

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 18-61017-CIV-ALTONAGA/Seltzer

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

POINTBREAK MEDIA, LLC; et al.,

Defendants.

**STIPULATED ORDER OF PERMANENT INJUNCTION AND
MONETARY JUDGMENT AS TO DEFENDANT DANIEL CARVER**

Plaintiff, the Federal Trade Commission (“Commission”), filed its First Amended Complaint for Permanent Injunction and Other Equitable Relief [ECF No. 109] (“First Amended Complaint”) under the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. section 53(b). The Commission and Defendant Daniel Carver stipulate to entry of this Stipulated Order of Permanent Injunction and Monetary Judgment (“Order”) to resolve all matters in dispute in this action between them.

Having carefully reviewed the parties’ stipulation and the record, it is

ORDERED AND ADJUDGED as follows:

FINDINGS

- A. The Court has jurisdiction over this matter.
- B. The First Amended Complaint charges that Settling Defendant participated in deceptive and unfair acts or practices in violation of section 5 of the FTC Act, 15 U.S.C. section 45; and in acts or practices that violate the Telemarketing Sales Rule (“TSR”), as

amended, 16 C.F.R. part 310; in the marketing and sale of Google “claiming and verification” and search engine optimization services.

C. Settling Defendant neither admits nor denies any of the allegations in the First Amended Complaint, except as specifically stated in this Order. Only for purposes of this action, Settling Defendant admits the facts necessary to establish jurisdiction.

D. Settling Defendant waives any claim that he may have under the Equal Access to Justice Act, 28 U.S.C. section 2412, concerning the prosecution of this action through the date of this Order, and agrees to bear his own costs and attorney’s fees.

E. Settling Defendant and the Commission waive all rights to appeal or otherwise challenge or contest the validity of this Order.

DEFINITIONS

For purposes of this Order, the following definitions apply:

A. **“Clear and Conspicuous”** means that a required disclosure is difficult to miss and easily understandable by ordinary consumers, including in all the following ways:

1. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure is made in only one means.

2. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.

3. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.

4. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.

5. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires the disclosure appears.

6. The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications.

7. The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.

8. When the representation or sales practice targets a specific audience, such as children, the elderly, or the terminally ill, “ordinary consumers” includes reasonable members of that group.

B. “**Defendants**” means all the Individual Defendants and the Corporate Defendants, individually, collectively, or in any combination.

C. “**Individual Defendants**” means Dustin Pillonato; Justin Ramsey; Aaron Michael Jones; Ricardo Diaz; Michael Pocker; Steffan Molina; Vincent Yates; and Daniel Carver, individually, collectively, or in any combination.

D. “**Corporate Defendants**” means Pointbreak Media, LLC; DCP Marketing, LLC; Modern Spotlight LLC; Modern Spotlight Group LLC; Modern Internet Marketing LLC;

Modern Source Media, LLC; Perfect Image Online LLC; Allstar Data, LLC; National Business Listings, LLC; and Pinnacle Presence LLC, and their successors and assigns, individually, collectively, or in any combination.

E. **“Settling Defendant”** means Defendant Daniel Carver, and his successors and assigns, individually, collectively, or in any combination.

F. **“National Do Not Call Registry”** means the “do-not-call” registry of telephone numbers maintained by the Commission pursuant to 16 C.F.R. section 310.4(b)(1)(iii)(B).

G. **“Outbound Telephone Call”** means a telephone call initiated by a Telemarketer to induce the purchase of goods or services or to solicit a charitable contribution.

H. **“Receiver”** means Jonathan E. Perlman, Esq., who the Court appointed as Receiver in Section XI of the Preliminary Injunction as to Defendants Dustin Pillonato; Justin Ramsey; Aaron Michael Jones; Michael Pocker; Pointbreak Media, LLC; DCP Marketing, LLC; Modern Spotlight LLC; Modern Spotlight Group LLC; Modern Internet Marketing LLC; and Modern Source Media, LLC [ECF No. 64]; in Section XI of the Preliminary Injunction as to Defendants Steffan Molina and Perfect Image Online LLC [ECF No. 58]; and in Section XI of the Preliminary Injunction as to Defendants Allstar Data, LLC; National Business Listings, LLC; Pinnacle Presence LLC; Vincent Yates; and Daniel Carver [ECF No. 169].

I. **“Telemarketer”** means any person who, in connection with Telemarketing, initiates or receives telephone calls to or from a customer or donor.

J. **“Telemarketing”** means a plan, program, or campaign that is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call.

