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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

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12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA

14 THE UNITED STATES OF
15 AMERICA,

16 Plaintiff,

17 v.

18 SONKEI COMMUNICATIONS,
19 INC., a California corporation, also
20 d/b/a SONKIE and SONKIE ONE,
21 PETER J. TURPEL, individually
and as an officer, director, or owner
22 of Sonkei Communications, Inc.,
and JOSEPH TURPEL,
23 individually and as an officer,
director, or owner of Sonkei
Communications, Inc.,

24 Defendants.
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27
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Ca - SACV11-1777-AG
(JPR)

COMPLAINT FOR CIVIL
PENALTIES, PERMANENT
INJUNCTION, AND OTHER
EQUITABLE RELIEF; DEMAND
FOR JURY TRIAL PURSUANT TO
FED. R. CIV. P. 38 AND LOCAL
RULE 38-1

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

5 1. Plaintiff brings this action under Sections 5(a), 5(m)(1)(A), 13(b), and
6 16(a) of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), and 56(a), and
7 Section 6 of the Telemarketing and Consumer Fraud and Abuse Prevention Act
8 (the “Telemarketing Act”), 15 U.S.C. § 6105, to obtain monetary civil penalties,
9 and permanent injunctive relief, and other equitable relief from Defendants for
10 their violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the
11 Commission’s Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310, as
12 amended.

13 **JURISDICTION AND VENUE**

14 2. This Court has subject matter jurisdiction over this action pursuant to
15 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and 15 U.S.C. §§ 45(m)(1)(A),
16 53(b), and 56(a). This action arises under 15 U.S.C. § 45(a).

17 3. Venue is proper in this District under 28 U.S.C. §§ 1391(b) - (c) and
18 1395(a), and 15 U.S.C. § 53(b).

19 **FEDERAL TRADE COMMISSION**

20 4. The Commission is an independent agency of the United States
21 Government created by statute. 15 U.S.C. §§ 41 - 58. The Commission enforces
22 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or
23 deceptive acts or practices in or affecting commerce. The Commission also
24 enforces the Telemarketing Act, 15 U.S.C. §§ 6101 - 6108. Pursuant to the
25 Telemarketing Act, the Commission promulgated and enforces the TSR, 16 C.F.R.
26 Part 310, which prohibits deceptive and abusive telemarketing acts or practices.

1 **DEFENDANTS**

2 5. Defendant Sonkei Communications, Inc. (“Sonkei”), also doing
3 business as Sonkie and Sonkie One, is a California for-profit corporation with its
4 principal place of business at 810 Lawrence Drive, Suite 120, Newbury Park,
5 California 91320. Sonkei transacts or has transacted business in this District and
6 throughout the United States.

7 6. Defendant Peter J. Turpel is an officer, director, and/or owner of
8 Sonkei. In connection with the matters alleged herein, defendant Peter J. Turpel
9 transacts or has transacted business in this District and throughout the United
10 States. At all times material to this Complaint, acting alone or in concert with
11 others, he has had the authority and responsibility to prevent or correct unlawful
12 telemarketing practices of Sonkei, and has formulated, directed, controlled, or
13 participated in the acts and practices of Sonkei, including the acts and practices set
14 forth in this Complaint.

15 7. Defendant Joseph Turpel is an officer, director, and/or owner of
16 Sonkei. In connection with the matters alleged herein, defendant Joseph Turpel
17 transacts or has transacted business in this District and throughout the United
18 States. At all times material to this Complaint, acting alone or in concert with
19 others, he has had the authority and responsibility to prevent or correct unlawful
20 telemarketing practices of Sonkei, and has formulated, directed, controlled, or
21 participated in the acts and practices of Sonkei, including the acts and practices set
22 forth in this Complaint.

23 8. 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 **THE TELEMARKETING SALES RULE**

27 9. Congress directed the Commission to prescribe rules prohibiting
28

1 abusive and deceptive telemarketing acts or practices pursuant to the
2 Telemarketing Act, 15 U.S.C. §§ 6101-6108. The Commission adopted the
3 original TSR in 1995, extensively amended it in 2003, and amended certain
4 provisions thereafter. 16 C.F.R. Part 310.

5 10. Among other things, the 2003 amendments to the TSR established a
6 do-not-call registry, maintained by the Commission (the “National Do Not Call
7 Registry” or “Registry”), of consumers who do not wish to receive certain types of
8 telemarketing calls. Consumers can register their telephone numbers on the
9 Registry without charge either through a toll-free telephone call or over the
10 Internet at donotcall.gov.

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

15 12. The FTC allows sellers, telemarketers, and other permitted
16 organizations to access the Registry over the Internet at
17 telemarketing.donotcall.gov, to pay the fee(s) if required, and to download the
18 numbers not to call.

