

USDC SDNY	Engelmaier, P.
DOCUMENT	
ELECTRONICALLY FILED	
DOC #:	
DATE FILED:	4/25/13

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

Mikael Marczak, a/k/a Michael Marczak,
individually, also d/b/a Virtual PC
Solutions, First PC Solution, Direct PC
Solution, Virtual IT Supports, and Global
Innovative Services, and as an officer of
Conquest Audit Corporation,

Wahid Ali, individually, and as a manager
of Virtual PC Solutions and Global
Innovative Services, and

Conquest Audit Corporation, a corporation,

Defendants.

Civil Action No. 12-CIV-7192 (PAE)
[Rel. 12-Civ.-7186]

_____, STIPULATED
**FINAL ORDER FOR
PERMANENT INJUNCTION
AND MONETARY
JUDGMENT AGAINST
CONQUEST AUDIT CORP.
AND MIKAEL MARCZAK**

On September 24, 2012, plaintiff Federal Trade Commission ("FTC" or "Commission") commenced this action, under Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. §§ 6101-6108, to obtain a permanent injunction and other equitable relief against defendants Mikael Marczak, a/k/a Michael Marczak, and Wahid Ali in connection with the marketing and sale of computer security or computer-related technical support services. On September 25, 2012, the Court granted a Temporary Restraining Order against the Defendants; the Court has since granted five requests by Defendant

Marczak and the FTC to extend the Temporary Restraining Order, which is now extended through May 1, 2013.

Concurrently with this Stipulated Final Order for Permanent Injunction and Monetary Judgment ("Order"), the FTC is filing an amended complaint adding additional counts under the FTC Act and Telemarketing Act against Defendant Marczak as well as against a new Defendant, Conquest Audit Corporation. Defendants Marczak and Conquest Audit and Plaintiff FTC hereby stipulate to the entry of, and request the Court to approve and enter, this Order to resolve all matters of dispute between them in this action.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

FINDINGS

1. This is an action by Plaintiff instituted under Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing Act, 15 U.S.C. §§ 6101-6108. Pursuant to these Sections of the FTC Act and Telemarketing Act, Plaintiff has the authority to seek the relief contained herein;
2. This Court has jurisdiction over the subject matter of this case and over the parties;
3. Venue is proper in this District under 28 U.S.C. § 1391(b), (c), and (d), and 15 U.S.C. § 53(b);
4. Settling Defendants waive all rights to object to this Court's jurisdiction over the parties and to venue in this district being proper;
5. The activities alleged in the Amended Complaint are in or affecting "commerce" as that term is defined in Section 4 of the FTC Act, 15 U.S.C. § 44;

6. The facts that Plaintiff has stated in its Amended Complaint, if true, would state claims upon which relief may be granted under Sections 5(a), 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 53(b), and 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b);

7. Settling Defendants have entered into this Order freely and without coercion, and they acknowledge that they have read the provisions of this Order and are prepared to abide by them;

8. The undersigned have agreed that the entry of this Order resolves all matters of dispute between them arising from the Amended Complaint in this action, up to the date of entry of this Order;

9. Settling Defendants waive all rights to seek appellate review or otherwise challenge or contest the validity of this Order and waive and release any claim they may have against the Receiver, Plaintiff, their employees, representatives, or agents;

10. Settling Defendants agree that this Order does not entitle them to seek or to obtain attorneys' fees as a prevailing party under the Equal Access to Justice Act, 28 U.S.C. § 2412, *as amended* by Pub. L. 104-121, 110 Stat. 847, 863-64 (1996), and any other law, regulation or rule, and they further waive any rights to attorneys' fees that may arise under said provisions of law, regulation, or rule;

11. Settling Defendants neither admit nor deny any of the allegations in the Amended Complaint, except as specifically stated in this Order. Only for purposes of this action, Settling Defendants admit the facts necessary to establish jurisdiction; and

12. Entry of this Order is in the public interest.

DEFINITIONS

For the purpose of this order, the following definitions shall apply:

