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CENTRAL DISTRICT OF CALIF.

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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12
13 FEDERAL TRADE COMMISSION,)
14 Plaintiff,)

15 v.)

16 USS ELDER ENTERPRISES, INC., a)
California corporation, d/b/a)
17 SALOMON PRESS FINANCIAL)
PUBLICATIONS, SALOMON PRESS,)
18 EDITORIAL SALOMON, COMPANIA)
AMERICANA, COMPANIAS)
19 AMERICANAS, and ESCRITORIO)
PUBLICO INTERNACIONAL,)

20 AMERICA VESPUCIA CORPORATION,)
21 a California corporation,)
d/b/a SALOMON PRESS FINANCIAL)
22 PUBLICATIONS, SALOMON PRESS,)
EDITORIAL SALOMON, COMPANIA)
23 AMERICANA, COMPANIAS)
AMERICANAS, and ESCRITORIO)
24 PUBLICO INTERNACIONAL,)

25 RICARDO ELDER PARTNERS, INC.,)
a California corporation,)
26 d/b/a ESCRITORIO PUBLICO)
INTERNACIONAL, and)

27 RICARDO E. GONZALEZ, a/k/a)
28 RICARDO ELDER, individually,)

SA^{CV}-04-1039 AHS (AN/c)

COMPLAINT FOR
INJUNCTIVE AND OTHER
EQUITABLE RELIEF

1 as an officer of USS ELDER)
 ENTERPRISES, INC., as an)
 2 officer of AMERICA VESPUCIA)
 CORPORATION, and as an)
 3 officer of RICARDO ELDER)
 PARTNERS, INC., and d/b/a)
 4 SALOMON PRESS FINANCIAL)
 PUBLICATIONS, SALOMON PRESS,)
 5 EDITORIAL SALOMON, COMPANIA)
 AMERICANA, COMPANIAS)
 6 AMERICANAS, and ESCRITORIO)
 PUBLICO INTERNACIONAL,)
 7)
 Defendants.)
 8)

9 Plaintiff, the Federal Trade Commission ("FTC" or
 10 "Commission"), for its complaint alleges:

11 1. Plaintiff FTC brings this action under Sections 13(b) and 19
 12 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§
 13 53(b) and 57(b), and the Telemarketing and Consumer Fraud
 14 and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. §
 15 6101 et seq., to secure a permanent injunction, rescission
 16 of contracts and restitution, disgorgement of ill-gotten
 17 gains, and other equitable relief against the Defendants for
 18 engaging in deceptive acts or practices in connection with
 19 the advertising, marketing and sale of work-at-home business
 20 opportunities in violation of Section 5(a) of the FTC Act,
 21 15 U.S.C. § 45(a), and the FTC's Telemarketing Sales Rule
 22 ("TSR"), 16 C.F.R. Part 310.

23 JURISDICTION AND VENUE

24 2. Subject matter jurisdiction is conferred upon this Court by
 25 15 U.S.C. §§45(a) and 53(b) and 28 U.S.C. §§ 1331, 1337(a),
 26 and 1345.
 27
 28

1 3. Venue in the United States District Court for the Central
2 District of California is proper under 15 U.S.C. § 53(b) and
3 28 U.S.C. §§ 1391(b) and (c).

4 PLAINTIFF

5 4. Plaintiff FTC is an independent agency of the United States
6 Government created by statute. 15 U.S.C. §§ 41 - 58, as
7 amended. The Commission is charged, *inter alia*, with
8 enforcement of Section 5(a) of the FTC Act, 15 U.S.C. §
9 45(a), which prohibits unfair or deceptive acts or practices
10 in or affecting commerce. The Commission also enforces the
11 TSR, 16 C.F.R. Part 310, which prohibits deceptive or
12 abusive telemarketing acts or practices. The Commission is
13 authorized to initiate federal district court proceedings,
14 by its own attorneys, to enjoin violations of the FTC Act
15 and the TSR, and to secure such equitable relief as may be
16 appropriate in each case, including restitution for injured
17 consumers. 15 U.S.C. §§ 53(b), 57(b), 6102(c), and 6105(b).

18 DEFENDANTS

19 5. Defendant USS Elder Enterprises, Inc. ("Elder") is a
20 California corporation with its principal place of business
21 at 124 West 4th Street, Los Angeles, CA 90013. Elder
22 transacts or has transacted business in the Central District
23 of California. Elder also does business as Salomon Press
24 Financial Publications, Salomon Press, Editorial Salomon,
25 Compania Americana, Companias Americanas, and Escritorio
26 Publico Internacional.

