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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF LOS ANGELES**

13 THE PEOPLE OF THE STATE OF
CALIFORNIA,

14 Plaintiff,

15 v.

16 TELE KING COMMUNICATIONS
CORPORATION, also known as TELE KING
17 COMMUNICATIONS, a Florida corporation;
18 TELE KING COMMUNICATIONS
MARKETING CORPORATION, a Florida
19 corporation; INTELECALL
COMMUNICATIONS, INC., a Florida
20 corporation; FRANK SCHREIBER, an
individual; RICHARD GOODMAN, an
21 individual; BARRY GOODMAN, an individual;
JOYCE HEATH, an individual; CARY
22 KRUGLY, an individual; and DOES 1 through
30, inclusive,

23 Defendants.
24

Case No.:

**COMPLAINT FOR RESTITUTION,
PERMANENT INJUNCTIVE RELIEF,
AND OTHER EQUITABLE RELIEF**

25 Plaintiff the People of the State of California (“People” or “Plaintiff”), by and through
26 Bill Lockyer, Attorney General of the State of California, is informed and believes and thereupon
27 alleges as follows:
28

PARTIES AND VENUE

1
2 1. Defendant Tele King Communications Corporation, a Florida corporation
3 also known as and/or doing business under the name Tele King Communications, and/or its direct
4 and indirect subsidiaries, affiliates, officers, directors, employees, agents, related entities,
5 successors, and assigns (collectively, “Tele King”), at all times mentioned herein, has transacted
6 business within the State of California, including in the County of Los Angeles. Despite doing
7 business in California, defendant Tele King Communications Corporation has not appointed an
8 agent for service of process in California.

9 2. Defendant Tele King Communications Marketing Corporation, a Florida
10 corporation, and/or its direct and indirect subsidiaries, affiliates, officers, directors, employees,
11 agents, related entities, successors, and assigns (collectively, “Tele King Marketing”), at all times
12 mentioned herein, have transacted business within the State of California, including in the County
13 of Los Angeles. Despite doing business in California, defendant Tele King Communications
14 Marketing Corporation has not appointed an agent for service of process in California.

15 3. Defendant Intelecall Communications, Inc., a Florida corporation, and/or
16 its direct and indirect subsidiaries, affiliates, officers, directors, employees, agents, related entities,
17 successors, and assigns (collectively, “Intelecall”), at all times mentioned herein, have transacted
18 business within the State of California, including in the County of Los Angeles.

19 4. Defendants Intelecall Communications, Inc., Tele King Communications
20 Marketing Corporation and Tele King Communications Corporation are successors in interest to,
21 partners or joint venturers with, and/or an alter egos of, one another, and as such are fully
22 responsible and liable for the actions of each other, as set forth in this complaint. Further, there is
23 such a unity of interest and ownership between Defendants Tele King Communications
24 Corporation, Tele King Communications Marketing Corporation and Intelecall Communications,
25 Inc., that any separateness between said corporations has ceased, and an adherence to the fiction
26 of the separate existence of said corporations would sanction fraud and promote injustice.

27 5. At all times mentioned herein defendant Frank Schreiber (“Schreiber”) was
28 the president of Tele King and Tele King Marketing, and engaged in, controlled, authorized,

1 and/or ratified the unlawful conduct of Defendants, as set forth herein. Defendant Scheiber is
2 sued individually and as a representative of Tele King, Tele King Marketing, or Intelecall.

3 6. At all times mentioned herein, Defendant Richard Goodman (“Richard
4 Goodman”) was working for and with Tele King and/or Tele King Marketing, and has engaged
5 in, controlled, authorized, and/or ratified the unlawful conduct of Defendants, as set forth herein.
6 Defendant Richard Goodman is sued individually and as a representative of Tele King, Tele King
7 Marketing or Intelecall.

8 7. At all times mentioned herein Defendant Barry Goodman (“Barry
9 Goodman”) was working for and with Tele King and/or Tele King Marketing, and has engaged
10 in, controlled, authorized, and/or ratified the unlawful conduct of Defendants, as set forth herein.
11 Defendant Barry Goodman is sued individually and as a representative of Tele King, Tele King
12 Marketing, or Intelecall.

