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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Federal Trade Commission,
Plaintiff,
v.
Helping Hands of Hope, Inc.,
a corporation;
U.S. Blind Services, Inc.,
a corporation;
Employment Opportunities of
America, Inc.,
a corporation;
Third Strike Employment, Inc.,
a corporation; and
Robyn Mayhan,
an individual;
Defendants.

Case No.

COMPLAINT FOR PERMANENT
INJUNCTION AND OTHER
EQUITABLE RELIEF

Plaintiff, the Federal Trade Commission (“FTC”), for its complaint alleges:

1. The FTC brings this action under Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101-6108, to obtain preliminary and permanent injunctive

1 relief, rescission or reformation of contracts, restitution, disgorgement of ill-gotten
2 monies, and other equitable relief for defendants' acts or practices in violation of
3 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), in violation of the FTC's
4 Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310, and in violation of the
5 Unordered Merchandise Statute, 39 U.S.C. § 3009.

6 **JURISDICTION AND VENUE**

7 2. This Court has subject matter jurisdiction pursuant to 28 U.S.C.
8 §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), and
9 6105(b).

10 3. Venue is proper in this District under 28 U.S.C. § 1391(b) and (c), and
11 15 U.S.C. § 53(b).

12 **PLAINTIFF**

13 4. Plaintiff FTC is an independent agency of the United States
14 Government created by statute. 15 U.S.C. §§ 41-58. The FTC is charged, *inter*
15 *alia*, with enforcement of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which
16 prohibits unfair and deceptive acts or practices in or affecting commerce. The FTC
17 is also charged with enforcement of the Telemarketing Act, 15 U.S.C. §§ 6101-
18 6108. Pursuant to the Telemarketing Act, the FTC promulgated and enforces the
19 TSR, 16 C.F.R. Part 310, which prohibits deceptive and abusive telemarketing acts
20 or practices. The FTC is also charged with the enforcement of the Unordered
21 Merchandise Statute, 39 U.S.C. § 3009. The FTC is authorized to initiate federal
22 district court proceedings, by its own attorneys, to enjoin violations of the FTC
23 Act, the TSR, and the Unordered Merchandise Statute, and to secure such equitable
24 relief as may be appropriate in each case, including restitution and disgorgement.
25 15 U.S.C. §§ 53(b), 57b, 6102(c), and 6105(b).

DEFENDANTS

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2 5. Defendant Helping Hands of Hope, Inc. (“HH”) is a for-profit Arizona
3 corporation with its principal place of business at 2201 E. Thomas Road in
4 Phoenix, Arizona. HH is a seller of various consumer products, such as light bulbs
5 and trash bags, that has caused telemarketers to call consumers to induce the
6 purchase of HH’s products. HH has been in business since at least 2003. HH
7 transacts or has transacted business in this District.

8 6. Defendant U.S. Blind Services, Inc. (“USBS”) is a for-profit Arizona
9 corporation with its principal place of business at 2201 E. Thomas Road in
10 Phoenix, Arizona. USBS is a seller of various consumer products, such as light
11 bulbs and trash bags, that has caused telemarketers to call consumers to induce the
12 purchase of USBS’s products. USBS has been in business since at least 2001.
13 USBS transacts or has transacted business in this District.

14 7. Defendant Employment Opportunities of America, Inc. (“EOA”) is a
15 for-profit Arizona corporation with its principal place of business at 2201 E.
16 Thomas Road in Phoenix, Arizona. EOA has been in business since at least 2000.
17 EOA transacts or has transacted business in this District.

18 8. Defendant Third Strike Employment, Inc. (“TSE”) is a for-profit
19 Arizona corporation with its principal place of business at 2201 E. Thomas Road in
20 Phoenix, Arizona. TSE has been in business since at least 2002. TSE transacts or
21 has transacted business in this District.

22 9. Defendant Robyn Mayhan is the president and CEO of HH, USBS,
23 EOA, and TSE, as well as the sole owner and director of HH, USBS, EOA and
24 TSE. In connection with the matters alleged herein, Mayhan resides or has
25 transacted business in this District. At all times material to this complaint, acting
26 alone or in concert with others, Mayhan has formulated, directed, controlled, or
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1 participated in the acts and practices of defendants HH, USBS, EOA and TSE,
2 including the acts and practices set forth in this complaint.

3 **COMMON ENTERPRISE**

4 10. HH, USBS, EOA and TSE (or “corporate defendants”) have operated
5 together as a common enterprise while engaging in the acts and practices alleged
6 below. Defendants have conducted the business practices described below through
7 an interrelated network of companies that have common ownership, officers,
8 managers, and business functions. Individual defendant Mayhan has formulated,
9 directed, and/or controlled, or had authority to control, or participated in the acts
10 and practices of the corporate defendants that comprise the common enterprise.

