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DISTRICT OF NEVADA

BY _____ TRUITY

1 UNITED STATES OF AMERICA
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8 UNITED STATES DISTRICT COURT
9 DISTRICT OF NEVADA

10 UNITED STATES OF AMERICA,
11 Plaintiff,
12
13 v.
14 BRAGLIA MARKETING GROUP, L.L.C., a
Nevada limited liability company,
15 FRANK BRAGLIA, individually and as an owner
and manager of Braglia Marketing Group,
16 L.L.C., and
17 KATE BRAGLIA, individually and as an owner
and manager of Braglia Marketing Group,
18 L.L.C.,
19 Defendants.

Case No. CV-S-04-1209-DWH-PAL
STIPULATED JUDGMENT AND
ORDER FOR
PERMANENT INJUNCTION

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21
22 Plaintiff, the United States of America, acting upon notification and authorization to the
23 Attorney General by the Federal Trade Commission ("FTC" or the "Commission"), has
24 commenced this action by filing the complaint herein, and Defendants have been served with the
25 summons and the complaint. The parties, represented by the attorneys whose names appear
26 hereafter, have agreed to settlement of this action without adjudication of any issue of fact or law,

1 and without Defendants admitting liability for any of the violations alleged in the complaint.

2 **THEREFORE**, on the joint motion of the parties, it is hereby **ORDERED**,
3 **ADJUDGED AND DECREED** as follows:

4 **FINDINGS**

5 1. This Court has jurisdiction over the subject matter and the parties pursuant to
6 28 U.S.C. §§ 1331, 1337(a), 1345 and 1355, and 15 U.S.C. §§ 45(m)(1)(A), 53(b), 56(a), and
7 57b.

8 2. Venue is proper as to all parties in this District.

9 3. The activities of Defendants are in or affecting commerce, as defined in Section 4
10 of the FTC Act, 15 U.S.C. § 44.

11 4. The complaint states a claim upon which relief may be granted against
12 Defendants, under Sections 5(a), 5(m)(1)(A), 13(b) and 19 of the Federal Trade Commission Act
13 ("FTC Act"), 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), and 57b.

14 5. Defendants have entered into this Stipulated Judgment and Order for Permanent
15 Injunction ("Order") freely and without coercion. The undersigned Individual Defendants further
16 acknowledge that they have read the provisions of this Order and are prepared to abide by them.

17 6. Defendants hereby waive all rights to appeal or otherwise challenge or contest the
18 validity of this Order.

19 7. Defendants have agreed that this Order does not entitle Defendants to seek or to
20 obtain attorneys' fees as a prevailing party under the Equal Access to Justice Act, 28 U.S.C.
21 § 2412, and Defendants further waive any rights to attorneys' fees that may arise under said
22 provision of law.

23 8. Entry of this Order is in the public interest.

24 **DEFINITIONS**

25 For the purpose of this Order, the following definitions shall apply:
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1 1. "Asset" means any legal or equitable interest in, or right or claim to, any real and
2 personal property, including without limitation, chattels, goods, instruments, equipment, fixtures,
3 general intangibles, leaseholds, mail or other deliveries, inventory, checks, notes, accounts,
4 credits, contracts, receivables, shares of stock, and all cash, wherever located.

5 2. "Defendants" means the Corporate Defendant and the Individual Defendants. The
6 "Corporate Defendant" is Braglia Marketing Group, L.L.C., a Nevada limited liability company
7 ("BMG"). The "Individual Defendants" are Frank Braglia and Kate Braglia, individually and as
8 managers of BMG.

9 3. The "Telemarketing Sales Rule" or "Rule" means the FTC Rule entitled
10 "Telemarketing Sales Rule," 16 C.F.R. § 310, attached hereto as Appendix A.

11 4. "Customer" means any person who is or may be required to pay for goods or
12 services offered through telemarketing.

13 5. "Outbound telephone call" means a telephone call initiated by a telemarketer to
14 induce the purchase of goods or services or to solicit a charitable contribution.

15 6. "Person" means any individual, group, unincorporated association, limited or
16 general partnership, corporation, or other business entity.

17 7. "Telemarketing" means a plan, program, or campaign which is conducted to
18 induce the purchase of goods or services or a charitable contribution, by use of one or more
19 telephones and which involves more than one interstate telephone call. The term does not
20 include the solicitation of sales through the mailing of a catalog which: contains a written
21 description or illustration of the goods or services offered for sale; includes the business address
22 of the seller; includes multiple pages of written material or illustrations; and has been issued not
23 less frequently than once a year, when the person making the solicitation does not solicit
24 customers by telephone but only receives calls initiated by customers in response to the catalog
25 and during those calls takes orders only without further solicitation. For purposes of the previous
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1 sentence, the term "further solicitation" does not include providing the customer with
2 information about, or attempting to sell, any other item included in the same catalog which
3 prompted the customer's call or in a substantially similar catalog.

