

19 of the Federal Trade Commission Act (“FTC ACT”), 15 U.S.C. §§ 45(a), 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. § 6101 *et seq.*, charging the Defendants Internet Marketing Group, Inc., OneSetPrice, Inc., First Choice Terminal, Inc. (a Louisiana corporation), First Choice Terminal, Inc. (an Arizona corporation), B & C Ventures, Inc., RPM Marketing Group, Inc., National Event Coordinators, Inc., David G. Cutler, Cindy Gannon, Paul D. Bonnallie, Tisa Christiana Spraul, and Michael J. Hatch with deceptive acts and practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, the Commission’s Trade Regulation Rules entitled “Telemarketing Sales Rule,” 16 C.F.R. Part 310, and “Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures” (the “Franchise Rule”), 16 C.F.R. Part 436.

Plaintiff Commission and Defendant David G. Cutler, by and through their attorneys, have agreed to entry of this Final Judgment and Order by this Court in order to resolve all claims against Defendant David G. Cutler in this action. The Commission and Defendant David G. Cutler have consented to entry of this Final Judgment and Order without trial or adjudication of any issue of law or fact herein and without Defendant David G. Cutler admitting liability for any of the violations alleged in the complaint or for any wrongdoing whatsoever.

Being fully advised in the premises and acting upon the joint motion of the parties, the Commission and Defendant David G. Cutler, to enter this Final Judgment and Order,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

1. This Court has jurisdiction over the subject matter of this case and personal jurisdiction over Defendant David G. Cutler;

2. The Complaint states a claim upon which relief may be granted against Defendant David G. Cutler under Sections 5, 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45, 53(b), and 57b, and the Telemarketing Sales Rule and the Franchise Rule;

3. Venue in this district is proper under 28 U.S.C. § 1391(b) and 15 U.S.C. § 53(b);

4. The activities of Defendant David G. Cutler are “in or affecting commerce” as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44;

5. Entry of this Final Judgment and Order is in the public interest;

6. Defendant David G. Cutler has read and fully understands the Complaint against him and the provisions of this Stipulated Final Judgment and Order, and he freely enters into this Stipulated Final Judgment and Order; and

7. Defendant David G. Cutler has waived all claims under the Equal Access to Justice Act, 28 U.S.C. § 2412, and all rights to seek judicial review or otherwise challenge the validity of this Final Judgment and Order. The parties shall each bear their own costs and attorney’s fees incurred in this action.

DEFINITIONS

For the purpose of this Final Judgment and Order, the following definitions shall apply:

A. “Assets” means any legal or equitable interest in, right to, or claim to, any real and personal property, including, but not limited to, “goods,” “instruments,” “equipment,” “fixtures,” “general intangibles,” “inventory,” “checks,” “notes” (as these terms are defined in the Uniform Commercial Code), and all chattel, leaseholds, contracts, mail or other deliveries, shares of stock, lists of consumer names, accounts, credits, premises, receivables, funds, and cash, wherever

located.

B. **“Franchise Rule”** is defined as the Commission’s Trade Regulation Rule entitled “Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures,” 16 C.F.R. Part 436, as currently promulgated or as it may hereafter be amended. A copy of the current Franchise Rule is attached hereto.

C. **“Franchise”** means any written or oral business arrangement, however denominated, which is a “franchise” as that term is defined in Section 436.2(a) of the Franchise Rule, 16 C.F.R. § 436.2(a).

D. **“Business Venture”** means any written or oral business arrangement, however denominated, whether or not covered by the Franchise Rule, 16 C.F.R. Part 436, which consists of the payment of any consideration for: (a) the right or means to offer, sell, or distribute goods or services (whether or not identified by a trademark, service mark, trade name, advertising, or other commercial symbol); and (b) more than nominal assistance to any person or entity in connection with or incident to the establishment, maintenance, or operation of a new business or the entry by an existing business into a new line or type of business.

