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11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA

13 FEDERAL TRADE COMMISSION,
14 Plaintiff,
15 v.

Case No.
SACV 13 - 00381 DOC (JPRx)

16 PHILLIP FLORA, individually and
17 also d/b/a Seaside Building Marketing
Inc. and SB Marketing,

COMPLAINT FOR PERMANENT
INJUNCTION AND OTHER
EQUITABLE RELIEF

18 SANDRA SKIPPER, individually and
19 also d/b/a Seaside Building Marketing
Inc. and SB Marketing,

20 KEVIN BEANS, individually and also
21 d/b/a Seaside Building Marketing Inc.
and SB Marketing, and

22 DAKOTA GEFFRE, individually and
23 also d/b/a Seaside Building Marketing
Inc. and SB Marketing,

24 Defendants.
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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
SANTA ANA

FILED

1 Plaintiff, the Federal Trade Commission ("FTC"), for its Complaint alleges:

2 1. The FTC brings this action under Section 13(b) of the Federal Trade
3 Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to obtain temporary,
4 preliminary, and permanent injunctive relief, restitution, disgorgement of ill-gotten
5 monies, and other equitable relief for Defendant's acts or practices in violation of
6 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

7 **JURISDICTION AND VENUE**

8 2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§
9 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a) and 53(b).

10 3. Venue is proper in this district under 28 U.S.C. § 1391(b) and 15
11 U.S.C. § 53(b).

12 **PLAINTIFF**

13 4. The FTC is an independent agency of the United States Government
14 created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the
15 FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices
16 in or affecting commerce.

17 5. The FTC is authorized to initiate federal district court proceedings, by
18 its own attorneys, to enjoin violations of the FTC Act and to secure such equitable
19 relief as may be appropriate in each case, including rescission or reformation of
20 contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten
21 monies. 15 U.S.C. §§ 53(b) and 56(a)(2)(A).

22 **DEFENDANTS**

23 6. Defendant **Phillip Flora**, also known as Phil Anthony ("Flora"), is
24 an individual who also does business as Seaside Building Marketing and SB
25 Marketing. At all times material to this Complaint, acting alone or in concert with
26 others, he has formulated, directed, controlled, had the authority to control, or
27 participated in the acts and practices set forth in this Complaint. Defendant Flora,
28 in connection with the matters alleged herein, transacts or has transacted business

1 in this district and throughout the United States.

2 7. Defendant **Sandra Skipper** (“Skipper”), is an individual who also
3 does business as Seaside Building Marketing and SB Marketing. At all times
4 material to this Complaint, acting alone or in concert with others, she has
5 formulated, directed, controlled, had the authority to control, or participated in the
6 acts and practices set forth in this Complaint. Defendant Skipper, in connection
7 with the matters alleged herein, transacts or has transacted business in this district
8 and throughout the United States.

9 8. Defendant **Kevin Beans** (“Beans”), is an individual who also does
10 business as Seaside Building Marketing and SB Marketing. At all times material
11 to this Complaint, acting alone or in concert with others, he has formulated,
12 directed, controlled, had the authority to control, or participated in the acts and
13 practices set forth in this Complaint. Defendant Beans, in connection with the
14 matters alleged herein, transacts or has transacted business in this district and
15 throughout the United States.

16 9. Defendant **Dakota Geffre** (“Geffre”), is an individual who also does
17 business as Seaside Building Marketing and SB Marketing. At all times material
18 to this Complaint, acting alone or in concert with others, he has formulated,
19 directed, controlled, had the authority to control, or participated in the acts and
20 practices set forth in this Complaint. Defendant Geffre, in connection with the
21 matters alleged herein, transacts or has transacted business in this district and
22 throughout the United States.

23 **COMMERCE**

24 10. At all times material to this Complaint, Defendants have maintained a
25 substantial course of trade in or affecting commerce, as "commerce" is defined in
26 Section 4 of the FTC Act, 15 U.S.C. § 44.

27 **DEFENDANTS' BUSINESS ACTIVITIES**

28 11. Defendants engage in and have engaged in the sending of

1 unauthorized and unsolicited commercial electronic text messages ("text message
2 spam") to the mobile telephones and other wireless devices of consumers
3 throughout the United States.

