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IN THE CHANCERY COURT FOR WILLIAMSON COUNTY, TENNESSEE
TWENTY-FIRST JUDICIAL DISTRICT AT FRANKLIN

STATE OF TENNESSEE, *ex rel.* ROBERT E. COOPER, JR., ATTORNEY GENERAL and REPORTER,	)	ENTERED _____
Plaintiff,	)	No. 33243
v.	)	**JURY DEMAND**
ROLAND FROEHLIG, a.k.a. Rollie Froehlig, THEODORE HOWES, a.k.a. Ted Howes, NATIONAL FULFILLMENT, INC., and ENTERTAINMENT AMERICA, INC.,	)	
Defendants.	)	

STATE OF TENNESSEE'S COMPLAINT

This civil law enforcement proceeding is brought in the name of the State of Tennessee, by and through Robert E. Cooper, Jr., Attorney General and Reporter ("Attorney General"), pursuant to the Identity Theft Deterrence Act of 1999 (Tenn. Code Ann. § 47-18-2101 *et seq.*) ("ITDA"), the Tennessee Consumer Protection Act of 1977 (Tenn. Code Ann. § 47-18-101 *et seq.*)("TCPA"), the Attorney General's general statutory authority (Tenn. Code Ann. § 8-6-109), the Attorney General's authority at common law, and at the request of Mary Clement, the Director of the Division of Consumer Affairs of the Department of Commerce and Insurance ("Director").

The Attorney General and the Director have reason to believe that the above-named Defendants have violated both the ITDA and TCPA by their unlawful scheme of engaging in identity theft by misappropriating credit card, debit card and other financial document

information and personally identifiable information in their possession. Defendants unlawfully used this information to bill approximately thirty thousand (30,000) consumers for a nonexistent good or product using the credit card/debit card numbers and information from current and/or previous clients of National Fulfillment, Inc. or from other sources.

The Defendants have been provided with ten (10) days notice of contemplated legal action as set forth in Tenn. Code Ann. § 47-18-108(a)(2).

JURISDICTION AND VENUE

1. This Court exercises jurisdiction pursuant to Tenn. Code Ann. § 47-18-2105(b), § 47-18-108, and Tenn. Code Ann. § 47-18-114. Venue is proper in Williamson County pursuant to Tenn. Code Ann. § 47-18-2105(b) which states that an action brought under the Identity Theft Deterrence Act of 1999 and the Tennessee Consumer Protection Act of 1997 may be brought where a Defendant resides. Lead Defendant Rollie Froehlig resides in Williamson County.

THE PARTIES

2. Plaintiff, State of Tennessee, *ex rel.* Robert E. Cooper, Jr., Attorney General and Reporter, is charged with enforcing the Identity Theft Deterrence Act of 1999, Tenn. Code Ann. § 47-18-2101 *et seq.* (hereinafter "the ITDA") and the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101 *et seq.*, (hereinafter "the TCPA"), which prohibits unfair or deceptive acts or practices affecting the conduct of trade or commerce. Per Tenn. Code Ann. § 47-18-2106(c) and Tenn. Code Ann. § 47-18-2105(a), the Attorney General, at the request of the Division of Consumer Affairs, may initiate civil law enforcement proceedings in the name of the State to enjoin violations of the ITDA and secure an asset freeze. Per Tenn. Code Ann. § 47-18-108(a)(1), the Attorney General may initiate civil law enforcement proceedings in the name of the State to stop violations of the TCPA and to secure such equitable and other relief as may be

appropriate in each case.

3. Defendant Rollie Froehlig, sued individually and in a representative capacity, is the president of both National Fulfillment, Inc. and Entertainment America, Inc. Defendant Rollie Froehlig is also Chief Executive Officer of National Fulfillment, Inc. and serves as Chairman on the Board of Directors of National Fulfillment, Inc. Defendant Rollie Froehlig orchestrated, personally directed, participated, supervised, and/or controlled the unlawful scheme between the incorporated Defendants at all times relevant to this complaint. Defendant Rollie Froehlig resides in Brentwood, Tennessee in Williamson County.

4. Defendant Ted Howes, sued individually and in a representative capacity, is the Executive Vice President and Chief Financial Officer of the company. Aside from being an officer of National Fulfillment, Defendant Ted Howes is a member of the Board of Directors of National Fulfillment, Inc. Defendant Ted Howes also personally directed, participated, supervised, and/or controlled the unlawful scheme between both businesses at all times relevant to this complaint.

5. National Fulfillment, Inc. ("National Fulfillment") is a Tennessee corporation based in Lebanon, Tennessee that provides a menu of logistical, billing, shipping, and customer services to third party owners of consumer products. Many of these consumer products are advertised either on cable television commercials or on infomercials on television. National Fulfillment has been administratively dissolved by the Secretary of State on two (2) previous occasions.

