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11 **UNITED STATES DISTRICT COURT**
12 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

13
14 **FEDERAL TRADE COMMISSION,**
15 **Plaintiff,**
16 **v.**
17 **IN DEEP SERVICES, INC., et al.**
18 **Defendants.**
19
20

Civil No. ED CV 09-01193
DEW (PJWx)

**[PROPOSED] FINAL
ORDER FOR
PERMANENT
INJUNCTION AND
MONETARY JUDGMENT
AS TO DEFENDANT
JOSEPH C. FLEMING IV**

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23 On June 23, 2009, Plaintiff Federal Trade Commission (“FTC” or
24 “Commission”) filed a Complaint in this Court for injunctive and other equitable
25 relief against the Corporate Defendant In Deep Services, Inc., and Individual
26 Defendants Ryan Champion and Joseph C. Fleming IV (collectively “the IDS
27 Defendants”), for engaging in acts and practices that violate Section 5 of the
28 Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45(a) and Section

1 917(c) of the Electronic Fund Transfer Act, 15 U.S.C. § 1693o(c) (“EFTA”)
2 [Docket Entry 1].

3 On June 23, 2009, upon motion by the FTC, the Court entered a noticed
4 Temporary Restraining Order (“TRO”) that, among other things, froze the IDS
5 Defendants' personal and corporate assets, enjoined defendants from making
6 certain misrepresentations, and ordered the IDS Defendants to show cause why a
7 preliminary injunction should not issue [DE 21]. On June 29, 2009, the Court
8 extended the TRO and changed the date set for the preliminary injunction hearing
9 [DE 32]. On July 21, 2009, the Court entered a Stipulated Preliminary Injunction
10 that continued the substantive provisions of the TRO [DE 36].

11 The IDS Defendants were served with copies of the Complaint, Summons,
12 and associated documents. [DE 24 (IDS Service), DE 26 (Fleming), DE 25 and
13 27 (Champion)]. The Individual Defendants Ryan Champion and Joseph C.
14 Fleming answered the FTC’s Complaint. [DE 58].

15 The Commission and Defendant Joseph C. Fleming IV stipulated to the entry
16 of, and requested the Court to enter, this Proposed Final Order for Permanent
17 Injunction and Monetary Judgment as to Defendant Fleming (“Order”), to resolve
18 all matters of dispute between them in this action.

19
20 **IT IS THEREFORE AGREED AND ORDERED** as follows:

- 21 1. This Court has jurisdiction over the subject matter of this case and there is
22 good cause to believe it has jurisdiction over the Defendant Joseph C.
23 Fleming IV;
- 24 2. Venue is proper in this District under 28 U.S.C. § 1391(b) and 15 U.S.C.
25 § 53(b);
- 26 3. The activities alleged in the Complaint are in or affecting “commerce” as
27

1 that term is defined in Section 4 of the FTC Act, 15 U.S.C. § 44;

2 4. The Complaint states a claim upon which relief may be granted under
3 Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b); and
4 under Section 917(c) of EFTA, 15 U.S.C. § 1693o(c);

5 5. Fleming has entered into this Order freely and without coercion, and he
6 acknowledges that he has read the provisions of this Order and is prepared
7 to abide by them;

8 6. This Order is in addition to, and not in lieu of, any other civil or criminal
9 remedies that may be provided by law;

10 7. Fleming waives all rights to seek appellate review or otherwise challenge
11 or contest the validity of this Order and waives and releases any claim he
12 may have against the Commission, its employees, representatives, or
13 agents;

14 8. Fleming agrees that this Order does not entitle him to seek or to obtain
15 attorneys' fees as a prevailing party under the Equal Access to Justice Act,
16 28 U.S.C. § 2412, as amended by Pub. L. 104-121, 110 Stat. 847, 863-64
17 (1996), and he further waives any rights to attorneys' fees that may arise
18 under said provision of law;

19 9. This Order is for settlement purposes only and does not constitute an
20 admission by Fleming that the law has been violated as alleged in the
21 Complaint or any admission of wrongdoing. However, for the purposes of
22 bankruptcy proceedings, if any, see Section V, Paragraph J;

23 10. This Order is remedial in nature and no portion of any payments paid
24 herein shall be deemed or construed as payment of a fine, damages,
25 penalty, or punitive assessment; and

