

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

FEDERAL TRADE COMMISSION,)	
)	CASE NO.: 6:00CV1051ORL-19-C
Plaintiff,)	
)	
v.)	
)	
EPIC RESORTS, LLC, A Delaware)	
Company; EPIC TRAVEL, LLC, A)	
Delaware Company, Thomas Flatley and)	
Scott Egelkamp,)	
)	
Defendants.)	

**STIPULATED FINAL JUDGMENT AND ORDER FOR PERMANENT
INJUNCTION AND CONSUMER REDRESS**

This matter comes before the Court on Plaintiff, Federal Trade Commission’s Amended Complaint for a permanent injunction and other relief 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, 15 U.S.C. § 6101 *et seq.*; and the Truth in Lending Act (“TILA”), 15 U.S.C. § 1601 *et seq.*

Plaintiff Federal Trade Commission (“FTC” or “Commission”) and Defendants Epic Resorts, LLC, Epic Travel, LLC, and Thomas Flatley, advised by counsel, have agreed to entry of this Stipulated Final Judgment and Order for Permanent Injunction and Consumer Redress (“Order”) by the Court to resolve all matters in dispute in this action. The FTC and the Defendants have consented to entry of this Order without trial or adjudication of any issue of law or fact herein. Defendants deny any wrongdoing or liability.

FINDINGS

1. This Court has jurisdiction over the subject matter of this case and over Defendants Epic Resorts, LLC, Epic Travel, LLC and Thomas Flatley.
2. The Amended Complaint states claims upon which relief may be granted against Defendants Epic Resorts, LLC, Epic Travel, LLC and Thomas Flatley under Sections 5, 13(b) and 19 of the FTC Act, as amended, 15 U.S.C. §§ 45, 53(b) and 57b; the FTC's Telemarketing Sales Rule, 16 C.F.R. Part 310; TILA, 15 U.S.C. § 1601 *et seq.*; and Section 226.12(e) of Regulation Z, 12 C.F.R. § 226.12(e), which implements TILA.
3. Entry of this Order is in the public interest.
4. Defendants Epic Resorts, LLC, Epic Travel, LLC, and Thomas Flatley enter into this Order freely and without coercion, and acknowledge that they understand the provisions of this Order and are prepared to abide by them.
5. Venue in this district is proper under 28 U.S.C. § 1391(b) and (c) and 15 U.S.C. § 53(b).
6. The acts and practices of Defendants Epic Resorts, LLC, Epic Travel, LLC and Thomas Flatley were or are in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
7. The parties hereto consent to the entry of this Order in the interests of compromising and settling this litigation. This Order does not constitute an admission by Defendants of any liability or wrongful conduct, nor shall this Order be constituted or be interpreted in any way as an admission by Defendants that they have engaged in violations of the FTC Act, the Telemarketing and Consumer Fraud and Abuse Prevention Act, the Telemarketing Sales Rule or TILA, or any wrongful conduct alleged in the

Complaint, and, in fact, Defendants deny the same. This Order is entered by Defendants only to avoid the cost and expense of further litigation. The parties hereto acknowledge the applicability of Federal Rule of Evidence 408 to the negotiations and execution of this Order, and incorporate by reference the provisions of that Rule.

DEFINITIONS

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

1. “Defendants” means Epic Resorts, LLC, Epic Travel, LLC, and Thomas Flatley.
2. “Vacation Travel Package” means any product or service that purports to provide transportation, accommodations, or amenities usable during travel. This definition specifically includes, but is not limited to: travel planning services; booking and reservation services; transportation or accommodation tickets or vouchers; and certificates, vouchers, coupons, reservation forms or other documents that purport to be full or partial payment, or redeemable, for transportation, accommodations, car rental, tours, sports or other activities, meals, drinks, or entrance to special events or locations. This definition does not include a timeshare interest itself nor any offer to a consumer to use accommodations in connection with a tour of a timeshare facility or a presentation about a timeshare facility, provided that the consumer is not obligated to pay for such accommodations, tour, presentation or any related amenity. Providing of a deposit by a consumer, refundable at or before the time that the consumer tours or listens to a presentation is not an obligation to pay for a Vacation Travel Package. Likewise, payment of governmentally imposed charges by a consumer is not an obligation to pay for a Vacation Travel Package.

