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FILED
CLERK, U.S. DISTRICT COURT
01/26/0016
CENTRAL DISTRICT OF CALIFORNIA
BY: js DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

**FEDERAL TRADE COMMISSION,**

**Plaintiff,**

**vs.**

**TELESTAR CONSULTING, INC., also d/b/a Kleritec and United Business Supply; and KARL WESLEY ANGEL, individually and as a principal of Telestar Consulting, Inc.,**

**Defendants.**

No. 2:16-cv-00555- SJO(SSx)

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

**[FILED UNDER SEAL]**

LODGED
CLERK, U.S. DISTRICT COURT
01/26/2016
CENTRAL DISTRICT OF CALIFORNIA
BY: js DEPUTY

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; 15 U.S.C. §§ 45(a), 53(b), 6102(c), and 6105(b).

3. Venue in the Central District of California is proper 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


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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)-(B), 57b, 6102(c), and 6105(b).

## DEFENDANTS

6. Defendant Telestar Consulting, Inc. ("Telestar"), also doing business as Kleritec and United Business Supply, is a California corporation with a registered address in Beverly Hills, California, and its principal place of business at 15823 Monte Street, Sylmar, California 91342, units 101 and 103. It has also used the address 8600 Darby Avenue, Northridge, California 91325. At all times material to this Complaint, acting alone or in concert with others, Telestar 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 Karl Wesley Angel ("Angel") is and has been an officer, director, or principal of Telestar and has also done business as Kleritec and United Business Supply. 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 this Complaint. Defendant Angel resides in this District and, in connection with the matters alleged herein, transacts or has transacted business in this District and throughout the United States.

## COMMERCE

8. 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

9. Since at least 2010, and continuing thereafter, the Defendants have engaged in a plan, program, or campaign to sell nondurable office or cleaning


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supplies, such as art supplies and disinfectant or sanitizer products, through interstate telephone calls to small businesses and non-profit organizations, such as childcare centers and schools (hereinafter "consumers"). In numerous instances, Defendants' initial contact with consumers is deceptive, and is part of a larger scheme in which Defendants send additional merchandise without the request or consent of consumers.

10. Defendants use a variety of tactics in the initial contact with consumers. For example, Defendants have initially contacted consumers by phone to offer a "good deal" on art supplies or to pitch cleaning products like hand sanitizer or stain removers. In some instances, Defendants' telemarketers have disclosed a price, but fail to disclose total costs, such as shipping charges or other charges included in the invoice subsequently sent to consumers. In addition, the Defendants' telemarketers sometimes have described the materials offered as, for example, $300 worth of supplies for $100, without specifying the quantity of items to be provided at that price. Alternatively, Defendants' telemarketers have called and obtained the consumer's agreement to receive a "sample" or "trial" shipment, without mention of any price. And in some circumstances, Defendants' first contact with the consumer is a shipment of unordered merchandise and an invoice demanding payment for the goods.

11. In numerous instances, although Defendants do not disclose their intent to send more than a single shipment, Defendants use the initial or earlier transaction as the foundation for at least one, often several, additional shipments of merchandise, without any prior agreement by consumers to accept these shipments. If the consumer objects that this additional merchandise is unordered, Defendants' telemarketer will claim that the shipment(s) are part of the original or previous order, or were agreed to at the time of the original order. In numerous instances, consumers are persuaded to accept a "backorder" on the understanding that there will be no additional charge, but are subsequently billed in an amount that exceeds



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the amount of the initial invoice. Another common tactic is for Defendants to tell consumers that the price of the initial invoice was discounted and that a condition of the discount was purchasing more product. As a result, consumers who do not accept additional shipment(s) will, according to Defendants, owe more money for the previous shipment(s), even though no such condition or restriction was disclosed at the time of the earlier sales call. In another similarly misleading variation, Defendants claim that consumers had agreed to multiple shipments, when they in fact agreed to only a single shipment.

12. In numerous instances, either before or after telemarketing calls as described in Paragraphs 9-11, Defendants have shipped merchandise to consumers without the consumers' consent or after Defendants' telemarketers have explicitly or by implication misled consumers' employees.

13. Many consumers have paid Defendants' invoices under a mistaken belief that someone in the consumer organization or business had expressly ordered the shipped merchandise from Defendants. In many instances, consumers' employees who order supplies 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.

14. In many instances, when consumers do not promptly pay Defendants' invoices or challenge Defendants' right to bill them, Defendants, directly or through their telemarketers, falsely claim that consumers owe payment for unordered merchandise. In many instances, Defendants, directly or through their telemarketers, attempt to persuade consumers to pay by threatening to send consumers to "collections." Consumers have paid because of these claims and threats. Defendants often respond to consumers' payments by sending more unordered merchandise, followed by additional invoices and demands for payments.


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15. As a result of Defendants' unfair and deceptive tactics, consumers have paid hundreds, sometimes thousands, of dollars apiece to Defendants in excess of the amount, if any, to which they agreed and were legally obligated to pay. In addition, Defendants' collection calls to consumers are harassing and harmful to the business operations of consumers' organizations, which are typically small and ill prepared to handle the number and aggressive nature of Defendants' sales and collection calls.