26 11. Entry of this Order is in the public interest.
27
28

ORDER

DEFINITIONS

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

1. **“Assisting others”** means providing any of the following products 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 promotional material; (3) providing names of, or assisting in the generation of, potential customers; (4) performing promotional or marketing services of any kind; or (5) processing credit and debit card payment;
2. **“Fleming”** means defendant Joseph C. Fleming IV, individually and as an officer of the Corporate Defendant, In Deep Services, Inc., whether acting directly or through any other person, entity, corporation, subsidiary, division, affiliate or other device;
3. **“Continuity program”** means any plan, arrangement, or system under which a consumer is periodically charged to maintain a service or periodically receive products, including but not limited to access to a “member only” website, without prior notification by the seller with sufficient time before each charge to allow the consumer to cancel without incurring charges;
4. **“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, Internet sites, Webpages, Websites, electronic correspondence, including e-mail and instant messages, photographs, audio and video recordings, contracts, accounting data, advertisements

1 (including, but not limited to, advertisements placed on the World Wide
2 Web), FTP Logs, Server Access Logs, USENET Newsgroup postings,
3 World Wide Web pages, books, written or printed records, handwritten
4 notes, telephone logs, telephone scripts, receipt books, ledgers, personal
5 and business canceled checks and check registers, bank statements,
6 appointment books, computer records, and other data compilations from
7 which information can be obtained and translated. A draft or non-identical
8 copy is a separate document within the meaning of the term;

9 5. **“Grant-related product or service”** means any product or service,
10 including a plan or program, that is represented, directly or by implication,
11 to assist a consumer in any manner in obtaining a grant or similar financial
12 assistance from the government or any other source;

13 6. **“In Deep Services”** or **“IDS”** means defendant In Deep Services, Inc., a
14 California corporation, and its successors and assigns;

15 7. **“Material fact”** means any statement that is likely to affect a person’s
16 choice of, or conduct regarding, products or services;

17 8. **“Negative-option program”** means any plan, arrangement, or system
18 under which a consumer’s silence or failure to take an affirmative action to
19 reject products or services or to cancel the agreement is interpreted by the
20 seller as acceptance of the offer;

21 9. **“Plaintiff”** or **“Commission”** or **“FTC”** means the Federal Trade
22 Commission;

23 10. **“Representative”** means Fleming’s successors, assigns, officers, agents,
24 servants, employees, and attorneys and those persons in active concert or
25 participation with them who receive actual notice of this Order by personal
26 service or otherwise;

11. The words “and” and “or” shall be understood to have both conjunctive and disjunctive meanings.

I.

BAN AGAINST MARKETING OF GRANT -RELATED PRODUCTS AND SERVICES

IT IS THEREFORE ORDERED that Fleming is hereby permanently restrained and enjoined from:

- A. Advertising, marketing, promoting, offering for sale, or selling any Grant-related product or service;
- B. Assisting others engaged in advertising, marketing, promoting, offering for sale, or selling of any Grant-related product or service;
- C. Holding any ownership interest, share, or stock in any business entity that engages in or assists in the advertising, marketing, promoting, offering for sale, or selling of any Grant-related product or service; *provided, however*, this prohibition shall not apply to any publicly-traded company in which Fleming owns one (1) percent or less of the outstanding common shares.

II.

BAN AGAINST CONTINUITY PROGRAMS AND NEGATIVE-OPTION MARKETING

IT IS THEREFORE ORDERED that Fleming is hereby permanently restrained and enjoined from:

- A. Advertising, marketing, promoting, offering for sale, or selling any product or service in which consumers will be entered into a Continuity program or a Negative-option program;
- B. Assisting others engaged in advertising, marketing, promoting,

1 offering for sale, or selling any product or service in which
2 consumers will be entered into a Continuity program or a Negative-
3 option program;

- 4 C. Holding any ownership interest, share, or stock in any business
5 entity that engages in or assists in the advertising, marketing,
6 promoting, offering for sale, or selling of any product or service in
7 which consumers will be entered into a Continuity program or a
8 Negative-option program; *provided, however*, this prohibition shall
9 not apply to any publicly-traded company in which Fleming owns
10 one (1) percent or less of the outstanding common shares.

