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15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**

17 FEDERAL TRADE COMMISSION,
18

19 Plaintiff,

20 v.

21 CREAM GROUP, INC., also d/b/a
22 Terra Nova, TNT, Inc., and CRM, Inc.,
23 a California Corporation;

24 SAMI CHARCHIAN, also d/b/a Oro
Marketing, Inc., Modo, Modo Industry,
25 Oro Max, Casa de Oro, Casa de Moda,
26 Oro Mundo, and Nation/Modo,
27 individually and as an owner or director
of Cream Group, Inc.;

Case No. CV 13-8843 JFW (PLA)

**COMPLAINT FOR PERMANENT
INJUNCTION AND OTHER
EQUITABLE RELIEF**

28
LODGED
CLERK, U.S. DISTRICT COURT
DEC - 2 2013
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

1 JOHN CHARCHIAN, a/k/a Djahangir
2 Charchian and Jahangir John Charchian,
3 also d/b/a Oro Marketing, Inc., Modo,
4 Modo Industry, Oro Max, Casa de Oro,
5 Casa de Moda, Oro Mundo, and
6 Nation/Modo, individually and as an
7 owner or director of Cream Group, Inc.;
8 and

9 NORMA RAE RAMOS, individually
10 and as officer and director of Cream
11 Group, Inc.,

12 Defendants.

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

15 1. The FTC brings this action under Sections 13(b) and 19 of the
16 Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the
17 Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing
18 Act"), 15 U.S.C. §§ 6101-6108, to obtain temporary, preliminary, and permanent
19 injunctive relief, rescission or reformation of contracts, restitution, the refund of
20 monies paid, disgorgement of ill-gotten monies, and other equitable relief for
21 Defendants' acts or practices in violation of Section 5(a) of the FTC Act, 15
22 U.S.C. § 45(a), and in violation of the FTC's Telemarketing Sales Rule ("TSR"),
23 16 C.F.R. Part 310.

24 **JURISDICTION AND VENUE**

25 2. This Court has subject matter jurisdiction pursuant to 28 U.S.C.
26 §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), and
27 6105(b).

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

1 **PLAINTIFF**

2 4. The FTC is an independent agency of the United States Government
3 created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the
4 FTC Act, 15 U.S.C. § 45(a), which prohibits unfair and deceptive acts or practices
5 in or affecting commerce. The FTC also enforces the Telemarketing Act, 15
6 U.S.C. §§ 6101-6108. Pursuant to the Telemarketing Act, the FTC promulgated
7 and enforces the TSR, 16 C.F.R. Part 310, which prohibits deceptive and abusive
8 telemarketing acts or practices.

9 5. The FTC is authorized to initiate federal district court proceedings,
10 by its own attorneys, to enjoin violations of the FTC Act and the TSR, and to
11 secure such equitable relief as may be appropriate in each case, including
12 rescission or reformation of contracts, restitution, the refund of monies paid, and
13 the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b), 56(a)(2)(A)-(B), 57b,
14 6102(c), and 6105(b).

15 **DEFENDANTS**

16 6. Defendant CREAM GROUP, INC. ("Cream Group"), also doing
17 business as Terra Nova, TNT, Inc., and CRM, Inc., is a California corporation
18 with its office and principal place of business at 14037 Vanowen St., Van Nuys,
19 California 91405. Cream Group transacts or has transacted business in this
20 district and throughout the United States.

21 7. Defendant SAMI CHARCHIAN, also doing business as Oro
22 Marketing, Inc., Modo, Oro Max, Casa de Oro, Casa de Moda, Oro Mundo, and
23 Nation/Modo, owns, directs, or otherwise controls Cream Group. At all times
24 material to this Complaint, acting alone or in concert with others, Defendant Sami
25 Charchian has formulated, directed, controlled, had the authority to control, or
26 participated in the acts and practices set forth in this Complaint, including the acts
27 and practices of Cream Group. Defendant Sami Charchian is or has been a
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1 signatory on bank accounts in the names of Cream Group and Oro Marketing,
2 Inc., into which consumer funds have been deposited, and has initiated or
3 authorized payments or transfers from these accounts to persons or entities in
4 apparent furtherance of the acts or practices set forth in this Complaint. He has
5 also arranged for the telephone and courier services used in connection with
6 Defendants' business in apparent furtherance of the acts or practices set forth in
7 this Complaint. Defendant Sami Charchian resides or has resided in this district
8 and, in connection with the matters alleged herein, transacts or has transacted
9 business in this district and throughout the United States.