3. “Persons or Entities” as used in Article I hereof shall mean each of Defendants’ principals, officers, directors, agents, servants, employees, salespersons, independent contractors, subsidiaries, affiliates, successors and assigns.

INJUNCTIVE RELIEF

I.

IT IS THEREFORE ORDERED that Defendants and all other Persons or Entities who market, offer for sale or sell Vacation Travel Packages in active concert or participation with Defendants, and who receive actual notice of this Order by personal service or otherwise, in connection with the marketing, offering for sale or sale of any Vacation Travel Package, are hereby enjoined from:

1. Misrepresenting, expressly or by implication, orally or in writing, that any consumer has won or been specially selected to receive a Vacation Travel Package;
2. Failing to disclose in a clear and conspicuous manner, the material conditions or restrictions that a consumer must fulfill in order to purchase, receive or use any Vacation Travel Package, including, but not limited to:
 - a. Any requirement to attend a timeshare sales presentation;
 - b. Any age or income requirement;
 - c. The total cost the consumer must pay;
 - d. That blackouts or surcharges for travel at certain times may apply.
3. Misrepresenting the total cost to purchase, receive or use any Vacation Travel Package;

4. Violating any provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310 including, but not limited to:
 - a. Failing to disclose, in a clear and conspicuous manner, before any consumer pays for a Vacation Travel Package, the total cost to purchase, receive or use the Vacation Travel Package or any goods or services associated therewith that are the subject of the sales offer, in violation of Section 310.3(a)(1)(i) of the Telemarketing Sales Rule, 16 C.F.R. §310.3(a)(1)(i);
 - b. Failing to disclose in a clear and conspicuous manner, before any consumer pays for a Vacation Travel Package, all material restrictions, limitations, or conditions to purchase, receive or use the Vacation Travel Package or goods or services associated therewith that are the subject of the sales offer, in violation of Section 310.3(a)(1)(ii) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(1)(ii);
 - c. Misrepresenting any material aspect of a prize promotion, in violation of Section 310.3(a)(2)(v) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(2)(v); and
 - d. Initiating an outbound telemarketing call to any person who has previously stated that he or she does not wish to receive an outbound telephone call made by or on behalf of Defendants, in violation of Section 310.4(b)(ii) of the Telemarketing Sales Rule, 16 C.F.R. § 310.4(b)(ii); and
5. Violating Section 166 of the Truth in Lending Act, 15 U.S.C. § 1666e and Section 226.12(e) of Regulation Z, 12 C.F.R. § 226.12(e) by failing, within seven (7)

business days from accepting the return of property sold by Defendants to a consumer or forgiving the debt respecting such property sold, to transmit a credit statement to the consumer's credit card issuer through the card issuer's normal channels for credit statements, or by complying with the requirements of such code section, as may be amended.

CONSUMER REFUNDS

II.

IT IS FURTHER ORDERED that

1. Within seven (7) days after entry of this Order, Defendants Epic Resorts, LLC, Epic Travel, LLC and Thomas Flatley shall transmit a credit statement to the card issuer through the card issuer's normal channels or provide refunds (if either have not previously been accomplished by Defendants) to purchasers of Vacation Travel Packages who are entitled to refunds pursuant to Section 166 of the Truth in Lending Act, 15 U.S.C. § 1666e and Section 226.12(e) of Regulation Z, 12 C.F.R. § 226.12(e); and
2. Within thirty (30) days after entry of this Order, Defendants Epic Resorts, LLC, Epic Travel, LLC and Thomas Flatley shall provide counsel for the Commission with a report detailing the names, addresses, and telephone numbers of all consumers who were provided refunds pursuant to this provision, and the amount refunded to each such consumer.

COMPLIANCE REPORTING

III.