4 8. "Seller" means any person who, in connection with a telemarketing transaction,
5 provides, offers to provide, or arranges for others to provide goods or services to the customer in
6 exchange for consideration, whether or not such person is under the jurisdiction of the Federal
7 Trade Commission.

8 9. "Telemarketer" means any person who, in connection with telemarketing, initiates
9 or receives telephone calls to or from a customer or donor.

10 10. "Representatives" means Defendants' successors, assigns, officers, agents,
11 servants, employees and those persons in active concert or participation with them who receive
12 actual notice of this Order by personal service or otherwise.

13 11. "National Do Not Call Registry" means the National Do Not Call Registry
14 maintained by the Federal Trade Commission pursuant to 16 C.F.R. § 310.4(b)(1)(iii)(B).

15 12. "Established business relationship" means a relationship between the seller and a
16 person based on: (a) the person's purchase, rental, or lease of the seller's goods or services or a
17 financial transaction between the person and seller, within the eighteen (18) months immediately
18 preceding the date of the telemarketing call; or (b) the person's inquiry or application regarding a
19 product or service offered by the seller, within the three months immediately preceding the date
20 of a telemarketing call.

21 ORDER

22 **I. BAN ON OWNERSHIP AND MANAGEMENT OF** 23 **TELEMARKETING OPERATIONS**

24 **IT IS ORDERED** that each Individual Defendant, with respect to any business entity
25 engaged, in whole or in part, in telemarketing, is hereby permanently restrained and enjoined
26 from:

- 1 A. Holding more than a 5% ownership interest, share, or stock in such entity,
2 B. Serving as a director, officer, trustee, or general manager of such entity; or
3 C. Holding any position of responsibility for compliance with the Telemarketing
4 Sales Rule at such entity.

5 **II. PROHIBITION AGAINST ABUSIVE TELEMARKETING PRACTICES**

6 **IT IS FURTHER ORDERED** that, in connection with telemarketing, Defendants and
7 their Representatives are hereby permanently restrained and enjoined from engaging in, or
8 causing other persons to engage in, or assisting other persons to engage in, violations of the
9 Telemarketing Sales Rule, including but not limited to:

10 A. Initiating any outbound telephone call to a person's telephone number on the
11 National Do Not Call Registry to induce the purchase of goods or services unless:

12 1. The seller has obtained the express agreement, in writing, of such person
13 to place calls to that person. Such written agreement shall clearly evidence such person's
14 authorization that calls made by or on behalf of a specific party may be placed to that person, and
15 shall include the telephone number to which the calls may be placed and the signature of that
16 person; or

17 2. The seller can prove an established business relationship with such person
18 and that person has not stated that he or she does not wish to receive outbound telephone calls
19 from the seller;

20 B. Abandoning any outbound telephone call to a person by failing to connect the call
21 to a representative within two (2) seconds of the person's completed greeting, unless the
22 following four (4) conditions are met:

23 1. Defendants employ technology that ensures abandonment of no more than
24 three (3) percent of all calls answered by a person, measured per day per calling campaign;

25 2. Defendants and their Representatives, for each telemarketing call placed,
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1 allow the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting
2 an unanswered call;

3 3. Whenever a representative is not available to speak with the person
4 answering the call within two (2) seconds after the person's completed greeting, the seller or
5 telemarketer promptly plays a recorded message that states the name and telephone number of
6 the seller on whose behalf the call was placed; and

7 4. Defendants retain records, in accordance with 16 C.F.R. § 310.5 (b)-(d),
8 establishing compliance with the preceding three conditions; and

9 C. Initiating any outbound telephone call to a telephone number within a given area
10 code without first paying the required annual fee for access to the telephone numbers, within that
11 area code, that are on the National Do Not Call Registry;

12 *Provided, however,* that if the Commission promulgates rules that modify or supersede
13 the Telemarketing Sales Rule, in whole or part, Defendants shall comply fully and completely
14 with all applicable requirements thereof, on and after the effective date of any such rules.

15 **III. CIVIL PENALTY AND RIGHT TO REOPEN**

16 **IT IS FURTHER ORDERED** that:

17 A. Judgment in the amount of Five Hundred Twenty-Six Thousand Nine Hundred
18 Thirty-Nine Dollars (\$526,939.00) is hereby entered against Defendants, jointly and severally, as
19 a civil penalty, pursuant to Section 5(m)(1)(A) of the Federal Trade Commission Act, 15 U.S.C.
20 § 45(m)(1)(A). Based upon Defendants' sworn representations in financial statements, full
21 payment for the foregoing civil penalty is suspended except for Three Thousand Five Hundred
22 Dollars (\$3,500.00), contingent upon the accuracy and completeness of the financial statements,
23 as set forth in Subparagraphs C and D of this Paragraph.