13 8. At all times mentioned herein Defendant Joyce Heath (“Heath”) was
14 working for and with Tele King and/or Tele King Marketing, and has engaged in, controlled,
15 authorized, and/or ratified the unlawful conduct of Defendants, as set forth herein. Defendant
16 Heath is sued individually and as a representative of Tele King, Tele King Marketing or Intelecall.

17 9. At all times mentioned herein Defendant Cary Krugly (“Krugly”) was
18 working for and with Tele King, and has engaged in, controlled, authorized, and/or ratified the
19 unlawful conduct of Defendants, as set forth herein. Defendant Krugly is sued individually and as
20 a representative of Tele King, Tele King Marketing, or Intelecall.

21 10. Plaintiff is not aware of the true names and capacities of the Defendants
22 sued herein as DOES 1 through 30, inclusive, and therefore sues these Defendants by such
23 fictitious names. Each of said fictitiously named Defendants is responsible in some manner for the
24 activities alleged herein. Plaintiff will amend this Complaint to add the true names of the
25 fictitiously named Defendants once they are discovered. Whenever reference is made in this
26 Complaint to “Defendants” such reference shall include Does 1 through 30, Tele King, Tele King
27 Marketing, Intelecall, and each of the individually named Defendants.

1 11. At all times mentioned herein, each of the Defendants acted as the
2 principal, agent, or representative of each of the other Defendants, and in doing the acts herein
3 alleged, each Defendant was acting within the course and scope of the agency relationship with
4 each of the other Defendants, and with the permission and ratification of each of the other
5 Defendants.

6 12. At all times mentioned herein, each Defendant knew or realized that the
7 other Defendants were engaging in or planned to engage in the violations of law alleged in this
8 Complaint. Knowing or realizing that other Defendants were engaging in such unlawful conduct,
9 each Defendant nevertheless facilitated the commission of those unlawful acts. Each Defendant
10 intended to and did encourage, facilitate, or assist in the commission of the unlawful acts, and
11 thereby aided and abetted the other Defendants in the unlawful conduct.

12 13. Defendants have engaged in a conspiracy, common enterprise, and
13 common course of conduct, the purpose of which is and was to engage in the violations of law
14 alleged in this Complaint. The conspiracy, common enterprise, and common course of conduct
15 continue to the present.

16 14. Whenever reference is made in this Complaint to any act of Defendants,
17 such allegation shall mean that each Defendant acted individually and jointly with the other
18 Defendants named in that cause of action.

19 15. The violations of law alleged in this Complaint occurred in Los Angeles
20 County and elsewhere throughout California.

21 DEFENDANTS' BUSINESS PRACTICES AND GOVERNING LAW

22 16. Subject to certain exclusions not applicable to this action, in pertinent part,
23 California Civil Code section 1812.201(a), defines a Seller Assisted Marketing Plan ("SAMP") as:

24 "[A]ny sale or lease or offer to sell or lease any product, equipment, supplies, or
25 services that requires a total initial payment exceeding five hundred dollars (\$ 500), but
26 requires an initial cash payment of less than fifty thousand dollars (\$ 50,000), that will aid
27 a purchaser or will be used by or on behalf of the purchaser in connection with or
28 incidental to beginning, maintaining, or operating a business when the seller assisted

1 marketing plan seller has advertised or in any other manner solicited the purchase or lease
2 of the seller assisted marketing plan and done any of the following acts:

3 “(1) Represented that the purchaser will earn, is likely to earn, or
4 can earn an amount in excess of the initial payment paid by the purchaser
5 for participation in the seller assisted marketing plan.

6 “(2) Represented that there is a market for the product,
7 equipment, supplies, or services . . . sold or leased or offered for sale or
8 lease to the purchaser by the seller assisted marketing plan seller....

9 17. Defendants offer for sale and sell pre-paid long distance phone cards,
10 marketing materials, and display racks to individuals, including residents of California.

11 18. Individuals purchasing the phone cards, marketing materials and display
12 racks are then directed by Defendants to re-sell the phone cards to the general public, by placing
13 the display racks containing the pre-paid phone cards for re-sale at various retail and service
14 locations. Defendants also purport to assist their customers in finding locations to place the
15 display racks and phone cards for re-sale.

