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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

FEDERAL TRADE COMMISSION, Plaintiff, v. PACT, INC., a Delaware corporation, YIFAN ZHANG, individually and as an officer of Pact, Inc., and GEOFFREY OBERHOFER, individually and as an officer of Pact, Inc., Defendants.	Case No. **COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), for its Complaint alleges:

1. The FTC brings this action under Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), and Section 5 of the Restore Online Shoppers' Confidence Act ("ROSCA"), 15 U.S.C. § 8404, to obtain preliminary and permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief for Defendants' acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a) and Section 4 of ROSCA, 15 U.S.C. § 8403.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a), 53(b), 57b, and 8404.

3. Venue is proper in this district under 28 U.S.C. §§ 1391(b)(1), (b)(2), (c)(2), and (d) and 15 U.S.C. § 53(b).

INTRADISTRICT ASSIGNMENT

4. Defendants have conducted business, marketed their services, and provided their services in the county of King.

PLAINTIFF

5. The FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The FTC also enforces ROSCA, 15 U.S.C. §§ 8401, *et seq.*, which prohibits certain methods of negative option marketing on the Internet.

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6. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and ROSCA, and to secure such equitable relief as may be appropriate in each case, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b), 57b, 56(a)(2)(A), 56(a)(2)(B), 57b, and 8404.

DEFENDANTS

7. Defendant **Pact, Inc.** is a corporation chartered under the laws of Delaware with its principal place of business in Seattle, Washington. Pact, Inc. transacts or has transacted business in this district and throughout the United States. At all times material to this complaint, acting alone or in concert with others, Pact, Inc. has advertised, marketed, distributed, or sold mobile software applications (“apps”) to consumers throughout the United States.

8. Defendant **Yifan Zhang** is the chief executive officer of Pact, Inc. At all times material to this Complaint, acting alone or in concert with others, she has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of Pact, Inc., including the acts and practices set forth in this Complaint. She resides in this district and, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

9. Defendant **Geoffrey Oberhofer** is the chief product officer of Pact, Inc. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of Pact, Inc., including the acts and practices set forth in this Complaint. He resides in this district and, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

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COMMERCE

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

DEFENDANTS' BUSINESS PRACTICES

11. Since January 2012, Defendants have distributed an app (the "Pact app") purporting to pay consumers who completed certain health-related activities within a week (such as exercising or meeting dietary goals) as part of a "pact," and charge only those consumers who did not complete their pacts. Instead, Defendants have not paid, and in fact have charged, many consumers who satisfied their pacts. These charges have ranged from $5 to $50 per purportedly missed activity. Moreover, many consumers who have attempted to cancel Defendants' service instead have continued to be charged in subsequent weeks without their consent. Defendants have received at least tens of thousands of consumer complaints about unauthorized charges billed through the Pact app, with many consumers reporting hundreds of dollars of losses in such charges. Defendants have acknowledged that unauthorized charges for some consumers was a "known issue." However, they have continued to charge (rather than pay) many consumers who have completed their pacts and bill consumers who have attempted to cancel the service, despite continued promises to the contrary. Indeed, rather than altering their claims or taking steps to pay and charge consumers only as promised, Defendants have introduced new types of pacts and additional features that suffer from the same issues. Further, in violation of ROSCA, Defendants have failed to disclose adequately how to cancel the service.

Defendants' Representations When Consumers Open the Pact App

12. Users have signed up for Defendants' services through the company's mobile app, which was available for download on mobile devices running the iOS operating system (such as the iPhone) and Android operating system. Defendants began distributing their app for use on the iOS operating system in January 2012 and on the Android operating system in December 2012.

13. When a consumer first opened the Pact app, it has displayed a series of screens that describe the app. These screens have represented that consumers will earn money if they satisfy their pacts, and they will pay money only if they fail to do so. For example, these screens have stated:

a. "Earn cash for living healthy, paid by members who don't";

b. "Set a weekly goal, and what you'll pay other members if you don't reach it"; and

c. "You earn cash rewards from the Pact community every week you complete your pact."