E. **“Telemarketing Sales Rule”** means the FTC Rule entitled “Telemarketing Sales Rule,” 16 C.F.R. Part 310, as currently promulgated or as it may hereafter be amended. A copy of the current Telemarketing Sales Rule is attached hereto.

F. **“Telemarketing”** means a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call. The term does not

include the solicitation of sales through the mailing of a catalog which: contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term “further solicitation” does not include providing the customer with information about, or attempting to sell, any other item included in the same catalog which prompted the customer’s call or in a substantially similar catalog.

G. **“Telemarketer”** means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor.

H. **“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, whether or not such person is under the jurisdiction of the Federal Trade Commission.

I. **“National Do Not Call Registry”** means the National Do Not Call Registry maintained by the Federal Trade Commission pursuant to 16 C.F.R. § 310.4(b)(1)(iii)(B).

J. **“Established business relationship”** means a relationship between the seller and a person based on: (a) the person’s purchase, rental, or lease of the seller’s goods or services or a financial transaction between the person and seller, within the eighteen (18) months immediately preceding the date of the telemarketing call; or (b) the person’s inquiry or application regarding a

product or service offered by the seller, within the three (3) months immediately preceding the date of a telemarketing call.

K. **“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.

L. **“Permanent Receiver”** means Robb Evans & Associates, L.L.C., appointed as Permanent Receiver for Defendants Internet Marketing Group, Inc., OneSetPrice, Inc., First Choice Terminal, Inc. (a Louisiana corporation), First Choice Terminal, Inc. (an Arizona corporation), B & C Ventures, Inc., RPM Marketing Group, Inc., and National Event Coordinators, Inc., pursuant to the Stipulated Preliminary Injunction Freezing Assets and Appointing a Receiver entered in this case on July 19, 2004.

M. **“Assisting others”** means knowingly providing any of the following goods or services to another entity: (1) performing customer service functions, including, but not limited to, receiving or responding to consumer complaints; (2) formulating or providing, or arranging for the formulation or provision of, any telephone sales script or any other marketing material; (3) providing names of, or assisting in the generation of, potential customers; or (4) performing marketing services of any kind.

N. **“Document”** is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a) and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which the information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning

of the term.

CONDUCT PROHIBITIONS

I. INJUNCTIVE PROVISIONS

A. **IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that in connection with the advertising, promotion, offering for sale, or sale of any Franchise or Business Venture, Defendant David G. Cutler, his agents, servants, employees, and attorneys, and all other persons or entities in active concert or participation with him who receive actual notice of this Final Judgment and Order by personal service or otherwise, whether acting directly or through any business entity, corporation, subsidiary, division, affiliate, or other device, are hereby permanently restrained and enjoined from misrepresenting, expressly or by implication, any material fact, including, but not limited to, misrepresenting:

1. That purchasers of a Franchise or Business Venture are likely to earn substantial income;
2. That purchasers of a Franchise or Business Venture will receive full refunds if they do not receive, within a specified period of time, the equipment, supplies, or products necessary to begin substantial operation of their business;
3. That purchasers of a Franchise or Business Venture will receive full refunds if they cancel their purchase agreements within three (3) days; and
4. That purchasers of a Franchise or Business Venture will receive full refunds of cash down payments if they are unable to obtain financing for, or otherwise afford payment of, the balance due under their purchase agreements.

B. **IT IS FURTHER ORDERED** that in connection with the advertising, promotion, offering for sale, or sale of any Franchise or Business Venture, Defendant David G. Cutler, his agents, servants, employees, and attorneys, and all other persons or entities in active concert or participation with him who receive actual notice of this Final Judgment and Order by personal service or otherwise, whether acting directly or through any business entity, corporation, subsidiary, division, affiliate, or other device, are hereby permanently restrained and enjoined from:

