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FEDERAL TRADE COMMISSION

8  
9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA

11 FEDERAL TRADE COMMISSION,

12 Plaintiff,

13 v.

14 FRONTIER PUBLISHING, INC., a  
15 corporation, also d/b/a American Data  
Group; and

16 WILLIAM J. CLAYTON, individually  
17 and as an officer of Frontier Publishing,  
Inc.,

18 Defendants.  
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Case No. 8:11-CV-01537-DOC-JPR

FINAL JUDGMENT AND ORDER  
FOR PERMANENT INJUNCTION  
AND MONETARY RELIEF

20 The parties, Plaintiff Federal Trade Commission and Defendants Frontier  
21 Publishing, Inc., a corporation, also d/b/a American Data Group; and William J.  
22 Clayton, having agreed in the Stipulation Concerning Final Judgment and Order  
23 for Permanent Injunction and Other Equitable Relief to entry of this Order, hereby  
24 request that the Court enter this Order to resolve all matters in dispute in this  
25 action between them. Defendants have waived service of the Summons and  
26 Complaint.  
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1 **DEFINITIONS**

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

3 1. **“Assisting others”** includes, but is not limited to: (a) performing  
4 customer service functions, including, but not limited to, receiving or responding  
5 to consumer complaints; (b) formulating or providing, or arranging for the  
6 formulation or provision of, any marketing material; (c) providing names of, or  
7 assisting in the generation of lists of, potential customers; (d) performing  
8 marketing or billing services of any kind; (e) processing credit and debit card  
9 payments; or (f) acting or serving as an owner, officer, director, manager, or  
10 principal of any entity.

11 2. **“Corporate Defendant”** means Frontier Publishing, Inc., d/b/a  
12 American Data Group, and its successors and assigns.

13 3. **“Defendants”** means the Individual Defendant and the Corporate  
14 Defendant, individually, collectively, or in any combination.

15 4. **“Employment Product or Service”** means any good, service, plan,  
16 or program that is represented, expressly or by implication, to assist an individual  
17 in any manner to obtain employment and includes, but is not limited to: (a)  
18 employment listings; (b) study guides or test preparation materials; (c) job  
19 application processing services; (d) certifications or licenses; (e) job matching  
20 services; or (f) facilitating resume distribution and interviews, but does not include  
21 the placement of advertisements or listings for employment by any Defendant for  
22 positions offered by that Defendant or by any business of which such Defendant is  
23 the majority owner or which such Defendant directly or indirectly controls.

24 5. **“FTC”** or **“Commission”** means Federal Trade Commission.

25 6. **“Inbound Telemarketing Call”** means a telephone call initiated by a  
26 consumer to a telemarketer, during which the telemarketer attempts to induce the  
27 consumer to purchase any product or service.

28 7. **“Individual Defendant”** means William J. Clayton.



1 promotion, offering for sale or sale of any product or service, by means of inbound  
2 telemarketing calls or otherwise, are hereby permanently restrained and enjoined  
3 from misrepresenting, or assisting others in misrepresenting, expressly or by  
4 implication, any material fact, including, but not limited to

5 A. Any material aspect of the performance, efficacy, nature or  
6 other characteristic of the product or service; and

7 B. Any material aspect of the nature or terms of any refund,  
8 cancellation, exchange, or repurchase policy, including, but not limited to, the  
9 likelihood of a consumer obtaining a full or partial refund, or the circumstances in  
10 which a full or partial refund will be granted to the consumer.

11 **III.**

12 **PROHIBITION AGAINST VIOLATING THE**  
13 **TELEMARKETING SALES RULE**

14 **IT IS FURTHER ORDERED** that Defendants and their officers, agents,  
15 servants, employees, and all persons in active concert or participation with any of  
16 them who receive actual notice of this Order by personal service or otherwise,  
17 whether acting directly or through any corporation, partnership, subsidiary,  
18 division, agent, or other device, are hereby permanently restrained and enjoined  
19 from violating, or assisting others in violating, any provision of the Telemarketing  
20 Sales Rule, 16 C.F.R. Part 310, as currently promulgated (attached to this Order as  
21 *Appendix A*) or as it hereinafter may be amended, including, but not limited to, by  
22 making a false or misleading statement to induce any person to pay for any  
23 products or services, in violation of Section 310.3(a)(4) of the Rule, 16 C.F.R. §  
24 310.3(a)(4).