24 B. Prior to or concurrently with their execution of this Order, Defendants shall
25 transfer Three Thousand Five Hundred Dollars (\$3,500.00), as non-suspended civil penalty
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1 payment, to their attorney, who shall hold the entire sum for no purpose other than payment to
2 the Treasurer of the United States after entry of this Order by the Court. Within five (5) days of
3 receipt of notice of the entry of this Order, Defendants' attorney shall transfer such civil penalty
4 payment in the form of a wire transfer or certified or cashier's check made payable to the
5 Treasurer of the United States. The check or written confirmation of the wire transfer shall be
6 delivered to: Director, Office of Consumer Litigation, U.S. Department of Justice Civil Division,
7 P.O. Box 386, Washington, DC 20044. The cover letter accompanying the check shall include
8 the title of this litigation and a reference to DJ# 102-3186. Such transfer by Defendants' attorney
9 shall constitute partial satisfaction of the judgment.

10 C. Upon payment by Defendants' attorney as provided in Subparagraph B of this
11 Paragraph, the remainder of the civil penalty judgment shall be suspended subject to the
12 conditions set forth in Subparagraph D of this Paragraph.

13 D. Plaintiff's agreement to this Order is expressly premised upon the truthfulness,
14 accuracy and completeness of Defendants' sworn financial statements and supporting documents
15 submitted to the Commission, namely those of the Corporate Defendant and Frank Braglia, each
16 signed and dated October 8, 2004, and those of Kate Braglia signed and dated October 4, 2004,
17 which include material information upon which Plaintiff relied in negotiating and agreeing to this
18 Order. If, upon motion by Plaintiff, this Court finds that Defendants have failed to disclose any
19 material asset or materially misstated the value of any asset in the financial statements and
20 related documents described above, or have made any other material misstatement or omission in
21 the financial statements and related documents described above, then this Order shall be
22 reopened and suspension of the judgment shall be lifted for the purpose of requiring payment of
23 civil penalty in the full amount of the judgment (\$526,939.00), less the sum of all amounts paid
24 to the Treasurer of the United States pursuant to Subparagraph B of this Paragraph. *Provided,*
25 *however,* that in all other respects this Order shall remain in full force and effect, unless
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1 otherwise ordered by the Court.

2 E. In accordance with 31 U.S.C. § 7701, Defendants are hereby required, unless they
3 have done so already, to furnish to Plaintiff and the FTC their respective taxpayer identifying
4 numbers (social security numbers or employer identification numbers) which shall be used for
5 purposes of collecting and reporting on any delinquent amount arising out of Defendants'
6 relationship with the government.

7 F. Defendants agree that the facts as alleged in the complaint filed in this action shall
8 be taken as true for the purpose of a nondischargeability complaint in any bankruptcy proceeding.

9 G. Proceedings instituted under this Paragraph are in addition to, and not in lieu of,
10 any other civil or criminal remedies that may be provided by law, including any other
11 proceedings the Plaintiff may initiate to enforce this Order.

12 IV. RECORD KEEPING PROVISIONS

13 **IT IS FURTHER ORDERED** that for a period of five (5) years from the date of entry of
14 this Order, each Defendant, and their successors and assigns, shall maintain and make available
15 to the Plaintiff or Commission, within seven (7) days of the receipt of a written request, business
16 records demonstrating compliance with the terms and provisions of this Order.

17 V. DISTRIBUTION OF ORDER BY DEFENDANTS AND 18 ACKNOWLEDGMENTS OF RECEIPT

19 **IT IS FURTHER ORDERED** that each Defendant, and their successors and assigns,
20 shall within thirty (30) days of the entry of this Order, provide a copy of this Order with
21 Appendix A to all of their owners, principals, members, officers, and directors, as well as
22 managers, agents, servants, employees, and attorneys having decision-making authority with
23 respect to the subject matter of this Order; secure from each such person a signed statement
24 acknowledging receipt of a copy of this Order; and shall, within ten (10) days of complying with
25 this Paragraph, file an affidavit with the Court and serve the Commission, by mailing a copy
26 thereof, to the Associate Director for Marketing Practices, Bureau of Consumer Protection,

1 Federal Trade Commission, 600 Pennsylvania Ave., N.W., Washington, D.C. 20580, setting
2 forth the fact and manner of their compliance, including the name and title of each person to
3 whom a copy of the Order has been provided.