1. Failing to provide, no later than ten (10) business days before any consumer signs a purchase agreement or tenders any payment for such Franchise or Business Venture, a complete and accurate basic disclosure statement that discloses all of the categories of information set forth in Section 436.1(a)(1)-(24) of the Franchise Rule;
2. Failing to provide any prospective purchaser of a Franchise or Business Venture with an earnings claim document or other disclosures required by Section 436.1(b)-(e) of the Franchise Rule, in the manner and within the times specified by the Franchise Rule;
3. Making any earnings claim or projection without having a reasonable basis for each claim or projection at the time the claim or projection is made, as required by Section 436.1(b)-(e) of the Franchise Rule; and
4. Engaging in any other act or practice prohibited by Section 436.1(f)-(h) of the Franchise Rule, or failing to fulfill any other obligation imposed by the Franchise

Rule;

provided, however, that Defendant David G. Cutler may choose to comply with the disclosure requirements of the Franchise Rule by fully and completely complying with the disclosure requirements set forth in the UFOC format. If he chooses to comply with the Franchise Rule by using the UFOC format, Defendant David G. Cutler, his agents, servants, employees, and attorneys, and all other persons or entities in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, affiliate, or other device, are hereby permanently enjoined from failing to comply with any provision of the UFOC. In the event the Franchise Rule is hereafter amended or modified, or the UFOC is amended or modified and such UFOC amendment or modification is accepted by the Commission for use in lieu of the Franchise Rule's disclosure format, Defendant David G. Cutler's compliance with the Franchise Rule as so amended or modified, or the UFOC as amended or modified and accepted by the Commission, shall not be deemed a violation of this Order.

C. **IT IS FURTHER ORDERED** that Defendant David G. Cutler, his agents, servants, employees, and attorneys, and all other persons or entities in active concert or participation with him who receive actual notice of this Final Judgment and Order by personal service or otherwise, whether acting directly or through any business entity, corporation, subsidiary, division, affiliate, or other device, are hereby permanently restrained and enjoined from violating any provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310, including, but not limited to:

1. Initiating or causing others to initiate an outbound call to a telephone number listed on the National Do Not Call Registry, unless:
 - a) The seller has obtained the express agreement, in writing, of such person to place calls to that person. Such written agreement shall clearly evidence such consumer's authorization that calls made by or on behalf of a specific party may be placed to that person, and shall include the telephone number to which the calls may be placed and the signature of that person; or
 - b) The seller can prove an established business relationship with such person and that person has not stated that he or she does not wish to receive outbound telephone calls from the seller;
2. Initiating any outbound telephone call to a person when that person has previously stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered or made by or on behalf of the charitable organization for which a charitable contribution is being solicited; or
3. Initiating any outbound telephone call to a telephone number within a given area code without first paying the required annual fee for access to the telephone numbers within that area code that are on the National Do Not Call Registry.

II. INJUNCTION AGAINST PROVIDING CUSTOMER LISTS

IT IS FURTHER ORDERED that Defendant David G. Cutler is hereby permanently restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the

name, address, telephone number, social security number, or other identifying information of any person who purchased services from Defendants Internet Marketing Group, Inc., OneSetPrice, Inc., First Choice Terminal, Inc. (a Louisiana corporation), First Choice Terminal, Inc. (an Arizona corporation), B & C Ventures, Inc., RPM Marketing Group, Inc., National Event Coordinators, Inc., David G. Cutler, Cindy Gannon, Paul D. Bonnallie, Tisa Christiana Spraul, and Michael J. Hatch at any time prior to the date this Final Judgment and Order is entered. *Provided*, however, that Defendant David G. Cutler may disclose such identifying information to a law enforcement agency or as required by any law, regulation, or court order.

MONETARY PROVISIONS

III. MONETARY JUDGMENT

IT IS FURTHER ORDERED that judgment in the amount of FIFTEEN MILLION DOLLARS (\$15,000,000.00) is entered against Defendant David G. Cutler; *provided*, however, that this judgment shall be suspended until further order of the Court; and *provided further* that this judgment shall be subject to the conditions set forth in Paragraph IV of this Final Judgment and Order.

