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16 UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

18 FEDERAL TRADE COMMISSION, )  
19 )  
20 Plaintiff, )  
21 v. )  
22 TONO RECORDS, dba TONO )  
MUSIC and PROFESSIONAL LEGAL )  
SERVICES, a corporation; )  
23 )  
24 TONO PUBLISHING, a corporation; )  
25 )  
26 PROMO MUSIC, a corporation; )  
27 )  
MILLENNIUM THREE CORP., a )  
28 corporation; )  
DULCE UGALDE, individually and )  
as an officer of Tono Records )  
and Tono Publishing; )

COMPLAINT

Case No. CV 07 3786 JFW  
COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF (RCx)

FILED  
2007 JUN 12 AM 11:27  
CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES

1 MARIA OCEGUERA, individually )  
 and as an officer of Tono )  
 2 Records and Tono Publishing; )  
 and )  
 3 )  
 4 LUIS ROBERTO RUIZ, individually )  
 and as an officer of Tono )  
 Records, Tono Publishing, Promo )  
 5 Music, and Millennium Three )  
 Corp., )  
 6 )  
 Defendants. )  
 7 )

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8  
 9 Plaintiff, the Federal Trade Commission ("FTC"), through its  
 10 undersigned attorneys, alleges as follows:

11 1. Plaintiff FTC brings this action under Sections 13(b) and 19  
 12 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b)  
 13 and 57b, and Section 814 of the Fair Debt Collection Practices Act  
 14 ("FDCPA"), 15 U.S.C. § 1692l, to obtain temporary, preliminary, and  
 15 permanent injunctive relief against Defendants to prevent them from  
 16 engaging in deceptive acts or practices in violation of Section 5(a)  
 17 of the FTC Act, 15 U.S.C. § 45(a), and from engaging in deceptive and  
 18 unfair acts or practices in violation of the FDCPA, 15 U.S.C. § 1692  
 19 et seq., and to obtain other equitable relief, including rescission of  
 20 contracts, restitution, disgorgement, and other ancillary equitable  
 21 relief as is necessary to redress injury to consumers and the public  
 22 interest resulting from Defendants' violations of the FTC Act and the  
 23 FDCPA.

24 **JURISDICTION AND VENUE**

25 2. This Court has subject matter jurisdiction pursuant to 28  
 26 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a), 53(b), 57b,  
 27 and 1692l.

1 3. Venue in the Central District of California is proper under  
2 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b) and (c).

3 THE PARTIES

4 4. Plaintiff FTC is an independent agency of the United States  
5 Government created by statute. 15 U.S.C. § 41 et seq. The FTC is  
6 charged, *inter alia*, with enforcement of Section 5(a) of the FTC Act,  
7 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or  
8 practices in or affecting commerce, and the FDCPA, 15 U.S.C. § 1692 et  
9 seq., which prohibits deceptive and unfair debt collection practices.  
10 The FTC is authorized to initiate federal district court proceedings,  
11 by its own attorneys, to enjoin violations of the FTC Act and the  
12 FDCPA, and to secure such equitable relief as may be appropriate in  
13 each case, including rescission of contracts, restitution, and  
14 disgorgement. 15 U.S.C. §§ 53(b), 57b, and 1692l(a).

15 5. Defendant Tono Records is a California corporation with its  
16 principal place of business in Los Angeles County, CA. The company  
17 markets musical and educational CDs to Spanish-speaking consumers. It  
18 has used the names Tono Music and Professional Legal Services while  
19 doing business in California. Tono Records transacts, or has  
20 transacted, business in this district and throughout the United  
21 States.

22 6. Defendant Tono Publishing is a California corporation with  
23 its principal place of business in Los Angeles County, CA. Tono  
24 Publishing transacts, or has transacted, business in this district and  
25 throughout the United States.

26 7. Defendant Promo Music is a California corporation with its  
27 principal place of business in Los Angeles County, CA. Promo Music  
28

1 transacts, or has transacted, business in this district and throughout  
2 the United States.

3 8. Defendant Millennium Three Corp. ("Millennium Three"), is a  
4 California corporation with its principal place of business in Los  
5 Angeles County, CA. Millennium Three transacts, or has transacted,  
6 business in this district and throughout the United States.

7 9. Defendant Dulce Ugalde ("Ugalde") is the Chief Executive  
8 Officer for Tono Records and Tono Publishing. At all times relevant  
9 to this complaint, acting alone or in concert with others, Ms. Ugalde  
10 has formulated, directed, controlled, had authority to control, or  
11 participated in the acts and practices of Tono Records and Tono  
12 Publishing, including the acts and practices set forth in this  
13 complaint. Ms. Ugalde transacts, or has transacted, business in the  
14 Central District of California.