1. "Assets" means any legal or equitable interest in, right to, or claim to, any real, personal, or intellectual property wherever located, including, but not limited to, chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, premises, contracts, mail or other deliveries, shares of stock, list of customer names, inventory, checks, notes, accounts, credits, receivables (as those terms are defined in the Uniform Commercial Code), funds, cash, and trusts.
2. "Assisting Others" includes providing any of the following goods or services to another entity: (i) performing customer service functions, including, but not limited to, charging consumers for products or services, or receiving or responding to consumer complaints; (ii) formulating or providing, or arranging for the formulation or provision of, any sales script or other marketing material; (iii) providing the names of, or assisting in the generation of, potential customers; (iv) performing or providing marketing or billing services of any kind; (v) processing credit and debit card payments; or (vi) acting as an officer or director of a business, corporation or other entity.
3. "Computer" means any cell phone, handheld device, smartphone, tablet, laptop computer, desktop computer, or any other electronic device on which a software program, code, script, or other content can be downloaded, installed or run.
4. "Corporate Defendant" means Conquest Audit Corporation, and its successors and assigns.
5. "Debt relief service" means any product, service or program, represented, directly or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of the debt between a person and one or more unsecured creditors or debt collectors, including, but not

limited to, a reduction in the balance, interest rate, or fees owed by a person to an unsecured creditor or debt collector.

6. "Defendant" or "Defendants" means the Individual Defendant, the Corporate Defendant, as well as Wahid Ali.

7. "Document" or "Documents" is synonymous in meaning and equal in scope to the usage of the term in the Federal Rules of Civil Procedure 34(a), and includes writings, drawings, graphs, charts, Internet sites, Web pages, Web sites, electronic correspondence, including e-mail and instant messages, photographs, audio and video recordings, computer records, contracts, accounting data, advertisements (including, but not limited to, advertisements placed on the World Wide Web), FTP Logs, Server Access Logs, USENET Newsgroup postings, World Wide Web pages, books, written or printed records, handwritten notes, telephone logs, telephone scripts, receipt books, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, computer records, and other data compilations from which 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.

8. "Individual Defendant" means Mikael Marczak, a/k/a Michael Marczak, individually, also doing business as Virtual PC Solutions, First PC Solution, Direct PC Solution, Virtual IT Supports, and Global Innovative Services, and as owner and/or officer of the Corporate Defendant.

9. "Person" means a natural person, organization, or other legal entity, including a corporation, partnership, proprietorship, association, cooperative, government or governmental subdivision or agency, or any other group or combination acting as an entity.

10. "Plaintiff" means the Federal Trade Commission.
11. "Receiver" means Howard I. Camhi, the receiver appointed in this action for the Receivership Defendants.
12. "Receivership Assets" means all assets of the Corporate Defendant, including owed assets, and the assets of the Individual Defendant that are identified in Section IX.B.
13. "Receivership Defendants" means the Corporate Defendant and the Individual Defendant's computer-security and computer-related technical support businesses.
14. "Representative" means any person insofar as he or she is acting in the capacity of an officer, agent, servant, employee, or attorney of any Defendant, and any person or entity in active concert or participation with any of the foregoing who receives actual notice of this Order by personal service or otherwise.
15. "Settling Defendant" or "Settling Defendants" means the Individual Defendant and the Corporate Defendant, individually, collectively, or in any combination.
16. "Telemarketing" means any plan, program or campaign (whether or not covered by the TSR, 16 C.F.R. Part 310) that is conducted to induce the purchase of goods or services by means of the use of one or more telephones.
17. The terms "and" and "or" shall be construed conjunctively or disjunctively as necessary, and to make the applicable phrase or sentence inclusive rather than exclusive.

I.

BAN ON MARKETING OR SALE OF COMPUTER SECURITY AND COMPUTER-RELATED TECHNICAL SUPPORT SERVICES

IT IS THEREFORE ORDERED that Settling Defendants, whether acting directly or through any other person, are hereby permanently restrained and enjoined from:

- A. Advertising, marketing, promoting, offering for sale, or selling any computer security or computer-related technical support service; and
- B. Assisting others engaged in advertising, marketing, promoting, offering for sale, or selling any computer security or computer-related technical support service.

II.

BAN ON MARKETING OR SALE OF DEBT RELIEF SERVICES

IT IS FURTHER ORDERED that Settling Defendants, whether acting directly or through any other person, are hereby permanently restrained and enjoined from:

- A. Advertising, marketing, promoting, offering for sale, or selling any debt relief service; and
- B. Assisting others engaged in advertising, marketing, promoting, offering for sale, or selling any debt relief service.

III.

