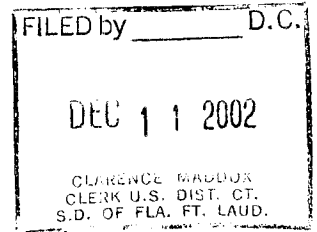


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 01-8922 CIV-ZLOCH



FEDERAL TRADE COMMISSION,

Plaintiff,

vs.

IRA SMOLEV, et al.,

Defendants.

**STIPULATED FINAL JUDGMENT AND
ORDER FOR PERMANENT INJUNCTION
AND MONETARY SETTLEMENT
FOR DEFENDANT BRUCE TURIANSKY**

_____/

THIS MATTER is before the Court upon the Stipulated Final Judgment and Order For Permanent Injunction and Monetary Settlement for Defendant Bruce Turiansky, bearing file stamp of the Clerk of the Court dated December 10, 2002, filed herein by the Plaintiff, the Federal Trade Commission (hereinafter "FTC" or "Commission") and the Defendant Bruce Turiansky.

Plaintiff FTC and Defendant Bruce Turiansky have agreed to the entry of this Stipulated Final Judgment and Order for Permanent Injunction and Monetary Settlement ("Order") by this Court to resolve all matters of dispute between the settling parties with respect to the conduct alleged in the Complaint (DE 1) in this action. The Court has carefully reviewed said Stipulation, the entire court file and is otherwise fully advised in the premises.

Accordingly, after due consideration, it is

ORDERED AND ADJUDGED as follows:

FINDINGS

1. This Court has jurisdiction of the subject matter of this case

and of Defendant Bruce Turiansky.

2. Venue is proper as to all parties in the Southern District of Florida.
3. The activities of Defendant Bruce Turiansky were in or affecting commerce, as defined in the FTC Act, 15 U.S.C. § 44.
4. The Complaint (DE 1) states a claim upon which relief may be granted against Defendant Bruce Turiansky 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 et seq., and the FTC's Telemarketing Sales Rule, 16 C.F.R. Part 310.
5. Defendant Bruce Turiansky has waived all rights that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412, amended by Pub. L. 104-121, 110 Stat. 847, 863-64 (1996).
6. Entry of this Order is in the public interest. Defendant also has waived all rights to seek judicial review of, or otherwise challenge or contest the validity of, this Order. Defendant also has waived service of a summons.

DEFINITIONS

1. "Assisting others" means knowingly providing any of the following services to any person or entity: (a) performing customer service functions for any person or entity, including, but not limited to, receiving or responding to consumer complaints; (b) formulating or providing, or arranging for the formulation or provision of, any telephone

sales script or any other marketing material for any person or entity; ©) performing marketing services of any kind for any person or entity, or (d) providing credit card merchant processing accounts, or otherwise providing access to a billing and collection system, such as a credit card, checking, savings, share or similar account, utility bill, telephone bill, mortgage loan account or debit card.

2. "Billing information" means any data that describes, constitutes or provides access to a billing and collection system, such as a credit card, checking, savings, share or similar account, utility bill, telephone bill, mortgage loan account or debit card.
3. "Charge" means any amount charged or debited to a consumer's credit card, checking, savings, share or similar account, utility bill, telephone bill, mortgage loan account or debit card, or any similar form of collecting money from a consumer.
4. With respect to advertisements and promotional and marketing materials, "clear(ly) and conspicuous(ly)" means:
 - a. In an advertisement communicated through an electronic medium (such as television, video, radio, and interactive electronic media such as software, the Internet and online services), the disclosure must be presented simultaneously in both the audio and visual portions of the advertisement; **provided, however,** that in any

advertisement presented solely through visual or audio means, the disclosure may be made through the same means in which the advertisement is presented; **provided further**, that in any advertisement disseminated by means of an interactive electronic medium such as software, the Internet, or online services, a disclosure made through the use of a hyperlink will not be deemed "clear and conspicuous" unless the hyperlink itself is clear and conspicuous, is clearly identified as a hyperlink, is labeled to convey the nature and relevance of the information it leads to, is on the same Web page, online service page, or other electronic page and proximate to the triggering representation, and takes the consumer directly to the disclosure on the click-through electronic page or other display window or panel. The audio disclosure must be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The visual disclosure must be of a size and shade, and must appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it; and

- b. In a print advertisement or any print promotional or marketing material, the disclosure must be in a type size and location sufficiently noticeable for an ordinary

consumer to read and comprehend it, and in print that contrasts with the background against which it appears. The disclosure must be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement, promotional or marketing material.