6. Entertainment America, Inc. is a Tennessee corporation based in Lebanon, Tennessee that acts as a broker house for National Fulfillment's clients to obtain payment and order processing, including credit card processing. Entertainment America, Inc. is located within

the warehouse owned, and primarily used, by National Fulfillment, Inc. Entertainment America has been administratively dissolved by the Secretary of State's office on four (4) previous occasions.

7. Other key management level employees involved in this matter include: Vicki Martin, who is on the Board of Directors of National Fulfillment, a Vice President at National Fulfillment, and head of the Consumer Care Division (the customer service division) of National Fulfillment; Jerry Bellante, who was on the Board of Directors of National Fulfillment at the time at issue in this matter, was a Vice President at National Fulfillment, and was in charge of Operations at National Fulfillment; and Townley Chattman, who was a Vice President of Client Services and who was responsible for the employees at National Fulfillment who acted as direct liaisons between a client and National Fulfillment.

GENERAL ALLEGATIONS

8. As a way of preface, the State alleges that the Defendants billed **approximately thirty thousand (30,000) consumers** and **attempted** to bill **approximately three hundred thousand consumers (300,000) or as much as four hundred thousand consumers (400,000) $19.90 each for a product that never existed under a phony account known as "EmTech."**

The State alleges that the Defendants unlawfully harvested the credit card, debit card, and other financial information belonging to the customers of some of its current and past clients in this billing scheme. Despite repeated requests from the management for routine pieces of information to verify the legitimacy of the "EmTech" account as early as when the account was first presented to management, the Defendants failed to ever provide adequate verification of the product. Defendants continued to bill consumers despite strong indications that the bits of information that were provided about the account by the Defendants were suspect and despite

being openly questioned about whether the "EmTech" account was fraudulent by one of National Fulfillment's officers before billing ceased. Aside from the third-party processor who actually ran the card numbers, the money collected from these billings has never been transferred outside of the bank accounts of the corporate Defendants, but has been dissipated internally. National Fulfillment has deducted **$511,425.62** from the total EmTech billing amount from Entertainment America, its wholly owned sister corporation, which has only approximately **$34,060.38** left from the EmTech billings.

9. Defendants Froehlig and Howes maintain that they were approached by Marc Nagoshiner, a business acquaintance of Defendant Froehlig who died prior to the Defendants' initial response to the State's Request for Consumer Protection information, with a list of consumers who had received, but who had never been billed for an exercise band. Defendants Froehlig and Howes maintain that the bands were shipped through an unknown fulfillment house in California that went out of business. The information gathered so far does not support the Defendants' version of events.

STATEMENT OF FACTS

10. After November 2004, sales at National Fulfillment dropped off roughly thirty (30) to forty (40) percent. At the beginning of calendar year 2005, Defendant National Fulfillment was struggling financially and had terminated some employees. During this time, Defendant National Fulfillment was at least slow to pay some of its creditors.

The Initial Presentation of the "EmTech" Account

11. Around March 2005, Defendant Froehlig approached the management and/or staff of both corporate Defendants with a potential "client."

12. Initially, Mr. Froehlig stated that **Eddie Mischan**, of Emson Products, a former

active client of National Fulfillment, was the person who requested that National Fulfillment bill the credit cards.

13. At the time that Emson was an active account, they were one of the larger clients that National Fulfillment had.

14. In his sworn testimony, Defendant Froehlig denied that Eddie Mischan had any connection to the "EmTech" account.

15. Defendant Howes denied that Emson had any connection to the "EmTech" account to his knowledge.

16. Both Defendant Froehlig and Defendant Howes claim instead that it was Marc Nagoshiner, now deceased, who was responsible for "EmTech."

17. Neither fellow board member, Vicki Martin, nor Townley Chattman, Director of Client Services, recall that Marc Nagoshiner was connected to the "EmTech" account.

18. Marc Nagoshiner died on December 30, 2005, prior to Defendant National Fulfillment's and Defendant Entertainment America's response to the State's Request for Consumer Protection Information.

19. Defendant Froehlig was the only person who claimed to talk to Marc Nagoshiner about the "EmTech" account.

20. Defendant Howes claims to have once called someone named "Patty" about the "EmTech" account, but she never got back to him.

21. Defendant Froehlig also provided Townley Chattman with a disc of customers that had approximately three hundred thousand (300,000) consumers information on it, including credit card information, **which appeared to be a download of the Emson database that Defendant National Fulfillment had provided to Emson when they ceased being an active**

client of Defendant National Fulfillment.

22. **The disc said "National Fulfillment" at the top, and it had the same layout as one given to a former client.**

23. At the time that the disc that appeared to be a download of the Emson database was presented, Townley Chattman questioned Defendant Froehlig about whether he had the correct disc because the disc had so many names on it. She found it hard to believe that every one of Emson's prior customers had received this product.

24. Defendant Froehlig also told Vicki Martin, his fellow board member on National Fulfillment, that the "EmTech" account had two hundred thousand to three hundred thousand (200,000 - 300,000) people to process.