16 19. Defendants typically charge consumers between \$12,000 and \$30,000 for
17 purchase of the display racks, marketing materials and prepaid phone cards. Defendants represent
18 to consumers that they can earn an amount in excess of the amount charged by Defendants, and
19 that there is a significant market for the phone cards.

20 20. The phone cards, marketing materials, and display racks sold by
21 Defendants (“Tele King SAMP”) constitute a SAMP as defined in the California Civil Code.

22
23 DEFENDANTS’ VIOLATIONS OF CALIFORNIA LAWS
24 REGULATING SELLER ASSISTED MARKETING PLANS

25 21. Section 1812.203 of the California Civil Code requires any entity seeking
26 to sell SAMPs to file certain documents with the California Attorney General’s Office thirty days
27 prior to placing any advertisement for or making any representation about the SAMP they are
28 planning to sell. Also pursuant to Section 1812.203(a) of the California Civil Code, no entity may

1 make any advertisements or representations about a SAMP until the California Attorney General's
2 Office issues a "Notice of Filing."

3 22. Defendants filed a SAMP application with the Office of the California
4 Attorney General in approximately December, 2001. After numerous modifications to the
5 advertisements and promotional materials that Defendants sought to use in marketing their SAMP
6 program, the California Attorney General's Office issued a Notice of Filing for Tele King in
7 August of 2002.

8 23. Although the California Attorney General's Office did not issue a Notice of
9 Filing for Tele King until August of 2002, Defendants commenced soliciting California residents,
10 and advertising and making representations about the SAMP they offered as early as December,
11 2001. In engaging in such conduct prior to receiving a Notice of Filing issued by the Attorney
12 General's office, Defendants violated section 1812.203(a) of the Civil Code.

13 24. Pursuant to Civil Code sections 1812.205 and 1812.206, before a
14 prospective purchaser signs a contract and before the seller collects any money, a seller of a
15 SAMP is required to disclose certain information, including that the state of California does not
16 approve or endorse any particular SAMP, the full identity of the seller of the SAMP, the identities
17 of the owners and officers of the entity selling the SAMP, as well as information about litigation
18 history of the sellers of the SAMP and commissions paid to individuals selling the SAMP.

19 25. Defendants have not always provided the disclosures required under Civil
20 Code sections 1812.205 and 1812.206 to California consumers who purchased Tele King
21 SAMPs. Instead, Defendants provided forms entitled "Information For Prospective Business
22 Opportunity Purchasers Required By the Federal Trade Commission," and "Disclosure Required
23 by Florida Law." These forms do not comply with the requirements of Civil Code sections
24 1812.205 and 1812.206 because, among other deficiencies, the forms do not disclose the owner
25 of Tele King, do not provide any of the required sales commissions disclosures, and do not
26 provide the litigation history required under California law. Further, the forms are not titled
27 according to the requirements of Civil Code sections 1812.205 and 1812.206.

28 26. Section 1812.207 of the Civil Code provides that sections 1812.200 et seq.

1 of the Civil Code govern all SAMP contracts entered into in this state, and section 1812.216 of
2 the Civil Code bars any waiver of any provision of the SAMP statute. Among other terms,
3 section 1812.202(b) of the Civil Code specifies that a sale of a SAMP is deemed to have
4 occurred in California when the purchaser of the SAMP lives in California. However, in violation
5 of these provisions, contracts used by Defendants provide that Florida law, not California law,
6 governs Tele King SAMPs sold to California residents.

7 27. Section 1812.209 of the California Civil Code also requires all sellers of
8 SAMPs to include certain terms in their contracts. In particular, subsection (a) requires escrow
9 information in instances where a purchaser pays more than 20% of the contract price before
10 delivery of the services and goods to be provided by the entity selling the SAMP; subsection (b)
11 requires SAMP contracts to include notice of a purchaser's right to cancel a SAMP contract
12 within three business days after the contract is signed; subsection (d) requires SAMP contracts to
13 include the address of the seller and the seller's agent for acceptance of service of process in
14 California; subsection (e) requires SAMP contracts to include information about the business form
15 (corporate, partnership, or otherwise) of the seller; subsection (h) requires SAMP contracts to
16 specify the terms under which a SAMP purchaser may terminate a contract under section
17 1812.215 of the Civil Code; and subsection (i) requires SAMP contracts to specify the name and
18 address of the entities of each supplier of the products that the SAMP seller will be providing to
19 the purchaser.

