

1 Joseph H. Hunt  
Assistant Attorney General  
2 Civil Division

3  
4 Nicola T. Hanna  
United States Attorney

5  
6 Gustav W. Eyler  
Director  
7 Consumer Protection Branch

8  
9 Rachel Baron  
Trial Attorney  
10 Consumer Protection Branch  
U.S. Department of Justice  
11 P.O. Box 386  
12 Washington, DC 20044  
13 (202) 532-4488  
[Rachel.e.baron@usdoj.gov](mailto:Rachel.e.baron@usdoj.gov)

14  
15 OF COUNSEL:  
Barbara Chun, Cal. Bar No. 186907  
16 [bchun@ftc.gov](mailto:bchun@ftc.gov)  
17 Federal Trade Commission  
10990 Wilshire Blvd., Suite 400  
18 Los Angeles, CA 90024  
19 Tel: (310) 824-4300; Fax: (310) 824-4380

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1 UNITED STATES DISTRICT COURT  
2 CENTRAL DISTRICT OF CALIFORNIA

3  
4 UNITED STATES OF AMERICA,

5 Plaintiff,

6 v.

7  
8 Media Mix 365, LLC, a California  
9 limited liability company, also d/b/a  
10 Solar Research Group and Solar  
11 Nation,

12 Nicholas J. Long, individually and as  
13 an owner and officer of Media Mix  
14 365, LLC, and

15 Nicole J. Long, a/k/a Nicole  
16 Leonard, a/k/a Nicole Leonard-Long,  
17 as an owner of Media Mix 365, LLC,

18 Defendants.

Case No. 19-1243

COMPLAINT FOR PERMANENT  
INJUNCTION, CIVIL PENALTIES  
AND OTHER EQUITABLE RELIEF

19  
20 Plaintiff, the United States of America, acting upon notification and  
21 authorization to the Attorney General by the Federal Trade Commission (“FTC”),  
22 pursuant to Section 16(a)(1) of the Federal Trade Commission Act (“FTC Act”),  
23 15 U.S.C. § 56(a)(1), for its Complaint alleges:

24 1. Plaintiff brings this action under Sections 5(a), 5(m)(1)(A), 13(b),  
25 16(a), and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), 56(a), and  
26 57b, and Section 6 of the Telemarketing and Consumer Fraud and Abuse  
27 Prevention Act (the “Telemarketing Act”), 15 U.S.C. § 6105, to obtain monetary  
28 civil penalties, permanent injunctive relief, rescission or reformation of contracts,

1 restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other  
2 equitable relief for Defendants’ acts or practices in violation of Section 5(a) of the  
3 FTC Act, 15 U.S.C. § 45(a), and the FTC’s Telemarketing Sales Rule (“TSR”), as  
4 amended, 16 C.F.R. Part 310.

5 **INTRODUCTION**

6 2. Media Mix 365, LLC (“Media Mix”) is a telemarketer that develops  
7 leads for home solar energy companies by initiating outbound telephone calls to  
8 consumers. Nicholas J. Long and Nicole J. Long are the owners of Media Mix.  
9 Since at least 2015, Media Mix has called millions of phone numbers on the  
10 National Do Not Call Registry maintained by the FTC (the “National Do Not Call  
11 Registry” or “Registry”) and has called phone numbers repeatedly or continuously  
12 with the intent to annoy, abuse, or harass any person at the called number. These  
13 calls violate Section 5 of the FTC Act, 15 U.S.C. § 5(a) and the TSR, 16 C.F.R.  
14 Part 310.

15 **JURISDICTION AND VENUE**

16 3. This Court has subject matter jurisdiction pursuant to 28 U.S.C.  
17 §§ 1331, 1337(a), 1345, and 1355.

18 4. Venue is proper in this District under 28 U.S.C. § 1391(b)(1), (b)(2),  
19 (c)(1), (c)(2), and 1395(a), and 15 U.S.C. § 53(b).

