

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

_____	:	
Christopher Wilson, Regina Ingram,	:	CIVIL ACTION NO.
Gary Ingram, Christian Kalled,	:	
Keith Walker, Mabyn Morgan,	:	
Daniel Morgan, Raymond Bailey,	:	
Shery Bailey, and Robin Varghese,	:	
individually, and on behalf of	:	
a class of persons similarly situated,	:	
	:	
Plaintiffs,	:	
	:	
DirectBuy, Inc., United Consumers	:	April 13, 2009
Club, Inc., and Direct Buy Holdings,	:	
Inc.,	:	
	:	
Defendants.	:	
_____	:	

CLASS ACTION COMPLAINT

Nature Of The Action

1. Plaintiffs have initiated this litigation individually, and on behalf of a class of all persons who have purchased memberships in the “DirectBuy” members-only buying club from October 11, 2002 through the date of final adjudication of this matter (the “Class” or “Class Members”). As more particularly alleged below, Defendants falsely and uniformly represent that, in exchange for the payment of significant membership fees consisting of an initial payment of at least several thousand dollars per Class Member and several hundred dollars periodically thereafter, “members” will be entitled to buy consumer products (such as carpeting, furniture, and appliances) from manufacturers and suppliers at “direct” prices – that is, the manufacturers’ or suppliers’ actual price. As alleged below, however, these representations are false and misleading

because, unbeknownst to Class Members, Defendants receive tens of millions of dollars in “kickbacks” from manufacturers and suppliers out of the purchase prices paid for products by DirectBuy members, thereby resulting in Class Members paying more than the “direct” price, contrary to the affirmative representations made by Defendants.

The Parties

2. At all times relevant to this litigation, Plaintiff Christopher Wilson has been a citizen of the State of Connecticut. In 2008, he purchased a DirectBuy membership.

3. At all times relevant to this litigation, Plaintiffs Regina and Gary Ingram have been citizens of the State of Alabama. In 2008, they purchased a DirectBuy membership.

4. At all times relevant to this litigation, Plaintiff Christian Kalled has been a citizen of the State of New York. In 2008, he purchased a DirectBuy membership.

5. At all times relevant to this litigation, Plaintiff Keith Walker has been a citizen of the State of California. In 2007, he purchased a DirectBuy membership.

6. At all times relevant to this litigation, Plaintiffs Mabyn and Daniel Morgan have been citizens of the State of California. In 2007, they purchased a DirectBuy membership.

7. At all times relevant to this litigation, Plaintiffs Raymond and Shery Bailey have been citizens of the State of Connecticut. In 2008, they purchased a DirectBuy membership.

8. At all times relevant to this litigation, Plaintiff Robin Varghese has been citizens of the State of Massachusetts. In 2008, he purchased a DirectBuy membership.

9. The individual plaintiffs set forth in ¶¶2-8 above are collectively referred to herein as “Plaintiffs.”

10. Defendant, DirectBuy, Inc. (“DirectBuy”), is an Indiana Corporation, with a principal place of business at 8450 Broadway, Merrillville, IN 46410. DirectBuy is a citizen of the state of Indiana. DirectBuy was originally incorporated in April 1981 under the name United Consumers Club Franchising Corporation; changed its name to UCC TotalHome, Inc. in January 1999; and changed its name to DirectBuy, Inc. in October 2004. At all times relevant to this litigation, DirectBuy engaged in activities and conduct which affect federal interstate commerce.

11. Defendant, United Consumers Club, Incorporated (“UCC”), is an Indiana Corporation, with a principal place of business at 8450 Broadway, Merrillville, IN 46410. DirectBuy is a citizen of the state of Indiana and a subsidiary of “UCC.” At all times relevant to this litigation, UCC engaged in activities and conduct which affect federal interstate commerce.

