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13  
 14 **UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

15  
 16 FEDERAL TRADE COMMISSION,

17 Plaintiff,

18 v.

19 PUBLISHERS BUSINESS SERVICES, INC.,  
 20 a corporation; ED DANTUMA  
 ENTERPRISES, INC., a corporation, also dba  
 21 PUBLISHERS DIRECT SERVICES and  
 PUBLISHERS BUSINESS SERVICES;  
 22 PERSIS DANTUMA; EDWARD  
 DANTUMA; BRENDA DANTUMA  
 23 SCHANG; DRIES DANTUMA; DIRK  
 DANTUMA; AND JEFFREY DANTUMA,  
 24 individually and as officers or managers of  
 Publishers Business Services, Inc., or Ed  
 25 Dantuma Enterprises, Inc.,

26 Defendants.  
 27  
 28

Case no. 2:08-cv-00620-PMP-PAL

FTC'S OPENING BRIEF ON THE  
 ISSUE OF DAMAGES

Evidentiary hearing  
 Date: May 18, 2010  
 Time: 9:30 a.m.  
 Place: Courtroom 7C  
 333 S. Las Vegas Blvd.  
 Las Vegas, NV 89101

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**FTC'S OPENING BRIEF**

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2 I. SECTION 13(B) OF THE FTC ACT AUTHORIZES THE COURT TO ORDER FULL RESTITUTION  
3 AGAINST DEFENDANTS FOR THEIR VIOLATIONS OF SECTION 5(A) OF THE FTC ACT  
4 Each Count of the FTC's amended complaint was brought under Section 13(b) of the FTC  
5 Act, 15 U.S.C. § 53(b), which authorizes the federal district court to grant, "in proper cases," a  
6 permanent injunction. *Id.* A "proper case" includes any matter involving a violation of a law that  
7 the FTC enforces. *FTC v. H.N. Singer*, 668 F.2d 1107, 1113 (9th Cir. 1982). "[T]he authority  
8 granted by section 13(b) ... includes the 'authority to grant *any* ancillary relief necessary to  
9 accomplish *complete justice*," *id.* (emphasis added), including restitution. *FTC v. Gill*, 265 F.3d  
10 944, 958 (9th Cir. 2001) ("restitution is a form of ancillary relief available to the court in these  
11 circumstances to effect complete justice"); *FTC v. Stefanchik*, 559 F.3d 924, 931 (9th Cir. 2009);  
12 *FTC v. Pantron I Corp.*, 33 F.3d 1088, 1102 (9th Cir. 1994).

13 In this case, Section 13(b) gives the Court the power to grant restitution based on each of  
14 Defendants' violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), including Counts One  
15 and Two (Section 5(a) violations), as well as Counts Three through Six (violations of TSR sections  
16 310.4(d), 310.3(a)(2)(i), 310.3(a)(4), and 310.4(b)(1)(i), which, pursuant to Section 3(c) of the  
17 Telemarketing Act, 15 U.S.C. § 6102(c), and Section 18(d)(3) of the FTC Act, 15 U.S.C.  
18 § 57a(d)(3), are also Section 5(a) violations).<sup>1</sup> In short, the Court may order such restitution and  
19 other ancillary relief as it deems appropriate to accomplish "complete justice" based on  
20 Defendants' violations of both Section 5 of the FTC Act and the TSR.

21 II. EQUITABLE MONETARY RELIEF AWARDED PURSUANT TO SECTION 13(B) OF THE FTC ACT IS  
22 NOT RESTRICTED BY ANY STATUTE OF LIMITATIONS  
23 The Court may grant restitution for the entire period requested by the FTC (January 1,  
24 2004-August 31, 2008), even though it includes injuries which occurred more than three years  
25 prior to the date the FTC's Complaint was filed, May 14, 2008. This is because equitable relief  
26 awarded pursuant to Section 13(b) of the FTC Act is *not* limited by any statute of limitations.  
27 15 U.S.C. § 53(b); *see also* 15 U.S.C. § 57b(e) ("Remedies provided in [Section 19 of the FTC Act,  
28 15 U.S.C. § 57b, which are limited by a three-year statute of limitations] are *in addition to, and not*

<sup>1</sup> Moreover, the Court has additional grounds for granting relief on Defendants' TSR violations, pursuant to Section 19(b) of the FTC Act, 15 U.S.C. § 57b. Section 19(b) authorizes this Court to redress consumer injury upon a finding of a violation of the TSR or any other trade regulation rule.