5. "Membership service" means any arrangement whereby persons who purportedly agree to the arrangement (often called "members") receive specified benefits over a period of time, including but not limited to, travel benefits, health benefits, home protection, credit card protection, legal services and discounts on goods and services.
6. An offer or agreement with a "negative option" feature means an offer or agreement to sell or provide any goods or services under which (a) a consumer must take an affirmative action to reject goods or services or cancel the agreement, and (b) the consumer's silence or failure to reject goods or services or to cancel the agreement is interpreted by the seller or provider as acceptance or continuing acceptance of the goods or services. Agreements with negative option features include, but are not limited to, agreements in which the consumer, subsequent to agreeing to the offer, will automatically be billed or charged at the end of a trial period (whether or not there is a fee for the trial period)

unless the consumer cancels, and continuity plans in which, subsequent to the consumer's agreement to the plan, the seller or provider automatically ships goods to a consumer unless the consumer notifies the seller or provider within a certain time not to ship the goods.

7. A "partner" of Defendant means any third party that contracts with Defendant to provide telemarketing or other marketing services in connection with any transaction wherein Defendant provides, offers to provide or arranges for others to provide goods or services to consumers in exchange for consideration.
8. "Renewal" means an extension beyond the original term of a membership, subscription or agreement for goods or services that are offered on a periodic basis.
9. "Telemarketing" means any business activity that involves attempts to induce consumers to purchase any item, good, service, partnership interest, trust interest or other beneficial interest, or to enter a contest for a prize, by means of telephone sales presentations, either exclusively or in conjunction with the use of other forms of marketing; **provided** that the term "telemarketing" does not include transactions that are not completed until after a face-to-face contact between the seller or solicitor and the consumers solicited; **provided further**, that for the purposes of Part III of this Order, the definition of telemarketing will be

consistent with 16 C.F.R. § 310.2.

10. "Third party" means (a) any entity that is not owned or controlled by Defendant, and (b) any person who is not acting in his or her capacity as an officer or employee of Defendant or any entity owned or controlled by Defendant.

I.

BOND

IT IS ORDERED that:

- A. Defendant Bruce Turiansky, whether directly, in concert with others, or through any business entity or other device, is hereby permanently restrained and enjoined from the following activities, unless at least two weeks prior to such activities, Defendant obtains a performance bond in the principal sum of One Hundred Thousand Dollars (\$100,000):
1. Initiating or receiving telephone calls to or from a customer, in connection with telemarketing;
 2. Engaging in; participating in; assisting others to engage or participate in; or owning, controlling or managing any entity engaged in:
 - a. The business of telemarketing, or
 - b. Causing any charges to be made or any payments to be billed to a consumer, or causing collection of, or attempts to collect,

payment, directly or indirectly, from a consumer, for the purchase of any goods or services offered for sale or sold through telemarketing;

B. Defendant Bruce Turiansky, whether directly, in concert with others, or through any business entity or other device, is hereby permanently restrained and enjoined from the following activities, unless at least two weeks prior to such activities, Defendant obtains a performance bond in the principal sum of Five Hundred Thousand Dollars (\$500,000): engaging in; participating in; assisting others to engage or participate in; or owning, controlling or managing any entity engaged in:

1. Any sales or marketing that involves offers or agreements with a negative option feature, or
2. Causing any charges to be made or any payments to be billed to a consumer, or causing collection of, or attempts to collect, payment, directly or indirectly, from a consumer, for the purchase of any goods or services offered for sale, sold or distributed through offers or agreements with a negative option feature;

Provided that if Defendant engages in conduct covered by both Subparts A and B of this Part, then he will post a bond in the

amount of \$500,000 which complies with Subpart B.

- C. Each performance bond required by this Part must be conditioned upon compliance with Section 5 of the FTC Act, 15 U.S.C. § 45, the Commission's Telemarketing Sales Rule, 16 C.F.R. Part 310, and Parts II through VII of this Order. Such bond must be deemed continuous and remain in full force and effect so long as the Defendant continues to engage or participate in any of the activities listed in Subparts I.A or I.B of this Order, as appropriate, whether directly, in concert with others, or through any business entity or other device, and for at least three years after ceasing to engage in any such activity. Such bond must cite this Order as the subject matter of the bond, and must provide surety thereunder against financial loss resulting from whole or partial failure of performance due, in whole or in part, to any violation of Section 5 of the FTC Act, 15 U.S.C. § 45, the Commission's Telemarketing Sales Rule, 16 C.F.R. Part 310, or Parts II through VII of this Order by Defendant while engaged or participating in any of the activities listed in Subparts I.A or I.B of this Order, as appropriate.
- D. Each performance bond required by this Part must be an insurance agreement providing surety for financial loss

issued by a surety company that is admitted to do business in each of the states in which Defendant is doing business and that holds a Federal Certificate of Authority as Acceptable Surety On Federal Bond and Reinsuring. Such performance bond must be executed in favor of both (1) the Federal Trade Commission for the benefit of any person injured as a result of any violation of Section 5 of the FTC Act, 15 U.S.C. § 45, the Commission's Telemarketing Sales Rule, 16 C.F.R. Part 310, and Parts II through VII of this Order by Defendant while engaged or participating in any of the activities listed in Subparts I.A or I.B of this Order, as appropriate; and (2) any consumer so injured.

