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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

BRIAN EBERSOLE, individually and as officer
of B2B VOICE BROADCASTING, INC., and
VOICE MARKETING, INC.,

VOICE MARKETING, INC., and

B2B VOICE BROADCASTING, INC.,

Defendants.

Case No. 3:12-cv-00105

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

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

1. Plaintiff brings this action under Sections 5(a), 5(m)(1)(A), 13(b), and 16(a) of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), and 56(a), and Section 6 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (the “Telemarketing Act”), 15 U.S.C. § 6105, to obtain monetary civil penalties, a permanent injunction, and other equitable relief for Defendants’ violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC’s Telemarketing Sales Rule (the “TSR” or “Rule”), as amended, 16 C.F.R. Part 310 (2011). This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and 15 U.S.C. §§ 45(m)(1)(A), 53(b), and 56(a). This action arises under 15 U.S.C. § 45(a).
2. Venue is proper in this District under 28 U.S.C. §§ 1391(b)-(c) and 1395(a), and 15 U.S.C. § 53(b). Defendants transact business in this District and Defendant B2B Voice Broadcasting, Inc., is incorporated in this District.

DEFENDANTS

3. Defendant Brian Ebersole is the sole officer and shareholder Voice Marketing, Inc., and B2B Voice Broadcasting, Inc. At all times material to this complaint, Defendant Ebersole has formulated, directed, controlled, or participated in the acts and practices of Voice Marketing, Inc., and B2B Voice Broadcasting, Inc., including the acts and practices

set forth in this complaint, and has had the authority and responsibility to prevent or correct the unlawful practices alleged in this complaint.

4. Defendant Voice Marketing, Inc., is an inactive for-profit Colorado corporation with its principal place of business in Hermosa Beach, California. Voice Marketing, Inc., filed articles of dissolution on December 14, 2010.
5. Defendant B2B Voice Broadcasting, Inc., is a for-profit Nevada corporation with its principal place of business in Hermosa Beach, California. In early 2010, prior to the dissolution of Voice Marketing, Inc., clients and business operations of Voice Marketing, Inc., were transferred to or assumed by B2B Voice Broadcasting, Inc. B2B Voice Broadcasting, Inc., is the corporate successor or *alter ego* of Voice Marketing, Inc.
6. Defendant Brian Ebersole is jointly and severally liable for the conduct of Voice Marketing, Inc., and B2B Voice Broadcasting, Inc., because he has had the authority to control and direct the activities of these corporations, has known of or has consciously avoided knowledge of the abusive pattern of telephone calls initiated by these corporations and their clients, and has had the authority and responsibility to prevent or correct the abusive practices alleged in this complaint.
7. At all times relevant to this complaint, Defendants have maintained a substantial course of trade or business in marketing goods or services via the telephone, in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

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

8. The Commission is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The Commission enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The Commission also enforces the Telemarketing Act, 15 U.S.C. §§ 6101-6108. Pursuant to the Telemarketing Act, the Commission promulgated and enforces the TSR, 16 C.F.R. Part 310, which prohibits deceptive and abusive telemarketing acts or practices.
9. Congress directed the Commission to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15 U.S.C. §§ 6101-6108. The Commission adopted the original TSR in 1995, extensively amended it in 2003, and amended certain provisions thereafter. 16 C.F.R. Part 310.
10. Among other things, the 2003 amendments to the TSR established a do-not-call registry, maintained by the Commission (the “National Do Not Call Registry” or “Registry”), of consumers who do not wish to receive certain types of telemarketing calls. Consumers can register their telephone numbers on the Registry without charge either through a toll-free telephone call or over the Internet at donotcall.gov.
11. Consumers who receive telemarketing calls to their registered numbers can complain of Registry violations the same way they registered, through a toll-free telephone call or over the Internet at donotcall.gov, or by otherwise contacting law enforcement authorities.