25. After being questioned about the high number, Defendant Froehlig took the disc back and said he would get back to her. Defendant Froehlig came back to Townley Chattman about a month later with a disc with approximately thirty thousand (30,000) customers on it. The client was from then on referred to as "EmTech."

26. Despite this, Defendant Froehlig maintains that only forty-five to fifty thousand (45-50,000) consumers' credit card and debit cards were due to be processed and that the "EmTech" account never had two hundred to three hundred thousand (200-300,000) consumers' credit card numbers to bill.

27. Defendant Froehlig stated at the initial presentation and has since maintained that he had been approached by someone who claimed to have shipped a product through another fulfillment house, which subsequently went bankrupt, to consumers who were never billed for that product.

28. Management or other staff expressed concern for the lack of information about the

product and the decision was made that the companies should not establish an account for the client.

Opening of the "EmTech" Account Despite Management's Previous Rejection

29. Around April 2005, "EmTech's" client account was set up.

30. Defendant Froehlig decided to be the only point of contact for "EmTech" purportedly "[b]ecause it was highly unusual, and [he] wanted no confusion because of the fact that it was unusual."

31. Aside from Defendant Froehlig's claim to have contact with "EmTech," no other individual at either Defendant National Fulfillment or Defendant Entertainment America had contact with, access to, or communicated with "EmTech." Defendant Howes stated that he once tried to contact someone at "EmTech," but she never called him back and he did not follow-up.

32. When the account first began, Defendant Froehlig authorized an "immediate credit - no questions asked" refund policy. The refund policy also included the payment of overdraft charges.

33. This "immediate credit, no questions asked" policy that included the payment of overdraft charges for debit card users lasted throughout the life of the account.

34. The immediate credit policy that included the payment of overdraft charges for debit card users had **never been done** before by Defendant National Fulfillment and has not been done since.

35. At the time the account was first set up under the name "EmTech," the Defendants did not have a sample of the actual product, a sample of the advertisements for the product, the specific shipping dates that the product was sent to consumers, or the specific dates that consumers ordered the product.

36. National Fulfillment uses a standardized "Client Set Up Sheet" whenever a client

account is opened.

37. These records are normally kept in the course of business.

38. Normally, the Client Set Up Sheet is filled out and signed by the client or the client's representative.

39. The Client Set Up Sheet requests, among other things, the client's contact information, a description of the client's product, the price of the product, the price of any shipping and handling, and the customer service toll-free number that the client will be using.

40. One of "EmTech's" Client Set Up Sheets is dated April 13, 2005.

41. Another one of "EmTech's" Client Set Up Sheets is dated July 25, 2005.

42. "EmTech's" Client Set Up Sheet dated April 13, 2005 lists as follows:

Product Name:	EMTech
Company Name:	EMTech c/o Entertainment America
Primary Contact:	Rollie Froehlig
Address:	6960 Eastgate Blvd
City, State, Zip:	Lebanon, TN 37090

43. The Client Set Up Sheet dated July 25, 2005 states the following:

Product Name:	EMTech
Company Name:	EMT
Primary Contact:	Dick Whitehead
Address:	1003 Trailmore Lane
City, State, Zip:	Weston, FL 33326

44. Despite being the only point of contact with "EmTech," Defendant Froehlig maintains that Dick Whitehead, a business acquaintance of his, is **"not at all"** connected with "EmTech."

45. Richard Whitehead was not connected in any way with "EmTech" or the billings that Defendants conducted under the "EmTech" account.

46. The Client Set Up sheet also contains an "Account Prepayment & Credit Agreement" which states that "All clients are required to pay in advance an amount sufficient to pay shipping charges for their consumer orders and refunds for check orders. . . . An additional 25% to provide funds for check orders **will** also be requested. . . . **To open a client account we must** have an original signed copy of this agreement returned to us along with your credit application."

47. "EmTech" did not advance the required twenty five (25) percent for refunds per Defendant Froehlig's instructions in spite of the fact that Defendant Froehlig considered the "EmTech" account risky.

48. In spite of the boilerplate language, a representative of" EmTech" did not sign either the Account Prepayment & Credit Agreement or Defendant National Fulfillment's Credit Application on either the Client Set Up Sheet dated April 13, 2005 or the Client Set Up Sheet dated July 25, 2005.

Billing of Consumer Cards Under the "EmTech" Account

49. There were several delays to start billing under the "EmTech" account because management wanted more information including a sample letter that was sent out to customers prior to billing and a sample of the actual product.

50. Defendants began billing consumers around the end of July 2005 and continued billing at least until the first week of September 2005.

51. Defendants billed consumers in small "batches" at Defendant Froehlig's request.

52. National Fulfillment first billed from July 29, 2005 through August 5, 2005, stopped for three days and then continued billing from August 11-19, 2005, stopped and then continued billing again from August 30 until September 6, 2005.

53. A merchant account holder cannot have its chargebacks exceed one percent of the

total sales in that month for three months in a row.

54. Defendants appeared to have made their decision to continue billing based on the charge back and complaint levels on the account.

