

UNITED STATES DISTRICT COURT  
DISTRICT OF KANSAS

FEDERAL TRADE COMMISSION, and the  
STATES OF ILLINOIS, KANSAS,  
MINNESOTA, and NORTH CAROLINA,

Plaintiffs,

v.

AFFILIATE STRATEGIES, INC., *et al.*

Defendants.

**Case No. 5:09-CV-04104-JAR-KGS**

**DEFAULT JUDGMENT AND  
PERMANENT INJUNCTION  
AGAINST APEX HOLDINGS  
INTERNATIONAL, L.L.C.;  
AFFILIATE STRATEGIES, INC.;  
LANDMARK PUBLISHING  
GROUP, L.L.C.; GRANT WRITERS  
INSTITUTE, L.L.C.; AND  
ANSWER CUSTOMERS, L.L.C.**

On July 20, 2009, original Plaintiffs, the Federal Trade Commission (“FTC”), and the States of Kansas, Minnesota and North Carolina filed a Complaint for Injunction and Other Equitable Relief to obtain temporary, preliminary, and permanent injunctive relief. The original Complaint was amended on December 9, 2009, adding one new Plaintiff, the State of Illinois (collectively with the original Plaintiffs, “Plaintiffs”), several new Defendants and new Counts. A Second Amended Complaint was filed on June 21, 2010, adding several additional facts and citations to evidence. The Second Amended Complaint brings claims 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 (“Telemarketing Act”), 15 U.S.C. §§ 6101 – 6108; the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.*; Minn. Stat. §§ 8.01 & 8.31; the Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. §§ 325D.43-325D.48; Minn. Stat. § 325F.67; the Minnesota Prevention of Consumer Fraud Act, Minn.

Stat. §§ 325F.68-325F.70; and Minn. Stat. § 325F.71, subd. 2 (2008); the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. §§ 75-1.1, *et seq.*; and the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2 *et seq.*

Defendants Apex Holdings International, L.L.C.; Affiliate Strategies, Inc.; Landmark Publishing Group, L.L.C.; Grant Writers Institute, L.L.C.; and Answer Customers, L.L.C., (collectively, “Defendants”) have failed to answer or otherwise respond to the Second Amended Complaint. Pursuant to Rule 55(a) of the Federal Rules of Civil Procedure, defaults were entered against Defendants by the Clerk of the Court on August 12, 2010.

**NOW THEREFORE**, Plaintiffs have moved this Court for entry of a judgment by default and permanent injunction against Defendants pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure. Having considered the memorandum filed in support of the motion and the record in this matter, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

**FINDINGS**

1. This Court has jurisdiction over the subject matter of this case and the parties hereto pursuant to 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), and 6105(b), and 28 U.S.C. §§ 1331, 1337(a), and 1345.
2. Venue in the District of Kansas is proper as to Defendants.
3. Defendants’ activities are in or affecting commerce, as defined in the FTC Act, 15 U.S.C. § 44.

4. The Second Amended Complaint states claims upon which relief may be granted against Defendants 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 - 6108, and the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.*; Minn. Stat. §§ 8.01 & 8.31; the Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. §§ 325D.43-325D.48; Minn. Stat. § 325F.67; the Minnesota Prevention of Consumer Fraud Act, Minn. Stat. §§ 325F.68-325F.70; and Minn. Stat. § 325F.71, subd. 2 (2008); the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. §§ 75-1.1, *et seq.*; and the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2 *et seq.*
5. Defendants have received proper process and service of process as required by Rule 4 of the Federal Rules of Civil Procedure.
6. Defendants have failed to file an answer to the Second Amended Complaint or to otherwise defend the claims in the Second Amended Complaint. The Clerk of the Court properly entered defaults against Defendants on August 12, 2010.
7. Because of Defendants' default, the factual allegations in the Second Amended Complaint are taken as true.
8. As alleged in Count I of the Second Amended Complaint, Defendants, in connection with the offering for sale or sale of a book entitled "Professional Grant Writer 'The Definitive Guide to Grant Writing

Success,' " made false, misleading, and unsubstantiated representations that consumers are guaranteed or highly likely to obtain a \$25,000 grant from the U.S. Government. The making of these representations constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

9. As alleged in Count II of the Second Amended Complaint, Defendants, in connection with the offering for sale or sale of grant research and writing services, made false, misleading, and unsubstantiated representations that Grant Writers Institute has a 70% success rate in obtaining grant funding for the consumers who purchase Defendants' services. The making of these representations constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).
10. As alleged in Count III of the Second Amended Complaint, Defendants have made false, misleading, and unsubstantiated representations that consumers who purchase Defendants' goods and services are likely to receive grant monies. The making of these representations constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).
11. As alleged in Count IV of the Second Amended Complaint, Defendants have misrepresented material aspects of the performance, efficacy, nature, or central characteristics of the grant-related services they sell, including (a) that consumers are guaranteed or highly likely to receive a \$25,000

grant; (b) that Grant Writers Institute has a 70% success rate in obtaining grant funding for the consumers who purchase Defendants' services; and (c) that consumers who purchase Defendants' goods and services are likely to receive grant monies. The making of these representations constitutes a deceptive telemarketing practice in violation of Section 310.3(a)(2)(iii) of the Telemarketing Sales Rule ("TSR"), 16 C.F.R. § 310.3(a)(2)(iii).