12. The FTC allows sellers, telemarketers, and other permitted organizations to access the Registry over the Internet at telemarketing.donotcall.gov, to pay the fee(s) if required, and to download the numbers not to call.
13. Under the TSR, a “telemarketer” means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor. 16 C.F.R. § 310.2(cc). A “seller” means any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration. *Id.* § 301.2(aa).
14. Under the TSR, an “outbound telephone call” means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution. 16 C.F.R. § 310.2(v).
15. It is a violation of the TSR for any person to provide substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice that violates Sections 310.3(a), (c) or (d), or 310.4 of the TSR. 16 C.F.R. § 310.3(b).
16. The TSR prohibits sellers and telemarketers from initiating an outbound telephone call to numbers on the Registry. 16 C.F.R. § 310.4(b)(1)(iii)(B).
17. The TSR prohibits sellers and telemarketers from abandoning any outbound telephone call. A telephone call is considered “abandoned” if a person answers it and the telemarketer who initiated the call does not connect the call to a sales representative within two (2) seconds of the person’s completed greeting. 16 C.F.R. § 310.4(b)(1)(iv).

A telemarketer violates this prohibition on abandoning calls if it plays a prerecorded message when a person answers rather than connecting the recipient of the call to a live sales representative within two (2) seconds of the recipient's completed greeting.

18. As amended, effective September 1, 2009, the TSR prohibits initiating a telephone call that delivers a prerecorded message to induce the purchase of any good or service unless the seller has obtained from the recipient of the call an express agreement, in writing, that evidences the willingness of the recipient of the call to receive calls that deliver prerecorded messages by or on behalf of a specific seller. The express agreement must include the recipient's telephone number and signature, must be obtained after a clear and conspicuous disclosure that the purpose of the agreement is to authorize the seller to place prerecorded calls to such person, and must be obtained without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service. 16 C.F.R. § 310.4(b)(1)(v)(A).
19. The TSR requires that telemarketers disclose in an outbound telephone call, including any outbound telephone call that delivers a prerecorded message, the following information:
 - a. The identity of the seller;
 - b. That the purpose of the call is to sell goods or services; and
 - c. The nature of the goods or services.

The telemarketer must disclose this information truthfully, promptly, and in a clear and conspicuous manner. 16 C.F.R. §§ 310.4(b)(1)(v)(B)(ii), 310.4(d).

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

DEFENDANTS' BUSINESS PRACTICES

1. Defendants' Voice Broadcasting Services

21. Defendants market voice broadcasting services that use, or allow their clients to use, computers and automated dialers to deliver prerecorded messages through telephone calls.
22. The voice broadcasting services sold by Defendants use automated dialers to place calls to a database of numbers. When the calls are answered, the voice broadcasting equipment uses a computerized protocol to detect whether the call has been answered by a live person, or by an answering machine or voice mail system, and to determine when the prerecorded message should be played.
23. Clients of Defendants' services authorize Defendants to distribute or broadcast prerecorded messages on the clients' behalf. Defendants provide clients with software and technical support and, in many cases, provide clients with access to computers, telecommunications services, and automated dialers needed to make telephone calls and deliver prerecorded messages.
24. Defendants also send prerecorded messages for marketers that have contracted with multiple clients to provide access to Defendants' voice broadcasting services, by offering

Defendants' services in the marketers' own name. These marketers, described by Defendants as "Private Label" resellers, include JGRD, Inc., a Pennsylvania corporation, which sold access to Defendants' services to others under the fictitious name "VoiceBlaze.com." Defendants have sent hundreds of millions of prerecorded messages for JGRD, Inc., and other Private Label resellers.

25. Defendants have the ability to simultaneously make thousands of telephone calls that deliver prerecorded messages, and can place clients in contact with more than one million potential customers each day.
26. Defendants offer and provide clients with training on how to select the telephone numbers, prerecorded messages, and period during which Defendants' service will broadcast the client's message.
27. Defendants offer and provide clients with lists of telephone numbers that Defendants' service will call to deliver the client's prerecorded messages.
28. Defendants offer and provide clients with recording services to create prerecorded messages that Defendants' service will broadcast through telephone calls.