- E. The performance bonds required by this Part are in addition to, and not in lieu of, any other bond required by any applicable federal, state, or local law.
- F. At least ten (10) days prior to the commencement of any activity for which a performance bond is required under this Part, Defendant must provide a copy of the bond to the Associate Director of the Commission's Division of Enforcement at the address specified in Part XVI.
- G. Defendant, his agents, and any persons acting in concert or participation with him or under Defendant's authority, supervision, or control must not disclose the existence

of the performance bonds to any consumer or other purchaser or prospective purchaser of any goods or services without simultaneously disclosing the following: "The bond is required by Order of the U.S. District Court to settle charges that Bruce Turiansky made false and misleading representations in promoting and selling discount buying clubs and other membership services." The required disclosure must be made clearly and conspicuously and in close proximity to the representation.

II.

PROHIBITED BUSINESS PRACTICES: MISLEADING REPRESENTATIONS

IT IS FURTHER ORDERED that Defendant Bruce Turiansky, and his officers, agents, employees, and attorneys, and all those persons or entities in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, or other device, are hereby permanently restrained and enjoined from making, or causing or assisting others to make, expressly or by implication, any false or misleading representation in connection with the advertising, promoting, marketing, offering for sale, sale, or distribution of any goods or services in or affecting commerce, including but not limited to:

- A. Falsely representing, through, *inter alia*, mailings, email, billings, credit card charges and checking account debits, that a consumer purchased or agreed to purchase goods or services, or that a transaction has been authorized by a consumer;
- B. Falsely representing (1) the amount that a consumer will be charged or billed for any goods or services; (2) that a consumer will not be charged or billed for any goods or services; (3) the timing or manner of any charge or bill, or (4) that a consumer will not be charged or billed without the consumer's authorization;
- C. Making any representation that a consumer will receive a trial membership, or that any information kit, good or service is offered "free," "risk-free," with "no obligation," or words of similar import denoting or implying the absence of any obligation on the part of the recipient of such offer to pay for the information kit, good or service or to take affirmative action to avoid incurring payment obligations, without disclosing clearly and conspicuously, and in close proximity to such representation, prior to requesting the consumer's authorization to be charged or billed for the offered trial membership, information kit, good or service, or any other goods or services:

1. Any obligation of the consumer associated with accepting the offered trial membership, information kit, good or service (including, but not limited to, payment of shipping and handling fees, the obligation to purchase other goods or services, the obligation to accept a trial membership or trial period, and the obligation to cancel or take other affirmative action to avoid incurring payment obligations and the manner in which such a cancellation request may be submitted);
 2. The amount and number of payments (if more than one) that will or may be required, and the circumstances under which additional payments may be required; and
 3. All material conditions, limitations and restrictions on the ability of the consumer to use the offered trial membership, information kit, good or service; and
- D. Making any representation that a consumer who accepts an offer for goods or services will receive an additional good or service for "free" or with "no obligation," or as discounted or reduced in price, or words of similar import, without disclosing clearly and conspicuously, and in close proximity to such representation, prior to

requesting the consumer's authorization to be charged or billed for the goods or services with which the purportedly free or discounted good or service is offered, all material conditions, limitations and restrictions on the ability of the consumer to use any such purportedly free or discounted good or service.

III.

VIOLATIONS OF TELEMARKETING SALES RULE

IT IS FURTHER ORDERED that Defendant Bruce Turiansky, and his officers, agents, employees, and attorneys, and all those persons or entities in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, or other device, are hereby permanently restrained and enjoined from violating any provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310, as in effect now or as it may be amended.

IV.