12. On or about November 30, 2007, UCC was acquired by, and became a wholly-owned subsidiary of, Defendant DirectBuy Holdings, Inc. (“DB Holdings”). DB Holdings does business at 8450 Broadway, Merrillville, IN 46410, and is owned by certain employees of DirectBuy and investment funds controlled by Trivest Partners IV, Inc. DB Holdings is a citizen of the state of Indiana. At all times relevant to this litigation, DB Holdings engaged in activities and conduct which affect federal interstate commerce.

13. The defendants set forth in ¶¶10-12 above are collectively referred to herein as “Defendants.”

Jurisdiction And Venue

14. This Court has subject matter jurisdiction over this action pursuant to (i) 18 U.S.C. §§ 1964(a); (ii) the Class Action Fairness Act of 2005, 28 U.S.C. §1332(d), because the aggregate amount in controversy exceeds \$5,000,000 and there is diversity of citizenship between a Plaintiff and a Defendant; (iii) 28 U.S.C. § 1331; and/or (iv) 28 U.S.C. §§ 1367(a).

15. Venue is proper in this district pursuant to (i) 18 U.S.C. § 1965 because Defendants, *inter alia*, transact their affairs within this judicial district, and/or (ii) 28 U.S.C. § 1391(b), because a substantial part of the events or omissions giving rise to the claim occurred within this judicial district.

Class Action Allegations

16. Plaintiffs bring this class action pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of all persons who purchased DirectBuy memberships from October 11, 2002 through the date of final adjudication of this matter (the “Class” or the “Class Period”).

17. The members of the Class are so numerous that joinder of all members is impracticable. Although the exact number of Class Members is unknown to Plaintiffs at this time and can only be ascertained through appropriate discovery, Plaintiffs reasonably believe there are, at a minimum, thousands of Class Members.

18. Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting solely individual members of the Class.

Among the questions of law and fact common to the Class are:

- (a) whether Defendants' conduct constitutes a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §1961, *et seq.*;
- (b) whether the conduct alleged herein unjustly enriched Defendants; and/or
- (c) whether the members of the Class have sustained damages and, if so, what is the proper measure of damages.

19. Plaintiffs' claims are typical of the claims of the members of the Class, as Plaintiffs and members of the Class sustained damages arising out of the same wrongful conduct by Defendants' as alleged herein.

20. Plaintiffs will fairly and adequately protect the interests of the members of the Class and have retained counsel competent and experienced in class action litigation. Plaintiffs have no interests antagonistic to or in conflict with those of the Class.

21. A class action is superior to all other available methods for the fair and efficient adjudication of the controversy since joinder of all members of the Class is impracticable. Furthermore, because the damages suffered by the individual Class members are relatively small (as compared to the costs of litigation), the expense and burden of individual litigation makes it impracticable for the Class Members individually to redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

Substantive Allegations

The DirectBuy Concept

22. As of April 10, 2009, there were approximately 145 DirectBuy Centers in operation throughout the United States.

23. As stated in a Complaint for Injunctive Relief, Damages and Other Relief (the “Indiana Complaint”), filed by UCC and DirectBuy in a suit captioned, *United Consumers Club, Inc. and DirectBuy, Inc. v. Prime Time Marketing Management, Inc., et. al.*, No. 2:07-cv-358 (N.D. Indiana), “UCC is the owner of, *inter alia*, the federally registered trademark “DIRECTBUY” under which UCC operates a members-only consumer buying club organization.”

24. According to the Indiana Complaint, “UCC and DirectBuy have developed, and are the sole and exclusive owners of, unique and uniform systems relating to the establishment and operation of DirectBuy members-only buying clubs. DirectBuy buying clubs offer a wide range of home furnishings and home improvement products exclusively to DirectBuy members, including, but not limited to, furniture, flooring, carpeting, cabinetry, window treatments, appliances, lighting, home improvement products, and home décor.”

25. The Indiana Complaint further states that “UCC and DirectBuy have continuously used the DirectBuy [trade]Mark in interstate commerce in connection with the promotion, sale and franchising of DirectBuy members-only buying clubs and the promotion and sale of the products they offer throughout the United States.”