25 **IV.**

26 **MONETARY RELIEF**

27 **IT IS FURTHER ORDERED** that judgment is hereby entered in favor of  
28 the Commission and against Defendants for equitable monetary relief, including,

1 but not limited to, consumer redress, in the amount of seven million five hundred  
2 thousand dollars (\$7,500,000). Defendants shall be jointly and severally liable for  
3 the entire amount of said judgment. *Provided, however,* that the Judgment against  
4 Defendants shall be suspended upon the satisfaction of the obligations imposed by  
5 Subsections A through G of this Section, and subject to the conditions set forth in  
6 Section V of this Order.

7 A. Defendants shall transfer one hundred thousand dollars (\$100,000) to  
8 the Commission or its designated agent within ten (10) business days  
9 of entry of this Order by the Court, in accordance with instructions  
10 provided by a representative of the Commission.

11 B. Time is of the essence for the payment specified above. In the event  
12 of default by Defendants on any obligation imposed by this Section  
13 IV, including, but not limited to, the failure to timely and completely  
14 fulfill their payment obligations,

15 1. the judgment imposed herein as to Defendants will not be  
16 suspended, and the full amount of that Judgment (\$7,500,000),  
17 less any amounts already paid, shall immediately become due  
18 and payable, plus interest from the date of entry of this Order  
19 pursuant to 28 U.S.C. § 1961, as amended, which shall accrue  
20 from the date of default to the date of payment; and

21 2. the Commission shall be entitled to immediately exercise any  
22 and all rights and remedies against Defendants and their assets  
23 to collect the full amount of the Judgment and interest thereon,  
24 less any amounts already paid.

25 C. All funds paid, collected or recovered pursuant to this Order shall be  
26 deposited into a fund administered by the Commission or its agent to  
27 be used for equitable relief, including, but not limited to, consumer  
28 redress, and any attendant expenses for the administration of such

1 equitable relief. Defendants shall cooperate fully to assist the  
2 Commission in identifying consumers who may be entitled to redress  
3 pursuant to this Order. If the Commission determines, in its sole  
4 discretion, that direct redress to consumers is wholly or partially  
5 impracticable or funds remain after the redress is completed, the  
6 Commission may apply any remaining funds for such other equitable  
7 relief (including consumer information remedies) as it determines to  
8 be reasonably related to Defendants' practices alleged in the  
9 Complaint. Any funds not used for such equitable relief shall be  
10 deposited to the United States Treasury as disgorgement. Defendants  
11 shall have no right to challenge the Commission's choice of remedies  
12 under this Part C. Defendants shall have no right to contest the  
13 manner of distribution chosen by the Commission.

14 D. This Judgment for equitable monetary relief is solely remedial in  
15 nature and is not a fine, penalty, punitive assessment or forfeiture.

16 E. In accordance with 31 U.S.C. § 7701, as amended, Defendants are  
17 hereby required, unless they have already done so, to furnish to the  
18 Commission their taxpayer identifying numbers (social security  
19 numbers or employer identification numbers), which shall be used for  
20 the purposes of collecting and reporting on any delinquent amount  
21 arising out of Defendants' relationship with the government.

22 F. Defendants relinquish all dominion, control, and title to the funds  
23 paid to the fullest extent permitted by law. Defendants shall make no  
24 claim to or demand for return of the funds, directly or indirectly,  
25 through counsel or otherwise.

26 G. Defendants agree that the facts as alleged in the Complaint filed in  
27 this action shall be taken as true without further proof in any  
28 bankruptcy case or subsequent civil litigation pursued by the

1 Commission to enforce its rights to any payment or money judgment  
2 pursuant to this Order, including, but not limited to, a  
3 nondischargeability complaint in any bankruptcy case. Defendants  
4 further stipulate and agree that the facts alleged in the Complaint  
5 establish all elements necessary to sustain an action by the  
6 Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy  
7 Code, 11 U.S.C. § 523(a)(2)(A), and this Order shall have collateral  
8 estoppel effect for such purposes.

