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14 **UNITED STATES DISTRICT COURT**
15 **DISTRICT OF NEVADA**

16 FEDERAL TRADE COMMISSION,

17 Plaintiff,

18 v.

19 GRANT CONNECT, LLC; GLOBAL GOLD,
INC.; HORIZON HOLDINGS, LLC;
20 O'CONNELL GRAY, LLC; PINK LP; VANTEX
GROUP, LLC; VERTEK GROUP, LLC;
21 RACHAEL A. COOK; JAMES J. GRAY;
STEVEN R. HENRIKSEN; JULIETTE M.
22 KIMOTO; AND RANDY D. O'CONNELL,

23 Defendants.

) Case No. 2:09-CV- 01349-RLH-RJJ

) **[FILED UNDER SEAL]**

24 **COMPLAINT FOR PERMANENT**
25 **INJUNCTION AND OTHER EQUITABLE RELIEF**

1 Plaintiff, the Federal Trade Commission (“FTC”), in a civil action brought under Section
2 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), and Section 917(c)
3 of the Electronic Fund Transfer Act (“EFTA”), 15 U.S.C. § 1693o(c), to obtain temporary,
4 preliminary, and permanent injunctive relief, rescission or reformation of contracts, restitution,
5 disgorgement of ill-gotten monies, and other equitable relief for Defendants’ acts or practices in
6 violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), Section 907(a) of EFTA, 15 U.S.C.
7 § 1693e(a), and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b), respectfully alleges as
8 follows:

9 **JURISDICTION AND VENUE**

- 10 1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a),
11 and 1345, and 15 U.S.C. §§ 45(a) and 53(b).
- 12 2. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c), and 15 U.S.C.
13 § 53(b).

14 **SUMMARY OF THE CASE**

- 15 3. This case concerns Defendants’ deceptive marketing of various products and
16 services in violation of the FTC Act and the EFTA, including Grant Connect — an internet-
17 based computer program that purportedly gets consumers easy access to free government or
18 other grant money. As explained below, Defendants have violated these laws by: (1)
19 misrepresenting the likelihood that consumers will get grants and/or “free money” using Grant
20 Connect; (2) failing to disclose, or disclose adequately, that consumers who sign up for
21 Defendants’ products or services are enrolled in multiple membership programs and must cancel
22 the programs within a limited time period to avoid costly recurring monthly charges; and (3)
23 debiting consumers’ bank accounts on a recurring basis without obtaining a written authorization
24 as required by the EFTA.
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PLAINTIFF

12 4. The FTC is an independent agency of the United States Government created by
13 statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a),
14 which prohibits unfair and deceptive acts or practices in or affecting commerce. The FTC also
15 enforces the EFTA, which regulates the rights, liabilities, and responsibilities of participants in
16 electronic fund transfer systems.

17 5. The FTC is authorized to initiate federal district court proceedings, by its own
18 attorneys, to enjoin violations of the FTC Act and the EFTA, and to secure such other equitable
19 relief as may be appropriate in each case, including restitution and disgorgement. 15 U.S.C.
20 §§ 53(b) and 56(a)(2)(A).

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DEFENDANTS

26 6. Defendant Grant Connect, LLC (“Grant Connect LLC”)¹ is a Nevada limited
27 liability company with its principal place of business at 1135 Terminal Way, Suite 203, Reno,
28 Nevada. Grant Connect LLC transacts or has transacted business in this District and throughout
29 the United States.

30 7. Defendant Global Gold, Inc. (“Global Gold”), also doing business under
31 numerous fictitious names, including “First Plus Platinum” and “First Universal Platinum,” is a
32 Nevada corporation with its principal place of business at 1404 South Jones Boulevard, Las
33 Vegas, Nevada. Global Gold transacts or has transacted business in this District and throughout
34 the United States.

35 8. Defendant Horizon Holdings, LLC (“Horizon Holdings”), also doing business
36 under numerous fictitious names, including, “Grant Connect” and “MemberLegalNet,” is a
37 Nevada limited liability company with its principal place of business at 1135 Terminal Way,

¹ Throughout the Complaint, the FTC uses the term “Grant Connect” to refer to the Grant Connect internet-based computer program sold and marketed by the Defendants and the term “Grant Connect LLC” to refer to Defendant Grant Connect, LLC.

