

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

FEDERAL TRADE COMMISSION, and
OFFICE OF THE ATTORNEY GENERAL,
STATE OF FLORIDA, DEPARTMENT OF
LEGAL AFFAIRS,

Plaintiffs,

v.

BIG DOG SOLUTIONS LLC, also d/b/a Help
Desk National and Help Desk Global, a
Florida limited liability company,

PC HELP DESK US LLC, also d/b/a Help
Desk National and Help Desk Global, a
Florida limited liability company,

INBOUND CALL SPECIALIST LLC, a
Florida limited liability company,

BLACKOPTEK CE INC., a Nevada
corporation,

9138242 CANADA CORPORATION, a
Quebec, Canada corporation,

DIGITAL GROWTH PROPERTIES, LLC, an
Iowa limited liability company,

CHRISTOPHER J. COSTANZA, individually
and as an owner or officer of Big Dog
Solutions LLC, PC Help Desk US LLC, and
Inbound Call Specialist LLC, and also d/b/a
CJM Consulting LLC,

SUZANNE W. HARRIS, individually and as
an owner or officer of Big Dog Solutions LLC,

MUZAFFAR ABBAS, individually and as an
owner or officer of 9138242 Canada

Case No. 16-cv-6607

Judge John Robert Blakey

**STIPULATED ORDER FOR
PERMANENT INJUNCTION
AND FINAL JUDGMENT AS TO
DEFENDANTS BIG DOG
SOLUTIONS LLC, PC HELP
DESK US LLC, INBOUND CALL
SPECIALIST LLC,
CHRISTOPHER J. COSTANZA,
AND SUZANNE HARRIS**

Corporation and BlackOptek CE Inc.,

GARY OBERMAN, individually and as an owner or officer of 9138242 Canada Corporation,

DONALD DOLPHIN, individually and as an owner or officer of BlackOptek CE Inc. and 9138242 Canada Corporation, and

JUSTIN POWERS, individually and as an owner or officer of Digital Growth Properties, LLC,

Defendants.

Plaintiffs, the Federal Trade Commission (“Commission” or “FTC”) and the Office of the Attorney General, State of Florida, Department of Legal Affairs (collectively, “Plaintiffs”), filed their Complaint for Permanent Injunction and Other Equitable Relief (“Complaint”), pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101-6108, and the Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”), Chapter 501, Part II, Florida Statutes (2016). Plaintiffs and Defendants Big Dog Solutions LLC, PC Help Desk US LLC, Inbound Call Specialist LLC, Christopher J. Costanza, and Suzanne Harris (“Stipulating Defendants”) stipulate to entry of this Stipulated Order for Permanent Injunction and Final Judgment (“Order”) to resolve all matters in dispute in this action between them.

THEREFORE, IT IS ORDERED and ADJUDGED as follows:

FINDINGS

1. This Court has jurisdiction over this matter.
2. The Complaint charges that Stipulating Defendants participated in deceptive acts or practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), the FTC's Trade Regulation Rule entitled "Telemarketing Sales Rule" ("TSR"), 16 C.F.R. Part 310, and Section 501.204 of the FDUTPA, in the advertising, marketing, promotion, offering for sale, or sale of Tech Support Products or Services.
3. Stipulating Defendants neither admit nor deny any of the allegations in the Complaint, except as specifically stated in this Order. Only for purposes of this action, Stipulating Defendants admit the facts necessary to establish jurisdiction.
4. Stipulating Defendants waive any claim that they may have against Plaintiffs and the Receiver and their employees, representatives, and agents and any claim that Stipulating Defendants may have under the Equal Access to Justice Act, 5-28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order. Stipulating Defendants agree to bear their own costs and attorneys' fees.
5. Stipulating Defendants waive all rights to appeal or otherwise to challenge or to contest the validity of this Order.