19 13. Under the TSR, an “outbound telephone call” means a telephone call
20 initiated by a telemarketer to induce the purchase of goods or services or to solicit
21 a charitable contribution. 16 C.F.R. § 310.2(v).

22 14. The TSR prohibits sellers and telemarketers from initiating an
23 outbound telephone call to numbers on the Registry in violation of the TSR. 16
24 C.F.R. § 310.4(b)(1)(iii)(B).

25 15. The TSR also prohibits sellers and telemarketers from initiating an
26 outbound telephone call to any person when that person previously has stated that
27 he or she does not wish to receive an outbound telephone call made by or on
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1 behalf of the seller whose goods or services are being offered. 16 C.F.R.
2 § 310.4(b)(1)(iii)(A).

3 16. The TSR requires that sellers and telemarketers transmit or cause to
4 be transmitted the telephone number of the telemarketer and, when made available
5 by the telemarketer's carrier, the name of the telemarketer, to any caller
6 identification service in use by a recipient of a telemarketing call, or transmit the
7 customer service number of the seller on whose behalf the call is made and, when
8 made available by the telemarketer's seller, the name of the seller. 16 C.F.R.
9 § 310.4(a)(8).

10 17. As amended, effective September 1, 2009, the TSR prohibits
11 initiating a telephone call that delivers a prerecorded message to induce the
12 purchase of any good or service unless the seller has obtained from the recipient of
13 the call an express agreement, in writing, that evidences the willingness of the
14 recipient of the call to receive calls that deliver prerecorded messages by or on
15 behalf of a specific seller. The express agreement must include the recipient's
16 telephone number and signature, must be obtained after a clear and conspicuous
17 disclosure that the purpose of the agreement is to authorize the seller to place
18 prerecorded calls to such person, and must be obtained without requiring, directly
19 or indirectly, that the agreement be executed as a condition of purchasing any
20 good or service. 16 C.F.R. § 310.4(b)(1)(v)(A).

21 18. It is a violation of the TSR for any person to provide substantial
22 assistance or support to any seller or telemarketer when that person knows or
23 consciously avoids knowing that the seller or telemarketer is engaged in any
24 practice that violates Sections 310.3(a), (c) or (d), or 310.4 of the TSR. 16 C.F.R.
25 § 310.3(b).

26 19. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C.
27 § 6102(c), and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation
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1 of the TSR constitutes an unfair or deceptive act or practice in or affecting
2 commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

3 **DEFENDANTS' BUSINESS ACTIVITIES**

4 **Defendants' Abusive Telemarketing Practices**

5 20. Defendants provide substantial assistance or support to
6 "telemarketer[s]" engaged in "telemarketing," as defined by the TSR, 16 C.F.R.
7 § 310.2.

8 21. Defendants provide substantial assistance or support to telemarketers
9 that initiate outbound telephone calls to consumers in the United States to induce
10 the purchase of goods or services sold by Defendants' clients.

11 22. Defendants provide substantial assistance or support to telemarketers
12 engaged in telemarketing by a plan, program, or campaign conducted to induce the
13 purchase of goods or services by use of one or more telephones and which
14 involves more than one interstate telephone call. Defendants facilitate the sale of
15 a telemarketing service that delivers prerecorded voice messages through
16 telephone calls. This service is known as "voice broadcasting" or "robocalling."

17 23. Since at least 2008, Defendants have sold these telemarketing
18 services, including voice broadcasting services, to numerous clients that purport to
19 offer products and services, including home security systems, grant procurement
20 programs, and credit card services, to consumers throughout the United States.

21 24. Defendants have provided substantial assistance or support to
22 telemarketers that have caused consumers to receive telemarketing solicitations in
23 violation of the TSR, including the National Do Not Call Registry, and the FTC
24 Act. These illegal telephone calls have generated tens of thousands of complaints
25 from consumers and businesses.

26 25. Defendants are able to alter the name of the calling party that is
27 transmitted to caller identification services for calls made by Defendants. In the
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1 course of the telemarketing described above, Defendants are aware of the name of
2 the calling party that is transmitted to caller identification services for calls made
3 by Defendants.

4 26. In numerous instances, Defendants were aware or consciously
5 avoided knowing that their clients made telemarketing calls that transmitted or
6 caused to be transmitted caller names that did not name the telemarketer initiating
7 the call or the seller on whose behalf the telemarketing call was made. For
8 example, in numerous instances, Defendants were aware or consciously avoided
9 knowing that their clients made telemarketing calls that transmitted or caused to be
10 transmitted caller names "SERVICE MESSAGE" or "SERVICE
11 ANNOUNCEMENT." Defendants provided substantial assistance or support to
12 their clients in the course of this telemarketing.