11 **DEFENDANTS’ BUSINESS PRACTICES**

12 11. HH and USBS are sellers of various household products to
13 consumers. HH and USBS are also telemarketers that initiate outbound telephone
14 calls to consumers in the United States to induce the purchase of HH’s and USBS’s
15 goods.

16 12. Defendants have engaged in telemarketing by a plan, program, or
17 campaign conducted to induce the purchase of goods or services by use of one or
18 more telephones and which involves more than one interstate telephone call.

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

22 14. Defendants telemarket products to consumers throughout the country
23 by appealing to consumers’ sense of charity. The products that defendants market
24 to consumers include, among others, light bulbs, trash bags, resealable bags, air
25 fresheners, and roadside emergency kits. In marketing these products, defendants
26 represent that consumers’ purchases will help handicapped or disabled people.

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1 15. The prices of defendants' products are substantially higher than
2 consumers would typically pay at a grocery store or other common retail outlet for
3 the same or similar products. For example, defendants charge \$69.99 for a box of
4 sixty standard fifteen-gallon kitchen trash bags, and \$59.99 for a box of fifty
5 standard half-gallon baggies. Defendants' representations that consumers'
6 purchases will help handicapped or disabled people persuade consumers to pay
7 these high prices.

8 16. Defendants' telemarketers use various approaches to convey to
9 consumers that their purchases will significantly help handicapped or disabled
10 people, including by representing to consumers that all or most persons employed
11 by defendants are handicapped or disabled; that the telemarketer himself or herself
12 is handicapped or disabled; that defendants' products are packaged by the
13 handicapped or disabled; or that defendants operate a charitable organization. On
14 defendants' websites, and also in the brochure that they send to consumers,
15 defendants represent that the individuals whom they employ are "disabled as
16 defined in the New Americans with Disabilities Act."

17 17. Defendants' representations, however, are false or misleading. Only a
18 few of the persons employed by defendants are handicapped or disabled; few, if
19 any, of defendants' products are packaged by the handicapped or disabled; and
20 defendants do not operate a legally recognized charitable organization.

21 18. Defendants are often unrelenting in their efforts to persuade
22 consumers to agree to make purchases. When consumers decline to place an order,
23 defendants and their telemarketers frequently continue to call back, attempting
24 repeatedly to persuade consumers to change their minds and make a purchase. In
25 numerous instances, the frequency of the calls, such as six times within ten
26 minutes, has been patently harassing or annoying.

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1 19. If a consumer agrees to place an order with defendants, in many
2 instances defendants will then later make a number of solicitation calls to the same
3 consumer, attempting to persuade him to purchase additional products.

4 20. Defendants have also refused to take “no” for an answer. In numerous
5 instances, defendants have mailed products to consumers who did not order them
6 and included with the packages invoices that state or imply that consumers
7 authorized the shipment, purchase of and/or billing for the products.

8 21. In numerous instances, in order to induce consumers to pay invoices
9 for unordered or unwanted consumer products, defendants misrepresent to
10 consumers that they are obligated to pay for such unordered, unauthorized, or
11 unwanted products. Defendants then bill these consumers and repeatedly call or
12 contact them, representing that the consumer placed an order and is required to pay
13 for the product. Defendants often threaten to turn these consumers over to a
14 collection agency and to injure their credit rating.

15 22. In truth and in fact, in numerous instances, defendants fail to obtain
16 consumers’ consent or authorization before sending and billing consumers for
17 defendants’ high-priced consumer products. Therefore, consumers have the right
18 to treat the unordered, unauthorized, or unwanted consumer products as gifts to
19 them, and have the right to retain, use, discard, or dispose of the unordered,
20 unauthorized, or unwanted consumer products in any manner they see fit without
21 any obligations whatsoever to defendants, including obligations to return or pay for
22 the consumer products.

23 23. In addition, defendants have billed consumers who never received any
24 product from defendants, representing that such consumers ordered and received
25 products from defendants and owe defendants money for these purchases.
26 Defendants often threaten to turn these consumers over to a collection agency and
27 to injure their credit rating.

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1 24. As a result of defendants' aggressive telemarketing and collections
2 practices, consumers will often surrender to defendants' demands for payment, and
3 provide their credit card or bank account information to defendants or send them a
4 personal check.

