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NORTHERN DISTRICT OF CALIFORNIA

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8 Attorneys for Plaintiff  
Federal Trade Commission  
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EMC

10 UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
San Francisco Division  
11

12 CV 09 0124

13 FEDERAL TRADE COMMISSION,  
14 Plaintiff,  
15 v.  
16 MARKET DEVELOPMENT SPECIALISTS,  
17 INC., a corporation, also d/b/a  
Wintergreen Systems, and  
18 JOHN LEVY, individually and as an officer of  
19 Market Development Specialists, Inc.,  
20 Defendants.

Case No. \_\_\_\_\_

**[PROPOSED] STIPULATED FINAL  
JUDGMENT AND ORDER FOR  
PERMANENT INJUNCTION AND  
OTHER EQUITABLE RELIEF AS  
TO DEFENDANTS MARKET  
DEVELOPMENT SPECIALISTS,  
INC., and JOHN LEVY**

21  
22 Plaintiff, the Federal Trade Commission ("FTC" or "Commission") filed a Complaint for  
23 Permanent Injunction and Other Equitable Relief ("Complaint") against Defendants Market  
24 Development Specialists, Inc., and John Levy (collectively, "Defendants") pursuant to Section  
25 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to secure  
26 permanent injunctive relief, restitution, disgorgement, and other equitable relief against  
27 Defendants for their alleged deceptive acts or practices in connection with the offering of mail-in  
28 rebates, in violation of Sections 5(a) of the FTC Act, 15 U.S.C. §§ 45(a).

1 Other than the allegations pertaining to jurisdictional facts and except as otherwise stated  
2 herein, Defendants deny the allegations in the Complaint. Defendants agree to the terms of the  
3 Order to avoid the uncertainties and costs of litigation.

4 The Commission and Defendants have stipulated to the entry of the following Order in  
5 settlement of the Commission's Complaint against Defendants. The Court, being advised in the  
6 premises, finds:

7 **FINDINGS**

8 1. This Court has jurisdiction over the subject matter of this case and jurisdiction  
9 over all parties pursuant to 15 U.S.C. §§ 45(a) and 53(b) and 28 U.S.C. §§ 1331, 1337(a) and  
10 1345.

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

13 3. The acts and practices of Defendants were and are in or affecting commerce, as  
14 defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

15 4. The Complaint states a claim upon which relief can be granted under Section 5(a)  
16 of the FTC Act, 15 U.S.C. § 45(a), and the Commission has the authority to seek the relief it has  
17 requested.

18 5. Defendants waive service of a summons and all rights to seek judicial review or  
19 otherwise challenge or contest the validity of this Order. Defendants also waive any claims that  
20 they may have held under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the  
21 prosecution of this action to the date of this Order.

22 6. Pursuant to Federal Rule of Civil Procedure 65(d), the provisions of this Order are  
23 binding upon Defendants, and their officers, agents, servants, employees, and all other persons  
24 or entities in active concert or participation with them, who receive actual notice of this Order by  
25 personal service or otherwise.

26 7. Nothing in this Order obviates Defendants' obligation to comply with Section 5  
27 of the FTC Act, 15 U.S.C. § 45.

1 8. This Order was drafted jointly by the Commission and Defendants and reflects  
2 the negotiated agreement of the parties. Each party reserves all rights not expressly addressed in  
3 this Order.

4 9. The paragraphs of this Order shall be read as the necessary requirements for  
5 compliance and not as alternatives for compliance and no paragraph serves to modify another  
6 paragraph unless expressly so stated.

7 10. Each party shall bear its own costs and attorneys' fees.

8 11. Entry of this Order is in the public interest.

9 **ORDER**

10 **DEFINITIONS**

11 For purposes of this Order, the following definitions shall apply:

12 1. Unless otherwise specified, "Defendants" shall mean:

13 a. Market Development Specialists, Inc., a corporation, also d/b/a Wintergreen  
14 Systems, its managers, members, divisions and subsidiaries, and its successors  
15 and assigns; and

16 b. John Levy, individually and in his capacity as an officer of Market Development  
17 Specialists, Inc.

18 2. "Commerce" shall mean as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

19 3. "Rebate" shall mean a check, cash, credit towards future purchases, or any other  
20 consideration offered to consumers who purchase products or services, and which is to be  
21 provided, subsequent to the purchase, to consumers who submit a request for redemption after  
22 satisfying the terms and conditions of the offer.

23 4. "Rebate program" shall mean any marketing program or plan in which a person  
24 or entity offers a rebate to consumers.

25 5. "Bonus" shall mean any premium, gift, award, or other consideration (whether in  
26 the form of cash, credit, merchandise, or any equivalent) given or offered to a consumer in  
27 exchange for purchasing a product or service.

