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12  
13 UNITED STATES DISTRICT COURT  
14 CENTRAL DISTRICT OF CALIFORNIA

15 FEDERAL TRADE COMMISSION,

16 Plaintiff,

17 v.

18 NATIONAL SUPPLY & DISTRIBUTION CENTER, INC.,  
a corporation,  
19 DATA DISTRIBUTION SERVICES, INC.,  
a corporation,  
20 STEVEN RAYMAN,  
individually and as an officer of the  
21 corporate defendants,  
LARRY ELLIS, individually,  
22 LEE SIEGEL, individually, and  
SCOTT EARL, individually,

23 Defendants.

CV-99-12828  
HLH (AJWx)

SECOND AMENDED  
COMPLAINT FOR  
INJUNCTION AND  
OTHER  
EQUITABLE  
RELIEF

24  
25 Plaintiff, the Âé¶¹´«Ã½ Trade Commission ("Commission"), by  
26 its undersigned attorneys, alleges:



1 16 C.F.R. Part 310, which prohibits deceptive or abusive  
2 telemarketing practices. The Commission may initiate federal  
3 district court proceedings by its own attorneys to enjoin  
4 violations of the FTC Act and the Telemarketing Sales Rule and  
5 to secure such equitable relief as may be appropriate in each  
6 case, including restitution for injured consumers. 15 U.S.C.  
7 §§ 53(b), 57b and 6105(b).

8 **DEFENDANTS**

9 5. Defendant National Supply & Distribution Center,  
10 Inc., ("NSDC"), is a Nevada corporation with its offices and  
11 principal place of business located at 7318 Topanga Canyon  
12 Boulevard, Suite 200, Canoga Park, California. Defendant NSDC  
13 transacts or has transacted business in the Central District of  
14 California.

15 6. Defendant Data Distribution Services, Inc., ("DDS"),  
16 is a Nevada corporation with its offices and principal place of  
17 business located at 22122 Sherman Way, Suite #105, Canoga Park  
18 CA 91303. Defendant DDS transacts or has transacted business  
19 in the Central District of California.

20 7. Defendant Steven Rayman is an owner and president of  
21 NSDC and DDS. Individually or in concert with others, he has  
22 formulated, directed, controlled or participated in the acts  
23 and practices of the corporate defendants, including the  
24 various acts and practices set forth herein. He resides in, and  
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1 transacts or has transacted business in, the Central District  
2 of California.

3       8. Defendant Larry Ellis is an owner of NSDC and DDS.  
4 He is listed on the Telephonic Seller Registrations filed by  
5 NSDC and DDS with the California Attorney General's office as  
6 "an individual who will solicit" on their behalf. In his  
7 dealings with third parties on behalf of the corporations he  
8 represents, or has represented, that he is the president of DDS  
9 and general manager of both NSDC and DDS. His duties at NSDC  
10 and DDS include collections and responding to consumer  
11 complaints. Defendant Ellis exercises a degree of control over  
12 the corporate defendants equivalent to that of a corporate  
13 officer and he and defendant Siegel and defendant Rayman  
14 receive approximately equal compensation for their work on  
15 behalf of the corporations. Individually or in concert with  
16 others, he has formulated, directed, controlled or participated  
17 in the acts and practices of the corporate defendants,  
18 including the various acts and practices set forth herein. He  
19 resides in, and transacts or has transacted business in, the  
20 Central District of California.

21       9. Defendant Lee Siegel is an owner of NSDC and DDS. He  
22 is listed on the Telephonic Seller Registrations filed by NSDC  
23 and DDS with the California Attorney General's office as "an  
24 individual who will solicit" on their behalf. At various  
25 times, he represents or has represented himself as the general  
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1 manager or vice-president in charge of sales of NSDC or DDS.  
2 He has control over the day-to-day functions of the  
3 corporations including, but not limited to, sales, marketing  
4 and operations. He is an authorized signatory on the corporate  
5 bank accounts. Defendant Siegel exercises a degree of control  
6 over the corporate defendants equivalent to that of a corporate  
7 officer and he and defendant Ellis and defendant Rayman receive  
8 approximately equal compensation for their work on behalf of  
9 the corporations. Individually or in concert with others, he  
10 has formulated, directed, controlled or participated in the  
11 acts and practices of the corporate defendants, including the  
12 various acts and practices set forth herein. He resides in,  
13 and transacts or has transacted business in, the Central  
14 District of California.