9 **V.**

10 **RIGHT TO REOPEN**

11 **IT IS FURTHER ORDERED** that

- 12 A. Plaintiff's agreement to this Order is expressly premised upon the  
13 truthfulness, accuracy and completeness of Defendants' financial  
14 condition, as represented in the Financial Disclosure Statements of  
15 Frontier Publishing, Inc., and William Clayton, dated February 25,  
16 2011, and supplemental material provided by counsel for Defendants  
17 on May 24, 2011, which contain material information upon which  
18 Plaintiff relied in negotiating and agreeing the terms of this Order;
- 19 B. If, upon motion by the FTC, the Court finds that any Defendant failed  
20 to disclose any material asset, materially misrepresented the value of  
21 any asset, or made any other material misrepresentation in or  
22 omission from the Defendant's financial statement or supporting  
23 documents, the Court will lift the suspension of the Judgment against  
24 the Defendants, in favor of the Commission, and the entire judgment  
25 as to the Defendants, less any amount previously paid, shall become  
26 immediately due and payable as to the Defendants. *Provided,*  
27 *however,* that, in all other respects, this Order shall remain in full  
28 force and effect, unless otherwise ordered by the Court;

1 C. Any proceedings instituted under this Section shall be in addition to,  
2 and not in lieu of, any other civil or criminal remedies that may be  
3 provided by law, including, but not limited to, contempt proceedings,  
4 or any other proceedings that the Commission or the United States  
5 might initiate to enforce this Order. For purposes of this Section,  
6 Defendants waive any right to contest any of the allegation in the  
7 Commission's Complaint.

8 **VI.**

9 **ORDER ACKNOWLEDGEMENTS**

10 **IT IS FURTHER ORDERED** that Defendants obtain acknowledgments of  
11 receipt of this Order:

- 12 A. Each Defendant, within 7 days of entry of this Order, must submit to  
13 the Commission an acknowledgment of receipt of this Order sworn  
14 under penalty of perjury.
- 15 B. For three (3) years after entry of this Order, the Corporate Defendant,  
16 and the Individual Defendant for any business which engages in  
17 conduct related to the subject matter of this Order, and of which such  
18 Defendant, individually or collectively with any other Defendant, is  
19 the majority owner or which such Defendant directly or indirectly  
20 controls, must deliver a copy of this Order to:
- 21 1. all principals, officers, directors, and managers;
  - 22 2. all employees, agents, and representatives who engage in  
23 conduct related to the subject matter of the Order; and
  - 24 3. any business entity resulting from any change in structure as  
25 set forth in the Section titled Compliance Reporting.

26 Delivery must occur within 7 days of entry of this Order for current  
27 personnel. To all others, delivery must occur before they assume  
28 their responsibilities.

- 1 C. From each individual or entity to which a Defendant delivered a copy  
2 of this Order, that Defendant must obtain, within 30 days, a signed  
3 and dated acknowledgment of receipt of this Order.

4 **VII.**

5 **COMPLIANCE REPORTING**

6 **IT IS FURTHER ORDERED** that Defendants make timely submissions to  
7 the Commission:

- 8 A. One year after entry of this Order, each Defendant must submit a  
9 compliance report, sworn under penalty of perjury.

- 10 1. Each Defendant must (a) designate at least one telephone  
11 number and an email, physical, and postal address as points of  
12 contact, which representatives of the Commission may use to  
13 communicate with Defendant; (b) identify all of that  
14 Defendant's businesses which engage in conduct related to the  
15 subject matter of this Order by all of their names, telephone  
16 numbers, and physical, postal, email, and Internet addresses;  
17 (c) describe the activities of each such business, including the  
18 products and services offered, the means of advertising,  
19 marketing, and sales, and the involvement of any other  
20 Defendant (which Individual Defendants must describe if they  
21 know or should know due to their own involvement); (d)  
22 describe in detail whether and how that Defendant is in  
23 compliance with each Section of this Order; and (e) provide a  
24 copy of each Order Acknowledgment obtained pursuant to this  
25 Order, unless previously submitted to the Commission;
- 26 2. Additionally, the Individual Defendant must (a) identify all  
27 telephone numbers and all email, Internet, physical, and postal  
28 addresses, including all residences; (b) identify all titles and

