

UNITED STATES DISTRICT COURT  
DISTRICT OF KANSAS

FEDERAL TRADE COMMISSION, and the  
STATES OF ILLINOIS, KANSAS,  
MINNESOTA, and NORTH CAROLINA,

Plaintiffs,

v.

AFFILIATE STRATEGIES, INC., *et al.*

Defendants.

Case No. 5:09-CV-04104-JAR-KGS

**DEFAULT JUDGMENT AND  
PERMANENT INJUNCTION  
AGAINST DIRECT  
MARKETING SYSTEMS, INC.**

On July 20, 2009, original Plaintiffs, the Federal Trade Commission (“FTC”), and the States of Kansas, Minnesota and North Carolina filed a Complaint for Injunction and Other Equitable Relief to obtain temporary, preliminary, and permanent injunctive relief. The original Complaint was amended on December 9, 2009, adding one new Plaintiff, the State of Illinois (collectively with the original Plaintiffs, “Plaintiffs”), several new Defendants and new Counts. A Second Amended Complaint was filed on June 21, 2010, adding several additional facts and citations to evidence. The Second Amended Complaint brings claims pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101 – 6108; the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.*; Minn. Stat. §§ 8.01 & 8.31; the Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. §§ 325D.43-325D.48; Minn. Stat. § 325F.67; the Minnesota Prevention of Consumer Fraud Act, Minn.

Stat. §§ 325F.68-325F.70; and Minn. Stat. § 325F.71, subd. 2 (2008); the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. §§ 75-1.1, *et seq.*; and the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2 *et seq.*

Defendant Direct Marketing Systems, Inc., (“Defendant”) has failed to answer or otherwise respond to the Second Amended Complaint. Pursuant to Rule 55(a) of the Federal Rules of Civil Procedure, default was entered against Defendant by the Clerk of the Court on August 12, 2010.

**NOW THEREFORE**, Plaintiffs have moved this Court for entry of a judgment by default and permanent injunction against Defendant pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure. Having considered the memorandum filed in support of the motion and the record in this matter, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

**FINDINGS**

1. This Court has jurisdiction over the subject matter of this case and the parties hereto pursuant to 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), and 6105(b), and 28 U.S.C. §§ 1331, 1337(a), and 1345.
2. Venue in the District of Kansas is proper as to Defendant.
3. Defendant’s activities are in or affecting commerce, as defined in the FTC Act, 15 U.S.C. § 44.
4. The Second Amended Complaint states claims upon which relief may be granted against Defendant under Sections 5(a), 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 53(b) and 57b, the Telemarketing Act, 15 U.S.C. §§

6101 – 6108, and the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.*; Minn. Stat. §§ 8.01 & 8.31; the Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. §§ 325D.43-325D.48; Minn. Stat. § 325F.67; the Minnesota Prevention of Consumer Fraud Act, Minn. Stat. §§ 325F.68-325F.70; and Minn. Stat. § 325F.71, subd. 2 (2008); the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. §§ 75-1.1, *et seq.*; and the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2 *et seq.*

5. Defendant has received proper process and service of process as required by Rule 4 of the Federal Rules of Civil Procedure.
6. Defendant has failed to file an answer to the Second Amended Complaint or to otherwise defend the claims in the Second Amended Complaint. The Clerk of the Court properly entered default against Defendant on August 12, 2010.
7. Because of Defendant's default, the factual allegations in the Second Amended Complaint are taken as true.
8. As alleged in Count II of the Second Amended Complaint, Defendant, in connection with the offering for sale or sale of grant research and writing services, made false, misleading, and unsubstantiated representations that Grant Writers Institute has a 70% success rate in obtaining grant funding for the consumers who purchase the services of Affiliate Strategies, Inc.; Landmark Publishing Group, L.L.C.; Grant Writers Institute, L.L.C.;

Answer Customers, L.L.C.; and Apex Holdings International, L.L.C.