15 10. Defendant Maria Ocegüera ("Ocegüera") is the Secretary of  
16 Tono Records and Tono Publishing. At all times relevant to this  
17 complaint, acting alone or in concert with others, Ms. Ocegüera has  
18 formulated, directed, controlled, had authority to control, or  
19 participated in the acts and practices of Tono Records and Tono  
20 Publishing, including the acts and practices set forth in this  
21 complaint. Ms. Ocegüera transacts, or has transacted, business in the  
22 Central District of California.

23 11. Defendant Luis Roberto Ruiz ("Ruiz") is the President of  
24 Tono Records, Chief Executive Officer of Promo Music, President of  
25 Tono Publishing, and President of Millennium Three. At all times  
26 relevant to this complaint, acting alone or in concert with others,  
27 Mr. Ruiz has formulated, directed, controlled, had authority to

1 control, or participated in the acts and practices of Tono Records,  
2 Promo Music, Tono Publishing, and Millennium Three, including the acts  
3 and practices set forth in this complaint. Mr. Ruiz transacts, or has  
4 transacted, business in the Central District of California.

5 12. Defendants Ugalde, Ocegüera, and Ruiz ("Individual  
6 Defendants") reside in the Central District of California.

7 **COMMON ENTERPRISE**

8 13. Defendants Tono Records, Tono Publishing, Promo Music, and  
9 Millennium Three ("Corporate Defendants") have acted as a common  
10 enterprise while engaging in the deceptive acts and practices alleged  
11 below. The Corporate Defendants are commonly controlled by one or  
12 more of the Individual Defendants, have shared employees, use the same  
13 mail-drop, placed joint advertisements, and have engaged in a common  
14 scheme to collect alleged obligations through unlawful practices.

15 **COMMERCE**

16 14. The acts and practices of the Defendants, as alleged in this  
17 complaint, are in or affecting commerce, as "commerce" is defined in  
18 Section 4 of the FTC Act, 15 U.S.C. § 44.

19 **DEFENDANTS' COURSE OF CONDUCT**

20 15. From 2003 to 2005, Defendants advertised and sold an  
21 English-language instruction course, called *Ingles con Ritmo* (English  
22 with Rhythm), primarily to Spanish-speaking consumers. Defendants  
23 advertised extensively on Spanish-language television and on their  
24 websites, *www.tonorecords.com* and *www.tonomusic.com*. Typically,  
25 Defendants' advertising stated that the course was free because it was  
26 subsidized by a governmental or non-profit organization. In fact,  
27 when consumers called to order the product, they were informed that

1 there was a \$100 to \$169 fee for shipping and handling. Defendants'  
2 sales continued until early 2005, at which time they stopped  
3 advertising and shut down their websites.

4 16. Since 2006, Defendants have been engaged in the deceptive  
5 scheme at issue in this Complaint. Defendants and their collectors,  
6 posing as third-party debt collectors, call Spanish-speaking consumers  
7 who purchased *Ingles con Ritmo* - and in some cases consumers with the  
8 same names as people who had purchased the product - and tell the  
9 consumers that they owe a significant sum of money, typically \$900, in  
10 connection with the purchase of *Ingles con Ritmo*.

11 17. The overwhelming majority of consumers who are subjected to  
12 Defendants' collection calls in fact owe Defendants nothing.  
13 Nevertheless, Defendants and their collectors routinely engage in a  
14 variety of deceptive practices to force consumers to pay these alleged  
15 obligations.

16 18. In the course of collecting the alleged obligations, some of  
17 Defendants' collectors present themselves to consumers as third-party  
18 debt collectors. For example, some of Defendants' collectors tell  
19 consumers they are employed by Professional Legal Services ("PLS"),  
20 which the collectors represent or imply is a third-party debt  
21 collector. In fact, PLS is an alias for the Defendants and has the  
22 same phone number, business address, and employees as the Corporate  
23 Defendants.

24 19. Defendants' collectors call consumers repeatedly or  
25 continuously, and continue to call consumers even after consumers have  
26 told them that they no longer wish to receive calls from the  
27 Defendants.