1 *in lieu of*, any other remedy or right of action provided by State or Federal law. *Nothing in this*  
2 *section shall be construed to affect any authority of the Commission under any other provision of*  
3 *law.*” (emphasis added)). Courts which have confronted this issue uniformly hold that the district  
4 court may grant equitable relief under Section 13(b) without time limitation. *See United States v.*  
5 *The Building Inspector of Am.*, 894 F. Supp. 507, 513-14 (D. Mass. 1995) (“actions for injunctive  
6 relief under Section 53(b), do not have any limitations period”); *FTC v. Minuteman Press*, 53 F.  
7 Supp. 2d 248, 263 (E.D.N.Y. 1998) (Section 19’s statute of limitations does not apply to Section  
8 13(b) actions); *United States v. Prochnow*, 2007 U.S. App. LEXIS 24718 at \*15 (11th Cir. 2007);  
9 *FTC v. Security Rare Coin & Bullion Corp.*, 931 F.2d 1312, 1315 (8th Cir. 1991) (“There can be  
10 no inference from [Section 19(e), 15 U.S.C. §57b(e)] that Congress intended in section 19 to  
11 restrict the broad equitable jurisdiction granted to the district court by section 13(b).”). Thus,  
12 Section 13(b) provides the Court with broad powers to grant full restitution to consumers for the  
13 entire January 1, 2004 through August 31, 2008 injury period requested by the FTC for  
14 Defendants’ violations of both the FTC Act and the TSR.

15 III. THE FTC HAS MET ITS BURDEN OF PROOF FOR SHOWING THAT DEFENDANTS’ NET REVENUES  
16 “REASONABLY APPROXIMATE” THE AMOUNT OF CONSUMERS’ NET LOSSES  
17 In granting summary judgment, the Court found that “in the initial and verification calls,  
18 while some of PBS’s representations may be literally true, the net impression of the representations  
19 is likely to mislead a consumer acting reasonably under the circumstances in a way that is  
20 material.” Order, doc. #151 at p.30, lns. 5-8. If the Court now finds that consumer injury resulted,  
21 the corporate Defendants are, as a matter of law, liable for monetary relief under section 13(b).  
22 *Pantron*, 33 F.3d at 1102-03.

23 Defendants ask the Court to apply the wrong legal test in evaluating the appropriate amount  
24 of monetary relief to be awarded. In the Reply Brief Defendants submitted in support of their  
25 summary judgment motion, they argue that:

26 [t]he only way to determine the damages, if any, that might be due, is to consider  
27 each customer complaint from May 2005 through May 2008 and determine whether  
28 a violation occurred and, if so, whether the customer paid any money to PBS. If the  
answer to both questions is ‘yes,’ then PBS should provide a full refund to the  
customer.

See Doc. #144 at p.19.

1 Defendants' proposed restitution standard is without legal basis and in direct contravention  
2 with the case law. The Court may order equitable monetary relief equal to the full amount of  
3 consumers' losses. *FTC v. Stefanichik*, 559 F.3d 924, 931-32 (9th Cir. 2009). Under the test for  
4 establishing consumer losses set forth in *FTC v. Febre*, 128 F.3d 530, 535 (7th Cir. 1997), the FTC  
5 is required to show that the monetary award it proposes "reasonably approximate[s] the amount of  
6 customers' net losses, and then the burden shifts to the defendants to show that those figures were  
7 inaccurate." *Id.*

8 In this case, all of Defendants' PBS sales were made by Defendants' employees using  
9 scripts which have remained essentially the same throughout the relevant time period (Order, doc.  
10 #151, at p.4, fn.5), and which the Court has found deceptive (Order, doc. #151 at Sections II.B.1.  
11 and II.B.2). For the period January 2004 through August 2008, Defendants' undisputed net  
12 revenues, which excludes the small amount of refunds that Defendants have already issued to  
13 consumers, is \$39,280,100.98.<sup>2</sup> The entire amount of Defendants' net revenues consists of money  
14 that consumers paid to Defendants pursuant to PBS's deceptive and abusive sales and collections  
15 practices. Thus, the Court should find that Defendants' net revenues of \$39,280,100.98 reasonably  
16 approximate the net losses suffered by Defendants' consumer victims. The burden should now  
17 shift to Defendants to prove that this figure is inaccurate.

