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13 **UNITED STATES DISTRICT COURT**
DISTRICT OF NEVADA

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15 FEDERAL TRADE COMMISSION,

16 Plaintiff,

17 v.

18 ELECTRONIC PROCESSING
19 SERVICES, INC., a Nevada
Corporation, and

20 DAVID STEWART, individually
21 and as an officer of
Electronic Processing
Services, Inc.,

22 Defendants.

CV-S-02-0500-LRH-RJJ

STIPULATED FINAL
JUDGMENT AND ORDER FOR
PERMANENT INJUNCTION AND
OTHER EQUITABLE RELIEF

23
24 Plaintiff, the Federal Trade Commission ("Commission"),
25 commenced this action on April 8, 2002, by filing its
26 Complaint for Injunctive and Other Equitable Relief
27 ("Complaint") pursuant to Section 13(b) of the Federal Trade
28 Commission Act ("FTC Act"), 15 U.S.C. § 53(b), charging that

1 Defendants Electronic Processing Services, Inc., and David
2 Stewart were engaged in deceptive acts or practices in
3 violation of Section 5 of the FTC Act, 15 U.S.C. § 45, in
4 connection with the advertising, telemarketing, offering for
5 sale, and sale of work-at-home medical billing employment
6 opportunities.

7 The Commission and Defendants, as defined below, hereby
8 stipulate to entry of this Stipulated Final Judgment and Order
9 for Permanent Injunction and Other Equitable Relief ("Order").

10 **NOW THEREFORE**, the Commission and Defendants having
11 requested the Court to enter this Order,

12 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** as follows:

13 **FINDINGS**

14 1. This is an action by the Commission instituted under
15 Sections 5 and 13(b) of the FTC Act, 15 U.S.C. §§ 45 and 53(b). The
16 Complaint seeks permanent injunctive relief against Defendants in
17 connection with the advertising, offering for sale, and sale of work-
18 at-home medical billing employment opportunities, and equitable
19 monetary relief in the form of consumer redress and/or disgorgement.

20 2. This Court has jurisdiction over the subject matter
21 of this action and the parties.

22 3. Venue is proper as to all parties in the District of
23 Nevada.

24 4. The Commission's Complaint states claims upon which
25 relief may be granted against Defendants under Sections 5(a)
26 and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b).

27 5. The Commission has the authority under Section 13(b)
28 of the FTC Act to seek the relief it has requested.

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

4 7. Defendants have entered into this Order freely and
5 without coercion. Defendants further acknowledge that they
6 have read the provisions of this Order and are prepared to
7 abide by them.

8 8. Plaintiff, by and through its counsel, and
9 Defendants have agreed to entry of this Order by the Court,
10 without trial or adjudication of any issue of fact or law, and
11 without any admission of any allegation or offense charged in
12 the complaint.

13 9. The Commission and Defendants stipulate and agree to
14 this Order, without trial or final adjudication of any issue
15 of fact or law, to settle and resolve all matters in dispute
16 between them arising from the Complaint up to the date of
17 entry of this Order.

18 10. Defendants waive all rights to seek judicial review
19 or otherwise challenge or contest the validity of this Order.
20 Defendants further waive and release any claim that either of
21 them may have against the Federal Trade Commission, its
22 employees, agents, or representatives.

23 11. Defendants have agreed that this Order does not entitle
24 Defendants to seek or to obtain attorneys' fees as a prevailing party
25 under the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended,
26 and Defendants further waive any claim that either of them may
27 have under said provision of law. Each settling party shall
28 bear its own costs and attorneys' fees.

1 management of a business venture; (d) providing names of, or
2 assisting in the generation of, potential customers; (e) performing
3 customer service functions, including but not limited to, receiving
4 or responding to consumer complaints; (f) performing marketing or
5 telemarketing services of any kind; or (g) acting as an officer
6 or director of a business entity.

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

9 18. "Defendants" means Electronic Processing Services,
10 Inc., a Nevada corporation, and David Stewart, individually,
11 and as an officer and director of Electronic Processing
12 Services, Inc., and either of them, by whatever names each
13 might be known, whether acting directly or through any person,
14 corporation, affiliate, division, agent, employee, consultant,
15 independent contractor, or other device.

16 19. "Document" is synonymous in meaning and equal in scope to
17 the usage of the term in Federal Rule of Civil Procedure 34(a), and
18 includes writings, drawings, graphs, charts, photographs, audio and
19 video recordings, electronic mail ("e-mail"), computer records, and
20 other data compilations from which information can be obtained and
21 translated, if necessary, through detection devices into reasonably
22 usable form. A draft or non-identical copy is a separate document
23 within the meaning of the term.