2. Defendants' Use of Voice Broadcasting for Telemarketing

29. Through their voice broadcasting services, Defendants initiate and have substantially assisted others in initiating telephone calls to induce the purchase of goods or services by consumers by delivering prerecorded messages. When they do so, Defendants are "telemarketers" under the TSR or provide substantial assistance or support to others that are "telemarketers" under the TSR. 16 C.F.R. § 310.2(cc).

30. Defendants know that their services are used to deliver prerecorded messages to induce the purchase of goods or services by consumers, and have initiated or substantially assisted others in initiating telephone calls to deliver prerecorded messages promoting the sale to consumers of auto warranties, carpet cleaning services, insurance for individuals, debt relief, and other consumer services.
31. In marketing their voice broadcasting services, Defendants have encouraged the use of voice broadcasting services to deliver prerecorded messages designed to induce the purchase of goods or services by consumers. Defendants have specifically advertised voice broadcasting services as a means to market and generate leads for auto warranties and financial services. Defendants have allowed other marketers to advertise Defendants' voice broadcasting services as a means to market and generate leads for insurance products, mortgage and finance services, and travel offers.
32. Defendants have access to the prerecorded messages delivered by their voice broadcasting services, and have listened to the contents of some of these prerecorded messages.
33. Prior to October 2010, when Defendants were aware that clients were using their voice broadcasting services for prerecorded messages designed to induce the purchase of goods or services by consumers, they did not take any action to restrict such use or to prevent outbound calls that violate the TSR. Defendants did not screen clients or prerecorded messages to prevent improper use of their services to deliver prerecorded messages designed to induce the purchase of goods or services by consumers, and did not require

that resellers or others offering Defendants' services screen clients or prerecorded messages for this purpose.

34. Prior to October 2010, Defendants did not restrict the use of their voice broadcasting services to prevent the delivery of prerecorded messages that are prohibited by the TSR, or to prevent clients using their services for telemarketing from violating the TSR. Even after October 2010, Defendants continued to allow Private Label resellers, like JGRD, Inc., to use their voice broadcasting services to deliver prerecorded messages that are prohibited by the TSR, and to use their services for telemarketing that violated the TSR.
35. Defendants do not require that clients using their voice broadcasting services to make outbound telephone calls to consumers demonstrate that they have registered to obtain access to the National Do Not Call Registry, have excluded numbers on the National Do Not Call Registry from lists of numbers to be called, or are using Defendants' services solely for telephone calls that are exempt from compliance with the National Do Not Call Registry.
36. Defendants have provided voice broadcasting services for telemarketing campaigns that they knew or consciously avoided knowing were illegally making calls to persons whose numbers were listed on the National Do Not Call Registry at the time the calls were made.
37. Defendants do not require that clients using their voice broadcasting services to make outbound telephone calls to consumers promptly, clearly, and truthfully identify the seller providing the goods or services promoted in the prerecorded messages that are delivered.

38. Since at least 2008, Defendants have, through their voice broadcasting services, initiated or substantially assisted others in initiating outbound telephone calls that deliver prerecorded messages throughout the United States to induce purchases by consumers as part of plans, programs, or campaigns conducted to induce the purchase of goods or services by use of one or more telephones and which involved more than one interstate telephone call. In doing so, Defendants have initiated or substantially assisted others in making tens of millions of outbound telephone calls that violate the TSR by, among other things:
- a. initiating outbound telephone calls to telephone numbers on the National Do Not Call Registry;
 - b. conducting voice broadcasting telemarketing campaigns that abandoned calls by playing a prerecorded message after the calls were answered by a person;
 - c. delivering prerecorded messages to persons, answering machines, and voice mail systems on or after September 1, 2009, when amendments to the TSR prohibited the delivery of such prerecorded messages; and
 - d. failing to disclose the identity of clients that caused the call to be made by delivering prerecorded messages that do not identify the seller.
39. Defendants conducted the campaigns described in Paragraph 38 knowing or consciously avoiding knowing that the prerecorded messages delivered by their voice broadcasting

services were made to induce the purchase of goods and services by consumers, and that the telephone calls and prerecorded messages did not comply with the TSR.