55. Every National Fulfillment client has a separate merchant account at Defendant Entertainment America if they choose the credit card processing feature from Defendant National Fulfillment.

56. If there were a large number of chargebacks, only that specific merchant account and not all of Defendant Entertainment America's merchant accounts would be affected.

57. Defendant Froehlig, with Defendant Howes's knowledge and approval, ordered that the billing be restarted after it was stopped several times from late July to at least early September 2005.

58. Once billing began, some management level employees got together without Defendant Howes or Defendant Froehlig and expressed concern that the company did not have the proper shipping records or direct contact with the client.

Lack of Basic Information About the EmTech Account

59. Neither Defendant Froehlig nor Defendant Howes nor anyone else employed at the corporate Defendants produced a sample advertisement to the corporate Defendants' management or anyone else at National Fulfillment or Entertainment America.

60. Defendant Froehlig, with at least Defendant Howes's knowledge, never provided a corporate referral number for EmTech despite a request by management of both corporate Defendants.

61. Instead, Defendant Froehlig, with at least Defendant Howes's knowledge, told management that Defendant National Fulfillment should handle all of EmTech's calls.

62. Despite requests from management of both corporate Defendants, neither

Defendant Froehlig, Defendant Howes, nor the corporate Defendants ever produced specific shipping or order dates for the EmTech account to management or anyone else at Defendant National Fulfillment or Defendant Entertainment America.

63. Instead, Defendant National Fulfillment, per Defendant Froehlig's instructions and with Defendant Howes's knowledge, inserted general parameters for shipping and order dates such as "prior to May 1st [2005]" in EmTech's customer database.

64. Defendant Howes was notified of both management's request for specific shipping dates and Defendant Froehlig's instruction to fill in the shipping date information in customer records with general parameters such as "prior to May 1st [2005]."

The Few Pieces of Information Produced by Defendants Under the "EmTech" Account Are Suspect

65. After being requested by Vicki Martin to produce the letter that purportedly warned consumers that they were going to be charged prior to being billed, Defendant Froehlig subsequently produced the following **undated** letter:

> DEAR CUSTOMER:
>
> Some time ago, you were sent via the US Postal Service, the exercise bands you previously ordered. However, due to a computer mix-up, you were not billed at the time of shipment. We just discovered this error, [sic] and have now charged your credit card for the product you ordered. We hope when you see the charge on your credit card statement, you will remember the initial request for the product and receiving it. If however, you have any questions relating to the product, the charge to your credit card, or wish to return the bands for a full credit, please call the number below. I hope you are enjoying the EmTech exercise bands.
>
> Richard Whitehead
> Emtech
> 866-299-1689

66. Defendants Froehlig and Howes told management that the letter was sent by "EmTech" to the consumers who would be billed for "EmTech's" product.

67. Despite the insistence of Vicki Martin, Consumer Care Manager, Defendant

National Fulfillment ***never*** **attempted** to ship out the postcards itself.

68. Neither of the corporate Defendants have ever employed someone by the name of Richard Whitehead, the individual listed in the signature block of the letter.

69. The number 866-299-1689 is a toll-free number that belongs to Defendant National Fulfillment and is answered by Defendant National Fulfillment's Consumer Care Division; the division within the company responsible for answering incoming calls at that number.

70. Despite listing National Fulfillment's 1-800 number in the letter, **no one** in National Fulfillment's Consumer Care Division **took a call from a consumer who referenced receiving the Richard Whitehead letter**.

71. No postage receipts, stamps, returned mailings, or any other evidence was produced to the Consumer Care Division indicating that the Richard Whitehead letter was ever sent out to consumers.

72. No other letter that purports to inform "EmTech" consumers that they were about to be billed exists.

73. Following one of the meetings with the managers of both corporate Defendants, Defendant Froehlig and Howes were notified that management would like to see a sample of EmTech's actual product.

74. In response, Defendant Froehlig produced an exercise band.

75. Defendant Howes was at least aware of Defendant Froehlig's production of the exercise band to some of the management and staff of Defendant National Fulfillment and Defendant Entertainment America.

76. Management at National Fulfillment was left with the impression that the exercise

band produced was a sample of one of EmTech's actual exercise bands.

77. The exercise band was also distributed to the Consumer Care Division.

78. The particular exercise band produced was one owned by SPRI Products, Inc. ("SPRI"), who is not and was not a National Fulfillment client.

79. The exercise band produced identified SPRI Products on the product.

80. SPRI has never had any business relationship with Defendants National Fulfillment, Entertainment America, or "EmTech."

81. Without the knowledge of Defendant Froehlig or Defendant Howes, Defendant National Fulfillment's Consumer Care Division updated EmTech's product sheet with the name SPRI assuming, based on the sample product produced with SPRI's name on it, that SPRI Products, Inc. was the corporate client who owned the exercise bands on the EmTech account.

82. Without the knowledge of Defendant Froehlig or Defendant Howes, Consumer Care Division representatives referred to SPRI as the company behind the EmTech account to consumers who called in to complain about the charge on their credit card.

