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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

1083

14 UNITED STATES OF AMERICA,)
15 Plaintiff,)
16 v.)
17 TELEMARKETING, INC., a Utah)
18 corporation, also d/b/a Univoxx; APEX)
19 INVESTMENTS, LLC, a Utah corporation,)
also d/b/a Operator Directory Service and)
20 Northwestern Atlantic; UNIVERSAL)
INNOVATIONS, LLC, a Utah corporation;)
21 THOMAS GREGORY PARRISH,)
individually and as an officer of)
Telemarketing, Inc.; SEAN K.)
22 ANGELETTI, individually, and as an officer)
of Telemarketing, Inc.; and JOHN P.)
23 STARRS, individually,)
24 Defendants.)

Civil Action No.

STIPULATED FINAL JUDGMENT AND
ORDER FOR PERMANENT
INJUNCTION AND OTHER EQUITABLE
RELIEF

25 WHEREAS plaintiff, the United States of America, has commenced this action by filing
26 the Complaint herein; Defendants have waived service of the Summons and Complaint; the
27

28 Stipulated Final Judgment and Order

1 parties have been represented by the attorneys whose names appear hereafter; and the parties
2 have agreed to settlement of this action upon the following terms and conditions, without
3 adjudication of any issue of fact or law, and without admitting liability for any of the matters
4 alleged in the Complaint;

5 THEREFORE, upon stipulation of Plaintiff and Defendants, it is hereby ORDERED,
6 ADJUDGED, AND DECREED as follows:

- 7 1. This Court has jurisdiction of the subject matter and of the parties.
- 8 2. The Complaint states a claim upon which relief may be granted against the
9 Defendants under Sections 5(a)(1), 5(m)(1)(A), 13(b), and 16(a) of the Federal Trade
10 Commission Act, 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 53(b), and 56(a).

11 DEFINITIONS

12 3. "American Idol Show" means the television program titled "American Idol: The
13 Search for a Superstar," produced and co-owned by FremantleMedia North America, Inc., and
14 19 TV Limited, or their successors or assigns.

15 4. "Clearly and prominently," unless otherwise specifically defined in this
16 Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief
17 ("Order"), means:

18 (a) In an advertisement communicated through an electronic medium (such as
19 television, video, radio, and interactive media such as the telephone, Internet, and online
20 services), the message shall be presented simultaneously in both the audio and video portion of
21 the advertisement. The audio message shall be delivered in a volume and cadence sufficient for
22 an ordinary consumer to hear and comprehend it. The video message shall be of a size and
23 shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read
24 and comprehend it. In addition to the foregoing, in interactive media the message shall also be
25 unavoidable and shall be presented prior to the consumer incurring any financial obligation.
26 Provided that, in any advertisement presented solely through video or audio means, the message

1 may be conveyed through the same means in which the ad is presented.

2 (b) In a print advertisement, the message shall be in a type size, location, and in print
3 that contrasts with the background against which it appears, sufficient for an ordinary consumer
4 to notice, read, and comprehend it. In a multi-page document, the message shall appear on the
5 first page.

6 (c) Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be
7 used in any advertisement.

8 5. "Commerce" shall mean as defined in Section 4 of the Federal Trade
9 Commission Act, 15 U.S.C. § 44.

10 6. The "Commission" or "FTC" means the Federal Trade Commission.

11 7. "Complementary Number Program" means a marketing technique whereby a
12 seller employs telephone numbers, Internet addresses, or other communication addresses similar
13 to current or previous telephone numbers, Internet addresses, or other communication addresses
14 of other organizations or persons ("Intended Contacts") that consumers frequently contact, in an
15 effort to market goods, services, or investments to persons who mistakenly contact the seller
16 rather than the Intended Contact.

17 8. "Complementary Number or Address" means any telephone number, Internet
18 address, or other communication address actually leased or utilized by persons conducting a
19 Complementary Number Program.

20 9. A "corresponding provision" of the Pay-Per-Call Rule, 16 C.F.R. Part 308, refers
21 to any duly enacted regulation that amends, augments or replaces the provision to which
22 "corresponding provision" refers.

23 10. "Defendants" means Thomas Gregory Parrish, Sean K. Angeletti, John P. Starrs,
24 Telemarketing, Inc., Apex Investments, LLC, and Universal Innovations, LLC, each of them
25 individually or in combination, and any entity through which any of them does business.