1 Suite 203, Reno, Nevada. Horizon Holdings transacts or has transacted business in this District
2 and throughout the United States.

3 9. Defendant O'Connell Gray, LLC ("O'Connell Gray") is a Nevada limited liability
4 company with its principal place of business at 1135 Terminal Way, Suite 203, Reno, Nevada.
5 O'Connell Gray transacts or has transacted business in this District and throughout the United
6 States.

7 10. Defendant Vantex Group, LLC ("Vantex") is a Nevada limited liability company
8 with its principal place of business at 6060 W. Elton Avenue, Suite A, Las Vegas, Nevada.
9 Vantex transacts or has transacted business in this District and throughout the United States.

10 11. Defendant Vertek Group, LLC ("Vertek") is a Nevada limited liability company
11 with its principal place of business at 6060 W. Elton Avenue, Suite A, Las Vegas, Nevada.
12 Vertek transacts or has transacted business in this District and throughout the United States.

13 12. Defendant Pink LP ("Pink") is a Nevada limited partnership with its principal
14 place of business at 6060 W. Elton Avenue, Suite A, Las Vegas, Nevada. Pink transacts or has
15 transacted business in this District and throughout the United States. Pink is the Managing
16 Member of Vertek.

17 13. Defendant Rachael A. Cook ("Cook") is the Manager of Vantex and Vertek. At
18 times material to this Complaint, acting alone or in concert with others, she has formulated,
19 directed, controlled, had the authority to control, or participated in the acts and practices of
20 Vertek, Vantex, and/or one or more of the other business entities named herein, including the
21 acts and practices set forth in this Complaint. Cook resides in this District and in connection
22 with the matters alleged herein, transacts or has transacted business in this District.

23 14. Defendant James J. Gray ("Gray") is a Managing Member of Grant Connect LLC,
24 Horizon Holdings, and O'Connell Gray. At times material to this Complaint, acting alone or in
25 concert with others, he has formulated, directed, controlled, had the authority to control, or

1 participated in the acts and practices of Grant Connect LLC, Horizon Holdings, O'Connell Gray,
2 and/or one or more of the other business entities named herein, including the acts and practices
3 set forth in this Complaint. Gray resides in this District and in connection with the matters
4 alleged herein, transacts or has transacted business in this District.

5 15. Defendant Steven R. Henriksen ("Henriksen") is the President, Secretary,
6 Treasurer, and sole owner of Global Gold. At times material to this Complaint, acting alone or
7 in concert with others, he has formulated, directed, controlled, had the authority to control, or
8 participated in the acts and practices of Global Gold, and/or one or more of the other business
9 entities named herein, including the acts and practices set forth in this Complaint. Henriksen
10 resides in this District and in connection with the matters alleged herein, transacts or has
11 transacted business in this District.

12 16. Defendant Juliette M. Kimoto ("Kimoto") is the owner of Vertek and the General
13 Partner of Pink. At times material to this Complaint, acting alone or in concert with others, she
14 has formulated, directed, controlled, had the authority to control, or participated in the acts and
15 practices of Pink, Vertek, Vantex, and/or one or more of the other business entities named
16 herein, including the acts and practices set forth in this Complaint. Kimoto resides in this
17 District and in connection with the matters alleged herein, transacts or has transacted business in
18 this District.

19 17. Defendant Randy D. O'Connell ("O'Connell") is a Managing Member of Horizon
20 Holdings and O'Connell Gray. At times material to this Complaint, acting alone or in concert
21 with others, he has formulated, directed, controlled, had the authority to control, or participated
22 in the acts and practices of Horizon Holdings, O'Connell Gray, and/or one or more of the other
23 business entities named herein, including the acts and practices set forth in this Complaint.
24 O'Connell resides in this District and in connection with the matters alleged herein, transacts or
25 has transacted business in this District.

