

The CID was authorized by Resolution No. 0123145, “Resolution Directing the Use of Compulsory Process in a Nonpublic Investigation of Telemarketers, Sellers, Suppliers, and Others,” which authorizes the use of compulsory process to determine

whether unnamed telemarketers, sellers, or others assisting them have engaged or are engaging in: (1) unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45 (as amended); and/or deceptive or abusive telemarketing acts or practice in violation of the Commission’s Telemarketing Sales Rule, 16 C.F.R. pt. 310 (as amended), including but not limited to the provision of substantial assistance or support – such as mailing lists, scripts, merchant accounts, and other information, products, or services – to telemarketers engaged in unlawful practices. The investigation is also to determine whether Commission action to obtain redress for injury to consumers or others would be in the public interest.¹

The CID specifications require CWP to complete two interrogatories and produce documents relating to its telemarketing activities from January 1, 2009, to date. Several of the specifications require CWP to produce documents relating to Your Magazine Provider (“YMP”) and other entities that are involved in magazine sales and that are also owned by Jason Ellsworth and others.² YMP and Ellsworth were the subjects of an earlier FTC investigation. At the conclusion of that investigation, YMP and Ellsworth entered into a Stipulated Final Judgment and Order for Permanent Injunction (“Order”) that settled allegations that YMP and Ellsworth had violated Section 5 of the FTC Act, 15 U.S.C. § 45, and the Telemarketing Sales Rule, 16 C.F.R. pt. 310, by engaging in deceptive telemarketing of magazines.³ The Order contains a number of provisions necessary for assessing their compliance with it, including a provision that reserves the right to monitor and investigate their compliance by using the Commission’s process authority or the specific monitoring provisions of the Order.⁴ Thus, the present investigation also seeks to determine whether Ellsworth is complying with the terms of the 2009 Order.

¹ A copy of the Civil Investigative Demand issued to CWP is attached as Order Exh. 1. The resolution is included as part of the CID.

² Order Exh. 1, at 2.

³ Pet. Exh. 1.

⁴ The Order provides, *inter alia*, “[N]othing in this Order shall limit 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, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).” Pet. Exh. 1 at 18-19. Citations are to page numbers in the PACER header, where available.

II. ANALYSIS

A. The Applicable Legal Standards

Compulsory process issued by a federal agency is proper if the inquiry is within the authority of the agency, the demand is not too indefinite, and the information sought is reasonably relevant to the inquiry, as defined by the investigatory resolution.⁵ Agencies have wide latitude to determine what information is relevant and needed to conduct a law enforcement investigation, and are not required to have “a justifiable belief that wrongdoing has actually occurred.”⁶ As the D.C. Circuit has explained, the standard for judging relevance in an administrative investigation is “more relaxed” than in an adjudicatory proceeding.⁷ Thus, to justify a refusal to comply with the Commission’s demands, it is incumbent on the recipient of process to show that the requested documents are “plainly irrelevant” to the investigation’s purpose.⁸

CWP contends that the instant CID does not satisfy these standards. First, CWP asserts that Requests for Production 1-6, 9-10, 13-14, and Interrogatory 1 exceed the scope and nature of the resolution – *i.e.*, that the information demands are not relevant to the investigation. CWP cites, for example, specifications requiring CWP to produce contracts with magazine clearinghouses or CWP’s sources of lead lists that it asserts are irrelevant to the stated purpose of the investigation.⁹ Second, CWP contends that Requests for Production 5, 10, 13 and Interrogatory 1 are overly burdensome.¹⁰ Third, CWP asserts that Requests for Production 5 and 13 require it to produce “private information,” such as the names of the magazines that consumers have purchased, as well as personal information about CWP employees. Finally,

⁵ *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950); *FTC v. Invention Submission Corp.*, 965 F.2d 1086, 1089 (D.C. Cir. 1992); *FTC v. Texaco, Inc.*, 555 F.2d 862, 874 (D.C. Cir. 1977) (*en banc*).

⁶ *See, e.g., Morton Salt*, 338 U.S. at 642-43 (“[Administrative agencies have] a power of inquisition, if one chooses to call it that, which is not derived from the judicial function. It is more analogous to the Grand Jury, which does not depend on a case or controversy for power to get evidence but can investigate merely on suspicion that the law is being violated, or even just because it wants an assurance that it is not.”).

⁷ *Invention Submission Corp.*, 965 F.2d at 1090.

⁸ *Id.* at 1089; *FTC v. Carter*, 636 F.2d 781, 788 (D.C. Cir. 1980).

⁹ Pet., 3-4.

¹⁰ CWP’s petition to quash does not state an objection to Requests for Production 7, 8, 12, and 15 or to Interrogatory 2. Pet. at 5.

CWP contends that the CID is oppressive, punitive, and intended to harass. As shown below, none of these contentions has merit.

B. The CID specifications are relevant to the purpose of the investigation

The purpose of the investigation – as set forth in the resolution quoted above – is to determine whether telemarketers, sellers, or others have engaged in unfair or deceptive acts or practices, or have violated the Commission’s Telemarketing Sales Rule, including by providing support and assistance to telemarketers that may be engaged in unlawful practices. The investigation also seeks to determine whether Ellsworth may be in violation of the 2009 Order. Applying the standard appropriate for administrative investigations, the specifications of the CID are clearly relevant to those purposes.¹¹ The obvious relevance of the requested materials is not cast into doubt merely because the same materials might also be relevant to future litigation should the Commission later decide that an enforcement action is warranted, as CWP seems to contend.¹²

CWP challenges the specifications calling for documents related to its contracts with magazine clearinghouses. However, CWP’s relationship with those entities is an important component of CWP’s own magazine sales business, and learning more about that relationship will help FTC staff assess whether CWP’s representations to consumers about the availability, terms, and costs of magazine subscriptions are deceptive or misleading. CWP also objects to Request for Production 10, which requires it to produce documents sufficient to establish the source of all lists of prospective customers and any lead lists. But this information is reasonably relevant to several issues in the instant investigation, including whether CWP is complying with the Telemarketing Sales Rule, which prohibits telemarketers from contacting phone numbers that appear on the National Do Not Call Registry, whether CWP is misrepresenting its affiliations in its contacts with potential consumers, and whether there are other individuals or entities that are