- 1 6. Defendant **America Vespucia Corporation** ("America") is a
2 California corporation with its principal place of business
3 at 124 West 4th Street, Los Angeles, CA 90013. America
4 transacts or has transacted business in the Central District
5 of California. America also does business as Salomon Press
6 Financial Publications, Salomon Press, Editorial Salomon,
7 Compania Americana, Companias Americanas, and Escritorio
8 Publico Internacional.
- 9 7. Defendant **Ricardo Elder Partners, Inc.** ("Ricardo") is a
10 California corporation with its principal place of business
11 at 838 North Van Ness Avenue, Santa Ana, CA 92701. Ricardo
12 transacts or has transacted business in the Central District
13 of California. Ricardo also does business as Escritorio
14 Publico Internacional.
- 15 8. Defendant **Ricardo E. Gonzalez a/k/a Ricardo Elder** is the
16 president of Elder, America, and Ricardo. At all times
17 material to this complaint, acting alone or in concert with
18 others, he has formulated, directed, controlled, or
19 participated in the acts and practices of Elder, America,
20 and Ricardo. He transacts or has transacted business in the
21 Central District of California.
- 22 9. Defendants **USS Elder Enterprises, Inc.**, **America Vespucia**
23 **Corporation**, and **Ricardo Elder Partners, Inc.** share office
24 space, sell the same work-at-home business opportunities,
25 use the same advertisements, and cooperate and act in
26 concert to carry out the Defendants' business practices as
27

1 alleged herein. They constitute a common enterprise for
2 purposes of this proceeding.

3 COMMERCE

4 10. At all times relevant to this complaint, Defendants have
5 maintained a substantial course of trade in or affecting
6 commerce, as "commerce" is defined in Section 4 of the FTC
7 Act, 15 U.S.C. § 44.

8 COURSE OF CONDUCT

9 11. Since early 2000, and continuing thereafter, Defendants have
10 advertised, promoted and sold work-at-home business
11 opportunities to consumers throughout the United States,
12 specifically targeting Hispanic consumers. Defendants,
13 either directly or through third parties, use newspaper
14 classified advertisements and magazine advertisements in
15 Spanish to promote their work-at-home business
16 opportunities. The advertisements refer consumers to
17 telephone numbers for additional information. A typical
18 advertisement reads:

19 **TRABAJOS FACILES EN CASA** Haciendo Campanitas*\$120
20 Gorritos*\$460 Portaplumas*\$125 Cuadros*\$112.50
21 Guantes/\$115 Conajitos*\$700 Aretes*\$150
(714)568-5445 (213)607-1818 Usted-va-a-ganar-mas!

22 In English translation, the advertisement reads: "EASY JOBS
23 AT HOME Making Bells \$120 Caps \$460 Pen Carriers \$125
24 Frames \$112.50 Gloves \$115 Rabbits \$700 Earrings \$150
25 (714)568-5445 (213)607-1818 You're going to earn more!"

26 12. When consumers call these numbers, they are informed by
27 Defendants' representatives that the work-at-home
28

1 opportunities consist of assembling various products, such
2 as key chains or jewelry. In numerous instances, consumers
3 are told that Defendants will provide them with assembly
4 project work for pay. In other instances, consumers are
5 told that Defendants will provide them with substantial
6 assistance in obtaining assembly project work for pay.
7 Defendants' representatives tell consumers that they will
8 earn between \$112 and \$700 per week, depending on their
9 ability and the products they choose to assemble.

10 13. Defendants' representatives explain that in order to receive
11 assembly project work, consumers must pay a "start up" or
12 other fee ranging from \$50 to \$180. Defendants assure some
13 consumers that if they are not fully satisfied with
14 Defendants' work-at-home assembly projects, Defendants will
15 refund their money. Defendants promise other consumers that
16 Defendants will refund their money after a trial period.

17 14. Consumers are instructed to submit their payment only in
18 cash, by money order, or by wire transfer. In some
19 instances, Defendants' representatives personally collect
20 the money from consumers at their homes. In most instances,
21 consumers are instructed to wire their payment directly to
22 Defendants.

23 15. Although they pay Defendants' fee, consumers do not receive
24 any assembly project work or any substantial assistance in
25 obtaining assembly project work for pay. Instead, consumers
26 receive a booklet in Spanish, which contains lists of
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1 companies to contact that allegedly offer work-at-home
2 opportunities.