11
12 **III.**

13 **PROHIBITION AGAINST VIOLATION OF THE ELECTRONIC FUND**
14 **TRANSFER ACT**

15 **IT IS FURTHER ORDERED** that, in connection with the advertising,
16 marketing, promotion, offering for sale, or sale of any product or service,
17 Fleming and his Representatives are hereby permanently restrained and enjoined
18 from:

- 19 A. Engaging or Assisting others in engaging in any recurring debiting
20 of a consumer's account without first obtaining a written
21 authorization signed or similarly authenticated from consumers for
22 Preauthorized Electronic Fund Transfers from the consumers
23 accounts; so that the authorization is clear and readily
24 understandable, identifiable as an authorization, and reflects the
25 consumer's assent; as required by Section 907(a) of EFTA, 15
26 U.S.C. § 1693e(a) and Section 205.10(b) of Regulation E, 12 C.F.R.
27 § 205.10(b) , as more fully set out in Section 205.10(b) -5 and -6 of
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1 the Federal Reserve Board's Official Staff Commentary to
2 Regulation E, 12 C.F.R. § 205.10(b) -5 and -6, Supp. I;

3 B. Engaging or Assisting others in engaging in any recurring debiting
4 of a consumer's account on a recurring basis without providing to
5 the consumer a copy of the written authorization signed or similarly
6 authenticated by the consumer for Preauthorized Electronic Fund
7 Transfers from the consumer's account, as required by Section
8 907(a) of EFTA, 15 U.S.C. § 1693e(a) and Section 205.10(b) of
9 Regulation E, 12 C.F.R. § 205.10(b), as more fully set out in
10 Section 205.10(b) -5 and -6 of the Federal Reserve Board's Official
11 Staff Commentary to Regulation E, 12 C.F.R. § 205.10(b) -5 and -6,
12 Supp. I; and

13 C. Failing to maintain procedures reasonably adapted to avoid an
14 unintentional failure to obtain a written authorization for
15 Preauthorized Electronic Fund Transfers, as required in Section
16 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b), as more fully set
17 out in Section 205.10(b) -7 of the Federal Reserve Board's Official
18 Staff Commentary to Regulation E, 12 C.F.R. § 205.10(b) -7,
19 Supp.I..
20

21 IV.

22 PROHIBITION AGAINST MAKING MISREPRESENTATIONS OF
23 MATERIAL FACTS
24

25 IT IS FURTHER ORDERED that, in connection with the advertising,
26 marketing, promoting, offering for sale or selling of any product or service,
27 Fleming and his Representatives are hereby permanently restrained and enjoined
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1 from misrepresenting or Assisting others in misrepresenting, directly or by
2 implication, any Material fact, including, but not limited to:

3 A. The total cost to purchase, receive, or use, and the quantity of, any
4 products or services that are the subject of the sales offer;

5 B. Any material restrictions, limitations, or conditions to purchase,
6 receive, or use the products or services;

7 C. Any material aspect of the nature or terms of a refund, cancellation,
8 exchange, or repurchase policy for the products or services; or

9 D. The income, profits, or sales volume likely to be achieved from the
10 products or services.

11
12 **V.**

13 **MONETARY JUDGMENT**

14 **IT IS FURTHER ORDERED** that:

15 A. Judgment in the amount of **Nine Million Forty-two Thousand and**
16 **Seventy dollars (\$9,042,070)** is entered against Defendant Fleming
17 jointly and severally with any other defendants found liable in this
18 matter;

19 B. The monetary judgment set forth in Paragraph A shall be suspended
20 upon Fleming's compliance with Paragraphs C and D of this
21 Section;

22 C. Fleming shall pay the United States Internal Revenue Service
23 ("IRS") and the State of California Franchise Tax Board (the "State
24 of California") monies due to wholly or partially satisfy his existing
25 tax liabilities;

26 1. Within sixty (60) days of the entry of this Order, Fleming
27 shall pay the IRS and the State of California using funds
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1 previously frozen by the Court in this action. Such accounts
2 are listed in Attachment A to this Order. The freeze on
3 Fleming's assets contained in the preliminary injunction
4 issued in this matter is hereby lifted to enable Fleming to
5 make payments from the accounts listed in Attachment A
6 pursuant to this Section;