(collectively, the “ASI Defendants”). The making of these representations constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

9. As alleged in Count III of the Second Amended Complaint, Defendant has made false, misleading, and unsubstantiated representations that consumers who purchase the ASI Defendants’ goods and services are likely to receive grant monies. The making of these representations constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).
10. As alleged in Count IV of the Second Amended Complaint, Defendant has misrepresented material aspects of the performance, efficacy, nature, or central characteristics of the grant-related services they sell, including (a) that consumers are guaranteed or highly likely to receive a \$25,000 grant; (b) that Grant Writers Institute has a 70% success rate in obtaining grant funding for the consumers who purchase the ASI Defendants’ services; and (c) that consumers who purchase the ASI Defendants’ goods and services are likely to receive grant monies. The making of these representations constitutes a deceptive telemarketing practice in violation of Section 310.3(a)(2)(iii) of the Telemarketing Sales Rule (“TSR”), 16 C.F.R. § 310.3(a)(2)(iii).

11. As alleged in Count VII of the Second Amended Complaint, Defendant, in the course of telemarketing grant-related goods and services, has falsely represented that the uses, benefits or characteristics of their goods and services have been proven or otherwise substantiated, specifically (a) that consumers are guaranteed or highly likely to receive a \$25,000 grant; (b) that Grant Writers Institute has a 70% success rate in obtaining grant funding for the consumers who purchase the ASI Defendants' services; and (c) that consumers who purchase the ASI Defendants' goods and services are likely to receive grant monies. The making of these representations is a deceptive act or practice that constitutes a violation of the Kansas Consumer Protection Act, K.S.A. § 50-626(b)(1)(G).
12. As alleged in Count VIII of the Second Amended Complaint, Defendant, in the course of telemarketing grant-related goods and services, charged Kansas consumers' credit cards for the purchase of a book entitled "Professional Grant Writer 'The Definitive Guide to Grant Writing Success' " prior to receiving signed confirmations from these consumers disclosing in full the terms of the transaction. This practice constitutes an unconscionable act or practice in violation of the Kansas Consumer Protection Act, K.S.A. § 50-675(b).
13. As alleged in Count IX of the Second Amended Complaint, Defendant, in the course of telemarketing grant-related goods and services, charged Kansas consumers' credit cards for the purchase of grant-related services

prior to receiving signed confirmations from these consumers that comply with the requirements of K.S.A. § 50-672(b). This practice constitutes an unconscionable act or practice in violation of the Kansas Consumer Protection Act, K.S.A. § 50-675(b).

14. As alleged in Count X of the Second Amended Complaint, Defendant, in the course of telemarketing grant-related goods and services, has caused elder or disabled persons to suffer (a) loss of or encumbrance upon the elder or disabled persons' principal source of income; (b) loss of property set aside for retirement or for personal or family care and maintenance; and/or (c) loss of assets essential to the health and welfare of disabled persons.
15. As alleged in Count XI of the Second Amended Complaint, Defendant, in connection with the advertising, marketing, promotion, offering for sale and sale of grant-related goods and services, has caused a likelihood of confusion or of misunderstanding as to their goods and services and misrepresented the source, sponsorship, approval, certification, affiliation, connection, association, characteristics, uses, or benefits of their goods and services, including (a) that consumers are guaranteed or highly likely to receive a \$25,000 grant; (b) that Grant Writers Institute has a 70% success rate in obtaining grant funding for the consumers who purchase the ASI Defendants' services; (c) that consumers who purchase the ASI Defendants' goods and services are likely to receive grant monies; and (d)

that the advertised grants are related to the U.S. Government. This conduct constitutes multiple, separate deceptive trade practices in violation of Minn. Stat. § 325D.44, subd. 1(2), (3), (5) and (13).

16. As alleged in Count XII of the Second Amended Complaint, Defendant, in connection with the advertising, marketing, promotion, offering for sale and sale of grant-related goods and services, have circulated or placed before the public postcards and other advertisements indicating (a) that consumers are guaranteed or highly likely to receive a \$25,000 grant; (b) that Grant Writers Institute has a 70% success rate in obtaining grant funding for the consumers who purchase the ASI Defendants' services; and (c) that consumers who purchase the ASI Defendants' goods and services are likely to receive grant monies. This conduct constitutes multiple, separate acts of false advertisement in violation of Minn. Stat. § 325F.67.