20 28. The SAMP contracts often used by Defendants do not include the terms
21 required by subsections (a), (b), (d), (e), (h), and (i) of Civil Code section 1812.209.

22 29. Section 1812.210(b) of the Civil Code specifies that in any case where a
23 seller of a SAMP receives payment of more than 20% of the initial purchase price prior to
24 delivery of the SAMP products and services, all funds paid by the purchaser that are in excess of
25 20% of the contract price shall be kept in a separate escrow account. Further, when an escrow
26 account is required, section 1812.209(a) of the Civil Code requires that the SAMP contract
27 provide information about the escrow account to the purchaser, including the name and address of
28 the escrow account holder, as well as the institution and branch where the escrow account is held,

1 and account number of the escrow account.

2 30. In violation of Section 1812.210(b) of the Civil Code, Defendants have
3 collected more than 20% of the purchase price from purchasers of a Tele King SAMP before
4 providing any goods or services to the purchaser, without placing any of the funds in excess of
5 20% of the purchase price in an escrow account.

6 **FIRST CAUSE OF ACTION**

7 **VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTION 17500**

8 **(UNTRUE OR MISLEADING REPRESENTATIONS)**

9 31. The People reallege and incorporate by reference paragraphs 1 through 30,
10 above, as though fully set forth at this place.

11 32. Since an exact date unknown to Plaintiff and continuing to the present
12 time, Defendants have violated, and continue to violate, California Business and Professions Code
13 §17500 by making or causing to be made untrue or misleading statements with the intent to
14 induce members of the public to purchase the Tele King SAMP offered by Defendants. Such
15 untrue or misleading statements include, but are not limited to, the following:

16 A. Misrepresenting to prospective purchasers of Tele King's SAMP that
17 Defendants would assist the purchasers in finding high traffic and high profile locations
18 where the phone cards could be resold to the general public, when in fact the locations
19 where the phone cards would be placed for resale were, if placed at all, would often be
20 low traffic and low profile locations, such as bakeries, furniture stores, and garages; and

21 B. Misrepresenting to prospective purchasers of Tele King's SAMP that the
22 SAMP would provide significant income to purchasers, when, after accounting for the
23 amount purchasers of the Tele King SAMP must pay to Tele King for the display racks
24 and phone cards and to the owners of the locations where the cards are placed for resale
25 to the public, purchasers of the SAMP are unlikely to earn any significant income.

26 C. Misrepresenting to prospective purchasers of Tele King's SAMP that Tele
27 King Communications Corporation has appointed CT Corporation System, 818 West
28 Seventh St., Los Angeles, California ("CT") as an agent to accept service of process,

1 when in fact Tele King has not appointed CT, nor any other entity, as its agent to accept
2 service of process in California.

3 33. Defendants knew, or by the exercise of reasonable care should have
4 known, that these statements were untrue or misleading at the time they were made.

5 **SECOND CAUSE OF ACTION**

6 **VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

7 **(UNFAIR COMPETITION)**

8 34. The People reallege and incorporate by reference paragraphs 1 through 33,
9 above, as though fully set forth at this place.

10 35. Since an exact date unknown to Plaintiff, and continuing to the present,
11 Defendants, and each of them, in offering for sale and selling SAMPs to the public, have engaged
12 in, and are still engaging in, acts of unfair competition, as defined in Business and Professions
13 Code section 17200, in that they have committed acts and practices, which include, but are not
14 limited to the following:

15 A. As set forth more fully in paragraph 31 of the First Cause of Action,
16 Defendants have violated Business and Professions Code section 17500;

17 B. As set forth more fully in paragraph 22 above, Defendants have violated
18 Civil Code section 1812.203(a) which prohibits offering for sale or selling a SAMP before
19 a seller receives a Notice of Filing from the Attorney General's office;

20 C. As more fully set forth in paragraphs 23 and 24 above, Defendants have
21 violated Civil Code sections 1812.205 and 1812.206, which prohibit selling a SAMP
22 without the a seller giving prospective purchasers the disclosure documents required by
23 such sections;