PROHIBITION AGAINST MISREPRESENTATIONS

IT IS FURTHER ORDERED that Settling Defendants and their Representatives, whether acting directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, marketing, promotion, offering for sale, or sale of any good or service, other than computer security or computer-related technical support services or debt relief

services, are hereby permanently restrained and enjoined from misrepresenting or assisting others in misrepresenting, expressly or by implication, any material fact, including but not limited to:

- A. Any material aspect of the performance, efficacy, nature, characteristics, benefits, or qualities of the good or service;
- B. The total costs to purchase, receive, or use, and the quantity of, the good or service;
- C. Any material restriction, limitation, or condition to purchase, receive, or use the good or service;
- D. Any material aspect of the nature or terms of any refund, cancellation, exchange, or repurchase policy, including, but not limited to, the likelihood of a consumer obtaining a full or partial refund, or the circumstances in which a full or partial refund will be granted to the consumer; and
- E. That any person or entity is an agency of or affiliated with, endorsed or approved by, or otherwise connected to the Federal government or a state government.

IV.

**PROHIBITION AGAINST VIOLATING
THE TELEMARKETING SALES RULE**

IT IS FURTHER ORDERED that Settling Defendants and their Representatives, whether acting directly or through any corporation, subsidiary, division, or other device, in connection with the telemarketing of any good or service, other than computer security or computer-related technical support services or debt relief services, are hereby permanently restrained and enjoined from:

- A. Making a false or misleading statement to induce any person to pay for goods or services;
- B. Initiating any outbound telemarketing call to a person's telephone number on the National Do Not Call Registry of persons who do not wish to receive outbound telephone calls to induce the purchase of goods or services, unless:
 - (1) 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 person'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
 - (2) the seller has an established business relationship with such person and that person has not previously stated that he or she does not wish to receive outbound telemarketing calls made by or on behalf of the seller;
- C. Initiating, or causing others to initiate, an outbound telephone call to a telephone number within a given area code without first, either directly or through another person, paying the required annual fee for access to the telephone numbers within that area code that are included in the National Do Not Call Registry; and
- D. From violating any provision of the Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310, a copy of which is attached.

V.

BAN ON THE USE OF CONSUMER INFORMATION

IT IS FURTHER ORDERED that Settling Defendants, whether acting directly or through any Person or Representative, are permanently restrained and enjoined from:

- A. Disclosing, using, or benefitting from customer information, including the name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account), of any person which any Defendant named in the Amended Complaint obtained prior to entry of this Order.
- B. Failing to dispose of such customer information in all forms in their possession, custody, or control within thirty (30) days after entry of this Order. Disposal shall be by means that protect against unauthorized access to the customer information, such as by burning, pulverizing, or shredding any papers, and by erasing or destroying any electronic media, to ensure that the customer information cannot practicably be read or reconstructed.

Provided, however, that customer information need not be disposed of, and may be disclosed, to the extent requested by a government agency or required by a law, regulation, or court order.

VI.

EQUITABLE MONETARY RELIEF

IT IS FURTHER ORDERED that

- A. Judgment is hereby entered in favor of Plaintiff and against Settling Defendants, jointly and severally, in the amount of nine hundred eighty-four thousand, seven hundred twenty-one dollars (\$984,721), which represents the amount of consumer injury caused by Settling Defendants' alleged unlawful practices; provided, however, that subject to the provisions of Section VII ("Conditional Stay of Judgment Against Settling Defendants") below, this judgment shall be suspended;

- B. Effective upon entry of this Order, Settling Defendants surrender all dominion, control, and title to the assets referenced in Sections IX and XI.D of this Order;
- C. In the event that it is necessary for Settling Defendants to execute additional documents to (1) surrender Receivership assets under this Order, or (2) dissolve and wind down the Corporate Defendant and the computer-security and computer-related technical support businesses of the Defendants named in the Amended Complaint, the Individual Defendant shall execute such documents within three business days of a request from the Receiver or Plaintiff;
- D. Any funds transferred or paid to the Commission pursuant to this Order shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including but not limited to, consumer redress and any attendant expenses for the administration of any redress fund. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds to such other equitable relief (including consumer information remedies) as it determines to be reasonably related to the acts and practices alleged in the Amended Complaint. Any funds not used for such equitable relief shall be deposited in the United States Treasury as disgorgement. Settling Defendants shall have no right to challenge the Commission's choice of remedies under this Section;
- E. Settling Defendants relinquish all dominion, control, and title to the funds paid to the fullest extent permitted by law. Settling Defendants shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise;

F. Settling Defendants agree that the facts as alleged in the Amended Complaint filed in this action shall be taken as true without further proof solely in any bankruptcy case, action brought pursuant to Section VII, or subsequent civil litigation pursued by the Commission to enforce its rights to any payment or money judgment pursuant to this Order, including but not limited to a nondischargeability complaint in any bankruptcy case. Settling Defendants further stipulate and agree that the facts alleged in the Amended Complaint establish all elements necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and that this Order shall have collateral estoppel effect for such purposes.