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

1. For a period of three (3) years from the date of entry of this Order, Defendants Epic Resorts, LLC, Epic Travel, LLC and Thomas Flatley (or any one of such Defendants) shall notify the Commission of the following:
 - a. Any changes in Defendant Thomas Flatley's residence, mailing address or telephone numbers, within ten (10) days of such change;
 - b. Any changes in Defendant Thomas Flatley's employment status (including self-employment) within ten (10) days of such change. Such notice shall include the name and address of each business that Defendant Thomas Flatley is affiliated with or employed by, a statement of the nature of the business, and a statement of Defendant Thomas Flatley's duties and responsibilities in connection with the business or employment; and
 - c. Any changes in the structure of either Defendant Epic Resorts, LLC or Epic Travel, LLC, such as dissolution, assignment or sale of Defendant Epic Resorts, LLC or Epic Travel, LLC limited liability company membership interests, merger, dissolution of subsidiaries, proposed filing of a bankruptcy petition, or change in the corporate name or address, any incorporation or creation of any business by Defendants where Defendant Epic Resorts, LLC, Epic Travel, LLC or Defendant Flatley is the majority owner or controls such business, or any other change that may affect

compliance obligations of Epic Resorts, LLC, Epic Travel, LLC or Thomas Flatley arising out of this Order, within thirty (30) days of such change.

2. One Hundred and eighty (180) days after the entry of this Order, Defendants Epic Resorts, LLC, Epic Travel, LLC and Thomas Flatley shall provide a written report to the FTC, sworn under penalty of perjury, setting forth in detail the manner and form in which Defendants have complied with this Order since the date of entry of this Order. This report shall include, but not be limited to:
 - a. Defendant Thomas Flatley's current residential address and telephone number;
 - b. Defendant Thomas Flatley's current employment, business address and telephone number;
 - c. A statement describing the manner in which Defendants Epic Resorts, LLC, Epic Travel, LLC and Thomas Flatley have complied with the Order.

RECORD KEEPING

IV.

IT IS FURTHER ORDERED that for a period of three (3) years from the date of entry of this Order, Defendants Epic Resorts, LLC, Epic Travel, LLC and Thomas Flatley, in connection with any business where: (1) Defendant Epic Resorts, LLC, Epic Travel, LLC or Thomas Flatley is the majority owner of the business or directly or indirectly manages or controls the business (provided, however, a Defendant shall not be deemed to be directly or indirectly managing or controlling the business if the business is

one in which the Defendant does not own more than five percent (5%) of the issued and outstanding shares of the capital stock thereof, and such capital stock or securities are listed on any United States national or regional securities exchange or have been registered under Section 12(g) of the Securities and Exchange Act of 1934); and (2) the business is engaged in the marketing, offering for sale or sale of any Vacation Travel Package, are hereby restrained and enjoined from failing to create and from failing to retain for a period of three (3) years following the date of such creation, unless otherwise specified:

1. Books, records and accounts which, in reasonable detail, accurately and fairly reflect the cost of Vacation Travel Packages sold, revenue generated therefrom, and the disbursement of such revenue;
2. Records accurately reflecting the name, address and telephone number of each employee, or independent contractor of such business engaged in the marketing, offering for sale or sale of a Vacation Travel Package, that person's job title or position, the date upon which the person commenced work, and the date and reason for his or her termination, if applicable. The businesses subject to this paragraph shall retain such records for any terminated person for a period of two (2) years following the date of termination;
3. Records containing the names, addresses and telephone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, for all consumers to whom such business has sold, invoiced, or shipped a Vacation Travel Package, whether on his/her behalf or that of any third party;

4. Records that reflect, for every consumer complaint or refund request respecting a Vacation Travel Package, whether received directly or indirectly or through any third party;
 - a. The consumer's name, address, telephone number and the dollar amount paid by the consumer;
 - b. The written complaint or request, if any, and the date of the complaint or refund request;
 - c. The basis of the complaint or request and the nature and the result of any investigation conducted as to the validity of any complaint;
 - d. Each response by any Defendant and the date of the response;
 - e. Any final resolution and the date of the resolution; and
 - f. In the event of a denial by any Defendant of a refund request, the reason for such denial, or if cured, the basis for determining that such complaint has been cured; and
5. Copies of all Vacation Travel Package sales scripts, training materials, advertisements, or other marketing materials, utilized by such businesses; provided that copies of all such sales scripts, training materials, advertisements or other marketing materials utilized shall be retained for three (3) years after the last date of dissemination of any such materials.