5 25. Defendants' calling patterns reflect a general disregard of consumers'
6 wishes. For example, on or after October 17, 2003, defendants have called
7 consumers' telephone numbers that are on the National Do Not Call Registry.

8 26. In fact, defendants have declined to obtain access to telephone
9 numbers that consumers have registered on the National Do Not Call Registry. On
10 or after October 17, 2003, defendants have called, or have caused telemarketers to
11 call, telephone numbers in various area codes without first paying the required
12 annual fee for access to the telephone numbers within such area codes that are
13 included in the National Do Not Call Registry.

14 27. Defendants have also refused to honor consumers' requests to be
15 placed on defendants' entity-specific do-not-call list, calling consumers who have
16 previously stated, on or after December 31, 1995, that they do not wish to receive
17 calls by or on behalf of the defendants.

18 **VIOLATIONS OF SECTION 5 OF THE FTC ACT**

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

21 **Count 1**

22 **Misrepresentation of Charitable Connection**

23 29. In numerous instances, in connection with the marketing of various
24 consumer products, defendants represent, directly or indirectly, expressly or by
25 implication, that consumers' purchases will significantly help handicapped or
26 disabled people because:

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- 1 a. all or most persons employed by defendants are handicapped or
2 disabled;
3 b. the person soliciting the purchase is handicapped or disabled;
4 c. defendants' products are packaged by the handicapped or
5 disabled; and/or
6 d. defendants operate a charitable organization.

7 30. In truth and in fact, in numerous instances when defendants make this
8 representation, the consumer's purchase will not significantly help handicapped or
9 disabled people as represented by defendants because:

- 10 a. only a small minority, if any, of defendants' employees are
11 handicapped or disabled;
12 b. the person soliciting the purchase is not handicapped or
13 disabled;
14 c. defendants' products are not packaged by the handicapped or
15 disabled; and/or
16 d. defendants do not operate a charitable organization.

17 31. Therefore, defendants' representation as set forth in Paragraph 29 is
18 false and misleading and constitutes a deceptive act or practice in violation of
19 Section 5(a) of the FTC Act, 15 U.S. C. § 45(a).

20 **Count 2**

21 **Misrepresentation That Consumer Ordered Product**

22 32. In numerous instances, in connection with the marketing of various
23 consumer products, or in the course of billing, attempting to collect, or collecting
24 money from consumers for such products, Defendants represent, directly or
25 indirectly, expressly or by implication, that consumers have ordered and/or agreed
26 to purchase one or more products from the defendants, and therefore owe money to
27 defendants.
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1 33. In truth and in fact, in numerous instances when this representation
2 has been made, the consumers have not ordered, purchased, or agreed to purchase
3 products from defendants, and therefore do not owe money to defendants.

4 34. Therefore, defendants' representation as set forth in Paragraph 32 is
5 false and misleading and constitutes a deceptive act or practice in violation of
6 Section 5(a) of the FTC Act, 15 U.S. C. § 45(a).

7 **VIOLATIONS OF THE UNORDERED MERCHANDISE STATUTE**

8 35. The Unordered Merchandise Statute, 39 U.S.C. § 3009, generally
9 prohibits shipping unordered merchandise, unless such merchandise is clearly and
10 conspicuously marked as a free sample, or is mailed by a charitable organization
11 soliciting contributions. The statute also prohibits mailing consumers bills for
12 unordered merchandise or dunning communications.

13 36. Pursuant to Section (a) of the Unordered Merchandise Statute, 39
14 U.S.C. § 3009, a violation of the Unordered Merchandise Statute constitutes an
15 unfair method of competition and an unfair trade practice, in violation of Section
16 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1).

17 **Count 3**

18 **Mailing and Billing for Unordered Merchandise**

19 37. In numerous instances, in connection with the marketing of various
20 consumer products, defendants, who are not a charitable organization soliciting
21 contributions, have mailed packages containing various consumer products to
22 consumers without the prior expressed request or consent of the recipients and
23 without identifying them as free samples, thereby violating Section (a) of the
24 Unordered Merchandise Statute, 39 U.S.C. § 3009(a).

25 38. In numerous instances, in connection with the marketing of various
26 consumer products, defendants have mailed to recipients of such consumer
27 products one or more bills for such products or dunning communications, thereby
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1 violating Sections (a) and (c) of the Unordered Merchandise Statute, 39 U.S.C.
2 § 3009(a) and (c).

3 39. Defendants' practices as alleged in Paragraphs 37 and 38 are also
4 unfair practices that violate Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1).