- 7 2. Fleming shall use funds contained in the accounts listed in
8 Attachment A solely for the purposes of: (a) wholly or
9 partially satisfying his existing tax liability; or (b) paying the
10 Commission, as described in Paragraph C(5) of this Section;
- 11 3. Any portion of Fleming's tax liabilities to the IRS and State of
12 California not satisfied by payments made from the accounts
13 listed in Attachment A shall be the sole responsibility of
14 Fleming;
- 15 4. Within ninety (90) days of the entry of this Order, Fleming
16 shall provide the Commission with copies of the front and
17 back of all cancelled personal checks, or electronic payment
18 receipts, made by Fleming to the IRS and State of California
19 pursuant to this Paragraph;
- 20 5. If, after making payments to the IRS and State of California
21 pursuant to this Paragraph, any funds (a) remain in the
22 accounts listed in Attachment A Fleming shall arrange for the
23 prompt payment of such funds to the Commission by wire
24 transfer in accordance with directions provided by the
25 Commission;

26 D. In order to ensure that Fleming uses funds held in the accounts listed
27 in Attachment A for the purpose of paying the IRS and State of
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1 California for tax liabilities, and that Fleming complies with
2 Paragraph L of this Section, Fleming shall:

3 1. Upon issuance of this Order, execute the statement in
4 Attachment B, and submit it to the Commission at the
5 following address:

6 Associate Director, Division of Marketing Practices,
7 600 Pennsylvania Avenue, N.W., Room 286,
8 Washington, D.C. 20580;

9 2. Within sixty (60) days of the entry of this Order, provide the
10 Commission with copies of his 2008 and 2009 federal income
11 tax returns as filed with the IRS and with copies of his 2008
12 and 2009 state income tax returns as filed with the State of
13 California; and

14 3. Within ten (10) days of being directed by the Commission,
15 complete, date, sign, and submit to the IRS, along with the
16 required fee, an IRS Form 4506, directing that copies of
17 Fleming's federal income tax returns and amended federal
18 income tax returns for tax years 2008,2009, and 2010 be sent
19 directly to the Commission at the address provided in
20 Paragraph D(1) above. The time period within which the
21 Commission can so direct Fleming will end sixty (60) days
22 after the last date on which Fleming has a right under law to
23 file an amended income tax return for Fleming's 2010 tax
24 year;

25 E. The Commission's agreement to this Order is expressly premised
26 upon the truthfulness, accuracy and completeness of Fleming's
27 sworn financial statements and supporting documents submitted to
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1 the Commission on or about July 2, 2009, as well as all subsequent
2 addenda thereto, all of which Fleming has stipulated are truthful,
3 accurate, and complete. Fleming and the Commission have
4 stipulated that these financial disclosures provide the basis for the
5 assets listed in Attachment A to this Order and include material
6 information upon which the Commission relied in negotiating and
7 agreeing to this Order. Fleming and the Commission have stipulated
8 that the Commission has relied on the truthfulness, accuracy, and
9 completeness of these financial disclosures in agreeing to the terms
10 of this Order and that the Commission would not have entered into
11 this Order but for the truthfulness, accuracy, and completeness of
12 these financial disclosures;

13 F. If, upon motion by the Commission, this Court finds that Fleming
14 has failed to disclose any material asset or materially misstated the
15 value of any asset in the financial statement and related documents
16 described above, or has made any other material misstatement or
17 omission in the financial statements and related documents
18 described above, then this Order shall be reopened and suspension of
19 the judgment shall be lifted for the purpose of requiring payment of
20 **Nine Million Forty-two Thousand and Seventy dollars**
21 **(\$9,042,070)**, as set forth in Paragraph A of this Section. *Provided,*
22 *however,* that in all other respects this Order shall remain in full
23 force and effect, unless otherwise ordered by the Court;

24 G. Upon such reinstatement of the monetary judgment, the Court shall
25 make an express determination that the monetary judgment shall be
26 immediately due and payable. The Commission shall be entitled to
27 interest on the judgment, computed from the day of entry of this
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1 Order, at the rate prescribed by 18 U.S.C. § 1961, as amended. The
2 Commission shall be permitted to execute on the judgment
3 immediately after the suspension is lifted and engage in discovery in
4 aid of execution;

