Statutes.

100. These above-described acts and practices of Defendants have injured and/or were directed at Senior Citizens (persons who are 65 years of age or older) in violation of §501.2077(2).

101. These above-described acts and practices of Defendants have injured and will likely continue to injure and prejudice the public.

102. Defendants willfully engaged in acts and practices when they knew or should have known that the acts and practices were unfair or deceptive or prohibited by law.

103. Unless the Defendants are permanently enjoined from engaging further in the acts and practices complained of herein, the continued activities of the Defendants will result in irreparable injury to the public for which there is no adequate remedy at law.

COUNT FOUR
VIOLATIONS OF §817.41, FLORIDA STATUTES
MISLEADING ADVERTISING
VIOLATIONS OF CHAPTER 501, PART II, FLORIDA STATUTES
DECEPTIVE AND UNFAIR TRADE PRACTICES

104. The Plaintiff repeats and realleges Paragraphs 1 through 78 with the same force and effect, as if fully set forth below:

105. Sections 817.41(1)-(2), Florida Statutes (2007), prohibiting misleading advertising, proscribes unfair, deceptive, and unconscionable acts and practices, provides:

(1) It shall be unlawful It shall be unlawful for any person to make or disseminate or cause to be made or disseminated before the general public of the state, or any portion thereof, any misleading advertisement. Such making or dissemination of misleading advertising shall constitute and is hereby declared to be fraudulent and unlawful, designed and intended for obtaining money or property under false pretenses.

106. Pursuant to Section 501.203(3)(c), Florida Statutes, a violation of Chapter 501, Part II, may be based upon “[a]ny law, statute, rule, regulation, or ordinance which proscribes unfair methods of competition, or unfair, deceptive, or unconscionable acts or practices.”

107. As set forth in paragraphs 1 through 78 above, Defendants have engaged in representations, acts, practices or omissions which are material and likely to mislead consumers acting reasonably under the circumstances; and have committed acts or practices in trade or commerce which offend established public policy and are unethical, unscrupulous or injurious to consumers in violation of Section 501.204(1), Florida Statutes.

108. These above-described acts and practices of Defendants have injured and/or were directed at Senior Citizens (persons who are 65 years of age or older) in violation of §501.2077(2).

109. These above-described acts and practices of Defendants have injured and will likely continue to injure and prejudice the public.

110. Defendants willfully engaged in acts and practices when they knew or should have known that the acts and practices were unfair or deceptive or prohibited by law.

111. Unless the Defendants are permanently enjoined from engaging further in the acts and practices complained of herein, the continued activities of the Defendants will result in irreparable injury to the public for which there is no adequate remedy at law.

COUNT FIVE
MISHANDLING OF CONSUMER CLAIMS
VIOLATIONS OF CHAPTER 501, PART II, FLORIDA STATUTES
DECEPTIVE AND UNFAIR TRADE PRACTICES

112. Plaintiff repeats and realleges Paragraphs 1 through 78 with the same force and effect, as if fully set forth below:

113. The Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes, provides that “unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.”

114. At all times material hereto, Defendants engaged in “trade or commerce” as defined in Section 501.203(8), Florida Statutes.

115. Defendants handling of consumer claims brought under Defendants’ Voucher Program, as set forth in paragraphs 59 through 70 above, were designed and conducted by Defendants, its employees and agents thereof to mislead consumers and deny consumers the ability to redeem vouchers that Defendants promised to honor, thus incurring financial benefit to the Defendants.

116. As set forth in paragraphs 1 through 78 above (particularly in paragraphs 59 through 70), Defendants have engaged in representations, acts, practices or omissions which are material and likely to mislead consumers acting reasonably under the circumstances; and have committed acts or practices in trade or commerce which offend established public policy and are unethical, unscrupulous or injurious to consumers in violation of §501.204(1), Florida Statutes.

117. These above-described acts and practices of Defendants have injured and/or were directed at Senior Citizens (persons who are 65 years of age or older) in violation of §501.2077(2).

118. These above-described acts and practices of Defendants have injured and will likely continue to injure and prejudice the public.

119. Defendants willfully engaged in acts and practices when they knew or should have known that the acts and practices were unfair or deceptive or prohibited by law.

120. Unless the Defendants are permanently enjoined from engaging further in the acts and practices complained of herein, the continued activities of the Defendants will result in irreparable injury to the public for which there is no adequate remedy at law.