IV. FINANCIAL STATEMENTS

A. **IT IS FURTHER ORDERED** that the Commission's agreement to and the Court's approval of this Final Judgment and Order are expressly premised upon the truthfulness, accuracy, and completeness of the financial statements and information provided to the Commission by Defendant David G. Cutler on or about August 8, 2004, and February 3, 2006, which contain material information relied upon by the Commission in negotiating and agreeing

to the terms of this Final Judgment and Order.

B. **IT IS FURTHER ORDERED** that if the Commission should have evidence that the above-referenced financial statements and information failed to disclose any material asset the value of which exceeds \$1,000, materially misrepresented the value of any asset, or made any other material misrepresentation or omission, the Commission may move that the Court reopen this Final Judgment and Order for the sole purpose of allowing the Commission to modify the monetary liability of Defendant David G. Cutler. If the Court finds that Defendant David G. Cutler failed to disclose any material asset, materially misrepresented the value of any asset, or made any other material misrepresentation or omission in the above-referenced financial statements and information, the Court shall reinstate the suspended judgment against him, in favor of the Commission, in the amount of FIFTEEN MILLION DOLLARS (\$15,000,000.00), which he and the Commission stipulate is the amount of consumer injury caused by the Defendants named in the Complaint, as set forth in Paragraph III of this Final Judgment and Order. *Provided*, however, that in all other respects this Final Judgment and Order shall remain in full force and effect unless otherwise ordered by the Court. Any proceedings instituted under this Paragraph shall be in addition to and not in lieu of any other proceedings the Commission may initiate to enforce this Final Judgment and Order. Solely for the purposes of reopening or enforcing this Paragraph, Defendant David G. Cutler hereby waives any right to contest any of the allegations set forth in the Complaint filed in this matter and agrees that the facts as alleged in the Complaint filed in this matter shall be taken as true, without further proof, in any subsequent litigation filed by or on behalf of the Commission to collect any unpaid amount or otherwise

enforce its rights pursuant to this Final Judgment and Order, including a nondischargeability complaint filed in any bankruptcy case.

C. Proceedings initiated under this Paragraph are in addition to, and not in lieu of, any other civil or criminal penalties that may be provided by law, including any other proceedings the Plaintiff may initiate to enforce this Final Judgment and Order.

RECEIVERSHIP

V. COOPERATION WITH PERMANENT RECEIVER

IT IS FURTHER ORDERED that Defendant David G. Cutler shall cooperate fully with the Permanent Receiver.

VI. CLAIMS AGAINST THE PERMANENT RECEIVER

IT IS FURTHER ORDERED that Defendant David G. Cutler hereby waives any claim he may have against the Permanent Receiver or the receivership estate.

ASSET FREEZE

VII. LIFTING OF ASSET FREEZE

IT IS FURTHER ORDERED that, upon entry of this Final Judgment and Order for Permanent Injunction, the freeze against assets imposed by the Stipulated Preliminary Injunction Order Freezing Assets and Appointing a Receiver, entered in this case on July 19, 2004, shall be lifted permanently as to Defendant David G. Cutler.

COMPLIANCE WITH FINAL JUDGMENT AND ORDER

VIII. COMPLIANCE REPORTING BY DEFENDANT

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Final Judgment and Order may be monitored:

- A. For a period of five (5) years from the date of entry of this Final Judgment and Order,
1. Defendant David G. Cutler shall notify the Commission of the following:
 - a. Any changes in his residence, mailing address, and/or telephone number within ten (10) days of the date of such change;
 - b. Any changes in his employment status (including self-employment), and any change in his ownership interest in any business entity, within ten (10) days of the date of such change. Such notice shall include the name and address of each business that Defendant David G. Cutler is affiliated with, employed by, creates or forms, or performs services for; a statement of the nature of the business; and a statement of his duties and responsibilities in connection with the business or employment; and
 - c. Any changes in his name or use of any aliases or fictitious names; and
 2. Defendant David G. Cutler shall notify the Commission of any changes in corporate structure of any business entity that he directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Final Judgment and Order, including, but not limited to, a dissolution,

assignment, sale, merger, or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Final Judgment and Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any proposed change in the corporation about which Defendant David G. Cutler learns less than thirty (30) days prior to the date such action is to take place, he shall notify the Commission as soon as is practicable after obtaining such knowledge.