COMPLIANCE MONITORING

V.

IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry of this Order, for purposes of determining or securing compliance with this

Order, Defendants Epic Resorts, LLC, Epic Travel, LLC and Thomas Flatley and any entity engaged in the marketing, offering for sale or sale of Vacation Travel Packages of which they are or become the majority owner or otherwise operate or control (provided, however, a Defendant shall not be deemed to be operating or controlling the entity if the entity is one in which the Defendant does not own more than five percent (5%) of the issued and outstanding shares of the capital stock thereof, and such capital stock or securities are listed on any United States national or regional securities exchange or have been registered under Section 12(g) of the Securities and Exchange Act of 1934) shall permit representatives of the Commission in respect to such business of Defendants or of such entity within three (3) business days of receipt of written notice from the Commission:

1. Access during normal business office hours to any business office or business facility in which documents relating to compliance with the terms of this Order are stored or held, to inspect and copy such documents; and
2. To interview current officers, directors, independent contractors and employees, including all personnel involved in responding to consumer complaints or inquiries, all sales personnel, and all personnel responsible for compliance with this Order. The person interviewed may have counsel present.

Provided, that nothing in this paragraph shall operate to preclude the Commission from otherwise monitoring Defendant Thomas Flatley, Epic Resorts, LLC or Epic Travel, LLC's compliance with this Order by other lawful means available to it.

ORDER DISTRIBUTION

VI.

IT IS FURTHER ORDERED that for a period of three (3) years from the date of entry of this Order, Defendants Epic Resorts, LLC, Epic Travel, LLC and Thomas Flatley (or any one of them) shall:

1. Provide a copy of this Order to and obtain a signed and dated acknowledgement of receipt from each and every current and future officer and director of Defendant Epic Resorts, LLC or Epic Travel, LLC, any successor or assign of Epic Resorts, LLC or Epic Travel, LLC and each manager and supervisor employed by any Defendant who is involved with the marketing, offering for sale or sale of Vacation Travel Packages or who is integral to any Defendant's compliance with the provisions of this Order; and
2. Provide the contents of Article I of this Order in the form attached hereto as Exhibit "A" and obtain a signed and dated acknowledgement of receipt of same from all personnel, other than those described in paragraph 1 above, involved in responding to complaints or inquiries from consumers regarding the marketing, offering for sale or sale of Vacation Travel Packages, and all sales personnel involved with the marketing, offering for sale or sale of Vacation Travel Packages, whether designated as employees, consultants, independent contractors or otherwise, immediately upon employing or retaining any such person, for any business where: (1) Defendant, Epic Resorts, LLC, Epic Travel, LLC or Thomas Flatley, is the majority owner of the business or directly or indirectly manages or controls the business (provided, however, a Defendant shall not be deemed to be

- directly or indirectly managing or controlling the business if the business is one in which the Defendant does not own more than five percent (5%) of the issued and outstanding shares of the capital stock thereof, and such capital stock or securities are listed on any United States national or regional securities exchange or have been registered under Section 12(g) of the Securities and Exchange Act of 1934); and (2) such business is engaged in marketing offering for sale or sale of any Vacation Travel Package; and
3. Retain for a period of three (3) years after creation, and upon reasonable notice make available to representatives of the Commission, the original signed and dated acknowledgements of receipts required by paragraphs 1 and 2.

MISCELLANEOUS PROVISIONS

VII.

IT IS FURTHER ORDERED that the expiration of any requirement imposed by this Order shall not affect any other obligation arising under this Order. Each party shall bear its own costs and attorney's fees.

VIII.

IT IS FURTHER ORDERED that Defendants shall submit any information, notifications, or reports required by this Order to: Associate Director for Marketing Practices, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580, or at such future address as the Commission may designate in writing to Defendants.

