UNITED STATES OF AMERICA
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CLERK U.S. DISTRICT COURT
DISTRICT OF NEVADA

BY_______________DEPUTY

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

v.

BRAGLIA MARKETING GROUP, L.L.C., a Nevada limited liability company,

FRANK BRAGLIA, individually and as an owner and manager of Braglia Marketing Group, L.L.C., and

KATE BRAGLIA, individually and as an owner and manager of Braglia Marketing Group, L.L.C.,

Defendants.

Case No. CV-S-04-1209-DWH-PAL

STIPULATED JUDGMENT AND ORDER FOR PERMANENT INJUNCTION

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission ("FTC" or the "Commission"), has commenced this action by filing the complaint herein, and Defendants have been served with the summons and the complaint. The parties, represented by the attorneys whose names appear hereafter, have agreed to settlement of this action without adjudication of any issue of fact or law, and without Defendants admitting liability for any of the violations alleged in the complaint.

THEREFORE, on the joint motion of the parties, it is hereby **ORDERED, ADJUDGED AND DECREED** as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter and the parties pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345 and 1355, and 15 U.S.C. §§ 45(m)(1)(A), 53(b), 56(a), and 57b.

2. Venue is proper as to all parties in this District.

3. The activities of Defendants are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

4. The complaint states a claim upon which relief may be granted against Defendants, under Sections 5(a), 5(m)(1)(A), 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), and 57b.

5. Defendants have entered into this Stipulated Judgment and Order for Permanent Injunction ("Order") freely and without coercion. The undersigned Individual Defendants further acknowledge that they have read the provisions of this Order and are prepared to abide by them.

6. Defendants hereby waive all rights to appeal or otherwise challenge or contest the validity of this Order.

7. Defendants have agreed that this Order does not entitle Defendants to seek or to obtain attorneys' fees as a prevailing party under the Equal Access to Justice Act, 28 U.S.C. § 2412, and Defendants further waive any rights to attorneys' fees that may arise under said provision of law.

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

DEFINITIONS

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

1. "Asset" means any legal or equitable interest in, or right or claim to, any real and personal property, including without limitation, chattels, goods, instruments, equipment, fixtures, general intangibles, leaseholds, mail or other deliveries, inventory, checks, notes, accounts, credits, contracts, receivables, shares of stock, and all cash, wherever located.

2. "Defendants" means the Corporate Defendant and the Individual Defendants. The "Corporate Defendant" is Braglia Marketing Group, L.L.C., a Nevada limited liability company ("BMG"). The "Individual Defendants" are Frank Braglia and Kate Braglia, individually and as managers of BMG.

3. The "Telemarketing Sales Rule" or "Rule" means the FTC Rule entitled "Telemarketing Sales Rule," 16 C.F.R. § 310, attached hereto as Appendix A.

4. "Customer" means any person who is or may be required to pay for goods or services offered through telemarketing.

5. "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.

6. "Person" means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

7. "Telemarketing" means a plan, program, or campaign which 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. The term does not include the solicitation of sales through the mailing of a catalog which: contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous

sentence, the term "further solicitation" does not include providing the customer with information about, or attempting to sell, any other item included in the same catalog which prompted the customer's call or in a substantially similar catalog.

8. "Seller" means any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration, whether or not such person is under the jurisdiction of the Federal Trade Commission.

9. "Telemarketer" means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor.

10. "Representatives" means Defendants' successors, assigns, officers, agents, servants, employees and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise.

11. "National Do Not Call Registry" means the National Do Not Call Registry maintained by the Federal Trade Commission pursuant to 16 C.F.R. § 310.4(b)(1)(iii)(B).

12. "Established business relationship" means a relationship between the seller and a person based on: (a) the person's purchase, rental, or lease of the seller's goods or services or a financial transaction between the person and seller, within the eighteen (18) months immediately preceding the date of the telemarketing call; or (b) the person's inquiry or application regarding a product or service offered by the seller, within the three months immediately preceding the date of a telemarketing call.