VII.

CONDITIONAL STAY OF JUDGMENT AGAINST SETTLING DEFENDANTS

IT IS FURTHER ORDERED that:

- A. The Plaintiff's agreement to and the Court's approval of this Order are expressly premised upon the truthfulness, accuracy, and completeness of Defendant Marczak's Financial Statement and supporting documentation, which Defendant Marczak asserts are truthful, accurate, and complete. Settling Defendants and the Plaintiff stipulate that Defendant Marczak's Financial Statement and supporting documentation provide the bases for the monetary judgment in Section VI of this Order and that the Plaintiff has relied on the truthfulness, accuracy, and completeness of Defendant Marczak's Financial Statement and supporting documentation;
- B. If, upon motion by the Plaintiff, this Court finds that Defendant Marczak has failed to disclose any material asset or materially misstated the value of any asset in his financial statement or supporting documentation, or made any other material misstatement or omission in his financial statement or supporting documentation, then this Order shall be reopened and

suspension of the judgment shall be lifted for the purpose of requiring payment of monetary relief in the amount of nine hundred eighty-four thousand, seven hundred twenty-one dollars (\$984,721), less the sum of any amounts paid to the Plaintiff pursuant to Section VI (Equitable Monetary Relief). *Provided, however*, that in all other respects this Order shall remain in full force and effect, unless otherwise ordered by the Court.

C. Upon reinstatement of the monetary judgment, the Court shall make an express determination that the judgment shall become immediately due and payable by Settling Defendants, and the Plaintiff shall be entitled to interest computed from the day of entry of this Order at the rate prescribed under 28 U.S.C. § 1961, as amended, on the unpaid balance. The Plaintiff shall be permitted to execute on the judgment immediately after the suspension is lifted and engage in discovery in aid of execution;

D. Settling Defendants acknowledge and agree that (1) this monetary judgment is equitable monetary relief, solely remedial in nature, and not a fine, punitive penalty, punitive assessment, or forfeiture; (2) any proceedings instituted under this Section would be in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any other proceedings that the Plaintiff may initiate to enforce this Order; and (3) solely for purposes of any action brought pursuant to this Section or Section VI of the Order, Settling Defendants waive the right to contest any of the allegations in the Amended Complaint.

VIII.

LIFTING OF ASSET FREEZE

IT IS FURTHER ORDERED that the freeze of the assets of Settling Defendants pursuant to the Temporary Restraining Order entered by this Court on September 25, 2012, and extended through May 1, 2013 by stipulations of the parties and approval of the Court, shall be

lifted for the sole purpose of transferring assets pursuant to Sections VI of this Order, and shall be dissolved upon the transfer of all such assets.

IX.

**APPOINTMENT OF RECEIVER TO WIND DOWN RECEIVERSHIP DEFENDANTS
AND LIQUIDATE ASSETS**

IT IS FURTHER ORDERED that Howard I. Cambi, the Receiver appointed by prior order of this Court, is hereby appointed Receiver for the Receivership Defendants for the purpose of taking the necessary steps to wind down the businesses of the Receivership Defendants and liquidate the Receivership assets identified in subparagraph B below. The Receiver is authorized and directed to:

- A. Pay those secured debts that the Receiver deems necessary to preserve assets to be liquidated in accordance with subparagraph B of this Section. The Receiver shall not make any payments to a creditor if the creditor's security interest is the same or exceeds the value of the assets.
- B. Take possession, custody, and control of all assets of the Receivership Defendants and the following assets of the Individual Defendant and liquidate them in a commercially reasonable manner:
 - 1) All Bank Accounts currently in the Receivership with the exception of \$3500, which the Receiver will pay to the Individual Defendant.
 - 2) The 2005 Hummer SUV H2 vehicle registered to Mikael Marczak: In addition, after Partners Federal Credit Union has used funds it has withheld to pay off the balance of the loan, the Receiver will take possession, custody, and control of all remaining funds in the Partners Federal Credit Union account.

- 3) The 2005 Harley Davidson Police Roadking motorcycle registered to Mikael Marczak

Provided, however, that the Receiver is not required to liquidate any asset described in subparagraph B of this Section that the Receiver determines, in his discretion, could not be sold for value. The Receiver shall promptly notify Plaintiff of any such a determination. Plaintiff must file any objection to the Receiver's determination within 30 days after receiving notice. If no objection is filed within that time, the Receiver may, in his discretion, abandon the asset.