5 H. All funds paid to the pursuant to the Order shall be deposited into an
6 account administered by the Commission or its agent to be used for
7 equitable relief, including but not limited to consumer redress, and
8 any attendant expenses for the administration of such equitable
9 relief. In the event that direct redress to consumers is wholly or
10 partially impracticable or funds remain after redress is completed,
11 the Commission may apply any remaining funds for such other
12 equitable relief (including consumer information remedies) as it
13 determines to be reasonably related to Fleming's practices alleged in
14 the Complaint. Any funds not used for such equitable relief shall be
15 deposited to the United States Treasury as disgorgement. Fleming
16 shall have no right to challenge the Commission's choice of
17 remedies under this Section. Fleming shall have no right to contest
18 the manner of distribution chosen by the Commission;

19 I. As to all funds paid to the Commission pursuant to this Order,
20 Fleming relinquishes all dominion, control, and title to the funds
21 paid to the fullest extent permitted by law. Fleming shall make no
22 claim to or demand return of the funds, directly or indirectly,
23 through counsel or otherwise;

24 J. Fleming agrees that the facts as alleged in the Complaint filed in this
25 action shall be taken as true without further proof in any bankruptcy
26 case or subsequent civil litigation pursued by the Commission to
27 enforce its rights to any payment or money judgment pursuant to this
28

1 Final Order, including but not limited to a nondischargeability
2 complaint in any bankruptcy case. Fleming further has stipulated
3 and agreed that the facts alleged in the Complaint establish all
4 elements necessary to sustain an action pursuant to, and that this
5 Order shall have collateral estoppel effect for purposes of, Section
6 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A);

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

11 L. Fleming agrees that he will not, whether acting directly or through
12 any corporation, partnership, subsidiary, division, trade name,
13 device, or other entity, submit to any federal or state tax authority
14 any return, amended return, or other official document that takes a
15 deduction for, or seeks a tax refund or other favorable treatment for,
16 any payment by Fleming pursuant to this Order. Fleming further
17 agrees that he will not seek a credit or refund of any kind for federal
18 or state taxes or penalties for tax years 2007, 2008 and 2009.

19 However, if Fleming otherwise obtains a credit or refund of any
20 federal or state taxes or penalties paid for tax years 2007, 2008 or
21 2009, then Fleming shall promptly remit such amount, together with
22 any interest Fleming has earned in connection with any such credit
23 or refund, to the Commission pursuant to the procedure set forth in
24 Section C(5) of this Paragraph;

25 M. Fleming shall, unless he has done so already, provide the
26 Commission with clear, legible, and full-size photocopies of all valid
27 driver's licenses he possesses, which will be used for reporting and
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1 compliance purposes.
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4 **VI.**

5 **BAN ON USE OF CUSTOMER INFORMATION**

6 **IT IS FURTHER ORDERED** that Fleming and his Representatives are
7 permanently restrained and enjoined from:

- 8 A. disclosing, using, or benefitting from customer information,
9 including the name, address, telephone number, email address, social
10 security number, other identifying information, or any data that
11 enables access to a customer's account (including a credit card, bank
12 account, or other financial account), of any person which Fleming
13 obtained prior to entry of this Order in connection with the
14 advertising, marketing, promotion, or offering of grant-related
15 products and services;
- 16 B. failing to dispose of such customer information in all forms in their
17 possession, custody, or control within thirty (30) days after entry of
18 this Order. Disposal shall be by means that protect against
19 unauthorized access to the customer information, such as by
20 burning, pulverizing, or shredding any papers, and by erasing or
21 destroying any electronic media, to ensure that the customer
22 information cannot practicably be read or reconstructed.

23 *Provided, however,* that customer information need not be disposed of, and may
24 be disclosed, to the extent requested by a government agency or required by a
25 law, regulation, or court order. In particular, a copy of the names, addresses and
26 email addresses of customers of In Deep Services for grant-related products and
27 services shall be share with the Commission before the time limit for disposal of

1 the information as outline in VI(B).