26. The Indiana Complaint further states that “[t]he DirectBuy concept is that members pay a fee to join a DirectBuy Center . . . in order to have access to a

vast array of top-quality, brand-name products from over 700 manufacturers and suppliers, without paying traditional retail markup . . . That is the concept on which United Consumers Club and DirectBuy are founded; it is the concept which DirectBuy and all its franchisees . . . advertise; and it is the fundamental reason on which people rely in deciding to join DirectBuy.”

27. According to Defendants, “[t]he essence of DirectBuy Centers is the ability to obtain merchandise and services directly from manufacturers and suppliers at their prevailing prices and to pass such savings on to their members.”

28. The Indiana Complaint further states that, “DirectBuy and its authorized franchisees have extensively advertised and promoted DIRECTBUY members-only buying clubs and the products and services they offer under the DIRECTBUY Mark throughout the United States and through various media. As a result of such efforts and the considerable money spent in connection therewith, the products and services offered by DirectBuy and its franchisees under the DIRECTBUY Mark have met with widespread public approval and have established demand and goodwill among consumers throughout the United States.”

29. The Indiana Complaint further states that “[i]n addition to the 700+ manufacturers available through DirectBuy, Inc., each DirectBuy franchisee has the option of establishing additional supplier relationships with local providers, thereby enhancing the extent of members’ product selection and purchasing options. . . . As with DirectBuy’s own manufacturers and suppliers, franchisees which set up local provider relationships must make the local products and services available to members without retail markup.”

Indeed, as set forth in the franchise agreements between DirectBuy and DirectBuy franchisees, the price charged for the sale of such local products and services must be

“at the lowest possible price,” and the DirectBuy franchisee is prohibited from, *inter alia*, imposing any “mark-up,” or soliciting, accepting or receiving any payments, fees, rebates, allowances, discounts, reimbursements or any other remuneration from any local provider.

The Relationship Between Defendants and the DirectBuy Franchisees

30. The Indiana Complaint further states that, “UCC and DirectBuy have the exclusive right to use and license the DIRECTBUY Mark and derivations thereof, as well as the unique and uniform system with which franchisees offer products and services to the public under the DIRECTBUY Mark. Pursuant to franchise agreements entered into by and between DirectBuy and its authorized and approved franchisees, DirectBuy grants franchises to qualified persons to own and operate DIRECTBUY members -- only buying clubs, and licenses its franchisees to use the DIRECTBUY Mark and UCC's and DirectBuy's uniform system, but only in such manner and at such locations as are expressly authorized by DirectBuy.”

31. DirectBuy grants franchise rights to franchisees (the “Franchisees”) and controls many aspects of the Franchisees' operations. As set forth in more detail below, every Franchisee must “comply with all mandatory standards, policies and procedures, including . . . membership marketing, solicitation and sales methods” and “merchandise ordering, handling and service procedures.”

32. The Franchisees (with the exception of a single franchisor-owned franchise as of January 31, 2008) at all times remain independent contractors separate from Defendants. According to Defendants, “Franchisor and Franchisee, as between themselves, are and shall be independent contractors” and the existence of a franchise relationship does not create “any fiduciary relationship or any other relationship of trust or confidence.” Moreover, neither any

Defendant nor any Franchisee is “a general or special agent, joint venturer, partner or employee of the other for any purpose whatsoever.”

33. Indeed, Franchisees are “solely responsible for all obligations and liabilities to members of“ that franchise. In addition, Franchisees are required to place “notices of independent ownership on membership forms, purchase orders, business cards, stationary, marketing, advertising, solicitation material and other materials as we may require from time to time” and are prohibited from “represent[ing] that the relationship . . . is anything other than that of independent contractors.”

