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12 **UNITED STATES DISTRICT COURT**
CENTRAL DISTRICT OF CALIFORNIA
13 **WESTERN DIVISION**

14 UNITED STATES OF AMERICA,
Plaintiff,

15 v.

No. 2:16-cv-1643

16 **KFJ MARKETING, LLC**, a California
17 Limited Liability Company,

18 **SUNLIGHT SOLAR LEADS, LLC**, a
19 California Limited Liability Company,

20 **GO GREEN EDUCATION**, a California
Nonprofit Public Benefit Corporation, and

21 **FRANCISCO J. SALVAT**, individually
22 and as an officer of KFJ Marketing,
23 LLC; Sunlight Solar Leads, LLC; and Go
24 Green Education, also doing business as
Go Green Leads and myleadgroup,
Defendants.

COMPLAINT FOR CIVIL PENALTIES,
PERMANENT INJUNCTION, AND
OTHER RELIEF

DEMAND FOR JURY TRIAL

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

6 1. Plaintiff brings this action under Sections 5(a), 5(m)(1)(A), 13(b), 16(a),
7 and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), 56(a), and 57b, and
8 Section 6 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (the
9 “Telemarketing Act”), 15 U.S.C. § 6105, to obtain monetary civil penalties, a permanent
10 injunction, and other relief for Defendants’ violations of Section 5(a) of the FTC Act, 15
11 U.S.C. § 45(a), and the FTC’s Telemarketing Sales Rule (the “TSR” or “Rule”), as
12 amended, 16 C.F.R. Part 310 (2013).

13 **JURISDICTION AND VENUE**

14 2. This Court has subject matter jurisdiction over this action pursuant to 28
15 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and 15 U.S.C. §§ 45(m)(1)(A), 53(b), and
16 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 1395(a),
18 and 15 U.S.C. § 53(b). Defendants reside in and transact business in this District.

19 **DEFENDANTS**

20 4. Defendant KFJ Marketing, LLC, (“KFJ”) is a California limited liability
21 company with its principal place of business at 31355 Oak Crest Drive, Suite 150,
22 Westlake Village, CA, 91361. KFJ is a telemarketer that initiates outbound telephone
23 calls to induce consumers to purchase solar panels and installation services. KFJ
24 transacts or has transacted business in this district.

25 5. Defendant Sunlight Solar Leads, LLC (“Sunlight”) is a California limited
26 liability company with its principal place of business at 31355 Oak Crest Drive, Suite
27 150, Westlake Village, CA, 91361. Sunlight is a telemarketer that initiates outbound
28

1 telephone calls to induce consumers to purchase solar panels and installation services.
2 Sunlight transacts or has transacted business in this district.

3 6. Defendant Go Green Education (“Go Green”) is a California nonprofit
4 public benefit corporation with its principal place of business at 31355 Oak Crest Drive,
5 Suite 150, Westlake Village, CA, 91361. Go Green is a telemarketer that initiates
6 outbound telephone calls to induce consumers to purchase solar panels and installation
7 services. Go Green transacts or has transacted business in this district.

8 7. Defendant Francisco J. Salvat (“Salvat”) is the founder, manager, member,
9 and owner of KFJ and Sunlight. He is also the CEO, Secretary, and CFO of Go Green.
10 In connection with the matters alleged herein, Salvat resides in or has transacted business
11 in this District.

12 8. At all times material to this Complaint, acting alone or in concert with
13 others, Salvat has had the authority and responsibility to prevent or correct unlawful
14 telemarketing practices of KFJ, Sunlight, and Go Green and has formulated, directed,
15 controlled, or participated in the acts and practices of them, including the acts and
16 practices set forth in this Complaint.

17 9. At all times relevant to this complaint, KFJ, Sunlight, Go Green, and Salvat,
18 (“Defendants”) have maintained a substantial course of trade or business in marketing
19 goods or services via the telephone, in or affecting commerce, as “commerce” is defined
20 in Section 4 of the FTC Act, 15 U.S.C. § 44.