24 20. "Material" means likely to affect a person's choice
25 of, or conduct regarding, goods or services.

26 21. "Medical Billing" means any service by which bills or
27 charges for medical services or products or medically related
28 services or products are sent, directly or indirectly, to a patient

1 or third party payor, including but not limited to, insurance
2 companies, on behalf of the physician, doctor or other provider of a
3 medical service or product or medically related service or product.

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

7 23. "Telemarketing" means the advertising, offering for
8 sale, or sale of any item, product, good or service to any
9 person by means of telephone sales presentations, either
10 exclusively or in conjunction with the use of other forms or
11 marketing;

12 24. "Work-At-Home Opportunity" means any program, plan,
13 product, or service represented to enable or assist a
14 participant or purchaser to earn money while working at home.

15 **I. PROHIBITED BUSINESS ACTIVITIES**

16 **IT IS FURTHER ORDERED** that, in connection with the
17 advertising, promotion, offering for sale, sale or
18 distribution of any item, product, good, service, business
19 opportunity, employment opportunity, or Work-At-Home
20 Opportunity, Defendants and their officers, agents, servants,
21 employees, successors and assigns, and any other person or
22 entity through which any of them does business, and any other
23 person or entity in active concert or participation with them
24 who receives actual notice of this Order by personal service
25 or otherwise, are hereby permanently restrained and enjoined
26 from:

27 A. Misrepresenting, expressly or by implication, that
28 they have job openings or work-at-home positions to fill;

1 B. Misrepresenting, expressly or by implication, that
2 work-at-home positions are available in particular geographic
3 areas;

4 C. Misrepresenting, expressly or by implication, that
5 they will furnish consumers with clients or the names and
6 addresses of doctors who are likely to use consumers to
7 process medical claims from home;

8 D. Misrepresenting, expressly or by implication, that
9 they have established relationships with doctors or any other
10 potential employers;

11 E. Misrepresenting, expressly or by implication, that
12 consumers are likely to earn a specific level of earnings
13 processing medical claims;

14 F. Misrepresenting, expressly or by implication, the
15 wage or salary for any job or work-at-home position;

16 G. Misrepresenting, expressly or by implication, that
17 consumers can readily obtain refunds upon request;

18 H. Misrepresenting, expressly or by implication, the
19 terms and conditions of any refund or guarantee policy;

20 I. Failing to disclose in a clear and conspicuous
21 manner, prior to charging a consumer for any good or service,
22 all material terms, conditions, and limitations of any refund
23 or guarantee policy, or any policy of non-refundability;

24 J. Misrepresenting, expressly or by implication, any
25 material fact regarding any item, product, good, or service
26 sold or offered for sale;

27 K. Violating the Telemarketing Sales Rule ("TSR"), 16
28 C.F.R. Part 310, including any amendments thereto; and

1 L. Assisting others who violate any provision of
2 Paragraphs A-K of this Section I.

3 **II. PROHIBITIONS REGARDING CONSUMERS**

4 **IT IS FURTHER ORDERED** that Defendants and their officers,
5 agents, servants, employees, corporations, successors and
6 assigns, and any other person or entity through which any of
7 them does business, and any other person or entity in active
8 concert or participation with them who receives actual notice
9 of this Order by personal service or otherwise, are hereby
10 permanently restrained and enjoined from:

11 A. Selling, renting, leasing, transferring, or
12 otherwise disclosing the name, address, telephone number,
13 Social Security number, credit card number, bank account
14 number, e-mail address, or other identifying information of
15 any person who paid any money to either Defendant, at any time
16 prior to entry of this Order, for any Work-At-Home Opportunity
17 or any good or service related to Medical Billing; *provided,*
18 *however,* that Defendants may disclose such identifying
19 information to a law enforcement agency or as required by any
20 law, regulation, or court order;

21 B. Seeking to collect, collecting, or assigning any
22 right to collect payment, directly or through any third party,
23 for any Work-At-Home Opportunity or any good or service
24 related to Medical Billing, from any customer of Electronic
25 Processing Services, Inc.

26 **III. MONETARY RELIEF**

27 **IT IS FURTHER ORDERED** that:

28 A. Judgment is hereby entered against Defendants,

1 jointly and severally, in the amount of ONE MILLION FIVE
2 HUNDRED SEVENTY-FOUR THOUSAND SIX HUNDRED NINE DOLLARS
3 (\$1,574,609); *provided, however,* that all of this amount
4 except for TWENTY-THREE THOUSAND FOUR HUNDRED DOLLARS
5 (\$23,400) plus any amount paid pursuant to Paragraph B of this
6 Section III, shall be suspended as long as the Court makes no
7 finding, as provided in Section V of this Order, that
8 Defendants have materially misrepresented or omitted the
9 nature, existence or value of any asset.