ORDER

I. PERMANENT BAN ON ROBOCALLS

The Settling Defendant, whether acting directly or through an intermediary, is permanently restrained and enjoined from:

- A. Initiating, causing the initiation of, or assisting others in initiating any Outbound Telephone Call that delivers a prerecorded message; and/or
- B. Owning or controlling, holding a managerial post in, consulting for, serving as an officer in, having any revenue sharing agreement with, or holding any ownership interest, share or stock in, other than the stock of a publicly traded company, any company that engages in conduct banned in Subsection I.A.

II. PERMANENT BAN ON CALLING TELEPHONE NUMBERS LISTED ON THE NATIONAL DO NOT CALL REGISTRY

The Settling Defendant, whether acting directly or through an intermediary, is permanently restrained and enjoined from:

- A. Initiating, causing the initiation of, or assisting others in initiating any Outbound Telephone Call to any telephone number listed for more than 31 days on the National Do Not Call Registry.
- B. Owning or controlling, holding a managerial post in, consulting for, serving as an officer in, having any revenue sharing agreement with, or holding any ownership interest, share or stock in, other than the stock of a publicly traded company, any company that engages in conduct banned in Subsection II.A.

III. REQUIRED TELEMARKETING DISCLOSURES

The Settling Defendant, Settling Defendant's officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual

notice of this Order are permanently restrained and enjoined from initiating, causing others to initiate, or assisting others in initiating any Outbound Telephone Call that fails to disclose truthfully, promptly, and in a Clear and Conspicuous manner (1) the identity of the seller, (2) that the purpose of the call is to sell goods and services, and (3) the nature of those goods or services.

IV. PROHIBITION AGAINST MISREPRESENTATIONS

The Settling Defendant, Settling Defendant's officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with promoting or offering for sale any good or service are permanently restrained and enjoined from misrepresenting or assisting others in misrepresenting, expressly or by implication:

- A. that they are authorized by, or affiliated with, Google or any other individual or entity;
- B. that any consumer is in danger of being removed from any internet search results or marked closed by Google or any other individual or entity;
- C. that they can assign keywords to any consumer that will affect the consumer's placement in internet search results;
- D. that any consumer will receive increased visibility in any internet search results; or
- E. any other fact material to consumers concerning any good or service, such as: the total cost; any material restrictions, limitations, or conditions; or any material aspect of its performance, efficacy, nature, or central characteristics.

V. MONETARY JUDGMENT AND PARTIAL SUSPENSION AS TO SETTLING DEFENDANT

- A. Judgment in the amount **\$2,461,626.12** is entered in favor of the Commission and against Settling Defendant, as equitable monetary relief.

B. Settling Defendant shall take the following steps to sell all interest in the 2016 Lexus RX 350 (“Vehicle”), identified in the Financial Statement of Daniel Carver executed on August 28, 2018:

1. Settling Defendant shall immediately attempt to sell the Vehicle at fair market value (based on its Kelley Blue Book value);
2. If Settling Defendant has not sold the Vehicle within 30 days of entry of this Order, Settling Defendant shall sell the Vehicle at a fair market value (based on its Kelley Blue Book value) by advertising it for sale through an online auction service and selling it to the highest bidder, or by placing the Vehicle for sale through an appropriate broker or automobile listing service;
3. Before placing an ad or otherwise listing the Vehicle for sale, and before accepting a bid or offer, Settling Defendant shall provide to Commission counsel documentation for the proposed sale price and for any and all bids or offers received;
4. Settling Defendant shall in no way profit directly or indirectly from the sale of the Vehicle, including by sharing in any sales commission or fee, or by receiving anything of value of any kind;
5. Pending sale of the Vehicle, Settling Defendant shall: (a) maintain the Vehicle in good working order and in the same condition as of August 28, 2018, the date Settling Defendant signed his sworn financial statement; (b) take no action to encumber or diminish its value; (c) maintain existing insurance coverage for the Vehicle; and (d) remain

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current on any tax, registration, maintenance costs, loans, and other fees and expenses related to the Vehicle; and

6. Within three (3) business days of receipt of the net proceeds (remaining funds from the sale minus payment on any outstanding loan balances) from the sale of all interest in the Vehicle, Settling Defendant shall cause to be wired to the Commission the net proceeds from the sale in accordance with instructions provided by the Commission, and shall identify the name, address and telephone number of the purchaser of the Vehicle.

C. Upon completion of all asset transfers, as specified above, the remainder of the judgment against Settling Defendant is suspended, subject to the Subsections below.

