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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

BUSINESS RECOVERY SERVICES, LLC
a limited liability company, and

BRIAN HESSLER,
Individually and as owner, officer, or
manager of Business Recovery
Services, LLC,

Defendants.

No. CV 11-0390-PHX-JAT

**DEFAULT JUDGMENT AND ORDER
FOR PERMANENT INJUNCTION AS
TO DEFENDANT BUSINESS
RECOVERY SERVICES, LLC**

Plaintiff, the United States of America, commenced this civil action on March 1, 2011, pursuant to the Federal Trade Commission Act and the Telemarketing Sales Rule to obtain preliminary and permanent injunctive and other equitable relief for Business Recovery Services, LLC and Brian Hessler’s (collectively, “Defendants”) violations of 15 U.S.C. § 45(a), 16 C.F.R §§ 310.4(a)(3) and 310.3(a)(2)(iii), in connection with the

1 marketing and sale of recovery goods and services. *See* Doc. #1. Business Recovery
2 Services, LLC (“Defaulting Defendant”) was served on March 2, 2011, and filed an
3 answer on March 28, 2011. *See Docs. #7 & 16.* The Defaulting Defendant was
4 represented by counsel, and it fully participated in this lawsuit, including filing motions,
5 opposing motions filed by the Government, and participating in discovery.
6

7
8 On September 5, 2012, Business Recovery Services’ attorneys filed a motion to
9 withdraw from their representation of both Defendants. That motion was granted on
10 September 26, 2012. The Defaulting Defendant was ordered to obtain counsel by
11 October 11, 2012. *See* Doc. #194. The Defaulting Defendant did not obtain counsel by
12 that deadline, and, as of the filing of this motion, no attorney has entered an appearance
13 on behalf of the corporation.
14

15
16 Plaintiff filed a motion asking that the Court strike the Defaulting Defendant’s
17 answer. *See* Doc. #199. That motion was granted on March 6, 2013. *See* Doc. #206. In
18 the Court’s March 6, 2013 Order, the Court stated that “Plaintiff may move for entry of
19 default against BRS within 60 days. Plaintiff may move for default judgment against
20 BRS within 90 days.” The Government subsequently petitioned for entry of default, and
21 the Clerk of Court entered default against Business Recovery Services on April 4, 2013.
22
23

24 The United States, now having filed its Motion for Entry of Default Judgment
25 Against Defendant Business Recovery Services, LLC, and the Court having considered
26

1 the Government's motion, and the entire record in this matter, the Government's motion
2 (Doc. 221) is hereby granted; there being no just reason for delay, **IT IS HEREBY**
3 **ORDERED, ADJUDGED AND DECREED** against Defendant Business Recovery
4 Services LLC (only) as follows:
5

6 **FINDINGS**

- 7
- 8 1. This Court has jurisdiction over the subject matter of this case and jurisdiction
9 over all parties pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and 15
10 U.S.C. §§ 45(m)(1)(A), 53(b), 56(a), and 57b.
 - 11 2. Venue in the District of Arizona is proper under 28 U.S.C. §§ 1391(b)-(c) and
12 1395(a), and 15 U.S.C. § 53(b).
 - 13 3. The acts and practices of Defendants were and are in or affecting commerce, as
14 defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
 - 15 4. The Complaint states a claim upon which relief can be granted under Sections
16 5(a), 5(m)(1)(A), 13(b), 16(a), and 19 of the Federal Trade Commission Act
17 ("FTC Act"), 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), 56(a), and 57b, and Section
18 6 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (the
19 "Telemarketing Act"), 15 U.S.C. § 6105, and the Federal Trade Commission's
20 Telemarketing Sales Rule (the "TSR" or the "Rule"), 16 C.F.R. Part 310, as
21 amended, and the Plaintiff has the authority to seek the relief it has requested.
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- 1 5. Counsel for the Defaulting Defendant withdrew on September 26, 2012.
- 2 6. Despite being ordered to do so, the Defaulting Defendant has failed to secure
3 replacement counsel, and no attorney has entered an appearance on its behalf.
4
- 5 7. The Government filed a motion asking that the Court strike Business Recovery
6 Services' answer, and that motion was granted on March 6, 2013.
7
- 8 8. The Government subsequently petitioned for entry of default, and the Clerk of
9 Court entered default against Business Recovery Services on April 4, 2013.
- 10 9. Because of Business Recovery Services' default, the allegations in the Complaint
11 filed in this action are taken as true.
12
- 13 10. As alleged in Count I of the Complaint, the Defaulting Defendant requested and
14 received payment of a fee from a person for goods represented to recover or
15 otherwise assist in the return of money paid by that person in a previous
16 telemarketing transaction, without waiting seven (7) business days after such
17 money is delivered to that person. This conduct violated the Telemarketing Sales
18 Rule. *See* 16 C.F.R. 310.4(a)(3).
19
- 20
21 11. As alleged in Count II of the Complaint, the Defaulting Defendant,
22 misrepresented, directly and by implication, material aspects of the performance,
23 efficacy, nature, and central characteristics of the recovery goods and services that
24 are the subject of their sales offer, including that consumers who purchase and use
25