The Receiver shall give commercially reasonable notice of the method of sale of these assets by filing a notice of each sale with the Court, and serving counsel for the Plaintiff and Settling Defendants. Other than notice given to parties through the Court's CM/ECF system, the Receiver shall not be required to serve any other party with notice of each sale.

- C. Take any and all steps that the Receiver concludes are appropriate to wind down the Receivership.
- D. Continue to exercise full control over the Receivership Defendants and continue to collect, marshal, and take custody, control, and possession of all the funds, property, premises, accounts, documents, mail, and other assets of, or in the possession or under the control of, the Receivership Defendants, wherever situated, the income and profits therefrom, and all sums of money now or hereafter due or owing to the Receivership Defendants on account of their activities prior to the date of the entry of this Order with full power to collect, receive, and take possession of all goods, chattels, rights, credits, monies, effects, lands, leases, books and records, limited partnership records, work

papers, and records of accounts, including computer-maintained information, contracts, financial records, monies on hand in banks and other financial institutions, and other papers and documents of other individuals, partnerships, or corporations whose interests are now held by or under the direction, possession, custody, or control of the Receivership Defendants.

- E. Continue to have full control over the management and personnel of the Receivership Defendants, including the authority to remove, as the Receiver deems necessary or advisable, any director, officer, independent contractor, employee, or agent of these Defendants from control of, management of, or participation in, the affairs of these Defendants.
- F. Take all steps necessary or advisable, including issuing subpoenas, to locate and liquidate all other assets of the Receivership Defendants, cancel the Receivership Defendants' contracts, collect on amounts owed to the Receivership Defendants, and take such other steps as may be necessary to wind-down, terminate and dissolve the Receivership Defendants efficiently.
- G. Make payments and disbursements from the Receivership Estate that are necessary or advisable for carrying out the directions of, or exercising the authority granted by, this Order. The Receiver shall apply to the Court for prior approval of any payment of any debt or obligation incurred by the Receivership Defendants or Individual Defendant prior to the date of entry of the temporary restraining order in this action, except payments that the Receiver deems necessary or advisable to secure and liquidate assets of the Receivership Defendants or Individual Defendant, such as rental payments or payment of liens.

- H. Continue to perform all acts necessary or advisable to complete an accounting of the Receivership Assets, and prevent unauthorized transfer, withdrawal, or misapplication of assets.
- I. Continue to maintain accurate records of all receipts and expenditures that he makes as Receiver.
- J. Continue to enter into contracts and purchase insurance as advisable or necessary.
- K. Continue to defend, compromise, adjust, or otherwise dispose of any or all actions or proceedings instituted in the past or in the future against the Receiver in his role as Receiver, or against the Receivership Defendants or Individual Defendant, as the Receiver deems necessary and advisable to carry out the Receiver's mandate under this Order.
- L. Continue to maintain bank accounts created as designated depositories for funds of the Receivership Defendants and the Individual Defendant, and make all payments and disbursements from the Receivership Estate from such an account.
- M. Continue to perform all incidental acts that the Receiver deems to be advisable or necessary, which includes retaining, hiring, or dismissing any employees, independent contractors, or agents.
- N. Continue to cooperate with reasonable requests for information or assistance from any state or federal law enforcement agency.
- O. Dispose of, or arrange for the disposal of, the records of the Receivership Defendants no later than two (2) years after the Court's approval of the Receiver's final report. Prior to disposing of the records, the Receiver shall notify Plaintiff's counsel and the Individual

Defendant. The Receiver shall provide reasonable access to the records to the Individual Defendant, at the Individual Defendant's expense.

So that the privacy of consumers is safeguarded, records containing personal financial information shall be shredded, incinerated, or otherwise disposed of in a secure manner. For records that must be retained, the Receiver may elect to retain records in their original form or to retain photographic or electronic copies so long as said records are: (1) kept in a secure, locked area; (2) stored electronically on a computer network or drive with restricted access or an encrypted electronic storage device; or (3) redacted of all personally identifiable information including dates of birth, Social Security numbers, driver's license numbers or other state identification numbers, passport numbers, financial account numbers, or credit or debit card numbers. Provided, however, that the Receiver may not sell, rent, lease, transfer, disclose, use, or otherwise benefit from the name, address, telephone number, credit card number, bank account number, e-mail address, or other identifying information of any person who paid any money to any Defendant named in the Amended Complaint in connection with the advertising, promotion, marketing, offering for sale, or sale of any product or service, except that the Receiver may disclose such identifying information and any records to a law enforcement agency, or as required by any law, regulation, or court order.

