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8 BENEFITS CENTER, AMERITECH FINANCIAL,  
9 and FINANCIAL EDUCATION BENEFITS CENTER

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

AMERICAN FINANCIAL BENEFITS  
CENTER, AMERITECH FINANCIAL, and  
FINANCIAL EDUCATION BENEFITS  
CENTER,

Plaintiffs,

vs.

FEDERAL TRADE COMMISSION,  
Defendant.

Case No: \_\_\_\_\_

**COMPLAINT FOR DECLARATORY  
RELIEF**

**28 U.S.C. § 2801**

1 Plaintiffs American Financial Benefits Center, Ameritech Financial, and Financial  
2 Education Benefits Center (collectively “Plaintiffs”) hereby state the following for their  
3 Complaint for Declaratory Relief against Defendant Federal Trade Commission (“FTC”).

4 **I. INTRODUCTION**

5 1. Plaintiffs assist consumers with finding and applying for the help they need  
6 relating to their federal student loans. Specifically, Plaintiffs assist customers to obtain access to  
7 government-offered benefits programs, including student loan consolidation, often in times of  
8 great financial need. This is a valuable, and often critical, service for consumers who are having  
9 difficulties paying back their existing student loan debt. One or more of Plaintiffs have been  
10 assisting consumers since 2011, and during that entire time they have received stellar ratings  
11 from the Better Business Bureau, and overwhelmingly positive comments from consumers who  
12 have publicly commented about the services Plaintiffs offer. In short, Plaintiffs are well-run  
13 companies offering valuable services to consumers.

14 2. Over the last year, student debt relief service companies have come under  
15 increasing scrutiny from Defendant FTC. It is no secret that in 2017 the FTC has acted  
16 aggressively against a number of less- or non-compliant actors in this field. Recently, Plaintiffs  
17 have learned that Defendant FTC is in the final process of gathering information to file a lawsuit  
18 against Plaintiffs on the purported and factually-unsupportable basis that Plaintiffs have violated  
19 the debt relief service provision of the Telemarketing Sales Rule (“TSR”), as amended in 2010.  
20 16 C.F.R., Part 310. But because of the manner in which the Plaintiff companies are operated,  
21 the TSR does not apply to Plaintiffs. However, even if it were to apply Plaintiffs would meet all  
22 legal requirements under that law.

23 3. Thus, Plaintiffs bring this action against the FTC to seek a declaration from this  
24 Court that the debt relief provision of the TSR will not apply to Plaintiffs’ businesses, or,  
25 alternatively, that Plaintiffs are fully complying with the legal requirements outlined by the TSR.

26 **II. PARTIES**

27 4. Plaintiff American Financial Benefits Center (“AFBC”) is a California  
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1 corporation with its principal place of business in Rohnert Park, California. It was created in  
2 2011 to assist federal student loan consumers with a variety of services. Among other services,  
3 AFBC helped consumers with student loan debt to identify and gain approval for one or multiple  
4 different government debt relief programs. Specifically, it assisted consumers with federal  
5 student loan debt with the preparation of student loan documentation for identified programs and  
6 provides student loan processing services. It also sold a bundled membership program that  
7 provided savings on services that would be much more expensive if purchased *a la carte*.

8 5. Plaintiff Ameritech Financial (“AmeriTech”) is a California corporation formed  
9 in 2015 with its principal place of business in Rohnert Park, California. Among other services, it  
10 helps consumers with federal student loan debt by preparing documentation in connection with  
11 the identification of, and gaining approval for, one or multiple government debt relief programs.  
12 AmeriTech does not take any payment for its services until it has worked with its customers to  
13 identify the most appropriate student loan repayment program, completed and submitted the  
14 associated application forms, and the consumer receives the results of those efforts.

15 6. Plaintiff Financial Education Benefits Center (“FEBC”) is a California  
16 corporation formed in 2015 with its principal place of business in Rohnert Park, California.  
17 FEBC offers bundled membership programs that provide savings on services that would be more  
18 expensive if purchased *a la carte*.

19 7. Defendant FTC is an independent agency of the United States government with  
20 its headquarters in Washington D.C. It was created by Congress and operates under the Federal  
21 Trade Commission Act, 15 U.S.C. §§ 41-58. Among the FTC’s responsibilities is enforcement  
22 of the debt relief service provision of the TSR.

23 **III. JURISDICTION AND VENUE**

24 8. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 28  
25 U.S.C. § 2201.

26 9. Venue is appropriate in the Northern District of California pursuant to 28 U.S.C. §  
27 1391(e).