Defendants' Representations About Specific Pacts

14. Since 2012, Defendants have offered GymPacts, whereby consumers commit to exercising a certain number of times per week. In late 2013, Defendants added FoodLoggingPacts and VeggiePacts. Consumers who have signed up for FoodLoggingPacts would commit to logging meals in a separate app called MyFitnessPal for a certain number of days per week. Consumers who have signed up for VeggiePacts would commit to eating a certain number of fruits and vegetables per week.

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15. Within the Pact app, Defendants have represented how consumers could complete pacts, that consumers who completed their pact commitments would be paid, and that those who did not would pay money to Defendants.

16. For example, with respect to GymPacts, Defendants have represented within the app that:

a. Consumers could "Workout Anywhere" by "check[ing] in" at a gym and remaining in that location for at least thirty minutes, by taking ten thousand steps in a day, or by being active for at least thirty minutes, to satisfy their pacts;

b. Defendant would track consumers' presence in a gym through GPS; and

c. Defendant would track the number of steps or time of activity by synchronizing with either the motion tracker in a user's mobile device, a different app that tracks distance traveled, or a wearable fitness tracker.

17. With respect to FoodLoggingPacts, Defendants have represented in the app that consumers had to do nothing more than "[c]onnect [their] MyFitnessPal account with Pact" and log the food they consume in the MyFitnessPal app to satisfy their pacts.

18. With respect to VeggiePacts, Defendants have represented in the app that consumers needed only "[s]nap a picture" that "[m]akes it obvious" that they are "actually eating or going to eat the veggie" to satisfy their pacts.

19. Depending on the type of pact selected, users have been asked to set a target for the number of days per week they would go to the gym, number of days per week they would log the food they consume, or number of servings of fruits or vegetables they would consume per day. On the same screen where users have been asked to set a target, Defendants have

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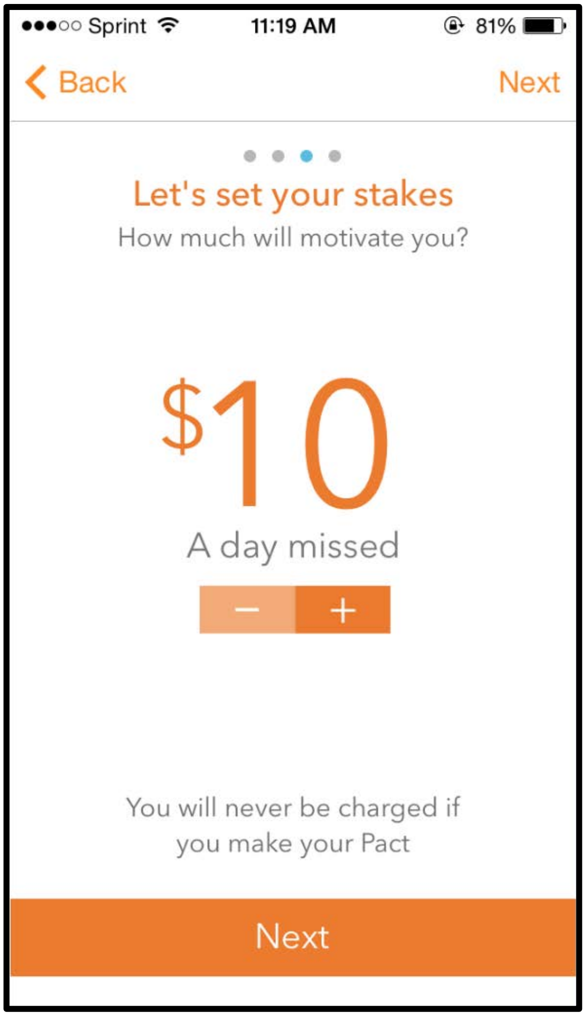
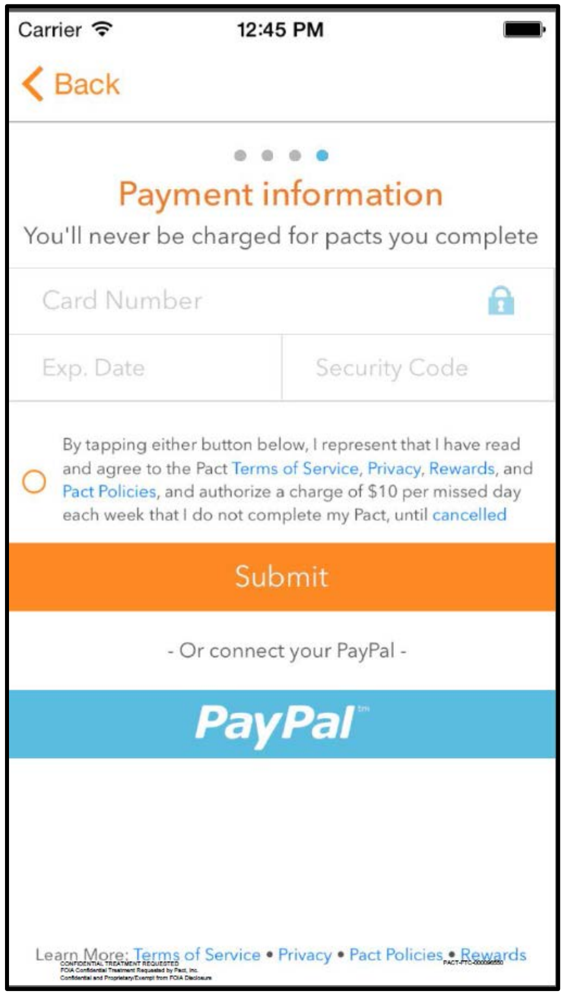
represented the amount of "rewards" money users would receive for each weekly pact completed.