17. As alleged in Count XIII of the Second Amended Complaint, Defendant, in connection with the sale of grant-related goods and services, has employed misleading statements and/or deceptive practices with the intent that others rely thereon by indicating (a) that consumers are guaranteed or highly likely to receive a \$25,000 grant; (b) that Grant Writers Institute has a 70% success rate in obtaining grant funding for the consumers who purchase the ASI Defendants' services; and (c) that consumers who purchase the ASI Defendants' goods and services are

likely to receive grant monies. This conduct constitutes multiple violations of Minn. Stat. § 325F.69, subd. 1.

18. As alleged in Count XIV of the Second Amended Complaint, Defendant, in connection with the advertising, marketing, promotion, offering for sale and sale of grant-related goods and services, has knowingly engaged in deceptive trade practices, false advertising and/or consumer fraud against senior citizens who are persons 62 years of age or older, or disable people, causing one or more senior citizens or disabled persons to suffer (1) loss or encumbrance of a primary residence, principal employment or source of income; (2) substantial loss of property set aside for retirement or for personal or family care and maintenance; (3) substantial loss of payments received under a pension or retirement plan or a government benefits program; or (4) loss of assets essential to the health or welfare of the senior citizen or disabled person. This conduct constitutes multiple, separate violations of Minn. Stat. § 325F.71, subd. 2.

19. As alleged in Count XV of the Second Amended Complaint, Defendant, in connection with the advertising, marketing, promotion, offering for sale and sale of grant-related goods and services, has engaged in a practice of misrepresentation, including but not limited to misrepresentations (a) that consumers are guaranteed or highly likely to receive a \$25,000 grant; (b) that Grant Writers Institute has a 70% success rate in obtaining grant funding for the consumers who purchase the ASI Defendants' services;

and (c) that consumers who purchase the ASI Defendants' goods and services are likely to receive grant monies; and (d) that it would be rare for consumers who purchase the ASI Defendants' services to not be "matched" with a grant. The making of these representations constitute unfair and deceptive trade practices in violation of N.C. Gen. Stat. § 75-1.1.

20. As alleged in Count XVII of the Second Amended Complaint, Defendant, in connection with the offering for sale or sale of grant research and writing services, made false, misleading, and unsubstantiated representations that Grant Writers Institute has a 70% success rate in obtaining grant funding for the consumers who purchase the ASI Defendants' services. The making of these representations constitutes a deceptive act or practice in violation of Section 2 of the Illinois Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/2).

21. As alleged in Count XVIII of the Second Amended Complaint, Defendant has made false, misleading, and unsubstantiated representations that consumers who purchase the ASI Defendants' goods and services are likely to receive grant monies. The making of these representations constitutes a deceptive act or practice in violation of Section 2 of the Illinois Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/2).

22. Absent a permanent injunction, Defendant is likely to continue to engage in the activities alleged in the Second Amended Complaint or to commit similar violations.
23. Defendant Justin Ely provided telemarketing services to the ASI Defendants, transacting his business with them through three entities (the "Ely Entities"), including Defendant, which Ely controlled as its sole officer.
24. The Ely Entities' total net sales from the conduct alleged in the Second Amended Complaint amounted to \$3,407,262.

#### DEFINITIONS

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

1. "**Asset**" means any legal or equitable interest in, right to, or claim to, any real and personal property, including, but not limited to, "goods," "instruments," "equipment," "fixtures," "general intangibles," "inventory," "checks," "notes" (as these terms are defined in the Uniform Commercial Code), and all chattel, leaseholds, contracts, mail or other deliveries, shares of stock, lists of consumer names, accounts, credits, premises, receivables, funds, reserve funds, and cash, wherever located.
2. "**Assisting others**" includes, but is not limited to, providing any of the following goods or services to another entity: (1) performing customer service functions, including, but not limited to, receiving or responding to consumer complaints; (2) formulating or providing, or arranging for the

formulation or provision of, any promotional material; (3) providing names of, or assisting in the generation of, potential customers; (4) performing promotional or marketing services of any kind; or (5) providing fulfillment services.

