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14 **UNITED STATES DISTRICT COURT**
DISTRICT OF NEVADA

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16 FEDERAL TRADE COMMISSION,

17 Plaintiff,

18 v.

19 PUBLISHERS BUSINESS SERVICES, INC.,
a corporation; ED DANTUMA
20 ENTERPRISES, INC., a corporation, also dba
21 PUBLISHERS DIRECT SERVICES and
PUBLISHERS BUSINESS SERVICES;
22 PERSIS DANTUMA; EDWARD
DANTUMA; BRENDA DANTUMA
23 SCHANG; DRIES DANTUMA; DIRK
DANTUMA; AND JEFFREY DANTUMA,
24 individually and as officers, directors, or
managers of Publishers Business Services,
25 Inc., or Ed Dantuma Enterprises, Inc.,

26 Defendants.
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Case no. 2:08-cv-00620-PMP-PAL

AMENDED 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,
19 15 U.S.C. §§ 6101-6108. Pursuant to the Telemarketing Act, the FTC promulgated and enforces
20 the 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.

1 6. **Defendant Ed Dantuma Enterprises, Inc.**, also doing business as “Publishers
2 Direct Services” and “Publishers Business Services,” is a Delaware corporation. Its principal place
3 of business is at 217 North Westmonte Drive, Altamonte Springs, Florida. Through its
4 participation in a common enterprise with Defendant Publishers Business Services, Inc., Ed
5 Dantuma Enterprises transacts or has transacted business in the District of Nevada.

6 7. **Defendant Persis Dantuma** is the sole officer and director of Publishers Business
7 Services. She is also the vice president of Ed Dantuma Enterprises. In connection with the matters
8 alleged herein, Persis Dantuma transacts or has transacted business in the District of Nevada. At
9 all times material to this complaint, acting alone or in concert with others, Persis Dantuma has
10 formulated, directed, controlled, had authority to control, or participated in the acts and practices of
11 Publishers Business Services and Ed Dantuma Enterprises, including the acts and practices set
12 forth in this complaint.

13 8. **Defendant Edward Dantuma** is the president of Ed Dantuma Enterprises. In
14 connection with the matters alleged herein, Edward Dantuma transacts or has transacted business
15 in the District of Nevada. At all times material to this complaint, acting alone or in concert with
16 others, Edward Dantuma has formulated, directed, controlled, had authority to control, or
17 participated in the acts and practices of Publishers Business Services and Ed Dantuma Enterprises,
18 including the acts and practices set forth in this complaint.

19 9. **Defendant Brenda Dantuma Schang** is a director and manager of Ed Dantuma
20 Enterprises. In connection with the matters alleged herein, Brenda Dantuma Schang transacts or
21 has transacted business in the District of Nevada. At all times material to this complaint, acting
22 alone or in concert with others, Brenda Dantuma Schang has formulated, directed, controlled, had
23 authority to control, or participated in the acts and practices of Publishers Business Services and
24 Ed Dantuma Enterprises, including the acts and practices set forth in this complaint.

25 10. **Defendant Dries Dantuma** is a director and manager of Ed Dantuma Enterprises.
26 In connection with the matters alleged herein, Dries Dantuma transacts or has transacted business
27 in the District of Nevada. At all times material to this complaint, acting alone or in concert with
28 others, Dries Dantuma has formulated, directed, controlled, had authority to control, or participated

1 in the acts and practices of Publishers Business Services and Ed Dantuma Enterprises, including
2 the acts and practices set forth in this complaint.

3 11. **Defendant Dirk Dantuma** is a director and manager of Ed Dantuma Enterprises.
4 In connection with the matters alleged herein, Dirk Dantuma transacts or has transacted business in
5 the District of Nevada. At all times material to this complaint, acting alone or in concert with
6 others, Dirk Dantuma has formulated, directed, controlled, had authority to control, or participated
7 in the acts and practices of Publishers Business Services and Ed Dantuma Enterprises, including
8 the acts and practices set forth in this complaint.

9 12. **Defendant Jeffrey Dantuma** is a director and manager of Ed Dantuma Enterprises.
10 In connection with the matters alleged herein, Jeffrey Dantuma transacts or has transacted business
11 in the District of Nevada. At all times material to this complaint, acting alone or in concert with
12 others, Jeffrey Dantuma has formulated, directed, controlled, had authority to control, or
13 participated in the acts and practices of Publishers Business Services and Ed Dantuma Enterprises,
14 including the acts and practices set forth in this complaint.

15 **COMMON ENTERPRISE**

16 13. Defendants Publishers Business Services and Ed Dantuma Enterprises (“Corporate
17 Defendants”) have operated together as a common enterprise while engaging in the acts and
18 practices alleged below. Defendants have conducted the business practices described below
19 through an interrelated network of companies that have common ownership, officers, managers,
20 and business functions. Defendants Persis Dantuma, Edward Dantuma, Brenda Dantuma Schang,
21 Dries Dantuma, Dirk Dantuma, and Jeffrey Dantuma have formulated, directed, and/or controlled
22 or had authority to control, or participated in the acts and practices of the Corporate Defendants
23 that comprise the common enterprise.