40. In particular, Defendants initiated or substantially assisted others that initiated more than 47 million outbound telephone calls to deliver prerecorded messages offering carpet and upholstery cleaning services during the period from February 2008 through October 2010. These calls included more than 20 million calls to persons whose telephone numbers were listed on the National Do Not Call Registry at the time of the call, and more than 13 million calls that were abandoned when the recipient of the call answered and the call was not connected to a live representative.
41. Defendants initiated or substantially assisted others that initiated more than 44 million outbound telephone calls to deliver prerecorded messages offering auto warranties in 2008. These calls included numerous calls to persons whose telephone numbers were listed on the National Do Not Call Registry at the time of the call, and at least 7.8 million calls that were abandoned when the recipient of the call answered and the call was not connected to a live representative. The prerecorded messages did not identify the seller.
42. Defendants initiated or substantially assisted others that initiated more than 137 million outbound telephone calls to deliver prerecorded messages offering debt relief services during the period from June 2008 to July 2009. These calls included numerous calls to persons whose telephone numbers were listed on the National Do Not Call Registry at the time of the call, and at least 33 million calls that were abandoned when the recipient of

the call answered and the call was not connected to a live representative. The prerecorded messages did not identify the seller.

43. Defendants initiated or substantially assisted others that initiated more than 10.3 million outbound telephone calls to deliver prerecorded messages advertising a mortgage modification program during the period from June 2008 through December 2009. These calls included at least 2.7 million calls to persons whose telephone numbers were listed on the National Do Not Call Registry at the time of the call, and more than 2.6 million calls that were abandoned when the recipient of the call answered and the call was not connected to a live representative. The prerecorded messages did not identify the seller.
44. Defendants initiated or substantially assisted others that initiated more than 4.3 million outbound telephone calls to deliver prerecorded messages offering loan modification and foreclosure assistance during the period from February 2008 through May 2009. These calls included more than 114,000 calls to persons whose telephone numbers were listed on the National Do Not Call Registry at the time of the call, and more than 1 million calls that were abandoned when the recipient of the call answered and the call was not connected to a live representative. The prerecorded messages did not identify the seller.
45. Defendants initiated or substantially assisted others that initiated more than 2.4 million outbound telephone calls to deliver prerecorded messages offering to market timeshares during the period from May 2010 to March 1, 2011. These calls included numerous calls to persons whose telephone numbers were listed on the National Do Not Call Registry at the time of the call, and more than 820,000 calls that were abandoned when the recipient

of the call answered and the call was not connected to a live representative. The prerecorded messages did not identify the seller.

46. Defendants initiated or substantially assisted others that initiated more than 1.9 million outbound telephone calls to deliver prerecorded messages offering subscriptions to satellite dish broadcasting during the period from November 2008 through January 2009. These calls included more than 540,000 calls that were abandoned when the recipient of the call answered and the call was not connected to a live representative.
47. Defendants initiated or substantially assisted others that initiated more than 2 million outbound telephone calls to deliver prerecorded messages marketing burial insurance during the period from October 2008 to March 1, 2011. These calls included numerous calls to persons whose telephone numbers were listed on the National Do Not Call Registry at the time of the call, and more than 410,000 calls that were abandoned when the recipient of the call answered and the call was not connected to a live representative. The prerecorded messages did not identify the seller.