20. On the next screen, users have set the penalty amounts between five and fifty dollars that they would pay per activity missed. This screen has notified users: "You will never be charged if you make your Pact." A representative sample of such a screen follows:



21. Defendants have required all users who sign up for a pact to provide payment account information or connect their PayPal account to the app before they can begin any pact. This has allowed Defendants to automatically charge consumers for pacts that the consumers allegedly failed to complete. On the screen through which Defendants have collected

consumers' payment information, Defendants again have represented, "You'll never be charged for pacts you complete." A representative sample of such a screen follows:



22. In statements described in the paragraphs above and in other statements, Defendants repeatedly have represented to consumers that the company would charge them only if they failed to meet the weekly goal and that it would pay them if they succeeded.

Defendants' Practice Of Charging Consumers For Completed Pacts Without Authorization Instead Of Paying As Promised

23. In many instances, consumers have fulfilled the terms of their pacts, but Defendants have failed to pay them as promised and have charged them instead.

24. For example, despite Defendants' claim that consumers could complete their pacts and avoid charges by working out "anywhere," in many instances, Defendants have charged consumers when they exercised outside of gyms, such as when consumers went for a run outdoors or worked out on a military base.

25. Similarly, in the case of FoodLoggingPacts, in many instances, Defendants have charged consumers even when they met their FoodLoggingPacts.

26. At least tens of thousands of consumers have complained to Defendants that they were charged rather than paid for completing a pact. A payment processor and a bank with which Defendants worked warned Defendants about the app's high chargeback rate, and the company was fined by a financial institution for exceeding Visa's permitted chargeback rate for six consecutive months. Nevertheless, in many instances, Defendants have continued to charge consumers who completed pacts, despite their ongoing representations that they would not charge such consumers and would instead pay them for completing the pacts.

27. Indeed, even as complaints poured in, Defendants continued to sign up new customers and even expanded the app to include new types of pacts – the FoodLogging and VeggiePacts – and make additional promises, such as claiming consumers would get paid for logging activities through *additional* partner apps and through wearable devices. And as with the initial promises, in many instances these promises have not panned out – Defendants charged consumers who completed these pacts, instead of paying them. Defendants acknowledged to consumers that their failure to record information from approved apps was a "known issue."