13 27. Since at least 2008, Defendants were aware or consciously avoided
14 knowing that their telemarketing clients called consumers' telephone numbers on
15 the National Do Not Call Registry.

16 28. In numerous instances on or after September 1, 2009, Defendants
17 were aware or consciously avoided knowing that their telemarketing clients made
18 outbound calls that delivered prerecorded messages to induce the sale of goods or
19 services when the persons to whom these telephone calls were made had not
20 expressly agreed, in writing, to authorize the seller to place prerecorded calls to
21 such person.

22 **Assisting and Facilitating Abusive Telemarketing Practices**

23 29. Since at least 2008, Defendants have provided substantial assistance
24 or support to their clients, by, among other things, engaging in the conduct set
25 forth in Paragraphs 20-28, even though Defendants knew or consciously avoided
26 knowing that the clients were engaged in violations of Section 310.4 of the TSR.

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1 **VIOLATIONS OF THE TELEMARKETING SALES RULE**

2 **Count I (Assisting and Facilitating Abusive Telemarketing Acts or Practices)**

3 30. In numerous instances, Defendants have provided substantial
4 assistance or support, as described in Paragraphs 20 through 28, to sellers or
5 telemarketers whom Defendants knew or consciously avoided knowing, were
6 engaged in the following violations of the TSR:

- 7 a. engaging in or causing others to engage in initiating an
8 outbound telephone call to a person's telephone number on the
9 National Do Not Call Registry in violation of the TSR, 16
10 C.F.R. § 310.4(b)(1)(iii)(B);
- 11 b. failing to transmit or cause to be transmitted the name of the
12 telemarketer or of the seller to any caller identification service
13 in use by a recipient of a telemarketing call in violation of the
14 TSR, 16 C.F.R. § 310.4(a)(8); and
- 15 c. on or after September 1, 2009, initiating outbound telephone
16 calls delivering prerecorded messages to induce the purchase of
17 goods or services when the persons to whom these telephone
18 calls were made had not expressly agreed, in writing, to
19 authorize the seller to place prerecorded calls to such person, in
20 violation of the TSR, § 310.4(b)(1)(v)(A).

21 31. Defendants' substantial assistance or support as alleged in Paragraph
22 30 above violates the TSR, 16 C.F.R. § 310.3(b).

23 **CONSUMER INJURY**

24 32. Consumers have suffered and will continue to suffer injury as a result
25 of Defendants' violations of the TSR. Absent injunctive relief by this Court,
26 Defendants are likely to continue to injure consumers and harm the public interest.

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

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

5 34. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as
6 modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of
7 1990, 28 U.S.C. § 2461, as amended, and as implemented by 16 C.F.R. § 1.98(d)
8 (2009), authorizes this Court to award monetary civil penalties of up to \$11,000
9 for each violation of the TSR committed on or before February 9, 2009, and up to
10 \$16,000 for each violation of the TSR committed after February 9, 2009.
11 Defendants’ violations of the TSR were committed with the knowledge required
12 by Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

13 35. This Court, in the exercise of its equitable jurisdiction, may award
14 ancillary relief to remedy injury caused by Defendants’ violations of the TSR and
15 the FTC Act.

16 **PRAYER FOR RELIEF**

17 Wherefore, Plaintiff requests that this Court, as authorized by Section 13(b)
18 of the FTC Act, 15 U.S.C. §§ 53(b), and pursuant to its own equitable powers:

- 19 A. Award Plaintiff such preliminary injunctive and ancillary relief as
20 may be necessary to avert the likelihood of ongoing law violations
21 during the pendency of this action, including, but not limited to,
22 temporary and preliminary injunctions;
- 23 B. Enter judgment against Defendants and in favor of Plaintiff for each
24 violation alleged in this Complaint;
- 25 C. Award Plaintiff monetary civil penalties from each Defendant for
26 every violation of the TSR;
- 27 D. Enter a permanent injunction to prevent future violations of the TSR

1 and the FTC Act by Defendants;

2 E. Order Defendants to pay the costs of this action; and


3 F. Award Plaintiff such other and additional relief as the Court may
4 determine to be just and proper.

5 Respectfully submitted,

6
7 **FOR THE PLAINTIFF:
UNITED STATES OF AMERICA**

8 November 14, 2011

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1 **DEMAND FOR JURY TRIAL**

2 Plaintiff, the United States of America, hereby demands trial by jury.

3 Respectfully submitted,

4 **FOR THE PLAINTIFF:**
5 **UNITED STATES OF AMERICA**

6 November 14, 2011

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