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1 **IV. RELEVANT FACTUAL ALLEGATIONS**

2 10. The FTC is an administrative agency authorized to prevent “unfair or deceptive  
3 acts or practices in commerce.” 15 U.S.C. § 45(a)(2). In 1994, Congress enacted the  
4 Telemarketing Consumer Fraud and Abuse Prevention Act, 15 U.S.C. § 6101 *et seq.*  
5 (“Telemarketing Act”). The Telemarketing Act authorized the FTC to regulate deceptive and  
6 abusive commercial telemarketing acts and practices intended to induce the purchase of goods or  
7 services. 15 U.S.C. § 6102(a)(3)(C). The Act further directed the FTC to promulgate  
8 regulations to “prohibit deceptive telemarketing acts or practices and other abusive telemarketing  
9 acts or practices.” 15 U.S.C. § 6102(a)(1).

10 11. The Telemarketing Act defines “abusive telemarketing acts or practices” as (1) a  
11 pattern of unsolicited telephone calls which the reasonable consumer would consider coercive or  
12 abusive to his or her right to privacy; (2) unsolicited calls to consumers during specific hours;  
13 and (3) failure to deliver prompt and clear disclosures that the purpose of the call is to sell goods  
14 or services and other such disclosures as the FTC deems appropriate. 15 U.S.C. §  
15 6102(a)(3)(A)-(C).

16 12. The FTC promulgated rules implementing the Telemarketing Act in 1995, which  
17 was codified at 16 C.F.R. § 310, called the Telemarketing Sales Rule (“TSR”). The FTC  
18 subsequently amended the TRS in 2003, 2008, and 2010.

19 13. In 2010, the FTC amended its TSR to regulate debt relief service providers. One  
20 provision of that regulation pertained to debt relief services. Specifically, the FTC amended TSR  
21 defines a “debt relief service” as a program that claims directly, or implies, that it can  
22 renegotiate, settle, or in some way change the terms of a person’s debt to an unsecured creditor  
23 or debt collector. 16 C.F.R., § 310.2(m). Moreover, the TSR prohibits a seller or telemarketer  
24 from “[r]equesting or receiving payment of any fee or consideration for any debt relief service  
25 until ... [t]he seller or telemarketer has renegotiated, settled, reduced, or otherwise altered the  
26 terms of at least one debt pursuant to a settlement agreement, debt management plan, or other  
27 such valid contractual agreement executed by the customer” and “[t]he customer has made at  
28 least one payment” pursuant to such agreement, plan, or contract. 16 C.F.R. §310.4(a)(5)(i).

1           14.     The dramatic impact of student loan debt on the public has long been an issue on  
2 the public's radar because of its crippling effect on consumers, who are frequently left with  
3 enormous student loan obligations and little or no ability to pay it back. These consumers face  
4 long-lasting financial challenges because of that student debt. This problem was particularly  
5 pronounced after the economic recession of the late 2000s.

6           15.     Unbeknownst to many consumers, there are a variety of federal student loan debt  
7 forgiveness and/or restructuring programs. Those programs are not clearly publicized or  
8 properly explained to borrowers by their loan servicer, and often require a very technical and  
9 complicated application process and follow-up procedures to maintain eligibility in the  
10 programs. They are helpful programs to consumers with student loan debt, but difficult for the  
11 average consumer to navigate.

12           16.     Moreover, there have been numerous alleged instances of student loan servicers  
13 systematically misleading millions of borrowers and driving up their repayment costs,  
14 culminating in a recent lawsuit that the Consumer Financial Protection Bureau filed against  
15 Navient Corporation in the Middle District of Pennsylvania (Case No.: 17-cv-00101), and in  
16 which a federal judge denied Navient's motion to dismiss on August 4, 2017.

17           17.     Plaintiffs AFBC and AmeriTech were companies formed to fill a void by  
18 identifying potential federal student loan relief programs available to consumers, preparing  
19 documentation for those consumers, and performing other related student loan processing  
20 services. FEBC was formed to provide supplemental membership benefits. Each company has  
21 a different story and provides different services, but each has been committed solely to helping  
22 consumers. Having been formed after the enactment of the 2010 amendment to the TSR, each  
23 Plaintiff was well aware of the requirements of the TSR.

24           18.     In 2011, AFBC was the first of the Plaintiff companies formed. It was created to  
25 help consumers identify one or more potential federal student loan relief programs available to  
26 them, and then assist those consumers with the preparation of highly-technical paperwork. To  
27 contact potential customers, the company would send standard mailers to consumers advising  
28 them of the AFBC program, which generated inbound calls. On the phone, the AFBC

1 representative would explain the program, its costs, and perform general intake so that AFBC  
2 could later identify potential federal loan relief programs, and prepare federal loan repayment  
3 applications. As part of that intake process, the AFBC representative would describe the  
4 separate loan processing membership program, which provided helpful services and resources  
5 to consumers including financial analysis and evaluation. The services did not include  
6 renegotiating debt. Rather, AFBC would assist consumers with the preparation of student loan  
7 application paperwork, and, if the consumer purchased the additional services, provide  
8 additional helpful services. In that regard, AFBC's services assisting consumers were  
9 comparable to a company such as H&R Block, which help consumers prepare paperwork,  
10 submit tax returns, and then process any refunds for the consumer. AFBC sold these various  
11 student loan services to consumers until late 2015. It no longer sells these services to new  
12 consumers, but continues to provide the membership services and assists its existing customers  
13 with annual recertifications that might be required of the federal loan repayment programs in  
14 which those customers are enrolled.