1 **COMMON ENTERPRISE**

2 18. Defendants Grant Connect LLC, Global Gold, Horizon Holdings, O’Connell
3 Gray, Pink, Vantex, and Vertek (collectively “Corporate Defendants”)² have operated as a
4 common enterprise while engaging in the deceptive acts and practices and other violations of law
5 alleged below. Because these Corporate Defendants have operated as a common enterprise, each
6 of them is jointly and severally liable for the acts and practices alleged below. Individual
7 Defendants Cook, Gray, Henriksen, Kimoto, and O’Connell have formulated, directed,
8 controlled, had the authority to control, or participated in the acts and practices of the Corporate
9 Defendants that constitute the common enterprise.

10 **COMMERCE**

11 19. At all times relevant to this Complaint, Defendants have maintained a substantial
12 course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act,
13 15 U.S.C. § 44.

14 **DEFENDANTS’ BUSINESS PRACTICES**

15 **Defendants’ Misrepresentations Regarding Grant Connect**

16 20. Defendants advertise, market, distribute, promote and sell Grant Connect and
17 other products and services to consumers throughout the United States.

18 21. On the Vantex website, www.vantexgroup.com, which Defendants use to recruit
19 affiliate marketers, Defendants describe Grant Connect as “a unique, consumer-friendly US
20 government grant program that delivers all of the tools for the consumer to search multiple
21 databases, write grant proposals and deliver polished plans all from one easy to use interface.”

22 22. Defendants offer Grant Connect to consumers through one of their Internet
23 websites, www.grantconnectoffer.com (the “Grant Connect Offer Site”), and through a variety of
24

25 ² Throughout the Complaint, the FTC uses the term “Corporate Defendants” to refer collectively to Grant Connect LLC, Global Gold, Horizon Holdings, O’Connell Gray, Pink, Vantex, and Vertek, even though some of these entities have elected other forms of business association.

1 other channels, including affiliated websites and blogs. A screen print of the Grant Connect
2 Offer Site homepage is attached hereto as **Plaintiff's Exhibit 1**.

3 23. In their advertising, Defendants represent to consumers that they are likely to
4 obtain grants, if they sign up for Grant Connect.

5 24. Typical representations made on the Grant Connect Offer Site include, but are not
6 limited to, the following:

7 A. "Over \$10 Billion Issued in 2009 Already!"

8 B. "\$15 Billion In Grant Money Available."

9 C. "EASY TO USE PROGRAM:

10 Instantly find the Grant that's right for you!

11 Receive your government funds!"

12 D. "Get Grant Connect Today!

13 Billions of dollars are being spent every month by the government trying to

14 help stabilize the economy. With billions more on the way, it's time for you

15 to get your cut! Grants are FREE MONEY given by foundations or the

16 government to help you with your financial situation. Not only is this money

17 non-taxable and interest-free, but most of the time you don't even have to pay

18 it back!"

19 E. "The Grant Connect Advantage

20 Why spend days searching through government databases, when you could

21 have our program do it for you? This is the Grant Connect difference. Our

22 program makes the process FAST and EASY, so all you have to worry about

23 is where to spend your money!"

24 25. The Grant Connect Offer Site also features testimonials from consumers who rave
25 about Grant Connect. For example, purported Grant Connect user Tahani Hanania exclaims:

1 “It’s just so easy! I got my first grant for \$330,000. All I have to do is search and click!”

2 Similarly, Catherine Roberts proclaims: “I received \$850,000 for my business. I’m not very
3 experienced with computers and your service made everything so simple for me. I don’t know
4 why anybody would use any other program!”

5 26. In many instances, Defendants bolster these claims by using images of President
6 Obama and Vice President Biden in their advertising. For example, beginning on or about
7 January 20, 2009, and continuing until at least March 3, 2009, the Grant Connect Offer Site
8 featured a picture of President Obama and Vice President Biden standing together in front of a
9 waving American flag and next to the Grant Connect logo with a caption in large blue and red
10 letters which read: “CHANGE Is Here! \$15 BILLION in FREE Government MONEY for you!”
11 A print-out of the Grant Connect Offer Site homepage as it appeared on March 3, 2009 is
12 attached hereto as **Plaintiff’s Exhibit 2**.