¹¹ CWP also questions the relevance of a separate CID issued to Farmer’s State Bank. Pet. Exh. 5. It is questionable whether CWP has standing to seek to quash a CID directed to a third party. *See, e.g., Greene v. Phila. Hous. Auth.*, 789 F. Supp. 2d 582, 586 (E.D. Pa. 2011); *see also FTC v. Trudeau*, 2012 U.S. Dist. LEXIS 160545, at *8 (N.D. Ohio Nov. 8, 2012). But we need not decide that issue because the investigational resolution specifically authorizes compulsory process to determine whether consumer redress is in the public interest. Financial information in the hands of a third-party bank that could bear on the amount of consumers’ losses and whether they are capable of being redressed is directly relevant to that purpose. *See, e.g., Invention Submission Corp.*, 965 F. 2d at 1089-90.

¹² *See* Pet., 4. CWP highlights the specification requesting merchant account information, but such accounts are expressly identified in the resolution as a form of “substantial assistance or support[.]”

assisting CWP in potentially unlawful conduct.¹³ In particular, the staff is investigating reports from consumers claiming to have been called by CWP even though the consumers had registered their telephone numbers in the National Do Not Call Registry. Understanding how and from where CWP obtained its lists of potential consumers to contact is important background information that is reasonably relevant to understanding CWP's business practices and processes for determining which consumers to call and whether these practices include complying with the Telemarketing Sales Rule.

C. CWP's claims that the specifications are overly broad or unduly burdensome are without support.

CWP further claims that Requests for Production 5, 10, 13 and Interrogatory 1 are overbroad and unduly burdensome.¹⁴ CWP's vague and nonspecific assertions fall far short of meeting well-established standards for the recipients of process from an administrative agency to demonstrate undue burden.

When an agency inquiry is pursuant to a lawful purpose and the requested documents are relevant to that purpose, the reasonableness of its request is presumed absent a showing that compliance threatens to disrupt or unduly hinder the normal operations of the business.¹⁵ Some burden on the recipient of process is "to be expected and is necessary in furtherance of the agency's legitimate inquiry and the public interest."¹⁶ Thus, a recipient of process must produce the requested materials unless the request is unduly burdensome or unreasonably broad.¹⁷ In other words, the recipient must make a record to show the "measure of their grievance rather than [asking the court] to assume it."¹⁸

¹³ Identifying the sources of customer lists may also uncover other entities that have violated the Telemarketing Sales Rule by providing assistance and support to CWP, a purpose expressly provided in the resolution. Order Exh. 1. As we recently noted, "[d]ocuments related to third-party telemarketing lead generators . . . go to the heart of an investigation looking into . . . possible violations of the Telemarketing Sales Rule." Order Denying Petition to Limit or Quash Civil Investigative Demand Filed by Caribbean Cruise Line, Inc., at 6, File No. 122 3196 (May 9, 2013).

¹⁴ Pet., 4, 5.

¹⁵ *In re Line of Business Report Litig.*, 595 F.2d 685, 703 (D.C. Cir. 1978) (citing *Texaco*, 555 F.2d at 882).

¹⁶ *Texaco*, 555 F.2d at 882.

¹⁷ *Texaco*, 555 F.2d at 882 & n.49 (citing *United States v. Powell*, 379 U.S. 48, 58 (1964)).

¹⁸ *FTC v. Standard American, Inc.*, 306 F.2d 231, 235 (3d Cir. 1962) (citing *United States v. Morton Salt Co.*, 338 U.S. 632, 654 (1950); *Oklahoma Press Publ'g Co. v. Walling*, 327 U.S. 186, 217-18 (1946)).

CWP has not even attempted to substantiate its claims of undue burden with facts that might support its grievance against the CID. It alleges burden, but makes no factual claims regarding the existence or extent of its burden. Nor does it make any factual claims to support an argument that compliance with the CID would “threaten to disrupt or unduly hinder” its normal operations.¹⁹ CWP’s vague and nonspecific assertions are not sufficient to justify quashing, or even limiting, the challenged specifications.

D. The CID specifications do not infringe the privacy rights of CWP’s customers or employees.

In further support of its petition to quash, CWP objects that Requests for Production 5 and 13 require it to disclose the “protected personal information” of its customers and employees without their consent. Specifically, CWP claims that Request for Production 5 – which calls for customer databases that include “the magazine titles to which the customer subscribed” – implicates the privacy rights of these consumers by disclosing to the government what they are reading. CWP also objects to Request for Production 13, which requires CWP to produce contact and employment-related information about CWP’s and other Telemarketing Entities’ employees.²⁰

CWP did not raise this issue during the mandatory pre-petition meet-and-confer with staff, as required by the Commission’s Rules of Practice.²¹ In any event, as courts have recognized, the confidential or sensitive nature of the required materials is not a proper basis for limiting the Commission’s information demands.²² The FTC Act, as well as the Commission’s Rules of Practice, provides CWP and its customers with ample protection for any sensitive information that its documents might contain.²³ Consequently, there is no basis to limit or quash the CID for this reason. The only relevant issue is whether the materials sought are “reasonably relevant to its investigation[.]”²⁴ Here, the materials sought by FTC staff are highly relevant to

¹⁹ Pet., 4, 5.

²⁰ The CID asks for employee contact information; period of employment; position, role, and responsibilities; and the reason for termination, if the employee was terminated. Order Exh. 1, at 11.

²¹ See 16 C.F.R. § 2.7(k).

²² *FTC v. Invention Submission Corp.*, 1991-1 Trade Cas. (CCH) ¶ 69,338, at 65,353 (D.D.C. 1991), *aff’d*, 965 F.2d 1086, 1089 (D.C. Cir. 1992).

²³ See, e.g., 15 U.S.C. § 57b-2; 16 C.F.R. § 4.10. The Commission has robust internal controls to safeguard non-public information obtained in the course of a law enforcement investigation (such as the personal information of consumers) that include limiting access to authorized FTC personnel for authorized purposes.