Defendants Have Charged Consumers On A Recurring Basis Without Clearly Disclosing A Method Of Stopping the Charges And Without Authorization

28. By default, consumers' pacts would renew each week with the same activity goals and monetary penalties. If consumers did not stop the renewal by Mondays at midnight, Defendants automatically have renewed the pacts for the next week, meaning that consumers would be charged if they did not complete their goals by the end of the following week.

29. Defendants have not clearly and conspicuously disclosed, before obtaining the consumers' billing information, the means consumers must use to stop the recurring charges. To obtain this information, consumers would have had to click on a link to obtain the app's terms of service and then scroll through 4,400 words (or 43 screens on an iPhone 5S) of dense text to find the means to stop recurring charges. This information has been difficult for consumers to locate and access, confusing, and much less simple than the mechanism consumers used to sign up for a pact and initiate the recurring charge.

30. In many instances, consumers have wanted to stop recurring charges, but have not been able to figure out how to do so. In other instances, consumers have completed the steps required to stop or freeze the recurring charges, but Defendants have continued to charge them.

31. Although Defendants have purported to offer another option, whereby consumers could temporarily stop charges by "schedul[ing] a break," in many instances, this option also has not worked.

32. Further, in many instances, consumers contacted Defendants' customer service representatives through the company's online portal, seeking to prevent their pacts from renewing, and were told that a break or freeze would be applied to their account. However, in many instances, Defendants continued to charge these consumers.

33. In many instances where consumers attempted to contact Defendants through the company's online portal to prevent their pacts from recurring, Defendants have delayed in

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responding to the requests until after the consumers were enrolled in a new pact and, therefore, subject to another charge by Defendants.

34. In many instances where consumers complained to Defendants that their pacts had been renewed without the consumers' authorization, Defendants have continued charging consumers for pacts that renewed after they complained.

Defendants Have Billed Many Consumers for Unauthorized Charges

35. Overall, Defendants have received at least tens of thousands of complaints related to unauthorized charges from their app users. For example:

a. Defendants charged a consumer for missed pacts when she could not get the app to recognize the gym at the Air Force base where she was stationed. After discovering the problem, she could not figure out how to stop future pacts;

b. Another consumer attempted to contact Defendants three times to inform them that his workouts were not being recorded. Defendants never responded and continued to charge the consumer $300 for two weeks of pacts;

c. Another consumer deleted her account, but continued to be charged by Defendants. Defendants charged this consumer over $500 in unauthorized charges;

d. Another consumer discovered charges from Defendants amounting to more than $100, even though that consumer had canceled the account months before;

e. Another consumer deleted her account after being injured in a car accident. Defendants continued to charge the consumer for pacts, and the consumer could not log in to Defendants' website to complain because her account had been deleted; and

f. Another consumer scheduled a break based on the schedule of his U.S. Navy ship. Defendants continued to charge this consumer during the break.

36. Some of the unauthorized charges placed by Defendants have overdrawn users' financial accounts and caused the users' financial institutions to levy overdraft fees on the accounts.

37. In many instances, consumers sought refunds for Defendants' unauthorized charges and Defendants refused to provide a refund. In many such instances, Defendants avoided giving refunds by delaying a decision on the consumers' refund requests—meanwhile often continuing to charge consumers—or by requiring consumers to submit evidence of facts that are difficult to prove retroactively such as exercise that took place days or weeks before.

<u>VIOLATIONS OF SECTION FIVE OF THE FTC ACT</u>

38. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair and deceptive acts or practices in or affecting commerce.

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

40. Acts or practices are unfair under Section 5 of the FTC Act if they cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition. 15 U.S.C. § 45(n).

COUNT ONE

(Deceptive Acts and Practices)

41. In numerous instances in connection with the advertising, marketing, promotion, or offering of the Pact app, Defendants have represented, directly or indirectly, expressly or by implication, that:

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a. Defendants would never charge consumers' financial accounts if consumers satisfied their pacts; and

b. Consumers who satisfied their pacts would receive payments.