13 27. Defendants’ marketing efforts also include the use of pop ups and chat boxes
14 designed to discourage consumers from leaving the Grant Connect Offer Site. In many
15 instances, when consumers attempt to leave the Grant Connect Offer Site, a confirmation box
16 pops up urging consumers to remain on the site. At the same time, a chat box pops up on the
17 screen featuring a chat agent that attempts to convince the consumer to sign up for Grant
18 Connect. Screen prints of the Grant Connect Offer Site, which capture the appearance of a
19 confirmation box and chat box, are attached hereto as **Plaintiff’s Exhibit 3**.

20 28. Defendants use the chat boxes to interact directly with consumers by exchanging
21 text messages with them in real-time. Typical representations made by Grant Connect chat
22 agents to consumers include, but are not limited to, the following:

23 A. “Hi and thanks for chatting with me! Because you’ve come this far we’d like
24 to give you our Grant Connect program for only a .99 cent [sic] processing fee
25 today. **CLICK HERE** to get this special offer!”

1 B. “How surprised will you be to know there is a lot of money out there for
2 people just like you and our program will show you how to get it!! Because
3 this is a special promotion you need to act right away!

4 C. “Are you ready to give it a try and get your Free Grant Money?”

5 29. Despite the numerous representations on the site regarding the ease of receiving a
6 grant, in truth and in fact, consumers using Grant Connect are not likely to obtain a grant from
7 any source. Grants have strict eligibility criteria which applicants must meet before a grant
8 application will even be considered. Even when an applicant meets these criteria, successful
9 grant seeking is not quick and easy. Rather, to be successful, grant applicants must carefully
10 research suitable opportunities, and initiate the proposal process months, or even a year, before
11 the deadline. Additionally, few grants are available to businesses involved in profit-making
12 projects. Instead, the bulk of grants are awarded to colleges, universities and other nonprofit
13 organizations. There are few, if any, grants available to the average individual consumer.

14 **Defendants’ Failure to Disclose Material Terms regarding Grant Connect**

15 30. In addition to misrepresenting the likelihood that consumers will get grants and/or
16 “free money” using Grant Connect, Defendants induce consumers to sign up for Grant Connect
17 by offering it at a very low cost, ranging from \$0.99 to \$2.78, which they frame as a
18 “processing” fee.

19 31. Consumers who wish to sign up for Grant Connect go through a two-step process.
20 The first step begins on the homepage of the Grant Connect Offer Site. *See* Pl.’s Exs. 1-2. In
21 addition to the representations described in paragraph 24, this part of the website invites
22 consumers to “Get Started Today!” by disclosing their name, address, email, and phone number
23 on a form and clicking on the green “Get Access Now!” or “Find My Money!” buttons. No fees
24 or costs are mentioned in this part of the website. Instead, consumers are asked to check a box
25 next to text stating, “I have Read & Agree with the Privacy Policy,” before they can proceed.

1 There is also a tiny disclaimer at the very bottom of the homepage, which would require
2 significant scrolling to reach, that states, “Users submitting this form acknowledge their
3 acceptance of the Privacy Policy / Terms and Conditions of this Web Site.” To actually view the
4 Terms and Conditions from the homepage, a consumer would have to click on the phrase “Terms
5 and Conditions” in this disclaimer. A print out of one version of the Grant Connect Terms and
6 Conditions is attached hereto as **Plaintiff’s Exhibit 4**.

7 32. Consumers who complete step one arrive at a second page on the Grant Connect
8 Offer Site where they can complete the sign-up process. This page of the website is substantially
9 similar to the Grant Connect Offer Site homepage. It features the same graphics, testimonials,
10 and representations regarding the likelihood of obtaining grants using Grant Connect, and a
11 similar layout. The form with the information provided by the consumer is still displayed,
12 however, the form now contains fields for consumers to enter their credit or debit card type,
13 number, expiration date, and authorization code. In addition, the form in the second step
14 contains text at the top, which reads either, “Limited Time: \$2.78 Today Only!” or “Limited
15 Time: \$.99 Today Only!” A screen print of the second page of the Grant Connect Offer Site is
16 attached hereto as **Plaintiff’s Exhibit 5**.