²⁴ *FTC v. Green*, 252 F. Supp. 153, 157 (S.D.N.Y. 1966).

the current investigation. Staff seeks to understand whether CWP is fulfilling consumers' magazine orders as it promises to do. For instance, the Commission has received complaints from consumers that they have not received all of the magazines they ordered through CWP, or that the magazines they have received are different from the ones they ordered. To assess the validity of these complaints and to determine whether CWP has failed to provide consumers with the services they paid for, FTC staff must therefore ascertain precisely which magazines consumers ordered. As for the requested employee information, employees may be witnesses with first-hand knowledge of CWP's directions and instructions for contacting potential customers. Where the purpose of the investigation is to determine whether there is reason to believe that CWP made deceptive representations to consumers, the employees directly involved in those contacts are a critical source of information.

E. CWP has not established that the CID is oppressive, punitive, or intended to harass CWP or Ellsworth.

Finally, CWP contends that the CID is oppressive, punitive, and intended to harass CWP and Ellsworth because CWP's business operations are "identical" to YMP, the subject of the FTC's earlier investigation and 2009 Order.

CWP has not offered anything of a factual nature to support its allegations that the investigation has been conducted merely to harass and embarrass CWP and Ellsworth.²⁵ Though the Commission need not make a factual showing to justify the issuance of process, here there are sufficient grounds to warrant the present investigation.²⁶ The Commission has received multiple complaints from consumers regarding several different aspects of CWP's and Ellsworth's magazine telemarketing business. As petitioners note, Ellsworth was the subject of a previous investigation and FTC enforcement action for substantially similar conduct involving the telemarketing of magazines. There is nothing unusual or improper about an investigation of a company where the subject matter of the inquiry may be similar to the subject matter of an earlier enforcement action against the same individual or entity and a related company.²⁷ Indeed, it is entirely proper for the Commission to conduct investigations into compliance with the 2009 Order to which Ellsworth is subject. Nor does the fact that the 2009 Order was a stipulated order alter the FTC's authority to investigate compliance. A stipulated order is not an endorsement of the defendants' conduct or an agreement that the FTC will refrain from further investigations. To the contrary, the Order in question plainly contemplates the potential for future violations by

²⁵ *Invention Submission Corp.*, 965 F.2d at 1091 (quoting *FTC v. Owens-Corning Fiberglas Corp.*, 626 F.2d 966, 975 (D.C. Cir. 1980)).

²⁶ *Oklahoma Press*, 327 U.S. at 216.

²⁷ While there are some superficial overlaps with the 2009 case, the 2009 Order expressly provides that the FTC may issue compulsory process to YMP and Ellsworth. Pet. Exh. 1, at 18-19. Far from being oppressive or punitive, this CID is precisely what YMP and Ellsworth agreed to.

giving the FTC tools to augment those provided by the FTC Act to investigate and assess Ellsworth's compliance. In addition, whether or not the business practices of CWP are the same as those of its sister company, YMP, the Commission acts well within the bounds of its statutory authority in conducting an investigation of CWP's practices for purposes of determining whether they adhere to the requirements of Section 5 of the FTC Act and the Commission's Telemarketing Sales Rule. Accordingly, we conclude that the investigation has not been conducted in bad faith.

III. CONCLUSION

For the foregoing reasons, **IT IS HEREBY ORDERED THAT** the Petition of Countrywide Periodicals, LLC to Quash the Civil Investigative Demand be, and hereby is, **DENIED**.

IT IS FURTHER ORDERED THAT all responses to the specifications in the Civil Investigative Demand to Countrywide Periodicals, LLC must now be produced on or before July 19, 2013.

By the Commission.

April J. Tabor
Acting Secretary

EXHIBIT 1



CIVIL INVESTIGATIVE DEMAND

1. TO

Countrywide Periodicals, LLC
Attn: Jason W. Ellsworth
737 U.S. Highway 93 North
Hamilton, MT 59840

This demand is issued pursuant to Section 20 of the Federal Trade Commission Act, 15 U.S.C. § 57b-1, in the course of an investigation to determine whether there is, has been, or may be a violation of any laws administered by the Federal Trade Commission by conduct, activities or proposed action as described in Item 3.

2. ACTION REQUIRED

You are required to appear and testify.

LOCATION OF HEARING

YOUR APPEARANCE WILL BE BEFORE

DATE AND TIME OF HEARING OR DEPOSITION

You are required to produce all documents described in the attached schedule that are in your possession, custody, or control, and to make them available at your address indicated above for inspection and copying or reproduction at the date and time specified below.

You are required to answer the interrogatories or provide the written report described on the attached schedule. Answer each interrogatory or report separately and fully in writing. Submit your answers or report to the Records Custodian named in Item 4 on or before the date specified below.

DATE AND TIME THE DOCUMENTS MUST BE AVAILABLE

JUN 03 2013

3. SUBJECT OF INVESTIGATION

See attached resolution.

4. RECORDS CUSTODIAN/DEPUTY RECORDS CUSTODIAN

Ronald Lewis/Megan Bartley
Federal Trade Commission
600 Pennsylvania Ave., NW, Mail Stop M-8102B
Washington, DC 20580
(202) 326-2985

5. COMMISSION COUNSEL

Megan Bartley
Federal Trade Commission
600 Pennsylvania Ave., NW, Mail Stop M-8102B
Washington, DC 20580
(202) 326-3424

DATE ISSUED

5/16/13

COMMISSIONER'S SIGNATURE

INSTRUCTIONS AND NOTICES

The delivery of this demand to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply. The production of documents or the submission of answers and report in response to this demand must be made under a sworn certificate, in the form printed on the second page of this demand, by the person to whom this demand is directed or, if not a natural person, by a person or persons having knowledge of the facts and circumstances of such production or responsible for answering each interrogatory or report question. This demand does not require approval by OMB under the Paperwork Reduction Act of 1980.