10 B. Defendants further agree that they shall pay to the
11 Commission any and all funds held in reserve by their credit
12 card processor(s) that are returned to either defendant,
13 within 10 days of the receipt by defendants of such funds, by
14 certified check or other guaranteed funds payable to and
15 delivered to the Commission, or by wire transfer in accord
16 with directions provided by the Commission.

17 C. Any and all funds paid pursuant to Paragraphs A or B
18 of this Section III shall be deposited into a fund
19 administered by the Commission or its agent to be used for
20 equitable relief, including but not limited to consumer
21 redress and any attendant expenses for the administration of
22 any redress fund. In the event that direct redress to
23 consumers is wholly or partially impracticable or funds remain
24 after redress is completed, the Commission may apply any
25 remaining funds for such other equitable relief (including
26 consumer information remedies) as it determines
27 to be reasonably related to the Defendants' practices alleged
28 in the Complaint. Any funds not used for such equitable

1 relief shall be deposited to the Treasury as disgorgement.
2 Defendants shall have no right to challenge the Commission's
3 choice of remedies under this Paragraph.

4 D. Defendants are hereby required, in accordance with
5 31 U.S.C. § 7701, to furnish to the Commission their Social
6 Security numbers and/or taxpayer identification numbers, which
7 shall be used for purposes of collecting and reporting on any
8 delinquent amount arising out of this Order;

9 E. Defendants further agree that the facts as alleged
10 in the Complaint shall be taken as true in the event of any
11 subsequent litigation to enforce this Order or to collect
12 amounts due pursuant to this Order, including but not limited
13 to a nondischargeability complaint in any bankruptcy
14 proceeding.

15 F. The judgment entered pursuant to Paragraph A of this
16 Section III is equitable monetary relief, solely remedial in
17 nature, and not a fine, penalty, punitive assessment or
18 forfeiture.

19 IV. ASSET FREEZE

20 **IT IS FURTHER ORDERED** that the freeze against the assets
21 of David Stewart and Electronic Processing Services, Inc.,
22 pursuant to the Stipulated Preliminary Injunction entered by
23 this Court on May 17, 2002, shall be lifted upon entry of this
24 Order.

25 V. RIGHT TO REOPEN

26 **IT IS FURTHER ORDERED** that, within five (5) business days
27 after entry of this Order, Defendants shall submit to the
28 Commission two truthful sworn statements, in the forms shown

1 on Appendices A and B, that shall acknowledge receipt of this
2 Order and shall reaffirm and attest to the truthfulness,
3 accuracy and completeness of the financial statements
4 submitted to the Commission by Defendants, namely: (A) that of
5 Defendant Electronic Processing Services, Inc., dated May 2,
6 2002; and (B) that of Defendant David Stewart, dated May 2,
7 2002, as supplemented on May 10, 2002 and July 20, 2002.

8 The Commission's agreement to this Order is expressly
9 premised on the truthfulness, accuracy and completeness of
10 such financial statements. If, upon motion by the Commission,
11 the Court finds that any such financial statement contains any
12 material misrepresentation or omission, the suspended judgment
13 entered in Paragraph A of Section III of this Order, less any
14 funds paid by Defendants pursuant to paragraphs A and B of
15 Section III, shall become immediately due and payable by
16 Defendants, and interest computed at the rate prescribed under
17 28 U.S.C. § 1961, as amended, shall immediately begin to
18 accrue on the unpaid balance; *provided, however,* that in all
19 other respects this Order shall remain in full force and
20 effect unless otherwise ordered by the Court; and, *provided*
21 *further,* that proceedings instituted under this provision
22 would be in addition to, and not in lieu of, any other civil
23 or criminal remedies as may be provided by law, including but
24 not limited to contempt proceedings, or any other proceedings
25 that the Commission or the United States may initiate to
26 enforce this Order. For purposes of this Paragraph,
27 Defendants waive any right to contest any of the allegations
28 in the Complaint.