20 **THE TELEMARKETING SALES RULE AND**  
21 **THE NATIONAL DO NOT CALL REGISTRY**

22 5. Congress directed the FTC to prescribe rules prohibiting abusive and  
23 deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15  
24 U.S.C. §§ 6101-6108. The FTC adopted the original TSR in 1995, extensively  
25 amended it in 2003, and amended certain provisions thereafter. 16 C.F.R. Part  
26 310.

27 6. Among other things, the 2003 amendments to the TSR established the  
28 National Do Not Call Registry of consumers who do not wish to receive certain

1 types of telemarketing calls. Consumers can register their telephone numbers on  
2 the Registry without charge either through a toll-free telephone call or over the  
3 Internet at donotcall.gov.

4 7. Consumers who receive telemarketing calls to their registered  
5 numbers can complain of Registry violations the same way they registered,  
6 through a toll-free telephone call or over the Internet at donotcall.gov, or by  
7 otherwise contacting law enforcement authorities.

8 8. The FTC allows sellers, telemarketers, and other permitted  
9 organizations to access the Registry over the Internet at  
10 telemarketing.donotcall.gov, to pay the fee(s) if required, and to download the  
11 numbers not to call.

12 9. Under the TSR, a “telemarketer” means any person who, in  
13 connection with telemarketing, initiates or receives telephone calls to or from a  
14 customer or donor. 16 C.F.R. § 310.2(ff). A “seller” means any person who, in  
15 connection with a telemarketing transaction, provides, offers to provide, or  
16 arranges for others to provide goods or services to the customer in exchange for  
17 consideration. *Id.* § 310.2(dd).

18 10. Under the TSR, an “outbound telephone call” means a telephone call  
19 initiated by a telemarketer to induce the purchase of goods or services or to solicit  
20 a charitable contribution. *Id.* § 310.2(x).

21 11. The TSR prohibits sellers and telemarketers from initiating an  
22 outbound telephone call to numbers on the Registry unless the seller or  
23 telemarketer can prove that the seller (1) has obtained the consumer’s express  
24 agreement, in writing, to place such calls, or (2) has an established business  
25 relationship with the consumer, and the consumer has not stated that he or she does  
26 not wish to receive such calls. *Id.* § 310.4(b)(1)(iii)(B). Valid written consent to  
27 receive a live telemarketing call to a number on the Registry requires: (i) a writing  
28 signed by the consumer, (ii) clearly evidencing authorization to receive calls

1 placed on behalf of a specific seller, and (iii) stating the phone number to which  
2 such calls may be placed. *Id.* § 310.4(b)(1)(iii)(B)(1). Telemarketers must retain  
3 all records of such “express agreement.” *Id.* § 310.5(a)(5). An established business  
4 relationship means a relationship between a seller and a consumer based on (1) the  
5 consumer’s purchase, rental, or lease of the seller’s goods or services or a financial  
6 transaction between the consumer and the seller, within the eighteen months  
7 immediately preceding the date of the telemarketing call; or (2) the consumer’s  
8 inquiry or application regarding a product or service offered by the seller, within  
9 the three months immediately preceding the date of the telemarketing call. *Id.* §  
10 310.2(q).

11 12. The TSR prohibits sellers and telemarketers from causing any  
12 telephone to ring, or engaging any person in telephone conversation, repeatedly or  
13 continuously with intent to annoy, abuse, or harass any person at the called  
14 number. *Id.* § 310.4(b)(1)(i).

15 13. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C.  
16 § 6102(c), and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation  
17 of the TSR constitutes an unfair or deceptive act or practice in or affecting  
18 commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

### 19 **DEFENDANTS**

20 14. Defendant Media Mix 365, LLC, also doing business as Solar  
21 Research Group and Solar Nation, is a California limited liability company with its  
22 principal place of business in Santa Ana, California. Media Mix is a closely held  
23 LLC owned by only Nicholas J. Long and Nicole J. Long. Media Mix transacts or  
24 has transacted business in this District and throughout the United States.