12. As alleged in Count VI of the Second Amended Complaint, Defendants, in connection with the offering for sale or sale of a book entitled "Professional Grant Writer 'The Definitive Guide to Grant Writing Success,'" made willful use of exaggeration, falsehood, innuendo or ambiguity as to a material fact, specifically that consumers are guaranteed or highly likely to receive a \$25,000 grant from the U.S. Government. The making of these representations constitutes a deceptive act or practice is violation of the Kansas Consumer Protection Act, K.S.A. § 50-626(b)(2).

13. As alleged in Count VII of the Second Amended Complaint, Defendants, in the course of telemarketing grant-related goods and services, have falsely represented that the uses, benefits or characteristics of their goods and services have been proven or otherwise substantiated, specifically (a) that consumers are guaranteed or highly likely to receive a \$25,000 grant; (b) that Grant Writers Institute has a 70% success rate in obtaining grant funding for the consumers who purchase Defendants' services; and

(c) that consumers who purchase Defendants' goods and services are likely to receive grant monies. The making of these representations is a deceptive act or practice that constitutes a violation of the Kansas Consumer Protection Act, K.S.A. § 50-626(b)(1)(G).

14. As alleged in Count VIII of the Second Amended Complaint, Defendants, in the course of telemarketing grant-related goods and services, charged Kansas consumers' credit cards for the purchase of a book entitled "Professional Grant Writer 'The Definitive Guide to Grant Writing Success' " prior to receiving signed confirmations from these consumers disclosing in full the terms of the transaction. This practice constitutes an unconscionable act or practice in violation of the Kansas Consumer Protection Act, K.S.A. § 50-675(b).
15. As alleged in Count IX of the Second Amended Complaint, Defendants, in the course of telemarketing grant-related goods and services, charged Kansas consumers' credit cards for the purchase of grant-related services prior to receiving signed confirmations from these consumers that comply with the requirements of K.S.A. § 50-672(b). This practice constitutes an unconscionable act or practice in violation of the Kansas Consumer Protection Act, K.S.A. § 50-675(b).
16. As alleged in Count X of the Second Amended Complaint, Defendants, in the course of telemarketing grant-related goods and services, have caused elder or disabled persons to suffer (a) loss of or encumbrance upon the

elder or disabled persons' principal source of income; (b) loss of property set aside for retirement or for personal or family care and maintenance; and/or (c) loss of assets essential to the health and welfare of disabled persons.

17. As alleged in Count XI of the Second Amended Complaint, Defendants, in connection with the advertising, marketing, promotion, offering for sale and sale of grant-related goods and services, have caused a likelihood of confusion or of misunderstanding as to their goods and services and misrepresented the source, sponsorship, approval, certification, affiliation, connection, association, characteristics, uses, or benefits of their goods and services, including (a) that consumers are guaranteed or highly likely to receive a \$25,000 grant; (b) that Grant Writers Institute has a 70% success rate in obtaining grant funding for the consumers who purchase Defendants' services; (c) that consumers who purchase Defendants' goods and services are likely to receive grant monies; and (d) that the advertised grants are related to the U.S. Government. This conduct constitutes multiple, separate deceptive trade practices in violation of Minn. Stat. § 325D.44, subd. 1(2), (3), (5) and (13).

18. As alleged in Count XII of the Second Amended Complaint, Defendants, in connection with the advertising, marketing, promotion, offering for sale and sale of grant-related goods and services, have circulated or placed before the public postcards and other advertisements indicating (a) that

consumers are guaranteed or highly likely to receive a \$25,000 grant;

(b) that Grant Writers Institute has a 70% success rate in obtaining grant funding for the consumers who purchase Defendants' services; and

(c) that consumers who purchase Defendants' goods and services are likely to receive grant monies. This conduct constitutes multiple, separate acts of false advertisement in violation of Minn. Stat. § 325F.67.

19. As alleged in Count XIII of the Second Amended Complaint, Defendants, in connection with the sale of grant-related goods and services, have employed misleading statements and/or deceptive practices with the intent that others rely thereon by indicating (a) that consumers are guaranteed or highly likely to receive a \$25,000 grant; (b) that Grant Writers Institute has a 70% success rate in obtaining grant funding for the consumers who purchase Defendants' services; and (c) that consumers who purchase Defendants' goods and services are likely to receive grant monies. This conduct constitutes multiple violations of Minn. Stat. § 325F.69, subd. 1.