15 10. Defendant Scott Earl is a manager of NSDC and DDS.  
16 Individually or in concert with others, he has formulated,  
17 directed, controlled or participated in the acts and practices  
18 of the corporate defendants, including the various acts and  
19 practices set forth herein. He resides in, and transacts or has  
20 transacted business in, the Central District of California.

21 **COMMERCE**

22 11. At all times material hereto, defendants have been  
23 engaged in the business of offering for sale and selling,  
24 through telemarketers, nondurable office supplies, including  
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1 photocopier toner, in or affecting commerce, as "commerce" is  
2 defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

3 **DEFENDANTS' BUSINESS ACTIVITIES**

4 12. Since at least 1997 and continuing thereafter,  
5 defendants Steve Rayman, Larry Ellis, Lee Siegel, Scott Earl  
6 and NSDC have engaged in a plan, program or campaign to sell  
7 nondurable office supplies, including photocopier toner,  
8 through interstate telephone calls throughout the United  
9 States.

10 13. Since at least 1998 and continuing thereafter,  
11 defendants Steve Rayman, Larry Ellis, Lee Siegel, Scott Earl  
12 and DDS have engaged in a plan, program or campaign to sell  
13 nondurable office supplies, including photocopier toner,  
14 through interstate telephone calls throughout the United  
15 States.

16 14. Defendants, directly or through sales  
17 representatives, have contacted various organizations by  
18 telephone, and in numerous instances, have obtained by  
19 telephone the name of the person responsible for ordering  
20 office supplies, then have shipped unordered merchandise and an  
21 invoice to the organization, listing as "buyer" the name of the  
22 person responsible for ordering office supplies.

23 15. After receiving an invoice from defendants,  
24 recipients have, in numerous instances, paid the invoice,  
25 mistakenly believing that someone in their organization has  
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1 ordered supplies from defendants. The prices of defendants'  
2 products, reflected on the invoices, are substantially higher  
3 than prices for similar products available on the market.

4 16. In numerous instances, when a recipient contends it  
5 has not ordered the supplies or attempts to return the  
6 unordered supplies, defendants, directly or through their  
7 representatives, represent that the recipient has authorized  
8 the purchase and is legally obliged to pay for it and attempt  
9 to obtain payment by refusing to cancel an invoice or to accept  
10 the return of supplies unless the recipient pays a substantial  
11 "restocking" fee.

12 17. In numerous instances, defendants, directly or  
13 through sales representatives, have contacted various  
14 organizations by telephone and have represented, expressly or  
15 by implication, that (a) they are, or are associated with, the  
16 consumer's regular supplier of photocopier toner, and that (b)  
17 they are giving the consumers the opportunity to purchase toner  
18 at a special price. Often in making such calls, defendants  
19 have failed to disclose promptly and in a clear and conspicuous  
20 manner their identity or the sales purpose of the call.

21 18. In numerous instances, consumers have placed orders  
22 for toner with defendants' sales representatives, believing  
23 them to be associated with the consumers' regular suppliers of  
24 toner and believing that the price would be the same as or

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1 lower than that charged by the regular supplier in the recent  
2 past.

3 19. In numerous instances, when a recipient contends it  
4 was misled as to the identity of the supplier when it ordered  
5 the supplies or attempts to return the supplies because it was  
6 misled as to the identity of the supplier, defendants, directly  
7 or through their representatives, represent that the recipient  
8 has authorized the purchase and is legally obliged to pay for  
9 it and attempt to obtain payment by refusing to cancel an  
10 invoice or to accept the return of supplies unless the  
11 recipient pays a substantial "restocking" fee.

12 **VIOLATIONS OF SECTION 5(a) OF FTC ACT**

13 **COUNT I**

14 20. In numerous instances, in connection with the sale,  
15 offering for sale, or distribution of nondurable office  
16 supplies, including photocopier toner, defendants have  
17 represented, expressly or by implication through, *inter alia*,  
18 telephone calls, letters, invoices, packing slips and/or  
19 shipment of toner, that businesses and other entities ordered  
20 the office supplies that were shipped and/or billed to them by  
21 defendants.