26 11. "Directory Assistance" means a service that, by any means, merely provides to
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1 an inquiring person telephone numbers, Internet addresses, or other address information of a
2 third party.

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

9 13. "Pay-Per-Call Service" shall have the meaning provided in section 308.2(c) of
10 the Pay-Per-Call Rule, 16 C.F.R. 308.2(c).

11 14. The "Pay-Per-Call Rule" or "Rule" means the FTC's Trade Regulation Rule
12 Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992, 16 C.F.R. Part 308,
13 as currently promulgated or as it may hereafter be amended.

14 15. "Person" means any individual, partnership, corporation, association,
15 government or governmental subdivision or agency, or other entity.

16 I. INJUNCTIVE PROVISIONS

17 **IT IS THEREFORE ORDERED** that:

18 A. Defendants, their successors, subsidiaries, affiliates and assigns, and their
19 officers, agents, servants, independent contractors, employees, and all persons in active concert
20 or participation with any one or more of them who receive actual notice of this Order by
21 personal service or otherwise, are hereby permanently enjoined from

22 (1) Falsely representing in any manner, expressly or by implication, that a caller to
23 any toll-free or pay-per-call line leased or otherwise utilized by Defendants for
24 their own business purposes has reached the American Idol Show or any other
25 entity affiliated with, associated with, or endorsed by the American Idol Show;

26 (2) Falsely representing in any manner, expressly or by implication, that a caller to
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- any toll-free or pay-per-call line leased or otherwise utilized by Defendants for their own business purposes has reached a particular person or has reached a person associated with, affiliated with, or endorsed by another person;
- (3) Falsely representing in any manner, expressly or by implication, that a caller to any toll-free number leased or otherwise utilized by Defendants for their own business purposes needs to call a pay-per-call number to successfully vote for any American Idol contestant;
 - (4) Falsely representing in any manner, expressly or by implication, that a caller to any toll-free number needs to call a pay-per-call number or otherwise incur charges to complete the original call or to complete any other communication or transaction;
 - (5) In connection with any Complementary Number Program employed in any medium (telephone, Internet, or other media), failing to disclose clearly and prominently to any person who has reached a Complementary Number or Address (a) that such person has failed to reach his or her Intended Contact; (b) the true identity of Defendants' business and affiliation with the Intended Contact (or lack thereof); and (c) a description of the service in sufficient detail to make clear it is not related to the Intended Contact's business.
 - (6) Providing substantial assistance or support to any person when the Defendants know or consciously avoid knowing that the person is engaged in the practices set forth in Paragraphs I.A.1 - I.A.5 above; and
 - (7) Using the trade name "Operator Directory Service" in connection with any telephonic Complementary Number Program that merely offers directory assistance, without clearly and prominently disclosing in all relevant toll-free and pay-per-call messages: (a) all of the information required to be disclosed in Part I.A.5 of this Order; and (b) that the service provided is mere directory assistance

1 and not itself a means to directly complete the original call or intended transaction or
2 communication.

3 B. Defendants, their successors, subsidiaries, affiliates and assigns, and their
4 officers, agents, servants, independent contractors, employees, and all persons in active concert
5 or participation with any one or more of them who receive actual notice of this Order by
6 personal service or otherwise, are hereby permanently enjoined from

7 (1) Violating any provision of the Pay-Per-Call Rule, 16 C.F.R. Part 308; and

8 (2) Failing, in connection with any Complementary Number Program (including
9 programs charging “nominal costs” that otherwise would be exempted by § 308.5(c) of the Pay-
10 Per-Call Rule), to include in a pay-per-call message an introductory disclosure message that
11 clearly, in a slow and deliberate manner and in a reasonably understandable volume, identifies
12 the name of the provider of the pay-per-call service, describes the service being provided, and
13 informs callers that charges for the call begin, and that to avoid charges the call must be
14 terminated, three seconds after a clearly discernible signal or tone indicating the end of the
15 introductory disclosure message.

16 II. CIVIL PENALTIES

17 IT IS FURTHER ORDERED that:

18 A. Defendants Thomas Gregory Parrish, Sean K. Angeletti, John P. Starrs,
19 Telemarketing, Inc., Apex Investments, LLC, and Universal Innovations, LLC and their
20 successors and assigns, shall pay to Plaintiff a civil penalty, pursuant to Section 5(m)(1)(A) of
21 the Federal Trade Commission Act, 15 U.S.C. § 45(m)(1)(A), in the amount of Forty Thousand
22 Dollars (\$40,000). Defendants are jointly and severally responsible for paying this penalty.