COUNT SIX
BREACH OF TRUST
VIOLATIONS OF CHAPTER 501, PART II, FLORIDA STATUTES
DECEPTIVE AND UNFAIR TRADE PRACTICES

121. Plaintiff repeats and realleges Paragraphs 1 through 78 with the same force and effect, as if fully set forth below:

122. The Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes, provides that “unfair methods of competition, unconscionable acts or practices,

and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.”

123. At all times material hereto, Defendants engaged in “trade or commerce” as defined in Section 501.203(8), Florida Statutes.

124. Defendants mishandling of funds in the Trust, as set forth in paragraphs 71 through 78, placed them in breach of the Trust and wrongfully denied the Beneficiaries (consumers making claims) funds from the Trust to which they were entitled.

125. Defendants financially benefited by the above described mishandling of funds in the Trust.

126. As set forth in paragraphs 1 through 78 above (particularly in paragraphs 71 through 78), Defendants have engaged in representations, acts, practices or omissions which are material and likely to mislead consumers acting reasonably under the circumstances; and have committed acts or practices in trade or commerce which offend established public policy and are unethical, unscrupulous or injurious to consumers in violation of §501.204(1), Florida Statutes.

127. These above-described acts and practices of Defendants have injured and/or were directed at Senior Citizens (persons who are 65 years of age or older) in violation of §501.2077(2)

128. These above-described acts and practices of Defendants have injured and will likely continue to injure and prejudice the public.

129. Defendants willfully engaged in acts and practices when they knew or should have known that the acts and practices were unfair or deceptive or prohibited by law.

130. Unless the Defendants are permanently enjoined from engaging further in the acts and practices complained of herein, the continued activities of the Defendants will result in irreparable injury to the public for which there is no adequate remedy at law.

COUNT SEVEN
VIOLATIONS OF §736.0801, FLORIDA STATUTES
DUTY OF TRUSTEE TO ADMINISTER TRUST IN GOOD FAITH
VIOLATIONS OF CHAPTER 501, PART II, FLORIDA STATUTES
DECEPTIVE AND UNFAIR TRADE PRACTICES

131. The Plaintiff repeats and realleges Paragraphs 1 through 78 with the same force and effect, as if fully set forth below:

132. §736.0801.41, Florida Statutes (2007), provides:

Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with this code.

133. Pursuant to Section 501.203(3)(c), Florida Statutes, a violation of Chapter 501, Part II, may be based upon “[a]ny law, statute, rule, regulation, or ordinance which proscribes unfair methods of competition, or unfair, deceptive, or unconscionable acts or practices.”

134. As set forth in paragraphs 1 through 78 above, Defendants have engaged in the systematic denial of claims, the systematic underpaying of claims, and the systematic refusal to remit payment of validly filed claims all made by Beneficiaries under the Trust and thereby have committed acts or practices in trade or commerce which offend established public policy and are unethical, unscrupulous or injurious to consumers in violation of Section 501.204(1), Florida Statutes.

135. These above-described acts and practices of Defendants have injured and/or were directed at Senior Citizens (persons who are 65 years of age or older) in violation of §501.2077(2).

136. These above-described acts and practices of Defendants have injured and will likely continue to injure and prejudice the public.

137. Defendants willfully engaged in acts and practices when they knew or should have known that the acts and practices were unfair or deceptive or prohibited by law.

138. Unless the Defendants are permanently enjoined from engaging further in the acts and practices complained of herein, the continued activities of the Defendants will result in irreparable injury to the public for which there is no adequate remedy at law.

COUNT EIGHT
VIOLATIONS OF §736.0802(1), FLORIDA STATUTES
DUTY OF LOYALTY ON THE PART OF THE TRUSTEE
VIOLATIONS OF CHAPTER 501, PART II, FLORIDA STATUTES
DECEPTIVE AND UNFAIR TRADE PRACTICES

139. The Plaintiff repeats and realleges Paragraphs 1 through 78 with the same force and effect, as if fully set forth below:

140. §736.0802(1), Florida Statutes (2007), provides:

(1) As between a trustee and the beneficiaries, a trustee shall administer the trust solely in the interests of the beneficiaries.

141. Pursuant to Section 501.203(3)(c), Florida Statutes, a violation of Chapter 501, Part II, may be based upon “[a]ny law, statute, rule, regulation, or ordinance which proscribes unfair methods of competition, or unfair, deceptive, or unconscionable acts or practices.”