1 Defendant's do-it-yourself recovery kits will recover or are highly likely to
2 recover a substantial portion of monies that the consumers previously paid to
3 third-party business opportunity and work-at-home ventures. This conduct
4 violated the Telemarketing Sales Rule. *See* 16 C.F.R. § 310.3(a)(2)(iii).
5

6 12. As alleged in Count III of the Complaint, the Defaulting Defendant, represented,
7 directly and indirectly, expressly and by implication, that consumers who purchase
8 and use Defendant's do-it-yourself recovery kits will recover or are highly likely
9 to recover a substantial portion of monies that the consumers previously paid to
10 third-party business opportunity and work-at-home ventures. These
11 representations were false, misleading, and were not substantiated at the time they
12 were made. This conduct violated the Federal Trade Commission Act. *See* 15
13 U.S.C. § 45(a).
14
15

16
17 13. Business Recovery Services has caused consumer injury in the amount of
18 \$5,283,658.
19

20 14. The Court finds that, absent a permanent injunction, the Defaulting Defendant is
21 likely to continue to engage in the activities alleged in the Complaint.

22 15. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to issue
23 injunctive and other relief against violations of the FTC Act and, in the exercise of
24 its equitable jurisdiction, to order restitution and the disgorgement of profits
25

1 resulting from the Defaulting Defendant's unlawful acts or practices, and issue
2 other ancillary equitable relief.

3
4 16. This Court is persuaded that the danger of future violations by Business Recovery
5 Services justifies the issuance of injunctive relief. Specifically, it is proper in this
6 case to issue a permanent injunction that (a) permanently bans the Defaulting
7 Defendant from selling recovery goods or services or assisting others who do so;
8 (b) prohibits the Defaulting Defendant from making misrepresentations in the sale
9 of any goods or services; and (c) provides such other ancillary relief as is
10 necessary to assist the United States and the Federal Trade Commission in
11 monitoring the Defaulting Defendant's compliance with such a permanent
12 injunction.

13
14
15 17. It is proper in this case to enter an equitable monetary judgment against the
16 Defaulting Defendant for its violations of Section 5 of the FTC Act and for its
17 violations of the Telemarketing Sales Rule. The Government is entitled to
18 judgment against Business Recovery Services in the amount of \$5,283,658, the
19 injury caused to consumers by it, even though this amount may exceed its unjust
20 enrichment.