3. **“Clear and conspicuous”** statement, or a statement presented **“clearly and conspicuously”** means:

- a. in print communications, the message shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears;
- b. in oral communications, the message shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it;
- c. in communications made through an electronic medium (including but not limited to television, video, radio, and interactive media, including but not limited to the Internet, online services, and software), the message shall be presented simultaneously in both the audio and visual portions of the communication. In any communication presented solely through visual or audio means, the message may be made through the same means in which the communication is presented. In any communication disseminated by means of an interactive electronic medium, including but not

limited to software, the Internet, or online services, a disclosure must be unavoidable and presented prior to the consumer incurring any financial obligation. Any audio message shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. Any visual message shall be of a size and shade, with a degree of contrast to the background against which it appears, and shall appear on the screen for a duration and in a location sufficiently noticeable for an ordinary consumer to read and comprehend it; and

d. regardless of the medium used to disseminate it, the message shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the message shall be used in any communication.

4. **“Credit-related or debt-related goods or services”** means any good or service that is marketed, advertised, offered for sale, or sold to consumers as a method by which consumers may directly or indirectly, establish or obtain any extension of credit or credit device, or any reduction or elimination of debt, including, but not limited to, credit cards, merchandise buying club membership cards that offer an extension of credit, loans, or refinancing; or as a method to restore, repair, or improve derogatory information contained in consumers’ credit reporting files; or as a method to consolidate or liquidate debts. Furthermore, for the

purposes of this Order, “credit-related or debt-related goods and services” shall include: interest rate reduction, credit counseling, debt elimination, debt negotiation, debt settlement, debt consolidation, or debt management goods or services.

5. “**Document**” is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts, Internet sites, Webpages, Websites, electronic correspondence, including e-mail and instant messages, photographs, audio and video recordings, contracts, accounting data, advertisements (including, but not limited to, advertisements placed on the World Wide Web), FTP Logs, Server Access Logs, USENET Newsgroup postings, World Wide Web pages, books, written or printed records, handwritten notes, telephone logs, telephone scripts, receipt books, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, computer records, and other data compilations from which information can be obtained and translated. A draft or non-identical copy is a separate document within the meaning of the term.
6. “**Money-making opportunities**” means any good or service represented to enable consumers or to assist consumers to earn income, or to obtain grants, monetary assistance, scholarships, employment, or business opportunities.

7. **“Negative option feature”** means, in an offer or agreement to sell or provide any product or service, a provision under which the consumer’s silence or failure to take an affirmative action to reject products or services or to cancel the agreement is interpreted by the seller or provider as acceptance of the offer. Offers or agreements with negative option features include, but are not limited to: (i) free or introductory price trial offers in which the consumer receives a product or service for free or at a nominal or introductory price for an initial period and will incur an obligation to pay or pay a greater amount for the product or service if he or she does not take affirmative action to cancel, reject, or return the product or service before the end of that period; (ii) continuity plans in which, subsequent to the consumer’s agreement to the plan, the seller or provider automatically ships products to a consumer unless the consumer notifies the seller or provider within a certain time not to ship the products; and (iii) automatic renewal plans in which the seller or provider automatically renews the agreement and charges the consumer unless the consumer cancels before the renewal.
8. **“Plaintiffs”** means the Federal Trade Commission, and the States of Kansas, Minnesota, North Carolina, and Illinois.
9. **“Representatives”** shall have the same scope as Federal Rule of Civil Procedure 65(d)(2), and means Defendant’s agents, servants, employees, and attorneys, and any other person or entity in active concert or

participation with them who receives actual notice of this Order by personal service or otherwise.

10. **“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, whether or not covered by the Telemarketing Sales Rule, 16 C.F.R. Part 310.

**I.**

**BAN ON MARKETING OF MONEY-MAKING OPPORTUNITIES**

**IT IS THEREFORE ORDERED** that Defendant, whether acting directly or through any entity, corporation, subsidiary, division, affiliate, or other device, is hereby permanently restrained and enjoined from engaging, participating, or assisting others in the advertising, promoting, marketing, offering for sale, sale, or distribution of any Money-making opportunities.