P. Within ten (10) business days of Defendants assisting the Receiver in identifying all settlement agreements in accordance with Section XII of this Order, contact all current clients of the Corporate Defendant currently in any debt relief program run by Settling Defendants and (1) notify the client that the Corporate Defendant has ceased operations; (2) provide the client with copies of any settlement agreements Settling Defendants or their Representatives have negotiated and/or obtained between the client and his/her creditors; (3)

notify the client that payments will continue to be made from the client's Global Client Solutions' account to the client's creditor in accordance with any settlement agreement the client has already entered into with that creditor, but that the client may close his/her Global Client Solutions' account by contacting Global Client Solutions and may withdraw all funds from the account at any time; (4) inform the client that his/her contract with Veritas Assurance Group will be cancelled ten (10) business days from the date of the Receiver's notice and fees will no longer be deducted from the Global Client Solutions' account to pay for Veritas' services [provided, however, that the client may contact Veritas and arrange to continue to receive Veritas' services under a new contract and will not be subject to any penalty or additional charge as a result of termination of the prior contract]; and (5) send the client a copy of the Federal Trade Commission's pamphlet entitled "Settling Your Credit Card Debts."

Unless otherwise ordered by this Court, the Receiver shall not be required to file tax returns for any of the Settling Defendants in this proceeding, but shall provide reasonable cooperation with any accountant or professional who needs access to records to prepare said returns.

X.

COMPENSATION OF RECEIVER

IT IS FURTHER ORDERED that the Receiver and all personnel hired by the Receiver, including counsel to the Receiver and accountants, are entitled to reasonable compensation for the performance of duties pursuant to this Order and for the cost of actual out-of-pocket expenses incurred by them, from the Receivership Assets and the assets now held by, in the possession or control of, or which may be received by, the Receivership Defendants. The Receiver shall apply

to the Court for approval of specific amounts of compensation and expenses and must not increase the hourly rates used as the bases for such fee applications without prior approval of the Court.

XI.

RECEIVER'S DISSOLUTION AND DISBURSEMENT REPORT

IT IS FURTHER ORDERED that:

- A. No later than sixty (60) days from the time the Receiver has finished sending notice to all of the Corporate Defendant's current clients in accordance with Section IX.P of this Order, the Receiver shall file and serve on the parties a report (the "Receiver's Dissolution and Disbursement Report") to the Court that details the steps taken to dissolve the Receivership Estate. The Receiver's Dissolution and Disbursement Report must include an accounting of the Receivership Estate's finances and total assets and a description of what other actions, if any, must be taken to wind down the Receivership.
- B. The Receiver shall mail copies of the Receiver's Dissolution and Disbursement Report to the creditors listed in the Receiver's monthly reports, along with a notice stating that any objections to paying any assets of the Receivership Defendants or Individual Defendant to satisfy the Receiver's costs and expenses and the monetary judgment set forth in this Order must be submitted to the Court and served by mail upon the Receiver and the parties within thirty (30) days of the mailing of the Receiver's Dissolution and Disbursement Report. The Receiver is not required to mail copies of the Receiver's Dissolution and Disbursement Report to any holders of consumer claims.

C. No later than fifteen (15) days after submission of the Receiver's Dissolution and Disbursement Report, the Receiver shall file an application for payment of compensation and expenses associated with his performance of his duties as Receiver.

D. The Court will review the Receiver's Dissolution and Disbursement Report and any objections to the report and, absent a valid objection, will issue an order directing that the Receiver:

1. Pay the reasonable costs and expenses of administering the Receivership, including compensation of the Receiver and the Receiver's personnel authorized by Section X of this Order or other orders of this Court and the actual out-of-pocket costs incurred by the Receiver in carrying out his duties.

2. With Court approval, the Receiver may hold back funds for a specified period as a reserve to cover additional fees and costs related to actions to be addressed in a Supplemental Report. The Receiver shall notify Plaintiff of any such decision to withhold funds. Plaintiff must file any objection to any such decision by the Receiver within 30 days after receiving notice. If the Receiver does not make a supplemental application for fees and expenses within the specified period, or if funds remain in the reserve fund after the payment of fees and expenses approved by the Court in response to such a supplemental application, all funds in the reserve funds shall be immediately paid to the Commission or its designated agent.

3. Pay all remaining funds, including the frozen funds of the Receivership Defendants and the Individual Defendant that are held by the Receiver as well as the proceeds of the sale of the assets identified in Section IX Subparagraph B, to the Commission or its designated agent to reduce the monetary judgment in Section VI.