25 15. Media Mix is familiar with telemarketing statutes and regulations.  
26 Since 2016, Media Mix has been named as a defendant in at least three lawsuits,  
27 including two class actions, that allege National Do Not Call Registry violations.  
28 *See Madar v. Media Mix 365 LLC*, 37-2016-00336110-SC-SC-CTL (San Diego

1 County, filed 5/17/16); *Affolder v. Media Mix 365 LLC, Nicholas Long, and Does*  
2 *1-25*, 8:16-cv-1470-DOC-KES (C.D. Cal., filed 8/9/2016); *Boger v. Trinity*  
3 *Heating & Air, Inc. and Media Mix 365, LLC*, 8:17-cv-01729-TDC (D. Md., filed  
4 6/23/17).

5 16. Since 2016, some Media Mix clients also have been sued for calls to  
6 numbers on the National Do Not Call Registry. Media Mix was an initiator of the  
7 violative phone calls as alleged in each action. For example, in *Worsham v.*  
8 *Trinity Heating and Air, Inc.*, 1:16-cv-01131-JFM (D. Md., filed 5/31/16), the  
9 complaint alleged that the defendant's telemarketers identified themselves as  
10 "Solar Research Group," which is one of Media Mix's fictitious business names.  
11 Likewise, in *Slovin v. Sunrun, Inc.*, 4:15-cv-05340-YGR (N.D. Cal., filed  
12 7/12/16), the complaint alleged that Media Mix made calls on behalf of Sunrun  
13 using the fictitious business name "Solar Nation," in violation of the National Do  
14 Not Call Registry.

15 17. Media Mix has access to the National Do Not Call Registry. In  
16 December 2013, Media Mix subscribed for access to the Registry and downloaded  
17 the phone numbers registered in four Colorado area codes. It has not downloaded  
18 any phone numbers since then under its own subscription to the Registry. The  
19 FTC also has no record that Media Mix has accessed the Registry at any time  
20 under another subscription.

21 18. Defendant Nicholas J. Long ("Nick Long") is the chief executive  
22 officer and an owner of Media Mix. At times material to this Complaint, acting  
23 alone or in concert with others, Nick Long has had the authority and responsibility  
24 to prevent or correct the unlawful telemarketing practices of Media Mix and has  
25 formulated, directed, controlled, had the authority to control, or participated in the  
26 acts or practices of Media Mix, including the acts and practices set forth in this  
27 Complaint. Nick Long resides in this District and, in connection with the matters  
28

1 alleged herein, transacts or has transacted business in this District and throughout  
2 the United States.

3 19. Nick Long is familiar with telemarketing statutes and regulations. In  
4 2010, Texas sued Nick Long, Michael Aaron Jones (also known as Aaron Michael  
5 Jones) (“Jones”), Andrew Salisbury (“Salisbury”), their company, On Point Media,  
6 Inc., and others for calling phone numbers on the National Do Not Call Registry  
7 while telemarketing auto warranties. *Texas v. SCM Media, Inc.* A-09-CV-387-SS  
8 (W.D. Tex. 2011). In 2011, Nick Long, Salisbury, and Jones stipulated to entry of  
9 an order (the “Order”) to settle the Texas case. The Order required Nick Long,  
10 Salisbury, and Jones to comply with federal and state telemarketing statutes,  
11 including the Telemarketing Act, 15 U.S.C. §§ 6101-6108, and all regulations  
12 promulgated pursuant to such statutes for calls to Texas consumers or for calls  
13 conducted from Texas. It also enjoined them from aiding, abetting, or facilitating  
14 others in making telephone calls that violated those telemarketing statutes and  
15 regulations, or from initiating or causing others to initiate outbound telephone calls  
16 to phone numbers on the National Do Not Call Registry.