2 **VII.**

3 **COMPLIANCE MONITORING**

4 **IT IS FURTHER ORDERED** that, for the purpose of (i) monitoring and
5 investigating compliance with any provision of this Order, and (ii) investigating
6 the accuracy of Fleming’s financial statements upon which the Commission’s
7 agreement to this Order is expressly premised:

- 8 A. Within ten (10) days of receipt of written notice from a
9 representative of the Commission, Fleming shall submit additional
10 written reports, which are true and accurate and sworn to under
11 penalty of perjury; produce documents for inspection and copying;
12 appear for deposition; and provide entry during normal business
13 hours to any business location in Fleming’s possession or direct or
14 indirect control to inspect the business operation;
- 15 B. In addition, the Commission is authorized to use all other lawful
16 means, including but not limited to:
 - 17 1. obtaining discovery from any person, without further leave of
18 court, using the procedures prescribed by Fed. R. Civ. P. 30,
19 31, 33, 34, 36, 45 and 69;
 - 20 2. having its representatives pose as consumers to Fleming, his
21 employees, or any other entity managed or controlled in
22 whole or in part by Fleming, without the necessity of
23 identification or prior notice; and
- 24 C. Fleming shall permit representatives of the Commission to interview
25 any employer, consultant, independent contractor, representative,
26 agent, or employee who has agreed to such an interview, relating in
27 any way to any conduct subject to this Order. The person

1 interviewed may have counsel present.

2 *Provided however*, that nothing in this Order shall limit the Commission's
3 lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act,
4 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things,
5 testimony, or information relevant to unfair or deceptive acts or practices in or
6 affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

7
8 **VIII.**

9 **COMPLIANCE REPORTING**

10 **IT IS FURTHER ORDERED** that, in order that compliance with the
11 provisions of this Order may be monitored:

- 12 A. For a period of five (5) years from the date of entry of this Order,
- 13 1. Fleming shall notify the Commission of the following:
- 14 a. Any changes in his residence, mailing addresses, and
15 telephone numbers, within ten (10) days of the date of
16 such change;
- 17 b. Any changes in his employment status (including self-
18 employment), and any change in his ownership in any
19 business entity within ten (10) days of the date of such
20 change. Such notice shall include the name and address
21 of each business that he is affiliated with, employed by,
22 creates or forms, or performs services for; a detailed
23 description of the nature of the business; and a detailed
24 description of his duties and responsibilities in
25 connection with the business or employment; and
- 26 c. Any changes in his name or use of any aliases or
27 fictitious names within ten (10) days of the date of such

change;

1
2 2. Fleming shall notify the Commission of any changes in
3 structure of In Deep Services, Inc. or any business entity that
4 he directly or indirectly controls, or has an ownership interest
5 in, that may affect compliance obligations arising under this
6 Order, including but not limited to: incorporation or other
7 organization; a dissolution, assignment, sale, merger, or other
8 action; the creation or dissolution of a subsidiary, parent, or
9 affiliate that engages in any acts or practices subject to this
10 Order; or a change in the business name or address, at least
11 thirty (30) days prior to such change, provided that, with
12 respect to any such change in the business entity about which
13 he learns less than thirty (30) days prior to the date such
14 action is to take place, he shall notify the Commission as soon
15 as is practicable after obtaining such knowledge.

16 B. One hundred eighty (180) days after the date of entry of this Order
17 and annually thereafter for a period of five (5) years, Fleming shall
18 provide a written report to the FTC, which is true and accurate and
19 sworn to under penalty of perjury, setting forth in detail the manner
20 and form in which he has complied and is complying with this
21 Order. This report shall include, but not be limited to:

- 22 1. Fleming's then-current residence address, mailing addresses,
23 and telephone numbers;
- 24 2. Fleming's then-current employment status (including self-
25 employment), including the name, addresses, and telephone
26 numbers of each business that Fleming is affiliated with,
27 employed by, or performs services for; a detailed description

1 of the nature of the business; and a detailed description of
2 Fleming's duties and responsibilities in connection with the
3 business or employment;

4 3. A copy of the acknowledgment of receipt of this Order,
5 obtained pursuant to the Section titled "Distribution of
6 Order;" and

7 4. Any other changes required to be reported under Subsection A
8 of this Section.

9 C. Fleming shall notify the Commission of the filing of a bankruptcy
10 petition by him within fifteen (15) days of filing.

11 D. For the purposes of this Order, Fleming shall, unless otherwise
12 directed by the Commission's authorized representatives, send by
13 overnight courier all reports and notifications required by this Order
14 to the Commission, to the following address:

15 Associate Director for Enforcement
16 Federal Trade Commission
17 600 Pennsylvania Avenue, N.W.,
18 Washington, D.C. 20580

19 Re: FTC v. In Deep Services, Inc., Ryan Champion and
20 Joseph C. Fleming IV
21 Case No.: 5:09-CV-01193-SGL (PJW)

22 *Provided that*, in lieu of overnight courier, Fleming may send such
23 reports or notifications by first-class mail, but only if he
24 contemporaneously sends an electronic version of such report or
25 notification to the Commission at: DEBrief@ftc.gov.