4 **Background**

5 12. Many mobile telephone and wireless device service providers
6 operating in the United States (hereinafter "wireless service providers") provide
7 their subscribers with text messaging services. Text messaging services permit the
8 transmission of text messages to wireless handsets from other wireless handsets,
9 electronic mail accounts, and various Internet applications.

10 13. To transmit a text message to wireless handsets, a sender transmits
11 the message electronically, either directly or indirectly, through a wireless service
12 provider's text message router, which then transmits the message to the recipient
13 through the wireless service provider's interstate wireless network.

14 14. Text messaging is used by consumers to stay in touch with business
15 colleagues and associates, customers, family members, and friends. Text
16 messaging is also used by numerous employers, schools, police departments, fire
17 departments, and emergency medical services across the country.

18 **Defendants' Text Message Spam**

19 15. Since at least March 2012, and continuing thereafter, Defendants
20 transmitted or arranged for the transmission of at least 29 million unsolicited
21 commercial electronic text messages to the wireless handsets of U.S. consumers
22 for the primary purpose of promoting products and services, including,
23 purportedly free merchandise, such as \$1,000 gift cards to retail companies like
24 Walmart and Best Buy.

25 16. Many of the unsolicited text messages represent, expressly or by
26 implication, that the consumer receiving the message has won a contest, or has
27 been specially selected to receive a gift or prize. For example, the text messages
28 contain statements such as:

- 1 • Dear Walmart shopper, Congratulations you have just won a \$1000
- 2 Walmart gift card. Click here to claim your gift www.clickwalmart.com.
- 3 • Dear Walmart shopper, your purchase last month won a \$1000 Gift
- 4 Card, go to www.vCardMobi.com within 24 hours to claim.
- 5 • You have been selected to receive a FREE \$1000 Best Buy gift card.
- 6 Go to www.BBCashLink.com to claim your gift.

7 17. The text messages contain a link to a website address. Consumers
8 who click on the address link contained in the messages are taken to one of various
9 websites operated by third parties. The third party websites reiterate and expand
10 upon the initial promised free merchandise offer.

11 18. The third party websites, however, require consumers to participate in
12 multiple other offers to qualify for the promised free merchandise. The consumer
13 usually must complete over ten offers. In most cases, completing an offer entails
14 paying money or incurring some other detriment, such as qualifying and applying
15 for credit cards. Some of the offers have free trial periods, but require consumers
16 to participate for a minimum period of time to qualify for the promised free
17 merchandise. Many of these offers also contain negative option components in
18 which consumers who do not cancel will be billed automatically. In addition, to
19 qualify for the promised free merchandise, consumers are required to provide a
20 variety of personal information, including their name, mailing address, email
21 address, date of birth, cell phone number, and home phone number.

22 19. Defendants' text messages fail to clearly and conspicuously disclose
23 that consumers must incur expenses or other obligations to obtain the promised
24 free merchandise. The text messages also fail to clearly and conspicuously
25 disclose the costs and obligations associated with participating in the third-party
26 promotions, such as applying and qualifying for credit cards.

27 20. In most instances, it is not possible for a consumer to obtain the
28 promised free merchandise without spending money.

1 **The Recipients of Defendant's Text Message Spam**

2 21. Many, if not all, of the consumers who received the text message
3 spam sent by Defendants never agreed to be contacted by Defendants.

4 22. Some of the recipients of Defendants' text message spam have
5 wireless service plans that require them to pay a fixed fee for each text message
6 received by their wireless handsets. Accordingly, such recipients were required to
7 pay a fee for the receipt of Defendants' text message spam.

8 23. Other recipients of Defendants' text message spam have wireless
9 service plans that allow them a fixed, limited number of text messages per month
10 without charge beyond their monthly service charge, with text messages that
11 exceed the monthly allowance billed on a per-message basis. Accordingly, many
12 such recipients had their monthly allowance of text messages reduced upon receipt
13 of each of Defendants' text message spam.