18 Defendants' proposed test contradicts all aspects of the *Febre* test. In applying their  
19 proposed test, Defendants narrowly define "customer complaints" so that only those complaints  
20 which consumers have made *in writing* (rather than by telephone), and which consumers either  
21 submitted to a third-party consumer protection agency or sent to PBS through an attorney, are  
22 "complaints." (Thus, verbal and written complaints that consumers made directly to PBS, verbal  
23 complaints that consumers made to third-party consumer protection agencies, are not included in  
24 Defendants' definition.) Applying this narrow definition, Defendants argue that less than 1% of

25 <sup>2</sup> See doc. #132-2 at p.69, lns.13-15 ("Defendants do not dispute that PBS collected  
26 \$39,280,100.98 from customers in connection with PBS sales [during that time period]."). The  
27 FTC contends that Defendants' "Subscription Order Services" ("SOS") sales were also made in  
28 violation of the FTC Act and TSR; however, because the Order granting summary judgment does  
not address the deceptive nature of Defendants' SOS sales (which generated net revenues in the  
undisputed amount of \$1,149,792.27), and assuming that no new evidence will be presented at the  
evidentiary hearing, the FTC limits its restitution request to the PBS sales (\$39,280,100.98).

1 consumers have complained about their sales and collections practices. Defendants then argue that  
 2 restitution is only appropriate for those consumers who have lodged a complaint that falls within  
 3 this narrowly-constructed definition, and who, despite lodging such a complaint, have nonetheless  
 4 paid money to PBS. Given that it is Defendants' practice to stop collection efforts against any  
 5 consumer about whom it receives a mediation letter from the Better Business Bureau or a State  
 6 Attorney General or a private attorney representing a consumer, *see* Order, doc. #151 at p.17, lns.  
 7 22-25, very few consumers who have lodged such a complaint have paid any or much money.  
 8 Application of Defendants' proposed test would thus allow Defendants to keep most of their ill-  
 9 gotten gains.

10 Defendants define constitutes customer "satisfaction" broadly, such that they classify as  
 11 "satisfied" those who most people would consider to be unhappy customers. Defendants admit  
 12 that although they are aware that consumers call PBS to complain about its sales and collections  
 13 practices, they do not keep track of these calls or classify them as "complaints."<sup>3</sup> A telling  
 14 example of this is the interaction between PBS customer service representative Anna Skelton and  
 15 the mother of two of PBS's consumer victims. Defendants claim that Ms. Skelton satisfactorily  
 16 resolved Susan Krause Byers' complaint about the deceptive calls that PBS made to her kids,  
 17 stating that:

18 *After we finished our conversation, Ms. Byers did state to me that she wished she had*  
 19 *contacted me prior to filing the complaints because I was able to answer all her questions*  
 20 *and concerns about her sons [sic] account.*

20 <sup>3</sup> PBS does not consider consumers who complain by telephone to be "complaints":

21 Q: ... What about people who call in asking for[,] say John Marley, general  
 22 manager[,] saying, ["I don't know what this agreement form is. It's saying I owe  
 23 \$717.60, but I never agree to that. Somebody lied to me.["] Do you consider a  
 24 complaint like that, a call like that[,] a complaint?

25 A: I consider that a ["]problem.["] In other words, [what] a customer service rep  
 26 needs to do is find out what the problem is with the accounts and solve that  
 27 problem.

28 Q: Okay. But calls like that, are they tracked?

A: No. They would be tracked. They would be put in [the] remarks [section] of the  
 customer [file]. But I don't have any way of tracking the remarks column if that  
 makes sense.