21
22
23 18. This Order is in addition to, and not in lieu of, any other civil or criminal remedies
24 that may be provided by law.
25

DEFINITIONS

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

- A. **“And”** and **“or”** shall be understood to have both conjunctive and disjunctive meanings.
- B. **“Asset”** means any legal or equitable interest in, right to, or claim to, any real, personal, or intellectual property including, but not limited to, chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, contracts, mail or other deliveries, shares or stock, securities, inventory, checks, notes, accounts, credits, receivables (as those items are defined in the Uniform Commercial Code), lists of consumer names, accounts, credits, premises, cash, trusts, including but not limited to asset protection trusts, and reserve funds or other accounts associated with any payments processed on behalf of any Defendant, including but not limited to reserve funds held by a payment processor, credit card processor, or bank.
- C. **“Assisting others”** includes but is not limited to: (a) performing customer service functions, including but not limited to receiving or responding to consumer complaints; (b) developing or providing or arranging for the development or provision of sales scripts and other marketing materials; (c) providing names of, or arranging for the provision of names, of potential customers; (d) performing

1 marketing services of any kind; or (e) providing any other service to a third party
2 that could result in payment such as a salary, fee, or commission, whether or not
3 there is an employment relationship between Defendant Hessler and third parties.
4

5 D. **“Defaulting Defendant”** means Business Recovery Services, LLC, also doing
6 business as Home Based Business Consulting Services, and their successors and
7 assigns.
8

9 E. **“Defendants”** means the Defendant Hessler and the Defaulting Defendant,
10 individually, collectively, or in any combination.
11

12 F. **“Defendant Hessler”** means Brian Hessler.

13 G. **“Material”** means likely to affect a person’s choice of, or conduct regarding,
14 goods or services.
15

16 H. **“Person”** means any individual, group, unincorporated association, limited or
17 general partnership, corporation, or other business entity.

18 I. **“Recovery Goods and Services”** means any business activity represented to
19 recover or otherwise assist in the return of money or any other item of value paid
20 for by, or promised to, a person in a previous transaction.
21

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

PERMANENT BAN ON THE SALE OF RECOVERY GOODS AND SERVICES

I. IT IS THEREFORE ORDERED that the Defaulting Defendant, Business Recovery Services, whether acting directly or through any person, business entity, trust, corporation, partnership, limited liability company, subsidiary, division, website, or other device, is hereby permanently restrained and enjoined from selling recovery goods and services, or assisting others engaged in the sale of recovery goods and services.

**PROHIBITION AGAINST MAKING MISREPRESENTATIONS
RELATING TO ANY GOOD OR SERVICE**

II. IT IS FURTHER ORDERED that the Defaulting Defendant and its officers, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service, facsimile transmission, email, or otherwise, whether acting directly or indirectly, in connection with the advertising, promoting, marketing, offering for sale, selling, or distributing of any 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 performance, efficacy, nature, or central characteristics of the good or service;

- 1 B. Any material aspect of the nature or terms of any refund, cancellation, exchange,
2 or repurchase policy for the goods and services;
3
4 C. That Defendants or any other person is affiliated with, endorsed or approved by, or
5 otherwise connected to any other person; government entity; public; non-profit, or
6 other non-commercial program; or any other program;
7
8 D. The total cost to purchase, receive, or use the goods or services;
9
10 E. Falsely representing, in any manner, directly or by implication, any fact material
11 to a consumer's decision (1) to purchase any item, product, good, service, or
12 interest of any kind; (2) to donate to charity; or (3) to enter a contest for a prize;
13 and
14 F. Making a false or misleading statement to induce any person to pay for goods or
15 services.
16

17 **CUSTOMER INFORMATION**

18
19 **III. IT IS FURTHER ORDERED** that the Defaulting Defendant and its officers,
20 agents, servants, employees, and attorneys, and those persons or entities in active concert
21 or participation with him who receive actual notice of this Order by personal service or
22 otherwise, are permanently restrained and enjoined from directly or indirectly:
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1 A. Failing to provide sufficient customer information to enable the Commission to
2 efficiently administer consumer redress. If a representative of the Commission requests
3 in writing any information related to redress, the Defaulting Defendant must provide it, in
4 the form prescribed by the Commission, within 14 days.