22 21. In truth and in fact, businesses and other entities  
23 did not order the photocopier toner that was shipped and/or  
24 billed to them by defendants.

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1 **VIOLATIONS OF THE TELEMARKETING SALES RULE**

2 26. In the Telemarketing Act, 15 U.S.C. § 6101 *et seq.*,  
3 Congress directed the Commission to prescribe rules prohibiting  
4 deceptive and abusive telemarketing acts or practices. On  
5 August 16, 1995, the Commission promulgated the Telemarketing  
6 Sales Rule, 16 C.F.R. Part 310, with a Statement of Basis and  
7 Purpose, 60 Fed. Reg. 43842 (August 23, 1995). The  
8 Telemarketing Sales Rule became effective December 31, 1995,  
9 and since then has remained in full force and effect.

10 27. Telephone calls between a telemarketer and a business  
11 that involve the retail sale of nondurable office supplies are  
12 subject to the Telemarketing Sales Rule's prohibitions against  
13 deceptive and abusive telemarketing acts or practices.  
14 16 C.F.R. § 310.6(g). In its Statement of Basis and Purpose  
15 for the Telemarketing Sales Rule, the Commission stated that:

16 . . . the Commission's enforcement experience  
17 against deceptive telemarketers indicates that  
18 office and cleaning supplies have been by far  
19 the most significant business-to-business  
20 problem area: such telemarketing falls within  
21 the Commission's definition of deceptive  
22 telemarketing acts or practices.

23 60 Fed. Reg. 43842, 43861 (Aug. 23, 1995).

24 28. The Telemarketing Sales Rule prohibits sellers and  
25 telemarketers from making a false or misleading statement to  
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1 induce any person to pay for goods or services. 16 C.F.R.  
2 § 310.3(a)(4).

3 29. The Telemarketing Sales Rule requires telemarketers  
4 in outbound telephone calls to disclose promptly and in a clear  
5 and conspicuous manner the identity of the seller. 16 C.F.R.  
6 § 310.4(d)(1).

7 30. The Telemarketing Sales Rule also requires  
8 telemarketers in outbound telephone calls to disclose promptly  
9 and in a clear and conspicuous manner that the purpose of the  
10 call is to sell goods and services. 16 C.F.R. § 310.4(d)(2).

11 31. The Commission addressed the issue of what  
12 constitutes a "prompt" disclosure in its Statement of Basis and  
13 Purpose for the Telemarketing Sales Rule, stating that it:

14 " . . .intends that [the TSR] *not* permit  
15 the disclosure of the identity of the  
16 seller and the promotional purpose of the  
17 call at the end of the sales pitch. At a  
18 minimum . . . disclosures should be made  
19 prior to the time any substantive  
20 information about a prize, product or  
21 service is conveyed to the consumer."

22 60 Fed. Reg. 43842, 43856 (Aug. 23, 1995).

23 32. Pursuant to Section 3(c) of the Telemarketing Act,  
24 15 U.S.C. § 6102 (c), and Section 18(d)(3) of the FTC Act,  
25 15 U.S.C. § 57a(d)(3), violations of the Telemarketing Sales  
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1 Rule constitute unfair or deceptive acts or practices in or  
2 affecting commerce, in violation of Section 5(a) of the  
3 FTC Act, 15 U.S.C. § 45(a).

4 33. Defendants are "telemarketers" or "sellers" engaged  
5 in "telemarketing" as those terms are defined in the  
6 Telemarketing Sales Rule, 16 C.F.R. § 310.2(r), (t) and (u).

7 **COUNT III**

8 **FALSE AND MISLEADING STATEMENTS TO INDUCE PAYMENT**

9 34. In numerous instances, in connection with the  
10 telemarketing of nondurable office supplies, including  
11 photocopier toner, defendants have made false or misleading  
12 statements to induce the consumer to pay for photocopier toner,  
13 including, but not limited to, misrepresenting directly or by  
14 implication that (a) they are the consumer's regular supplier  
15 or that they are associated with the photocopier manufacturer;  
16 (b) the price of the photocopier toner used by the consumer is  
17 about to increase substantially; (c) they will continue  
18 charging for photocopier toner the price the consumer has been  
19 paying; (d) the consumer ordered the toner that was shipped  
20 and/or billed to the consumer by the defendants; and (e) if the  
21 consumer wants to return a shipment, the consumer has an  
22 obligation to pay a restocking fee; thereby violating 16 C.F.R.  
23 § 310.3(a)(4).