*See* doc. #154-2, Sixth Gale declaration at Attachment 6 (Dries Dantuma deposition transcript at  
 p.87, lns.14-25, and p.88, ln.1).



1 Doc. #96 at p.399. Ms. Byer’s supplemental declaration shows, however, that Ms. Byers was in  
2 fact *not* satisfied. In contesting the representations in Ms. Skelton’s letter, Ms. Byers noted that:

3 *One of the things I told her was that what the company was doing was criminal; I don’t*  
4 *know how she could interpret that to mean I was in any way “satisfied” with PBS.*

5 Doc. #96 at pp.386-87.<sup>4</sup> Adopting Defendants’ proposed restitution test and their low standard for  
6 establishing customer “satisfaction” would reward Defendants for their refusal to recognize  
7 consumer complaints for what they are and would make a mockery of the “complete justice” that  
8 Section 13(b) and the Ninth Circuit contemplate.

9 Defendants should not be able to minimize their monetary liability by refusing to keep  
10 track of complaints. Other courts have rejected similar attempts to reduce restitution obligations  
11 based on a defendant’s lack of records. In *Febre*, for example, the Seventh Circuit rejected the  
12 defendants’ contention that the FTC’s restitution calculation was not reliable because defendants’  
13 computer database lacked necessary information, noting that “[t]he risk of uncertainty should fall  
14 on the wrongdoer whose illegal conduct created the uncertainty.” 128 F.3d at 535 (*quoting SEC v.*  
15 *First City Financial Corp., Ltd.*, 890 F.2d 1215 (D.C. Cir. 1989)). *See also CFTC v. American*  
16 *Metals Exchange Corp.*, 991 F.2d 71, 77 (3rd Cir. 1993) (consumer losses are appropriate measure  
17 of disgorgement where defendants’ record keeping has “so obscured matter that lawful gains  
18 cannot be distinguished from the unlawful without incurring inordinate expense); *United States v.*  
19 *Prochnow*, 2007 U.S. App. LEXIS 24718 at \*15 (11th Cir. 2007) (“given the state of the business  
20 records that [the defendant’s] organizations kept, there was no way to calculate the precise amount  
21 of injury on a customer-by customer basis”).

22 IV. THE COURT SHOULD REJECT DEFENDANTS’ EVIDENCE AS TO “SATISFIED CUSTOMERS”  
BECAUSE IT IS BASED ON UNSUPPORTABLE INFERENCES

23 A. *None of Defendants’ evidence supports their argument that they had satisfied*  
24 *customers*

25 Pursuant to both FRCP 26(a)(1)(A)(ii) and the FTC’s discovery requests, Defendants were  
26 required to produce all evidence that they would use to support their defenses in this case,  
27 including that they had “satisfied customers.” The only evidence Defendants produced to support

28 <sup>4</sup> The low standard of “customer satisfaction” employed by Defendants’ customer service department is noteworthy given that they are the gatekeepers responsible for “keeping an eye out” for problem employees. *See* doc. #154-2, Sixth Gale declaration at Attachment 6 (Dries Dantuma deposition transcript, p.98, lns.13-15).

1 their defense that customers who paid for magazines were satisfied were documents entitled “First  
2 Payment Coupons” and their lists of new customer for a four-month period.<sup>5</sup>

3 The First Payment Coupon does not in fact attempt to elicit consumers’ opinions on  
4 whether they are in fact satisfied customers. The first question, “1. *How do you rate the way our*  
5 *representative presented your order?*”, is ambiguous since consumers have spoken to more than  
6 one representative by the time they receives the First Payment Coupon, and the question does not  
7 allow for a negative response (the only answers allowed are “Excellent,” “Good,” or “Fair”). The  
8 second question, “2. *Were your magazines lists correctly on your order?*”, does not have even  
9 colorable relevance to the issue of whether consumers were satisfied customers. Moreover, as the  
10 Court noted in its Order, some of the First Payment Coupons included written complaints which  
11 show or suggest customer *dissatisfaction*. Doc. #151 at p.12, Ins.18-25. Thus, the Court should  
12 conclude as a matter of law that Defendants’ First Payment Coupons are insufficient to support  
13 Defendants’ claim that they had satisfied customers.