17 20. Nick Long provided a document to Texas called “Do Not Call List  
18 Training.” This document explains that “The National Do Not Call Registry is  
19 available to help consumers block unwanted telemarketing calls at home.” The  
20 document also notes that “Telemarketers have up to 30 days from the date  
21 [consumers] register [on the Do Not Call Registry] to remove [the consumers’]  
22 phone number from their list and stop calling [the consumers].”

23 21. In 2016, Nick Long and Media Mix were named as defendants in a  
24 class action that alleges Media Mix called numbers on the National Do Not Call  
25 Registry to telemarket home solar energy systems. *See Affolder*, 8:16-cv-1470-  
26 DOC-KES.

27 22. Since 2010, Nick Long has maintained close business ties to his  
28 codefendants in the Texas lawsuit, Salisbury and Jones. Both Salisbury and Jones

1 were recently sued by the FTC for placing millions of calls to numbers on the Do  
2 Not Call Registry. Since at least 2016, Nick Long has also had close business ties  
3 to Justin Ramsey. Justin Ramsey has also been sued by the FTC for placing  
4 millions of calls to numbers on the Do Not Call Registry.

- 5 • In May 2018, the FTC sued Salisbury and his company, World  
6 Connection USA, LLC (“World Connection”), in *FTC v. Christiano*,  
7 SACV 18-0936-DOC (C.D. Cal.). The *Christiano* complaint alleged  
8 that since 2005, the defendants made or assisted, and facilitated the  
9 making of, telemarketing calls to phone numbers on the Registry.  
10 Nick Long was the organizer and is the registered agent for World  
11 Connection and was personally served with the *Christiano* complaint  
12 on June 4, 2018.
- 13 • In January 2017, the FTC sued Jones and others in *FTC v. Jones*,  
14 8:17-cv-58-DOC-JCG (C.D. Cal.). The *Jones* complaint alleged that,  
15 since at least March 2009, Jones controlled an enterprise that made or  
16 facilitated the making of prerecorded calls (“robocalls”) to numbers  
17 on the National Do Not Call Registry. Jones’s robocalling enterprise  
18 included On Point Media, the auto warranty telemarketing company  
19 that Jones, Salisbury, and Nick Long controlled and which was a  
20 defendant in the 2010 Texas action.
- 21 • In January 2017, the FTC sued Justin Ramsey and others in *FTC v.*  
22 *Ramsey*, 9:17-cv-80032-KAM (S.D. Fla.). The *Ramsey* complaint  
23 alleged that, since 2012, Ramsey and his company, Prime Marketing,  
24 LLC, robocalled numbers on the National Do Not Call Registry.  
25 Media Mix employed Ramsey to make calls on its behalf for some of  
26 Media Mix’s clients until July 2016. In April 2016, Media Mix paid  
27 Prime Marketing over \$110,000.  
28



- 1 • In July 2018, the FTC sued Ramsey and Jones, and Ramsey’s  
2 company, Allstar Data, LLC, in *FTC v. Pointbreak Media, LLC*, 18-  
3 61017-CIV-Altonaga/ Seltzer (S.D. Fla.). The *Pointbreak Media*  
4 complaint alleged that, since at least November 2016, the defendants  
5 operated a telemarketing scam that included robocalling phone  
6 numbers on the National Do Not Call Registry. From May to October  
7 2016, Media Mix paid Allstar Data over \$124,000.

8 23. Defendant Nicole J. Long (“Nicole Long”), also known as Nicole  
9 Leonard and Nicole Leonard-Long, is Media Mix’s majority owner and is married  
10 to Nick Long. She was Media Mix’s organizer and initial agent for service of  
11 process in 2013. At various times in documents filed with the California Secretary  
12 of State or the Orange County Clerk-Recorder, she has declared she is its manager,  
13 member, CEO, and owner. She registered Media Mix’s fictitious business name,  
14 “Solar Research Group.” At all times material to this Complaint, acting alone or in  
15 concert with others, Nicole Long has had the authority and responsibility to  
16 prevent or correct the unlawful telemarketing practices of Media Mix and has  
17 formulated, directed, controlled, had the authority to control, or participated in the  
18 acts or practices of Media Mix, including the acts and practices set forth in this  
19 Complaint. Nicole Long resides in this District and, in connection with the matters  
20 alleged herein, transacts or has transacted business in this District and throughout  
21 the United States.