23 B. Defendants shall, within five (5) days of the date of entry of this Order, pay the
24 foregoing sum of \$40,000 in civil penalties by certified or cashier’s check made payable to the
25 Treasurer of the United States and delivered to the Office of Consumer Litigation, Civil
26 Division, U.S. Department of Justice, Washington, D.C. 20530, for appropriate disposition.

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1 Alternatively, Defendants by that date shall pay such sum by electronic transfer in accordance
2 with the instructions provided by the Office of Consumer Litigation, Civil Division, U.S.
3 Department of Justice, Washington, D.C. 20530.

4 C. In the event of any default on any obligation to make payment under this Part,
5 interest, computed pursuant to 28 U.S.C. § 1961(a), shall accrue from the date of default to the
6 date of payment.

7 D. Within five (5) days of the date of entry of this Order, Defendants are hereby
8 required, in accordance with 31 U.S.C. § 7701, to furnish to Plaintiff their taxpayer identifying
9 numbers (social security number or employer identification number), which shall be used for
10 purposes of collecting and reporting on any delinquent amount arising out of such persons'
11 relationship with the government

12 III. COMPLIANCE MONITORING

13 **IT IS FURTHER ORDERED** that, for the purpose of monitoring and investigating
14 compliance with any provision of this Order,

15 (A) Within ten (10) days of receipt of written notice from a representative of the
16 Commission, Defendants Thomas Gregory Parrish, Sean K. Angeletti, John P. Starrs,
17 Telemarketing, Inc., Apex Investments, LLC, and Universal Innovations, LLC shall submit
18 additional written reports, sworn to under penalty of perjury; produce documents for inspection
19 and copying; appear for deposition; and/or provide entry during normal business hours to any
20 business location in Defendants' possession or direct or indirect control to inspect the business
21 operation;

22 (B) The Commission is authorized to monitor compliance with this Order by all
23 other lawful means, including but not limited to the following:

24 (1) obtaining discovery from any person, without further leave of court, using the
25 procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45; and

26 (2) using representatives posing as consumers to Thomas Gregory Parrish, Sean K.
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1 business; and a statement of Defendant's duties and responsibilities in
2 connection with the business;

3 (b) Any changes in any Defendant's name or use of any aliases or fictitious
4 names; and

5 (2) Thomas Gregory Parrish, Sean K. Angeletti, John P. Starrs, Telemarketing, Inc.,
6 Apex Investments, LLC, and Universal Innovations, LLC each shall notify the
7 Commission of any changes in corporate structure that may affect compliance
8 obligations arising under this Order, including but not limited to a dissolution,
9 assignment, sale, merger, or other action that would result in the emergence of a
10 successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that
11 engages in any acts or practices subject to this Order; the filing of a bankruptcy petition;
12 or a change in the corporate name or address, at least thirty (30) days prior to such
13 change, *provided* that, with respect to any proposed change in the corporation about
14 which the Defendant learns less than thirty (30) days prior to the date such action is to
15 take place, Defendant shall notify the Commission as soon as is practicable after
16 obtaining such knowledge.

17 (B) One hundred eighty (180) days after the date of entry of this Order, Defendants
18 each shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in
19 detail the manner and form in which they have complied and are complying with this Order.

20 This report shall include, but not be limited to:

- 21 (1) Any changes required to be reported pursuant to subparagraph (A) above;
- 22 (2) A copy of each acknowledgment of receipt of this Order obtained by Defendants
23 pursuant to Paragraph VI of this Order; and
- 24 (3) A statement describing the manner in which each Defendant has
25 complied and is complying with the injunctive provisions of this Order.

26 (C) For the purposes of this Order, Defendants shall, unless otherwise directed by the
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purchased, to the extent such information is obtained in the ordinary course of business;

- (D) Complaints and refund requests (whether received directly, indirectly or through any third party) and any responses to those complaints or requests;
- (E) Copies of all sales, entertainment, information, operator, recorded message, and customer service scripts, training materials, advertisements, or other marketing materials; and
- (F) Lists of all Complementary Numbers, toll-free numbers, and Pay-Per-Call Numbers used, and scripts used in conjunction with such Complementary Numbers, toll-free numbers or Pay-Per-Call Numbers.