14 The Court should likewise find that Defendants’ “new customer” lists are insufficient as a  
15 matter of law to establish that Defendants had any satisfied customers. The Court found that  
16 Defendants’ abusive collection tactics included threatening legal action or negative credit  
17 repercussions if the consumer failed to pay. In addition, consumer declarations show that at least  
18 some of the consumers who are on Defendants’ “new customer” lists were extremely dissatisfied  
19 with Defendants’ sales and collections tactics, and that these consumers paid money to PBS  
20 because they were either afraid that PBS would damage their credit if they didn’t pay, or felt as  
21 though they had been tricked into a binding contract. *See* doc. #90 (FTC’s undisputed fact #151);  
22 doc. #96 at p.410 (Campbell declaration ¶ 11); doc. #135-16 (Shepard declaration ¶¶ 2, 5). Thus,  
23 the Court should reject Defendants’ proposed inference that the fact that a consumer paid money to  
24 PBS and is a current “customer” should somehow lead to the conclusion that the consumer is a

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25 <sup>5</sup> Defendants initially refused to produce this evidence to the FTC, and ultimately produced new  
26 customer lists covering a four-month period, only after the Court compelled their production.  
27 Pursuant to FRCP 37(c)(1), the Court should exclude any new evidence that Defendants attempt to  
28 introduce on this issue at the evidentiary hearing. If the Court allows Defendants to present new  
evidence, it should also allow the FTC to present new evidence, including on consumer injury for  
the period September 1, 2008 to date.

1 satisfied customer. To the contrary, given the Court's findings and the FTC's uncontroverted  
2 evidence which shows that consumers who paid money to PBS did so because PBS's collections  
3 tactics made them feel coerced to pay, the Court should infer that the typical paying consumer felt  
4 coerced into paying because of Defendants' deceptive and abusive collections tactics.

5 In short, Defendants' First Payment Coupons and new customer lists are not reliable and  
6 are insufficient to support Defendants' argument that consumers paid money to PBS because they  
7 were satisfied with Defendants' sales and collections tactics.

8 *B. The Court should reject Defendants' proposed inference that consumers who paid*  
9 *money to PBS or who did not file "third-party" complaints are "satisfied"*  
10 Defendants argue that the Court should infer that all non-complaining customers who "are  
11 paying for and receiving magazines" or "who renew their magazine subscriptions and/or add-on to  
12 their current subscription(s)" or who have responded to PBS's "First Payment Coupon" questions  
13 are "satisfied." See doc. #92 at p.79, lns.23-27 (Defendant Ed Dantuma Enterprises, Inc.'s  
14 response to FTC's Interrogatory No. 16). The Ninth Circuit rejected a similar defense in *FTC v.*  
*Pantron*, where the defendant had:

15 introduced evidence [at trial] that over half of its orders come from repeat  
16 purchasers, that it had received very few written complaints, and that very few of  
17 Pantron's customers (less than 3%) had exercised their rights under the money-back  
18 guarantee. 33 F.3d at 1093. The Ninth Circuit noted that "even many unsatisfied customers will not take  
19 advantage of a money-back guarantee." *Id.* at 1103. See also *FTC v. Nat'l Urological Group, Inc.*,  
20 645 F.Supp.2d 1167 (N.D. Ga. 2008) (drawing rebuttable presumption that consumers relied on the  
21 misrepresentations even when making subsequent purchases, noting it was defendants' to introduce  
22 evidence that customers did not rely on the misrepresentations, and rejecting defendants' argument  
23 that they should not be required to compensate repeat customers).