6 B. Disclosing, using, or benefitting from customer information, including the name,
7 address, telephone number, email address, social security number, other identifying
8 information, or any data that enables access to a customer's account (including a credit
9 card, bank account, or other financial account), that the Defaulting Defendant obtained
10 prior to entry of this Order; and
11

13 C. Failing to dispose of such customer information in all forms in their possession
14 upon receipt of written direction to do so from a representative of the Commission.
15 Disposal must be by means that protect against unauthorized access to the customer
16 information, such as by burning, pulverizing, or shredding any papers, and by erasing or
17 destroying any electronic media, to ensure that the customer information cannot
18 practicably be read or reconstructed.
19
20

21 Provided, however, that customer information need not be disposed of, and may
22 be disclosed, to the extent requested by a government agency or required by law,
23 regulation, or court order.
24

MONETARY JUDGMENT AND PARTIAL SUSPENSION

IV. IT IS FURTHER ORDERED that:

- A. Judgment is hereby entered against the Defaulting Defendant, for equitable monetary relief, pursuant to Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, in the amount of five million, two hundred and eighty three thousand, six hundred and fifty eight dollars (\$5,283,658), with post-judgment interest at the legal rate. The monetary judgment set forth in this Section is enforceable against any asset owned by, on behalf of, for the benefit of, or in trust by or for, the Defaulting Defendant.
- B. Any funds received by the Plaintiff pursuant to this Section shall 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 Complaint. Any money not used for such equitable relief is to be deposited to the U.S. Treasury as disgorgement. The Defaulting Defendant has no right to

1 challenge any actions the Commission or its representatives may take pursuant to
2 this Subsection.

3
4 C. The Defaulting Defendant relinquishes all dominion, control, and title to the assets
5 surrendered or paid to the fullest extent permitted by law. The Defaulting
6 Defendant shall make no claim to or demand for return of these assets, directly or
7 indirectly, through counsel or otherwise.
8

9 D. The judgment entered pursuant to this Section is equitable monetary relief, solely
10 remedial and restitutionary in nature, and not a fine, penalty, punitive assessment,
11 or forfeiture.
12

13 E. Upon request, the Defaulting Defendant is hereby required, in accordance with 31
14 U.S.C. § 7701, to furnish the Federal Trade Commission its tax identification
15 number, which shall be used for purposes of collecting and reporting on any
16 delinquent amount arising out of this Order.
17

18 F. Pursuant to Section 604(a)(1) of the Fair Credit Reporting Act, 15 U.S.C. §
19 1681b(a)(1), any consumer reporting agency may furnish a consumer report
20 concerning the Defaulting Defendant to the Federal Trade Commission, which
21 shall be used for purposes of collecting and reporting on any delinquent amount
22 arising out of this Order.
23
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ORDER ACKNOWLEDGMENTS

V. IT IS FURTHER ORDERED that the Defaulting Defendant obtain acknowledgments of receipt of this Order:

A. The Defaulting Defendant, within seven (7) days of the entry of this Order, must submit to the Federal Trade Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.

B. For 5 years after entry of this Order, the Defaulting Defendant must deliver a copy of this Order to: (1) all principals, officers, directors, managers, and members; (2) all employees, agents, and representatives who participate in marketing or advertising any product or service on websites or through telemarketing; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within seven (7) days of entry of this Order for current personnel. To all others, delivery must occur before they assume their responsibilities.

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

COMPLIANCE REPORTING

VI. IT IS FURTHER ORDERED that the Defaulting Defendant make timely submissions to the Federal Trade Commission:

A. 180 days after entry of this Order, the Defaulting Defendant must submit a compliance report, sworn under penalty of perjury. The Defaulting Defendant must: (a) designate at least one telephone number and an email, physical, and postal address as points of contact, which representatives of Plaintiff and the Federal Trade Commission may use to communicate with the Defaulting Defendant; (b) identify all of the Defaulting Defendant businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the products and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant; (d) describe in detail whether and how the Defaulting Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Federal Trade Commission.