3 16. When consumers call Defendants to complain and request a
4 refund, they are often unable to speak with any of
5 Defendants' representatives, as they are placed on hold
6 indefinitely or their calls are disconnected. Those
7 consumers who are able to speak with Defendants'
8 representatives learn that refunds will be issued only after
9 the consumers meet numerous conditions.

10 17. Despite their efforts to meet Defendants' conditions, in
11 numerous instances, Defendants deny consumers' refund
12 requests.

13 18. In addition, consumers who attempt to contact the companies
14 listed in the booklet often learn that these companies no
15 longer exist, impose their own fees, or have no relationship
16 with Defendants.

17 VIOLATIONS OF SECTION 5 OF THE FTC ACT

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

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

24 COUNT ONE

25 21. In numerous instances, in the course of offering for sale
26 and selling work-at-home business opportunities, Defendants
27 or their employees or agents have represented, expressly or
28

1 by implication, that consumers who pay Defendants a fee will
2 obtain either assembly project work for pay or substantial
3 assistance in obtaining such work.

4 22. In truth and in fact, after paying Defendants a fee, few, if
5 any, consumers obtain assembly project work for pay or
6 substantial assistance in obtaining such work.

7 23. Therefore, the representation set forth in Paragraph 21 is
8 false and misleading and constitutes a deceptive act or
9 practice in violation of Section 5(a) of the FTC Act, 15
10 U.S.C. § 45(a).

11 **COUNT TWO**

12 24. In numerous instances, in the course of offering for sale
13 and selling work-at-home business opportunities, Defendants
14 or their employees or agents have represented, expressly or
15 by implication, that consumers who pay Defendants a fee are
16 likely to earn a substantial level of earnings, such as \$112
17 to \$700 per week, assembling products at home.

18 25. In truth and in fact, after paying Defendants a fee, few, if
19 any, consumers are likely to earn a substantial level of
20 earnings, such as \$112 to \$700 per week, assembling products
21 at home.

22 26. Therefore, the representation in Paragraph 24 is false and
23 misleading and constitutes a deceptive act or practice in
24 violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

25 **COUNT THREE**

26 27. In numerous instances, in the course of offering for sale
27 and selling work-at-home business opportunities, Defendants
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1 or their employees or agents have represented, expressly or
2 by implication, that they will provide refunds to consumers.

3 28. In truth and in fact, in numerous instances, Defendants do
4 not provide refunds to consumers.

5 29. Therefore, the representation set forth in Paragraph 27 is
6 false and misleading and constitutes a deceptive act or
7 practice in violation of Section 5(a) of the FTC Act, 15
8 U.S.C. § 45(a).

9 THE FTC'S TELEMARKETING SALES RULE

10 30. In 1994, Congress directed the FTC to prescribe rules
11 prohibiting abusive and deceptive telemarketing acts or
12 practices pursuant to the Telemarketing Act, 15 U.S.C.
13 §§ 6101-6108. On August 16, 1995, the FTC adopted the TSR,
14 16 C.F.R. Part 310, which became effective on December 31,
15 1995. On January 29, 2003, the FTC amended the TSR by
16 issuing a Statement of Basis and Purpose and the final
17 amended TSR. 68 Fed. Reg. 4580, 4669. Except for specific
18 provisions not alleged in this action, the amended TSR
19 became effective March 31, 2003.

20 31. On or after December 31, 1995, the TSR prohibits
21 telemarketers and sellers from misrepresenting, directly or
22 by implication, in the sale of goods or services, any
23 material aspect of the performance, efficacy, nature, or
24 central characteristics of goods or services that are the
25 subject of a sales offer. 16 C.F.R. § 310.3(a)(2)(iii).

26 32. On or after December 31, 1995, The TSR also prohibits
27 telemarketers and sellers from misrepresenting any material
28

1 aspect of the nature or terms of the seller's refund,
2 cancellation, exchange, or repurchase policies. 16 C.F.R.
3 § 310.3(a)(2)(iv).

4 33. On or after December 31, 1995, except for certain specified
5 types of transactions, the TSR exempted from the scope of
6 the TSR telephone calls initiated by a customer in response
7 to an advertisement through any media, other than direct
8 mail solicitations. 16 C.F.R. § 310.6(e). On or after
9 March 31, 2003, the amended TSR modified Section 310.6(e)
10 (now renumbered as Section 310.6(b)(5)) to also exclude from
11 this exemption telephone calls initiated by a customer in
12 response to an advertisement relating to business
13 opportunities other than business arrangements covered by
14 the Franchise Rule, 16 C.F.R. Part 436. 16 C.F.R.
15 § 310.6(b)(5).