20. As alleged in Count XIV of the Second Amended Complaint, Defendants, in connection with the advertising, marketing, promotion, offering for sale and sale of grant-related goods and services, have knowingly engaged in deceptive trade practices, false advertising and/or consumer fraud against senior citizens who are persons 62 years of age or older, or disabled people, causing one or more senior citizens or disabled persons to suffer

(1) loss or encumbrance of a primary residence, principal employment or source of income; (2) substantial loss of property set aside for retirement or for personal or family care and maintenance; (3) substantial loss of payments received under a pension or retirement plan or a government benefits program; or (4) loss of assets essential to the health or welfare of the senior citizen or disabled person. This conduct constitutes multiple, separate violations of Minn. Stat. § 325F.71, subd. 2.

21. As alleged in Count XV of the Second Amended Complaint, Defendants, in connection with the advertising, marketing, promotion, offering for sale and sale of grant-related goods and services, have engaged in a practice of misrepresentation, including but not limited to misrepresentations (a) that consumers are guaranteed or highly likely to receive a \$25,000 grant; (b) that Grant Writers Institute has a 70% success rate in obtaining grant funding for the consumers who purchase Defendants' services; and (c) that consumers who purchase Defendants' goods and services are likely to receive grant monies; and (d) that it would be rare for consumers who purchase the Defendants' services to not be "matched" with a grant. The making of these representations constitute unfair and deceptive trade practices in violation of N.C. Gen. Stat. § 75-1.1.

22. As alleged in Count XVI of the Second Amended Complaint, Defendants, in connection with the offering for sale or sale of a book entitled "Professional Grant Writer 'The Definitive Guide to Grant Writing

Success,' " made false, misleading, and unsubstantiated representations that consumers are guaranteed or highly likely to obtain a \$25,000 grant from the U.S. Government. The making of these representations constitutes a deceptive act or practice in violation of Section 2 of the Illinois Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/2).

23. As alleged in Count XVII of the Second Amended Complaint, Defendants, in connection with the offering for sale or sale of grant research and writing services, made false, misleading, and unsubstantiated representations that Grant Writers Institute has a 70% success rate in obtaining grant funding for the consumers who purchase Defendants' services. The making of these representations constitutes a deceptive act or practice in violation of Section 2 of the Illinois Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/2).
24. As alleged in Count XVIII of the Second Amended Complaint, Defendants have made false, misleading, and unsubstantiated representations that consumers who purchase Defendants' goods and services are likely to receive grant monies. The making of these representations constitutes a deceptive act or practice in violation of Section 2 of the Illinois Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/2).

25. Absent a permanent injunction, Defendants are likely to continue to engage in the activities alleged in the Second Amended Complaint or to commit similar violations.
26. Defendants have operated as a common enterprise by sharing ownership, officers, directors, members, managers, office locations, and mailing addresses in furtherance of the acts and practices alleged in the Second Amended Complaint. Because Defendants have operated as a common enterprise, each of them is jointly and severally liable for the acts and practices alleged in the Second Amended Complaint.
27. Defendants' total net sales from the conduct alleged in the Second Amended Complaint amounted to \$27,247,141.

### DEFINITIONS

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

1. "**Asset**" means any legal or equitable interest in, right to, or claim to, any real and personal property, including, but not limited to, "goods," "instruments," "equipment," "fixtures," "general intangibles," "inventory," "checks," "notes" (as these terms are defined in the Uniform Commercial Code), and all chattel, leaseholds, contracts, mail or other deliveries, shares of stock, lists of consumer names, accounts, credits, premises, receivables, funds, reserve funds, and cash, wherever located.
2. "**Assisting others**" includes, but is not limited to, providing any of the following goods or services to another entity: (1) performing customer

service functions, including, but not limited to, receiving or responding to consumer complaints; (2) formulating or providing, or arranging for the formulation or provision of, any promotional material; (3) providing names of, or assisting in the generation of, potential customers; (4) performing promotional or marketing services of any kind; or (5) providing fulfillment services.

3. **“Clear and conspicuous”** statement, or a statement presented **“clearly and conspicuously”** means:
  - a. in print communications, the message shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears;
  - b. in oral communications, the message shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it;
  - c. in communications made through an electronic medium (including but not limited to television, video, radio, and interactive media, including but not limited to the Internet, online services, and software), the message shall be presented simultaneously in both the audio and visual portions of the communication. In any communication presented solely through visual or audio means, the message may be made through the same means in which the

communication is presented. In any communication disseminated by means of an interactive electronic medium, including but not limited to software, the Internet, or online services, a disclosure must be unavoidable and presented prior to the consumer incurring any financial obligation. Any audio message shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. Any visual message shall be of a size and shade, with a degree of contrast to the background against which it appears, and shall appear on the screen for a duration and in a location sufficiently noticeable for an ordinary consumer to read and comprehend it; and

d. regardless of the medium used to disseminate it, the message shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the message shall be used in any communication.