**II.**

**BAN ON TELEMARKETING**

**IT IS FURTHER ORDERED** that Defendant, whether acting directly or through any entity, corporation, subsidiary, division, affiliate, or other device, is hereby permanently restrained and enjoined from engaging, participating or assisting others in Telemarketing, including advertising, marketing, promoting, offering for sale, or sale of any product or service through Telemarketing.

**III.**

**PROHIBITED REPRESENTATIONS**

**IT IS FURTHER ORDERED** that Defendant and its Representatives, whether acting directly or through any entity, corporation, subsidiary, division, affiliate, or other device, in connection with the advertising, marketing, promotion, offering for sale, or sale of any good or service, specifically including but not limited to any credit-related or debt-related good or service, are hereby permanently restrained and enjoined from misrepresenting or assisting others in misrepresenting, expressly or by implication, any material fact, including but not limited to:

- A. Any material aspect of the nature or terms of any refund, cancellation, exchange, or repurchase policy, including, but not limited to, the likelihood of a consumer obtaining a full or partial refund, or the circumstances in which a full or partial refund will be granted to the consumer;
- B. The total costs to purchase, receive, or use, and the quantity of, the good or service;
- C. Any material restriction, limitation, or condition to purchase, receive, or use the good or service;
- D. Any material term, condition, or limitation, of any offer with a negative option feature; and
- E. Any material aspect of the performance, efficacy, nature, or characteristics of the good or service.

**IV.**

**SUBSTANTIATION**

**IT IS FURTHER ORDERED** that Defendant and its Representatives, directly or through any entity, corporation, subsidiary, division, affiliate, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any good or service, in or affecting commerce, are hereby permanently restrained and enjoined from making, or assisting others in making, expressly or by implication, including through the use of a product name, endorsement, depiction, or illustration, any representation about the benefits, performance, or efficacy of such good or service, unless the representation is non-misleading, and, at the time the representation is made, Defendant possesses and relies upon competent and reliable tests, analysis, research, or studies that, when evaluated in an objective manner, are sufficient to substantiate that the representation is true.

**V.**

**REQUIRED DISCLOSURES**

**IT IS FURTHER ORDERED** that Defendant and its Representatives, whether acting directly or through any entity, corporation, subsidiary, division, affiliate, or other device, in connection with the manufacturing, labeling, advertising, promoting, marketing, offering for sale, sale, or distribution of any good or service are hereby permanently enjoined from failing to:

A. Clearly and conspicuously disclose, before consumers are asked to pay money, submit consideration, or reveal billing information:

1. All fees and costs;
2. All material restrictions, limitations, or conditions applicable to the purchase, receipt, or use of the goods or services that are part of the offer (including but not limited to any promotion associated with free goods or services, or goods or services available on a trial basis);
3. All material terms and conditions of any cancellation or refund policy, including but not limited to informing consumers if no cancellations or refunds are permitted; and
4. All material terms and conditions of any offer with a negative option feature, including but not limited to:
  - a. The fact that the customer's account will be charged unless the customer takes affirmative action to avoid the charges;
  - b. The dollar amount of the first payment and when it will be charged, withdrawn, or become due; the dates or frequency (*e.g.*, monthly, quarterly) of all subsequent charges or payment(s); and the dollar amount or range of costs of all subsequent charges or payments;
  - c. When any trial period begins; the length of any trial period; the specific steps and means by which a cancellation request must be submitted; and the date by, or time period within

which, a cancellation request must be received to avoid a charge;

- d. The length of any renewal period; the manner in which a notice not to ship or renew must be submitted; the date by or time period within which a notice not to ship or renew must be received to avoid shipment or renewal (*e.g.*, two weeks after the consumer is advised of an upcoming shipment or renewal); and the telephone number, email address, or street address to which such a notice must be directed; and
- e. All material conditions, limitations, and restrictions on the ability of the consumer to use any good or service that is offered as “free,” “risk-free,” “without obligation,” or “discounted,” or offered using words of similar import denoting or implying the absence of any obligation; and

B. At least thirty (30) days prior to renewing a consumer’s membership, subscription, or agreement to purchase for any good or service (in the case of a membership, subscription, or agreement whose term is six (6) months or longer) and prior to the submission for payment of a consumer’s billing information for such goods or services, send the consumer written confirmation of such renewal, identified in a clear and conspicuous manner on the outside of the envelope, via first class mail, that includes all of the information required by this Section and a clear and conspicuous statement of the procedures by which the consumer can cancel such renewal.