PROHIBITED FAILURES TO DISCLOSE

IT IS FURTHER ORDERED that Defendant Bruce Turiansky, and his officers, agents, employees, and attorneys, and all those persons or entities in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation,

subsidiary, division, or other device, in connection with the advertising, promoting, marketing, offering for sale, sale, or distribution of any goods or services by means of telemarketing or the Internet, by or on behalf of Defendant, or any entity controlled, owned, directly or indirectly, or managed, by Defendant, must affirmatively disclose, clearly and conspicuously, before obtaining the consumer's express authorization to bill or charge the consumer for any such goods or services, all material terms and conditions for the purchase of any such goods or services, including but not limited to:

- A. That a purpose of the call or other solicitation is to sell goods or services;
- B. The fact, if true, that a good or service is offered on behalf of a seller that is a separate entity from the seller doing the telemarketing, and, if so, the name of the separate seller and the entity to which payment will be made;
- C. The number of payments (if more than one), the date(s) or time period(s) at which the payment(s) will be required or charged, the amount of the payment(s), and the total cost;
- D. The fact, if true, that the billing information the seller already possesses, either because the consumer previously provided it to the seller or the seller

obtained it from another source, will be used to bill or charge the consumer;

- E. The terms of the seller's refund, cancellation, exchange, or repurchase policies;
- F. If the consumer will be automatically billed at the end of a trial period unless the consumer cancels: this fact; the length of the trial period; the manner in which a cancellation request may be submitted; the date or time period by which a cancellation request must be received; and either a telephone number or address to which a cancellation request may be directed or the fact, if true, that such information will be included in written materials provided to the consumer within a reasonable period prior to the date by which a cancellation request must be received; and
- G. If the seller automatically ships goods to a consumer or automatically renews a membership, subscription or agreement for goods or services that is offered on a periodic basis, unless the consumer notifies the seller within a certain time not to ship or renew: this fact; the manner in which a notice not to ship or renew may be submitted; the date or time period by which a notice not to ship or renew must be received to avoid shipment or renewal; and either a telephone number or address to

which such a notice may be directed or the fact, if true, that such information will be included in written materials provided to the consumer within a reasonable period prior to the date by which such a notice must be received;

Provided, that if Defendant Bruce Turiansky, or any entity controlled, owned, directly or indirectly, or managed by Defendant, obtains a consumer's billing information to purchase any goods or services and then further solicits the purchase of other goods or services, Defendant, or such entity, must affirmatively disclose all material terms and conditions for the purchase of each additional good or service, including but not limited to those set forth in this Part, before obtaining the consumer's express authorization to bill or charge the consumer for such additional good or service; and **provided further**, that, in connection with the advertising, promoting, marketing, offering for sale, sale, or distribution of any goods or services pursuant to an offer or agreement with a negative option feature, Defendant, prior to billing or charging the consumer for such goods or services, must provide the consumer with a document disclosing, clearly and conspicuously, all material terms and conditions of the sale, including but not limited to those set forth in this Part.

V.

EXPRESS VERIFIABLE AUTHORIZATION FOR SALES

IT IS FURTHER ORDERED that Defendant Bruce Turiansky, and his officers, agents, employees, and attorneys, and all those persons or entities in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, or other device, in connection with the advertising, promoting, marketing, offering for sale, sale, or distribution of any goods or services by means of telemarketing or the Internet, by or on behalf of Defendant, or any entity controlled, owned, directly or indirectly, or managed, by Defendant, are hereby permanently restrained and enjoined from submitting billing information for payment, transferring billing information to a third party, or collecting or attempting to collect payment for goods or services, directly or indirectly, without the consumer's express verifiable authorization as follows:

- A. Such express verifiable authorization must clearly evidence the consumer's name, the consumer's express authorization to purchase the goods or services and of the amount and manner of the billing or payment for such goods and service, and the date of the consumer's express authorization, and that all of the following information has been disclosed to the consumer, clearly and

conspicuously, and in close proximity to, the consumer's express authorization:

1. The amount and manner of the billing or payment for such goods or services, including but not limited to, the disclosures set forth in Subparts C and D of Part IV of this Order, prior to the consumer's express authorization (e.g., during the express automated electronic authorization referenced in Subpart B.4 of this Part, such disclosures must be made prior to the time the consumer inputs the personal identification number);
2. All of the disclosures set forth in Subparts A, B, E, F, and G of Part IV of this Order, prior to the consumer's express authorization, **provided, however,** for purposes of this Subpart, the express verifiable authorization may evidence, if true, that such disclosures have previously been disclosed to the consumer, clearly and conspicuously, in a print advertisement or print promotional or marketing material;
3. To the extent not already disclosed pursuant to Subpart A.1 of this Part, the consumer's specific billing information, including the name of the account and the account number, that will be used

to collect payment for the goods or services that are the subject of the sales offer; and

4. A telephone number for consumer inquiry that is answered during normal business hours;

B. For the sale of any goods or services by means of telemarketing, the consumer's express authorization will be deemed verifiable only if one of the following means is employed:

