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16 **UNITED STATES DISTRICT COURT**
17 **DISTRICT OF NEVADA**

18 FEDERAL TRADE COMMISSION,

19 Plaintiff,

20 v.

21 PUBLISHERS BUSINESS SERVICES, INC.,
22 a corporation; ED DANTUMA
23 ENTERPRISES, INC., a corporation, also dba
24 PUBLISHERS DIRECT SERVICES and
25 PUBLISHERS BUSINESS SERVICES;

26 PERSIS DANTUMA; EDWARD
27 DANTUMA; and BRENDA DANTUMA
28 SCHANG, individually and as officers or
managers of Publishers Business Services,
Inc., or Ed Dantuma Enterprises, Inc.,

Defendants.

CV-S-

COMPLAINT FOR INJUNCTIVE
AND OTHER EQUITABLE RELIEF

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

2 1. The FTC brings this action under Sections 13(b) and 19 of the Federal Trade
3 Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer
4 Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101-6108, to obtain
5 temporary, preliminary, and permanent injunctive relief, rescission or reformation of contracts,
6 restitution, disgorgement of ill-gotten monies, and other equitable relief for Defendants’ acts or
7 practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and in violation of the
8 FTC’s Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310.

9 **JURISDICTION AND VENUE**

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

12 3. Venue in the District of Nevada is proper under 15 U.S.C. § 53(b) and 28 U.S.C.
13 §§ 1391(b) and (c).

14 **THE PARTIES**

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

24 5. **Defendant Publishers Business Services, Inc.**, is a Florida corporation, which is
25 registered to do business in the State of Nevada. It maintains a place of business at 701 North
26 Green Valley Parkway, Henderson, Nevada. Publishers Business Services transacts or has
27 transacted business in the District of Nevada.
28

1 through an interrelated network of companies that have common ownership, officers, managers,
2 and business functions. Defendants Persis Dantuma, Edward Dantuma and Brenda Dantuma
3 Schang have formulated, directed, and/or controlled or had authority to control, or participated in
4 the acts and practices of the Corporate Defendants that comprise the common enterprise.

5 **DEFENDANTS' COURSE OF BUSINESS**

6 11. Defendants are sellers of magazine subscriptions to consumers. Defendants are also
7 telemarketers that initiate outbound telephone calls to consumers in the United States to induce the
8 purchase of Defendants' magazine subscriptions.

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

12 13. At all times relevant to this complaint, Defendants have maintained a substantial
13 course of trade or business in the offering for sale and sale of goods or services via the telephone,
14 in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

15 14. Defendants are magazine subscription agents. They have contracts with magazine
16 publishers that authorize them to solicit subscriptions on behalf of the publishers and to submit
17 those subscriptions to the publishers' subscription departments or fulfillment agents for processing.

18 15. Defendants' typical method of contacting consumers is to call small businesses and
19 engage whoever answers the phone. In many cases, the pitch starts with an invitation to take part
20 in a short survey. At the end of the survey, Defendants offer consumers a gift of some magazines
21 to thank them for their time. When consumers agree to receive the magazines, Defendants ask for
22 their home address so that Defendants can have the magazines shipped to them. In the initial call,
23 Defendants either do not disclose any cost or state that there is a nominal shipping and handling
24 fee. In other cases, Defendants offer magazine subscriptions for sale but misrepresent the total cost
25 of the subscriptions.

26 16. In some cases, the initial call is consumers' only contact with Defendants. In other
27 cases, Defendants make one or two other calls to confirm the address and the terms of the gift or
28 subscriptions. In some cases, Defendants appear to use a verification system that produces a

1 recording of the consumer's consent to receive the magazines. Even when there are "verification
2 calls," however, Defendants fail to cure their earlier representation that the magazines are free or
3 for a specified low price. Within a matter of a few weeks, consumers receive an invoice, typically
4 listing five-year subscriptions for three to six magazines and informing them that they are being
5 billed for two years of monthly payments, typically totaling \$720, for the subscriptions to which
6 they had allegedly agreed.