17 33. In some instances, consumers also are asked to check a box next to new text
18 stating, “I have Read & Agree with the Terms and Conditions, Privacy Policy, and Offer Details
19 below” before they can proceed. This checkbox appears only during step two of the signup
20 process. In some instances, there is also a tiny disclaimer at the bottom of the page that states,
21 “Users submitting this form acknowledge their acceptance of the Privacy Policy / Terms and
22 Conditions of this Web Site.” To actually view the Terms and Conditions from the second page
23 of the Grant Connect Offer Site, a consumer would have to click on the phrase, “Terms and
24 Conditions,” contained in the text next to the checkbox or in the disclaimer at the bottom the
25 page.

1 34. In numerous instances, Defendants enroll consumers in a costly membership
2 program for Grant Connect and charge consumers' credit cards or debit their bank accounts on a
3 recurring monthly basis unless the consumers cancel their memberships within seven days of
4 being enrolled. Defendants charge or debit consumers \$39.95 per month if they do not cancel
5 their membership within the seven day period.

6 35. In numerous instances, Defendants also enroll consumers in, and charge their
7 credit cards or debit their bank accounts for, additional products and services, including, but not
8 limited to: Id Pro Alert (described by Defendants as "identity theft protection"), ID Lock On
9 (described by Defendants as "identity theft protection"), Member Legal Net (described by
10 Defendants as "a team of legal experts to help anytime you need them!") and/or SmartHealth
11 Gold (described by Defendants as "quality, affordable health benefits").

12 36. Charges for Grant Connect and these additional products and services are not
13 adequately disclosed.

14 37. In some instances, the following inadequately disclosed language appears in small
15 densely packed text below the "Get Access Now!" button on the second page of the Grant
16 Connect Offer Site:

17 OFFER DETAILS: By clicking "Submit" I am authorizing Grant Connect to
18 charge my credit or debit card a \$2.78 processing fee for my 7 days trial
19 membership. After the 7 day trial, if I do not call customer service to cancel, the
20 account I provided here will be charged \$39.95 each month thereafter. I may
21 cancel by calling the customer service number of Grant Connect listed in the
22 Terms and Conditions.

23
24 As an additional bonus, you will also receive a 14 day trial of SmartHealth Gold
25 medical and lifestyle benefits for a processing fee of \$1.65. Unless you cancel,

1 SmarthHealth Gold will bill your account \$19.95 for the services each month
2 thereafter. You have the right to cancel by calling the number listed at
3 smarthealthgold.com.

4
5 As an additional bonus, I agree to receive a 14 day trial to MemberLegalNet.
6 After the trial period, unless I cancel, MemberLegalNet will charge my account
7 \$12.95 a month thereafter. I may cancel by calling the toll free number located at
8 memberlegalnet.com.

9 38. The inconspicuous Grant Connect “Offer Details” and “Terms and Conditions”
10 fail to adequately inform consumers that they will be enrolled in and charged for a membership
11 program if they fail to cancel within seven days, and that they will be enrolled in and charged for
12 additional products or services, including, but not limited to: Id Pro Alert, ID Lock On, Member
13 Legal Net and/or SmartHealth Gold, especially in light of the Defendants’ more prominent
14 representations that consumers will receive Grant Connect at a very low cost ranging from \$0.99
15 to \$2.78.

16 39. In numerous instances, consumers learn that Grant Connect is a costly
17 membership program, and that they have been enrolled for one or more additional products or
18 services only after their accounts have been charged.

19 **Defendants’ Use of Other Websites to Charge**

20 **Consumers for Grant Connect and Other Products or Services**

21 40. Defendants also use websites that promote non-grant related products or services
22 to enroll consumers in the Grant Connect membership program and to charge their credit cards
23 or debit their bank accounts.

24 41. For example, Defendants advertise, market, distribute, promote and sell First Plus
25 Platinum cards through one of their Internet websites, www.firstplusplatinumoffer.com (the

1 “First Plus Platinum Offer Site”), and through a variety of channels, including affiliated websites
2 and blogs. A screen print of the homepage of the First Plus Platinum Offer Site is attached
3 hereto as **Plaintiff’s Exhibit 6**.