83. After being told the name SPRI Products, Inc. by Defendant National Fulfillment's Consumer Care Division, consumers called SPRI directly to complain about the charges to their credit cards or debit cards.

84. SPRI, in turn, contacted Defendant National Fulfillment as a result of the complaints it received.

85. **After** being notified of the call directly from SPRI, Defendant Froehlig notified management that they had been mistaken and that the exercise band produced was not the actual product but merely a sample of what EmTech's exercise band resembled.

86. Defendant Howes was notified that this situation occurred.

Despite Being Notified of High Numbers of Consumers Alleging Fraud, Defendants Continue Billing

87. Some consumers called Defendant National Fulfillment based on the descriptor line found in the online or hard copy versions of credit card, debit card, or other bank statements.

88. The descriptor line for the EmTech charge that showed up on credit card and debit card statements next to the itemized $19.90 charge, stated "EmTech" and provided one of Defendant National Fulfillment's or Defendant Entertainment America's toll-free numbers.

89. Consumers complained to Defendant National Fulfillment's Consumer Care Division about being billed for a product that they never ordered.

90. The concentration of consumers calling into Defendant National Fulfillment's Consumer Care Division with the complaint that they were billed for a product that they never ordered comprised the vast majority of all callers who called into Defendant National Fulfillment during the time period at issue.

91. From **August 4, 2005 until September 9, 2005**, Defendant National Fulfillment's Consumer Care Division logged approximately **one thousand and forty-three (1,043)** incoming calls that they logged into their Comment Call Report under the category **"Fraud accusation/threatened BBB & AG."**

92. Within the Call Comment Reports, the Consumer Care Division used a specific code, Code 69, entitled, "Fraud accusation, threatened BBB, AG," for callers who either "threatened [National Fulfillment] with an agency, or [stated that they were] going to call [their] police department," or was delivered in a tone that showed that the consumer was irate beyond helping.

93. Other callers who stated that they did not order the product, but did not make

agency threats or similar elevated threats would most probably not be classified under Code 69.

94. Defendant National Fulfillment was notified that at least one caller called in and stated that **they were elderly and disabled, that they did not order an exercise band and that they would have no use for one**.

95. Defendant National Fulfillment's Consumer Care Division, with Defendant Howes and Defendant Froehlig's approval, developed a series of scripted responses if customer service representatives were questioned about the billing that occurred on the "EmTech" account, the order and/or ship dates, how and with whom the order was placed, and about whether there were advertisements for the exercise band.

96. The script responses stated the following:

> If questioned about the billing that occurred: [Response:] . . . **If you don't remember receiving this product, we'll be glad to credit your account, in full, immediately. . . .**
>
> If questioned about the order and/or ship dates: [Response] . . . But, if you do not remember having received this product, we'll be happy to credit your account, in full, immediately. . . .
>
> How and with whom was the order placed? How was this product advertised? [Response] . . . But, if you do not remember having received this product, we'll be glad to issue you a full credit to your account immediately. . . .

97. A manual review of "EmTech's" billing records also produced several duplicate credit card numbers, slightly changed names with the same zip code or address, and other discrepancies that "EmTech's" computer program, which was designed to identify duplicate billings within the system, would not and did not identify.

Member of National Fulfillment's Board of Directors Openly Questions If "EmTech" Account Is Fraudulent, Yet Billing Continues

98. On August 12, 2005, roughly halfway through the time period that credit cards were billed under the "EmTech" account, Vicki Martin, Vice President, Member of the Board of Directors, and Officer in charge of National Fulfillment's Consumer Care Division, wrote the following email to Defendant Howes and Becky Cardiff, the Vice President of Entertainment America:

> We just received a call from an EmTech customer who works for some sort of court office in Florida who was charged and believes she is a victim of identity theft. **Like all of the Em Tech customers, she clearly states that she did not order the product, nor did she receive it, nor did she receive a letter warning of the charge.** This became a supervisor call and Tammie, again, mentioned the letter sent to all of the customers prior to the charge. She asked Tammie to read it to her. She wanted to know who signed the letter and Tammie told her Richard Whitehead. She wants a call back from Richard Whitehead and tells us that she will not let this die because someone is abusing her credit card information. She wants to talk to him only. . .
> I know that consumer care is supposed to handle all of the calls for this client. But we're not qualified or prepared as we have no corporate referral number, proof of shipment, etc. Even though we credit immediately, like this consumer was, that's not enough for these callers. They want to talk directly to the person/company who had their information and claims a product was ordered and shipped. . . **This is not the only call like this. In fact, 95 percent are like this.** I would love to just say, We can handle it, but since crediting isn't enough for these consumers, we don't know what to do with these escalated calls who demand to know who holds their information that was downloaded to us. The easy answer is to let the consumer care handle these, but this client's calls are very different from even our worst cases of the past (Branseed/Buckhead, for example), and we need a unique plan of action. **My most seasoned reps and management staff are suffering from a unique feeling of helplessness (as do I) and feel that they are somehow involved in something that just feels wrong.** Please help us. You know I've never questioned our qualifications to handle consumer calls. **But it's clear to me that we're not qualified and do not have the tools and information (including myself) to handle this situation.** If we've helped them as much as we can (which crediting is our only recourse), do we just hang up on them if they refuse to be satisfied with that? I can't believe that this is our only alternative. That will only prompt these angry customers to seek help with the BBB, attorney general, or their banks.

