UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
NORTHERN DIVISION

FEDERAL TRADE COMMISSION, East Central Region 1111 Superior Avenue, Suite 200 Cleveland, OH 44114 Plaintiff, v. AMERICAN INDUSTRIAL ENTERPRISES, LLC, a Maryland limited liability company, 6801 Eastern Avenue, Suite 206 Baltimore, MD 21224 Baltimore City; EASTON CHEMICAL SUPPLY, INC., a Maryland corporation, 430 Folcroft Street Baltimore, MD 21224 Baltimore City; LIGHTING X-CHANGE COMPANY, LLC, a Maryland limited liability company, 7444 Holabird Avenue Dundalk, MD 21222 Baltimore County; LMS LIGHTING & MAINTENANCE SOLUTIONS, LLC, a Maryland limited liability company, 4 Newport Drive Forest Hill, MD 21050 Baltimore County;	**Case No.** ____________ **FILED UNDER SEAL** **COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF**

WERNER INTERNATIONAL ENTERPRISES, INC.,
a Maryland corporation,
430 Folcroft Street
Baltimore, MD 21224
Baltimore City;

BENJAMIN COX,
Individually, as a director of Easton Chemical Supply, Inc., and Werner International Enterprises, Inc., and as a principal of American Industrial Enterprises, LLC, Easton Chemical Supply, Inc., Lighting X-Change Company, LLC, LMS Lighting & Maintenance Solutions, LLC, Werner International Enterprises, Inc., and TBC Companies, Inc.,
430 Folcroft Street
Baltimore, MD 21224
Baltimore City;

VINCENT STAPLETON,
Individually and as a principal of Lighting X-Change Company, LLC,
430 Folcroft Street
Baltimore, MD 21224
Baltimore City;

JOHN THARRINGTON,
Individually and as a principal of American Industrial Enterprises, LLC,
430 Folcroft Street
Baltimore, MD 21224
Baltimore City;

Defendants, and

TBC COMPANIES, INC.,
a Maryland corporation
109 Jarrettsville Road, Suite E
Forest Hill, MD 21050
Harford County;

Relief Defendant.

Plaintiff, the Federal Trade Commission (FTC or Commission), 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, the Telemarketing and Consumer Fraud and Abuse Prevention Act (Telemarketing Act), 15 U.S.C. §§ 6101-6108, and the Unordered Merchandise Statute, 39 U.S.C. § 3009, to obtain temporary, preliminary, and permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief for Defendants' acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), the FTC's Telemarketing Sales Rule (TSR), 16 C.F.R. Part 310, and the Unordered Merchandise Statute, 39 U.S.C. § 3009.

JURISDICTION AND VENUE

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

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

PLAINTIFF

4. The FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The FTC also enforces the Telemarketing Act. In accordance with the Telemarketing Act, the FTC promulgated and enforces the TSR, which prohibits deceptive and abusive telemarketing acts or practices. In addition, the FTC enforces the Unordered Merchandise Statute.

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

DEFENDANTS

6. Defendant American Industrial Enterprises, LLC (AIE), is a Maryland limited liability that filed articles of organization on October 22, 2014. AIE represents or has represented its principal place of business to be 6801 Eastern Avenue, Suite 206, Baltimore, Maryland, 21224. At times material to this Complaint, acting alone or in concert with others, AIE has initiated outbound telephone calls to induce consumers to purchase goods, and transacts or has transacted business in this District and throughout the United States.

7. Defendant Easton Chemical Supply, Inc. (Easton), is a Maryland corporation that filed articles of incorporation on March 9, 2007. On September 10, 2015, Easton filed articles of dissolution. On information and belief, Easton has not been fully dissolved. Easton represents or has represented its principal place of business to be 430 Folcroft Street, Baltimore, Maryland, 21224. At times material to this Complaint, acting alone or in concert with others, Easton has initiated outbound telephone calls to induce consumers to purchase goods, and transacts or has transacted business in this District and throughout the United States.

8. Defendant Lighting X-Change Company, LLC (LX or Lighting X-Change), is a Maryland limited liability company that filed articles of organization on October 22, 2014. Lighting

X-Change represents or has represented its principal place of business to be 7444 Holabird Avenue, Dundalk, Maryland, 21222. At times material to this Complaint, acting alone or in concert with others, LX has initiated outbound telephone calls to induce consumers to purchase goods, and transacts or has transacted business in this District and throughout the United States.