142. As set forth in paragraphs 1 through 78 above, Defendants have engaged in the systematic denial of claims, the systematic underpaying of claims, and the systematic refusal to remit payment of validly filed claims all made by Beneficiaries under the Trust and thereby have committed acts or practices in trade or commerce which offend established public policy and are unethical, unscrupulous or injurious to consumers in violation of Section 501.204(1), Florida Statutes.

143. These above-described acts and practices of Defendants have injured and/or were directed at Senior Citizens (persons who are 65 years of age or older) in violation of §501.2077(2).

144. These above-described acts and practices of Defendants have injured and will likely continue to injure and prejudice the public.

145. Defendants willfully engaged in acts and practices when they knew or should have known that the acts and practices were unfair or deceptive or prohibited by law.

146. Unless the Defendants are permanently enjoined from engaging further in the acts and practices complained of herein, the continued activities of the Defendants will result in irreparable injury to the public for which there is no adequate remedy at law.

COUNT NINE
VIOLATIONS OF §812.014, FLORIDA STATUTES
THEFT
VIOLATIONS OF CHAPTER 501, PART II, FLORIDA STATUTES
DECEPTIVE AND UNFAIR TRADE PRACTICES

147. The Plaintiff repeats and realleges Paragraphs 1 through 78 with the same force and effect, as if fully set forth below:

148. §812.014(1), Florida Statutes (2007), provides:

(1) A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or to use, the property of another with intent to, either temporarily or permanently:

(a) Deprive the other person of a right to the property or a benefit from the property.

(b) Appropriately the property to his or her own use or to the use of any person not entitled to the use of the property.

149. Pursuant to Section 501.203(3)(c), Florida Statutes, a violation of Chapter 501, Part II, may be based upon “[a]ny law, statute, rule, regulation, or ordinance which proscribes unfair methods of competition, or unfair, deceptive, or unconscionable acts or practices.”

150. As set forth in paragraphs 1 through 78 above, Defendants have knowingly obtained monies, through fraud and deceit, from merchants participating in Defendants’ voucher program with the intent to permanently appropriate the money when Defendants are not entitled to the permanent appropriation of those monies, and thereby have committed acts or practices in trade or commerce which offend established public policy and are unethical, unscrupulous or injurious to consumers in violation of Section 501.204(1), Florida Statutes.

151. These above-described acts and practices of Defendants have injured and/or were directed at Senior Citizens (persons who are 65 years of age or older) in violation of §501.2077(2).

152. These above-described acts and practices of Defendants have injured and will likely continue to injure and prejudice the public.

153. Defendants willfully engaged in acts and practices when they knew or should have known that the acts and practices were unfair or deceptive or prohibited by law.

154. Unless the Defendants are permanently enjoined from engaging further in the acts and practices complained of herein, the continued activities of the Defendants will result in irreparable injury to the public for which there is no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, State of Florida, Office of the Attorney General, Department of Legal Affairs, respectfully requests that this Court:

A. Temporarily and permanently enjoin the Defendants from violating Chapter 501, Part II, Florida Statutes (2007), and engaging in conduct in violation thereof;

B. Temporarily and permanently enjoin the Defendants from violating Section 817.06(1), Florida Statutes (2007), related to false advertising;

C. Temporarily and permanently enjoin the Defendants from violating Sections 817.41(1)-(2), Florida Statutes (2007), related to misleading advertising;

D. Temporarily and permanently enjoin the Defendants from violating § 736.0801 Florida Statutes (2007), related to duties of Trustees to administer trust in good faith.

E. Temporarily and permanently enjoin the Defendants from violating § 736.0802(1) Florida Statutes (2007), related to duties of Trustee loyalty.

F. Temporarily and permanently enjoin the Defendants from violating §812.014(1), Florida Statutes (2007), related to theft.

G. Assess civil penalties against Defendants, in the amount of \$10,000 for each violation of Chapter 501, Part II, Florida Statutes, pursuant to Section 501.2075, Florida Statutes, and \$15,000 for each violation thereof involving a handicapped person or senior citizen pursuant to Section 501.2077, Florida Statutes;

H. Award the Plaintiff attorneys fees and costs pursuant to the provisions of Chapter 501, Part II, Florida Statutes, and as otherwise may be allowable by applicable statutes;

I. Require disgorgement of profits and award restitution and refunds to Florida consumers for each violation of Florida law;

J. Award such other relief as the interests of justice shall require and that this Honorable Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury for all issues so triable.

Respectfully Submitted,

BILL MCCOLLUM
ATTORNEY GENERAL

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