1 roles in all business activities, including any business for which  
2 such Defendant performs services whether as an employee or  
3 otherwise and any entity in which such Defendant has any  
4 ownership interest; and (c) describe in detail such Defendant's  
5 involvement in each such business, including title, role, respon-  
6 sibilities, participation, authority, control, and any ownership.

7 B. For five (5) years following entry of this Order, each Defendant must  
8 submit a compliance notice, sworn under penalty of perjury, within  
9 14 days of any change in the following:

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

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

25 C. Each Defendant must submit to the Commission notice of the filing  
26 of any bankruptcy petition, insolvency proceeding, or any similar  
27 proceeding by or against such Defendant within 14 days of its filing.

28 D. Any submission to the Commission required by this Order to be

1 sworn under penalty of perjury must be true and accurate and comply  
2 with 18 U.S.C. § 1746, such as by concluding: “I declare under  
3 penalty of perjury under the laws of the United States of America that  
4 the foregoing is true and correct. Executed on: \_\_\_\_\_” and supplying  
5 the date, signatory’s full name, title (if applicable), and signature.

6 E. Unless otherwise directed by a Commission representative in writing,  
7 all submissions to the Commission pursuant to this Order must be  
8 emailed to DEbrief@ftc.gov or sent by overnight courier (not the  
9 U.S. Postal Service) to:

10 Associate Director for Enforcement  
11 Bureau of Consumer Protection  
12 Federal Trade Commission  
13 600 Pennsylvania Avenue NW  
14 Washington, DC 20580.

15 The subject line must begin: FTC v. Frontier Publishing, Inc., *et al.*

## 16 **VIII.**

### 17 **RECORDKEEPING**

18 **IT IS FURTHER ORDERED** that Defendants must create certain records  
19 for five (5) years after entry of this Order, and retain each such record for five (5)  
20 years. Specifically, the Corporate Defendant and the Individual Defendant, for  
21 any business in which that Defendant is a majority owner or which he directly or  
22 indirectly controls which engages in conduct related to the subject matter of this  
23 Order, must maintain the following records:

- 24 A. Accounting records showing the revenues from all goods or services  
25 sold, all costs incurred in generating those revenues, and the resulting  
26 net profit or loss;
- 27 B. Personnel records showing, for each person providing services,  
28 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;

- 1 C. Customer files showing the names, addresses, telephone numbers,  
2 dollar amounts paid, and the quantity and description of goods or  
3 services purchased;
- 4 D. Complaints and refund requests, whether received directly or  
5 indirectly, such as through a third party, and any response;
- 6 E. All records necessary to demonstrate full compliance with each  
7 provision of this Order, including all submissions to the Commission;  
8 and
- 9 F. A copy of each advertisement or other marketing material.

10 **IX.**

11 **COMPLIANCE MONITORING**

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

- 16 A. Within fourteen (14) days of receipt of a written notice from a  
17 representative of the Commission, each Defendant must submit  
18 additional compliance reports or other requested information, which  
19 must be sworn under penalty of perjury; appear for depositions; and  
20 produce documents, for inspection and copying. The Commission is  
21 also authorized to obtain discovery, without further leave of court,  
22 using any of the procedures prescribed by Federal Rules of Civil  
23 Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36,  
24 45, and 69;
- 25 B. For matters concerning this Order, the Commission is authorized to  
26 communicate directly with each Defendant. Defendant must permit  
27 representatives of the Commission to interview any employee or  
28 other person affiliated with any Defendant who has agreed to such an

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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 Defendants or any individual or entity affiliated with 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.

X.

**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.

Dated: October 14, 2011

*David O. Carter*

David. O. Carter, U.S. District Court Judge

Presented by:

/s/ David M. Newman  
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