9. Defendant LMS Lighting & Maintenance Solutions, LLC (LMS), is a Maryland limited liability company that filed articles of organization on October 19, 2012. LMS represents or has represented its principal place of business to be 4 Newport Drive, Forest Hill, Maryland, 21050. At times relevant to this Complaint, acting alone or in concert with others, LMS has initiated outbound telephone calls to induce consumers to purchase goods, and transacts or has transacted business in this District and throughout the United States.

10. Defendant Werner International Enterprises, Inc. (Werner), is a Maryland corporation that filed articles of incorporation on March 7, 2007. On September 10, 2015, Werner filed articles of dissolution. On information and belief, Werner has not been fully dissolved. Werner represents or has represented its principal place of business to be 430 Folcroft Street, Baltimore, Maryland 21224. At times relevant to this Complaint, acting alone or in concert with others, Werner has initiated outbound telephone calls to induce consumers to purchase goods, and transacts or has transacted business in this District and throughout the United States.

11. Defendant Benjamin Cox (Cox) is or has been an officer, director, manager, or other principal of AIE, Easton, LX, LMS, and Werner, and of Relief Defendant TBC Companies, Inc. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in the

Complaint. Defendant Cox resides in this District and, in connection with the matters alleged in this Complaint, transacts or has transacted business in this District and throughout the United States.

12. Defendant Vincent Stapleton (Stapleton) is and has been an officer, director, manager, or other principal of LX. At times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in the Complaint. Defendant Stapleton resides in this District and, in connection with the matters alleged in this Complaint, transacts or has transacted business in this District and throughout the United States.

13. Defendant John Tharrington (Tharrington) is and has been an officer, director, manager, or other principal of AIE. At times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in the Complaint. Defendant Tharrington resides in this District and, in connection with the matters alleged in this Complaint, transacts or has transacted business in this District and throughout the United States.

RELIEF DEFENDANT

14. Relief Defendant TBC Companies, Inc. (TBC), is a Maryland corporation that filed articles of incorporation on October 19, 2012. TBC represents or has represented its principal place of business to be 109 Jarrettsville Road, Suite E, Forest Hill, Maryland, 21050. TBC has received funds that can be traced directly to Corporate Defendants' unlawful acts or practices alleged below, and it has no legitimate claim to those funds.

COMMON ENTERPRISE

15. Defendants AIE, Easton, LX, LMS, and Werner (Corporate Defendants) have operated as a common enterprise while engaging in the unlawful acts and practices alleged below. Defendants have conducted the business practices described below through an interrelated network of companies that have common ownership, officers, managers, business functions, employees, and locations and that have commingled funds. Because the Corporate Defendants have operated as a common enterprise, each of them is jointly and severally liable for the acts and practices alleged below. Defendants Cox, Stapleton, and Tharrington have formulated, directed, controlled, had the authority to control, or participated in the acts and practices of the Corporate Defendants that constitute the common enterprise. Defendants Cox, Stapleton, and Tharrington have controlled and have the authority to control bank accounts used by the Corporate Defendants that constitute the common enterprise, and have used their control and authority to enrich themselves personally with substantial funds derived from the Corporate Defendants that constitute the common enterprise and from the business practices described below.

COMMERCE

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

DEFENDANTS' BUSINESS PRACTICES

17. Since at least 2013, and continuing thereafter, Defendants have engaged in a plan, program, or campaign to sell nondurable office or cleaning supplies, such as light bulbs and cleaning products, through interstate telephone calls.

18. On numerous occasions, Defendants, through their telemarketers, have contacted various organizations or businesses (consumers) by telephone. Upon contacting consumers' employees, Defendants' telemarketers have employed several deceptive tactics to sell nondurable office or cleaning supplies.

19. In numerous instances, Defendants' telemarketers have falsely stated or implied that (1) Defendants had previously done business with the consumers; or (2) Defendants were offering a free sample or free catalog.

20. Defendants' telemarketers often have failed to disclose promptly, clearly, and conspicuously that the purpose of the call is to sell nondurable office or cleaning supplies.