28 6. A requirement that any Defendant "notify," "furnish," "provide," or "submit" to

1 the Commission shall mean that the Defendant shall send the necessary information via  
2 overnight courier, costs prepaid, to:

3 Associate Director for Enforcement  
4 Federal Trade Commission  
5 600 Pennsylvania Avenue, N.W.  
6 Washington, DC 20580  
7 Attn: *FTC v. Market Development Specialists, Inc., et al.* (N.D. Ind.)  
8 Civ. No. \_\_\_\_\_ ( ).

9 7. The terms “and” and “or” in this Order shall be construed conjunctively or  
10 disjunctively as necessary, to make the applicable phrase or sentence inclusive rather than  
11 exclusive.

12 8. The term “including” in this Order shall mean “without limitation.”

13 **IT IS STIPULATED, AGREED, AND ORDERED THAT:**

14 **I.**

15 **PROHIBITED BUSINESS ACTIVITIES**

16 A. Defendants, directly or through any corporation, partnership, subsidiary, division,  
17 trade name, device, or other entity, and their officers, agents, servants, employees,  
18 and all persons and entities in active concert or participation with them who  
19 receive actual notice of this Order, by personal service or otherwise, are hereby  
20 permanently restrained and enjoined from any involvement in the development,  
21 marketing, fulfillment, or funding of any rebate program.

22 B. Defendants, directly or through any corporation, partnership, subsidiary, division,  
23 trade name, device, or other entity, and their officers, agents, servants, employees,  
24 and all persons and entities in active concert or participation with them who  
25 receive actual notice of this Order, by personal service or otherwise, in connection  
26 with the manufacturing, labeling, advertising, promotion, offering for sale, sale,  
27 or distribution of any product or service, in or affecting commerce, are hereby  
28 permanently restrained and enjoined from making, or assisting others in making,  
directly or by implication, any misrepresentation regarding any bonus.

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II.

MONETARY JUDGMENT

A. Judgment is hereby entered in favor of the Commission and against Defendants Market Development Specialists, Inc., and John Levy, jointly and severally, in the amount of \$330,240.00 for redress to consumers. Provided, however, that this judgment shall be suspended subject to the provisions of Part III.

B. All funds paid pursuant to this Order shall be deposited into a fund administered by the Commission or its agents to be used for equitable relief, including but not limited to consumer redress, and any attendant expenses for the administration of such equitable relief. If requested, Defendants will cooperate fully to assist Plaintiffs in identifying which consumers are eligible to receive redress funds. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after the redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendants' practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the United States Treasury as disgorgement. Defendants shall have no right to challenge the Commission's choice of remedies under this Part. Defendants shall have no right to contest the manner of distribution chosen by the Commission. No portion of any payment under the judgment herein shall be deemed a payment of any fine, penalty, or punitive assessment.

C. Defendants relinquish all dominion, control, and title to the funds paid, and all legal and equitable title to the funds shall vest in the Treasurer of the United States and in the designated consumers. Defendants shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise; and in the event of bankruptcy of any Defendant, Defendants acknowledge that the funds are not part of the debtor's estate, nor does the estate have any claim or interest therein.

1 D. Defendants agree that, if they fail to timely and completely fulfill the payment  
2 and other obligations set forth in this Order, the facts as alleged in the Complaint  
3 filed in this matter shall be taken as true in any subsequent litigation filed by the  
4 Commission to enforce its rights pursuant to this Order, including but not limited  
5 to a non-dischargeability complaint in any bankruptcy case.

6 E. Proceedings instituted under this Part are in addition to, and not in lieu of, any  
7 other civil or criminal remedies that may be provided by law, including any other  
8 proceedings the Commission may initiate to enforce this Order.

9 F. In accordance with 31 U.S.C. § 7701, Defendants are hereby required to furnish  
10 to the Commission their respective taxpayer identifying numbers (social security  
11 numbers or employer identification numbers) which shall be used for purposes of  
12 collecting and reporting on any delinquent amount arising out of the Defendants'  
13 relationship with the government.

14 **III.**

15 **RIGHT TO REOPEN**

16 A. The Commission's agreement to this Order is expressly premised upon the  
17 financial condition of Defendants as represented in:

18 1. Financial Statement of Market Development Specialists, Inc., dated June  
19 6, 2008; and

20 2. Financial Statement of John Levy, dated June 10, 2008,

21 all of which include material information upon which the Commission relied in  
22 negotiating and consenting to this Order.

23 B. If, upon motion by the Commission, this Court finds that Defendants made a  
24 material misrepresentation or omitted material information concerning their  
25 financial condition, then the Court shall reinstate the judgment against Defendants  
26 and in favor of the Commission for the full amount of \$330,240.00 immediately  
27 due and payable, together with interest computed at the rate prescribed under 28  
28 U.S.C. § 1961, as amended, less the sum of any payments previously made

1 pursuant to this Order.

