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12 **UNITED STATES DISTRICT COURT FOR THE**
13 **CENTRAL DISTRICT OF CALIFORNIA,**

14
15 CASE NO. CV 05-591 AHM (CTx)
Hon. A. Howard Matz

16 [PROPOSED]

17 AMENDED CO MPLAINT FOR
18 INJUNCTIVE AN D OTHER
19 EQUITABLE RELIEF

20
21 GROUP, INC. , a Nevada corporation;
22 TRANS-GLOBAL CONNECTION,
INC. a Nevada corporation;
23 MUSKETEER PARTNERS, INC., a
Nevada corporation;
24 FULFILLMENT OPTIONS, INC., a
Nevada corporation;
25 INTERNATIONAL ASSOCIATES
WORLDWIDE, INC. , a Delaware
corporation;
26 MAGNA DELTA, LLC, an
unincorporated entity;
27 OFFICE OPTIONS, LLC, a Nevada
limited liability company;
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1 California is proper under 28 U.S.C. §§ 1391(b) and (c), and 15 U.S.C. § 53(b).

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THE PARTIES

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4. Plaintiff, the Federal Trade Commission, is an independent a

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1 including the acts and practices set forth in this Complaint. He resides or has
2 transacted business in the Central District of California.

3 16. Defendant Shannon Holden (“Holden”) was the President, Secretary,
4 Treasurer, and Director of TGC from at least December 2003 through at least July
5 2004, and continues to hold herself out as a principal of TGC. During this period,
6 acting alone or in concert with others, Holden formulated, directed, controlled, or
7 participated in the acts and practices of TGC, including the acts and practices set
8 forth in this Complaint. She resides or has transacted business in the Central District
9 of California.

10 17. Defendant Jaime Klotthor is the President, Secretary, and Treasurer of
11 MP and the Treasurer and Director of Fulfillment. Jaime Klotthor is one of Takala’s
12 and/or Fidler's daughters. At all times material to this Complaint, acting alone or in
13 concert with others, Jaime Klotthor has formulated, directed, controlled, or
14 participated in the acts and practices of MP and Fulfillment, including the acts and
15 practices set forth in this Complaint. She resides or has transacted business in the
16 Central District of California.

17 18. Defendant Jennifer Klotthor is the President and Secretary of
18 Fulfillment. She also serves as a signatory and Bank at leaforth in this 17150.5200 0.00

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1 this Complaint, acting alone or in concert with others, Rinaldo has formulated,
2 directed, controlled, or participated in the acts and practices of WTA, including the
3 acts and practices set forth in this Complaint. He resides or has transacted business in
4 the Central District of California.

5 COMMON ENTERPRISE

6 20. Corporate defendants WTA, UTA, IMG, TGC, MP, Fulfillment, IAW,
7 Magna Delta, and Office Options have operated as a common enterprise while
8 engaging in the deceptive acts and practices and other violations of law alleged
9 below. Individual defendants Takala, Fidler, Holden, Jaime Klotthor, Jennifer
10 Klotthor, and Rinaldo have formulated, directed, controlled or had authority to
11 control, or participated in the acts and practices of the corporate defendants that
12 comprise the common enterprise.

13 COMMERCE

14 21. At all times relevant to this Complaint, the defendants have maintained a
15 substantial course of trade in the offering for sale and sale of surplus distribution
16 business ventures, in or affecting commerce, as “commerce” is defined in Section 4 of
17 the FTC Act, 15 U.S.C. § 44.

18 THE DEFENDANTS’ BUSINESS PRACTICES

19 22. Since at least 1996 and continuing thereafter, defendants have marketed
20 and sold a surplus distribution business opportunity to consumers across the nation.
21 Purchasers of the venture offered by WTA, UTA, IMG, and TGC (“WTA, et al.”) pay
22 an initial fee ranging from \$6,995 to \$7,950 to become affiliates in WTA, et al.’s
23 network of surplus brokers. Defendants represent that these affiliates, or brokers, will
24 have access to “exclusive” listings of overstocked merchandise for sale. Affiliates
25 market the surplus goods by telephone and facsimile and receive a commission on
26 any sales they make. WTA, et al. promise expert training, pre-qualified accounts, and
27 everything an affiliate needs to operate a successful surplus brokerage business.

1 23. Since at least June 2003 and continuing to the present, MP has marketed
2 and sold a business opportunity that, like the one offered by WTA, et al., involves the
3 brokerage of surplus merchandise. MP's business venture differs from that offered
4 by WTA, et al. in that MP's venture involves the brokerage of surplus merchandise
5 over the Internet.