21. In numerous instances, following telemarketing calls as described in Paragraphs 18 – 20, Defendants have shipped merchandise to consumers without the consumers' consent or after Defendants' telemarketers have explicitly or by implication misled consumers' employees. After shipping merchandise, Defendants typically send consumers invoices seeking payment for the merchandise. The prices of Defendants' merchandise, reflected on the invoices, are substantially higher than prices for similar products readily available to consumers.

22. Many consumers have been deceived by Defendants' tactics and paid invoices under a belief that someone in the consumer organization or business had expressly ordered the shipped merchandise from Defendants. In many instances, consumers' employees or volunteers who receive

Defendants' shipments are not the same individuals who receive or process Defendants' invoices, and Defendants' tactics deceive the individuals who receive or process Defendants' invoices into believing that the merchandise was ordered.

23. Often, when consumers have been deceived by Defendants' tactics and paid Defendants' invoices under a belief that they were obligated to do so, Defendants have sent additional unordered merchandise followed by additional invoices and demands for payment.

24. In many instances, when consumers have challenged Defendants and have asserted that merchandise was unordered, Defendants, directly or through their telemarketers, have claimed falsely that the merchandise was ordered. In many instances, Defendants, directly or through their telemarketers, make further attempts to deceive consumers into paying for unordered merchandise. In some instances, Defendants claim to have evidence of an order being placed, such as a document signed by the consumer's employee or a recording of the employee, but fail or refuse to produce that evidence. In other instances, Defendants have insisted on payment but have purported to discount the price to allow the consumer to pay less than the amount on the original invoice.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

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

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

Count I
(All Defendants Except Relief Defendant TBC)

27. In numerous instances in connection with the marketing, sale, offering for sale, or distribution of nondurable office or cleaning supplies, Defendants have represented, directly or indirectly, expressly or by implication, through, inter alia, telephone calls, invoices, packing slips, or shipment of nondurable office or cleaning supplies, (a) that Defendants have previously done business with the consumers, (b) that Defendants would send only a free sample or free product catalog, and/or (c) that consumers ordered the goods that were shipped and/or billed to the consumers by Defendants.

28. In truth and in fact, in numerous instances in which Defendants have made the representations set forth in Paragraph 27 of this Complaint, (a) Defendants had not previously done business with the consumers, (b) Defendants did not send only a free sample or free product catalog, and (c) consumers did not order the goods that were shipped and/or billed to them by Defendants.

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

VIOLATIONS OF THE TELEMARKETING SALES RULE

30. Congress directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15 U.S.C. §§ 6101-6108, in 1994. The FTC adopted the original TSR in 1995, extensively amended it in 2003, and amended certain sections thereafter.

31. Telephone calls between a telemarketer and a business that involve the retail sale of nondurable office or cleaning supplies are subject to the TSR's prohibitions against deceptive and

abusive telemarketing acts or practices. 16 C.F.R. § 310.6(b)(7). In its Statement of Basis and Purpose for the TSR, the Commission stated:

> [T]he Commission's enforcement experience against deceptive telemarketers indicates that office and cleaning supplies have been by far the most significant business-to-business problem area; such telemarketing falls within the Commission's definition of deceptive telemarketing acts or practices.

60 Fed. Reg. 43842, 43861 (Aug. 23, 1995).

32. It is a deceptive telemarketing act or practice, and a violation of the TSR, for any seller or telemarketer to make a false or misleading statement to induce a person to pay for goods or services or to induce a charitable contribution. 16 C.F.R. § 310.3(a)(4).

33. The TSR requires telemarketers in outbound telephone calls to induce the purchase of goods or services to disclose promptly, and in a clear and conspicuous manner, that the purpose of the call is to sell goods or services. 16 C.F.R. § 310.4(d)(2).

34. Defendants place "outbound calls" and are "sellers" or "telemarketers" engaged in "telemarketing," as those terms are defined in the TSR, 16 C.F.R. § 310.2(v), (aa), (cc), and (dd).