1. Express written authorization by the consumer, which includes the consumer's signature (the term "signature" includes a verifiable electronic or digital form of signature, to the extent such form of signature is recognized as a valid signature under applicable federal law or state contract law);

2. Express oral authorization that is verified by an independent third party verifier ("TPV") that meets the requirements of Part VI of this Order;

3. Express oral authorization that is tape recorded, and meets the following criteria:

a. For telemarketing conducted by Defendant and any entities owned or controlled, directly or indirectly, or managed, by Defendant, and their officers, agents, and employees, the

tape recording must include the entire telephone call during which the consumer gave oral authorization;

- b. For telemarketing conducted by Defendant's partners, the tape recording must include the entire portion of the telephone call that relates to the goods and services that are the subject of Defendant's sales offer and during which the consumer gave oral authorization; and
 - c. A copy of the tape recording is provided upon request to the consumer, the consumer's bank, credit card company or other billing entity, state attorney general or consumer protection agency or the Commission; and
4. Express automated electronic authorization in which the consumer provides the authorization by calling a toll-free telephone number used exclusively for such authorizations and by inputting a personal identification number that has been mailed to the consumer at the consumer's home address.

VI.

THIRD PARTY VERIFICATION

IT IS FURTHER ORDERED that, if Defendant Bruce Turiansky

chooses to use a third party verifier ("TPV") to obtain express verifiable authorization, as described in Subpart B.2 of Part V of this Order, the following requirements apply:

- A. Defendant must give written notice to the Commission's Associate Director for Enforcement at least twenty (20) days prior to the use of a TPV to obtain express verifiable authorization; **provided** that the Commission's Associate Director for Enforcement, at his or her sole discretion, may reject the selected TPV at any time, and, within thirty (30) days of receipt of a written notification from the Commission's Associate Director for Enforcement that the TPV has been rejected, Defendant must cease using the TPV to obtain express verifiable authorization;
- B. The TPV must not be owned, managed, controlled, or directed by Defendant, or any business entity owned or controlled, directly or indirectly by the Defendant or Defendant's partners, and must not have any financial incentive to confirm orders for Defendant;
- C. Defendant must not be on the telephone line during the verification by the TPV;
- D. The TPV must, by telephone confirm that the consumer has agreed to the offer of goods or services, and has authorized billing for such goods or services, by the

method and subject to the terms and conditions of the offer, and ensure that no misrepresentations have been made and no material information has been omitted during the sales call by describing the material terms and conditions of the offer in a clear and conspicuous manner (including, but not limited to, those enumerated in Part IV of this Order) and asking whether the consumer agrees to the described terms and conditions;

- E. Unless the consumer, during the verification by the TPV, affirmatively and unambiguously states that he or she agreed to each material term and condition of the offer, the sale will not be considered properly verified, and Defendant must not enforce or attempt to enforce any obligation whatsoever against any consumer in connection with such unverified sale; and
- F. If express verifiable authorization pursuant to this Part is obtained through:
 - 1. A live interaction between the verifier and the consumer, the TPV must tape record the entire telephone call between the verifier and the consumer;
 - 2. An automated system, such as an interactive voice response system, the TPV must maintain records showing when the confirmation occurred, how the

content of the telephone call was created and how the consumer's responses were recorded.

VII.

**LIMITATION ON DISSEMINATING CONSUMERS'
INFORMATION (OPT-IN PROVISION)**

IT IS FURTHER ORDERED that Defendant Bruce Turiansky, and his officers, agents, employees, and attorneys, and all those persons or entities in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, or other device, in connection with any business or entity controlled, majority owned, directly or indirectly, or managed, by defendant, are permanently restrained and enjoined from providing or disclosing to any third party, whether or not in exchange for payment or other consideration, any of the following consumer information:

- A. Billing information;
- B. Unique identifying information, such as social security number, date of birth, place of birth and mother's maiden name;
- C. Credit information;
- D. Income information; and
- E. Asset and liability information;

unless (1) Defendant has clearly and conspicuously disclosed to

such consumer what information Defendant proposes to provide or disclose, the intended use of the information, and the person or entity to whom Defendant proposes to provide or disclose the information; and (2) the consumer has expressly authorized Defendant to provide or disclose such information; **provided, however,** that this Part does not apply to the disclosure of consumer information: (1) necessary to effectuate or administer a transaction for which Defendant has obtained the consumer's express verifiable authorization; (2) pursuant to Section 623 of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681s-2, to a "consumer reporting agency" as defined by Section 603(f) of the FCRA, 15 U.S.C. § 1681a(f); or (3) to a law enforcement agency either voluntarily, or as required by any law, regulation, or court order.