PETITION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any petition to limit or quash this demand be filed within 20 days after service, or, if the return date is less than 20 days after service, prior to the return date. The original and twelve copies of the petition must be filed with the Secretary of the Federal Trade Commission, and one copy should be sent to the Commission Counsel named in item 5.

YOUR RIGHTS TO REGULATORY ENFORCEMENT FAIRNESS

The FTC has a longstanding commitment to a fair regulatory enforcement environment. If you are a small business (under Small Business Administration standards), you have a right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR (1-888-734-3247) or www.sba.gov/ombudsman regarding the fairness of the compliance and enforcement activities of the agency. You should understand, however, that the National Ombudsman cannot change, stop, or delay a federal agency enforcement action.

The FTC strictly forbids retaliatory acts by its employees, and you will not be penalized for expressing a concern about these activities.

TRAVEL EXPENSES

Use the enclosed travel voucher to claim compensation to which you are entitled as a witness for the Commission. The completed travel voucher and this demand should be presented to Commission Counsel for payment. If you are permanently or temporarily living somewhere other than the address on this demand and it would require excessive travel for you to appear, you must get prior approval from Commission Counsel.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

Form of Certificate of Compliance*

I/We do certify that all of the documents and information required by the attached Civil Investigative Demand which are in the possession, custody, control, or knowledge of the person to whom the demand is directed have been submitted to a custodian named herein.

If a document responsive to this Civil Investigative Demand has not been submitted, the objections to its submission and the reasons for the objection have been stated.

If an interrogatory or a portion of the request has not been fully answered or a portion of the report has not been completed, the objections to such interrogatory or uncompleted portion and the reasons for the objections have been stated.

Signature _____

Title _____

Sworn to before me this day

Notary Public

*In the event that more than one person is responsible for complying with this demand, the certificate shall identify the documents for which each certifying individual was responsible. In place of a sworn statement, the above certificate of compliance may be supported by an unsworn declaration as provided for by 28 U.S.C. § 1746.

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman
William E. Kovacic
J. Thomas Rosch
Edith Ramirez
Julie Brill

RESOLUTION DIRECTING USE OF COMPULSORY PROCESS IN A NONPUBLIC
INVESTIGATION OF TELEMARKETERS, SELLERS, SUPPLIERS, OR OTHERS

File No. 0123145

Nature and Scope of Investigation:

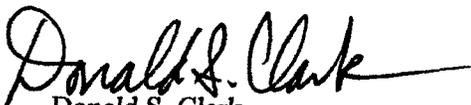
To determine whether unnamed telemarketers, sellers, or others assisting them have engaged or are engaging in: (1) unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45 (as amended); and/or (2) deceptive or abusive telemarketing acts or practices in violation of the Commission's Telemarketing Sales Rule, 16 C.F.R. pt 310 (as amended), including but not limited to the provision of substantial assistance or support — such as mailing lists, scripts, merchant accounts, and other information, products, or services — to telemarketers engaged in unlawful practices. The investigation is also to determine whether Commission action to obtain redress for injury to consumers or others would be in the public interest.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation for a period not to exceed five years from the date of issuance of this resolution. The expiration of this five-year period shall not limit or terminate the investigation or the legal effect of any compulsory process issued during the five-year period. The Federal Trade Commission specifically authorizes the filing or continuation of actions to enforce any such compulsory process after the expiration of the five-year period.

Authority to Conduct Investigation:

Sections 6, 9, 10, and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50, 57b-1 (as amended); and FTC Procedures and Rules of Practice, 16 C.F.R. §§ 1.1 *et seq.* and supplements thereto.

By direction of the Commission.


Donald S. Clark
Secretary

Issued: April 11, 2011

**CIVIL INVESTIGATIVE DEMAND
SCHEDULE FOR PRODUCTION OF DOCUMENTS AND WRITTEN REQUESTS TO
INTERROGATORIES**

I. DEFINITIONS

As used in this Civil Investigative Demand, the following definitions shall apply:

- A. **“And,”** as well as **“or,”** shall be construed both conjunctively and disjunctively, as necessary, in order to bring within the scope of any specification in this Schedule all information that otherwise might be construed to be outside the scope of the specification.
- B. **“Any”** shall be construed to include **“all,”** and **“all”** shall be construed to include the word **“any.”**
- C. **“CID”** shall mean the Civil Investigative Demand, including the attached Resolution and this Schedule, and including the Definitions, Instructions, and Specifications.
- D. **“Document”** shall mean the complete original and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any written, typed, printed, transcribed, filmed, punched, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated or made, including but not limited to any advertisement, book, pamphlet, periodical, contract, correspondence, file, invoice, memorandum, note, telegram, report, record, handwritten note, transcript of audio or video recording, working paper, routing slip, chart, graph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, agenda, minute, code book, or label. **“Document” shall also include all documents, materials, and information, including Electronically Stored Information, within the meaning of the Federal Rules of Civil Procedure.**
- E. **“Each”** shall be construed to include **“every,”** and **“every”** shall be construed to include **“each.”**
- F. **“Electronically Stored Information” or “ESI”** shall mean the complete original and any non-identical copy (whether different from the original because of notations, different metadata, or otherwise), regardless of origin or location, of any writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any electronic medium from which information can be obtained either directly or, if necessary, after translation by you into a reasonably usable form. This includes, but is not limited to, electronic mail, instant messaging, videoconferencing, and other electronic correspondence (whether active, archived, or in a deleted items folder), word processing files, spreadsheets, databases, and video and sound recordings, whether stored on: cards; magnetic or electronic tapes; disks; computer hard drives, network shares or servers, or other drives; cloud-based platforms; cell phones, PDAs, computer tablets, or other mobile devices; or other storage media.