4 42. In their advertising for First Plus Platinum, Defendants represent to consumers
5 that they are guaranteed to get a “\$7,500 Unsecured Credit Line” at “0% Interest For 12 Months”
6 if they apply. This advertising makes no mention of Grant Connect.

7 43. In applying for First Plus Platinum, consumers are asked to pay an activation fee
8 ranging from \$0.99 to \$2.78 by entering their credit or debit card type, number, expiration date,
9 and authorization code.

10 44. In numerous instances, Defendants fail to disclose, or to disclose adequately, to
11 consumers who apply for First Plus Platinum cards that they will be enrolled in, and that their
12 credit or debit card will be charged for, membership programs, including First Plus Platinum and
13 additional products or services, such as Grant Connect.

14 45. In some instances, fine print at the bottom of the First Plus Platinum Offer Site
15 states:

16 Offer Details: By submitting this order you give First Plus Platinum Credit
17 authorization to charge your debit or credit card a processing fee of \$2.78 for the
18 7 day trial membership. The \$7,500 credit account is for use toward thousands of
19 our merchandise items only. After the 7 day trial, unless you cancel, we will
20 automatically bill the account your provided us today for \$39.95, and each month
21 thereafter. All monthly fees will be applied to any outstanding line of credit
22 balance. This charge will appear as debit by “Credit Line” on your statement.
23 You have the right to cancel any time by calling the toll-free number provided in
24 the Terms and Conditions.
25

1 You also agree to receive a 15 day FREE trial membership for Grant Connect
2 where you can get easy access to free government money. After the 15-day trial,
3 unless you cancel, Grant Connect will charge your account \$19.95 each month
4 thereafter. You have the right to cancel any time by calling the toll-free number
5 located at grantconnect.com.

6
7 As an additional bonus, you will also receive a FREE 10 day trial of Vcomm300
8 International and Long Distance Calling Service. Unless you cancel, Vcomm300
9 will bill your account \$14.95 for the services each month thereafter. You have
10 the right to cancel anytime by calling the toll-free number located at
11 vcomm300.com.

12 46. Buried in paragraph 23 of First Plus Platinum's eight page, single spaced Member
13 Agreement is the following language:

14 PROMOTIONAL OFFERS: As the First Plus Platinum Offer Terms and
15 Conditions and web site indicated, I accepted enrollment for up to 2 additional
16 promotional product offers using the relevant data I entered for the First Plus
17 Platinum Offer. The following are links to Terms of all our affiliated third party
18 promotional offers: Grant Connect, Vcomm300, VCommUnlimited, CarExpress,
19 Premier Plus Member. For additional information regarding the offers I signed
20 up for, I can refer to the website where I signed up, or I can call Customer
21 Service at 1-800-595-5110.

22 A print out of one version of the First Plus Platinum Member Agreement is attached hereto as
23 **Plaintiff's Exhibit 7.**

24 47. In numerous instances, consumers learn they have been enrolled in Grant
25 Connect's membership program only after their accounts have been charged monthly fees for

1 Grant Connect.

2 **VIOLATIONS OF THE FTC ACT**

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

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

7 **COUNT I – Misrepresentation**

8 50. In connection with the marketing and sale of grant-related products or services,
9 including, but not limited to, Grant Connect, Defendants have represented, directly or indirectly,
10 expressly or by implication, that consumers who purchase and use Defendants’ products or
11 services are likely to obtain a government or other grant.

12 51. The representation set forth in Paragraph 50 of this Complaint is false,
13 misleading, and/or was not substantiated at the time the representation was made.

14 52. Therefore, the making of the representation set forth in Paragraph 50 of this
15 Complaint constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15
16 U.S.C. § 45(a).

17 **COUNT II — Failure to Disclose**

18 53. In numerous instances in connection with the advertising, marketing, promotion,
19 offering for sale, or sale of a variety of products and services, including but not limited to Grant
20 Connect and First Plus Platinum, Defendants have represented, directly or indirectly, expressly
21 or by implication, that their products or services are available at a very low cost.