1 **VI. RECORD KEEPING PROVISIONS**

2 **IT IS FURTHER ORDERED** that, for a period of five (5)
3 years from the date of entry of this Order, in connection with
4 any business where either Defendant is the majority owner of
5 the business or directly or indirectly manages or controls the
6 business, Defendants and their officers, agents, servants,
7 employees, corporations, successors and assigns, and those
8 persons in active concert or participation with them who
9 receive actual notice of this Order by personal service or
10 otherwise, are hereby restrained and enjoined from failing to
11 create and retain the following records:

12 A. Books, records or accounts that, in reasonable
13 detail, accurately and fairly reflect the cost of goods or
14 services sold, revenues generated, and the disbursement of
15 such revenues;

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

22 C. Records containing the names, addresses, phone
23 numbers, dollar amounts paid, quantity of items or services
24 purchased, and description of items or services purchased, for
25 all consumers to whom such business has sold, invoiced or
26 shipped any goods or services, to the extent such information
27 is obtained in the ordinary course of business;

28 D. Records that include and reflect, for every consumer

1 complaint or refund request received directly or indirectly or
2 through any third party: (a) the consumer's name, address,
3 telephone number and the dollar amount paid by the consumer;
4 (b) the written complaint or refund request, if any, and the
5 date of the complaint or refund request; (c) the basis of the
6 complaint, including the name of any salesperson complained
7 against, and the nature and result of any investigation
8 conducted concerning any complaint; (d) each response and the
9 date of the response; (e) any final resolution and the date of
10 the resolution; and (f) in the event of a denial of a refund
11 request, the reason for the denial; and

12 E. Copies of all sales scripts, training materials,
13 advertisements, or other marketing materials utilized.

14 **VII. AUTHORITY TO MONITOR COMPLIANCE**

15 **IT IS FURTHER ORDERED** that the Commission is authorized
16 to monitor Defendants' compliance with this Order by all
17 lawful means, including but not limited to the following
18 means:

19 A. The Commission is authorized, without further leave
20 of Court, to obtain discovery from any person in the manner
21 provided by Chapter V of the Federal Rules of Civil Procedure,
22 Fed. R. Civ. P. 26 through 37, including the use of compulsory
23 process pursuant to Fed. R. Civ. P. 45, for the purpose of
24 monitoring and investigating Defendants' compliance with any
25 provision of this Order;

26 B. The Commission is authorized to use representatives
27 posing as consumers and suppliers to Defendants, their
28 employees, or any other entity managed or controlled in whole

1 or in part by either Defendant, without the necessity of
2 identification or prior notice;

3 C. Nothing in this Order shall limit the Commission's
4 lawful use of compulsory process, pursuant to Sections 9 and
5 20 of the FTC Act, 15 U.S.C. §§ 49 and 57b-1, to investigate
6 whether either Defendant has violated any provision of this
7 Order or Section 5 of the FTC Act, 15 U.S.C. § 45.

8 **VIII. ACCESS TO BUSINESS PREMISES**

9 **IT IS FURTHER ORDERED** that, for a period of five (5)
10 years from the date of entry of this Order, for the purpose of
11 further determining compliance with this Order, Defendants
12 shall permit representatives of the Commission, within three
13 (3) business days of receipt of written notice from the
14 Commission:

15 A. Access during normal business hours to any office,
16 or facility storing documents, of any business where (1)
17 either Defendant is the majority owner of the business or
18 directly or indirectly manages or controls the business, and
19 where (2) the business is engaged in telemarketing, or in
20 advertising, offering for sale, or sale of any Work-At-Home
21 Opportunity or any good or service related to Medical Billing,
22 or in assisting others engaged in said activities. In
23 providing such access, the Defendant shall permit
24 representatives of the Commission to inspect and copy all
25 documents relevant to any matter contained in this Order; and
26 shall permit Commission representatives to remove documents
27 relevant to any matter contained in this Order for a period
28 not to exceed five (5) business days so that the documents may

1 be inspected, inventoried, and copied. *Provided* that, upon
2 application of the Commission and for good cause shown, the
3 Court may enter an *ex parte* order granting immediate access to
4 either Defendant's business premises for the purposes of
5 inspecting and copying all documents relevant to any matter
6 contained in this Order.

7 B. To interview the officers, directors, and employees,
8 including all personnel involved in responding to consumer
9 complaints or inquiries, and all sales personnel, whether
10 designated as employees, consultants, independent contractors
11 or otherwise, of any business to which Paragraph A of this
12 Section VIII applies, concerning matters relating to
13 compliance with the terms of this Order. The person
14 interviewed may have counsel present.