DirectBuy Memberships

34. In order to purchase a DirectBuy membership, Members are required to (i) sign a standard form Membership Agreement prepared by DirectBuy (the “Membership Agreement”) and (ii) pay a membership fee (the “Membership Fee”) in an amount set forth in the Membership Agreement (and thereafter must pay periodic renewal fees to remain members of DirectBuy). The Membership Agreement provides, in relevant part, that in exchange for the payment of the Membership Fee:

MEMBERS ARE ENTITLED TO ALL OF THE RIGHTS AND PRIVILEGES OF MEMBERSHIP, INCLUDING THE RIGHT TO ORDER CARPETING, FURNITURE, APPLIANCES AND MERCHANDISE FOR MEMBERS’ PERSONAL USE OR AS BONA FIDE GIFTS THROUGH SAID CENTER AT THE MANUFACTURER’S OR SUPPLIER’S PRICE PLUS SALES TAXES, FREIGHT CHARGES AND HANDLING FEE.

(Emphasis added)

35. Twenty-two percent (22%) of each Membership Fee and fifty percent (50%) of each renewal Membership Fees paid by Members is paid directly to DirectBuy, within 5 business days after sale or renewal of a DirectBuy membership.

36. Beta Finance Company, Inc. (“Beta Finance”) is an affiliate of DirectBuy and UCC that provides financing of new membership purchases by Members.

37. After becoming a Member, Members pay for and place orders for merchandise at a Franchisee DirectBuy Center and the DirectBuy Center then transmits the Member’s merchandise order and payment to DirectBuy.

38. The Franchisee of each DirectBuy Center is not permitted to communicate with the manufacturer or supplier with respect to the Member’s merchandise order. Instead, the Franchisee of each DirectBuy Center is required to order all merchandise and authorized products and services exclusively through DirectBuy.

39. DirectBuy, through UCC, places the Member’s merchandise order with the supplier or manufacturer of the merchandise; after the supplier or manufacturer receives the Member’s merchandise order, and payment, from DirectBuy, the supplier or manufacturer “drop-ships” the merchandise directly to the Franchisee’s Center.

FIRST CLAIM FOR RELIEF AGAINST DIRECTBUY
(18 U.S.C. § 1962(c))

40. Plaintiffs repeat and reallege the preceding paragraphs 1-39 as if fully set forth herein.

41. At all time relevant to this litigation, DirectBuy was a “person” within the meaning of 18 U.S.C. § 1961(3).

42. At all times relevant to this litigation, DirectBuy, the DirectBuy Franchisees, and Beta Finance constituted an “association in fact” enterprise within the meaning of 18 U.S.C. § 1961(4).

43. At all times relevant to this litigation, DirectBuy, the DirectBuy Franchisees and Beta Finance engaged in, and/or affected interstate commerce.

44. At all times relevant to this litigation, Defendant DirectBuy conducted and/or participated, directly or indirectly, in the conduct of the “enterprise” through a pattern of racketeering activity.

45. Many aspects of the business and operation of each DirectBuy Center, including the manner in which DirectBuy memberships are sold to Members, are uniform and under the exclusive control and direction of DirectBuy.

(a) For example, the terms of the written agreements for the operation of DirectBuy Centers between DirectBuy and its franchisees state that the:

presentation of a uniform image to the public is an essential element of a successful franchise system of buyer clubs. We have the right to determine the terms and conditions (other than prices and terms of payment) of membership agreements for your Center. In order to assure your compliance, you agree to submit to us completed application forms for all members of your Center concurrently with the payment of royalty fees due on such memberships, and we will issue membership cards or other indicia of ownership for your Center on your behalf. We are not obligated to issue membership cards or any other indicia of membership for any member for your Center unless the royalty fee on such membership has been paid in full and the terms of membership (other than price and terms of payment) conform to our requirements.

(b) Similarly, DirectBuy Franchisees are required to agree that:

Every aspect of the appearance and operation of your Center is important to us and is subject to our standards, policies and procedures. You must comply with all mandatory standards, policies, and procedures, including: (a) hours and day of operation; (b) cleanliness and appearance of your Center; (c) general appearance and demeanor of employees of your Center; (d) membership marketing, solicitation and sales methods; (e) merchandise ordering procedures; (f) procedures for Authorized Local Products and Services and Ancillary Services; (g) catalogs, materials and supplies used in the operation of your Center; (h) methods of communications with us and your members, including e-mail and the internet; and (i) recordkeeping and accounting systems.