1           20. In the course of collecting alleged obligations, Defendants  
2 engage in numerous deceptive practices. In numerous instances,  
3 Defendants' collectors falsely represent that they are attorneys or  
4 employed by attorneys. In numerous instances, Defendants' collectors  
5 also falsely tell consumers that an attorney has reviewed the  
6 consumer's case and is preparing the case for legal action. In  
7 addition, in numerous instances Defendants' collectors threaten that  
8 they will have the consumer arrested, sue the consumer, or seize the  
9 consumer's property unless Defendants receive prompt payment, even  
10 though Defendants have no legal authority to take such actions or do  
11 not intend to take such actions.

12           21. In numerous instances, Defendants have failed to send  
13 consumers a written notice informing the consumer that if the consumer  
14 disputes the alleged obligation in writing within thirty days, the  
15 Defendants must obtain verification of the alleged obligation and  
16 cease contacting the consumer.

17                           DEFENDANTS' VIOLATIONS OF THE FTC ACT

18           22. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits  
19 "unfair or deceptive acts or practices in or affecting commerce."  
20 Misrepresentations of material fact constitute deceptive acts or  
21 practices prohibited by the FTC Act.

22                                           COUNT ONE

23           23. On numerous occasions, in connection with the collection of  
24 alleged obligations, Defendants have represented to consumers,  
25 directly or by implication, that

- 26           a. The alleged obligation that Defendants attempted to collect  
27           was a valid debt owed by the consumer to Defendants;

- 1 b. Defendants' collector was an attorney or working on behalf  
2 of an attorney who had reviewed the case and was preparing  
3 legal action against the consumer;
- 4 c. Defendants intended to take legal action against a consumer;  
5 and
- 6 d. Nonpayment of an alleged obligation would result in a  
7 consumer's arrest or imprisonment, or seizure, garnishment  
8 or attachment of a consumer's property or wages.
- 9 24. In truth and in fact, on numerous of these occasions
- 10 a. The alleged obligation that Defendants were attempting to  
11 collect was not a valid debt owed by the consumer to  
12 Defendants;
- 13 b. Defendants' collector was not an attorney or working on  
14 behalf of an attorney who had reviewed the case and was  
15 preparing legal action against the consumer;
- 16 c. Defendants did not intend to take legal action against the  
17 consumer; and
- 18 d. Nonpayment of the alleged obligation did not result in a  
19 consumer's arrest or imprisonment, or seizure, garnishment  
20 or attachment of a consumer's property or wages.

21 25. Therefore, Defendants' representations as set forth in  
22 Paragraph 23 are false or misleading and constitute deceptive acts or  
23 practices in violation of Section 5(a) of the FTC Act, 15 U.S.C.  
24 § 45(a).

25 VIOLETIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT

26 26. In 1977, Congress passed the FDCPA, 15 U.S.C. § 1692 et  
27 seq., which became effective on March 20, 1978, and has been in force



1 since that date. In pertinent part, the FDCPA defines "debt" as "any  
2 obligation or alleged obligation of a consumer to pay money arising  
3 out of a transaction." Section 803(5) of the FDCPA, 15 U.S.C. §  
4 1692a(5). Section 814 of the FDCPA, 15 U.S.C. § 1692l, specifically  
5 empowers the Commission to enforce the FDCPA. Under Section 814, for  
6 purpose of the exercise by the Commission of its functions and powers  
7 under the FTC Act, a violation of the FDCPA is deemed an unfair or  
8 deceptive act or practice in violation of the FTC Act. Further, the  
9 Commission is authorized to use all of its functions and powers under  
10 the FTC Act to enforce compliance with the FDCPA by any person,  
11 irrespective of whether that person is engaged in commerce or meets  
12 any other jurisdictional tests set by the FTC Act. The authority of  
13 the Commission in this regard includes the power to enforce the  
14 provisions of the FDCPA in the same manner as if the violations of the  
15 FDCPA were violations of a Federal Trade Commission trade regulation  
16 rule.

17 27. On numerous occasions, Defendants' collectors hold  
18 themselves out to be representatives of a third-party debt collector.  
19 Defendants are, therefore, "a creditor who, in the process of  
20 collecting his own debts, uses any name other than his own which would  
21 indicate that a third person is collecting or attempting to collect  
22 such debts" within the meaning of Section 803(6) of the FDCPA and are,  
23 therefore, subject to the provisions of the FDCPA. 15 U.S.C.  
24 § 1692a(6).