15 **IX. DISTRIBUTION OF ORDER BY DEFENDANTS**

16 **IT IS FURTHER ORDERED** that, for a period of five (5)
17 years from the date of entry of this Order, Defendants shall:

18 A. Provide a copy of this Order to, and obtain a signed
19 and dated acknowledgment of receipt of same from, each officer
20 or director, each individual serving in a management capacity,
21 all personnel involved in responding to consumer complaints or
22 inquiries, and all sales personnel, whether designated as
23 employees, consultants, independent contractors or otherwise,
24 immediately upon employing or retaining any such persons, for
25 any business where (1) either Defendant is the majority owner
26 of the business or directly or indirectly manages or controls
27 the business, and where (2) the business is engaged in
28 telemarketing, or in advertising, offering for sale, or sale

1 of any Work-At-Home Opportunity or any good or service related
2 to Medical Billing, or in assisting others engaged in said
3 activities; and

4 B. Maintain for a period of three (3) years after
5 creation, and upon reasonable notice, make available to
6 representatives of the Commission, the original signed and
7 dated acknowledgments of the receipt of copies of this Order,
8 as required in Paragraph A of this Section IX.

9 **X. COMPLIANCE REPORTING BY DEFENDANTS**

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

12 A. For a period of five (5) years from the date of
13 entry of this Order, each Defendant shall notify the
14 Commission of the following: (1) any changes in Defendant's
15 residence, mailing address, and telephone numbers, within ten
16 (10) calendar days of the date of such change; and (2) any
17 changes in Defendant's employment status (including self-
18 employment) within ten (10) calendar days of such change.
19 Such notice shall include the name and address of each
20 business that Defendant is affiliated with or employed by, a
21 statement of the nature of the business, and a statement of
22 Defendant's duties and responsibilities in connection with the
23 business or employment; and (3) any proposed change in the
24 structure of Defendant Electronic Processing Services, Inc.,
25 or any business entity owned or controlled by Defendant David
26 Stewart, such as creation, incorporation, dissolution,
27 assignment, sale, merger, proposed filing of a bankruptcy
28 petition, change in the corporate name or address, creation or

1 dissolution of subsidiaries or affiliates, or any other change
2 that may affect compliance obligations arising out of this
3 Order, thirty (30) calendar days prior to the effective date
4 of any proposed change, or as soon as possible after Defendant
5 learns of the proposed change;

6 B. One hundred eighty (180) calendar days after the
7 date of entry of this Order, each Defendant shall submit a
8 written report to the Commission, sworn to under penalty of
9 perjury, setting forth in detail the manner and form in which
10 each has complied and is complying with this Order. This
11 report shall include but not be limited to:

12 1. Defendant's then current residence address and
13 telephone number;

14 2. Defendant's then current employment, business
15 address and telephone number, a description of the business
16 activities of each of Defendant's employers, and Defendant's
17 title and responsibilities for each such employer;

18 3. A copy of each acknowledgment of receipt of this
19 Order obtained pursuant to Paragraph A of Section IX of this
20 Order; and

21 4. A statement describing the manner in which
22 Defendant has complied with and is complying with this Order;

23 C. For a period of five (5) years from the date of
24 entry of this Order, upon written request by a representative
25 of the Commission, Defendants shall submit additional written
26 reports (under oath, if requested) and produce documents on
27 fifteen (15) calendar days' notice with respect to any conduct
28 subject to this Order;

1 D. For the purposes of this Order, Defendants shall,
2 unless otherwise directed by the Commission's authorized
3 representatives, mail all written communications to the
4 Commission to:

5 Regional Director
6 Federal Trade Commission
7 901 Market Street, Suite 570
8 San Francisco, CA 94103
9 Re: FTC v. Electronic Processing Services

10 E. For the purposes of this Section X, "employment"
11 includes the performance of services as an employee,
12 consultant, or independent contractor; and "employer" includes
13 any individual or entity for whom either Defendant performs
14 services as an employee, consultant, or independent
15 contractor;

16 F. For purposes of the compliance reporting required by
17 this Section X, the Commission is authorized to communicate
18 directly with Defendants.

19 **XI. RETENTION OF JURISDICTION**

20 **IT IS FURTHER ORDERED** that this Court shall retain
21 jurisdiction over this matter and Defendants for purposes of
22 the construction, modification, and enforcement of this Order.

23 **XII. ENTRY OF THIS FINAL JUDGMENT**

24 **IT IS FURTHER ORDERED**, pursuant to Federal Rule of Civil
25 Procedure 54(b), that there is no just reason for delay and
26 the
27 Clerk of Court immediately shall enter this Order as a final
28 judgment as to Defendants Electronic Processing Services,
Inc., and David Stewart.

IT IS SO ORDERED.

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UNITED STATES DISTRICT JUDGE

Dated: _____

SO STIPULATED:

FEDERAL TRADE COMMISSION

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Attorneys for Plaintiff FTC

Dated: _____,
2002

DEFENDANTS

David Stewart
Defendant
Individually and on behalf
of
Defendant Electronic
Processing
Services, Inc.

Dated: _____,
2002