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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION, Plaintiff, v. **FGH INTERNATIONAL CORPORATION, et al.**, Defendants.	No. CV04-8013-AHM (JWJx) **AMENDED COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF**

Plaintiff, Federal Trade Commission ("FTC"), by its undersigned attorneys, for its complaint alleges:

1. The FTC brings this action under Sections 13(b) and 19

in deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and for engaging in deceptive and abusive telemarketing acts or practices in violation of the FTC's Trade Regulation Rule entitled "Telemarketing Sales Rule" ("TSR"), 16 C.F.R. Part 310, as amended, in connection with the advertising, marketing and sale of instructional programs.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over Plaintiff's claims pursuant to 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c) and 6105(b) and 28 U.S.C. §§ 1331, 1337(a), and 1345.

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

THE PARTIES

4. Plaintiff **Federal Trade Commission** is an independent agency of the United States Government created by the FTC Act, 15 U.S.C. §§ 41 *et seq*. The FTC enforces the FTC Act, which prohibits unfair or deceptive acts or practices in or affecting commerce. The FTC also enforces the TSR, which prohibits deceptive or abusive telemarketing acts or practices. The FTC may initiate federal district court proceedings, through its attorneys, to enjoin violations of the FTC Act and the TSR, and to secure such other equitable relief, including rescission of contracts and restitution, and disgorgement of ill-gotten gains, as may be appropriate in each case. 15 U.S.C. §§ 53(b), 57b, and 6105(b).

5. Defendant **FGH International Corporation**("FGH USA") is a California company with its principal place of business in Van

10. At all times relevant to this complaint, Defendants have operated as a common enterprise to advertise, market, and sell instructional programs.

COMMERCE

11. 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.

COURSE OF CONDUCT

12. Since at least September 2001, and continuing thereafter, Defendants have promoted and sold, via telemarketing, instructional programs, purportedly to teach consumers how to speak English or become an auto mechanic, to consumers throughout the United States, specifically targeting consumers whose first language is Spanish.

13. Defendants engage in outbound telemarketing (*i.e.*, Defendants’ telemarketers initiate calls to consumers). Defendants’ telemarketers typically introduce themselves to a consumer as being affiliated with a federal or state government program. The telemarketers state that the consumer has been

telemarketers explain that the consumer can pay in installments, with the first installment (between $150 and $300) being paid as a Cash on Delivery ("COD") payment to Federal Express (who delivers the materials).

14. In most instances, regardless of whether the consumer agrees to purchase Defendants' program, a few days after the initial telephone call, Defendants send the consumer a letter stating that the materials will arrive via Federal Express COD on a specified date and the consumer is expected to remit the COD payment at the time of delivery. The materials consist of a series of videotapes, computer disks, and workbooks.

15. If a consumer refuses the Federal Express package or, prior to the material's arrival, calls Defendants to explain that he or she did not order the materials, Defendants attempt to intimidate the consumer into paying. Typically, shortly after the consumer calls or refuses the Federal Express package, Defendants' representatives, often purporting to be Defendants' attorney, call the consumer and threaten legal action if the requested amount is not paid. In some instances, Defendants' representatives threaten to report the consumer to immigration authorities for deportation if her or she does not pay the requested amount. In some instances, Defendants demand that the consumer pay the full amount of the program or, in some cases, a "discounted" price of around $300. In other instances, they demand that the consumer pay a "cancellation fee" of around $100. In many instances, consumers, fearing the threatened legal

action, submit to Defendants’ demands and wire transfer the requested amount to Defendants.

16. Since at least October 17, 2003, Defendants have called, or have caused telemarketers to call, consumers’ telephone numbers that are on the National Do Not Call Registry.

17. Defendants have not accessed the National Do Not Call Registry to download registered telephone numbers.

18. Since at least October 17, 2003, Defendants have called, or have caused telemarketers to call, telephone numbers in various area codes without first paying the annual fee for access to the telephone numbers within such area codes that are included in the National Do Not Call Registry.

THE FEDERAL TRADE COMMISSION ACT

19. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts or practices in or affecting commerce. Misrepresentations or omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

VIOLATIONS OF SECTION 5(a) OF THE FTC ACT

COUNT ONE

20. In numerous instances, in connection with the sale, offering for sale, or distribution of instructional programs, Defendants represent, expressly or by implication, that (a) they are an agency of, or affiliated with, the Federal government or a state government and (b) consumers have been selected by the government to receive subsidized training to learn English or become an auto mechanic.

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which became effective on December 31, 1995. On January 29, 2003, the FTC amended the TSR by issuing a Statement of Basis and Purpose and the final amended TSR. 68 Fed. Reg. 4580, 4669. 1dm4580, 4669

COUNT SEVEN

44. Since at least October 17, 2003, in numerous instances, in the course of offering for sale and selling instructional programs through telemarketing, Defendants have initiated, or caused others to initiate, an outbound telephone call to a telephone number within a given area code without the required annual fee having been paid for access to the telephone numbers within that area code that are included in the National Do Not Call Registry.

45. Defendants have thereby violated Section 310.8 of the Telemarketing Sales Rule. 16 C.F.R. § 310.8.

CONSUMER INJURY

46. Consumers throughout the United States have suffered, and continue to suffer, substantial monetary loss as a result of Defendants' unlawful acts and practices. In addition, Defendants have been unjustly enriched as a result of their unlawful acts and 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

47. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant a permanent injunction, rescission of contracts and restitution, disgorgement of ill-gotten gains, and other equitable relief to prevent and remedy any violations of any provision of law enforced by the FTC.

48. 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