25 COUNT TWO

26 28. On numerous occasions, in connection with the collection of  
27 debts, Defendants have used false, deceptive or misleading

1 representations or means, in violation of Section 807 of the FDCPA, 15  
2 U.S.C. § 1692e, including, but not limited to the following:

- 3 a. Defendants have falsely represented the character, amount or  
4 legal status of a debt, in violation of Section 807(2)(A) of  
5 the FDCPA, 15 U.S.C. §§ 1692e(2)(A);
- 6 b. Defendants have falsely represented or implied that their  
7 collectors are attorneys or representatives of an attorney  
8 or that a communication is from an attorney, in violation of  
9 Section 807(3) of the FDCPA, 15 U.S.C. § 1692e(3);
- 10 c. Defendants have falsely represented or implied that  
11 nonpayment of a debt will result in the arrest or  
12 imprisonment of a person or the seizure, garnishment or  
13 attachment of a person's property or wages, when such action  
14 is not lawful or when Defendants have no intention of taking  
15 such action, in violation of Section 807(4) of the FDCPA, 15  
16 U.S.C. § 1692e(4);
- 17 d. Defendants have threatened to take action that cannot be  
18 legally taken or that Defendants do not intend to take, such  
19 as filing a lawsuit, in violation of Section 807(5) of the  
20 FDCPA, 15 U.S.C. § 1692e(5); and
- 21 e. Defendants have used a business name other than their true  
22 name, in violation of Section 807(14) of the FDCPA, 15  
23 U.S.C. § 1692e(14).

24 COUNT THREE

25 29. On numerous occasions, in connection with the collection of  
26 a debt, Defendants have attempted to collect debts, the amount of  
27 which, including any interest, fee, charge, or expense incidental to

1 the principal obligation, is not expressly authorized by the agreement  
2 creating the debt or permitted by law, in violation of Section 808(1)  
3 of the FDCPA, 15 U.S.C. § 1692f(1).

4 COUNT FOUR

5 30. On numerous occasions, in connection with the collection of  
6 a debt, Defendants have engaged in conduct the natural consequence of  
7 which is to harass, oppress or abuse a person, in violation of Section  
8 806 of the FDCPA, 15 U.S.C. § 1692d, including, but not limited to,  
9 causing a telephone to ring or engaging a person in telephone  
10 conversations repeatedly or continuously with the intent to annoy,  
11 abuse or harass a person at the number called, in violation of Section  
12 806(5) of the FDCPA, 15 U.S.C. § 1692d(5).

13 COUNT FIVE

14 31. On numerous occasions, in connection with the collection of  
15 a debt, Defendants have failed to notify consumers of their right to  
16 dispute and obtain verification of their debts and to obtain the name  
17 of the original creditor, either in Defendants' initial communication  
18 with consumers or within five days thereafter, in violation of Section  
19 809(a) of the FDCPA, 15 U.S.C. §1692g(a).

20 CONSUMER INJURY

21 32. Consumers in the United States have suffered and continue to  
22 suffer monetary loss and injury as a result of Defendants' unlawful  
23 acts and practices. In addition, Defendants have been unjustly  
24 enriched as a result of their unlawful practices. Absent injunctive  
25 relief by this Court, Defendants are likely to continue to injure  
26 consumers, reap unjust enrichment, 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  
3 this Court to grant injunctive and such other relief as the Court may  
4 deem appropriate to halt and redress violations of the FTC Act. The  
5 Court, in the exercise of its equitable jurisdiction, may award other  
6 ancillary relief, including, but not limited to, rescission of  
7 contracts, restitution, and the disgorgement of ill-gotten gains, to  
8 prevent and remedy injury caused by Defendants' law violations.

9                                            PRAYER FOR RELIEF

10           WHEREFORE, Plaintiff Federal Trade Commission, pursuant to  
11 Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and the Court's own  
12 equitable powers, requests that the Court:

13           1. Award Plaintiff such preliminary injunctive and ancillary  
14 relief as may be necessary to avert the likelihood of consumer injury  
15 during the pendency of this action and to preserve the possibility of  
16 effective final relief, including, but not limited to, temporary and  
17 preliminary injunctions, an order freezing assets, and appointment of  
18 a receiver;

19           2. Enter a permanent injunction to prevent future violations of  
20 the FTC Act and FDCPA Act by Defendants;

21           3. Award such relief as the Court finds necessary to redress  
22 injury to consumers resulting from Defendants' violations of Section  
23 5(a) of the FTC Act and violations of the FDCPA, including, but not  
24 limited to, rescission or reformation of contracts, restitution, the  
25 refund of monies paid, and the disgorgement of ill-gotten monies; and  
26  
27  
28