16 34. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C.
17 § 6102(c), and Section 18(d)(3) of the FTC Act, 15 U.S.C. §
18 57a(d)(3), violations of the TSR constitute unfair or
19 deceptive acts or practices in or affecting commerce, in
20 violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

21 35. Defendants are "sellers" or "telemarketers" engaged in
22 "telemarketing," as those terms are defined in the FTC
23 Telemarketing Sales Rule. 16 C.F.R. §§ 310.2(z), (bb) &
24 (cc). Defendants' work-at-home business opportunity is not
25 a business arrangement covered by the Franchise Rule, 16
26 C.F.R. Part 436.

1 VIOLATIONS OF THE TELEMARKETING SALES RULE

2 COUNT FOUR

3 36. In numerous instances, in the course of offering for sale and
4 selling work-at-home business opportunities through
5 telemarketing, Defendants or their employees or agents have
6 misrepresented, directly or by implication, material aspects
7 of the performance, efficacy, nature, or central
8 characteristics of goods or services including, but not
9 limited to the misrepresentations that: (i) consumers who pay
10 Defendants a fee will obtain assembly project work for pay or
11 substantial assistance in obtaining such work; and (ii)
12 consumers who pay Defendants a fee are likely to earn a
13 substantial level of earnings, such as \$112.50 to \$700 per
14 week, assembling products at home.

15 37. Defendants have thereby violated Section 310.3(a)(2)(iii) of
16 the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(2)(iii).

17 COUNT FIVE

18 38. In numerous instances, in the course of offering for sale and
19 selling work-at-home business opportunities, Defendants or
20 their employees or agents have misrepresented, directly or by
21 implication, that they will provide refunds to consumers.

22 39. Defendants have thereby violated Section 310.3(a)(2)(iv) of
23 the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(2)(iv).

24 CONSUMER INJURY

25 40. Consumers throughout the United States have suffered, and
26 continue to suffer, substantial monetary loss as a result of
27 Defendants' unlawful acts and practices. In addition,
28

1 Defendants have been unjustly enriched as a result of their
2 unlawful acts and practices. Absent injunctive relief by
3 this Court, Defendants are likely to continue to injure
4 consumers, reap unjust enrichment, and harm the public
5 interest.

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

7 41. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers
8 this Court to grant injunctive and such other relief as the
9 Court may deem appropriate to halt and redress violations of
10 the FTC Act. The Court, in the exercise of its equitable
11 jurisdiction, may award other ancillary relief, including but
12 not limited to, rescission of contracts and restitution, and
13 the disgorgement of ill-gotten gains, to prevent and remedy
14 injury caused by Defendants' law violations.

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

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff FTC, pursuant to Sections 13(b) and 19
24 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, Section 6(b) of the
25 Telemarketing Act, 15 U.S.C. § 6105(b), and the Court's own
26 equitable powers, requests that the Court:
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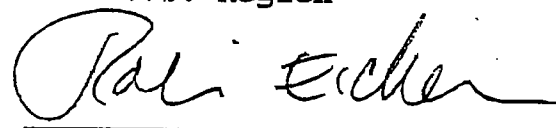
- 1 1. Award Plaintiff such preliminary injunctive and ancillary
- 2 relief as may be necessary to avert the likelihood of
- 3 consumer injury during the pendency of this action and to
- 4 preserve the possibility of effective final relief, including
- 5 but not limited to, a preliminary injunction, and an order
- 6 freezing assets;
- 7 2. Permanently enjoin Defendants from violating the FTC Act and
- 8 the Telemarketing Sales Rule, as alleged herein;
- 9 3. Award such equitable relief as the Court finds necessary to
- 10 redress injury to consumers resulting from the Defendants'
- 11 violations of Section 5(a) of the FTC Act and the
- 12 Telemarketing Sales Rule, including but not limited to,
- 13 rescission of contracts and restitution, and the disgorgement
- 14 of ill-gotten gains by the Defendants; and
- 15 4. Award Plaintiff the costs of bringing this action, as well as
- 16 such other and additional relief as the Court may determine
- 17 to be just and proper.

18
19 Dated: August 27, 2004

Respectfully Submitted,

20
21 WILLIAM E. KOVACIC
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22 BARBARA ANTHONY
23 Regional Director
24 Northeast Region

25 

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