B. For 15 years following entry of this Order, Defaulting Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following: (a) any designated point of contact; and (b) the structure of the

1 Defaulting Defendant or any entity that the Defaulting Defendant has any
2 ownership interest in or directly or indirectly controls that may affect compliance
3 obligations arising under this Order, including: creation, merger, sale, or
4 dissolution of the entity or any subsidiary, parent, or affiliate that engages in any
5 acts or practices subject to this Order.
6

7
8 C. The Defaulting Defendant must submit to the Federal Trade Commission notice of
9 the filing of any bankruptcy petition, insolvency proceeding, or any similar
10 proceeding by or against such Defendant within 14 days of its filing.
11

12 D. Any submission to the Federal Trade Commission required by this Order to be
13 sworn under penalty of perjury must be true and accurate and comply with 28
14 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under
15 the laws of the United States of America that the foregoing is true and correct.
16 Executed on: _____” and supply the date, signatory’s full name, title (if
17 applicable), and signature.
18

19
20 E. Unless otherwise directed by a Federal Trade Commission representative in
21 writing, all submissions to the Federal Trade Commission pursuant to this Order
22 must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S.
23 Postal Service) to:
24

25 Associate Director for Enforcement
26

1 Bureau of Consumer Protection
2 Federal Trade Commission
3 600 Pennsylvania Avenue NW
4 Washington, DC 20580.

5 The subject line must begin: United States v. Business Recovery Services, File
6 No. 1123009.

7
8 **RECORDKEEPING**

9 **VII. IT IS FURTHER ORDERED** that the Defaulting Defendant must create certain
10 records for 15 years after entry of the Order, and retain each such record for 5 years.
11

12 Specifically, the Defaulting Defendant must maintain the following records:

- 13 A. Accounting records showing the revenues from all goods or services sold, all costs
14 incurred in generating those revenues, and the resulting net profit or loss;
15
16 B. Personnel records showing, for each person providing services, whether as an
17 employee or otherwise, that person's: name, addresses, and telephone numbers;
18 job title or position; dates of service; and, if applicable, the reason for termination;
19
20 C. Complaints and refund requests, whether received directly or indirectly, such as
21 through a third party, and any response;
22
23 D. Copies of all sales scripts, training materials, advertisements, or other marketing
24 materials; and
25

1 E. All records necessary to demonstrate full compliance with each provision of this
2 Order, including all submissions to the Federal Trade Commission.
3

4 **COMPLIANCE MONITORING**

5 **VIII. IT IS FURTHER ORDERED** that, for the purpose of monitoring the Defaulting
6 Defendant's compliance with this Order:
7

8 A. Within fourteen (14) days of receipt of a written request from a representative of
9 Plaintiff or the Federal Trade Commission, the Defaulting Defendant must: submit
10 additional compliance reports or other requested information, which must be
11 sworn under penalty of perjury; appear for depositions; and produce documents,
12 for inspection and copying. The Federal Trade Commission and Plaintiff are also
13 authorized to obtain discovery, without further leave of court, using any of the
14 procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including
15 telephonic depositions), 31, 33, 34, 36, 45, and 69.
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19 B. For matters concerning this Order, Plaintiff and the Federal Trade Commission are
20 authorized to communicate directly with the Defaulting Defendant. The
21 Defaulting Defendant must permit representatives of the Plaintiff and the Federal
22 Trade Commission to interview any employee or other person affiliated with any
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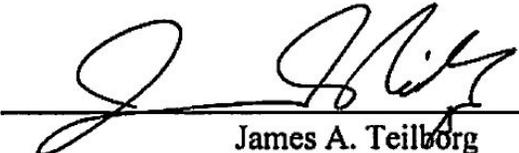
Defendant who has agreed to such an interview. The person interviewed may have counsel present.

C. Plaintiff and the Federal Trade Commission may use all other lawful means, including posing, through its representatives, as consumers, suppliers, or other individuals or entities, to Defendants or any individual or entity affiliated with Defendants, without the necessity of identification or prior notice. Nothing in this Order limits the Plaintiff and the Federal Trade Commission’s lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

RETENTION OF JURISDICTION

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

Dated this 27th day of September, 2013.



James A. Teilborg
Senior United States District Judge