(c) Also, information relating to the operation of DirectBuy centers is proprietary, including (i) the marketing, solicitation and sales techniques for

prospective Members, (ii) the merchandise ordering procedures, (iii) the identity of suppliers and pricing and other information about their products and services, and (iv) the techniques for recruiting, training and motivating sales personnel.

(d) In addition, DirectBuy (i) approves the site of every Center and provides every Franchisee with prototype plans for the layout and design of a DirectBuy Center, (ii) requires every Franchisee to attend an extensive training program on the operation of a DirectBuy Center, which requires classroom training in the subjects of Recruiting, Leadership and Management, Service, Sales and Marketing, Training Sales Staff, Financial Accounting, and Administration, (iii) provides the merchandise catalogs and other materials (the sole and exclusive property of DirectBuy) to Franchisees for Members to use at DirectBuy Centers to make merchandise purchases, (iv) provides the standard form Membership Agreement that all Members are required to sign in order to become Members, and the Beta Finance retail installment contracts for new memberships, (v) provides Franchisees with DirectBuy's Operating Manual, and (vi) provides refresher or supplemental training programs.

(e) Under the terms of the written franchise agreements between DirectBuy and the Franchisees, Franchisees are required to pay DirectBuy various fees, including: (i) an initial franchise fee, which includes DirectBuy's "standard initial operation package," and consists of an initial inventory of forms and supplies (including the standard form Membership Agreement that all Members are required to sign in order to become Members, and Beta Finance retail installment contracts for new memberships), (ii) membership fee Royalties equal to 22% of

new membership fees paid by Members and 50% of renewal membership fees paid by Members, due and payable within 5 business days after sale or renewal of membership (the “Royalties”), (iii) Lead Generation and Marketing Program Fees, including fees to DirectBuy for potential membership leads obtained by DirectBuy from DirectBuy “infomercials” and websites, fees to DirectBuy for “infomercial talent,” and fees to DirectBuy for the sponsorship of the DirectBuy “spokesperson,” (iv) various fees and charges relating to Beta Finance financing, and (v) Marketing and Legislative Fund Contributions.

46. Beta Finance provides financing of new membership purchases by Members at the DirectBuy Centers operated by the DirectBuy Franchisees through Retail Installment Contracts, and DirectBuy Franchisees act as agents for Beta Finance agents in connection with these Retail Installment Contracts. DirectBuy receives finance income attributable to these Retail Installment Contracts and the business and operations of Beta Finance.

47. DirectBuy also (i) offers and sells DirectBuy memberships directly through the Internet, and (ii) maintains at least two websites (including www.directbuy.com and www.directbuycares.com) which, *inter alia*, market prospective members about DirectBuy’s merchandise and services, and scheduling new member tour reservations.

48. DirectBuy engaged in a pattern of racketeering activity within the meaning of 18 U.S.C. § 1961(5), involving multiple predicate acts of mail fraud (18 U.S.C. § 1341), wire fraud (18 U.S.C. § 1343) and/or bank fraud (18 U.S.C. § 1344). DirectBuy and the DirectBuy Franchisees uniformly misrepresented to potential DirectBuy members

that, in exchange for the payment of membership fees (often financed, in whole or in part by Beta Finance), members will be entitled to buy consumer products at the manufacturers' and suppliers' actual prices, without *any* markup. For example:

- (a) During the Class Period, the Membership Agreement has made false representations about the benefits Members receive in exchange for the payment of the Membership Fee, such as representations that:

MEMBERS ARE ENTITLED TO ALL OF THE RIGHTS AND PRIVILEGES OF MEMBERSHIP, INCLUDING THE RIGHT TO ORDER CARPETING, FURNITURE, APPLIANCES AND MERCHANDISE FOR MEMBERS' PERSONAL USE OR AS BONA FIDE GIFTS THROUGH SAID CENTER AT **THE MANUFACTURER'S OR SUPPLIER'S PRICE** PLUS SALES TAXES, FREIGHT CHARGES AND HANDLING FEE.