21 **COMMON ENTERPRISE**

22 10. Defendants KFJ, Sunlight, and Go Green (“Corporate Defendants”) have
23 operated as a common enterprise while engaging in the unlawful acts and practices
24 alleged below. Defendants have conducted business through an interrelated network of
25 companies that have common ownership, managers, employees, business functions, and
26 office locations, and that have commingled funds. Because these Corporate Defendants
27 have operated as a common enterprise, each of them is jointly and severally liable for the
28 acts and practices alleged below. Defendant Francisco J. Salvat has formulated,

1 directed, controlled, had the authority to control or participated in the acts and practices
2 of the Corporate Defendants that constitute the common enterprise.

3 **THE TELEMARKETING SALES RULE**

4 **AND THE NATIONAL DO NOT CALL REGISTRY**

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

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

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

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

20 15. Under the TSR, a “telemarketer” means any person who, in connection with
21 telemarketing, initiates or receives telephone calls to or from a customer or donor. 16
22 C.F.R. § 310.2(cc). A “seller” means any person who, in connection with a
23 telemarketing transaction, provides, offers to provide, or arranges for others to provide
24 goods or services to the customer in exchange for consideration. *Id.* § 301.2(aa).

25 16. Under the TSR, “telemarketing” is a plan, program, or campaign that uses
26 one or more telephones and involves more than one interstate telephone call, and is
27 conducted to induce the purchase of goods or services or charitable contribution. 16
28 C.F.R. § 310.2(dd)

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

4 18. The TSR prohibits sellers and telemarketers from initiating an outbound
5 telephone call to numbers on the Registry unless the seller (1) has obtained the
6 consumer’s express agreement, in writing, to place such calls, or (2) has an established
7 business relationship with that consumer, and the consumer has not stated that he or she
8 does not wish to receive such calls. 16 C.F.R. §§ 310.2(o), 310.4(b)(1)(iii)(B). Valid
9 written consent to receive a live telemarketing call to a number on the Registry requires:
10 (i) a writing signed by the consumer, (ii) clearly evidencing authorization to receive calls
11 placed on behalf of a specific seller, and (iii) stating the phone number to which such
12 calls may be placed. 16 C.F.R. § 310.4(b)(1)(iii)(B)(1).

13 19. The TSR prohibits sellers and telemarketers from initiating an outbound
14 telephone call that delivers a prerecorded message (“robocall”), unless the seller has
15 obtained the consumer’s express agreement, in writing, to receive such calls. 16 C.F.R.
16 § 310.4(b)(1)(v). Such express agreement must include: (1) 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; (2) that the seller did not require the agreement to be
19 executed as a condition of purchasing a good or service; (3) the specific seller the
20 consumer is authorizing to make robocalls; and (4) the consumer’s telephone number
21 and signature. 16 U.S.C. § 310.4(b)(1)(v)(A)(i)-(iv).

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

26 21. The TSR requires that sellers and telemarketers transmit or cause to be
27 transmitted the telephone number and, when made available by the telemarketer’s
28 carrier, the name of the telemarketer, to any caller identification service in use by a

1 recipient of a telemarketing call, or transmit the customer service number of the seller on
2 whose behalf the call is made and, when made available by the telemarketer's seller, the
3 name of the seller. 16 C.F.R. § 310.4(a)(8).

4 22. The TSR prohibits sellers and telemarketers from calling any telephone
5 number within a given area code unless the seller on whose behalf the call is made has
6 paid the annual fee for access to the telephone numbers within that area code that are
7 included in the Registry. 16 C.F.R. § 310.8.

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

12 **DEFENDANTS' BUSINESS PRACTICES**

13 24. Defendants are "telemarketers" engaged in "telemarketing" as those terms
14 are defined in the TSR.

15 25. Defendants initiated outbound telephone calls to consumers throughout the
16 United States to induce the purchase of solar panels and installation services.

17 26. Defendants have engaged in telemarketing by a plan, program, or campaign
18 conducted to induce the purchase of solar panels and installation services by the use of
19 one or more telephones and which involves more than one interstate telephone call.

