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13 **UNITED STATES DISTRICT COURT**

14 **DISTRICT OF NEVADA**

15 UNITED STATES OF AMERICA, )  
 )  
16 Plaintiff, ) Case No.  
 )  
17 v. )  
 )  
18 STAR SATELLITE, LLC, also doing business )  
as TENAYA MARKETING; WALTER ERIC )  
19 MYERS, individually and as an officer of )  
STAR SATELLITE LLC; )  
20 Defendants, and )  
21 )  
22 THE MYERS IRREVOCABLE TRUST, )  
CINDY MYERS and ZACHARY T. BALL in )  
their capacities as Trustees, KATIE MYERS )  
23 and M [REDACTED] M [REDACTED], )  
 )  
24 Relief Defendants. )  
 )  
25 \_\_\_\_\_ )

26 **COMPLAINT FOR CIVIL PENALTIES, PERMANENT INJUNCTION AND OTHER  
EQUITABLE RELIEF**

1 Plaintiff, the United States of America, acting upon notification and authorization to the  
2 Attorney General by the Federal Trade Commission (“FTC” or “Commission”), pursuant to  
3 Section 16(a)(1) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 56(a)(1), for its  
4 complaint alleges:

5 1. Plaintiff brings this action under Sections 5(a), 5(m)(1)(A), 13(b), 16(a) and 19 of the  
6 FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), 56(a) and 57b, and Section 6 of the  
7 Telemarketing and Consumer Fraud and Abuse Prevention Act (the “Telemarketing Act”), 15  
8 U.S.C. § 6105, to obtain monetary civil penalties, a permanent injunction, and other equitable  
9 relief from Defendants and Relief Defendants for violations of Section 5(a) of the FTC Act, 15  
10 U.S.C. § 45(a), and the FTC’s Telemarketing Sales Rule (the “TSR” or “Rule”), 16 C.F.R.  
11 Part 310, as amended by 68 Fed. Reg. 4580, 4669 (January 29, 2003).

12 **JURISDICTION AND VENUE**

13 2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331,  
14 1337(a), 1345, and 1355, and 15 U.S.C. §§ 45(m)(1)(A), 53(b), 56(a) and 57b. This action arises  
15 under 15 U.S.C. § 45(a).

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1 the Trust are Relief Defendants. The Myers Irrevocable Trust transacts or has transacted business  
2 in the District of Nevada.

3 **THE TELEMARKETING SALES RULE**

4 **AND THE NATIONAL DO NOT CALL REGISTRY**

5 7. Congress directed the FTC to prescribe rules prohibiting abusive and deceptive  
6 telemarketing acts or practices pursuant to the Telemarketing Act, 15 U.S.C. §§ 6101-6108, in  
7 1994. On August 16, 1995, the FTC adopted the Telemarketing Sales Rule (the “Original TSR”),  
8 16 C.F.R. Part 310, which became effective on December 31, 1995. On January 29, 2003, the  
9 FTC amended the TSR by issuing a Statement of Basis and Purpose (“SBP”) and the final  
10 amended TSR (the “Amended TSR”). 68 Fed. Reg. 4580, 4669.

11 8. Since October 1, 2003, sellers and telemarketers have been prohibited from abandoning  
12 any outbound telephone call in violation of the Amended TSR. 16 C.F.R. § 310.4(b)(1)(iv).

13 9. A “seller” is any person who, in connection with a telemarketing transaction, provides,  
14 offers to provide, or arranges for others to provide goods or services to the customer in exchange  
15 for consideration. 16 C.F.R. § 310.2(z).

16 10. A “telemarketer” is any person who, in connection with telemarketing, initiates or  
17 receives telephone calls to or from a customer or donor. 16 C.F.R. § 310.2(bb).

18 11. “Person” means any individual, group, unincorporated association, limited or general  
19 partnership, corporation, or other business entity. 16 C.F.R. § 310.2(v).