### 22 COMMERCE

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

### 26 DEFENDANTS’ BUSINESS ACTIVITIES

27 25. Defendants are “telemarketers” engaged in “telemarketing” as those  
28 terms are defined in the TSR.

1           26. Defendants initiate outbound telephone calls to consumers in the  
2 United States to induce the purchase of home solar energy systems.

3           27. Defendants engage in telemarketing by a plan, program, or campaign  
4 conducted to induce the purchase of home solar energy systems by the use of one  
5 or more telephones and which involves more than one interstate telephone call.

6           28. Since at least 2015 and as part of their campaign to market home solar  
7 energy systems, Defendants have initiated millions of outbound telemarketing calls  
8 to the phone numbers of consumers who had previously registered their phone  
9 numbers on the Do Not Call Registry.

10           29. Defendants' telemarketers typically identify themselves as "Solar  
11 Research Group" or "Solar Nation" (Defendants' fictitious business names).

12           30. During the telemarketing calls, Defendants' telemarketers ask  
13 consumers scripted questions to assess their interest in and eligibility for a home  
14 solar energy system.

15           31. Consumers who express an interest and who meet the prequalification  
16 criteria are then transferred by Defendants' telemarketers to Defendants' clients.  
17 Defendants' clients pay Defendants a fee for the leads they purchase from  
18 Defendants.

19           32. Defendants have called numbers on the National Do Not Call  
20 Registry. Defendants have not removed the phone numbers of consumers who  
21 were registered on the National Do Not Call Registry by employing a version of  
22 the National Do Not Call Registry obtained from the Commission no more than  
23 thirty-one days before the date of any call.

24           33. Consequently, Defendants have made millions of calls to telephone  
25 numbers on the National Do Not Call Registry.

26           34. Millions of consumers whose telephone numbers were on the National  
27 Do Not Call Registry and who received Defendants' telemarketing calls since 2015  
28 did not have a pre-existing business relationship with Defendants nor had they

1 given express written consent to receive telemarketing calls from Defendants or  
2 from the third parties to whom Defendants sold the sales leads.

3 35. Defendants have also made thousands of telephone calls that caused  
4 telephones to ring, or engaged people in telephone conversations, repeatedly or  
5 continuously:

- 6 • Media Mix called thousands of phone numbers more than 3 times in a  
7 single day;
- 8 • Media Mix called thousands of phone numbers more than 30 times each;
- 9 • Media Mix called one number more than 300 times in less than six months;
- 10 • And finally, Media Mix called one number over 1,000 times in less than  
11 one year.

12 Defendants made these calls with the intent to annoy, abuse, or harass any  
13 person at the called number.

14 36. Defendants' conduct is ongoing. The FTC continues to receive  
15 complaints about Defendants calling phone numbers on the Registry.

16 37. Based on the facts and violations of law alleged in this Complaint, the  
17 FTC has reason to believe that Defendants are violating or are about to violate laws  
18 enforced by the Commission.

19 **VIOLATIONS OF THE TELEMARKETING SALES RULE**

20 **Count I**

21 **Calls to Persons Registered on the National Do Not Call Registry**

22 38. In numerous instances, in connection with telemarketing, Defendants  
23 have initiated or caused others to initiate an outbound telephone call to a person's  
24 telephone number on the National Do Not Call Registry in violation of the TSR. 16  
25 C.F.R. §310.4(b)(1)(iii)(B).

1 **Count II**

2 **Repeated, Continuous Calls**

3 39. In numerous instances, in connection with telemarketing, Defendants  
4 have caused telephones to ring, or have engaged persons in telephone  
5 conversations, repeatedly or continuously with intent to annoy, abuse, or harass  
6 any person at the called number, in violation of the TSR. 16 C.F.R.  
7 § 310.4(b)(1)(i).