20 27. As part of its campaign to market solar panels and installation services,
21 Defendants initiated over 1.3 million outbound telemarketing calls to phone numbers on
22 the Do Not Call Registry.

23 28. Defendants had no established business relationship with consumers they
24 called whose numbers were listed on the Do Not Call Registry, nor did Defendants have
25 consumers' express agreement, in writing, to receive outbound telemarketing calls from
26 Defendants.

27 29. As part of its campaign to market solar panels and installation services,
28 Defendants placed robocalls to consumers.

1 30. Defendants' robocalls contained statements similar to the following: "this is
2 an important public service announcement," "this is an urgent call about your energy
3 bill," and "stop the 14% increase coming soon." The recorded message then directed
4 consumers to press "1" to lower their electric bill. Consumers who pressed "1" were
5 transferred to a telemarketer who worked for Defendants. The telemarketer asked if the
6 consumer was interested in solar panels. If so, the telemarketer scheduled an
7 appointment for the consumer to meet with a private solar installation company.
8 Defendants then sold this information to private solar panel installation companies as a
9 customer lead.

10 31. Defendants did not have consumers' express agreement, in writing, to
11 receive robocalls from Defendants.

12 32. In numerous instances, Defendants continued to call consumers who had
13 previously informed Defendants that they did not wish to receive additional calls by or
14 on behalf of Defendants.

15 33. In numerous instances, Defendants "spoofed" their calls by transmitting
16 phony caller identification information so that the call recipients did not know the true
17 source of the calls.

18 34. Defendants received complaints from consumers who assert they did not
19 consent to Defendants' robocalls.

20 **VIOLATIONS OF THE TELEMARKETING SALES RULE**

21 **Count I**

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

23 35. In numerous instances, in connection with telemarketing, Defendants have
24 initiated or caused others to initiate an outbound telephone call to a person's telephone
25 number on the National Do Not Call Registry in violation of the TSR. 16 C.F.R.
26 § 310.4(b)(1)(iii)(B).

1 **Count II**

2 **Failure to Honor Entity-Specific Do Not Call Requests**

3 36. In numerous instances, in connection with telemarketing, Defendants have
4 initiated, or caused others to initiate, an outbound telephone call to a person who has
5 previously stated that he or she does not wish to receive such a call made by or on behalf
6 of the seller whose goods or services are being offered in violation of the TSR. 16
7 C.F.R. § 310.4(b)(1)(iii)(A).

8 **Count III**

9 **Failure to Transmit Caller Identification**

10 37. In numerous instances, in connection with telemarketing, Defendants have
11 failed to transmit, or cause to be transmitted, the telephone number and name of the
12 telemarketer or of the seller to any caller identification service in use by a recipient of a
13 telemarketing call, in violation of the TSR. 16 C.F.R. § 310.4(a)(8).

14 **Count IV**

15 **Initiating Unlawful Prerecorded Messages**

16 38. In numerous instances, in connection with telemarketing, Defendants have
17 made, or caused others to make, outbound telephone calls that delivered prerecorded
18 messages to induce the purchase of good or services when the persons to whom these
19 telephone calls were made had not signed an express agreement, in writing, authorizing
20 the seller to place prerecorded calls to such person, in violation of the TSR. 16 C.F.R.
21 § 310.4(b)(1)(v)(A).

22 **CONSUMER INJURY**

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

THIS COURT’S POWER TO GRANT RELIEF

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

41. 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 \$16,000 for each violation of the TSR. 16 C.F.R. § 1.98(d) (2013). 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).

42. 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. Enter judgment against Defendants and in favor of Plaintiff for each violation alleged in this complaint;
- B. Award Plaintiff monetary civil penalties from each Defendant for every violation of the TSR;
- C. Enter a permanent injunction to prevent future violations of the TSR and the FTC Act by Defendants; and
- D. 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.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all issues so triable.

1 Dated: March 10, 2016

Respectfully submitted,

2 Federal Trade Commission

FOR THE UNITED STATES OF
AMERICA

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24