VIOLATIONS OF THE TELEMARKETING SALES RULE

Count I

Calls to Persons Registered on the National Do Not Call Registry

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

Count II
Abandoning Calls

49. In numerous instances, in connection with telemarketing, Defendants have abandoned, or caused others to abandon, an outbound telephone call by failing to connect the call to a sales representative within two (2) seconds of the completed greeting of the person answering the call, in violation of the TSR, 16 C.F.R. § 310.4(b)(1)(iv).

Count III
Initiating Unlawful Prerecorded Messages

50. In numerous instances on or after September 1, 2009, Defendants made outbound calls that delivered prerecorded messages to induce the purchase of goods or services.
51. Defendants acts or practices, as described in Paragraph 50 above, are abusive telemarketing acts or practices that violate the TSR, 16 C.F.R. § 310.4(b)(1)(v)(A).

Count IV
Failing to Make Required Oral Disclosures

52. In numerous instances, in connection with calls to induce the purchase of goods and services, Defendants have made or caused telemarketers to make outbound telephone calls in which the telemarketer failed to disclose to the person receiving the call the identity of the seller.
53. Defendants' practice as alleged in Paragraph 52 is an abusive telemarketing practice that violates the TSR, 16 C.F.R. §§ 310.4(d)(1), 310.4(b)(1)(v)(B)(ii).

Count V
Assisting and Facilitating Abusive Telemarketing Acts or Practices

54. In numerous instances, Defendants have provided substantial assistance or support to sellers or telemarketers whom Defendants knew or consciously avoided knowing, were engaged in the following violations of the TSR:
- a. engaging in or causing others to engage in initiating an outbound telephone call to a person's telephone number on the National Do Not Call Registry in violation of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B);
 - b. abandoning calls by delivering prerecorded messages when a person answers an outbound telephone call, rather than connecting the call to a live representative within two (2) seconds of the person's completed greeting, in violation of the TSR, 16 C.F.R. § 310.4(b)(1)(iv);
 - c. on or after September 1, 2009, initiating outbound telephone calls delivering prerecorded messages to induce the purchase of goods or services in violation of the TSR, 16 C.F.R. § 310.4(b)(1)(v)(A); and
 - d. initiating outbound telephone calls to deliver prerecorded messages that fail to disclose truthfully, promptly, and in a clear and conspicuous manner the identity of the seller on whose behalf the call was made in violation of the TSR, 16 C.F.R. §§ 310.4(d)(1), 310.4(b)(1)(v)(B)(ii).
55. Defendants' substantial assistance or support as alleged in Paragraph 54 above violates the TSR, 16 C.F.R. § 310.3(b).

CONSUMER INJURY

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

THIS COURT'S POWER TO GRANT RELIEF

57. Defendants have violated the TSR as described above with knowledge or knowledge fairly implied on the basis of objective circumstances that such act is unfair or deceptive and is prohibited by the Rule, as set forth in Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).
58. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended, and as implemented by 16 C.F.R. § 1.98(d), authorizes this Court to award monetary civil penalties of up to \$11,000 for each violation of the TSR on or before February 9, 2009, see 16 C.F.R. § 1.98(d) (2009), and up to \$16,000 for each violation of the TSR after February 9, 2009. 74 Fed. Reg. 857 (Jan. 9, 2009).
59. Defendants' violations of the TSR were committed with the knowledge required by Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).
60. This Court, in the exercise of its equitable jurisdiction, may award ancillary relief to remedy injury caused by Defendants' violations of the TSR and the FTC Act.

PRAYER FOR RELIEF

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

- A. Award Plaintiff such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief, including but not limited to temporary and permanent injunctions;
- B. Enter judgment against Defendants and in favor of Plaintiff for each violation alleged in this complaint;
- C. Award Plaintiff monetary civil penalties from each Defendant for every violation of the TSR;
- D. Enter a permanent injunction to prevent future violations of the TSR and the FTC Act by Defendants;
- E. Order Defendants to pay the costs of this action; and
- F. Award Plaintiff such other and additional relief as the Court may determine to be just and proper.

Dated: February 23, 2012

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Respectfully Submitted,

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