4. **“Credit-related or debt-related goods or services”** means any good or service that is marketed, advertised, offered for sale, or sold to consumers as a method by which consumers may directly or indirectly, establish or obtain any extension of credit or credit device, or any reduction or elimination of debt, including, but not limited to, credit cards, merchandise buying club membership cards that offer an extension of credit, loans, or refinancing; or as a method to restore, repair, or improve

derogatory information contained in consumers' credit reporting files; or as a method to consolidate or liquidate debts. Furthermore, for the purposes of this Order, "credit-related or debt-related goods and services" shall include: interest rate reduction, credit counseling, debt elimination, debt negotiation, debt settlement, debt consolidation, or debt management goods or services.

5. "**Document**" is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts, Internet sites, Webpages, Websites, electronic correspondence, including e-mail and instant messages, photographs, audio and video recordings, contracts, accounting data, advertisements (including, but not limited to, advertisements placed on the World Wide Web), FTP Logs, Server Access Logs, USENET Newsgroup postings, World Wide Web pages, books, written or printed records, handwritten notes, telephone logs, telephone scripts, receipt books, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, computer records, and other data compilations from which information can be obtained and translated. A draft or non-identical copy is a separate document within the meaning of the term.
6. "**Money-making opportunities**" means any good or service represented to enable consumers or to assist consumers to earn income, or to obtain

grants, monetary assistance, scholarships, employment, or business opportunities.

7. **“Negative option feature”** means, in an offer or agreement to sell or provide any product or service, a provision under which the consumer’s silence or failure to take an affirmative action to reject products or services or to cancel the agreement is interpreted by the seller or provider as acceptance of the offer. Offers or agreements with negative option features include, but are not limited to: (i) free or introductory price trial offers in which the consumer receives a product or service for free or at a nominal or introductory price for an initial period and will incur an obligation to pay or pay a greater amount for the product or service if he or she does not take affirmative action to cancel, reject, or return the product or service before the end of that period; (ii) continuity plans in which, subsequent to the consumer’s agreement to the plan, the seller or provider automatically ships products to a consumer unless the consumer notifies the seller or provider within a certain time not to ship the products; and (iii) automatic renewal plans in which the seller or provider automatically renews the agreement and charges the consumer unless the consumer cancels before the renewal.
8. **“Plaintiffs”** means the Federal Trade Commission, and the States of Kansas, Minnesota, North Carolina, and Illinois.

9. **“Representatives”** shall have the same scope as Federal Rule of Civil Procedure 65(d)(2), and means Defendants’ agents, servants, employees, and attorneys, and any other person or entity in active concert or participation with them who receives actual notice of this Order by personal service or otherwise.
10. **“Telemarketing”** means a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call, whether or not covered by the Telemarketing Sales Rule, 16 C.F.R. Part 310.

**I.**

**BAN ON MARKETING OF MONEY-MAKING OPPORTUNITIES**

**IT IS THEREFORE ORDERED** that Defendants, whether acting directly or through any entity, corporation, subsidiary, division, affiliate, or other device, are hereby permanently restrained and enjoined from engaging, participating, or assisting others in the advertising, promoting, marketing, offering for sale, sale, or distribution of any Money-making opportunities.

**II.**

**BAN ON TELEMARKETING**

**IT IS FURTHER ORDERED** that Defendants, whether acting directly or through any entity, corporation, subsidiary, division, affiliate, or other device, are hereby permanently restrained and enjoined from engaging, participating or assisting

others in Telemarketing, including advertising, marketing, promoting, offering for sale, or sale of any product or service through Telemarketing.

### III.

#### PROHIBITED REPRESENTATIONS

**IT IS FURTHER ORDERED** that Defendants and their Representatives, whether acting directly or through any entity, corporation, subsidiary, division, affiliate, or other device, in connection with the advertising, marketing, promotion, offering for sale, or sale of any good or service, specifically including but not limited to any credit-related or debt-related good or service, are hereby permanently restrained and enjoined from misrepresenting or assisting others in misrepresenting, expressly or by implication, any material fact, including but not limited to:

- A. Any material aspect of the nature or terms of any refund, cancellation, exchange, or repurchase policy, including, but not limited to, the likelihood of a consumer obtaining a full or partial refund, or the circumstances in which a full or partial refund will be granted to the consumer;
- B. The total costs to purchase, receive, or use, and the quantity of, the good or service;
- C. Any material restriction, limitation, or condition to purchase, receive, or use the good or service;
- D. Any material term, condition, or limitation, of any offer with a negative option feature; and
- E. Any material aspect of the performance, efficacy, nature, or characteristics

of the good or service.