5 **VIOLATIONS OF THE TELEMARKETING SALES RULE**
6 **AND THE NATIONAL DO NOT CALL REGISTRY**

7 40. Congress directed the FTC to prescribe rules prohibiting abusive and
8 deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15
9 U.S.C. §§ 6101-6108, in 1994. On August 16, 1995, the FTC adopted the
10 Telemarketing Sales Rule (the "Original TSR"), 16 C.F.R. Part 310, which became
11 effective on December 31, 1995. On January 29, 2003, the FTC amended the
12 Original TSR by issuing a Statement of Basis and Purpose and the final amended
13 Telemarketing Sales Rule (the "TSR"). 68 Fed. Reg. 4580, 4669.

14 41. Defendants are "seller[s]" or "telemarketer[s]" engaged in
15 "telemarketing," as defined by the TSR, 16 C.F.R. § 310.2(z), (bb), and (cc).

16 42. The TSR prohibits any seller or telemarketer from causing billing
17 information to be submitted for payment, or collecting or attempting to collect
18 payment for goods or services or a charitable contribution, directly or indirectly,
19 without the customer's or donor's express verifiable authorization, except when the
20 method of payment used is a credit card subject to the protections of the Truth In
21 Lending Act, 15 U.S.C. § 1601 *et seq.*, and Regulation Z, 12 C.F.R. § 226, or a
22 debit card subject to the protections of the Electronic Funds Transfer Act, 15
23 U.S.C. § 1693 *et seq.*, and Regulation E, 12 C.F.R. § 205. When an audio
24 recording of the customer's express oral authorization is used to satisfy this
25 requirement, the TSR requires that the recording must be made available upon
26 request to the customer, and must evidence clearly the customer's authorization of
27 payment for the goods or services that are the subject of the telemarketing
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1 transaction and the customer's receipt of all of the following information, among
2 other information:

- 3 a. the number of debits, charges, or payments (if more than one);
- 4 b. the date(s) the debit(s), charge(s), or payment(s) will be submitted for
5 payment;
- 6 c. the amount(s) of the debit(s), charge(s), or payment(s);
- 7 d. a telephone number for customer inquiry that is answered during
8 normal business hours; and
- 9 e. the date of the customer's oral authorization. 16 C.F.R.
10 § 310.3(a)(3)(ii)

11 43. The TSR prohibits any seller or telemarketer from making a false or
12 misleading statement to induce any person to pay for goods or services or to induce
13 a charitable contribution. 16 C.F.R. § 310.3(a)(4).

14 44. It is an abusive telemarketing act or practice and a violation of the
15 TSR for any seller or telemarketer to cause any telephone to ring, or engage any
16 person in telephone conversation, repeatedly or continuously with intent to annoy,
17 abuse, or harass any person at the called number. 16 C.F.R. § 310.4(b)(1)(i).

18 45. The TSR also established a "do-not-call" registry (the "National Do
19 Not Call Registry" or "Registry"), maintained by the FTC, of consumers who do
20 not wish to receive certain types of telemarketing calls. Consumers can register
21 their telephone numbers on the Registry without charge either through a toll-free
22 telephone call or over the Internet at www.donotcall.gov.

23 46. Consumers who receive telemarketing calls to their registered
24 numbers can complain of Registry violations the same way they registered, through
25 a toll-free telephone call or over the Internet at www.donotcall.gov, or by
26 otherwise contacting law enforcement authorities.

1 of the Truth In Lending Act, 15 U.S.C. § 1601 *et seq.*, and Regulation Z, 12 C.F.R.
2 § 226, or a debit card subject to the protections of the Electronic Funds Transfer
3 Act, 15 U.S.C. § 1693 *et seq.*, and Regulation E, 12 C.F.R. § 205, without the
4 consumer's express verifiable authorization.

5 53. Defendants' practice as alleged in Paragraph 52 is a deceptive
6 telemarketing practice that violates Section 310.3(a)(3) of the TSR, 16 C.F.R.
7 § 310.3(a)(3).

8 Count 5

9 **Misrepresentations to Induce Payment**

10 54. In numerous instances, in the course of telemarketing various
11 consumer products, defendants have made false or misleading statements to induce
12 consumers to pay for such products, including but not limited to misrepresentations
13 that the consumer's purchase would significantly help handicapped or disabled
14 people because:

- 15 a. all or most persons employed by defendants are handicapped or
16 disabled;
- 17 b. the person soliciting the purchase is handicapped or disabled;
- 18 c. defendants' products are packaged by the handicapped or
19 disabled; and/or
- 20 d. defendants operate a charitable organization.