99. In her sworn testimony, Vicki Martin acknowledged that she meant that **she was wondering if there was fraud behind the "EmTech" account** when she stated, "My most seasoned reps and management staff are suffering from a unique feeling of helplessness (as do I) and feel that **they are somehow involved in something that just feels wrong**."

100. Defendant Howes was notified of Vicki Martin's concerns through her August 12th email.

101. Vicki Martin provided daily call comment reports, the internal report used to classify the nature of consumer complaints, for the "EmTech" account to Defendant Froehlig.

102. Defendant Froehlig asked Vicki Martin to report frequently on the call volume for "EmTech."

103. Vicki Martin had never before followed the daily call reports from beginning to end with any other client.

104. On August 15, 2005, **43.51%** of the **131** callers referencing the "EmTech" account were calls that were classified under Code 69 "Fraud Accusation, threatened BBB, AG."

105. **On August 16, 2005,** Vicki Martin, Defendants Froehlig and Howes's fellow board member, recommended to Defendants Froehlig and Howes that processing on the "EmTech" account should stop.

106. **On August 17, 2005,** Becky Cardiff, Vice President of Defendant Entertainment America, also recommended to Defendants Froehlig and Howes that processing on the "EmTech" account should stop.

107. Becky Cardiff stated in this e-mail, "We just don't have the required information to show the validity of the product should the processor demand to see it."

108. On August 23, 2005, **44.85%** of the **136** callers who called in referencing the Em

Tech account were classified under Code 69 "Fraud accusation, threatened BBB, AG."

109. On August 29, 2005, **57.35%** of the **136** callers who called in referencing the Em Tech account were classified under Code 69 "Fraud accusation, threatened BBB, AG."

110. On August 31, 2005, **67.09%** of the **79** callers who called in referencing the "EmTech" account were classified under Code 69 "Fraud accusation, threatened BBB, AG."

111. From August 31, 2005 to the beginning of October, 2005, the percentage of "EmTech" callers whose complaints were placed under Code 69 "Fraud accusation, threatened BBB, AG" comprised roughly **50-60 %** of the calls.

112. Despite these high percentages and call volumes, the consumers on the "EmTech" account continued to be billed at least until **September 6, 2005.**

113. At least some individuals who were billed on the "EmTech" account and stated that they had never ordered exercise bands were customers of other current or former National Fulfillment clients, including, but not limited to Aloette Cosmetics, Youth Factor, Barbara K, and Banjo Minnow.

114. In spite of this, National Fulfillment did not call its own clients to inform them of the complaints.

115. Defendant Froehlig was notified that these consumers were calling into the Consumer Care Division, stating that they did not order a product from "EmTech", that they were alleging that their credit card information had been misused, and that they were former customers of Youth Factor, Aloette, Banjo Minnow and Barbara K by **September 7, 2005.**

116. Complaints continued to come in under the Em Tech account. On **September 13, 2005, 66.39%** of the **122** callers who called in referencing the Em Tech account were classified under Code 69 "Fraud accusation, threatened BBB, AG."

117. As of **September 14, 2005,** Defendant Froehlig was notified by his fellow board member that there were "more and more" Youth Factor customers that were accusing Defendant National Fulfillment of fraudulent behavior.

118. Defendant Froehlig, Defendant Howes, and the corporate Defendants were aware of this yet no one at either Defendant National Fulfillment or Defendant Entertainment America, including Defendant Froehlig and Defendant Howes, contacted their clients to notify them of the substance of these complaints.

In Spite of This Knowledge, Defendants Wanted to Bill More and Tried to Keep Billing

119. At some point around this time, after approximately thirty thousand (30,000) consumers had their credit card accounts billed under the "EmTech" by the Defendants, Defendant Froehlig came back to Townley Chattman with another disc for more billing

120. Despite these problems, **on September 16, 2005**, Defendant Froehlig and Howes were contemplating billing again and stated that the next disc on the EmTech account should not process **before September 29, 2005.**

121. Management, during another meeting, told Defendant Froehlig again that they felt very uncomfortable doing any more billing, that something did not seem right.

National Fulfillment and Entertainment America Kept the Money from the "EmTech" Account

122. After the credit card numbers were processed by First Data Merchant Services, the money collected from the billing has not been transferred outside of Defendant Entertainment America or Defendant National Fulfillment's bank accounts.

123. Defendant National Fulfillment deducted its fees for the customer service and order processing on the "EmTech" account from the money that was returned from First Data Merchant Services after the credit card numbers were charged.

124. "EmTech" never sent in any checks to pay for these fees.