24 **DEFENDANTS’ COURSE OF BUSINESS**

25 14. Defendants are sellers of magazine subscriptions to consumers. Defendants are also
26 telemarketers that initiate outbound telephone calls to consumers in the United States to induce the
27 purchase of Defendants’ magazine subscriptions.

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

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

7 17. Defendants are magazine subscription agents. They have contracts with magazine
8 publishers that authorize them to solicit subscriptions on behalf of the publishers and to submit
9 those subscriptions to the publishers’ subscription departments or fulfillment agents for processing.

10 18. Defendants’ typical method of contacting consumers is to call small businesses and
11 engage whoever answers the phone. In many cases, the pitch starts with an invitation to take part
12 in a short survey. At the end of the survey, Defendants offer consumers a gift of some magazines
13 to thank them for their time. Defendants either do not disclose any cost for accepting this “gift” or
14 state that the only cost is a nominal weekly or monthly fee, often described as a shipping and
15 handling fee. When consumers agree to receive the magazines, Defendants ask for their home
16 address so that Defendants can have the magazines shipped to them. In other cases, Defendants
17 offer magazine subscriptions for sale. In those cases, Defendants fail to disclose the total cost of
18 the subscriptions and sometimes represent that the consumers can decide whether to accept the
19 offer after reviewing written information that Defendants will send.

20 19. Defendants typically follow the initial call with one or more calls to the consumer,
21 the purpose of which the initial telemarketer describes to the consumer as being to confirm the
22 consumer’s address and the terms discussed in the initial call. In these follow-up calls, Defendants
23 attempt to commit the consumer to new contract terms which are materially different from the ones
24 presented in the initial call, including but not limited to the fact that the subscriptions that the
25 consumer is agreeing to receive are long-term subscriptions which may not be cancelled. In many
26 instances, the new contract terms are so confusingly or unintelligibly presented that the consumer
27 continues to have the impression, formed in the initial telemarketing call, that the magazines are
28 free, that the magazines will be purchased for a nominal price, or that the consumer can consider

1 the offer after reviewing written information that Defendants will send after the verification call.
2 This follow-up call, which Defendants refer to as the “verification,” is recorded.

3 20. Defendants’ “verification” calls fail to cure their earlier representation that the
4 magazines are free or for a nominal price. Within a few weeks, consumers receive an invoice,
5 which typically lists several five-year magazine subscriptions and informs them that they must
6 make thirty monthly payments totaling \$720.

7 21. When a consumer calls Defendants to complain or cancel, Defendants point to the
8 verification recording as “proof” that the consumer agreed to pay hundreds of dollars for several
9 long-term magazine subscriptions pursuant to an oral contract which cannot be cancelled.
10 Defendants also routinely represent that the consumer may not cancel the subscriptions because
11 Defendants have already paid the magazine publishers for issuing these subscriptions.

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

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

22 **DEFENDANTS’ VIOLATIONS OF THE FTC ACT**

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

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

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

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

6 27. Therefore, Defendants' representation, as set forth in Paragraph 25 of this
7 complaint, is false or misleading and constitutes a deceptive act or practice in violation of Section
8 5(a) of the FTC Act, 15 U.S.C. § 45(a).

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

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

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

17 30. Therefore, Defendants' representation, as set forth in Paragraph 28 of this
18 complaint, is false or misleading and constitutes a deceptive act or practice in violation of Section
19 5(a) of the FTC Act, 15 U.S.C. § 45(a).

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

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

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

1 33. It is an abusive telemarketing act or practice and a violation of the TSR for a
2 telemarketer in an outbound telephone call to induce the purchase of goods or services to fail to
3 disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the
4 call, the following information, among other information: (1) the identity of the seller; (2) that the
5 purpose of the call is to sell goods or services; and (3) the nature of the goods or services.
6 16 C.F.R. § 310.4(d).

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

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

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

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

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

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

25 39. Defendants’ practice, as alleged in Paragraph 38, is an abusive telemarketing
26 practice that violates Section 310.4(d)(2) of the TSR, 16 C.F.R. § 310.4(d)(2).
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1 4. Award Plaintiff the costs of bringing this action, as well as such other and additional
2 relief as the Court may determine to be just and proper.

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4 Dated: December 17, 2008

Respectfully submitted,
WILLIAM BLUMENTHAL
General Counsel

5
6 /s/ Faye Chen Barnouw
7 FAYE CHEN BARNOUW
8 RAYMOND E. McKOWN
9 MARICELA SEGURA
10 Federal Trade Commission
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