7 17. Defendants tell consumers who call to complain or cancel that they have a verbal
8 contract that cannot be cancelled and that Defendants have recorded the verification calls.
9 Defendants also routinely represent that they cannot cancel the subscriptions because they have a
10 no-cancellation policy and because they have already paid the magazine publishers.

11 18. In many instances, Defendants' agreements with the magazine publishers authorize
12 them to sell subscriptions only to business locations and not to individual consumers and do not
13 authorize them to sell subscriptions for periods as long as five years. In many instances,
14 Defendants' agreements with the magazine publishers require them to remit only a small
15 percentage or none of the magazine subscription fees that they collect from consumers.

16 19. When consumers refuse to pay or insist on their right to cancel, Defendants subject
17 them to frequent abusive and harassing phone calls at work, even after consumers ask Defendants
18 not to call them at work. Defendants threaten consumers with lawsuits, garnishments and other
19 collection actions if they do not pay for the magazine subscriptions, and at least some consumers
20 have faced adverse consequences at work because of the frequent phone calls.

21 **DEFENDANTS' VIOLATIONS OF THE FTC ACT**

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

24 **Count One – Misrepresentation In Initial Telemarketing Calls**

25 21. In numerous instances, in connection with the telemarketing of magazine
26 subscriptions, Defendants have represented to consumers, directly or indirectly, expressly or by
27 implication, that Defendants will send the consumers magazines as a free gift or for a specified
28 nominal cost.

1 22. In truth and in fact, in numerous instances in which Defendants have made the
2 representations above, Defendants do not send the consumers magazines as a free gift or for a
3 specified nominal cost, but rather, charge consumers hundreds of dollars for the magazines.

4 23. Therefore, Defendants' representation, as set forth in Paragraph 21 of this
5 complaint, is false or misleading and constitutes a deceptive act or practice in violation of Section
6 5(a) of the FTC Act, 15 U.S.C. § 45(a).

7 **Count Two – Misrepresentations In Subsequent Communications**

8 24. In numerous instances, in connection with the telemarketing of magazine
9 subscriptions, Defendants have represented to consumers, directly or indirectly, expressly or by
10 implication, that consumers previously entered into contracts with Defendants to purchase
11 magazine subscriptions for hundreds of dollars.

12 25. In truth and in fact, in numerous instances in which Defendants have made the
13 representation above, the consumers did not previously enter into contracts with Defendants to
14 purchase magazine subscriptions at that price.

15 26. Therefore, Defendants' representation, as set forth in Paragraph 24 of this
16 complaint, is false or misleading and constitutes a deceptive act or practice in violation of Section
17 5(a) of the FTC Act, 15 U.S.C. § 45(a).

18 **DEFENDANTS' VIOLATIONS OF THE TELEMARKETING SALES RULE**

19 27. Congress directed the FTC to prescribe rules prohibiting abusive and deceptive
20 telemarketing acts or practices pursuant to the Telemarketing Act, 15 U.S.C. §§ 6101 - 6108, in
21 1994. On August 16, 1995, the FTC adopted the Telemarketing Sales Rule (the "Original TSR"),
22 16 C.F.R. Part 310, which became effective on December 31, 1995. On January 29, 2003, the FTC
23 amended the Original TSR by issuing a Statement of Basis and Purpose and the final amended
24 Telemarketing Sales Rule (the "TSR"). 68 Fed. Reg. 4580, 4669.

25 28. Defendants are "sellers" or "telemarketers" engaged in "telemarketing," as those
26 terms are defined in the TSR, 16 C.F.R. § 310.2(z), (bb), and (cc).

27 29. It is an abusive telemarketing act or practice and a violation of the TSR for a
28 telemarketer in an outbound telephone call to induce the purchase of goods or services to fail to

1 disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the
2 call, the following information, among other information: (1) the identity of the seller; (2) that the
3 purpose of the call is to sell goods or services; and (3) the nature of the goods or services. 16
4 C.F.R. § 310.4(d).

5 30. The TSR also prohibits telemarketers and sellers from misrepresenting, directly or
6 by implication, in the sale of goods or services, the total costs to purchase, receive, or use, and the
7 quantity of, any goods or services that are the subject of a sales offer. 16 C.F.R. § 310.3(a)(2)(i).