**VI.**

**PROHIBITION ON VIOLATION OF CERTAIN STATE LAWS**

**IT IS FURTHER ORDERED** that Defendant and its Representatives, whether acting directly or through any entity, corporation, subsidiary, division, affiliate, or other device, are hereby permanently restrained and enjoined from violating:

- A. Illinois laws, including the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2 *et seq.*;
- B. Kansas laws, including the Kansas Consumer Protection Act, K.S.A. § 50-623 *et seq.*;
- C. Minnesota laws, including:
  - 1. the Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. §§ 325D.43 – 325D.48;
  - 2. Minn. Stat. §§ 325F.67;
  - 3. the Prevention of Consumer Fraud Act, Minn. Stat. §§ 325F.68 - 325F.70; and
  - 4. Minn. Stat. § 325F.71.; and
- D. North Carolina laws, including the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1, *et seq.*

**VII.**

**CUSTOMER INFORMATION**

**IT IS FURTHER ORDERED** that Defendant and its Representatives, whether acting directly or through any entity, corporation, subsidiary, division, affiliate, or other device, are permanently restrained and enjoined from:

A. 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), of any person which was obtained by any Defendant prior to entry of this Order in connection with the marketing and sale of grant-related goods and services; and

B. failing to dispose of such customer information in all forms in their possession, custody, or control within thirty (30) days after entry of this Order. Disposal shall be by means that protect against unauthorized access to the customer information, such as by burning, pulverizing, or shredding any papers, and by erasing or destroying any electronic media, to ensure that the customer information cannot practicably be read or reconstructed. *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 a law, regulation, or court order.

**VIII.**

**MONETARY JUDGMENT**

**IT IS FURTHER ORDERED** that:

A. Judgment is hereby entered in favor of the Plaintiffs and against Defendant in the amount of three million, four hundred seven thousand, two hundred sixty-two dollars (\$3,407,262) for the payment of equitable monetary relief, including, but not limited to, consumer restitution and/or disgorgement, and for paying any attendant expenses of administration of any redress fund.

B. Any funds paid to the Plaintiffs pursuant to this Section shall be deposited into a fund administered by the Plaintiffs or their designees to be used for equitable relief, including, but not limited to, consumer restitution and any attendant expenses for the administration any redress fund. Defendant will cooperate fully to assist the Plaintiffs in identifying consumers who may be entitled to redress pursuant to this Order. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Plaintiffs may apply funds for any other equitable relief (including consumer information remedies) that they determine to be reasonably related to Defendant's practices alleged in the Second Amended Complaint. Any funds paid to the Commission not used for equitable relief shall be deposited into the U.S. Treasury as disgorgement and/or into each State Co-Plaintiff's treasury fund designated for such deposits. Any funds paid to any State Plaintiff not used for equitable relief may be used by that State Plaintiff to the full extent authorized by that State's laws, including as payment for that State's costs of investigating and litigating

the instant case. Defendant shall have no right to challenge Plaintiffs' choice of remedies under this Section.

C. Defendant relinquishes all dominion, control, and title to the funds paid to the fullest extent permitted by law. Defendant shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise.

D. The facts as alleged in the Second Amended Complaint filed in this action shall be taken as true without further proof in any bankruptcy case or subsequent civil litigation pursued by Plaintiffs to enforce their rights to any payment or money judgment pursuant to this Order, including but not limited to a nondischargeability complaint in any bankruptcy case.

E. Defendant is hereby required, in accordance with 31 U.S.C. § 7701, to furnish to the Commission its taxpayer identifying numbers (social security number or employer identification number), which shall be used for purposes of collecting and reporting on any delinquent amount arising out of Defendant's relationship with the government.