- 2 C. Any proceedings instituted under this Part are in addition to, and not in lieu of,  
3 any other civil or criminal remedies as may be provided by law, including any  
4 other proceedings that the FTC may initiate to enforce this Order.

5 **IV.**

6 **COMPLIANCE MONITORING**

7 For the purpose of monitoring and investigating compliance with any provision of this  
8 Order,

- 9 A. Within ten (10) days of receipt of written notice from a representative of the  
10 Commission, Market Development Specialists, Inc., and John Levy each shall  
11 submit additional written reports, sworn to under penalty of perjury; produce  
12 documents for inspection and copying; appear for deposition; and/or provide  
13 entry during normal business hours to any business location in such Defendant's  
14 possession or direct or indirect control to inspect the business operation;
- 15 B. In addition, the Commission is authorized to monitor compliance with this Order  
16 by all other lawful means, including but not limited to the following:
- 17 1. obtaining discovery from any person, without further leave of court, using  
18 the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;
  - 19 2. posing as consumers and suppliers to: Market Development Specialists,  
20 Inc., John Levy, and their employees, and any other entity managed or  
21 controlled in whole or in part by Market Development Specialists, Inc., or  
22 John Levy, without the necessity of identification or prior notice; and
- 23 C. Market Development Specialists, Inc., and John Levy shall permit  
24 representatives of the Commission to interview any employer, consultant,  
25 independent contractor, representative, agent, or employee who has agreed to  
26 such an interview, relating in any way to any conduct subject to this Order. The  
27 person interviewed may have counsel present.

28 Provided, however, that nothing in this Order shall limit the Commission's lawful use of

1 compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to  
2 obtain any documentary material, tangible things, testimony, or information relevant to unfair or  
3 deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. §  
4 45(a)(1)).

5 **V.**

6 **COMPLIANCE REPORTING BY DEFENDANTS**

7 In order that compliance with the provisions of this Order may be monitored:

8 A. For a period of five (5) years from the date of entry of this Order,

9 1. Individual Defendant John Levy shall notify the Commission of the  
10 following:

11 a. Any changes in residence, mailing addresses, and telephone  
12 numbers of Individual Defendant, within ten (10) days of the date  
13 of such change;

14 b. Any changes in employment status (including self-employment) of  
15 Individual Defendant, and any change in the ownership of the  
16 Individual Defendant in any business entity, within ten (10) days  
17 of the date of such change. Such notice shall include the name and  
18 address of each business that the Individual Defendant is affiliated  
19 with, employed by, creates or forms, or performs services for; a  
20 statement of the nature of the business; and a statement of the  
21 Individual Defendant's duties and responsibilities in connection  
22 with the business or employment; and

23 c. Any changes in the Individual Defendant's name or use of any  
24 aliases or fictitious names; and

25 2. Market Development Specialists, Inc., and John Levy shall notify the  
26 Commission of any changes in the corporate structure of Market  
27 Development Specialists, Inc., or any business entity that the Individual  
28 Defendant directly or indirectly controls, or has an ownership interest in,

1 that may affect compliance obligations arising under this Order, including  
2 but not limited to a dissolution, assignment, sale, merger, or other action  
3 that would result in the emergence of a successor entity; the creation or  
4 dissolution of a subsidiary, parent, or affiliate that engages in any acts or  
5 practices subject to this Order; the filing of a bankruptcy petition; or a  
6 change in the corporate name or address, at least thirty (30) days prior to  
7 such change, provided that, with respect to any proposed change in the  
8 corporation about which the Defendant(s) learns less than thirty (30) days  
9 prior to the date such action is to take place, Defendant(s) shall notify the  
10 Commission as soon as is practicable after obtaining such knowledge.

11 B. One hundred eighty (180) days after the date of entry of this Order, Market  
12 Development Specialists, Inc., and John Levy each shall provide a written report  
13 to the FTC, sworn to under penalty of perjury, setting forth in detail the manner  
14 and form in which they have complied and are complying with this Order. This  
15 report shall include, but not be limited to:

16 1. For the Individual Defendant:

17 a. The then-current residence address, mailing addresses, and  
18 telephone numbers of the Individual Defendant;

19 b. The then-current employment and business addresses and  
20 telephone numbers of the Individual Defendant, a description of  
21 the business activities of each such employer or business, and the  
22 title and responsibilities of the Individual Defendant, for each such  
23 employer or business; and

24 c. Any other changes required to be reported under Subpart A of this  
25 Part.

26 2. For all Defendants:

27 a. A copy of each acknowledgment of receipt of this Order, obtained  
28 pursuant to Part VII; and