6 24. MP promises to create and maintain for each affiliate an individualized
7 surplus goods website modeled after a website MP created called "Blowout
8 Bargains." MP represents that it will i.0000 TD(e)TjET7w 0.0000 TD(i.0000 TD(e)T 0.0

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1 industry is a profitable industry free of ups and downs and one in which the
2 “opportunities are limitless.” Defendants’ advertisements also portray the venture as
3 a foolproof, turnkey business: “Men and women of all ages, working part-time or full
4 time can be earning fees almost immediately.”

5 27. Defendants also promote their business opportunity on their company
6 websites, which claim that defendants’ venture features “the best and most unique
7 training and support program in the world.” The websites portray the surplus
8 industry as “[r]ecession-[p]roof” and “constantly expanding.” Defendants also
9 represent on their websites that eighty percent of the surplus merchandise offered
10 through the venture is “name brand, first quality” merchandise with all of the
11 manufacturers’ original warranties and guarantees. The websites promise the
12 mentoring of a trainer who earns “six figures” and who will “help you set-up every
13 aspect of the business (a foolproof) 60.00000 1.00000 0.000600 430.4400 TD07d The wo

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1 30. The promotional materials also often include a reference to *Entrepreneur*
2 *Magazine* that consumers who purchase the opportunity will earn \$103,000 annually.
3 Defendants’ brochures lure prospective purchasers with the promise that “there are no
4 limitations to your earnings” from the business opportunity.

5 31. Within a week of sending the promotional package, a sales
6 representative calls or emails the prospect to schedule an appointment for a detailed
7 presentation of the business opportunity. During this presentation, the sales
8 representative explains the basics of the surplus industry and highlights the purported
9 advantages of becoming an affiliate in the company’s network of surplus brokers.

10 32. Defendants’ sales representatives frequently make express earnings
11 claims during their sales presentations. Defendants tell potential consumers that they
12 can expect to recoup their investment in two to four months. Defendants represent
13 that there are current affiliates working part-time who earn between \$35,000 to
14 \$40,000 and full-time affiliates who earn six-figure incomes.

15 33. Defendants do not provide any support for their earnings claims made in
16 their websites, promotional materials, advertisements, or made by sales
17 representatives to potential consumers on the telephone.

18 34. Consumers who purchase defendants’ business opportunity do not earn
19 six-figure incomes per year. In fact, consumers typically lose money on their
20 investment, regardless of whether they work full-time or part-time.

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1 purchasing surplus merchandise. In the majority of other instances, consumers have
2 found that the pre-qualified businesses either had never heard of the defendants or
3 had requested that defendants' brokers refrain from contacting them in the future.

4 37. Defendant MP and its representatives promise, through written and oral
5 statements to prospective purchasers, that brokers will obtain two hundred customers
6 on their Blowout Bargains website.

7 38. In numerous instances, MP brokers failed to obtain the promised two
8 hundred customers on their Blowout Bargains website.

9 39. Defendants and their representatives represent to prospective purchasers
10 that defendants will provide all goods and services necessary for affiliates to operate
11 their surplus business venture. The promised goods include, but are not limited to,
12 hundreds of overstocked, name-brand goods that defendants store in their warehouses
13 and ship directly to surplus purchasers. The promised services include, but are not
14 limited to, training, support, and delivery of goods to surplus purchasers.

15 40. In numerous instances, defendants failed to provide the goods and
16 services promised to potential purchasers.

17 41. If, after hearing the sales representative's detailed presentations, the
18 prospect appears interested in pursuing the opportunity, the sales representative
19 provides him or her with a list of references to contact. Defendants and their
20 representatives represent to prospective purchasers that company-selected references
21 are satisfied purchasers of one of the business ventures offered by defendants. These
22 company-selected references typically tell consumers that they have purchased one of
23 the defendants' business opportunities, and are making the amount of money that
24 defendants represented they would make.

25 42. In numerous instances, the references either have not purchased the
26 specified business opportunity from defendants or have not had the type of success
27 they describe to prospective purchasers.

1 are false and misleading and constitute deceptive acts or practices in violation of
2 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

3 **COUNT IV**

4 **Misrepresentations Regarding Goods and Services Provided to Business Purchasers**

5 58. In numerous instances in the course of offering for sale and selling their
6 surplus distribution business ventures, the defendants represent, directly or indirectly,
7 expressly or by implication, that defendants provide purchasers with goods and
8 services for the operation of their businesses. The promised goods include, but are
9 not limited to, hundreds of overstocked, name-brand goods stored in defendants'
10 warehouses. The promised services include, but are not limited to, training, support,
11 and delivery of merchandise to surplus purchasers.