## **IX.**

### **COMPLIANCE MONITORING**

**IT IS FURTHER ORDERED** that, for the purpose of monitoring and investigating compliance with any provision of this Order:

A. Within ten (10) business days of receipt of written notice from a representative of the Commission, Defendant shall submit additional written reports, which are true and accurate and sworn to under penalty of perjury; produce documents

for inspection and copying; appear for deposition; and provide entry during normal business hours to any business location in its possession or direct or indirect control to inspect the business operation;

B. In addition, the Commission is authorized to use all other lawful means, including but not limited to:

1. obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, 45 and 69;
2. having its representatives pose as consumers and suppliers to Defendant, its employees, or any other entity managed or controlled in whole or in part by Defendant, without the necessity of identification or prior notice; and

C. Defendant shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present.

*Provided however*, that nothing 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)).

X.

## COMPLIANCE REPORTING

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

A. For a period of five (5) years from the date of entry of this Order, Defendant shall notify the Commission of any changes in its structure or in the structure of any business entity that it directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Order, including but not limited to: incorporation or other organization; a dissolution, assignment, sale, merger, or other action; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; or a change in the business name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any such change in the business entity about which Defendant learns less than thirty (30) days prior to the date such action is to take place, Defendant shall notify the Commission as soon as is practicable after obtaining such knowledge.

B. One hundred eighty (180) days after the date of entry of this Order and annually thereafter for a period of three (3) years, Defendant shall provide a written report to the FTC, which is true and accurate and sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this Order. This report shall include, but not be limited to:

1. A copy of each acknowledgment of receipt of this Order, obtained pursuant to the Section titled "Distribution of Order;" and

2. Any other changes required to be reported under Subsection A of this Section.

C. Defendant shall notify the Commission of the filing of a bankruptcy petition by it within fifteen (15) days of filing.

D. For the purposes of this Order, Defendant shall, unless otherwise directed by the Commission's authorized representatives, send by overnight courier (not the U.S. Postal Service) all reports and notifications required by this Order to:

Associate Director for Enforcement  
Bureau of Consumer Protection  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

*Re: FTC v. Affiliate Strategies et al., FTC case no. X090073*

*Provided that*, in lieu of overnight courier, Defendant may send such reports or notifications by first-class mail, but only if Defendant contemporaneously sends an electronic version of such report or notification to the Commission at [DEBrief@ftc.gov](mailto:DEBrief@ftc.gov).

E. For purposes of the compliance reporting and monitoring required by this Order, the Commission is authorized to communicate directly with Defendant.

## XI.

### RECORDKEEPING

**IT IS FURTHER ORDERED** that, for a period of eight (8) years from the date of entry of this Order, Defendant, for any business for which it, individually or in concert with others, is the majority owner or directly or indirectly controls, is hereby restrained and enjoined from failing to create and retain the following records:

A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;

B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;

C. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;

D. Complaints and refund requests (whether received directly or indirectly, such as through a third party) and any responses to those complaints or requests;

E. Copies of all sales scripts, training materials, advertisements, or other marketing materials; and

F. All records and documents necessary to demonstrate full compliance with each provision of this Order, including but not limited to, copies of acknowledgments of receipt of this Order required by the Sections titled "Distribution of Order" and "Acknowledgment of Receipt of Order" and all reports submitted to the FTC pursuant to the Section titled "Compliance Reporting."

## XII.

### **DISTRIBUTION OF ORDER**

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

A. Defendant must deliver a copy of this Order to (1) all of its principals, officers, directors, and managers; (2) all of its employees, agents, and representatives who engage in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting." For current personnel, delivery shall be within five (5) days of service of this Order upon Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities. For any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting," delivery shall be at least ten (10) days prior to the change in structure.

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

### **XIII.**

#### **ACKNOWLEDGMENT OF RECEIPT OF ORDER**

**IT IS FURTHER ORDERED** that Defendant, within five (5) business days of receipt of this Order as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Order.

**XIV.**

**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.

**XV.**

**ENTRY OF ORDER**

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

**SO ORDERED**, this 26 day of July, 2011.

s/ Julie A. Robinson

**JULIE A. ROBINSON**  
**UNITED STATES DISTRICT JUDGE**