24 The Ninth Circuit's common-sense observation applies with particular force in this case  
25 because PBS employees continue to employ the abusive collections tactics described in the Court's  
26 order. See Order, doc. #151 at p.31, lns.3-9; doc. #154-2 (Sixth Gale declaration ¶¶ 12, 13, 14),  
27 doc. #154-3 (Gaynier declaration) (consumer received PBS's deceptive sales call in October 2009  
28 and PBS's abusive collections calls in November and December 2009). See also doc. #96 at  
pp.456, 458 (Toomer declaration ¶¶8, 14) (consumer felt "trapped [by PBS's tactics]... and that

1 [he] didn't have any alternative but to pay the bill" and has "never been a satisfied customer of  
2 PBS"); doc. #96 at p.410 (Campbell declaration ¶ 11) (PBS "tricked [consumer] into paying much  
3 more than [she] was originally told"; her experience with PBS was "very unsatisfactory"); doc.  
4 #135-16 at pp.6286-88 (Shepard declaration ¶¶ 2, 5) (consumer is "thoroughly dissatisfied" with  
5 PBS and felt "forced into paying [for] something that [she] never agreed to and did not want";  
6 PBS's phone calls to her work were a "major distraction and [she] needed them to stop calling");  
7 doc. #145-1 at p.7 (fifth Gale declaration ¶ 9). It is not surprising that consumers who are faced  
8 with Defendants' deceptive and abusive collection tactics, who did not agree to buy Defendants'  
9 magazine subscriptions, and whom PBS is threatening with legal action, might pay money to PBS  
10 for the sole purpose of getting PBS to stop contacting them. Holding consumers' payment to PBS  
11 against the consumers under these circumstances would be contrary to the purpose of the FTC Act.  
12 Likewise, the Court should not penalize consumers just because they did not retain an attorney to  
13 present their complaint to PBS or because they did not submit a written complaint to a third-party  
14 consumer protection agency. The fact that a consumer paid money to PBS, or did not lodge a  
15 written complaint in particular manner, does not mean that he or she was not victimized by  
16 Defendants. *See, e.g.*, doc. #96 at pp.406-10 (Campbell declaration), pp.436-37 (Narramore  
17 declaration), and pp. 454-60 (Toomer declaration); doc. #135-16 (Shepard declaration).

18 V. THE COURT SHOULD EXCLUDE ANY EVIDENCE DEFENDANTS PROFFER AS TO THE EXPENSES  
19 THEY INCURRED IN OPERATING THEIR DECEPTIVE AND ABUSIVE TELEMARKETING SCHEME  
A court may award equitable restitution under Section 5 equal to the amount of consumer  
20 losses based on total sales of a deceptively sold product, even where that amount exceeded the  
21 amount of the defendants' unjust enrichment. *Stefanchik* at 931. "[B]ecause the FTC Act is  
22 designed to protect consumers from economic injuries, courts have often awarded the full amount  
23 lost by consumers rather than limiting damages to a defendant's profits." *Id.* "Requiring the  
24 defendants to return the profits that they received rather than the costs incurred by the injured  
25 consumer would be the equivalent of making the consumer bear the defendants' expenses." *FTC*  
26 *v. Nat'l Urological Group, Inc.*, 645 F.Supp.2d at 1213. The Court should award monetary relief  
27 in the full amount of money that consumers paid pursuant to Defendants' deceptive and abusive  
28 sales scheme, regardless of the expenses Defendants incurred in operating the scheme.

1 Defendants' consumer victims should not be monetarily penalized for expenses incurred by  
2 Defendants and over which the consumers had no control.

3 VI. THE COURT SHOULD HOLD EACH OF THE INDIVIDUAL DEFENDANTS JOINTLY AND SEVERALLY  
4 LIABLE FOR THE FULL AMOUNT OF RESTITUTION

5 In ordering equitable monetary relief under Section 13(b), the Court may hold individual  
6 corporate officers and owners personally liable for the monetary relief if the individuals:

7 had knowledge that the corporation or one of its agents engaged in dishonest or  
8 fraudulent conduct, that the misrepresentations were the type upon which a  
9 reasonable and prudent person would rely, and that consumer injury resulted.

10 *FTC v. Affordable Media, LLC*, 179 F.3d 1228, 1234 (9th Cir. 1999) (citing *FTC v. Publishing  
11 Clearing House, Inc.*, 104 F.3d 1168, 1171 (9th Cir. 1997)). The knowledge requirement can be  
12 satisfied if:

13 the individuals had actual knowledge of material misrepresentations, [were]  
14 recklessly indifferent to the truth or falsity of a misrepresentation, or had awareness  
15 of a high probability of fraud along with an intentional avoidance of the truth.