42. In truth and in fact, in numerous instances in which Defendants have made the representations set forth in paragraph 41 of this complaint,

a. Defendants have charged consumers' financial accounts even when consumers have satisfied their pacts; and

b. Consumers who have satisfied their pacts have not received payments.

43. Therefore, Defendants' representations are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT TWO

(Unfair Billing Practices)

44. In numerous instances when consumers have attempted to end recurring charges, Defendants have charged such consumers without their express informed consent.

45. Defendants' actions as described in Paragraph 44 have caused or are likely to cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition.

46. Defendants' practices as described in Paragraphs 44-45 above constitute unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. §§ 45(a) and 45(n).

VIOLATIONS OF THE RESTORE ONLINE SHOPPERS' CONFIDENCE ACT

47. In 2010, Congress passed ROSCA, 15 U.S.C. §§ 8401, et seq., which became effective on December 29, 2010. Congress passed ROSCA because "[C]onsumer confidence is essential to the growth of online commerce. To continue its development as a marketplace, the

Internet must provide consumers with clear, accurate information and give sellers an opportunity to fairly compete with one another for consumers' business." Section 2, of ROSCA, 15 U.S.C. § 8401.

48. Section 4 of ROSCA, 15 U.S.C. § 8403, generally prohibits charging a consumer for goods or services sold in transactions effected on the Internet through a negative option feature, as that term is defined in the Commission's Telemarketing Sales Rule ("TSR"), 16 C.F.R. § 310.2(w), unless the seller (1) clearly and conspicuously discloses all material terms of the transaction before obtaining the consumer's billing information, (2) obtains the consumer's express informed consent before making the charge, and (3) provides a simple mechanism to stop recurring charges. *See* 15 U.S.C. § 8403.

49. The TSR defines a negative option feature as: "an offer or agreement to sell or provide any goods or services, a provision under which the consumer's silence or failure to take an affirmative action to reject goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer." 16 C.F.R. § 310.2(w).

50. As described in Paragraphs 11-37 above, Defendants have advertised and sold their service through a negative option feature as defined by the TSR. 16 C.F.R. § 310.2(w).

51. Pursuant to Section 5 of ROSCA, 15 U.S.C. § 8404, a violation of ROSCA is a violation of a rule promulgated under Section 18 of the FTC Act, 15 U.S.C. §57a.

COUNT THREE

(Failure to Disclose All Material Terms)

52. In numerous instances, Defendants have charged consumers for Defendants' service through a negative option feature while failing to clearly and conspicuously disclose all material terms of the transaction – including the mechanism for consumers to stop recurring

charges from being placed on their credit card, debit card, bank account, or other financial account – before obtaining consumers' billing information.

53. Defendants' acts or practices, as described in Paragraph 51, above, constitute a violation of Section 4(1) of ROSCA, 15 U.S.C. § 8403(1), and are therefore a violation of a rule promulgated under Section 18 of the FTC Act, 15 U.S.C. § 57a.

CONSUMER INJURY

54. Consumers have suffered substantial injury as a result of Defendants' violations of the FTC Act and ROSCA. In addition, Defendants have been unjustly enriched as a result of its unlawful acts or practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

55. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of any provision of law enforced by the FTC. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

56. Section 5 of ROSCA, 15 U.S.C. § 8404, authorizes this Court to grant such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of ROSCA, including the rescission or reformation of contracts, and the refund of money.

PRAYER FOR RELIEF

Wherefore, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), Section 5 of ROSCA, 15 U.S.C. § 8404, and the Court's own equitable powers, requests that the

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Court:

A. Award Plaintiff such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief, including but not limited to, a preliminary injunction;

B. Enter a permanent injunction to prevent future violations of the FTC Act and ROSCA by Defendants;

C. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act and ROSCA, including but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and

D. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Dated: September 21, 2017

Respectfully submitted,

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