21 55. Defendants' practice as alleged in Paragraph 54 is a deceptive
22 telemarketing practice that violates Section 310.3(a)(4) of the TSR, 16 C.F.R.
23 § 310.3(a)(4).

24 Count 6

25 **Abusive Repeated Calling**

26 56. In numerous instances, in the course of telemarketing goods or
27 services, defendants have caused consumers' telephones to ring repeatedly, and/or
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1 have engaged consumers repeatedly in telephone conversations, with the intent to
2 annoy, abuse, or harass persons at the called number.

3 57. Defendants' practice as alleged Paragraph 56 is an abusive
4 telemarketing practice that violates Section 310.4(b)(1)(i) of the TSR, 16 C.F.R.
5 § 310.4(b)(1)(i).

6 Count 7

7 **Calling Telephone Numbers on the National Do Not Call Registry**

8 58. In numerous instances since October 17, 2003, in the course of
9 telemarketing goods or services, defendants engaged in or caused others to engage
10 in initiating an outbound telephone call to a person when that person's telephone
11 number is on the National Do Not Call Registry.

12 59. Defendants' practice as alleged in Paragraph 58 is an abusive
13 telemarketing practice that violates Section 310.4(b)(1)(iii)(B) of the TSR, 16
14 C.F.R. § 310.4(b)(1)(iii)(B).

15 Count 8

16 **Ignoring Entity-Specific Do Not Call Requests**

17 60. In numerous instances, in connection with telemarketing, defendants
18 have engaged in or caused others to engage in initiating an outbound telephone call
19 to persons who had previously stated that they do not wish to receive calls made by
20 or on behalf of the defendants.

21 61. Defendants' practice as alleged in Paragraph 60 is an abusive
22 telemarketing practice that violates Section 310.4(b)(1)(iii)(A) of the TSR, 16
23 C.F.R. § 310.4(b)(1)(iii)(A).

24 Count 9

25 **Failing to Pay Fee for Access to National Do Not Call Registry**

26 62. In numerous instances since October 17, 2003, in the course of
27 telemarketing goods or services, defendants have initiated, or caused others to
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1 initiate, an outbound telephone call to a telephone number within a given area code
2 without defendants, either directly or through another person, first paying the
3 annual fee required for access to the telephone numbers within that area code that
4 are included in the National Do Not Call Registry.

5 63. Defendants' practice as alleged in Paragraph 62 violates Section 310.8
6 of the TSR, 16 C.F.R. § 310.8.

7 **CONSUMER INJURY**

8 64. Consumers in the United States have suffered and will suffer injury as
9 a result of defendants' violations of the FTC Act, the Unordered Merchandise
10 Statute, and the TSR. In addition, defendants have been unjustly enriched as a
11 result of their unlawful practices. Absent injunctive relief by this Court,
12 defendants are likely to continue to injure consumers, reap unjust enrichment, and
13 harm the public interest.

14 **THIS COURT'S POWER TO GRANT RELIEF**

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

21 66. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 6(b) of the
22 Telemarketing Act, 15 U.S.C. § 6105(b), authorize this Court to grant such relief as
23 the Court finds necessary to redress injury to consumers or other persons resulting
24 from defendants' violations of the TSR, including the rescission and reformation of
25 contracts, and the refund of money.

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1 **PRAYER FOR RELIEF**

2 Wherefore, plaintiff Federal Trade Commission, pursuant to Sections 13(b)
3 and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and Section 6(b) of the
4 Telemarketing Act, 15 U.S.C. § 6105(b), and the Court’s own equitable powers,
5 requests that the Court:

6 A. Award plaintiff such preliminary injunctive and ancillary relief as may
7 be necessary to avert the likelihood of consumer injury during the pendency of this
8 action, and to preserve the possibility of effective final relief, including but not
9 limited to temporary and preliminary injunctions, an order freezing assets,
10 immediate access, and the appointment of a receiver;

11 B. Enter a permanent injunction to prevent future violations of the FTC
12 Act, the TSR, and the Unordered Merchandise Statute, by defendants;

13 C. Award such relief as the Court finds necessary to redress injury to
14 consumers resulting from defendants’ violations of the FTC Act, the TSR, and the
15 Unordered Merchandise Statute, including but not limited to, rescission or
16 reformation of contracts, restitution, the refund of monies paid, and the
17 disgorgement of ill-gotten monies; and

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

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21 Respectfully submitted,
22 WILLIAM BLUMENTHAL
23 General Counsel

24
25 Dated: _____

26 _____
27 John D. Jacobs
28 Barbara Y.K. Chun
Attorneys for Plaintiff
FEDERAL TRADE COMMISSION