- G. “**FTC**” or “**Commission**” shall mean the Federal Trade Commission.
- H. “**Identify**” or “**the identity of**” shall be construed to require identification of (a) natural persons by name, title, present business affiliation, present business address and telephone number, or if a present business affiliation or present business address is not known, the last known business and home addresses; and (b) businesses or other organizations by name, address, identities of natural persons who are officers, directors or managers of the business or organization, and contact persons, where applicable.
- I. “**Magazine Clearinghouse**” shall mean any entity that directly or indirectly clears, processes, or fulfills magazine subscriptions on behalf of any **Telemarketing Entity** including but not limited to a magazine clearinghouse or magazine fulfillment house.
- J. “**Magazine Sales**” shall mean any activity in any way related to the marketing, telemarketing, or sale of magazines, magazine subscriptions, magazine services or magazine subscription services, or the purchasing or servicing of magazine subscription orders.
- K. “**Relating to**” shall mean discussing, describing, reflecting, containing, analyzing, studying, reporting, commenting, evidencing, constituting, setting forth, considering, recommending, concerning, or pertaining to, in whole or in part.
- L. “**Telemarketing Entity**” shall mean:
- (a) Countrywide Periodicals, Inc.; Countrywide Periodicals, LLC; Customer Service, Inc.; JBS Enterprises LLC; Periodicals; Lavell Enterprises; Magazine Services, Inc.; Old West Publications; Romp Inc.; U.S. Magazine Service; or Your Magazine Provider; their wholly or partially owned subsidiaries, incorporated and unincorporated divisions, joint ventures, operations under assumed names, and affiliates; and all directors, officers, employees, agents, consultants, and other persons working for or on behalf of any of the foregoing;
 - (b) Any entity involved in **Magazine Sales** that is owned, operated, controlled, managed, or directed, in whole or in part, by Jason W. Ellsworth, Elizabeth J. Hartman, Louis J. Laverne, Wayne Shiever; or
 - (c) Any entity involved in **Magazine Sales** using any of the following addresses for any purpose: 737 Highway 93 N, Hamilton, MT; 11300 Highway 93 N, Suite K, Lolo, MT; 1073 Golf Course Rd, Hamilton, MT; P.O. Box 750, Lolo, MT; or P.O. Box 770, Lolo, MT.
- M. “**Training Materials**” shall mean any handbooks, guidelines, outlines, presentations, memos, notes, or related documents that describe any policy, procedure, or practice of any **Telemarketing Entity**, including but not limited to **Magazine Sales**, billing, customer service, sales techniques, and compliance with the Stipulated Final Judgment and Order in *FTC v. Your Magazine Provider, Inc.*, No. 08-64 (D. Mont, Oct. 7, 2009), the Telemarketing Sales Rule (16 C.F.R. Part 310), and the FTC Act (15 U.S.C. § 45)

N. **“You” and “Your”** shall mean the person or entity to whom this CID is issued.

II. INSTRUCTIONS

A. **Sharing of Information:** The Commission often makes its files available to other civil and criminal federal, state, local, or foreign law enforcement agencies. The Commission may make information supplied by you available to such agencies where appropriate pursuant to the Federal Trade Commission Act and 16 C.F.R. § 4.11 (c) and (j).

Information you provide may be used in any federal, state, or foreign civil or criminal proceeding by the Commission or other agencies.

B. **Meet and Confer:** You must contact **Megan Bartley at (202) 326-3424** as soon as possible to schedule a meeting (telephonic or in person) to be held **within fourteen (14) days after receipt of this CID**, or before the deadline for filing a petition to quash, whichever is first, in order to discuss compliance and to address and attempt to resolve all issues, including issues relating to protected status and the form and manner in which claims of protected status will be asserted, and the submission of ESI and other electronic productions as described in these Instructions. Pursuant to 16 C.F.R. § 2.7(k), you must make available personnel with the knowledge necessary for resolution of the issues relevant to compliance with this CID, including but not limited to personnel with knowledge about your information or records management systems, relevant materials such as organizational charts, and samples of material required to be produced. If any issues relate to ESI, you must make available a person familiar with your ESI systems and methods of retrieval.

C. **Applicable time period:** Unless otherwise directed in the specifications, the applicable time period for the request shall be from **January 1, 2009 until the date of full and complete compliance with this CID**.

D. **Claims of Privilege:** If any material called for by this CID is withheld based on a claim of privilege, work product protection, or statutory exemption, or any similar claim (*see* 16 C.F.R. § 2.7(a)(4)), the claim must be asserted no later than the return date of this CID. In addition, pursuant to 16 C.F.R. § 2.11(a)(1), submit, together with the claim, a detailed log of the items withheld. The information in the log shall be of sufficient detail to enable the Commission staff to assess the validity of the claim for each document, including attachments, without disclosing the protected information. Submit the log in a searchable electronic format, and, for each document, including attachments, provide:

1. Document control number(s);
2. The full title (if the withheld material is a document) and the full file name (if the withheld material is in electronic form);
3. A description of the material withheld (for example, a letter, memorandum, or email), including any attachments;
4. The date the material was created;

5. The date the material was sent to each recipient (if different from the date the material was created);
6. The email addresses, if any, or other electronic contact information to the extent used in the document, from which and to which each document was sent;
7. The names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all authors;
8. The names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all recipients of the material;
9. The names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all persons copied on the material;
10. The factual basis supporting the claim that the material is protected; and
11. Any other pertinent information necessary to support the assertion of protected status by operation of law.

16 C.F.R. § 2.11(a)(1)(i)-(xi).

In the log, identify by an asterisk each attorney who is an author, recipient, or person copied on the material. The titles, business addresses, email addresses, and relevant affiliations of all authors, recipients, and persons copied on the material may be provided in a legend appended to the log. However, provide in the log the information required by Instruction D.6. 16 C.F.R. § 2.11(a)(2). The lead attorney or attorney responsible for supervising the review of the material and who made the determination to assert the claim of protected status must attest to the log. 16 C.F.R. § 2.11(a)(1).

If only some portion of any responsive material is privileged, all non-privileged portions of the material must be submitted. Otherwise, produce all responsive information and material without redaction. 16 C.F.R. § 2.11(c). The failure to provide information sufficient to support a claim of protected status may result in denial of the claim. 16 C.F.R. § 2.11(a)(1).