DEFINITIONS

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

1. **“Defendant(s)”** means Big Dog Solutions LLC, PC Help Desk US LLC, Inbound Call Specialist LLC, BlackOptek CE Inc., 9138242 Canada Corporation, Digital Growth Properties, LLC, Christopher J. Costanza, Suzanne W. Harris, Muzaffar Abbas, Gary Oberman, Donald Dolphin, and Justin Powers, individually, collectively, or in any combination.

2. **“Stipulating Defendant(s)”** means all of the Stipulating Individual Defendants and the Stipulating Receivership Defendants, individually, collectively, or in any combination.

3. **“Stipulating Individual Defendant(s)”** means Christopher J. Costanza and Suzanne W. Harris, by whatever names they may be known.

4. **“Stipulating Receivership Defendants”** means Big Dog Solutions LLC, a Florida limited liability company, PC Help Desk US LLC, a Florida limited liability company, and Inbound Call Specialist LLC, a Florida limited liability company, their successors and assigns, as well as any subsidiaries, affiliates, divisions, or sales or customer service operations, and any fictitious business entities or business names created or used by these entities, and also includes Security Software Hub LLC, a Florida limited liability company, and Call Center Management LLC, a Florida limited liability company, and their successors and assigns,.

5. **“Tech Support Product or Service”** includes any plan, program or software, marketed to repair, maintain or improve a computer’s performance or

security, including registry cleaners, anti-virus programs, anti-malware programs, fire wall programs, and computer or software diagnostic services.

6. “**Telemarketing**” means any plan, program, or campaign that is conducted to induce the purchase of goods or services or a charitable contribution by use of one or more telephones.

SECTION I: BAN ON TECH SUPPORT PRODUCTS AND SERVICES

IT IS ORDERED that Stipulating Defendants are permanently restrained and enjoined from:

A. Advertising, marketing, promoting, offering for sale, selling, or providing any Tech Support Product or Service;

B. Assisting or providing consulting services for others engaged in, or receiving any proceeds from, advertising, marketing, promoting, offering for sale, selling or providing any Tech Support Product or Service; and

C. Owning, controlling, or serving as an officer, director, or manager of any business entity advertising, marketing, promoting, offering for sale, selling, providing, or assisting or providing consulting services for others engaged in, advertising, marketing, promoting, offering for sale, selling or providing, any Tech Support Product or Service.

SECTION II: PROHIBITION AGAINST DECEPTIVE TELEMARKETING

IT IS FURTHER ORDERED that Stipulating Defendants, their officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them who receive actual notice of this Order, whether acting directly or indirectly, in connection with the Telemarketing of any product or service, are permanently restrained and enjoined from:

A. Making a false or misleading statement to induce any person to pay for goods or services or to induce a charitable contribution; or

B. Violating the Telemarketing Sales Rule, 16 C.F.R. Part 310, attached as **Attachment A**.

SECTION III: PROHIBITION AGAINST MISREPRESENTATIONS

IT IS FURTHER ORDERED that Stipulating Defendants, their officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the advertising, marketing, promoting, offering for sale, sale, or selling of any good or service, are permanently restrained and enjoined from misrepresenting, or assisting others in misrepresenting, expressly or by implication:

A. That Stipulating Defendants are part of, certified or authorized by, affiliated with, or acting on behalf of any entity; and

B. Any other fact material to consumers concerning any good or service, such as: the total costs; any material restrictions, limitations, or conditions; or any material aspect of its performance, efficacy, nature, or central characteristics.

SECTION IV: PROHIBITION AGAINST COLLECTING ON ACCOUNTS

IT IS FURTHER ORDERED that Stipulating Defendants, their officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them who receive actual notice of this Order, whether acting directly or indirectly, are permanently restrained and enjoined from attempting to collect, collecting, or assigning any right to collect payment for any Tech Support Product or Service sold by any Defendant.