B. One hundred and eighty (180) days after the date of entry of this Final Judgment and Order, Defendant David G. Cutler shall provide a written report to the Commission, sworn to under penalty of perjury, setting forth in detail the manner and form in which he has complied and is complying with this Final Judgment and Order. This report shall include, but not be limited to:

1. His then-current residence address, mailing address(es), and telephone numbers;
2. His then-current employment and/or business addresses and telephone numbers, a description of the business activities of each of his employers and/or businesses, and his title and responsibilities for each such employer and/or business;
3. A copy of each acknowledgment of receipt of this Final Judgment and Order obtained pursuant to Paragraph X of this Final Judgment and Order;
4. Any other changes required to be reported under Subparagraph A of this Paragraph;

5. A list of any telephone numbers that Defendant David G. Cutler has used or uses in telemarketing since entry of this Final Judgment and Order, including all originating telephone numbers, transmitted as caller-identification, all telephone numbers provided by voice recording or live operator to consumers receiving telephone calls, and all telephone numbers listed in any promotional materials or advertisements to generate calls from consumers;
 6. A list of any Organization ID and Subscription Account Number Defendant David G. Cutler has used or obtained, or uses, in connection with the National Do Not Call Registry since entry of this Final Judgment and Order;
 7. A list of all names under which Defendant David G. Cutler has conducted or currently conducts business since entry of this Final Judgment and Order; and
 8. A list of all domain names and web page addresses Defendant David G. Cutler has registered or used in connection with telemarketing.
- C. For the purposes of this Final Judgment and Order, Defendant David G. Cutler shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Associate Director of Enforcement
Federal Trade Commission
600 Pennsylvania Ave, N.W.
Washington, D.C. 20580

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- D. For purposes of the compliance reporting and monitoring required by this Final Judgment and Order, the Commission is authorized to communicate directly with Defendant

David G. Cutler.

IX. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring and investigating compliance with any provision of this Final Judgment and Order:

A. Within ten (10) days of receipt of written notice from a representative of the Commission, Defendant David G. Cutler shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in his possession or under his direct or indirect control to inspect the business operation;

B. In addition, the Commission is authorized to monitor compliance with this Final Judgment and Order by all other lawful means, including, but not limited to, the following:

1. Obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45; and
2. Posing as consumers and suppliers to Defendant David G. Cutler, his employees, or the employees of any entity he manages or controls in whole or in part, without the necessity of identification or prior notice; and

C. Defendant David G. Cutler shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Final Judgment and Order. The person interviewed may have counsel present.

Provided, however, that nothing in this Final Judgment and Order shall limit the

Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49 and 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

X. DISTRIBUTION OF FINAL JUDGMENT AND ORDER BY DEFENDANT

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Final Judgment and Order, Defendant David G. Cutler shall deliver copies of this Final Judgment and Order as directed below:

A. **Defendant David G. Cutler as control person:** For any business that Defendant David G. Cutler controls, directly or indirectly, or in which he has a majority ownership interest, he must deliver a copy of this Final Judgment and Order to all principals, officers, directors, and managers of that business. He must also deliver copies of this Final Judgment and Order to all employees, agents, and representatives of that business who engage in conduct related to the subject matter of this Final Judgment and Order. For current personnel, delivery shall be within five (5) days of service of this Final Judgment and Order upon Defendant. For new personnel, delivery shall occur prior to their assuming their responsibilities.

B. **Defendant David G. Cutler as employee or non-control person:** For any business where Defendant David G. Cutler is not a controlling person of the business but otherwise engages in conduct related to the subject matter of this Final Judgment and Order, he must deliver a copy of this Final Judgment and Order to all principals and managers of such business before engaging in such conduct.