- E. **Document Retention:** You shall retain all documentary materials used in the preparation of responses to the specifications of this CID. The Commission may require the submission of additional documents at a later time during this investigation. Accordingly, you should suspend any routine procedures for document destruction and take other measures to prevent the destruction of documents that are in any way relevant to this investigation during its pendency, irrespective of whether you believe such documents are protected from discovery by privilege or otherwise. See 15 U.S.C. § 50; see also 18 U.S.C. §§ 1505, 1519.
- F. **Petitions to Limit or Quash:** Any petition to limit or quash this CID must be filed with

the Secretary of the Commission no later than twenty (20) days after service of the CID, or, if the return date is less than twenty (20) days after service, prior to the return date. Such petition shall set forth all assertions of protected status or other factual and legal objections to the CID, including all appropriate arguments, affidavits, and other supporting documentation. 16 C.F.R. § 2.10(a)(1). Such petition shall not exceed 5,000 words as set forth in 16 C.F.R. § 2.10(a)(1) and must include the signed separate statement of counsel required by 16 C.F.R. § 2.10(a)(2). **The Commission will not consider petitions to quash or limit absent a pre-filing meet and confer session with Commission staff and, absent extraordinary circumstances, will consider only issues raised during the meet and confer process. 16 C.F.R. § 2.7(k); see also § 2.11(b).**

- G. **Modification of Specifications:** If you believe that the scope of the required search or response for any specification can be narrowed consistent with the Commission's need for documents or information, you are encouraged to discuss such possible modifications, including any modifications of definitions and instructions, with **Megan Bartley at (202) 326-3424**. All such modifications must be agreed to in writing by the Bureau Director, or a Deputy Bureau Director, Associate Director, Regional Director, or Assistant Regional Director. 16 C.F.R. § 2.7(l).
- H. **Certification:** A responsible corporate official shall certify that the response to this CID is complete. This certification shall be made in the form set out on the back of the CID form, or by a declaration under penalty of perjury as provided by 28 U.S.C. § 1746.
- I. **Scope of Search:** This CID covers documents and information in your possession or under your actual or constructive custody or control including, but not limited to, documents and information in the possession, custody, or control of your attorneys, accountants, directors, officers, employees, and other agents and consultants, whether or not such documents and information were received from or disseminated to any person or entity.
- J. **Document Production:** You shall produce the documentary material by making all responsive documents available for inspection and copying at your principal place of business. Alternatively, you may elect to send all responsive documents to **Ron Lewis, Federal Trade Commission, 600 Pennsylvania Ave., NW, Mailstop M-8102B, Washington, DC 20580**. Because postal delivery to the Commission is subject to delay due to heightened security precautions, please use a courier service such as Federal Express or UPS. Notice of your intended method of production shall be given by email or telephone to **Megan Bartley at mbartley@ftc.gov, (202) 326-3424 at least five days prior to the return date**.
- K. **Document Identification:** Documents that may be responsive to more than one specification of this CID need not be submitted more than once; however, your response should indicate, for each document submitted, each specification to which the document is responsive. If any documents responsive to this CID have been previously supplied to the Commission, you may comply with this CID by identifying the document(s) previously provided and the date of submission. Documents should be produced in the order in which they appear in your files or as electronically stored and without being

manipulated or otherwise rearranged; if documents are removed from their original folders, binders, covers, containers, or electronic source in order to be produced, then the documents shall be identified in a manner so as to clearly specify the folder, binder, cover, container, or electronic media or file paths from which such documents came. In addition, number by page (or file, for those documents produced in native electronic format) all documents in your submission, preferably with a unique Bates identifier, and indicate the total number of documents in your submission.

- L. **Production of Copies:** Unless otherwise stated, legible photocopies (or electronically rendered images or digital copies of native electronic files) may be submitted in lieu of original documents, provided that the originals are retained in their state at the time of receipt of this CID. Further, copies of originals may be submitted in lieu of originals only if they are true, correct, and complete copies of the original documents; provided, however, that submission of a copy shall constitute a waiver of any claim as to the authenticity of the copy should it be necessary to introduce such copy into evidence in any Commission proceeding or court of law; and provided further that you shall retain the original documents and produce them to Commission staff upon request. Copies of marketing materials and advertisements shall be produced in color, and copies of other materials shall be produced in color if necessary to interpret them or render them intelligible.
- M. **Electronic Submission of Documents:** The following guidelines refer to the production of any Electronically Stored Information (“ESI”) or digitally imaged hard copy documents. Before submitting any electronic production, You must confirm with the Commission counsel named above that the proposed formats and media types will be acceptable to the Commission. The FTC requests Concordance load-ready electronic productions, including DAT and OPT load files.
- (1) **Electronically Stored Information:** Documents created, utilized, or maintained in electronic format in the ordinary course of business should be delivered to the FTC as follows:
- (a) Spreadsheet and presentation programs, including but not limited to Microsoft Access, SQL, and other databases, as well as Microsoft Excel and PowerPoint files, must be produced in native format with extracted text and metadata. Data compilations in Excel spreadsheets, or in delimited text formats, must contain all underlying data un-redacted with all underlying formulas and algorithms intact. All database productions (including structured data document systems) must include a database schema that defines the tables, fields, relationships, views, indexes, packages, procedures, functions, queues, triggers, types, sequences, materialized views, synonyms, database links, directories, Java, XML schemas, and other elements, including the use of any report writers and custom user data interfaces;
 - (b) All ESI other than those documents described in (1)(a) above must be provided in native electronic format with extracted text or Optical

Character Recognition (OCR) and all related metadata, and with corresponding image renderings as converted to Group IV, 300 DPI, single-page Tagged Image File Format (TIFF) or as color JPEG images (where color is necessary to interpret the contents); and