(Emphasis added)

- (b) During the Class Period, the written information brochures sent by mail to potential DirectBuy members have contained false and misleading statements of fact, such as representations that:

(i) "DirectBuy has a membership fee and no retail markup. . . . [Y]ou're paying the actual price from the manufacturer, plus shipping and handling. This is our model. It works best for people who plan ahead and are willing to invest up front to get the lowest possible prices."

(ii) "At DirectBuy, you're no longer in the dark about what something really costs."

(iii) "Unlike the stores, at DirectBuy, there are no retail markups. You buy direct, paying the actual price from the manufacturer, plus shipping and handling."

- (c) During the Class Period, the DirectBuy website has contained false and misleading statements of fact, including misrepresentations that:

(i) "Of course, the greatest advantage to becoming a DirectBuy member is that you pay the manufacturer's price for an item, including

shipping and handling when applicable, instead of the marked-up price you'd find in retail stores. Discovery the power of shopping without paying the middleman's markup."

(ii) "With the help of a DirectBuy service representative, you can decorate, furnish or remodel your entire home – all in one location and easier than ever before. Design, delivery and installation services are all available at your local DirectBuy design center. The only difference is that you pay the manufacturer's price for an item (plus shipping and handling), not the marked-up price you have to pay in the stores."

(iii) "Be smart. Stop buying retail and start buying the DirectBuy way. It's the better way – no, actually it's the *best* way to buy most everything you need for your home, without paying retail markups."

49. These representations were materially false and misleading because, at all times relative to this litigation, DirectBuy and UCC have been paid rebates, discounts and other payments from manufacturers and suppliers attributable to the merchandise ordered by Members at the manufacturer's or supplier's current prices to Members (the "Kickbacks"). For example, during the fiscal year ended July 31, 2006, DirectBuy and UCC received approximately \$6,000,000 in Kickbacks, and during the fiscal year ended July 31, 2007, DirectBuy and UCC received approximately \$8,000,000 in Kickbacks.

50. In addition, the sale of DirectBuy memberships to Class Members by means of the material misrepresentations described above has been extremely lucrative in other areas as well. For example, DirectBuy generated income of approximately \$87,344,506 for the year ended July 31, 2007, including \$77,162,670 in payments directly from members arising from the sale of memberships, and finance income of \$2,104,111. Similarly, DirectBuy generated income of approximately \$60,691,549 for the year ended July 31, 2006, including \$54,693,147 in payments directly from members arising from the sale of memberships, and finance income of \$1,536,696. Furthermore, DirectBuy generated income of approximately \$40,442,498 for the year ended July 31,

2005, including \$35,564,556 in payments directly from members arising from the sale of memberships, and finance income of \$1,190,451.

51. As alleged above, DirectBuy memberships were sold to all Class Members by means of materially false representations of fact and the failure to disclose the Kickbacks, and this scheme to defraud was advanced, concealed and/or furthered by the use of the U.S. mail and/or wires. For example, the enterprise used the U.S. mails to send potential DirectBuy members the information brochures alleged above, and used the wires to make telephone calls to potential DirectBuy members to obtain the mailing information of potential DirectBuy members in order to, *inter alia*, send potential DirectBuy members a “Visitors Pass” to attend a “DirectBuy Open House Tour” and to schedule a date and time to attend a “DirectBuy Open House Tour” (which must be attended in order to purchase a DirectBuy membership). Such predicate acts comprise a pattern of racketeering activity under 18 U.S.C. § 1961(5)

52. In addition, 18 U.S.C. § 1344 was violated because the scheme to defraud resulted in Class Members authorizing banks to release funds to pay for the DirectBuy memberships, and, in those instances in which a Class Member financed the purchase of the DirectBuy membership through Beta Finance, the scheme to defraud resulted in Class Members authorizing banks to release funds to Beta Finance. Such instances of mail fraud, wire fraud and/or bank fraud are related and continuous. Such predicate acts also comprise a pattern of racketeering activity under 18 U.S.C. § 1961(5).