**IV.**

**SUBSTANTIATION**

**IT IS FURTHER ORDERED** that Defendants and their Representatives, directly or through any entity, corporation, subsidiary, division, affiliate, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any good or service, in or affecting commerce, are hereby permanently restrained and enjoined from making, or assisting others in making, expressly or by implication, including through the use of a product name, endorsement, depiction, or illustration, any representation about the benefits, performance, or efficacy of such good or service, unless the representation is non-misleading, and, at the time the representation is made, Defendants possess and rely upon competent and reliable tests, analysis, research, or studies that, when evaluated in an objective manner, are sufficient to substantiate that the representation is true.

**V.**

**REQUIRED DISCLOSURES**

**IT IS FURTHER ORDERED** that Defendants and their Representatives, whether acting directly or through any entity, corporation, subsidiary, division, affiliate, or other device, in connection with the manufacturing, labeling, advertising, promoting, marketing, offering for sale, sale, or distribution of any good or service are hereby permanently enjoined from failing to:

A. Clearly and conspicuously disclose, before consumers are asked to pay money, submit consideration, or reveal billing information:

1. All fees and costs;
2. All material restrictions, limitations, or conditions applicable to the purchase, receipt, or use of the goods or services that are part of the offer (including but not limited to any promotion associated with free goods or services, or goods or services available on a trial basis);
3. All material terms and conditions of any cancellation or refund policy, including but not limited to informing consumers if no cancellations or refunds are permitted; and
4. All material terms and conditions of any offer with a negative option feature, including but not limited to:
  - a. The fact that the customer's account will be charged unless the customer takes affirmative action to avoid the charges;
  - b. The dollar amount of the first payment and when it will be charged, withdrawn, or become due; the dates or frequency (e.g., monthly, quarterly) of all subsequent charges or payment(s); and the dollar amount or range of costs of all subsequent charges or payments;
  - c. When any trial period begins; the length of any trial period; the specific steps and means by which a cancellation request

must be submitted; and the date by, or time period within which, a cancellation request must be received to avoid a charge;

- d. The length of any renewal period; the manner in which a notice not to ship or renew must be submitted; the date by or time period within which a notice not to ship or renew must be received to avoid shipment or renewal (*e.g.*, two weeks after the consumer is advised of an upcoming shipment or renewal); and the telephone number, email address, or street address to which such a notice must be directed; and
- e. All material conditions, limitations, and restrictions on the ability of the consumer to use any good or service that is offered as “free,” “risk-free,” “without obligation,” or “discounted,” or offered using words of similar import denoting or implying the absence of any obligation; and

B. At least thirty (30) days prior to renewing a consumer’s membership, subscription, or agreement to purchase for any good or service (in the case of a membership, subscription, or agreement whose term is six (6) months or longer) and prior to the submission for payment of a consumer’s billing information for such goods or services, send the consumer written confirmation of such renewal, identified in a clear and conspicuous manner on the outside of the envelope, via first class mail, that

includes all of the information required by this Section and a clear and conspicuous statement of the procedures by which the consumer can cancel such renewal.

**VI.**

**PROHIBITION ON VIOLATION OF CERTAIN STATE LAWS**

**IT IS FURTHER ORDERED** that Defendants and their Representatives, whether acting directly or through any entity, corporation, subsidiary, division, affiliate, or other device, are hereby permanently restrained and enjoined from violating:

- A. Illinois laws, including the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2 *et seq.*;
- B. Kansas laws, including the Kansas Consumer Protection Act, K.S.A. § 50-623 *et seq.*;
- C. Minnesota laws, including:
  - 1. the Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. §§ 325D.43 – 325D.48;
  - 2. Minn. Stat. §§ 325F.67;
  - 3. the Prevention of Consumer Fraud Act, Minn. Stat. §§ 325F.68 - 325F.70; and
  - 4. Minn. Stat. § 325F.71.; and
- D. North Carolina laws, including the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1, *et seq.*

**VII.**

**CUSTOMER INFORMATION**

**IT IS FURTHER ORDERED** that Defendants and their Representatives, whether acting directly or through any entity, corporation, subsidiary, division, affiliate, or other device, are permanently restrained and enjoined from:

A. disclosing, using, or benefitting from customer information, including the name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account), of any person which was obtained by any Defendant prior to entry of this Order in connection with the marketing and sale of grant-related goods and services; and

B. failing to dispose of such customer information in all forms in their possession, custody, or control within thirty (30) days after entry of this Order. Disposal shall be by means that protect against unauthorized access to the customer information, such as by burning, pulverizing, or shredding any papers, and by erasing or destroying any electronic media, to ensure that the customer information cannot practicably be read or reconstructed. *Provided, however*, that customer information need not be disposed of, and may be disclosed, to the extent requested by a government agency or required by a law, regulation, or court order.