IX.

IT IS FURTHER ORDERED that no portion of the payment as herein provided shall be deemed a payment of any fine, penalty, forfeiture, or punitive assessment.

X.

IT IS FURTHER ORDERED that the parties hereby stipulate and agree, without further notice to any of them, to entry of this Order, which shall constitute a final judgment in this action. Defendants hereby waive any claims they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, amended by PL 104-121, 110 Stat. 847, 863-64 (1996), concerning the prosecution of this action to the date of this Order.

XI.

IT IS FURTHER ORDERED that Defendants Epic Resorts, LLC, Epic Travel, LLC and Thomas Flatley shall execute, have notarized and return to the Commission at the address listed in paragraph VIII signed, dated acknowledgements of receipt of date-stamped copies of this Order within five (5) days of receipt of the date-stamped copies of this Order.

XII.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes.

XIII.

IT IS FURTHER ORDERED that this Order is in settlement and full satisfaction of all claims asserted by the Commission against Defendants for the conduct of the Defendants in the above referenced civil action.

XIV.

IT IS FURTHER ORDERED that all claims asserted against Defendant Scott Egelkamp are hereby dismissed with prejudice.

United States District Judge

Respectfully submitted this ____ day of _____, 2001.

Counsel for the Plaintiff:

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Defendants:

Thomas Flatley, Individually and on behalf
Of Epic Resorts, LLC and Epic Travel, LLC
1150 First Avenue, Suite 900
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EXHIBIT A

NOTICE

Epic Resorts, LLC and its subsidiaries maintain a strict company policy to follow all federal and state laws concerning the marketing, offering for sale and selling of Vacation Travel Packages. This policy applies to all management and employees of any Epic entity, as well as all independent contractors, agents or vendors and their respective employees.

In that regard, Epic has voluntarily entered into a Consent Order with the Federal Trade Commission. In compliance with that Order and as an expression of Epic policy, you are prohibited from engaging in any of the following activities:

1. Misrepresenting, expressly or by implication, orally or in writing, that any consumer has won or been specially selected to receive a Vacation Travel Package;
2. Failing to disclose in a clear and conspicuous manner, the material conditions or restrictions that a consumer must fulfill in order to purchase, receive or use any Vacation Travel Package, including, but not limited to:
 - (a) Any requirement to attend a timeshare sales presentation;
 - (b) Any age or income requirement;
 - (c) Any requirement to pay any fee, and the type of fee such as any tax, port fee or service fee and the amount of any such tax or fee, unless the same is governmentally imposed;
 - (d) That blackouts or surcharges for travel at certain times may apply.
3. Misrepresenting the total cost to purchase, receive or use any Vacation Travel Package;
4. Violating any provision of the Telemarketing Sales Rule, including, but not limited to:
 - (a) Failing to disclose, in a clear and conspicuous manner, before any consumer pays for a Vacation Travel Package, the total cost to purchase, receive or use a Vacation Travel Package or any goods or services associated therewith that are the subject of the sales offer;
 - (b) Failing to disclose in a clear and conspicuous manner, before any consumer pays for the Vacation Travel Package, all material restrictions, limitations, or

conditions to purchase, receive or use the Vacation Travel Package or goods or services associated therewith that are the subject of the sales offer;

(c) Misrepresenting any material aspect of a prize promotion; and

(d) Initiating an outbound telemarketing call to any consumer who has previously stated that he or she does not wish to receive an outbound telephone call made by or on behalf of any Epic entity; and

5. Violating the Truth in Lending Act and Regulation Z, by failing, within seven (7) business days from accepting the return of property sold by any Epic entity to a consumer or forgiving the debt respecting such property sold, to transmit a credit statement to the consumer's credit card issuer through the card issuer's normal channels for credit statements, or by complying with the requirements of such code section, as may be amended.

It is mandatory that you comply with this policy. If you have any questions, consult your supervisor or Epic contact immediately. Please sign below indicating that you have read and received a copy of this document.

Print Name

Date

Signature