10 8. Defendant JOHN CHARCHIAN, a/k/a Djahangir Charchian and
11 Jahangir John Charchian, also doing business as Oro Marketing, Inc., Modo, Oro
12 Max, Casa de Oro, Casa de Moda, Oro Mundo, and Nation/Modo, owns, directs,
13 or otherwise controls Cream Group. At all times material to this Complaint,
14 acting alone or in concert with others, Defendant John Charchian has formulated,
15 directed, controlled, had the authority to control, or participated in the acts and
16 practices set forth in this Complaint, including the acts and practices of Cream
17 Group. He has initiated or authorized payments or transfers from bank accounts
18 in the name of Cream Group and Oro Marketing, Inc., into which consumer funds
19 have been deposited, to persons or entities in apparent furtherance of the acts or
20 practices set forth in this Complaint. He is one of the owners of Defendants'
21 business premises at 14037 Vanowen St., Van Nuys, California 91405.
22 Defendant John Charchian resides or has resided in this district and, in connection
23 with the matters alleged herein, transacts or has transacted business in this district
24 and throughout the United States.

25 9. Defendant NORMA RAE RAMOS is the president, chief executive
26 officer, secretary, chief financial officer, director, and registered agent for Cream
27 Group. At all times material to this Complaint, acting alone or in concert with
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1 others, Defendant Norma Rae Ramos has formulated, directed, controlled, had the
2 authority to control, or participated in the acts and practices of Cream Group,
3 including the acts and practices set forth in this Complaint. Defendant Norma
4 Rae Ramos is or has been a signatory on bank accounts in the name of Cream
5 Group into which consumer funds have been deposited and from which payments
6 have been initiated or authorized to persons or entities in apparent furtherance of
7 the acts or practices set forth in this Complaint. Defendant Norma Rae Ramos
8 resides or has resided in the state of California and, in connection with the matters
9 alleged herein, transacts or has transacted business in this district and throughout
10 the United States.

11 COMMERCE

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

15 DEFENDANTS’ BUSINESS PRACTICES

16 11. Defendants telemarket the opportunity to buy what they claim is
17 popular brand-name merchandise at wholesale prices. Defendants primarily
18 target Hispanic women across the United States for their unsolicited
19 telemarketing sales calls and employ telemarketers who conduct the calls in
20 Spanish. Promising brand-name merchandise that consumers can resell for a
21 profit in their communities and to friends and family, Defendants’ telemarketers
22 convince consumers to pay between \$400 and \$490 for a cash-on-delivery
23 (“COD”) shipment. Instead of the promised goods, Defendants send cheap, poor-
24 quality merchandise. If consumers call to complain, Defendants’ representatives
25 tell them that the company made a mistake and will send another shipment
26 containing the promised brand-name merchandise, along with a refund check for
27 the first shipment, if the consumer pays between \$400 and \$490 for the next COD
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1 shipment. Consumers who pay for additional COD shipments receive only more
2 shoddy merchandise and no refunds. Defendants' representatives often threaten
3 consumers who refuse to accept and pay for additional shipments with phony
4 lawsuits, fines, garnishment, and damage to their credit history. In some
5 instances, Defendants' representatives also threaten consumers with arrest or
6 referral to immigration authorities.

7 12. Since 2009, Defendants Sami Charchian and John Charchian have
8 used various d/b/as, including Oro Marketing, Inc., Modo, Oro Max, Casa de Oro,
9 Casa de Moda, Oro Mundo, and Nation/Modo, to deceptively market and sell
10 their merchandise to consumers. After Defendant Cream Group was incorporated
11 in 2011, Defendants began using different d/b/as, including Terra Nova, TNT,
12 Inc., and CRM, Inc., to deceptively market and sell their merchandise to
13 consumers.

14 13. Defendants' telemarketers typically first contact consumers by cold
15 calling them at home and offering them the chance to purchase a variety of
16 merchandise—often clothing, lingerie, purses, and perfumes—at deeply discounted
17 prices. Defendants' telemarketers tell consumers that the merchandise is from
18 popular and well-known brands, including Abercrombie & Fitch, Aeropostale,
19 American Eagle, Armani, Banana Republic, Bebe, Bulgari, Carolina Herrera,
20 Chanel, Coach, Diesel, Dolce & Gabbana, GAP, Gucci, Guess, Hollister, Hugo
21 Boss, Lacoste, Levi Strauss, Luis Vuitton, Obsession, Prada, Ralph Lauren,
22 Tommy Hilfiger, Victoria's Secret, and YSL. Defendants' telemarketers claim
23 that consumers can purchase a shipment of such merchandise at a reduced
24 "wholesale" or discount price, and typically quote a price between \$400 and
25 \$490. Defendants' telemarketers claim that consumers can use the merchandise
26 themselves or resell it for a profit in their communities and to their friends and
27 family.