## VIII.

### MONETARY JUDGMENT

**IT IS FURTHER ORDERED** that:

A. Judgment is hereby entered in favor of the Plaintiffs and against Defendants in the amount of twenty-seven million, two hundred forty-seven thousand, one hundred forty-one dollars (\$27,247,141) for the payment of equitable monetary relief, including, but not limited to, consumer restitution and/or disgorgement, and for paying any attendant expenses of administration of any redress fund.

B. Any funds paid to the Plaintiffs pursuant to this Section shall be deposited into a fund administered by the Plaintiffs or their designees to be used for equitable relief, including, but not limited to, consumer restitution and any attendant expenses for the administration any redress fund. Defendants will cooperate fully to assist the Plaintiffs in identifying consumers who may be entitled to redress pursuant to this Order. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Plaintiffs may apply funds for any other equitable relief (including consumer information remedies) that they determine to be reasonably related to Defendants' practices alleged in the Second Amended Complaint. Any funds paid to the Commission not used for equitable relief shall be deposited into the U.S. Treasury as disgorgement and/or into each State Co-Plaintiff's treasury fund designated for such deposits. Any funds paid to any State Plaintiff not used for equitable relief may be used by that State Plaintiff to the full extent authorized by that State's laws, including as payment for that State's costs of investigating and litigating

the instant case. Defendants shall have no right to challenge Plaintiffs' choice of remedies under this Section.

C. Defendants relinquish all dominion, control, and title to the funds paid to the fullest extent permitted by law. Defendants shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise.

D. The facts as alleged in the Second Amended Complaint filed in this action shall be taken as true without further proof in any bankruptcy case or subsequent civil litigation pursued by Plaintiffs to enforce their rights to any payment or money judgment pursuant to this Order, including but not limited to a nondischargeability complaint in any bankruptcy case.

F. Defendants are hereby required, in accordance with 31 U.S.C. § 7701, to furnish to the Commission their taxpayer identifying numbers (social security number or employer identification number), which shall be used for purposes of collecting and reporting on any delinquent amount arising out of Defendants' relationship with the government.

## **IX.**

### **LIFTING OF ASSET FREEZE**

**IT IS FURTHER ORDERED** that the freeze against the assets of the Defendants pursuant to the Temporary Restraining Order entered by this Court on June 20, 2009, and by the Stipulated Preliminary Injunction entered on September 1, 2009, shall be lifted for the sole purpose of transferring assets pursuant to Sections VIII and XII of this Order, and shall be dissolved upon the transfer of all such assets.

X.

**COMPLETION OF RECEIVERSHIP**

**IT IS FURTHER ORDERED** that Larry E. Cook, the Receiver appointed by prior orders of this Court, shall continue as Receiver for the Defendants for the purpose of taking the necessary steps to wind down the businesses of the Defendants, liquidate the assets of the Defendants, and pay any net proceeds to the Plaintiffs to satisfy the monetary judgment in this Order. In carrying out these duties, the Receiver shall be the agent of this Court, shall be accountable directly to this Court, and is authorized and directed to:

A. Take any and all steps that the Receiver concludes are appropriate to wind down the Defendants;

B. Continue to exercise full control over the Defendants and continue to collect, marshal, and take custody, control, and possession of all the funds, property, premises, accounts, documents, mail, and other assets of, or in the possession or under the control of the Defendants, wherever situated, the income and profits therefrom, and all sums of money now or hereafter due or owing to the Defendants, with full power to collect, receive, and take possession of all goods, chattels, rights, credits, monies, effects, lands, leases, books and records, limited partnership records, work papers, and records of accounts, including computer-maintained information, contracts, financial records, monies on hand in banks and other financial institutions, and other papers and documents of other individuals, partnerships, or corporations whose interests are now

held by or under the direction, possession, custody, or control of the Defendants (“Receivership Estate”);

C. Continue to have full control over the management and personnel of the Defendants, including the authority to remove, as the Receiver deems necessary or advisable, any director, officer, independent contractor, employee, or agent of these Defendants from control of, management of, or participation in, the affairs of these Defendants;

D. Take all steps necessary or advisable, including issuing subpoenas, to locate and liquidate all other assets of the Defendants, cancel the Defendants’ contracts, collect on amounts owed to the Defendants, and take such other steps as may be necessary to wind-down, terminate and dissolve the Defendants efficiently;

E. Take all steps necessary or advisable, including issuing subpoenas, to identify the name, address, telephone number, date of purchase, program or product purchased, total amount paid, amount of any full or partial refund or chargeback, and payment information for consumers who were charged by the Defendants, and provide the Plaintiffs, upon request, with any customer records or other business records of the Defendants;

F. Make payments and disbursements from the Receivership Estate that are necessary or advisable for carrying out the directions of, or exercising the authority granted by, this Order. The Receiver shall apply to the Court for prior approval of any payment of any debt or obligation incurred by the Defendants prior to the date of entry of the temporary restraining order in this action, except payments that the Receiver

deems necessary or advisable to secure and liquidate assets of the Defendants, such as rental payments or payment of liens;