VIII.

MONETARY RELIEF

IT IS FURTHER ORDERED that:

- A. Judgment is hereby entered against Defendant Bruce Turiansky in the amount of Two Million Four Hundred Thousand Dollars (\$2,400,000); **provided, however,** that this judgment will be suspended (1) upon payment to the Commission, within five (5) days of the date of entry of this judgment, the amount of Ten Thousand Dollars (\$10,000), which payment must be by wire transfer pursuant to instructions provided by the Commission and (2) as long as the Court makes no finding, as provided in

Paragraph IX of this Order, that defendant has materially misrepresented or omitted the nature, existence or value of any asset.

- B. All funds paid pursuant to this Paragraph shall either (1) to the extent allowable by law, be paid to state law enforcement agencies as reimbursement of their costs in connection with any joint investigation or litigation related to or associated with the transactions or the occurrences that are the subject of the Complaint, or (2) be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including but not limited to consumer redress and any attendant expenses for the administration of any redress fund. At the sole discretion of the Commission, such funds may be combined with funds paid to the Commission in other actions relating to the conduct of Ira Smolev, or any entities affiliated with Ira Smolev. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to the defendants' practices alleged in the complaint. Any funds not paid to state law enforcement agencies or used for equitable relief shall be deposited to the Treasury

as disgorgement. Defendants shall have no right to challenge the Commission's choice of remedies under this Paragraph.

- C. The Commission will notify Defendant of its plan for the disbursement of funds. Defendant acknowledges and agrees that all money paid pursuant to this Order is irrevocably paid to the FTC for purposes of settlement between the parties. Defendant will make no claim or demand for return of the funds, directly or indirectly, through counsel or otherwise, and in the event of bankruptcy of Defendant, Defendant acknowledges that the funds are not part of the debtor's estate, nor does the estate have any claim or interest therein;
- D. Defendant Bruce Turiansky is hereby required, in accordance with 31 U.S.C. § 7701, to furnish to the Commission his social security number, which will be used for purposes of collecting and reporting on any delinquent amount arising out of this Order;
- E. Defendant Bruce Turiansky waives any right to contest any of the allegations in the Complaint in any subsequent litigation to collect amounts due pursuant to this Order, including but not limited to a nondischargeability complaint in any bankruptcy proceeding; and
- F. The judgment entered pursuant to this Part VIII is equitable monetary relief, solely remedial in nature, and

not a fine, penalty, punitive assessment or forfeiture.

IX.

RIGHT TO REOPEN

The Commission's agreement to this Order is expressly premised on the truthfulness, accuracy and completeness of the financial statement executed by Defendant Bruce Turiansky on August 13, 2001 and submitted to the Commission on August 23, 2001. If, upon motion by the Commission, the Court finds that such financial statement contains any material misrepresentation or omission, the suspended judgment of Two Million Four Hundred Thousand Dollars (\$2,400,000) entered in Paragraph VIII of this Order shall become immediately due and payable. **Provided, however,** that in all other respect this Order will remain in full force and effect unless otherwise ordered by the Court; and, **provided further,** that proceedings instituted under this provision would be in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any other proceedings that the Commission may initiate to enforce this Order. For purposes of this Part IX, Defendant Bruce Turiansky waives any right to contest any of the allegations in the Complaint.

X.

COOPERATION WITH GOVERNMENT COUNSEL

IT IS FURTHER ORDERED that Defendant Bruce Turiansky must, in connection with this action or any concurrent or subsequent civil

investigations related to or associated with the transactions or the occurrences that are the subject of the Complaint, cooperate in good faith with the Commission, and appear at such places and times as the Commission reasonably requests, after written notice to Defendant, and upon payment of travel expenses, for interviews, conferences, pretrial discovery, review of documents, and for such other matters as may be reasonably requested by the Commission. If requested in writing by the Commission, Defendant Bruce Turiansky must appear and provide truthful testimony in any civil trial, deposition or other proceeding related to or associated with the transactions or the occurrences that are the subject of the Complaint, upon the payment of travel fees, and upon the service of a civil investigative demand or subpoena, which service may be deferred until Defendant's appearance. The Commission's agreement to this Order is expressly premised on Defendant Bruce Turiansky's compliance with the requirements of this Part; **provided** that nothing in this Part constitutes or will be deemed to constitute a waiver by Defendant of his constitutional rights under the Fifth Amendment. If the Commission determines that Defendant Bruce Turiansky has not complied with the requirements of this Part, the Commission may move the Court to reopen and request modification of this Order. If, however, Defendant exercises his constitutional rights under the Fifth Amendment and thereby refuses to provide truthful testimony as provided herein, the Court, upon motion by the Commission, will reopen this matter to allow the Commission to

request modification of the Order. Proceedings to reopen instituted under this Part would be in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any other proceedings that the Commission may initiate to enforce this Order. Nothing in this Part precludes Defendant Bruce Turiansky from cooperating in other investigations or litigation.