53. The Plaintiffs and the members of the Class sustained injuries to their property that were proximately caused by reason of Defendant’s violation of 18 U.S.C. § 1962 (c).

SECOND CLAIM FOR RELIEF AGAINST UCC
(18 U.S.C. § 1962(c))

54. Plaintiffs repeat and reallege ¶¶ 1-39 and 41-53 as if fully set forth herein.

55. At all time relevant to this litigation, UCC was a “person” within the meaning of 18 U.S.C. § 1961(3).

56. At all times relevant to this litigation, UCC, DirectBuy, the DirectBuy Franchisees and Beta Finance engaged in, and/or affected interstate commerce.

57. At all times relevant to this litigation, UCC conducted and/or participated, directly or indirectly, in the conduct of the “enterprise” through a pattern of racketeering activity. As alleged above, DirectBuy is a wholly-owned subsidiary of UCC.

58. UCC engaged in a pattern of racketeering activity within the meaning of 18 U.S.C. § 1961(5), involving multiple predicate acts of mail fraud (18 U.S.C. § 1341), wire fraud (18 U.S.C. § 1343) and/or bank fraud (18 U.S.C. § 1344). UCC, DirectBuy and the DirectBuy Franchisees uniformly misrepresented to potential DirectBuy members that, in exchange for the payment of membership fees (often financed, in whole or in part by Beta Finance), members will be entitled to buy consumer products at the manufacturers’ and suppliers’ actual prices, without *any* markup, as set forth in ¶48 above.

59. These representations were materially false and misleading because, at all times relative to this litigation, UCC and DirectBuy have been paid Kickbacks from manufacturers and suppliers, as set forth in ¶¶49-50 above.

60. DirectBuy memberships were sold to all Class members by means of materially false representations of fact and the failure to disclose the Kickbacks, and this scheme to defraud was advanced, concealed and/or furthered by the use of the U.S. mail

and/or wires, as set forth in ¶51 above. In addition, 18 U.S.C. § 1344 was violated, as set forth in ¶52 above. Such predicate acts comprise a pattern of racketeering activity under 18 U.S.C. § 1961(5).

61. The Plaintiffs and the members of the Class sustained injuries to their property that were proximately caused by reason of UCC's violation of 18 U.S.C. § 1962 (c).

THIRD CLAIM FOR RELIEF AGAINST DB HOLDINGS
(18 U.S.C. § 1962(c))

62. Plaintiffs repeat and reallege ¶¶ 1-39, 41-53, and 55-61 as if fully set forth herein.

63. At all time relevant to this litigation, DB Holdings was a "person" within the meaning of 18 U.S.C. § 1961(3).

64. At all times relevant to this litigation, DB Holdings, UCC, DirectBuy, the DirectBuy Franchisees and Beta Finance engaged in, and/or affected interstate commerce.

65. At all times relevant to this litigation, DB Holdings conducted and/or participated, directly or indirectly, in the conduct of the "enterprise" through a pattern of racketeering activity. As alleged above, UCC is a wholly-owned subsidiary of DB Holdings.

66. DB Holdings engaged in a pattern of racketeering activity within the meaning of 18 U.S.C. § 1961(5), involving multiple predicate acts of mail fraud (18 U.S.C. § 1341), wire fraud (18 U.S.C. § 1343) and/or bank fraud (18 U.S.C. § 1344). DB Holdings, UCC, DirectBuy and the DirectBuy Franchisees uniformly misrepresented to potential DirectBuy members that, in exchange for the payment of membership fees

(often financed, in whole or in part by Beta Finance), members will be entitled to buy consumer products at the manufacturers' and suppliers' actual prices, without *any* markup, as set forth in ¶48 above.

67. These representations were materially false and misleading because, at all times relative to this litigation, DB Holdings, UCC and DirectBuy have been paid Kickbacks from manufacturers and suppliers, as set forth in ¶¶49-50 above.