15 19. Because the FTC's interpretation of the laws surrounding the ability to accept  
16 fees for loan processing services would be considered an advanced fee under the TSR was  
17 somewhat unsettled, AmeriTech and FEBC were formed as separate companies in 2015. Since  
18 its formation, AmeriTech has assisted consumers with the preparation of student loan relief  
19 program application documentation. As required by the TSR, AmeriTech does not accept any  
20 payment for its student loan application documentation and processing services until after the  
21 customers receive their results. FEBC, in contrast, provides membership benefits. FEBC's  
22 services are offered to customers of AmeriTech, but those companies are completely separate  
23 entities.

24 20. Before making the decision to form separate companies for the student loan  
25 documentation and loan processing services, Plaintiffs sought an informal legal opinion  
26 regarding the applicability of the debt relief service provision of the amended TSR to the  
27 benefits FEBC intended to provide (but did not yet provide). Specifically, FEBC proposed that  
28 it would offer a membership benefit program that could be purchased on its own or in

1 conjunction with the student loan application assistance being offered by AmeriTech.  
2 Critically, FEBC's consumer contract would be separate and independent from AmeriTech's  
3 program, and thus the new FEBC program would be characterized as an optional external upsell  
4 under the TSR. Optional upsell programs are permitted under the TSR when consumers are not  
5 required to purchase those services in order to receive or contract for their debt relief-related  
6 services. Such is the case with the membership services offered by FEBC. In addition, the  
7 payment for that membership program would be made directly to FEBC and not AmeriTech.  
8 Based on the list of services and the description of services provided to Plaintiffs' counsel,  
9 counsel opined that the program would not fall within the definition of a debt relief service  
10 program under the TSR. Plaintiff FEBC has fastidiously followed that advice, and offered only  
11 those distinct services for which counsel advised the TSR would not apply.

12 21. Because of how closely Plaintiffs have followed the separation of those services  
13 and segregated the loan documentation preparation and loan processing service programs, the  
14 debt relief provision of the TSR does not apply. Plaintiff AFBC no longer provides services to  
15 new consumers. Plaintiff AmeriTech provides only student loan documentation preparation  
16 services, and even then will only accept payment after the consumer has enrolled in the program  
17 and receives the results. Plaintiff FEBC operates separate and apart from AmeriTech, and  
18 offers only services that do not fall under the definition of a debt relief service program under  
19 the TSR, including, but not limited to, personal financial budgetary analysis, access to official  
20 forms and documents, access to legal documents, resume and cover letter documentation, tools  
21 for keeping budgets, access to educational websites, financial calculators, printable forms and  
22 educational kits, life lock identity theft protection, roadside assistance, tax preparation services,  
23 credit repair service discounts, medical/everyday savings, and telemedicine. That this service  
24 might be discussed in calls with AmeriTech representatives is of no import because this offer is  
25 merely an external upsell, thus falling under the TSR's external upsell provisions. However, it  
26 is not an impermissible upfront fee, nor fall within the definition of a debt relief program.

27 22. Importantly, Plaintiffs have each been highly-rated by the Better Business  
28 Bureau ("BBB") over the last half decade, and each is highly touted by its customers. For

1 example, Plaintiff AFBC currently maintains an A rating with the BBB. Similarly, Plaintiff  
2 FEBC maintained an A rating with the BBB. Ameritech is currently not rated by the BBB, but  
3 is in the process of getting accredited. However, in addition to the positive BBB ratings,  
4 Plaintiffs have also received very positive feedback from its customer. Since 2016, Plaintiffs  
5 have offered its customers surveys about its customer service function at two distinct points in  
6 the relationship: 1) immediately after the enrollment with the enrollment representative and  
7 successful completion of the client verification, and 2) after every single interaction with  
8 customer service. That has resulted in a total of 19,607 survey responses. From that survey  
9 total, Plaintiffs received an average client satisfaction score of 24.03 out of 25 points. Plaintiffs  
10 have also performed separate surveys related to their enrollment program. That has resulted in a  
11 total of 1,156 survey responses. From that survey total, Plaintiffs received an average client  
12 satisfaction score of 19.33 out of 20 points. Needless to say, Plaintiffs provide valuable and  
13 much-appreciated services to its consumers, guiding them through a highly-technical process to  
14 help alleviate their financial burdens, and, in many cases, student loan defaults.