16. In numerous instances, consumers also complain that the merchandise they received was not consistent with the telemarketers' description, or was otherwise poor quality.

17. More than 400 consumers, from locations across the nation, have filed complaints about the business they know as "Kleritec" to the FTC or entities that forward complaints to the FTC, such as the Better Business Bureau of Los Angeles and Silicon Valley ("BBB"). The vast majority of these complaints state that one or more of the following occurred: (1) Kleritec sent and/or billed for merchandise that the consumer's organization or business did not request or consent to purchase; (2) Kleritec obtained consumers' consent to receive and pay for goods without first disclosing the total cost and the quantity of the goods that were the subject of the sales offer; or (3) Kleritec obtained consumers' consent to receive and pay for goods without disclosing all material conditions to purchase or receive the goods, such as by failing to disclose that the price of an initial shipment was discounted and would be increased if the consumer did not agree to receive one or more additional shipments. The BBB has given Kleritec an "F" rating, the lowest rating it assigns, because of the high number of unresolved complaints.

## VIOLATIONS OF SECTION 5 OF THE FTC ACT

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



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

## COUNT I

### Misrepresentations to Induce Payment for Defendants' Goods

20. In numerous instances, in connection with the marketing, sale, offering for sale, or distribution of merchandise to small businesses and other organizations, Defendants have represented, directly or indirectly, expressly or by implication, through, *inter alia*, telephone calls, invoices, packing slips, or shipment of goods, that consumers ordered the goods that were shipped and/or billed to the consumers by Defendants.

21. In truth and in fact, in numerous instances in which Defendants have made the representations set forth in Paragraph 20 of this Complaint, consumers did not order the goods that were shipped and/or billed to them by Defendants.

22. Therefore, Defendants' representations as set forth in Paragraph 20 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).

## COUNT II

### Failure to Disclose

23. In numerous instances, in connection with the marketing, sale, offering for sale, or distribution of merchandise to small businesses and other organizations, Defendants have represented, expressly or by implication, that Defendants are offering a package of goods for use in connection with the consumers' business at a particular price.

24. In numerous instances, Defendants have failed to disclose, or failed to disclose adequately, to consumers material terms and conditions of their offer, including:

a. The total amount Defendants will charge consumers;

b. The quantity of materials consumers will receive; and



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c. All material restrictions, limitations, or conditions to purchase, receive, or use the goods that are the subject of the sales offer.

25. The Defendants' failure to disclose, or disclose adequately, the material information described in Paragraph 24, in light of the representation described in Paragraph 23 above, constitutes 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

26. 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.

27. Telephone calls between a telemarketer and a business, made to induce the retail sale of nondurable office or cleaning supplies, are subject to the TSR's prohibitions against deceptive telemarketing acts or practices. 16 C.F.R. § 310.6(b)(7). In its Statement of Basis and Purpose for the TSR, the Commission explained:

> [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).

28. 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).



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29. It is a deceptive telemarketing act or practice, and a violation of the TSR, for any seller or telemarketer to fail to disclose truthfully, in a clear and conspicuous manner, before a customer consents to pay, (i) the total costs to purchase, receive, or use, and the quantity of any goods or services that are the subject of the sales offer, and (ii) all material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer. 16 C.F.R. § 310.3(a)(1)(i)-(ii).

30. 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).

31. 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 III

### False and Misleading Statements to Induce Payment in Connection with Telemarketing

32. 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 that the consumer ordered or agreed to purchase goods that were to be, or had been, shipped and/or billed to the consumer by Defendants, or otherwise misrepresenting that consumers were obligated to pay for goods or services.

33. Defendants' acts and practices as described in Paragraph 32 are deceptive telemarketing acts or practices that violate the TSR, 16 C.F.R. § 310.3(a)(4).


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## COUNT IV

### Failure to Disclose Total Costs, Quantity, or Material Conditions in Connection with Telemarketing

34. In numerous instances, in connection with the telemarketing of nondurable office and cleaning supplies, Defendants have failed to disclose truthfully, in a clear and conspicuous manner, before a customer consents to pay (1) the total costs to purchase, receive, or use, or the quantity of, the goods that are the subject of the sales offer; or (2) all material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer.

35. Defendants' acts and practices as described in Paragraph 34 are deceptive telemarketing acts or practices that violate the TSR, 16 C.F.R. § 310.3(a)(1) (i)-(ii).

## VIOLATIONS OF THE UNORDERED MERCHANDISE STATUTE

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

37. 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 V

### Sending and Billing for Unordered Merchandise

38. In numerous instances, in connection with the marketing of merchandise to businesses and non-profit organizations, Defendants, who are not a


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charitable organization soliciting contributions, have shipped merchandise without the prior express request or consent of the recipients, or without identifying the products as free samples, thereby violating subsection (a) of the Unordered Merchandise Statute, 39 U.S.C. § 3009(a).

39. In numerous instances, in connection with the marketing of merchandise as described in Paragraph 38, Defendants have mailed 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).

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

## CONSUMER INJURY

41. 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

42. 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.


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43. 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



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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.

Dated: January 26, 2016

Respectfully submitted,

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