125. Instead, funds were deducted from the "EmTech" account at Defendant Entertainment America to pay for accounts that Marc Nagoshiner had with Defendant National Fulfillment where Defendant National Fulfillment was still owed money on a previous product.

126. The money collected has never been disbursed to "EmTech."

127. A representative from "EmTech" has never requested the money collected under the "EmTech" account.

128. Through this unlawful billing scheme, Defendants have caused consumers to suffer ascertainable losses of at least $19.90 per consumer who was billed and did not receive a refund from the Defendants.

VIOLATIONS OF THE LAW

129. Plaintiff hereby incorporates by reference and re-alleges each and every allegation contained in paragraphs 1 through 128.

130. Credit card and debit card information or numbers constitute a "Financial document" under the Identity Theft Deterrence Act of 1999.

131. Pursuant to Tenn. Code Ann. § 47-18-2005, any violation of the Identity Theft Deterrence Act constitutes a separate violation of the Tennessee Consumer Protection Act of 1977 subject to all sanctions, penalties and remedies provided in the Tennessee Consumer Protection Act, including attorneys' fees and costs.

COUNT ONE: IDENTITY THEFT

132. Pursuant to Tenn. Code Ann. § 47-18-2103, it is unlawful for any person to directly or indirectly engage in identity theft or engage in any unfair, deceptive, misleading act or practice for the purpose of directly or indirectly engaging in identity theft.

133. Pursuant to Tenn. Code Ann. § 47-18-102(6), identity theft means obtaining,

possessing, transferring, using or attempting to obtain, possess, transfer or use, for unlawful economic benefit, one or more identification documents or personal identification numbers of another person; or otherwise obtaining, possessing, transferring, using or attempting to obtain, possess, transfer or use, for unlawful economic benefit, one or more financial documents of another person.

134. Pursuant to Tenn. Code Ann. § 47-18-102(4), financial document means any credit card, debit card, check or checking account information or number, savings deposit slip or savings account information or number, or similar financial account or account number, including, but not limited to, a money market account, certificate of deposit, or other type of interest generating account with a bank, savings and loan or credit union account, or any other financial institution, mutual fund, account, 401K account, individual retirement account, retirement account, or other stock account information, savings bond or other bond, credit line, equity line or the line of credit which the possessor of the account has the right to draw against.

135. Pursuant to Tenn. Code Ann. § 47-18-2102(5), identification documents means any card, certificate or document which identifies or purports to identify the bearer of such document, whether or not intended for use as identification, and includes, but is not limited to, documents purporting to be a driver license, nondriver certificate cards, birth certificates, marriage certificates, divorce certificates, passports, immigration documents, social security cards, employee identification cards, cards issued by the government to provide benefits of any sort, heath care benefit cards, or health benefit organization, insurance company or managed care organization cards for the purpose of identifying a person eligible for services.

136. By billing consumers for products that they did not order by using credit card, debit card, other charge numbers, or other financial documents within their possession for

unlawful economic benefit, Defendants have engaged in identity theft as that term is defined in Tenn. Code Ann. § 47-18-2102(6)(B), in violation of Tenn. Code Ann. § 47-18-2103(1).

137. By attempting to bill consumers for products that they did not order by using credit card numbers within their possession for unlawful economic benefit, Defendants have engaged in identity theft as that term is defined in Tenn. Code Ann. § 47-18-2102(6)(B), in violation of Tenn. Code Ann. § 47-18-2103(1).

138. By telling complaining consumers that they had ordered an EmTech exercise band when they had not, Defendants have engaged in an unfair, deceptive, misleading act or practice for the purpose of directly or indirectly engaging in identity theft in violation of Tenn. Code Ann. § 47-18-2103(2) with each utterance or statement.

139. By telling complaining consumers that they were given a postcard informing them that they had ordered an exercise band from EmTech and were now being billed when this was not true, Defendants have engaged in an unfair, deceptive, misleading act or practice for the purpose of directly or indirectly engaging in identity theft in violation of Tenn. Code Ann. § 47-18-2103(2) with each utterance or statement.

140. By telling complaining consumers that SPRI Products was the manufacturer of the EmTech exercise band when this was not true, Defendant National Fulfillment has engaged in an unfair, deceptive, misleading act or practice for the purpose of directly or indirectly engaging in identity theft in violation of Tenn. Code Ann. § 47-18-2103(2) with each utterance or statement.

COUNT TWO: TENNESSEE CONSUMER PROTECTION ACT VIOLATIONS

141. By engaging in the aforesaid conduct, Defendants have violated the Tennessee Consumer Protection Act by committing acts and practices that are unfair or deceptive, in violation of Tenn. Code Ann. § 47-18-104(a).

142. By engaging in the aforesaid conduct, Defendants have violated the Tennessee Consumer Protection Act by committing acts and practices that are *per se* deceptive, in violation of Tenn. Code Ann. § 47-18-104(b).