XI.

ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANT

IT IS FURTHER ORDERED that, within five (5) business days after receipt by Defendant Bruce Turiansky of this Order as entered by the Court, Defendant must submit to the Commission a truthful sworn statement, in the form shown on Appendix A, that acknowledges receipt of this Order.

XII.

DISTRIBUTION OF ORDER

IT IS FURTHER ORDERED that, for a period of ten (10) years from the date of entry of this Order, Defendant Bruce Turiansky must:

A. Provide:

1. A copy of this Order to, and obtain a signed and dated acknowledgment of receipt from, each officer and director; and
2. A summary of this Order, as set forth in Appendix B to, and obtain a signed and dated acknowledgment of receipt from:

a. Each individual serving in a management capacity; and

b. All sales and marketing personnel and all personnel involved in responding to consumer complaints or inquiries;

whether such persons are designated as employees, consultants, independent contractors or otherwise, of Defendant or of any business entity controlled, directly or indirectly, owned, or managed, by Defendant;

provided however, that nothing in Subpart A. of this Part requires Defendant to provide a copy of the Order to any business entity or its personnel unless he controls, owns, directly or indirectly, or manages such entity;

provided further, that the Defendant must deliver the copy of the Order or summary of the Order, as appropriate, to current personnel within thirty (30) days after the date of entry of the Order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities; and

B. Maintain for a period of three (3) years after creation, and, within fifteen (15) days of receipt of a written request, make available to representatives of the Commission, the original signed and dated acknowledgments of the receipt of the Order or summary of the Order, as

required in Subpart A. of this Part.

XIII.

RECORD-KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of ten (10) years from the date of entry of this Order, Defendant Bruce Turiansky, and his officers, agents, employees, and attorneys, and all those persons or entities in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, or other device, 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, in connection with any business entity controlled, owned, directly or indirectly, or managed by Defendant:

- A. Books, records and accounts that, in reasonable detail, accurately and fairly reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues by such business;
- B. Each tape recording of a telemarketing call made pursuant to Part V of the Order;
- C. Records that accurately reflect the name, address, and telephone number of each person employed or retained in any capacity by such business, whether such person is designated as an employee, consultant, independent

contractor or otherwise; 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;

- D. Records that accurately reflect the names, addresses, phone numbers, dollar amounts paid, quantity of goods or services purchased, and description of goods or services purchased, for all consumers to whom such business has sold, invoiced, billed, or shipped any goods or services;
- E. For every consumer complaint or refund request (including those by telephone), whether received directly or indirectly or through any third party, records that accurately reflect:
 - 1. The consumer's name, address, telephone number and the dollar amount paid by the consumer;
 - 2. The written complaint or the refund request, if any;
 - 3. The date of the complaint or refund request;
 - 4. The basis of the complaint, including the name of any salesperson complained against, and the nature and result of any investigation conducted concerning any complaint;
 - 5. Each response and the date of the response;
 - 6. Any final resolution and the date of the resolution; and

7. In the event of a denial of a refund request, the reason for the denial;
- F. Copies of all sales scripts, training materials, advertisements, or other marketing materials utilized, and records that accurately reflect the time periods during which such materials were used and the persons and business entities that used such materials; **provided**, that these marketing materials and records must be retained for three (3) years after the last date of dissemination of any such marketing materials;
 - G. For any credit card merchant processing accounts held, or set up, by Defendant Bruce Turiansky, directly or indirectly:
 1. A copy of the contract providing the account;
 2. Records that accurately reflect the name, address and telephone number of the acquirer bank, and its credit card processor(s); and
 3. Copies of correspondence from VISA, MasterCard, any similar entity, and any acquirer bank or credit card processor; and
 - H. Copies of any contracts providing the Defendant Bruce Turiansky with access to a billing and collection system, such as a credit card, checking, savings, share or similar account, utility bill, telephone bill, mortgage loan account or debit card;

- I. For each of Defendant's partners:
 1. A copy of the contract and any amendments thereto between such partner and Defendant;
 2. Records that accurately reflect the name, address and telephone number of such partner;
 3. Records that accurately reflect all payments made to such partner by Defendant, all payments made to Defendant by such partner, the reasons for such payments, and how such payments were calculated; and
 4. Copies of any correspondence with Defendant's partners or any person or entity that relate to complaints from consumers, government entities or any other parties about the sales, billing or collection practices or any questionable activities of Defendant's partners.