- (c) Each electronic file should be assigned a unique document identifier (“DocID”) or Bates reference.
- (2) **Hard Copy Documents:** Documents stored in hard copy in the ordinary course of business should be submitted in an electronic format when at all possible. These documents should be true, correct, and complete copies of the original documents as converted to TIFF (or color JPEG) images with corresponding document-level OCR text. Such a production is subject to the following requirements:
- (a) Each page shall be endorsed with a document identification number (which can be a Bates number or a document control number);
 - (b) Logical document determination should be clearly rendered in the accompanying load file and should correspond to that of the original document; and
 - (c) Documents shall be produced in color where necessary to interpret them or render them intelligible.
- (3) For each document electronically submitted to the FTC, You should include the following metadata fields in a standard ASCII delimited Concordance DAT file:
- (a) **For electronic mail:** begin Bates or unique document identification number (“DocID”), end Bates or DocID, mail folder path (location of email in personal folders, subfolders, deleted or sent items), custodian, from, to, cc, bcc, subject, date and time sent, date and time received, and complete attachment identification, including the Bates or DocID of the attachments (AttachIDs) delimited by a semicolon, MD5 or SHA Hash value, and link to native file;
 - (b) **For email attachments:** begin Bates or DocID, end Bates or DocID, parent email ID (Bates or DocID), page count, custodian, source location/file path, file name, file extension, file size, author, date and time created, date and time modified, date and time printed, MD5 or SHA Hash value, and link to native file;
 - (c) **For loose electronic documents (as retrieved directly from network file stores, hard drives, etc.):** begin Bates or DocID, end Bates or DocID, page count, custodian, source media, file path, filename, file extension, file size, author, date and time created, date and time modified, date and time printed, MD5 or SHA Hash value, and link to native file;

- (d) **For imaged hard copy documents:** begin Bates or DocID, end Bates or DocID, page count, source, and custodian; and where applicable, file folder name, binder name, attachment range, or other such references, as necessary to understand the context of the document as maintained in the ordinary course of business.
- (4) If You intend to utilize any de-duplication or email threading software or services when collecting or reviewing information that is stored in Your computer systems or electronic storage media, or if Your computer systems contain or utilize such software, You must contact the Commission counsel named above to determine whether and in what manner You may use such software or services when producing materials in response to this Request.
- (5) Submit electronic productions as follows:
 - (a) With passwords or other document-level encryption removed or otherwise provided to the FTC;
 - (b) As uncompressed electronic volumes on size-appropriate, Windows-compatible, media;
 - (c) All electronic media shall be scanned for and free of viruses;
 - (d) Data encryption tools may be employed to protect privileged or other personal or private information. The FTC accepts TrueCrypt, PGP, and SecureZip encrypted media. The passwords should be provided in advance of delivery, under separate cover. Alternate means of encryption should be discussed and approved by the FTC.
 - (e) Please mark the exterior of all packages containing electronic media sent through the U.S. Postal Service or other delivery services as follows:

**MAGNETIC MEDIA – DO NOT X-RAY
MAY BE OPENED FOR POSTAL INSPECTION.**

- (6) All electronic files and images shall be accompanied by a production transmittal letter which includes:
 - (a) A summary of the number of records and all underlying images, emails, and associated attachments, native files, and databases in the production; and
 - (b) An index that identifies the corresponding consecutive document identification number(s) used to identify each person's documents and, if submitted in paper form, the box number containing such documents. If the index exists as a computer file(s), provide the

index both as a printed hard copy and in machine-readable form (provided that the Commission counsel named above determines prior to submission that the machine-readable form would be in a format that allows the agency to use the computer files). The Commission counsel named above will provide a sample index upon request.

A Bureau of Consumer Protection Production Guide is available upon request from the Commission counsel named above. This guide provides detailed directions on how to fully comply with this instruction.

- N. **Sensitive Personally Identifiable Information:** If any material called for by these requests contains sensitive personally identifiable information or sensitive health information of any individual, please contact us before sending those materials to discuss whether it would be appropriate to redact the sensitive information. If that information will not be redacted, contact us to discuss encrypting any electronic copies of such material with encryption software such as SecureZip and provide the encryption key in a separate communication.

For purposes of these requests, sensitive personally identifiable information includes: an individual's Social Security number alone; or an individual's name or address or phone number in combination with one or more of the following: date of birth; Social Security number; driver's license number or other state identification number or a foreign country equivalent; passport number; financial account number; credit card number; or debit card number. Sensitive health information includes medical records and other individually identifiable health information relating to the past, present, or future physical or mental health or conditions of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

- O. **Certification of Records of Regularly Conducted Activity:** Attached is a Certification of Records of Regularly Conducted Activity, which may reduce the need to subpoena You to testify at future proceedings in order to establish the admissibility of documents produced in response to this CID. You are asked to execute this Certification and provide it with your response.

III. SPECIFICATIONS

REQUESTS FOR PRODUCTION OF DOCUMENTS AND ANSWERS TO WRITTEN INTERROGATORIES

- (1) Provide all contracts and agreements, regardless of date, between any **Telemarketing Entity** and any **Magazine Clearinghouse**.
- (2) Provide all documents, regardless of date, relating to any relationship or agreement between any **Telemarketing Entity** and: (a) any other entity engaged in **Magazine Sales**; and (b) any other entity that provides a product or service (other than magazine subscriptions) that any **Telemarketing Entity** markets or sells to consumers.
- (3) For each magazine title for which any **Telemarketing Entity** engages in **Magazine Sales**, provide documents sufficient to show all payment arrangements, including remit rates and any other fees paid to any **Magazine Clearinghouse**.
- (4) Provide: (a) all agent and sub-agent applications and authorizations, regardless of date and regardless of whether the application was approved, between any **Telemarketing Entity** and any **Magazine Clearinghouse** or entity that engages in **Magazine Sales**; and (b) documents sufficient to show that any **Telemarketing Entity** is authorized to offer the subscription pricing and terms for the magazine titles any **Telemarketing Entity** offers to customers.
- (5) For all **Databases** any **Telemarketing Entity** maintains containing any information or data relating to customers, provide: (a) the full and complete database in native format with all available fields and data, including but not limited to all fields relating to customer names and contact information, the magazine titles to which the customer subscribed, all customer inquiries and complaints, and all payments made by customers; and (b) any key or list explaining all fields and codes that appear in the **Database**.