26 E. For purposes of the compliance reporting and monitoring required
27 by this Order, the Commission is authorized to communicate
28

1 directly with Fleming.

2
3 IX.

4 RECORDKEEPING

5 IT IS FURTHER ORDERED that, for a period of eight (8) years from
6 the date of entry of this Order, Fleming, for any business for which he is the
7 majority owner or directly or indirectly controls, is hereby restrained and
8 enjoined from failing to create and retain the following records:

- 9 A. Accounting records that reflect the cost of goods or services sold,
10 revenues generated, and the disbursement of such revenues;
- 11 B. Personnel records accurately reflecting: the name, address, and
12 telephone number of each person employed in any capacity by such
13 business, including as an independent contractor; that person's job
14 title or position; the date upon which the person commenced work;
15 and the date and reason for the person's termination, if applicable;
- 16 C. Customer files containing the names, addresses, telephone numbers,
17 dollar amounts paid, quantity of items or services purchased, and
18 description of items or services purchased, to the extent such
19 information is obtained in the ordinary course of business;
- 20 D. Complaints and refund requests (whether received directly or
21 indirectly, such as through a third party,) and any responses to those
22 complaints or requests;
- 23 E. Copies of all sales scripts, training materials, advertisements, or
24 other marketing materials; and
- 25 F. All records and documents necessary to demonstrate full compliance
26 with each provision of this Order, including but not limited to,
27 copies of acknowledgments of receipt of this Order required by the

Sections titled "Distribution of Order" and "Acknowledgment of Receipt of Order" and all reports submitted to the FTC pursuant to the Section titled "Compliance Reporting."

X.

DISTRIBUTION OF ORDER

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, Fleming shall deliver copies of the Order as directed below:

A. Fleming as control person: For any business that Fleming controls, directly or indirectly, or in which he has a majority ownership interest, he must deliver a copy of this Order to (1) all principals, officers, directors, and managers of that business; (2) all employees, agents, and representatives of that business who engage in sales and marketing related to products and services; and (3) any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting." For current personnel, delivery shall be within five (5) days of service of this Order upon Fleming. For new personnel, delivery shall occur prior to them assuming their responsibilities. For any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting," delivery shall be at least ten (10) days prior to the change in structure.

B. Fleming as employee or non-control person: For any business where Fleming is not a controlling person of a business but otherwise engages in sales and marketing related to products and services, he must deliver a copy of this Order to all principals and

managers of such business before engaging in such conduct.

C. Fleming must secure a signed and dated statement acknowledging receipt of this Order, within thirty (30) days of delivery, from all persons receiving a copy of this Order pursuant to this Section.

XI.

ACKNOWLEDGMENT OF RECEIPT OF ORDER

IT IS FURTHER ORDERED that Fleming, 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.

XII.

RETENTION OF JURISDICTION

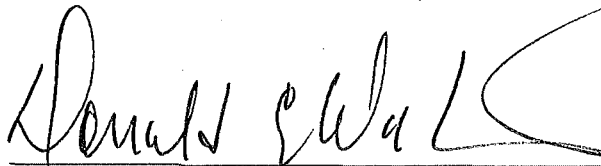
IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

XIII.

ENTRY OF ORDER

IT IS FURTHER ORDERED that there is no just reason for delay, and the Clerk of Court is hereby directed to enter this Order immediately.

SO ORDERED, this 26 day of Oct, 2010, at 8:00 m., Pacific Standard Time.



The Honorable Donald E. Walter
United States District Judge

Attachment A

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Accounts with Citibank:

- *****2659
- *****0672
- *****2917
- *****2933
- *****8959
- *****6606.

Accounts with Wells Fargo:

- *****0395
- *****7710
- *****6868
- *****6767.

Accounts with Bank of America:

- *****8526
- *****7386.

Attachment B

I, Joseph C. Fleming IV:

i. will use my share of the released frozen funds only to pay the tax liabilities described in this Order;

ii. to the extent that I do not need part of my share of the frozen funds to pay such tax liabilities, will return that part of the frozen funds to the Federal Trade Commission.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on __ day of _____, 2010.

Joseph C. Fleming IV