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15 For Plaintiff Federal Trade Commission

16 UNITED STATES DISTRICT COURT  
17 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
18 SAN FRANCISCO DIVISION

MEJ

C 03 - 2139

19 FEDERAL TRADE COMMISSION, )  
20 )  
21 Plaintiff, )  
22 )  
23 v. )  
24 )  
25 KEN CHASE )  
26 d/b/a Free Do Not Call List.org )  
27 and d/b/a National Do Not Call List.US, )  
28 Defendant. )

29 COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF

30 Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), for its Complaint  
31 alleges:

- 32 1. The FTC brings this action under Sections 5(a) and 13(b) of the FTC Act, 15

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NORTHERN DISTRICT OF CALIFORNIA  
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1 U.S.C. §§ 45(a) and 53(b), to obtain temporary, preliminary, and permanent injunctive relief,  
2 rescission of contracts, restitution, disgorgement, and other equitable relief for the Defendant's  
3 violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).  
4

#### 5 JURISDICTION

6 2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.  
7 §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 53(b) and 57b. This action arises under 15 U.S.C.  
8 § 45(a)(1).  
9

#### 10 VENUE

11 3. Venue in the United States District Court for the Northern District of California is  
12 proper under 28 U.S.C. §§ 1391(b), and 15 U.S.C. § 53(b).  
13

#### 14 INTRADISTRICT ASSIGNMENT

15 4. A substantial portion of the events that give rise to the claims asserted in this  
16 matter occurred in Marin County, California. Therefore, this case should be assigned to the San  
17 Francisco or Oakland Division of this Court.  
18

#### 19 THE PARTIES

20 5. Plaintiff, the FTC, is an independent agency of the United States Government  
21 created by statute. 15 U.S.C. §§ 41 *et seq.* The Commission is charged, *inter alia*, with  
22 enforcement of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or  
23 deceptive acts or practices in or affecting commerce, as well as with enforcement of the  
24 Telemarketing Sales Rule, 16 C.F.R. § 310. The Commission is authorized to initiate federal  
25 district court proceedings; by its own attorneys, to enjoin violations of the FTC Act in order to  
26 secure such equitable relief as may be appropriate in each case, and to obtain consumer redress.  
27 15 U.S.C. §§ 53(b) and 57b.  
28



1 FTC's jurisdiction will be potentially subject to civil penalties of up to \$11,000 for each call they  
2 make to consumers whose phone numbers are on the FTC Registry. See 15 U.S.C. §  
3 45(m)(1)(a), as modified by 28 U.S.C. 2461 & 1.98(d) of the FTC Rules of Practice, 16 CFR  
4 1.98(d); and 15 U.S.C. § 6102(c).  
5

6 11. In the course of the FTC's rulemaking, more than 44,000 commenters expressed  
7 support for the creation of a National Do Not Call Registry.

8 12. Some commenters suggested that third party registration could lead to abusive  
9 practices, such as companies deceptively offering to add consumers telephone numbers to the  
10 FTC Registry for a fee.  
11

12 13. In its Statement of Basis and Purpose, the Commission determined that third party  
13 registration should not be permitted. Indeed, the FTC has designed procedures to ensure that  
14 telephone numbers are not entered in bulk into the National Do Not Call Registry. See 68 Fed.  
15 Reg. 4580 at 4639 (Jan. 29, 2003).  
16

17 14. The only exceptions the Commission made to the prohibition on third party  
18 registration were to agree to add to the FTC's National Do Not Call Registry lists of subscribers  
19 compiled by state governments pursuant to state do-not-call laws, in order to harmonize federal  
20 and state do not call laws, and to offer to include in the FTC Registry the established do not call  
21 list maintained by the Direct Marketing Association. *Id.* at 4641.  
22

23 15. Despite the fact that the FTC has made clear that it will prevent other third parties  
24 from placing consumers' phone numbers on the FTC's National Do Not Call Registry, the  
25 Defendant Kenneth Chase represents that Free Do Not Call List.org and National Do Not Call  
26 List.US will arrange for consumers' phone numbers to be placed on the FTC's Do Not Call  
27 Registry.  
28

1           16.     Since at least March 2003, and continuing thereafter, through the website  
2 www.free-do-not-call-list.org, Defendant Kenneth Chase d/b/a Free Do Not Call List.org has  
3 represented that consumers can “preregister for the proposed FTC Do Not Call List” by  
4 providing d/b/a Free Do Not Call List.org with their personal identifying information.  
5

6           17.     Consumers who attempt to preregister for the FTC’s Do Not Call Registry  
7 through Free Do Not Call List.org’s website receive email from Free Do Not Call List.org which  
8 says:

9           Your pre-registration has been received for the FTC’s National Do Not Call list.

10           Your information will be transmitted to the FTC as soon as the list becomes  
11 available, proposed for the last quarter of 2003.

12           18.     Through Free Do Not Call List.org’s website, consumers can request that Free Do  
13 Not Call List.org send email information to other consumers. The email that Free Do Not Call  
14 List sends out says:

15           If you are interested in signing up for the Federal Trade Commission’s National Do Not Call  
16 List, I’ve found this website where you can pre-register and its FREE!

17           They will automatically get your name included on the National Do Not Call LIST when it is  
18 activated so that you can be one of the first on the list.

19           19.     The Free Do Not Call List.org website also directs consumers who want to stop  
20 receiving telemarketing to what it describes as “the Active list” at www.national-do-not-call-  
21 list.us.

22           20.     Since at least January 2003, and continuing thereafter, through the website,  
23 www.national-do-not-call-list.us, the Defendant Kenneth Chase has represented that by  
24 subscribing to National Do Not Call List.US’s service, consumers can stop receiving  
25 telemarketing calls, junk faxes and junk email.  
26  
27  
28



1 National Do Not Call Registry.

2 28. In truth and in fact, the Defendant cannot arrange for consumers' phone numbers  
3 to be placed on the FTC's National Do Not Call Registry.

4 29. Therefore, the Defendant's representations as set forth in Paragraph 27 are false  
5 and misleading and constitute a deceptive act or practice in violation of Section 5(a) of the FTC  
6 Act, 15 U.S.C. § 45(a).

8 **CONSUMER INJURY**

9 30. Consumers nationwide have suffered or will suffer substantial injury as a result of  
10 the Defendant's violations of Section 5(a) of the FTC Act. Absent injunctive relief by this Court,  
11 the Defendant is likely to continue to injure consumers and harm the public interest.

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

14 31. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant  
15 injunctive and other ancillary relief, including consumer redress, disgorgement and restitution, to  
16 prevent and remedy any violations of any provision of law enforced by the Federal Trade  
17 Commission.

18 32. This Court, in the exercise of its equitable jurisdiction, may award ancillary relief  
19 to remedy injury caused by the defendants' law violations.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, the plaintiff requests that this Court, as authorized by Sections 13(b) and  
23 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and pursuant to its own equitable powers:

24 1. Award the plaintiff such preliminary injunctive and ancillary relief, including a  
25 temporary restraining order, as may be necessary to avert the likelihood of consumer injury  
26 during the pendency of this action, and to preserve the possibility of effective final relief;  
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2. Permanently enjoin the Defendant from violating the FTC Act;

3. Award such relief as the Court finds necessary to redress injury to consumers resulting from the Defendant's violations of the FTC Act, including but not limited to, rescission of contracts, the refund of monies paid, and the disgorgement of ill-gotten gains by the Defendant; and

4. 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,

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