ORDER

I. BAN ON OWNERSHIP AND MANAGEMENT OF TELEMARKETING OPERATIONS

IT IS ORDERED that each Individual Defendant, with respect to any business entity engaged, in whole or in part, in telemarketing, is hereby permanently restrained and enjoined from:

A. Holding more than a 5% ownership interest, share, or stock in such entity;

B. Serving as a director, officer, trustee, or general manager of such entity; or

C. Holding any position of responsibility for compliance with the Telemarketing Sales Rule at such entity.

II. PROHIBITION AGAINST ABUSIVE TELEMARKETING PRACTICES

IT IS FURTHER ORDERED that, in connection with telemarketing, Defendants and their Representatives are hereby permanently restrained and enjoined from engaging in, or causing other persons to engage in, or assisting other persons to engage in, violations of the Telemarketing Sales Rule, including but not limited to:

A. Initiating any outbound telephone call to a person's telephone number on the National Do Not Call Registry to induce the purchase of goods or services unless:

1. The seller has obtained the express agreement, in writing, of such person to place calls to that person. Such written agreement shall clearly evidence such person's authorization that calls made by or on behalf of a specific party may be placed to that person, and shall include the telephone number to which the calls may be placed and the signature of that person; or

2. The seller can prove an established business relationship with such person and that person has not stated that he or she does not wish to receive outbound telephone calls from the seller;

B. Abandoning any outbound telephone call to a person by failing to connect the call to a representative within two (2) seconds of the person's completed greeting, unless the following four (4) conditions are met:

1. Defendants employ technology that ensures abandonment of no more than three (3) percent of all calls answered by a person, measured per day per calling campaign;

2. Defendants and their Representatives, for each telemarketing call placed,

allow the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call;

3. Whenever a representative is not available to speak with the person answering the call within two (2) seconds after the person's completed greeting, the seller or telemarketer promptly plays a recorded message that states the name and telephone number of the seller on whose behalf the call was placed; and

4. Defendants retain records, in accordance with 16 C.F.R. § 310.5 (b)-(d), establishing compliance with the preceding three conditions; and

C. Initiating any outbound telephone call to a telephone number within a given area code without first paying the required annual fee for access to the telephone numbers, within that area code, that are on the National Do Not Call Registry;

Provided, however, that if the Commission promulgates rules that modify or supersede the Telemarketing Sales Rule, in whole or part, Defendants shall comply fully and completely with all applicable requirements thereof, on and after the effective date of any such rules.

III. CIVIL PENALTY AND RIGHT TO REOPEN

IT IS FURTHER ORDERED that:

A. Judgment in the amount of Five Hundred Twenty-Six Thousand Nine Hundred Thirty-Nine Dollars ($526,939.00) is hereby entered against Defendants, jointly and severally, as a civil penalty, pursuant to Section 5(m)(1)(A) of the Federal Trade Commission Act, 15 U.S.C. § 45(m)(1)(A). Based upon Defendants' sworn representations in financial statements, full payment for the foregoing civil penalty is suspended except for Three Thousand Five Hundred Dollars ($3,500.00), contingent upon the accuracy and completeness of the financial statements, as set forth in Subparagraphs C and D of this Paragraph.

B. Prior to or concurrently with their execution of this Order, Defendants shall transfer Three Thousand Five Hundred Dollars ($3,500.00), as non-suspended civil penalty payment, to their attorney, who shall hold the entire sum for no purpose other than payment to the Treasurer of the United States after entry of this Order by the Court. Within five (5) days of receipt of notice of the entry of this Order, Defendants' attorney shall transfer such civil penalty payment in the form of a wire transfer or certified or cashier's check made payable to the Treasurer of the United States. The check or written confirmation of the wire transfer shall be delivered to: Director, Office of Consumer Litigation, U.S. Department of Justice Civil Division, P.O. Box 386, Washington, DC 20044. The cover letter accompanying the check shall include the title of this litigation and a reference to DJ# 102-3186. Such transfer by Defendants' attorney shall constitute partial satisfaction of the judgment.

C. Upon payment by Defendants' attorney as provided in Subparagraph B of this Paragraph, the remainder of the civil penalty judgment shall be suspended subject to the conditions set forth in Subparagraph D of this Paragraph.

D. Plaintiff's agreement to this Order is expressly premised upon the truthfulness, accuracy and completeness of Defendants' sworn financial statements and supporting documents submitted to the Commission, namely those of the Corporate Defendant and Frank Braglia, each signed and dated October 8, 2004, and those of Kate Braglia signed and dated October 4, 2004, which include material information upon which Plaintiff relied in negotiating and agreeing to this Order. If, upon motion by Plaintiff, this Court finds that Defendants have failed to disclose any material asset or materially misstated the value of any asset in the financial statements and related documents described above, or have made any other material misstatement or omission in the financial statements and related documents described above, then this Order shall be reopened and suspension of the judgment shall be lifted for the purpose of requiring payment of civil penalty in the full amount of the judgment ($526,939.00), less the sum of all amounts paid to the Treasurer of the United States pursuant to Subparagraph B of this Paragraph. *Provided, however*, that in all other respects this Order shall remain in full force and effect, unless otherwise ordered by the Court.