14 24. The consumer injury caused by Defendants cannot be reasonably
15 avoided by consumers. Defendants' text message spam is routinely foisted upon
16 consumers without their advance knowledge or permission. Many consumers who
17 have requested that Defendants stop sending them text message spam continued to
18 receive text message spam after making the request.

19 25. Defendants' text message spam does not create countervailing
20 benefits to consumers or to competition that outweigh the harm caused by their
21 unlawful activity.

22 **VIOLATIONS OF THE FTC ACT**

23 26. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or
24 deceptive acts or practices in or affecting commerce."

25 27. Misrepresentations or deceptive omissions of material fact constitute
26 deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

27 28. Acts or practices are unfair under Section 5 of the FTC Act if they
28 cause substantial injury to consumers that consumers cannot reasonably avoid

1 themselves and that is not outweighed by countervailing benefits to consumers or
2 competition. 15 U.S.C. § 45(n).

3 **Count I**

4 29. Through the means described in Paragraphs 11-25, Defendants have
5 represented, directly or indirectly, expressly or by implication, that consumers
6 have won a contest or have been specifically selected to receive a gift or prize that
7 is without cost or obligation.

8 30. In numerous instances in which Defendants have made the
9 representation set forth in Paragraph 29 of the Complaint, Defendants have failed
10 to disclose or disclose adequately to consumers the material terms and conditions
11 of the offer, including:

12 a. that consumers must pay money or other consideration to
13 receive the gift or prize; and

14 b. the costs and obligations to receive the gift or prize.

15 31. Defendants' failure to disclose or disclose adequately the material
16 information described in Paragraph 30 above, in light of the representation
17 described in Paragraph 30 above, constitutes a deceptive act or practice in
18 violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

19 **Count II**

20 32. In numerous instances, Defendants' practice of initiating or procuring
21 the transmission of unauthorized or unsolicited commercial electronic text
22 messages to the mobile telephones and other wireless devices of consumers in the
23 United States has caused or is likely to cause substantial injury to consumers that
24 consumers cannot reasonably avoid themselves and that is not outweighed by
25 countervailing benefits to consumers or competition.

26 33. Therefore, Defendants' practice as described in Paragraph 32 is unfair
27 and violates Section 5 of the FTC Act, 15 U.S.C. §§ 45(a) and 45(n).

1 **CONSUMER INJURY**

2 34. Consumers have suffered and will continue to suffer substantial
3 injury as a result of Defendants' violations of the FTC Act. In addition,
4 Defendants have been unjustly enriched as a result of their unlawful acts or
5 practices. Absent injunctive relief by this Court, Defendants are likely to continue
6 to injure consumers, reap unjust enrichment, and harm the public interest.

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

8 35. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this
9 Court to grant injunctive and such other relief as the Court may deem appropriate
10 to halt and redress violations of any provision of law enforced by the FTC. The
11 Court, in the exercise of its equitable jurisdiction, may award ancillary relief,
12 including rescission or reformation of contracts, restitution, the refund of monies
13 paid, and the disgorgement of ill-gotten monies, to prevent and remedy any
14 violation of any provision of law enforced by the FTC.

15 **PRAYER FOR RELIEF**

16 Wherefore, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act, 15
17 U.S.C. § 53(b), and the Court's own equitable powers, requests that the Court:

18 A. Award Plaintiff such preliminary injunctive and ancillary relief as
19 may be necessary to avert the likelihood of consumer injury during the pendency
20 of this action and to preserve the possibility of effective final relief, including but
21 not limited to, temporary and preliminary injunctions, an order preserving assets,
22 and an accounting;

23 B. Enter a permanent injunction to prevent future violations of the FTC
24 Act by Defendants;

25 C. Award such relief as the Court finds necessary to redress injury to
26 consumers resulting from Defendants' violations of the FTC Act, including but not
27 limited to, rescission or reformation of contracts, restitution, the refund of monies
28 paid, and the disgorgement of ill-gotten monies; and

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

4 Respectfully submitted,
5 DAVID SHONKA
6 Acting General Counsel

7 Dated: March 4, 2013


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