8 31. The TSR also prohibits telemarketers and sellers from “making a false or
9 misleading statement to induce any person to pay for goods or services.” 16 C.F.R. § 310.3(a)(4).

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

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

18 **Count Three – Failure to Disclose the Purpose of the Call**

19 34. In numerous instances, in the course of telemarketing magazine subscriptions,
20 Defendants in an outbound telephone call have failed to disclose truthfully, promptly and in a clear
21 and conspicuous manner to the person receiving the call that the purpose of the call is to sell
22 magazine subscriptions.

23 35. Defendants’ practice, as alleged in Paragraph 34, is an abusive telemarketing
24 practice that violates Section 310.4(d)(2) of the TSR, 16 C.F.R. § 310.4(d)(2).

25 **Count Four – Misrepresentations of Total Cost**

26 36. In numerous instances, in the course of telemarketing magazine subscriptions,
27 Defendants have misrepresented, directly or by implication, the total cost to purchase, receive, or
28

1 use magazines, including that Defendants will send the consumers magazines as a free gift or for a
2 specified nominal cost.

3 37. Defendants' practice, as alleged in Paragraph 36, is a deceptive
4 telemarketing practice that violates Section 310.3(a)(2)(i) of the TSR, 16 C.F.R. § 310.3(a)(2)(i).

5 **Count Five - Misrepresentations to Induce Payment**

6 38. In numerous instances, in the course of telemarketing magazine subscriptions,
7 Defendants have made false or misleading statements to induce consumers to pay for magazines,
8 including but not limited to the misrepresentation that consumers previously entered into contracts
9 with Defendants to purchase magazine subscriptions for hundreds of dollars.

10 39. Defendants' practice as alleged in Paragraph 38 is a deceptive telemarketing
11 practice that violates Section 310.3(a)(4) of the TSR, 16 C.F.R.
12 § 310.3(a)(4).

13 **Count Six – Engaging in a Pattern of Abusive Calls**

14 40. In numerous instances, Defendants have caused consumers' telephones to ring
15 repeatedly, and/or have engaged consumers repeatedly in telephone conversation with the intent to
16 annoy, abuse, or harass persons at the called number in violation of Section 310.4(b)(1)(i) of the
17 TSR, 16 C.F.R. § 310.4(b)(1)(i).

18 **CONSUMER INJURY**

19 41. Consumers in the United States have suffered and will continue to suffer injury as a
20 result of Defendants' violations of the FTC Act and the TSR. In addition, Defendants have been
21 unjustly enriched as a result of their unlawful practices. Absent injunctive relief by this Court,
22 Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public
23 interest.
24

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

26 42. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant
27 injunctive and such other relief as the Court may deem appropriate to halt and redress violations of
28 the FTC Act. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief,

1 including rescission of contracts and restitution, and the disgorgement of ill-gotten monies, to
2 prevent and remedy any violation of any provision of law enforced by the FTC.

3 43. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 6(b) of the Telemarketing
4 Act, 15 U.S.C. § 6105(b), authorize this Court to grant such relief as the Court finds necessary to
5 redress injury to consumers resulting from Defendants' violations of the TSR, including the
6 rescission and reformation of contracts, and the refund of money.

7 **PRAYER FOR RELIEF**

8 **WHEREFORE**, Plaintiff FTC, pursuant to Sections 13(b) and 19 of the FTC Act, 15
9 U.S.C. §§ 53(b) and 57b, Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), and the
10 Court's own equitable powers, requests that the Court:

11 1. Award Plaintiff such preliminary and ancillary relief as may be necessary to avert
12 the likelihood of consumer injury during the pendency of this action and to preserve the possibility
13 of effective final relief, including but not limited to temporary and preliminary injunctions;

14 2. Enter a permanent injunction to prevent future violations of the FTC Act and the
15 TSR by Defendants;

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

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

22
23
24 Dated: May 12, 2008

Respectfully submitted,
WILLIAM BLUMENTHAL
General Counsel

25
26
27 /s/ Faye Chen Barnouw
FAYE CHEN BARNOUW
RAYMOND E. McKOWN
MARICELA SEGURA
28 Federal Trade Commission