G. Continue to perform all acts necessary or advisable to complete an accounting of the Receivership assets, and prevent unauthorized transfer, withdrawal, or misapplication of assets;

H. Continue to maintain accurate records of all receipts and expenditures that he makes as Receiver;

I. Continue to enter into contracts and purchase insurance as advisable or necessary;

J. Continue to defend, compromise, adjust, or otherwise dispose of any or all actions or proceedings instituted in the past or in the future against the Receiver in his role as Receiver, or against the Defendants, as the Receiver deems necessary and advisable to carry out the Receiver's mandate under this Order;

K. Continue to maintain bank accounts created as designated depositories for funds of the Defendants, and make all payments and disbursements from the Receivership Estate from such an account;

L. Continue to perform all incidental acts that the Receiver deems to be advisable or necessary, which includes retaining, hiring, or dismissing any employees, independent contractors, or agents;

M. Continue to cooperate with reasonable requests for information or assistance from any state or federal law enforcement agency;

N. Dispose of, or arrange for the disposal of, the records of the Defendants no later than six months after the Court's approval of the Receiver's final report, except that:

1. To the extent that such records are reasonably available, the Receiver shall arrange for records sufficient to ascertain the funds that an individual consumer paid to the Defendants to be retained for a minimum of one year from the entry of this Order, and

2. If state or local law regulating the Defendants' business requires the retention of particular records for a specified period, the Receiver shall arrange for such records to be disposed of after the specified period has expired.

To safeguard the privacy of consumers, records containing personal financial information shall be shredded, incinerated, or otherwise disposed of in a secure manner. For records that must be retained, the Receiver may elect to retain records in their original form or to retain photographic or electronic copies so long as said records are: 1) kept in a secure, locked area; 2) stored electronically on a computer network or drive with restricted access or an encrypted electronic storage device; or 3) redacted of all personally identifiable information including dates of birth, Social Security numbers, driver's license numbers or other state identification numbers, passport numbers, financial account numbers, or credit or debit card numbers. *Provided, however,* that the Receiver may not sell, rent, lease, transfer, disclose, use, or otherwise benefit from the name, address, telephone number, credit card number, bank account number, e-mail address, or other identifying information of any person who paid any money to

Defendants in connection with the advertising, promotion, marketing, offering for sale, or sale of any product or service, except that the Receiver may disclose such identifying information to a law enforcement agency, or as required by any law, regulation, or court order.

**XI.**

**COMPENSATION OF RECEIVER**

**IT IS FURTHER ORDERED** that the Receiver and all personnel hired by the Receiver, including counsel to the Receiver and accountants, are entitled to reasonable compensation for the performance of duties pursuant to this Order and for the cost of actual out-of-pocket expenses incurred by them, from the assets now held by, in the possession or control of, or which may be received by, the Defendants. The Receiver shall apply to the Court for approval of specific amounts of compensation and expenses and must not increase the hourly rates used as the bases for such fee applications without prior approval of the Court.

**XII.**

**RECEIVER'S FINAL REPORT AND DISBURSEMENT**

**IT IS FURTHER ORDERED** that:

A. No later than sixty (60) days from the date of the entry of this Order, the Receiver shall file and serve on the parties a report (the "Final Report") to the Court that details the steps taken to dissolve the Receivership Estate. The Final Report must include an accounting of the Receivership Estate's finances and total assets and a description of what other actions, if any, must be taken to wind down the Receivership.

B. The Receiver shall mail copies of the Final Report to all known creditors of the Defendants with a notice stating that any objections to paying any assets of the Defendants to satisfy the Receiver's costs and expenses and the monetary judgment set forth in this Order must be submitted to the Court and served by mail upon the Receiver and the parties within thirty (30) days of the mailing of the Final Report.

C. No later than fifteen (15) days after submission of the Final Report, the Receiver shall file an application for payment of compensation and expenses associated with his performance of his duties as Receiver.

D. The Court will review the Final Report and any objections to the report and, absent a valid objection, will issue an order directing that the Receiver:

1. Pay the reasonable costs and expenses of administering the Receivership, including compensation of the Receiver and the Receiver's personnel authorized by Section XI of this Order or other orders of this Court and the actual out-of-pocket costs incurred by the Receiver in carrying out his duties; and
2. Pay all remaining funds to the Plaintiffs or their designated agent in partial satisfaction of the monetary judgment in Section VIII.

E. If subsequent actions (such as the completion of tax returns or further actions to recover funds for the Receivership Estate) are appropriate, the Receiver shall file an additional report or reports (the "Supplemental Reports") describing the subsequent actions and a subsequent application for the payment of fees and expenses related to the subsequent acts.