8 **CONSUMER INJURY**

9 40. Consumers are suffering, have suffered, and will continue to suffer  
10 substantial injury as a result of Defendants' violations of the FTC Act and the TSR.  
11 Absent injunctive relief by this Court, Defendants are likely to continue to injure  
12 consumers and harm the public interest.

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

14 41. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court  
15 to grant injunctive and such other relief as the Court may deem appropriate to halt  
16 and redress violations of any provision of law enforced by the FTC. Section 19 of  
17 the FTC Act, 16 U.S.C. § 57b, and Section 6(b) of the Telemarketing Act, 15  
18 U.S.C. § 6105(b), authorize this Court to grant such relief as the Court finds  
19 necessary to redress injury to consumers resulting from Defendants' violations of  
20 the FTC Act and the TSR, including rescission or reformation of contracts, and the  
21 refund of money.

22 42. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as  
23 modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of  
24 1990, 28 U.S.C. § 2461, as amended, and as implemented by FTC Rule 1.98(d),  
25 16 C.F.R. § 1.98(d), authorizes this Court to award monetary civil penalties.  
26 From 2015 until July 31, 2016, the Court was authorized to award a penalty of up  
27 to \$16,000 for each violation of the TSR. *See* 16 C.F.R. §1.98(d) (2009).  
28 Effective August 1, 2016, the maximum penalty amount was adjusted to \$40,000

1 per violation. 16 C.F.R. § 1.98(d) (2016). Effective January 24, 2017, the  
2 maximum civil penalty amount was adjusted to \$40,654. 16 C.F.R. § 1.98 (2017).  
3 Effective January 22, 2018, the maximum civil penalties amount was adjusted to  
4 \$41,484 for each violation of the TSR. 16 C.F.R. § 1.98 (2018). As of February  
5 14, 2019, the maximum civil penalties amount was adjusted to \$42,530 for each  
6 violation of the TSR. 16 C.F.R. § 1.98 (2019). Some of the TSR violations  
7 alleged in this Complaint occurred during 2015-2018 when the civil penalty was  
8 capped at \$16,000, \$40,000, \$40,654, or \$41,484 per violation. Defendants'  
9 violations of the TSR were committed with the knowledge required by Section  
10 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

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

14 **PRAYER FOR RELIEF**

15 **WHEREFORE**, Plaintiff requests that this Court, pursuant to Sections 5(a),  
16 5(m)(1)(A), 13(b), 16(a), and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A),  
17 53(b), 56(a), and 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C.  
18 § 6105(b), and the Court's own equitable powers:

- 19 A. Enter judgment against Defendants and in favor of Plaintiff for each  
20 violation alleged in this complaint;
- 21 B. Award Plaintiff monetary civil penalties from each Defendant for  
22 every violation of the TSR;
- 23 C. Enter a permanent injunction to prevent future violations of the FTC  
24 Act and the TSR by Defendants;
- 25 D. Award such relief as the Court finds necessary to redress injury to  
26 consumers resulting from Defendants' violations of the FTC Act and  
27 the TSR, including but not limited to, rescission or reformation of  
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contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and

E. 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.

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Dated: June 20, 2019

Respectfully submitted,

JOSEPH H. HUNT  
Assistant Attorney General  
Civil Division

OF COUNSEL:

NICOLA T. HANNA  
United States Attorney

THOMAS N. DAHDOUH  
Regional Director  
Western Region  
Federal Trade Commission

GUSTAV W. EYLER  
Director  
Consumer Protection Branch

Barbara Chun  
Attorney  
Federal Trade Commission

/s/ Rachel Baron  
Rachel Baron  
Trial Attorney  
Consumer Protection Branch  
U.S. Department of Justice  
P.O. Box 386  
Washington, DC 20044  
(202) 532-4488  
[Rachel.e.baron@usdoj.gov](mailto:Rachel.e.baron@usdoj.gov)