20 12. Telemarketers are prohibited from abandoning an outbound telemarketing call, and  
21 sellers are prohibited from causing a telemarketer to do so in violation of the Amended TSR. 16  
22 C.F.R. § 310.4(b)(1)(iv). An outbound telephone call is abandoned if a person answers it and the  
23 telemarketer does not connect the call to a sales representative within two (2) seconds of the  
24 person's completed greeting. 16 C.F.R. § 310.4(b)(1)(iv).

25 13.

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1 telemarketer is not connecting the call to a sales representative within two (2) seconds of the  
2 person's completed greeting.

3 14. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c), and Section  
4 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the Amended TSR constitutes an  
5 unfair or deceptive act or practice in or affecting commerce, in violation of Section 5(a) of the  
6 FTC Act, 15 U.S.C. § 45(a).

7 15. Defendants are "seller[s]" and/or "telemarketer[s]" engaged in "telemarketing," as  
8 defined by the Amended TSR, 16 C.F.R. § 310.2.

9 **DEFENDANTS' BUSINESS ACTIVITIES**

10 16. Defendant Star Satellite marketed Dish Network satellite television programming to  
11 consumers throughout the United States.

12 17. Defendant Star Satellite marketed Dish Network satellite television programming  
13 through a variety of methods, including telemarketing.

14 18. Since on or after October 1, 2003, Star Satellite has directly, or through intermediaries,  
15 abandoned outbound telemarketing calls to consumers by failing to connect the call to a  
16 representative within two (2) seconds of the consumer's completed greeting.

17 19. The Relief Defendants in this case were unjustly enriched to the extent that they received  
18 funds or assets derived from the unlawful practices of Star Satellite complained of herein. The  
19 Relief Defendants have no legitimate claim to funds or assets derived from the unlawful practices  
20 of Star Satellite complained of herein.

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

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

2 28. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive  
3 and other ancillary relief to prevent and remedy any violation of any provision of law enforced by  
4 the FTC.

5 29. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as modified by Section 4  
6 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended,  
7 and as implemented by 16 C.F.R. § 1.98(d) (1997), authorizes this Court to award monetary civil  
8 penalties of not more than \$11,000 for each violation of the TSR. Defendants' violations of the  
9 TSR were committed with the knowledge required by Section 5(m)(1)(A) of the FTC Act, 15  
10 U.S.C. § 45(m)(1)(A).

11 30. This Court, in the exercise of its equitable jurisdiction, may award ancillary relief to  
12 remedy injury caused by Defendants' violations of the Rule and the FTC Act.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff requests that this Court, as authorized by Sections 5(a),  
15 5(m)(1)(A), 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b) and 57b, and  
16 pursuant to its own equitable powers:

- 17 1. Enter judgment against Defendants and in favor of Plaintiff for each violation alleged in  
18 this complaint;
- 19 2. Award plaintiff monetary civil penalties from Defendants for every violation of the TSR;
- 20 3. Impose a constructive trust on any ill-gotten gains derived from the acts or practices  
21 complained of herein and passed to the Relief Defendants;
- 22 4. Permanently enjoin Defendants from violating the TSR and the FTC Act;
- 23 5. Order Defendants to pay the costs of this action; and
- 24 6. Award Plaintiff such other and additional relief as the Court may determine to be just and  
25 proper.

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DATED: June 19, 2008

Respectfully Submitted,

GREGORY A. BROWER  
United States Attorney

ROBERT R. EDELMAN  
Assistant United States Attorney

/S/ Alan Phelps  
ALAN PHELPS  
Trial Attorneys  
U.S. Department of Justice

OF COUNSEL:

LOIS C. GREISMAN

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**PROOF OF SERVICE**

I, Alan Phelps, certify that the following individuals were served the **Complaint for Civil Penalties, Permanent Injunction and Other Equitable Relief** on this date by the below identified method of service:

**Electronic Case Filing**

**U.S. Mail**

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DATED: This 19th day of June, 2008.

/S/ Alan Phelps  
ALAN PHELPS  
TRIAL ATTORNEY