143. By telling complaining consumers that the EmTech exercise band was manufactured by SPRI Products, Inc. when this was not true, Defendant National Fulfillment has violated Tenn. Code Ann. § 47-18-104(b)(1), (b)(2), and (b)(27).

144. By telling complaining consumers that they had ordered the EmTech exercise band when this was not true, Defendants have violated Tenn. Code Ann. § 47-18-104(b)(27).

145. By telling complaining consumers that they received a postcard informing them that they had ordered an exercise band and were now going to be billed, when no postcard was sent, Defendants have violated Tenn. Code Ann. § 47-18-104(b)(27).

DEMAND FOR RELIEF

WHEREFORE, Plaintiff, State of Tennessee, *ex rel.* Robert E. Cooper, Jr., Attorney General and Reporter, pursuant to the ITDA and the TCPA, the Attorney General's general statutory authority, the Attorney General's authority at common law and this Court's equitable powers, prays:

1. That this Complaint be filed without cost bond as provided by Tenn. Code Ann. § 47-18-116 and 47-18-2105(c) and no court costs or litigation fees or costs of any sort be taxed against the State pursuant to Tenn. Code Ann. § 47-18-2105(g) and § 47-18-116;

2. That process issue and be served upon Defendants Rollie Froehlig, Ted Howes, National Fulfillment, Inc., and Entertainment America, Inc. requiring each Defendant to appear and answer this Complaint;

3. That this Court adjudge and decree that the Defendants have each engaged in the

aforementioned acts or practices which violate the Tennessee Identity Theft Deterrence Act of 1999;

4. That this Court adjudge and decree that the Defendants have each engaged in the aforementioned acts or practices which violate the Tennessee Consumer Protection Act of 1977;

5. That this Court temporarily and permanently enjoin Defendants from engaging in the aforementioned acts or practices which violate the Tennessee Consumer Protection Act of 1977 and Tennessee Identity Theft Deterrence Act of 1999 and that such orders and injunctions be issued without bond pursuant to Tenn. Code Ann. § 47-18-108(4) and § 47-18-2105(a);

6. That this Court make such orders or render such judgments as may be necessary to restore to any consumer or other person any ascertainable losses including statutory interest as that term is defined in Tenn. Code Ann. § 47-18-2102(1), including statutory interest suffered by reason of the alleged violations of the Identity Theft Deterrence Act of 1999 and the Tennessee Consumer Protection Act of 1977, and require that Defendants be taxed with the cost of distributing and administering the same, pursuant to Tenn. Code Ann. § 47-18-108(b)(1) and Tenn. Code Ann. § 47-18-2105(e);

7. That this Court issue an asset freeze limited to the proceeds collected by the Defendants under the "EmTech" account;

8. That this Court make such orders or render such judgments as may be necessary to disgorge the profits and ill-gotten gains Defendants realized by reason of the alleged violations of the Tennessee Consumer Protection Act of 1977 and the Identity Theft Deterrence Act of 1999;

9. That this Court enter judgment against Defendants and in favor of the State for the reasonable costs and expenses of the investigation and prosecution of the Defendants' actions, including attorneys' fees, expert and other witness fees, as provided by Tenn. Code Ann. § 47-

18-108(a)(5), (b)(4) and Tenn. Code Ann. § 47-18-2105(f).

10. That this Court adjudge and decree that the Defendants each separately pay civil penalties in the amount of the greater of $5,000 per day for each day that each person's identity has been assumed or ten (10) times the amount obtained by the Defendants using their unlawful billing scheme to bill 30,000 consumers pursuant to Tenn. Code Ann. § 47-18-2105(d), supplemental and in addition to any civil penalties under the Tennessee Consumer Protection Act.

11. That this Court adjudge and decree that the Defendants each separately pay civil penalties in the amount of ten (10) times the amount attempted to be obtained by the Defendants using their unlawful billing scheme to attempt to bill 300,000 consumers pursuant to Tenn. Code Ann. § 47-18-2105(d) supplemental and in addition to any civil penalties under the Tennessee Consumer Protection Act.

12. That this Court adjudge and decree that the Defendants each separately pay civil penalties of not more than one thousand dollars ($1,000.00) per violation of the Tennessee Consumer Protection Act to the State as provided by Tenn. Code Ann. § 47-18-108(b)(3);

13. That this Court, in light of the gravity of harm posed to the commercial marketplace in Tennessee and through the authority vested with this Court in Tenn. Code Ann. § 47-18-108(b)(2), revoke Defendant National Fulfillment's corporate status as long as either Rollie Froehlig or Ted Howes remain as an officer, representative, agent, board member, shareholder, or an employee of National Fulfillment, its affiliates, or subsidiaries;

14. That this Court, in light of the gravity of harm posed to the commercial marketplace in Tennessee and through the authority vested with this Court in Tenn. Code Ann. § 47-18-108(b)(2), revoke Entertainment America's corporate status as long as either Rollie Froehlig or Ted Howes remain as an officer, representative, agent, board member, shareholder or an employee of National

Respectfully submitted,

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