4. Any party asserting a claim against the Receivership Estate who asserts that the claim should be paid before the payment described in Section XI.D.3 of this Order is made, shall file a motion with the Court to establish the claim's priority, along with any objections to the Receiver's Dissolution Report and Disbursement, within 30 days after submission of the Report to the Court. Such party shall serve copies of any motions and objections on the Receiver and the Parties. The Parties and the Receiver must file any response to the motions and objections within 30 days after receiving them.

E. If subsequent actions (such as the completion of tax returns or further actions to recover funds for the Receivership Estate) are appropriate, the Receiver shall file an additional report or reports (the "Supplemental Reports") describing the subsequent actions and a subsequent application for the payment of fees and expenses related to the subsequent acts.

F. Upon the completion of the disposition of all assets and money, and after all records have been destroyed, or turned over to other governmental authorities in accordance with this Order, the Receiver shall file with the Court a Final Report, stating that the administration of the Receivership Estate is completed. The Receiver shall serve the Final Report on all the parties to this action. Any objection to the Final Report by the parties must be filed within fifteen (15) days after the Receiver filed the Report with the Court. If no objections are filed within that time, the Receiver shall submit a proposed order to the Court which discharges the Receiver from his obligations in this matter.

XII.

COOPERATION WITH RECEIVER

IT IS FURTHER ORDERED that Settling Defendants, their Representatives, and all other persons or entities served with a copy of this Order shall fully cooperate with and assist the

Receiver in taking and maintaining possession, custody, or control of the Receivership Assets and will do so at no cost. Settling Defendants shall also, within five (5) business days of entry of this Order, provide the Receiver with assistance in identifying all settlement agreements they or their Representatives have negotiated and/or obtained between consumers and consumers' creditors. This cooperation and assistance shall include, but not be limited to: providing information to the Receiver that the Receiver deems necessary in order to exercise the authority and discharge the responsibilities of the Receiver under this Order; providing any password required to access any computer, electronic file, or telephonic data in any medium; advising all persons who owe money to the Receivership Defendants that all debts should be paid directly to the Receiver; and transferring funds at the Receiver's direction and producing records related to the assets and sales of the Receivership Defendants and Individual Defendant.

XIII.

COOPERATION WITH FTC COUNSEL

IT IS FURTHER ORDERED that Settling Defendants 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 Plaintiff's Amended Complaint, cooperate in good faith with Plaintiff and appear at such places and times as Plaintiff 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 Plaintiff. If requested in writing by Plaintiff, the Settling Defendants 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 Amended Complaint, without the service of a subpoena.

The Settling Defendants shall also cooperate fully to assist Plaintiff in identifying the name, address, telephone number, date of purchase, program or product purchased, total amount paid, amount of any full or partial refund or chargeback, and payment information for consumers who were charged by any Defendant named in the Amended Complaint, and any further information Plaintiff deems necessary to effectuate any redress program for consumers.

XIV.

ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Settling Defendants obtain acknowledgments of receipt of this Order:

- A. Each Settling Defendant, within 7 days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.
- B. For five (5) years after entry of this Order, the Individual Defendant for any business that he, individually or collectively with any other Defendant named in the Amended Complaint, is the majority owner or directly or indirectly controls, and the Corporate Defendant, must deliver a copy of this Order to: (1) all principals, officers, directors, and managers; (2) all employees, agents, and representatives who participate in telemarketing; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within 7 days of entry of this Order for current personnel. To all others, delivery must occur before they assume their responsibilities.
- C. From each individual or entity to which a Settling Defendant delivered a copy of this Order, that Settling Defendant must obtain, within thirty (30) days, a signed and dated acknowledgment of receipt of this Order.

XV.

COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Settling Defendants make timely submissions to the Commission:

A. One (1) year after entry of this Order, each Settling Defendant must submit a compliance report, sworn under penalty of perjury.

1. Each Settling Defendant must: (a) designate at least one telephone number and an email, physical, and postal address as points of contact, which representatives of the Commission may use to communicate with Settling Defendant; (b) identify all of that Settling Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the products and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant named in the Amended Complaint (which Individual Defendant must describe if he knows or should know due to his own involvement); (d) describe in detail whether and how that Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission;

2. Additionally, the Individual Defendant must: (a) identify all telephone numbers and all email, Internet, physical, and postal addresses, including all residences; (b) identify all titles and roles in all business activities, including any business for which such Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest; and (c) describe in detail such Defendant's involvement in each such

business, including title, role, responsibilities, participation, authority, control, and any ownership.