D. The Commission's agreement to the suspension of part of the judgment is expressly premised upon the truthfulness, accuracy, and completeness of Settling Defendant' sworn financial statements and related documents (collectively, "financial representations") submitted to the Commission, namely:

1. the Financial Statement of Daniel Carver signed on August 28, 2018, including all attachments and other documentation provided;
2. the representation by Mr. Carver to FTC counsel that his financial statement dated August 28, 2018 remained accurate as of February 7, 2019; and
3. the documentation Daniel Carver provided to the FTC on February 11, 2019.

E. The suspension of the judgment will be lifted as to the Settling Defendant if, upon motion by the Commission, the Court finds that Settling Defendant failed to disclose any

material asset, materially misstated the value of any asset, or made any other material misstatement or omission in the financial representations identified above.

F. If the suspension of the judgment is lifted, the judgment becomes immediately due as to Settling Defendant in the amount specified in Subsection A above (which the parties stipulate only for purposes of this Section represents the consumer injury alleged in the First Amended Complaint during the time of Settling Defendant's participation in the activities alleged in the First Amended Complaint), less any payment previously made pursuant to this Section, plus interest computed from the date of entry of this Order.

VI. ADDITIONAL MONETARY PROVISIONS

A. Settling Defendant relinquishes dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets.

B. Settling Defendant grants to the Commission all rights and claims they have to any assets currently in the possession, custody, or control of the Receiver, and to any other asset of any Corporate Defendant.

C. The facts alleged in the First Amended Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of the Commission, including in a proceeding to enforce its rights to any payment or monetary judgment pursuant to this Order, such as a nondischargeability complaint in any bankruptcy case.

D. The facts alleged in the First Amended Complaint establish all elements necessary to sustain an action by the Commission pursuant to 11 U.S.C. section 523(a)(2)(A), and this Order will have collateral estoppel effect for such purposes.

E. Settling Defendant acknowledge that their Taxpayer Identification Numbers (Social Security Numbers or Employer Identification Numbers), which Settling Defendant previously submitted to the Commission, may be used for collecting and reporting on any delinquent amount arising out of this Order, consistent with 31 U.S.C. section 7701.

F. All money paid to the Commission under this Order may be deposited into a fund administered by the Commission or its designee to be used for equitable relief, including consumer redress and any attendant expenses for the administration of any redress fund. If a representative of the Commission decides that direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, the Commission may apply any remaining money for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendants' practices alleged in the First Amended Complaint. Any money not used for such equitable relief is to be deposited to the United States Treasury as disgorgement. Settling Defendant has no right to challenge any actions the Commission or its representatives may take pursuant to this Subsection.

VII. LIFTING OF ASSET FREEZE

The freeze against the assets of Settling Defendant pursuant to the Preliminary Injunction as to Settling Defendant [ECF No. 169] shall be lifted as to Settling Defendant for the sole purpose of transferring assets pursuant to this Order, and shall be dissolved only as to Settling Defendant only upon the transfer of all such assets as described in Sections V.

VIII. CUSTOMER INFORMATION

The Settling Defendant, Settling Defendant's officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual

notice of this Order, whether acting directly or indirectly, are permanently restrained and enjoined from directly or indirectly:

A. failing to provide sufficient customer information to enable the Commission to efficiently administer consumer redress. If a representative of the Commission requests in writing any information related to redress, Settling Defendant must provide it, in the form prescribed by the Commission, within 14 days.

B. disclosing, using, or benefitting from customer information, including the name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account), that any Defendant obtained prior to entry of this Order in connection with the marketing and sale of Google "claiming and verification" and search engine optimization services;

C. failing to destroy such customer information in all forms in their possession, custody, or control within 30 days after receipt of written direction to do so from a representative of the Commission.

Provided, however, that customer information need not be disposed of, and may be disclosed, to the extent requested by a government agency or required by law, regulation, or court order.

IX. COOPERATION

The Settling Defendant must fully cooperate with representatives of the Commission and the Receiver in this case and in any investigation related to or associated with the transactions or the occurrences that are the subject of the First Amended Complaint in this matter. Settling Defendant must provide truthful and complete information, evidence, and testimony. Settling

Defendant must appear for interviews, discovery, hearings, trials, and any other proceedings that a Commission representative or Receiver representative may reasonably request upon 5 days written notice, or other reasonable notice, at such places and times as a Commission representative or Receiver representative may designate, without the service of a subpoena. Further, to assist the Commission with any investigation related to or associated with the transactions or the occurrences that are the subject of the First Amended Complaint, and with monitoring Settling Defendant's compliance with this Order, Settling Defendant consents, for purposes of the Electronic Communications Privacy Act, in relevant part at 18 U.S.C. sections 2701-2712, to the disclosure, by electronic communications service providers and remote computing service providers of the contents of his auto-dialed, Telemarketing communications and records or other information pertaining to his auto-dialed, Telemarketing communications. Settling Defendant further agrees to execute, within fourteen days of a request from the Commission, any forms or other documents evidencing his consent that may be required by such electronic communications service providers or remote computing service providers.