22 54. In numerous instances in which Defendants have made the representation set forth
23 in Paragraph 53 of this Complaint, Defendants have failed to disclose, or disclose adequately, to
24 consumers, material terms and conditions of the offer, including:

25 A. that consumers who sign up for one of the Defendants’ products or services

1 are enrolled in a membership program for the product or service and must
2 cancel the program within a limited time period to avoid additional charges;

3 B. that consumers who sign up for one of the Defendants' products or services
4 will be charged for additional unrelated products or services unless consumers
5 take affirmative action to avoid the charges; and

6 C. the amounts of such charges.

7 55. Defendants' failure to disclose, or disclose adequately, the material information
8 described in Paragraph 54, above, in light of the representation described in Paragraph 53, above,
9 constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C.
10 § 45(a).

11 **VIOLATIONS OF THE ELECTRONIC FUND TRANSFER ACT AND REGULATION E**

12 56. Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a), provides that a "preauthorized
13 electronic fund transfer from a consumer's account may be authorized by the consumer only in
14 writing, and a copy of such authorization shall be provided to the consumer when made."

15 Section 903(9) of the EFTA, 15 U.S.C. § 1693a(9), provides that the term "preauthorized
16 electronic fund transfer" means "an electronic fund transfer authorized in advance to recur at
17 substantially regular intervals."

18 57. Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b), provides that
19 "[p]reauthorized electronic fund transfers from a consumer's account may be authorized only by
20 a writing signed or similarly authenticated by the consumer. The person that obtains the
21 authorization shall provide a copy to the consumer."

22 58. Section 205.10 of the Federal Reserve Board's Official Staff Commentary to
23 Regulation E, 12 C.F.R. § 205.10(b), Supp. I, provides that "[t]he authorization process should
24 evidence the consumer's identity and assent to the authorization." *Id.* ¶ 10(b), cmt 5. The
25 Official Staff Commentary further provides that "[a]n authorization is valid if it is readily

1 identifiable as such and the terms of the preauthorized transfer are clear and readily
2 understandable.” *Id.* ¶ 10(b), cmt 6.

3 **COUNT III—Unauthorized Debiting of Consumers’ Bank Accounts**

4 59. In numerous instances, Defendants have debited consumers’ bank accounts on a
5 recurring basis without obtaining a written authorization signed or similarly authenticated from
6 consumers for preauthorized electronic fund transfers from their accounts, thereby violating
7 Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a), and Section 205.10(b) of Regulation E, 12
8 C.F.R. § 205.10(b).

9 60. In numerous instances, Defendants have debited consumers’ bank accounts on a
10 recurring basis without providing a copy of a written authorization signed or similarly
11 authenticated by the consumer for preauthorized electronic fund transfers from the consumer’s
12 account, thereby violating Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a), and Section
13 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b).

14 61. Pursuant to Section 917 of the EFTA, 15 U.S.C. § 1693o(c), every violation of the
15 EFTA and Regulation E constitutes a violation of the FTC Act.

16 62. By engaging in violations of the EFTA and Regulation E as alleged in Paragraphs
17 59 and 60 of this Complaint, Defendants have engaged in violations of the FTC Act. 15 U.S.C.
18 § 1693o(c).

19 **CONSUMER INJURY**

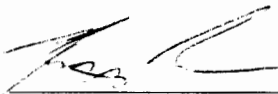
20 63. Consumers have suffered and will continue to suffer substantial injury as a result
21 of Defendants’ violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), Section 907(a) of
22 EFTA, 15 U.S.C. § 1693e(a), and Section 205.10(b) of Regulation E, as set forth above. In
23 addition, Defendants have been unjustly enriched as a result of their unlawful acts or practices.
24 Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers,
25 reap unjust enrichment, and harm the public interest.

1 4. Award the FTC the costs of bringing this action, as well as any other equitable
2 relief that the Court may determine to be just and proper.

3 Dated: July 27, 2009

Respectfully submitted,

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5 WILLARD K. TOM
General Counsel

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8 ROBERTO ANGUIZOLA
TRACEY THOMAS

9 Attorneys for Plaintiff
10 Federal Trade Commission
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