68. DirectBuy memberships were sold to all Class members by means of materially false representations of fact and the failure to disclose the Kickbacks, and this scheme to defraud was advanced, concealed and/or furthered by the use of the U.S. mail and/or wires, as set forth in ¶51 above. In addition, 18 U.S.C. § 1344 was violated, as set forth in ¶52 above. Such predicate acts comprise a pattern of racketeering activity under 18 U.S.C. § 1961(5).

69. The Plaintiffs and the members of the Class sustained injuries to their property that were proximately caused by reason of DB Holding's violation of 18 U.S.C. § 1962 (c).

**FOURTH CLAIM FOR RELIEF AGAINST ALL DEFENDANTS
(Unjust Enrichment)**

70. Plaintiffs repeat and reallege ¶¶ 1-69 as if fully set forth herein.

71. As alleged above, all Class Members were required to, *inter alia*, sign the Membership Agreement and pay the Membership Fee in order to purchase a DirectBuy membership.

72. As alleged above, the Membership Agreement stated, *inter alia*, that:

MEMBERS ARE ENTITLED TO ALL OF THE RIGHTS AND
PRIVILEGES OF MEMBERSHIP, INCLUDING THE RIGHT TO
ORDER CARPETING, FURNITURE, APPLIANCES AND

MERCHANDISE FOR MEMBERS' PERSONAL USE OR AS BONA FIDE GIFTS THROUGH SAID CENTER AT THE MANUFACTURER'S OR SUPPLIER'S PRICE PLUS SALES TAXES, FREIGHT CHARGES AND HANDLING FEE.

73. At all times relative to this litigation, DirectBuy, UCC and DB Holdings have been paid Kickbacks, as set forth in ¶49-50 above. For example, during the fiscal year ended July 31, 2006, Defendants received approximately \$6,000,000 in Kickbacks, and during the fiscal year ended July 31, 2007, Defendants received approximately \$8,000,000 in Kickbacks.

74. In the Indiana Complaint, DirectBuy and UCC admitted that (i) is a breach of the DirectBuy membership agreement for DirectBuy members to pay undisclosed markups (it "affronts DirectBuy's essential concept") and (ii) DirectBuy and UCC are legally obligated to make restitution to DirectBuy members in the event that undisclosed markups are paid by DirectBuy members of all amounts.

75. Defendants have been unjustly enriched at the expense of Plaintiffs and the Class as a result of the receipt of the Kickbacks alleged above.

76. Plaintiffs and the Class have suffered money damages as a result of the conduct alleged above.

77. It would be inequitable for Defendants to retain the profits, benefits and other compensation obtained from their wrongful conduct.

78. Plaintiffs on behalf of themselves and all others similarly situated seek restitution from Defendants and an order of this Court proportionally disgorging all profit, benefits and other compensation obtained by Defendants from their wrongful conduct.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and the Class submit the following request for relief:

- (i) For an order that this action is properly maintainable under Federal Rule of Civil Procedure Rule 23(a) and (b)(3), and appointing Plaintiffs to represent the Class;
- (ii) Pursuant to 18 U.S.C. § 1964(c), an order awarding treble damages, costs of suit, and a reasonable attorneys' fee;
- (iii) Damages against the Defendants in an amount to be determined at trial, together with interest thereon, costs of suit, and reasonable attorneys' fees;
- (iv) Pursuant to 18 U.S.C. § 1964(a) and Fed. R. Civ. P. 23(b)(2), an order prohibiting the Defendant(s) from engaging in the same type of endeavor as the enterprise engaged in;
- (v) Restitution and disgorgement of all amounts obtained by Defendants as a result of their misconduct;
- (vi) All recoverable compensatory and other damages sustained by Plaintiffs and the Class;
- (vii) Pre-judgment and post-judgment interest; and
- (viii) For such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiffs demand trial by jury.

Respectfully Submitted,

PLAINTIFFS

By: 

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