B. For ten (10) years following entry of this Order, each Settling Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

1. Each Settling Defendant must report any change in: (a) any designated point of contact; or (b) the structure of the Corporate Defendant or any entity that the Settling Defendant has any ownership interest in or directly or indirectly controls that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

2. Additionally, the Individual Defendant must report any change in: (a) name, including aliases or fictitious name, or residence address; or (b) title or role in any business activity, including any business for which he performs services whether as an employee or otherwise and any entity in which he has any ownership interest, and identify its name, physical address, and Internet address, if any.

C. Each Settling Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or any similar proceeding by or against such Defendant within fourteen (14) days of its filing.

D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: "I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____" and supplying the date, signatory's full name, title (if applicable), and signature.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: *FTC v. Mikael Marczak and Conquest Audit Corporation*.

XVI.

RECORDKEEPING

IT IS FURTHER ORDERED that Settling Defendants must create certain records for ten (10) years after entry of the Order, and retain each such record for five (5) years.

Specifically, the Corporate Defendant and the Individual Defendant for any business in which that Defendant, individually or collectively with any other Defendant named in the Amended Complaint, is a majority owner or directly or indirectly controls, must maintain the following records:

- A. Accounting records showing the revenues from all goods or services sold, all costs incurred in generating those revenues, and the resulting net profit or loss;
- B. Personnel records showing, for each person providing services, whether as an employee, or otherwise, that person's: name, addresses, and telephone numbers; job title or position; dates of service; and, if applicable, the reason for termination;
- C. Customer files obtained after entry of this Order showing the names, addresses, telephone numbers, dollar amounts paid, and the quantity and description of goods or services purchased, to the extent such information is obtained in the ordinary course of business;

- D. Complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;
- E. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission; and
- F. A copy of each advertisement or other marketing material.

XVII.

COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Settling Defendants' compliance with this Order, including the financial representations upon which part of the judgment was suspended and any failure to transfer any assets as required by this Order:

- A. Within fourteen (14) days of receipt of a written request from a representative of the Commission, each Settling Defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents, for inspection and copying. The Commission is also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69, provided that the Settling Defendants, after attempting to resolve a dispute without court action and for good cause shown, may file a motion with this Court seeking an order including one or more of the protections set forth in Rule 26 (c).
- B. For matters concerning this Order, the Commission is authorized to communicate directly with each Settling Defendant. Settling Defendants must permit representatives of the Commission to interview any employee or other person affiliated with any Settling Defendant who has agreed to such an interview. The person interviewed may have counsel present.

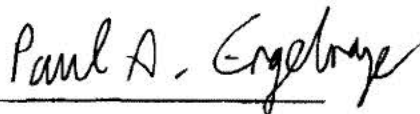
C. The Commission may use all other lawful means, including posing, through its representatives, as consumers, suppliers, or other individuals or entities, to Settling Defendants or any individual or entity affiliated with Settling Defendants, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

XVIII.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

IT IS SO ORDERED, this 24th day of April 2013.



Judge Paul A. Engelmayer
United States District Judge
Southern District of New York

SO STIPULATED AND AGREED:


FOR DEFENDANT CONQUEST AUDIT CORPORATION:



MICHAEL A. THURMAN, ESQ.
Loeb & Loeb LLP
10100 Santa Monica Blvd., 22nd Floor
Los Angeles, CA 91030
310-282-2122
COUNSEL FOR CONQUEST AUDIT CORPORATION

DATE: 3/11/13

FOR DEFENDANT MIKAEL MARCZAK AND CONQUEST AUDIT CORPORATION:


DATE: 3/11/2013
MIKAEL MARCZAK, INDIVIDUALLY AND
AS AN OFFICER OF CONQUEST AUDIT CORPORATION

FOR THE PLAINTIFF
FEDERAL TRADE COMMISSION:


DATE: 4/12/13

Kelly Home, CA Bar #242675
Colleen B. Robbins, SDNY Bar #CB5086
Christine M. Todaro, OH Bar #0084976
Benjamin R. Davidson, DC Bar #975509
Federal Trade Commission
600 Pennsylvania Ave. NW
Washington, DC 20580
(202) 326-3031; khome@ftc.gov
(202) 326-2548; crobbs@ftc.gov
(202) 326-3711; ctodaro@ftc.gov
(202) 326-3055; bdauidson@ftc.gov

Attorneys for Plaintiff
FEDERAL TRADE COMMISSION