24 D. As more fully set forth in paragraph 25 above, Defendants have violated
25 Civil Code section 1812.207 which requires that that every contract for the sale of a
26 SAMP shall be in writing and subject to the provisions os the SAMP Act in that
27 Defendants use contracts which do not comply with the terms of the SAMP Act and claim
28 that the contract is to be governed by Florida law rather than California law;

1 E. As more fully set forth in paragraphs 26 and 27 above, Defendants have
2 violated Civil Code section 1812.209 which requires a SAMP seller to use a contract
3 which complies with the requirements of such section in that Defendants have sold
4 SAMPs in California using contracts which do not comply with the requirements of
5 subsections (a), (b), (d), (e), (h) and (i) of such section;

6 F. As more fully set forth in paragraphs 28 and 29 above, Defendants have
7 violated Civil Code section 1812.210(b) which, among other things, requires a SAMP
8 seller to establish an escrow account when the seller receives more than 20% of the initial
9 payment amount prior to the delivery of the products being sold through the SAMP;

10 G. Defendants have required consumers purchasing a Tele King SAMP to
11 execute contracts that differ from and contain terms that are different from the model
12 contract that Defendants submitted to the Office of the California Attorney General for
13 purposes of obtaining the Notice of Filing necessary for them to do business in this state;
14 and

15 H. Defendants have required consumers purchasing a Tele King SAMP to
16 execute contracts that purportedly require any disputes with Tele King (or any other of the
17 Defendants) to be litigated or arbitrated in Florida, thereby improperly seeking to deprive
18 such consumers from obtaining access to a meaningful, convenient, and proper forum to
19 resolve any such disputes.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff prays for judgment as follows:

22 1. Pursuant to Business and Professions Code § 17535, that all Defendants,
23 their successors, agents, representatives, employees, and all persons who act in concert with them
24 be permanently enjoined from making any untrue or misleading statements in violation of Business
25 and Professions Codes § 17500, including, but not limited to, the untrue or misleading statements
26 alleged in the First Cause of Action;

27 2. Pursuant to Business and Professions Code § 17203, that all Defendants,
28 their successors, agents, representatives, employees, and all persons who act in concert with them

1 be permanently enjoined from committing any acts of unfair competition, including, but not
2 limited to, the violations alleged in the Second Cause of Action, including violating Civil Code §§
3 1812.200 *et seq*;

4 3. Pursuant to Business and Professions Code § 17536, that the Court assess
5 a civil penalty of two thousand five hundred dollars (\$2,500) against each Defendant for each
6 violation of Business and Professions Code § 17500, as proved at trial, in an amount of at least
7 \$500,000;

8 4. Pursuant to Business and Professions Code § 17206, that the Court assess
9 a civil penalty of two thousand five hundred dollars (\$2,500) against each Defendant for each
10 violation of Business and Professions Code § 17200 alleged in the Complaint, as proved at trial, in
11 an amount of at least \$500,000;

12 5. Pursuant to Business and Professions Code §§ 17203 and 17535, that
13 Defendants be ordered to give full restitution to all California consumers who purchased the
14 SAMP offered by Tele King;

15 6. Such other and further relief that the Court deems just and proper,
16 including (1) an order that each Defendant hereto be permanently barred from selling SAMPs in
17 California and from having any involvement in or with any business, corporation, or any other
18 entity that engages in the business of selling SAMPs in California, (2) an order imposing a
19 constructive trust on (a) all money Defendants have received from consumers who responded to
20 Defendants' unlawful solicitations; (b) all bank, savings, and checking accounts in which any
21 Defendant deposited any of this money; (c) all profits derived from this money; and (d) any
22 property purchased or maintained, in whole or in part, by any of this money and (3) an order that
23 Defendants be enjoined from spending, transferring, disbursing, encumbering, or otherwise
24 dissipating any funds held in the constructive trust imposed under the terms of subparagraph (2)
25 above without first obtaining approval from this Court after a hearing of which Plaintiff is given at
26 least 15 days' written notice; and

27 7. That the People recover their costs of suit.

1 DATED: April __, 2003

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