Produce all **Databases** in accordance with **Instruction M (Electronic Submission of Documents)**, including a database schema and any other software or interface required to read or access the data. Provide the full and complete **Database** regardless of whether any information is also provided in response to any other Request.

- (6) Provide documents sufficient to show: (a) all requests any **Telemarketing Entity** submitted to any **Magazine Clearinghouse** to switch a customer's subscription from one magazine title to a new magazine title; and (b) all responses to such requests.
- (7) Provide all scripts, rebuttal scripts, outlines, guides, or related documents, used by any **Telemarketing Entity on or after October 7, 2009**, relating to any communication with customers or prospective customers, including but not limited to outbound sales calls, follow up calls, closing calls, "verification" calls, customer inquiries, complaints, cancellation requests, and refund requests.

- (8) Provide all **Training Materials** for all employees of any **Telemarketing Entity** used in any way **on or after October 7, 2009**.
- (9) Provide: (a) documents sufficient to demonstrate any marketing relationship or affiliation between any **Telemarketing Entity** and any credit card company, bank, or financial institution that relates to any representation any **Telemarketing Entity** made to consumers; and (b) documents sufficient to substantiate claim that any **Telemarketing Entity** contacts consumers because of the consumer's relationship or preferred status with a credit card company, bank, or financial institution.
- (10) Provide documents sufficient to establish the source of all lists of prospective customers and any lead lists.
- (11) Provide all audio recordings of: (a) all customers or prospective customers recorded on each day within the date ranges listed in Appendix A (90 days total); and (b) all customers or prospective customers listed in Appendix B.
- (12) Provide all complaints and inquiries received by any **Telemarketing Entity**, including but not limited to those received from consumers directly or indirectly through any other entity, and provide any communications from or on behalf of any **Telemarketing Entity** in response to such complaints and inquiries.
- (13) For each employee, agent, and consultant of any **Telemarketing Entity** provide each person's: (a) full name, address, phone number, and email address; (b) starting and ending dates of employment; (c) position, role, and responsibilities; (d) terms and amount of compensation; and (e) reason for termination, if terminated.
- (14) Provide documents sufficient to show all merchant account numbers, payment processors, and contacts at each payment processor for any merchant account used by any **Telemarketing Entity**.
- (15) Provide documents sufficient to establish the document retention policies employed by any **Telemarketing Entity** during the **Applicable Time Period**.

INTERROGATORIES

- (1) To the extent not produced in a fully accurate and accessible format in response to Request for Production No. 5, for each customer of any **Telemarketing Entity** from **January 1, 2011** through the date of full and complete compliance with this request, provide the following in a sortable spreadsheet (in MS Excel, MS Access, or other format allowable under the **Instructions**):
 - (a) Customer First Name; (b) Customer Last Name; (c) Street Address; (d) Phone Number; (e) Sales Date (date of telemarketing sales call); (f) Total Amount Paid (total amount paid by customer); (g) Monthly Payment Amount (monthly amount paid by customer); (h) Payment Dates (date of first and last payment by customer); (i) Orders Requested (magazine titles and subscription length requested by customer); (j)

Submission Date (date each magazine title was submitted to a **Magazine Clearinghouse** or publisher for fulfillment); (k) Orders Submitted (magazine titles and subscription length submitted to a **Magazine Clearinghouse** or publisher on a customer's behalf); (l) Confirmation Date (date fulfillment of requested title and length was confirmed); (m) Remit Amount (amount any **Telemarketing Entity** remitted to secure the fulfillment); and (n) Remit Date (date any **Telemarketing Entity** paid remit amount).

- (2) Identify all officers, directors, managers, and owners for any **Telemarketing Entity**, and, for each individual or entity, state the corresponding dates and ownership share.

APPENDIX A
Dates for Audio Recording Production (Request for Production 11)

1	3/26/2012 – 3/30/2012
2	6/4/2012 – 6/8/2012
3	6/18/2012 – 6/22/2012
4	7/2/2012 – 7/6/2012
5	8/6/2012 – 8/10/2012
6	8/13/2012 – 8/17/2012
7	9/10/2012 – 9/14/2012
8	11/5/2012 – 11/9/2012
9	11/12/2012 – 11/16/2012
10	12/3/2012 – 12/7/2012
11	12/10/2012 – 12/14/2012
12	12/17/2012 – 12/21/2012
13	12/24/2012 – 12/29/2012
14	1/28/2013 – 2/1/2013
15	2/4/2013 – 2/8/2013
16	2/11/2013 – 2/15/2013
17	2/18/2013 – 2/22/2013
18	2/25/2013 – 2/29/2013

APPENDIX B
Consumers for Audio Recording Production (Request for Production 11)

	LAST NAME	FIRST NAME	CITY	STATE
1	Baughman	Thomas	Anacoco	LA
2	Chung	Dahwa	Morrisville	NC
3	Covarruvias	Jess	Stockton	CA
4	Diehl	Rachelle	Bella Vista	CA
5	DiNapoli	Kate	Concord	NH
6	Eason	Brandon	Norfolk	VA
7	Faulstick	Joseph	Sammamish	WA
8	Franklin	Kevin	Louisville	KY
9	Gilmer	Jeffery	Rome	GA
10	Gluntz	Belinda	Soquel	CA
11	Hefner	Brittany	Tiffin	OH
12	Mackie	Elizabeth	Buxton	ME
13	Mendez	Tracie	Brookings	SD
14	Moua	Gillian	Hickory	NC
15	Nunziata	Gina	West Haven	CT
16	Perryman-Vasquez	Maria	San Bernardino	CA
17	Preseault	Kristen	Bradenton	FL
18	Rodriguez	Norma	Brooklyn	OH
19	Rowland	Jessica	West Windsor	NJ
20	Ruelas	Rabekah	Lancaster	CA
21	Slaton	Christopher	Wolfforth	TX
22	Smith	Emily	Cuyahoga Falls	OH
23	Sorriso	Angela	Cicero	IL
24	Spinelli	Joseph	Old Bridge	NJ
25	Topel	Jessica	Rockville	MD
26	Wood	Aliscia	Buffalo	MN