F. With Court approval, the Receiver may hold back funds for a specified period as a reserve to cover additional fees and costs related to actions to be addressed in a Supplemental Report. If the Receiver does not make a supplemental application for fees and expenses within the specified period, or if funds remain in the reserve fund after the payment of fees and expenses approved by the Court in response to such a supplemental application, all funds in the reserve funds shall be immediately paid to the Plaintiffs or its designated agent.

### **XIII.**

#### **COMPLIANCE MONITORING**

**IT IS FURTHER ORDERED** that, for the purpose of monitoring and investigating compliance with any provision of this Order:

A. Within ten (10) business days of receipt of written notice from a representative of the Commission, Defendants shall submit additional written reports, which are true and accurate and sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and provide entry during normal business hours to any business location in his possession or direct or indirect control to inspect the business operation;

B. In addition, the Commission is authorized to use all other lawful means, including but not limited to:

1. obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, 45 and 69;

2. having its representatives pose as consumers and suppliers to Defendants, their employees, or any other entity managed or controlled in whole or in part by Defendants, without the necessity of identification or prior notice; and

C. Defendants shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present.

*Provided however*, that nothing in this Order shall limit 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 obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

## XI.

### 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, Defendants shall notify the Commission of any changes in structure of any Defendant or any business entity that any Defendant directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Order, including but not limited to: incorporation or other organization; a dissolution,

assignment, sale, merger, or other action; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; or a change in the business name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any such change in the business entity about which a Defendant learns less than thirty (30) days prior to the date such action is to take place, such Defendant shall notify the Commission as soon as is practicable after obtaining such knowledge.

B. One hundred eighty (180) days after the date of entry of this Order and annually thereafter for a period of three (3) years, Defendants shall provide a written report to the FTC, which is true and accurate and sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this Order. This report shall include, but not be limited to:

1. A copy of each acknowledgment of receipt of this Order, obtained pursuant to the Section titled "Distribution of Order;" and
2. Any other changes required to be reported under Subsection A of this Section.

C. Each Defendant shall notify the Commission of the filing of a bankruptcy petition by such Defendant within fifteen (15) days of filing.

D. For the purposes of this Order, Defendants shall, unless otherwise directed by the Commission's authorized representatives, send by overnight courier (not the U.S. Postal Service) all reports and notifications required by this Order to:

Associate Director for Enforcement

Bureau of Consumer Protection  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

*Re: FTC v. Affiliate Strategies et al., FTC case no. X090073*

*Provided that*, in lieu of overnight courier, Defendants may send such reports or notifications by first-class mail, but only if such Defendant contemporaneously sends an electronic version of such report or notification to the Commission at [DEBrief@ftc.gov](mailto:DEBrief@ftc.gov).

E. For purposes of the compliance reporting and monitoring required by this Order, the Commission is authorized to communicate directly with each Defendant.

## XII.

### RECORDKEEPING

**IT IS FURTHER ORDERED** that, for a period of eight (8) years from the date of entry of this Order, Defendants are hereby restrained and enjoined from failing to create and retain the following records:

A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;

B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; 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;

C. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or

services purchased, to the extent such information is obtained in the ordinary course of business;

D. Complaints and refund requests (whether received directly or indirectly, such as through a third party) and any responses to those complaints or requests;

E. Copies of all sales scripts, training materials, advertisements, or other marketing materials; and

F. All records and documents necessary to demonstrate full compliance with each provision of this Order, including but not limited to, copies of acknowledgments of receipt of this Order required by the Sections titled "Distribution of Order" and "Acknowledgment of Receipt of Order" and all reports submitted to the FTC pursuant to the Section titled "Compliance Reporting."

### **XIII.**

#### **DISTRIBUTION OF ORDER**

**IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry of this Order, Defendants shall deliver copies of the Order as directed below:

A. Each Defendant must deliver a copy of this Order to (1) all of its principals, officers, directors, and managers; (2) all of its employees, agents, and representatives who engage in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting." For current personnel, delivery shall be within five (5) days of service of this Order upon such Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities. For any business entity resulting from any change in structure set forth in

Subsection A.2 of the Section titled “Compliance Reporting,” delivery shall be at least ten (10) days prior to the change in structure.

B. Defendants must secure a signed and dated statement acknowledging receipt of the Order, within thirty (30) days of delivery, from all persons receiving a copy of the Order pursuant to this Section.

**XIV.**

**ACKNOWLEDGMENT OF RECEIPT OF ORDER**

**IT IS FURTHER ORDERED** that each Defendant, within five (5) business days of receipt of this Order as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Order.

**XVI.**

**RETENTION OF JURISDICTION**

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

**XVII.**

**ENTRY OF ORDER**

**IT IS FURTHER ORDERED** that there is no just reason for delay, and the Clerk of Court is hereby directed to enter this Order immediately.

**SO ORDERED**, this 26 day of July, 2011.

s/ Julie A. Robinson  
**JULIE A. ROBINSON**  
**UNITED STATES DISTRICT JUDGE**