16 *Id.* Accordingly, an individual may be held personally liable for restitution without a showing of  
17 an actual intent to defraud consumers. *Id.*

18 Among the factors that courts have considered in determining whether an individual  
19 defendant had knowledge of the underlying corporate fraud are the individual's active role in  
20 developing deceptive materials used to market to consumers, such as telemarketing scripts, and  
21 responsibility for corporate financial matters. *See, e.g., FTC v. Cyberspace.com, LLC*, 2002 U.S.  
22 Dist LEXIS 25565 at \*17-19, 2003-1 Trade Cas. (CCH) ¶ 73,960 (W.D. Wash. 2002), *aff'd*, 453  
23 F.3d 1196 (9th Cir. 2006); *FTC v. Amy Travel*, 875 F.2d 564, 574 (7th Cir. 1989) (telemarketing  
24 scripts); *FTC v. Am. Standard Credit Sys.*, 874 F. Supp. 1080, 1089 (C.D. Cal. 1994) (developing  
25 deceptive marketing materials); *FTC v. World Media Brokers*, 415 F.3d 758, 765-66 (7th Cir.  
26 2005) (responsibility for corporate financial matters). Knowledge may also be inferred in part  
27 from an individual's awareness of consumer complaints. *FTC v. Cyberspace.com, LLC*, 453 F.3d  
28 1196, 1202 (9th Cir. 2006); *FTC v. Bay Area Bus. Council, Inc.*, 423 F.3d 627, 637-38 (7th Cir.  
2005); *Amy Travel*, 875 F.2d at 574.

Based on the uncontroverted evidence already presented, and as discussed in Section IV.B.  
of the FTC's memorandum in support of its summary judgment motion (doc. #88), the Court

1 should make the additional findings that: (1) consumer injury has resulted; and (2) each individual  
2 Defendant (Edward Dantuma, Persis Dantuma, Brenda Dantuma Schang, Dirk Dantuma, Jeffrey  
3 Dantuma, and Dries Dantuma) had actual knowledge of material misrepresentations, was  
4 recklessly indifferent to the truth or falsity of a misrepresentation, or had awareness of a high  
5 probability of fraud along with an intentional avoidance of the truth. Based on these findings and  
6 the Court's previous findings that (1) PBS's sales and collections tactics violated Section 5 of the  
7 FTC Act and four provisions of the FTC's TSR; and (2) the misrepresentations are the type upon  
8 which a reasonable and prudent person would rely, the Court should hold each of the individual  
9 Defendants personally liable for monetary relief.

10 Further, the Court should find that the Defendants acted as a "common enterprise." *See*  
11 discussion at Sections II.H. and III.D of doc. #88. Based on the Court's findings that Defendants  
12 acted as a common enterprise in engaging in the acts and practices that violate Section 5(a) of the  
13 FTC Act and the TSR, the Court should hold each of the defendants jointly and severally liable  
14 with the Corporate Defendants for the monetary judgment.

15 VII. THE FTC REQUESTS THAT THE COURT ORDER ANCILLARY RELIEF TO FACILITATE  
16 ADMINISTRATION BY THE FTC OF ANY MONETARY RELIEF AWARDED

17 Section VIII of the proposed final judgment lodged by the FTC in connection with its  
18 summary judgment motion set forth various ancillary equitable provisions designed to assist and  
19 provide guidance to the FTC in administering the requested monetary relief. *See* doc. #109. The  
20 FTC respectfully requests that the Court include the following sections of doc. #109 with any  
21 monetary relief it awards: Sections VIII.B. (allowing for creation of restitution fund), VIII.C.  
22 (requiring Defendants to produce customer information to FTC, to facilitate administration of a  
23 restitution program), VIII.D. (providing for accrual of interest on unpaid balance of monetary  
24 award), and VIII.E (disclosing Defendants' taxpayer identifying numbers to FTC to facilitate  
25 collecting and reporting on delinquent amounts).

26 Dated: April 20, 2010

27 Respectfully submitted,  
28 /s/ Faye Chen Barnouw  
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