C. Defendant David G. Cutler must secure a signed and dated statement acknowledging receipt of this Final Judgment and Order, within thirty (30) days of delivery, from all persons receiving a copy of the Final Judgment and Order pursuant to this Paragraph.

XI. RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this Final Judgment and Order, Defendant David G. Cutler, his agents, servants, employees, and attorneys, and all other persons or entities in active concert or participation with him who receive actual notice of this Final Judgment and Order by personal service or otherwise, whether acting directly or through any business entity, corporation, subsidiary, division, affiliate or other device, in connection with any business where he is the majority owner of the business or directly or indirectly manages or controls the business, and where the business involves telemarketing or the advertising, promotion, offering for sale, or sale of Franchises or Business Ventures, are hereby restrained and enjoined from failing to create and retain the following records:

A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;

B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;

C. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to

the extent such information is obtained in the ordinary course of business;

D. Copies of all sales scripts, training materials, advertisements, or other promotional or marketing materials;

E. Records that reflect, for every written or oral consumer complaint or refund request received, whether directly or indirectly or through any third party: (1) the customer's name, address, and telephone number; (2) the written complaint or request, if any; (3) the basis of the complaint or request, including the name of any salesperson referenced; (4) the nature and result of any investigation conducted concerning the complaint or request; (5) each response and the date of such response to the complaint or request; (6) any final resolution of the complaint or request, and the date of such resolution; and (7) in the event of a denial of any resolution, the reason for the denial;

F. Copies of all contracts or agreements with telephone companies;

G. Copies of all contracts or agreements with telemarketers;

H. Copies of all contracts or agreements with sellers;

I. Documents reflecting compliance with the caller identification provisions of the Telemarketing Sales Rule, including a list of all telephone numbers transmitted during telemarketing calls;

J. Documents reflecting compliance with direct requests not to be called, including a list of each consumer making such a request, the date of such request, and the consumer's telephone number; and

K. All records and documents necessary to demonstrate full compliance with each

provision of this Final Judgment and Order, including, but not limited to, copies of acknowledgments of receipt of this Final Judgment and Order, required by Paragraph X, and all reports submitted to the FTC pursuant to Paragraph VIII.

XII. COOPERATION WITH FTC COUNSEL

IT IS FURTHER ORDERED that Defendant David G. Cutler shall, in connection with this action or any subsequent investigations related to or associated with the transactions or the occurrences that are the subject of the FTC's Complaint, cooperate in good faith with the FTC and appear at such places and times as the FTC shall reasonably request, after written notice, for interviews, conferences, pretrial discovery, review of documents, and for such other matters as may be reasonably requested by the FTC. If requested in writing by the FTC, Defendant David G. Cutler shall appear and provide truthful testimony in any trial, deposition, or other proceeding related to or associated with the transactions or the occurrences that are the subject of the Complaint, without the service of a subpoena.

XIII. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANT

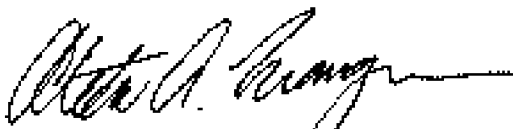
IT IS FURTHER ORDERED that Defendant David G. Cutler, within five (5) business days of receipt of this Final Judgment and Order as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Final Judgment and Order.

XIV. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification and enforcement of this Final Judgment and Order.

IT IS SO ORDERED.

ENTERED, this 22nd day of May, 2006.



ALETA A. TRAUGER
UNITED STATES DISTRICT JUDGE

SO STIPULATED:

WILLIAM BLUMENTHAL
General Counsel



DEBORAH W. DAWSON

JAMES E. ELLIOTT

Federal Trade Commission, Southwest Region

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ATTORNEYS FOR PLAINTIFF

FEDERAL TRADE COMMISSION



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Defendant



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