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

Count II
False and Misleading Statements to Induce Payment in Connection with Telemarketing
(All Defendants Except Relief Defendant TBC)

36. In numerous instances, in connection with the telemarketing of nondurable office and cleaning supplies, Defendants have made false or misleading statements, directly or by implication, to

induce consumers to pay for goods or services, including, but not limited to, misrepresenting (a) that Defendants have previously done business with the consumer, (b) that the Defendants would send only a free sample or free product catalog, and/or (c) that the consumer ordered the goods that were to be shipped and/or billed to the consumer by Defendants.

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

Count III
Failure to Disclose that the Purpose of the Call is to Sell
(All Defendants Except Relief Defendant TBC)

38. In numerous instances, in connection with the telemarketing of nondurable office and cleaning supplies, Defendants place "outbound telephone call[s]," as that term is defined in the TSR, 16 C.F.R. § 310.2(v), and have failed to disclose promptly and in a clear and conspicuous manner to the person receiving the call that the purpose of the call was to sell goods.

39. Defendants' acts and practices described in Paragraph 38 are abusive telemarketing acts or practices that violate the TSR, 16 C.F.R. § 310.4(d)(2).

VIOLATIONS OF THE UNORDERED MERCHANDISE STATUTE

40. The Unordered Merchandise Statute, 39 U.S.C. § 3009, generally prohibits sending unordered merchandise unless such merchandise is clearly and conspicuously marked as a free sample or is sent by a charitable organization soliciting contributions. The statute also prohibits sending consumers bills for unordered merchandise or dunning communications.

41. In accordance with Section (a) of the Unordered Merchandise Statute, 39 U.S.C. § 3009(a), a violation of the Unordered Merchandise Statute constitutes an unfair method of competition and an unfair trade practice, in violation of Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1).

Count IV
Sending and Billing for Unordered Merchandise
(All Defendants Except Relief Defendant TBC)

42. In numerous instances, in connection with the marketing of nondurable office and cleaning supplies, Defendants, who are not a charitable organization soliciting contributions, have shipped nondurable office and cleaning supplies without the prior express request or consent of the recipients and without identifying the products as free samples, thereby violating subsection (a) of the Unordered Merchandise Statute, 39 U.S.C. § 3009(a).

43. In numerous instances, in connection with the marketing of nondurable office and cleaning supplies, Defendants have sent to the recipients of such goods one or more bills or dunning communications for such goods, thereby violating subsections (a) and (c) of the Unordered Merchandise Statute, 39 U.S.C. § 3009(a) and (c).

44. Defendants' practices, as alleged in Paragraphs 42 and 43, are therefore unfair trade practices that violate Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1).

UNJUST ENRICHMENT

Count V
(Relief Defendant TBC)

45. Relief Defendant, TBC, has received, directly or indirectly, funds or other assets from Defendants that are traceable to funds obtained from consumers through the unlawful acts or practices described in this Complaint.

46. TBC is not a bona fide purchaser with legal or equitable title to Defendants' consumers' funds or other assets, and TBC will be unjustly enriched if it is not required to disgorge the funds or the value of the benefits it received as a result of the Defendants' unlawful acts and practices.

47. For the reasons set forth in above, TBC holds funds or assets in constructive trust for the benefit of injured consumers.

CONSUMER INJURY

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

THE COURT'S POWER TO GRANT RELIEF

49. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of any provision of law enforced by the FTC. This Court, in the exercise of its equitable jurisdiction, may award

ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

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

PRAYER FOR RELIEF

Wherefore, Plaintiff, FTC, pursuant to Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b; Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b); the Unordered Merchandise Statute, 39 U.S.C. § 3009; and the Court's own equitable powers, requests that the Court:

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

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

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

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

Respectfully submitted,

JONATHAN E. NUECHTERLEIN
General Counsel

Jonathan L. Kessler

JONATHAN L. KESSLER (Colo. Bar #15094)
MARIA DEL MONACO (Ohio Bar #0067930)
MICHAEL B. ROSE (Penn. Bar #52954)
Federal Trade Commission
1111 Superior Avenue, Suite 200
Cleveland, Ohio 44114
Kessler Phone: (216) 263-3436
Del Monaco Phone: (216) 263-3405
Rose Phone: (216) 263-3412
Fax: (216) 263-3426
JKessler@ftc.gov
MDelMonaco@ftc.gov
MRose@ftc.gov

Attorneys for Plaintiff
FEDERAL TRADE COMMISSION