15       23. In the last year, student debt relief programs have come under increasing scrutiny  
16 from the FTC, and the FTC has acted aggressively towards student debt relief companies that are  
17 not in compliance with the TSR. Because of the concerns surrounding that scrutiny, on  
18 December 29, 2016, counsel for Plaintiffs proactively wrote to the Chairwoman of the FTC to  
19 inform her of the services being offered by Plaintiffs, and to explain why the TSR did not apply  
20 to Plaintiffs' businesses. Counsel invited the FTC to discuss Plaintiffs' services. The FTC never  
21 responded, and as a result never provided Plaintiffs with any feedback about the FTC's position  
22 on the applicability of the debt relief provision of the TSR to Plaintiffs' business. Instead,  
23 Plaintiffs were left in the dark without any recourse.

24       24. Recently, Plaintiffs learned that FTC representatives have been questioning  
25 Plaintiffs' ex-employees about Plaintiffs' businesses. Moreover, the FTC has been asking those  
26 ex-employees to sign declarations in connection with the filing of a motion for a temporary  
27 restraining order and/or preliminary injunction, in connection with the filing of a lawsuit alleging  
28 violations of the TSR. **Such extraordinary relief would be inappropriate and unnecessary**



1 **here, as Plaintiffs have been willing and ready to discuss their businesses with the FTC**  
2 **since at least December 2016, yet the FTC has not responded.** These covert actions cannot  
3 stand without court intervention. Plaintiffs have long run successful businesses with favorable  
4 BBB ratings, overwhelmingly positive consumer feedback, and helped tens of thousands of  
5 individuals navigate the difficult world of student debt relief. A judicial declaration is necessary  
6 to ensure Plaintiffs receive fair treatment and do not have their due process rights violated.

7 **COUNT I – DECLARATORY RELIEF**

8 25. Plaintiffs incorporate by reference paragraphs 1 through 24 as though fully stated  
9 herein.

10 26. The Declaratory Judgment Act, 28 U.S.C. § 2201, grants this Court the authority  
11 to declare the rights and legal relations of the parties to this action, and grant further necessary or  
12 proper relief based on its declaration where an actual controversy exists.

13 27. As explained above, an actual controversy exists here. Defendant FTC failed to  
14 respond to the inquiries of the attorney for Plaintiffs’ in late 2016 regarding Plaintiffs’  
15 companies, and has been interviewing ex-employees of Plaintiffs for the purpose of getting them  
16 to sign declarations or affidavits to support a motion for a temporary restraining order and/or  
17 preliminary injunction to be filed in conjunction with a complaint alleging that Plaintiffs are in  
18 violation of the debt relief provision of the TSR. Plaintiffs face perilous danger by these actions,  
19 which are unsupported by law or fact, do not further an important government interest, and are  
20 not substantially related to an important government interest.

21 28. Moreover, Defendant FTC’s inaction in responding to the December 2016 letter,  
22 coupled with their recent contacting of Plaintiffs’ ex-employees, violate Plaintiffs’ rights to due  
23 process because there is no way for Plaintiffs to know whether the FTC contends they are  
24 violating the debt relief provisions of the TSR when they have expressly requested to  
25 communicate with the FTC on this exact topic. This is particularly problematic because  
26 Plaintiffs’ standards under the debt relief provision of the TSR are unconstitutionally vague.

27 29. Here, the debt relief service provision of the TSR, as amended in 2010, does not  
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1 apply to any Plaintiffs. However, even were the TSR to apply to Plaintiffs, a declaration in favor  
2 of Plaintiffs that they are in compliance with the TSR rules and requirements is appropriate.

3 30. Accordingly, Plaintiffs hereby seek a declaration from this Court stating the debt  
4 relief provision of the TSR does not apply to Plaintiffs.

5 31. In the alternative, Plaintiffs hereby seek a declaration from this Court that  
6 Plaintiffs are in compliance with the requirements of the debt relief provision of the TSR.

7 **PRAYER FOR RELIEF**

8 Plaintiffs respectfully ask this Court to grant them the following relief:

9 1. A declaration that the student debt relief provision of the TSR will not apply to  
10 Plaintiffs' companies, and that Plaintiffs are not responsible for complying with the requirements  
11 of the debt relief provision of the TSR

12 2. Or, in the alternative, a declaration that Plaintiffs have complied with the  
13 requirements of the debt relief provision of the TSR;

14 3. Award Plaintiffs their fees and costs in bringing this action under any potentially-  
15 applicable statute or law; and

16 4. Such other relief as this Court deems just and proper  
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18 Date: August 18, 2017

NOSSAMAN LLP  
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19 By: /s/ James H. Vorhis

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