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

F. Defendants agree that the facts as alleged in the complaint filed in this action shall be taken as true for the purpose of a nondischargeability complaint in any bankruptcy proceeding.

G. Proceedings instituted under this Paragraph are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings the Plaintiff may initiate to enforce this Order.

IV. RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that for a period of five (5) years from the date of entry of this Order, each Defendant, and their successors and assigns, shall maintain and make available to the Plaintiff or Commission, within seven (7) days of the receipt of a written request, business records demonstrating compliance with the terms and provisions of this Order.

V. DISTRIBUTION OF ORDER BY DEFENDANTS AND ACKNOWLEDGMENTS OF RECEIPT

IT IS FURTHER ORDERED that each Defendant, and their successors and assigns, shall within thirty (30) days of the entry of this Order, provide a copy of this Order with Appendix A to all of their owners, principals, members, officers, and directors, as well as managers, agents, servants, employees, and attorneys having decision-making authority with respect to the subject matter of this Order; secure from each such person a signed statement acknowledging receipt of a copy of this Order; and shall, within ten (10) days of complying with this Paragraph, file an affidavit with the Court and serve the Commission, by mailing a copy thereof, to the Associate Director for Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave., N.W., Washington, D.C. 20580, setting forth the fact and manner of their compliance, including the name and title of each person to whom a copy of the Order has been provided.

VI. NOTIFICATION OF BUSINESS CHANGES

IT IS FURTHER ORDERED that each Defendant, and their successors and assigns, shall notify the Associate Director for Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave., N.W., Washington, D.C. 20580, at least thirty (30) days prior to any change in such Defendant's business, including, but not limited to, merger, incorporation, dissolution, assignment, and sale, which results in the emergence of a successor corporation, the creation or dissolution of a subsidiary or parent, or any other change, which may affect such Defendant's obligations under this Order.

VII. NOTIFICATION OF INDIVIDUALS' AFFILIATIONS

IT IS FURTHER ORDERED that each Individual Defendants shall, for a period of seven (7) years from the date of entry of this Order, notify the Associate Director for Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave., N.W., Washington, D.C. 20580, within thirty (30) days of his or her affiliation with a new business or employment whose activities include telemarketing, or of his or her affiliation with a new business or employment in which his or her own duties and responsibilities involve telemarketing.

VIII. COMMUNICATION WITH DEFENDANTS

IT IS FURTHER ORDERED that for the purposes of compliance reporting, if undersigned counsel no longer represents a Defendant, Plaintiff and the Commission are authorized to communicate directly with such Defendant.

IX. FEES AND COSTS

IT IS FURTHER ORDERED that each party to this Order hereby agrees to bear its own costs and attorneys' fees incurred in connection with this action.

X. SEVERABILITY

IT IS FURTHER ORDERED that the provisions of this Order are separate and severable from one another. If any provision is stayed or determined to be invalid, the remaining provisions shall remain in full force and effect.

XI. RETENTION OF JURISDICTION

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

XII. COMPLETE SETTLEMENT

The parties, by their respective counsel, hereby consent to entry of the foregoing Order which shall constitute a final judgment and order in this matter. The parties further stipulate and agree that the entry of the foregoing Order shall constitute a full, complete and final settlement of this action.

JUDGMENT IS THEREFORE ENTERED in favor of Plaintiff and against

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Defendants, pursuant to all the terms and conditions recited above.

SO ORDERED this _______ day of _________________, 200___.

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UNITED STATES DISTRICT JUDGE

FOR THE PLAINTIFF:
FOR THE UNITED STATES OF AMERICA:

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FOR THE FEDERAL TRADE COMMISSION:

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Eileen Harrington
Associate Director for Marketing Practices

FOR DEFENDANTS:

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Bruce M. Judd, Esq., Attorney for Defendants Braglia Marketing Group, L.L.C., Frank Braglia, and Kate Braglia

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Braglia Marketing Group, L.L.C., by Frank Braglia, Managing Member

Kate Braglia
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Braglia Marketing Group, L.L.C., by Kate Braglia, Managing Member

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