VI. DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order,

- (A) Telemarketing, Inc., Apex Investments, LLC, and Universal Innovations, LLC, and their successors and assigns shall deliver a copy of this Order to all principals, officers, directors, managers, employees, agents, and representatives having responsibilities with respect to the subject matter of this Order, and shall secure from each such person a signed and dated statement acknowledging receipt of the Order. Telemarketing, Inc., Apex Investments, LLC, and Universal Innovations, LLC shall deliver this Order to current personnel within thirty (30) days after the date of service of this Order, and to new personnel within thirty (30) days after the person assumes such position or responsibilities.
- (B) Thomas Gregory Parrish, Sean K. Angeletti, and John P. Starrs shall deliver a copy of this Order to the principals, officers, directors, managers and employees under their control for any business that (a) employs or contracts for personal services from him, and (b) has responsibilities with respect to the subject matter

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of this Order. Thomas Gregory Parrish, Sean K. Angeletti, and John P. Starrs shall secure from each such person a signed and dated statement acknowledging receipt of the Order within thirty (30) days after the date of service of the Order or the commencement of the employment relationship.

VII. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS

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

VIII. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of enabling any of the parties to this Order to apply to the Court at any time for such further orders or directives as may be necessary or appropriate for the interpretation or modification of this Order, for the enforcement of compliance therewith, or for the punishment of violations thereof.

JUDGMENT IS THEREFORE ENTERED in favor of Plaintiff and against Defendants, pursuant to all the terms and conditions recited above.

Dated this _____ day of _____, 2004

UNITED STATES DISTRICT JUDGE

1 The parties, by their respective counsel, hereby consent to the terms and conditions of the
2 Order as set forth above and consent to the entry thereof. Defendants waive any rights
3 that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the
4 investigation and prosecution of this action.

5 FOR THE UNITED STATES OF AMERICA:

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9 U.S. Department of Justice

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22 By:
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FOR THE FEDERAL TRADE COMMISSION:

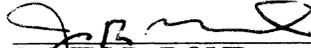


JEFFREY KLURFELD
Regional Director
Western Region
Federal Trade Commission



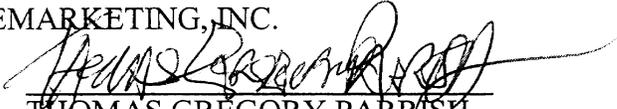
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FOR THE DEFENDANTS:

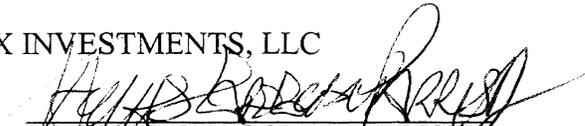


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TELEMARKETING, INC.

By: 
THOMAS GREGORY PARRISH
President

APEX INVESTMENTS, LLC

By: 
THOMAS GREGORY PARRISH
Manager

///

REASONS FOR SETTLEMENT

This statement accompanies the Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief (“Order”) executed by defendants Telemarketing, Inc., Apex Investments, LLC, Universal Innovations, LLC, Thomas Gregory Parrish, Sean Angeletti, and John P. Starrs, in settlement of an action brought to recover penalties and other equitable relief from the defendants for engaging in acts or practices in violation of the Commission’s Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992, 16 C.F. R. Part 308 (the “Rule”).

Pursuant to Section 5(m)(3) of the Federal Trade Commission Act, as amended (15 U.S.C. § 45(m)(3)), the Commission hereby sets forth its reasons for settlement by entry of an Order:

On the basis of the allegations contained in the attached Complaint, the Commission believes that the payment of \$40,000 in civil penalties by the defendants constitutes an appropriate amount upon which to base a settlement. The amount should assure compliance with the law by defendants and by others who engage in practices covered by the Rule. Further, defendants are permanently enjoined from engaging in acts or practices that are prohibited by the Rule. With the entry of such Order the time and expense of litigation will be avoided.

For the foregoing reasons, the Commission believes that the settlement by entry of the attached Order with Telemarketing, Inc., Apex Investments, LLC, Universal Innovations, LLC, Thomas Gregory Parrish, Sean Angeletti, and John P. Starrs is justified and well within the public interest.