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1 14. Once consumers agree to order a shipment of merchandise,
2 Defendants' telemarketers tell them that the merchandise will be shipped, COD,
3 by United Parcel Service ("UPS") or Federal Express ("FedEx"). Defendants'
4 telemarketers instruct consumers to give the delivery driver a money order as
5 payment when the shipment is delivered. Defendants place labels on each
6 package that instruct the delivery driver not to allow the consumer to open the
7 package until after she has paid the driver with her money order. For example,
8 Defendants' labels often state "ATTENTION: UPS DRIVER...PLEASE DO
9 NOT LET RECIPIENT OPEN BOX WITHOUT GETTING MONEY ORDER
10 FIRST."

11 15. After consumers pay the delivery drivers with their money orders
12 and open Defendants' packages, they discover that Defendants have not sent the
13 promised, brand-name merchandise, but generic-brand or unlabeled products of
14 poor quality. In many cases, the merchandise consumers receive is of an entirely
15 different type than the merchandise the consumer ordered. Some consumers have
16 described the merchandise they receive as "junk."

17 16. When consumers call the company to report that they have not
18 received the promised merchandise, Defendants' representatives typically say that
19 the wrong merchandise was sent by mistake. Defendants' representatives claim
20 that the company will send another COD package containing the correct
21 merchandise along with a check refunding the entire cost of the first shipment.
22 Defendants' representatives tell consumers to give a second money order,
23 typically for between \$400 and \$490, to the delivery driver when the second
24 shipment arrives.

25 17. Relying on Defendants' promises, some consumers agree and pay for
26 another COD shipment. Upon paying for and receiving the second shipment,
27 however, consumers discover that, once again, Defendants have sent only poor-
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1 quality and generic-brand or unlabeled merchandise and have failed to include a
2 refund check as promised. Defendants deceive some consumers into paying even
3 more money by continuing to make refund promises and instructing consumers to
4 make additional payments, typically for between \$400 and \$490. As before,
5 Defendants' subsequent shipments to these consumers contain only more poor-
6 quality and generic-brand or unlabeled merchandise and do not contain refund
7 checks.

8 18. In many instances, Defendants' representatives threaten or intimidate
9 consumers who refuse to accept and pay for additional shipments. Defendants'
10 representatives often tell these consumers that the company has filed or will file
11 lawsuits against them and provide a fake date and location for the hearing.
12 Defendants' representatives further tell consumers that they are required to appear
13 at a courthouse with two government-issued IDs, that they may be charged
14 thousands of dollars in fines and have their wages, bank accounts, or tax refunds
15 garnished if they do not appear for the hearing, and that their credit history will be
16 damaged if they refuse to pay more money. In some instances, Defendants'
17 representatives have threatened consumers with arrest or referral to immigration
18 authorities.

19 19. Defendants typically do not refund consumers' money. Consumers
20 who persist in attempting to obtain refunds from Defendants are ignored or told
21 they must first return the merchandise shipped in error using return labels that
22 Defendants will send only after consumers pay an additional amount of between
23 \$400 and \$490.

24 **VIOLATIONS OF THE FTC ACT**

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

1 neither the well-known, brand-name merchandise they ordered nor a refund of the
2 amount they paid Defendants.

3 27. Therefore, Defendants' representations as set forth in Paragraph 25
4 of this Complaint are false and misleading and constitute deceptive acts or
5 practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

6 **THE TELEMARKETING SALES RULE**

7 28. 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. The FTC adopted the original Telemarketing
10 Sales Rule in 1995, extensively amended it in 2003, and amended certain sections
11 thereafter. 16 C.F.R. Part 310.

12 29. Defendants are "seller[s]" and/or "telemarketer[s]" engaged in
13 "telemarketing," and Defendants have initiated, or have caused telemarketers to
14 initiate, "outbound telephone call[s]" to consumers to induce the purchase of
15 goods or services, as those terms are defined in the TSR, 16 C.F.R. § 310.2(v),
16 (aa), (cc), and (dd).