XIV.

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 Bruce Turiansky must notify the Commission of the following:
 1. Any changes in Defendant's residence, mailing addresses, and telephone numbers, within ten (10)

days of the date of such change;

2. Any changes in Defendant's employment status (including self-employment) within ten (10) days of such change. Such notice must include the name and address of each business that Defendant is affiliated with or employed by, a statement of the nature of the business, and a statement of his duties and responsibilities in connection with the business or employment; and
3. Any proposed change in the structure of any business entity owned or controlled by Defendant, such as creation, incorporation, dissolution, assignment, sale, merger, creation, dissolution of subsidiaries, proposed filing of a bankruptcy petition, or change in the corporate name or address, or any other change that may affect compliance obligations arising out of this Order, thirty (30) days prior to the effective date of any proposed change; **provided**, however, that, with respect to any proposed 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 must notify the Commission as soon as is practicable after learning of such proposed change;

B. One hundred eighty (180) days after the date of entry of this Order, Defendant Bruce Turiansky must provide a written report to the Commission, sworn to under penalty of perjury, setting forth in detail the manner and form in which Defendant has complied and is complying with this Order. This report must include but not be limited to:

1. Defendant's current home address, telephone number, fax number, and email address; his current employment; his business address(es), telephone number(s), fax number(s), and email address(es); a description of the business activities of each such employer; and Defendant's title and responsibilities for each employer;
2. A copy of each acknowledgment of receipt of this Order obtained by Defendant pursuant to Part XII;
3. A statement describing the manner in which Defendant has complied and is complying with Parts I through XIII of the Order;

C. Within fifteen (15) days after receipt of a written request by a representative of the Commission, Defendant Bruce Turiansky must submit additional written reports (under oath, if requested) and produce documents with respect to any conduct subject to this Order; and

D. For the purposes of this Part

1. "Employment" includes the performance of services as an employee, consultant, or independent contractor; and "employers" include any individual or entity for whom Defendant performs services as an employee, consultant, or independent contractor; and
2. The Commission and its representatives are authorized to communicate directly with Defendant Bruce Turiansky.

XV.

COMMISSION'S AUTHORITY TO MONITOR COMPLIANCE

IT IS FURTHER ORDERED that the Commission is authorized to monitor compliance with this Order by all lawful means, including but not limited to the following means:

- A. The Commission is authorized, without further leave of court, to obtain discovery from any person in the manner provided by Chapter V of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 26 - 37, as in effect now and as it may be amended, including the use of compulsory process pursuant to Fed. R. Civ. P. 45, for the purpose of monitoring and investigating compliance with any provision of this Order by Defendant Bruce Turiansky;
- B. The Commission is authorized to use representatives posing as consumers and suppliers to Defendant Bruce Turiansky, his employees, or any entity managed or

controlled, directly or indirectly, by Defendant without the necessity of identification or prior notice; and

C. Nothing in this Order limits 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 investigate whether Defendant Bruce Turiansky has violated any provision of the Telemarketing Act, 15 U.S.C. §§ 6101 et seq., Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), the Telemarketing Sales Rule, 16 C.F.R. Part 310, or any other provision of law enforced by the Commission.

XVI.

NOTIFICATIONS

IT IS FURTHER ORDERED, for the purposes of this Order, Defendant Bruce Turiansky must, unless otherwise directed by the Commission or its representatives, mail all written notifications to the Commission to:

Associate Director of Enforcement
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington D.C. 20580
Re: Bruce Turiansky (Smolev/Triad)

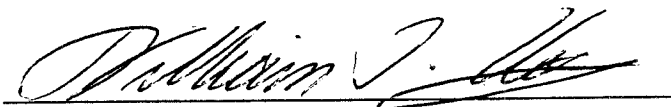
XVII.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court will retain jurisdiction of this matter for all purposes, including but not limited to, the purpose of enabling any of the parties to this Order to apply to

the Court at any time for such further orders or directives as may be necessary or appropriate for the interpretation or modification of this Order, for the enforcement of compliance therewith or for the punishment of violations thereof.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 11th day of December, 2002.



WILLIAM J. ZLOCH
Chief United States District Judge

Copies Furnished:

Gregory Ashe, Esq.
For Plaintiff

Barry J. Cutler, Esq.
For Defendant Kaylor

Lewis Rose, Esq.
For corporate Defendants

William I. Rothbard, Esq.
For Defendant Lynstrom Information Service, Inc.

Andrew J. Strenio, Jr., Esq.
For Defendant Turiansky

Charles I. Weissman, Esq.
For Defendant Smolev