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**COUNT IV**

**FAILURE TO DISCLOSE SALES PURPOSE OF CALL**

35. In numerous instances, in connection with the telemarketing of nondurable office supplies, including photocopier toner, representatives of NSDC and DDS who call consumers say or imply that they are checking information about the consumer's photocopier machine, confirming the person who orders office supplies, verifying the consumer's standing order, or otherwise fail to disclose that the reason they are calling is to sell office supplies or wait until the end of the call to disclose its sales purpose.

36. Thus, defendants have failed to disclose promptly and in a clear and conspicuous manner to the person receiving "outbound telephone calls," as that term is defined in the Telemarketing Sales Rule, 16 C.F.R. § 310.2(n), that the purpose of the call is to sell goods, in violation of 16 C.F.R. § 310.4(d)(2).

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**COUNT V**

**FAILURE TO DISCLOSE THE IDENTITY OF THE SELLER**

37. In numerous instances, in connection with the telemarketing of nondurable office supplies, including photocopier toner, representatives of NSDC and DDS who call consumers say or imply that they are that consumer's regular supplier, that they are affiliated with the manufacturer of the consumer's photocopier, or otherwise fail to disclose their

1 affiliation with NSDC and DDS, or wait until the end of the  
2 call to disclose their identity.

3 38. Thus, in "outbound telephone calls," as that term is  
4 defined in the Telemarketing Sales Rule, 16 C.F.R. § 310.2(n),  
5 defendants have failed to disclose promptly and in a clear and  
6 conspicuous manner their identity to the person receiving the  
7 call, thereby violating 16 C.F.R. § 310.4(d)(1).

#### 8 **CONSUMER INJURY**

9 39. Consumers throughout the United States have suffered  
10 substantial monetary loss as a result of defendants' unlawful  
11 acts or practices. In addition, defendants have been unjustly  
12 enriched as a result of their unlawful practices. Absent  
13 injunctive relief by this Court, defendants are likely to  
14 continue to injure consumers and harm the public interest.

#### 15 **THIS COURT'S POWER TO GRANT RELIEF**

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

21 41. Section 19 of the FTC Act, 15 U.S.C. § 57b,  
22 authorizes this Court to award such relief as is necessary to  
23 redress the injury to consumers or others resulting from  
24 defendants' violations of the Telemarketing Sales Rule,

1 including the rescission and reformation of contracts and the  
2 refund of monies.

3 42. The Court, in the exercise of its equitable  
4 jurisdiction, may award other ancillary relief to remedy injury  
5 caused by defendants' violations.

6 **PRAYER FOR RELIEF**

7 Wherefore, Plaintiff requests that this Court, as  
8 authorized by Sections 13(b) and 19 of the FTC Act, 15 U.S.C.  
9 §§ 53(b) and 57b, and Section 6(b) of the Telemarketing and  
10 Consumer Fraud and Abuse Prevention Act, 15 U.S.C. § 6105(b),  
11 and pursuant to its own equitable powers:

12 1. Award plaintiff such temporary preliminary injunctive  
13 and ancillary relief as may be necessary to avert the  
14 likelihood of consumer injury during the pendency of this  
15 action, and to preserve the possibility of effective final  
16 relief;

17 2. Permanently enjoin the defendants from violating the  
18 Telemarketing Sales Rule and the FTC Act, as alleged herein;

19 3. Award such relief as the Court finds necessary to  
20 redress injury to consumers resulting from the defendants'  
21 violations of the Telemarketing Sales Rule and the FTC Act,  
22 including, but not limited to, rescission of contracts, the  
23 refund of monies paid, and the disgorgement of ill-gotten  
24 monies; and

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1           4.   Award plaintiff the costs of bringing this action, as  
2 well as such other and additional equitable relief as the Court  
3 may determine to be just and proper.

4   DATE: \_\_\_\_\_           Respectfully submitted,

5                                   DEBRA A. VALENTINE  
6                                   General Counsel

7                                   \_\_\_\_\_  
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