4 **VI. NOTIFICATION OF BUSINESS CHANGES**

5 **IT IS FURTHER ORDERED** that each Defendant, and their successors and assigns,
6 shall notify the Associate Director for Marketing Practices, Bureau of Consumer Protection,
7 Federal Trade Commission, 600 Pennsylvania Ave., N.W., Washington, D.C. 20580, at least
8 thirty (30) days prior to any change in such Defendant's business, including, but not limited to,
9 merger, incorporation, dissolution, assignment, and sale, which results in the emergence of a
10 successor corporation, the creation or dissolution of a subsidiary or parent, or any other change,
11 which may affect such Defendant's obligations under this Order.

12 **VII. NOTIFICATION OF INDIVIDUALS' AFFILIATIONS**

13 **IT IS FURTHER ORDERED** that each Individual Defendants shall, for a period of
14 seven (7) years from the date of entry of this Order, notify the Associate Director for Marketing
15 Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave.,
16 N.W., Washington, D.C. 20580, within thirty (30) days of his or her affiliation with a new
17 business or employment whose activities include telemarketing, or of his or her affiliation with a
18 new business or employment in which his or her own duties and responsibilities involve
19 telemarketing.

20 **VIII. COMMUNICATION WITH DEFENDANTS**

21 **IT IS FURTHER ORDERED** that for the purposes of compliance reporting, if
22 undersigned counsel no longer represents a Defendant, Plaintiff and the Commission are
23 authorized to communicate directly with such Defendant.

24 **IX. FEES AND COSTS**

25 **IT IS FURTHER ORDERED** that each party to this Order hereby agrees to bear its own
26

1 costs and attorneys' fees incurred in connection with this action.

2 **X. SEVERABILITY**

3 **IT IS FURTHER ORDERED** that the provisions of this Order are separate and
4 severable from one another. If any provision is stayed or determined to be invalid, the remaining
5 provisions shall remain in full force and effect.

6 **XI. RETENTION OF JURISDICTION**

7 **IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for
8 purposes of construction, modification and enforcement of this Order.

9 **XII. COMPLETE SETTLEMENT**

10 The parties, by their respective counsel, hereby consent to entry of the foregoing Order
11 which shall constitute a final judgment and order in this matter. The parties further stipulate and
12 agree that the entry of the foregoing Order shall constitute a full, complete and final settlement of
13 this action.

14 **JUDGMENT IS THEREFORE ENTERED** in favor of Plaintiff and against

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1 Defendants, pursuant to all the terms and conditions recited above.

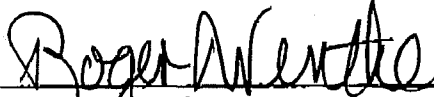
2 **SO ORDERED** this _____ day of _____, 200__.

3
4 UNITED STATES DISTRICT JUDGE

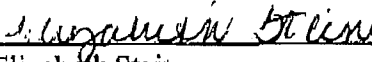
5 **FOR THE PLAINTIFF:**
6 **FOR THE UNITED STATES OF**
7 **AMERICA:**

8 PETER D. KEISLER, JR.
9 Assistant Attorney General
10 Civil Division
11 U.S. DEPARTMENT OF JUSTICE

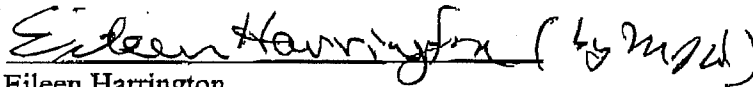
12 DANIEL G. BOGDEN
13 United States Attorney
14 District of Nevada

15 
16 Roger W. Wenthe
17 Assistant U.S. Attorney


18 EUGENE M. THIROLF
19 Director
20 Office of Consumer Litigation


21 
22 Elizabeth Stein
23 Attorney
24 Office of Consumer Litigation
25 Civil Division
26 U.S. Department of Justice
Washington, DC 20530

FOR THE FEDERAL TRADE
COMMISSION:



Eileen Harrington
Associate Director for Marketing Practices

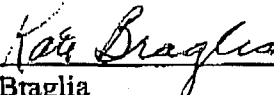
FOR DEFENDANTS:


Bruce M. Judd, Esq., Attorney for
Defendants Braglia Marketing Group,
L.L.C., Frank Braglia, and Kate Braglia


Braglia Marketing Group, L.L.C., by
Frank Braglia, Managing Member


Braglia Marketing Group, L.L.C., by
Kate Braglia, Managing Member


Frank Braglia


Kate Braglia

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Allen Hill (by mgcd)

Allen Hill
Assistant Director for Marketing Practices

Michael J. Davis

Michael J. Davis,
Attorney, Division of Marketing Practices
Bureau of Consumer Protection
Federal Trade Commission
Washington, DC 20580