X. ORDER ACKNOWLEDGMENTS

The Settling Defendant must obtain acknowledgments of receipt of this Order as follows:

- A. Settling Defendant, within seven days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.
- B. For five years after entry of this Order, Settling Defendant, for any business that he, individually or collectively with any other Defendant, is the majority owner or controls directly or indirectly, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees having managerial responsibilities for conduct related to the subject matter of the Order and all agents and

representatives who participate in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within 7 days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

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

XI. COMPLIANCE REPORTING

The Settling Defendant must make timely submissions to the Commission:

A. One year after entry of this Order, Settling Defendant must submit a compliance report, sworn under penalty of perjury. Settling Defendant must:

1. identify all telephone numbers and all physical, postal, email and Internet addresses, including all residences;
2. identify all business activities, including any business for which Settling Defendant performs services, whether as an employee or otherwise, and any entity in which such Defendant has any ownership interest;
3. describe in detail Settling Defendant's involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership;
4. identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with Settling Defendant;

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5. identify all Settling Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses;
 6. describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant (which Settling Defendant must describe if he knows or should know due to his own involvement);
 7. describe in detail whether and how that Settling Defendant follows each Section of this Order; and
 8. provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.
- B. For 20 years after entry of this Order, Settling Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:
1. name, including aliases or fictitious name or residence address;
 2. title or role in any business activity, including any business for which Settling Defendant performs services whether as an employee or otherwise and any entity in which Settling Defendant has any ownership interest, and identify the name, physical address, and any Internet address of the business or entity;
 3. any designated point of contact; and
 4. the structure of any entity that Settling Defendant has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the

entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

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

D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. section 1746, such as by concluding: "I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct," and supplying the date, signatory's full name, title (if applicable), and signature.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: *FTC v. Daniel Carver, X180031*.

XII. RECORDKEEPING

The Settling Defendant must create certain records for 20 years after entry of the Order and retain each such record for 5 years. Specifically, Settling Defendant, for any business that he, individually or collectively with any other Defendant, is a majority owner or controls directly or indirectly, must create and retain the following records:

A. accounting records showing the revenues from all goods or services sold;

- B. personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;
- C. records of all consumer complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;
- D. all records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission; and
- E. a copy of each unique advertisement or other marketing material, including sales scripts.

XIII. COMPLIANCE MONITORING

For the purpose of monitoring Settling Defendant's compliance with this Order, including the financial representations upon which part of the judgment was suspended and any failure to transfer any assets as required by this Order:

- A. Within 14 days of receipt of a written request from a representative of the Commission, Settling Defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents for inspection and copying. The Commission is also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69. Notwithstanding the provisions of Local Rule 26.1(i), the Commission is not required to provide notice to Settling Defendant of, or make available for inspection by Settling Defendant, any objections, documents, electronically stored information, or things received in response to a subpoena.

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B. For matters concerning this Order, the Commission is authorized to communicate directly with Settling Defendant. Settling Defendant must permit representatives of the Commission to interview any employee or other person affiliated with any Settling Defendant who has agreed to such an interview. The person interviewed may have counsel present.

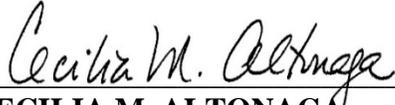
C. The Commission may use all other lawful means, including posing, through its representatives as consumers, suppliers, or other individuals or entities, to Settling Defendant or any individual or entity affiliated with Settling Defendant, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process under 15 U.S.C. sections 49, 57b-1.

D. Upon written request from a representative of the Commission, any consumer reporting agency must furnish consumer reports concerning Settling Defendant, under the Fair Credit Reporting Act, 15 U.S.C. section 1681b(a)(1).

XIV. RETENTION OF JURISDICTION

The Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

DONE AND ORDERED in Miami, Florida, this 25th day of April, 2019.



CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE

cc: counsel of record
Justin Ramsey (*pro se*)
Dustin Pillonato (*pro se*)

SO STIPULATED AND AGREED:

FOR PLAINTIFF FEDERAL TRADE COMMISSION:

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DEFENDANT DANIEL CARVER:

DANIEL CARVER
In his individual capacity