17 30. The TSR prohibits sellers and telemarketers from misrepresenting,
18 directly or by implication, in the sale of goods or services, any material aspect of
19 the performance, efficacy, nature, or central characteristics of the goods or
20 services that are the subject of a sales offer. 16 C.F.R. § 310.3(a)(2)(iii).

21 31. The TSR prohibits sellers and telemarketers from misrepresenting,
22 directly or by implication, in the sale of goods or services, any material aspect of
23 the nature or terms of the seller's refund, cancellation, exchange, or repurchase
24 policies. 16 C.F.R. § 310.3(a)(2)(iv).

25 32. The TSR prohibits sellers and telemarketers from failing to disclose
26 truthfully, in a clear and conspicuous manner, before a customer consents to pay
27 for goods or services offered, if the seller has a policy of not making refunds or
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1 cancellations, a statement informing the customer that this is the seller's policy.
2 16 C.F.R. § 310.3(a)(1)(iii).

3 33. The TSR prohibits sellers and telemarketers from making a false or
4 misleading statement to induce any person to pay for goods or services. 16
5 C.F.R. § 310.3(a)(4).

6 34. It is an abusive telemarketing act or practice, and a violation of the
7 TSR, for any seller or telemarketer to engage in the use of threats or intimidation.
8 16 C.F.R. § 310.4(a)(1).

9 35. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C.
10 § 6102(c), and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation
11 of the TSR constitutes an unfair or deceptive act or practice in or affecting
12 commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

13 **VIOLATIONS OF THE TELEMARKETING SALES RULE**

14 **COUNT III**

15 **Misrepresentations in Violation of the TSR**

16 36. In numerous instances, in connection with telemarketing goods,
17 Defendants have made false or misleading statements, directly or by implication,
18 to induce consumers to pay for goods, including, but not limited to,
19 misrepresentations that consumers who purchase merchandise from Defendants
20 will receive well-known, brand-name merchandise at low or wholesale prices.

21 37. Defendants' acts or practices, as described in Paragraph 36 above,
22 are deceptive telemarketing acts or practices that violate the TSR, 16 C.F.R.
23 § 310.3(a)(2)(iii) or § 310.3(a)(4).

24 **COUNT IV**

25 **Refund Misrepresentations in Violation of the TSR**

26 38. In numerous instances, in connection with telemarketing goods,
27 Defendants have misrepresented, directly or by implication, material aspects of
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1 the nature or terms of the seller's refund, cancellation, exchange, or repurchase
2 policies, including, but not limited to, that consumers who pay for and accept
3 receipt of additional shipments from Defendants will receive the well-known,
4 brand-name merchandise they ordered, along with a refund of the amount they
5 have paid to Defendants.

6 39. Defendants' acts and practices, as described in Paragraph 38 above,
7 are deceptive telemarketing acts or practices that violate the TSR, 16 C.F.R.
8 § 310.3(a)(2)(iv).

9 **COUNT V**

10 **Failure to Disclose Refund, Cancellation, Exchange, or Repurchase Policy**

11 40. In numerous instances, in connection with telemarketing goods,
12 Defendants have failed to disclose truthfully, in a clear and conspicuous manner,
13 before a consumer consents to pay for the goods, that Defendants have a policy of
14 not making refunds or cancellations.

15 41. Defendants' acts and practices, as described in Paragraph 40 above,
16 are deceptive telemarketing acts or practices that violate the TSR, 16 C.F.R.
17 § 310.3(a)(1)(iii).

18 **COUNT VI**

19 **Threats or Intimidation**

20 42. In numerous instances, in connection with telemarketing, Defendants
21 have used threats or intimidation to coerce consumers to pay Defendants,
22 including, but not limited to, threatening consumers with false legal actions, fines,
23 damage to consumers' credit history, garnishment of income and bank accounts,
24 arrest, and reports to immigration authorities.

25 43. Defendants' acts and practices, as described in Paragraph 42, are
26 abusive telemarketing acts or practices that violate the TSR, 16 C.F.R.
27 § 310.4(a)(1).

1 not limited to, temporary and preliminary injunctions, an order freezing assets,
2 immediate access to business premises, and the appointment of a receiver;

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

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

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

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12 Dated this 2nd day of December, 2013.

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Respectfully Submitted,

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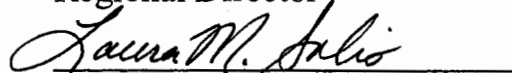
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ATTORNEYS FOR PLAINTIFF
FEDERAL TRADE COMMISSION

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