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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

SEALED

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

relief, rescission or reformation of contracts, restitution, 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), in violation of the FTC's Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310, and in violation of 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), 57b, 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. Plaintiff FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC is charged, *inter alia*, with enforcement of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair and deceptive acts or practices in or affecting commerce. The FTC is also charged with enforcement of the Telemarketing Act, 15 U.S.C. §§ 6101-6108. Pursuant to the Telemarketing Act, the FTC promulgated and enforces the TSR, 16 C.F.R. Part 310, which prohibits deceptive and abusive telemarketing acts or practices. The FTC is also charged with the enforcement of the Unordered Merchandise Statute, 39 U.S.C. § 3009. 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 restitution and disgorgement. 15 U.S.C. §§ 53(b), 57b, 6102(c), and 6105(b).

DEFENDANTS

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

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

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

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

9. Defendant Robyn Mayhan is the president and CEO of HH, USBS, EOA, and TSE, as well as the sole owner and director of HH, USBS, EOA and TSE. In connection with the matters alleged herein, Mayhan resides or has transacted business in this District. At all times material to this complaint, acting alone or in concert with others, Mayhan has formulated, directed, controlled, or

participated in the acts and practices of defendants HH, USBS, EOA and TSE, including the acts and practices set forth in this complaint.

COMMON ENTERPRISE

10. HH, USBS, EOA and TSE (or "corporate defendants") have operated together as a common enterprise while engaging in the 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, and business functions. Individual defendant Mayhan has formulated, directed, and/or controlled, or had authority to control, or participated in the acts and practices of the corporate defendants that comprise the common enterprise.

DEFENDANTS' BUSINESS PRACTICES

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

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

13. At all times relevant 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VIOLATIONS OF SECTION 5 OF THE FTC ACT

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

Count 1

Misrepresentation of Charitable Connection

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

a. all or most persons employed by defendants are handicapped or disabled;

b. the person soliciting the purchase is handicapped or disabled;

c. defendants' products are packaged by the handicapped or disabled; and/or

d. defendants operate a charitable organization.

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

a. only a small minority, if any, of defendants' employees are handicapped or disabled;

b. the person soliciting the purchase is not handicapped or disabled;

c. defendants' products are not packaged by the handicapped or disabled; and/or

d. defendants do not operate a charitable organization.

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

Count 2

Misrepresentation That Consumer Ordered Product

32. In numerous instances, in connection with the marketing of various consumer products, or in the course of billing, attempting to collect, or collecting money from consumers for such products, Defendants represent, directly or indirectly, expressly or by implication, that consumers have ordered and/or agreed to purchase one or more products from the defendants, and therefore owe money to defendants.

33. In truth and in fact, in numerous instances when this representation has been made, the consumers have not ordered, purchased, or agreed to purchase products from defendants, and therefore do not owe money to defendants.

34. Therefore, defendants' representation as set forth in Paragraph 32 is false and misleading and 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 UNORDERED MERCHANDISE STATUTE

35. The Unordered Merchandise Statute, 39 U.S.C. § 3009, generally prohibits shipping 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.

36. Pursuant to Section (a) of the Unordered Merchandise Statute, 39 U.S.C. § 3009, 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 3

Mailing and Billing for Unordered Merchandise

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

38. In numerous instances, in connection with the marketing of various consumer products, defendants have mailed to recipients of such consumer products one or more bills for such products or dunning communications, thereby

violating Sections (a) and (c) of the Unordered Merchandise Statute, 39 U.S.C. § 3009(a) and (c).

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

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

40. 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. On August 16, 1995, the FTC adopted the Telemarketing Sales Rule (the "Original TSR"), 16 C.F.R. Part 310, which became effective on December 31, 1995. On January 29, 2003, the FTC amended the Original TSR by issuing a Statement of Basis and Purpose and the final amended Telemarketing Sales Rule (the "TSR"). 68 Fed. Reg. 4580, 4669.

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

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

transaction and the customer's receipt of all of the following information, among other information:

a. the number of debits, charges, or payments (if more than one);

b. the date(s) the debit(s), charge(s), or payment(s) will be submitted for payment;

c. the amount(s) of the debit(s), charge(s), or payment(s);

d. a telephone number for customer inquiry that is answered during normal business hours; and

e. the date of the customer's oral authorization. 16 C.F.R. § 310.3(a)(3)(ii)

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

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

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

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

47. On or after September 2, 2003, the FTC allowed sellers, telemarketers, and other permitted organizations to access the Registry over the Internet at www.telemarketing.donotcall.gov, pay the required fees, and download the registered numbers by area code.

48. Since October 17, 2003, sellers and telemarketers subject to the FTC's jurisdiction have been prohibited from calling numbers on the Registry in violation of the TSR. 16 C.F.R. § 310.4(b)(1)(iii)(B).

49. Since December 31, 1995, sellers and telemarketers have been prohibited from initiating an outbound telephone call to any person when that person previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered or made on behalf of the charitable organization for which a charitable contribution is being solicited. 16 C.F.R. § 310.4(b)(1)(iii)(A).

50. Since October 17, 2003, sellers and telemarketers have been generally prohibited from calling any telephone number within a given area code unless the seller first has paid the annual fee for access to the telephone numbers within that area code that are included in the National Do Not Call Registry. 16 C.F.R. § 310.8(a) and (b).

51. 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 4

Lack of Express Verifiable Authorization

52. In numerous instances, in connection with telemarketing various consumer products, defendants have caused billing information to be submitted for payment using a payment method other than a credit card subject to the protections

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

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

<u>Count 5</u>

Misrepresentations to Induce Payment

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

a. all or most persons employed by defendants are handicapped or disabled;

b. the person soliciting the purchase is handicapped or disabled;

c. defendants' products are packaged by the handicapped or disabled; and/or

d. defendants operate a charitable organization.

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

<u>Count 6</u>

Abusive Repeated Calling

56. In numerous instances, in the course of telemarketing goods or services, defendants have caused consumers' telephones to ring repeatedly, and/or

have engaged consumers repeatedly in telephone conversations, with the intent to annoy, abuse, or harass persons at the called number.

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

Count 7

Calling Telephone Numbers on the National Do Not Call Registry

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

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

Count 8

Ignoring Entity-Specific Do Not Call Requests

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

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

Count 9

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

62. In numerous instances since October 17, 2003, in the course of telemarketing goods or services, defendants have initiated, or caused others to

initiate, an outbound telephone call to a telephone number within a given area code without defendants, either directly or through another person, first paying the annual fee required for access to the telephone numbers within that area code that are included in the National Do Not Call Registry.

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

CONSUMER INJURY

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

THIS COURT'S POWER TO GRANT RELIEF

65. 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 the FTC Act. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission of contracts and restitution, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

66. 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 or other persons resulting from defendants' violations of the TSR, including the rescission and reformation of contracts, and the refund of money.

PRAYER FOR RELIEF

Wherefore, plaintiff Federal Trade Commission, pursuant to Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), 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, an order freezing assets, immediate access, and the appointment of a receiver;

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,

WILLIAM BLUMENTHAL
General Counsel

Dated: May 12, 2008

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FEDERAL TRADE COMMISSION