12 59. In truth and in fact, in numerous instances, defendants do not provide
13 purchasers with the promised goods and services for the operation of their businesses.

14 60. Therefore, the defendants' representations as set forth in Paragraph 58
15 are false and misleading and constitute deceptive acts or practices in violation of
16 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

17 **THE FRANCHISE RULE**

18 61. The business ventures sold by the defendants are franchises, as
19 "franchise" is defined in Sections 436.2(a)(1)(ii), (a)(2), and (a)(5) of the Franchise
20 Rule, 16 C.F.R. §§ 436.2(a)(1)(ii), (a)(2), and (a)(5).

21 62. The Franchise Rule requires a franchisor to provide prospective
22 franchisees with a complete and accurate basic disclosure document containing
23 twenty categories of information, including information about the owners and officers
24 of the franchisor, information about the terms and conditions under which the
25 franchise operates, the litigation history of the franchisor and its principals, and
26 information identifying existing franchisees. 16 C.F.R. § 436.1(a)(1) - (a)(20). The
27 pre-sale disclosure of this information required by the Rule enables a prospective
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1 franchisee to contact prior purchasers and take other steps to assess the potential risks
2 involved in the purchase of the franchise.

3 63. The Franchise Rule specifically prohibits franchisors from making any
4 claim or representation that contradicts information required to be disclosed pursuant
5 to Section 436.1 of the Rule. 16 C.F.R. § 436.1(f).

6 64. The Franchise Rule additionally requires that a franchisor:

- 7 (a) have a reasonable basis for any oral, written, or visual
8 earnings claim it makes, 16 C.F.R. § 436.1(b)(2), (c)(2) and
9 (e)(1);
- 10 (b) disclose, in immediate conjunction with any earnings claim
11 it makes, and in a clear and conspicuous manner, that
12 material which constitutes a reasonable basis for the
13 earnings claim is available to prospective franchisees, 16
14 C.F.R. § 436.1(b)(2) and (c)(2);
- 15 (c) provide, as prescribed by the Rule, an earnings claim
16 document containing information that constitutes a
17 reasonable basis for any earnings claim it makes, 16 C.F.R.
18 § 436.1(b) and (c); and
- 19 (d) clearly and conspicuously disclose, in immediate
20 conjunction with any generally disseminated earnings claim,
21 additional information including the number and percentage
22 of prior purchasers known by the franchisor to have
23 achieved the same or better results, 16 C.F.R. §
24 436.1(e)(3)-(4).

25 65. Pursuant to Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), and 16
26 C.F.R. § 436.1, violations of the Franchise Rule constitute unfair or deceptive acts or
27 practices in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15

1 U.S.C. § 45(a).

2 **VIOLATIONS OF THE FRANCHISE RULE**

3 **COUNT V**

4 **Basic Disclosure Violations**

5 66. In connection with the offering of franchises, as “franchise” is defined in
6 Section 436.2(a) of the Rule, the defendants violate Section 436.1(a) of the Rule and
7 Section 5(a) of the FTC Act by failing to provide prospective franchisees with
8 accurate and complete disclosure documents within the time period prescribed by the
9 Rule.

10 **COUNT VI**

11 **Earnings Disclosure Violations**

12 67. In connection with the offering of franchises, as “franchise” is defined in
13 Section 436.2(a) of the Franchise Rule, the defendants violate Sections 436.1(b)-(c)
14 of the Rule and Section 5(a) of the FTC Act by making earnings claims to prospective
15 franchisees while, *inter alia*: (1) lacking a reasonable basis for each claim at the
16 times it is made; (2) failing to disclose, in immediate conjunction with each earnings
17 claim, and in a clear and conspicuous manner, that material which constitutes a
18 reasonable basis for the claim is available to prospective franchisees; and/or (3)
19 failing to provide prospective franchisees with an earnings claim document, as
20 prescribed by the Rule.

21 **CONSUMER INJURY**

22 68. Consumers nationwide have suffered or will suffer substantial monetary
23 loss as a result of the defendants' violations of Section 5(a) of the FTC Act and the
24 Franchise Rule. Absent injunctive relief by this Court, the defendants are likely to
25 continue to injure consumers and harm the public interest.

26 **THIS COURT’S POWER TO GRANT REHEARSAL IS LIMITED TO 10% OF THE TOTAL AMOUNT OF THE JUDGMENT.**

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Dated: April 5, 2005

Respectfully submitted,
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