SECTION V: MONETARY JUDGMENT AND PARTIAL SUSPENSION

IT IS FURTHER ORDERED that:

A. Judgment in the amount of Nine Million, Nine Hundred Forty-Eight Thousand, Six Hundred Seventy-Four dollars and Twenty-Eight cents (\$9,948,674.28) is entered in favor of Plaintiffs and against Stipulating Defendants, jointly and severally, as equitable monetary relief.

B. Defendant Harris is ordered to pay to the Commission Sixty Thousand Dollars (\$60,000.00) within 7 days of entry of this Order by electronic fund transfer in accordance with instructions previously provided by a representative of

Plaintiffs. Upon such payment, the remainder of the judgment is suspended, subject to the Subsections below.

C. Plaintiffs' agreement to the suspension of part of the judgment is expressly premised upon the truthfulness, accuracy, and completeness of Stipulating Defendants' sworn financial statements and related documents (collectively, "financial statements") submitted to Plaintiffs, namely:

1. The Financial Statement of Individual Defendant Christopher Costanza signed on July 4, 2016, including the attachments;

2. The Financial Statement of Individual Defendant Suzanne Harris signed on July 5, 2016, including the attachments;

3. The Financial Statement of Receivership Defendant Big Dog Solutions LLC, signed by Suzanne Harris on July 5, 2016;

4. The Financial Statement of Receivership Defendant PC Help Desk US, LLC, signed by Christopher Costanza on January 26, 2017; and

5. The Financial Statement of Receivership Defendant Inbound Call Specialist LLC, signed by Christopher Costanza on July 5, 2016.

D. The partial suspension of the judgment will be lifted as to any Stipulating Defendant if, upon motion by any Plaintiff, the Court finds that such Defendant failed to disclose any material asset, materially misstated the value of any asset, or made any other material misstatement or omission in the financial representations identified above.

E. If the partial suspension of the judgment is lifted, the judgment

becomes immediately due as to that Defendant in the amount specified in Subsection A above (which the parties stipulate only for purposes of this Section represents the consumer injury alleged in the Complaint), less any payment previously made pursuant to this Section, plus interest computed from the date of entry of this Order.

SECTION VI: ADDITIONAL MONETARY PROVISIONS

IT IS FURTHER ORDERED that:

A. Stipulating Defendants relinquish dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets.

B. The facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of Plaintiffs, including in a proceeding to enforce their rights to any payment or monetary judgment pursuant to this Order, such as a nondischargeability complaint in any bankruptcy case.

C. The facts alleged in the Complaint establish all elements necessary to sustain an action by Plaintiffs pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral estoppel effect for such purposes.

D. Stipulating Defendants acknowledge that their Taxpayer Identification Numbers (Social Security Numbers or Employer Identification Numbers), which

such Defendants previously submitted to Plaintiffs, may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. §7701.

E. All money paid to Plaintiffs pursuant to this Order may be deposited into a fund administered by the Commission or its designee on behalf of both the Commission and the State of Florida. This fund shall be used for equitable relief, including consumer redress and any attendant expenses for the administration of any redress fund. If a representative of the Commission decides that direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, the Commission may apply any remaining money for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Stipulating Defendants' practices alleged in the Complaint, relinquish its authority over any portion of the joint monies not used for equitable relief to the State of Florida, or both. Stipulating Defendants shall have no right to challenge the Commission's choice of remedies under this Section. Stipulating Defendants have no right to challenge any actions Plaintiffs or their representatives may take pursuant to this Subsection.

F. All joint funds not used for the equitable relief described above in Paragraph E of this Section shall be distributed between the Commission and the State of Florida in the following manner:

1. The State of Florida shall be reimbursed for the costs and fees it incurred in this matter including its costs of investigation and litigation, after

which,

2. All remaining joint funds shall be divided equally between the Commission and the State of Florida. Any money paid to the Commission not used for equitable relief shall be deposited to the U.S. Treasury as disgorgement.

SECTION VII: DISSOLUTION OF ASSET FREEZE

IT IS FURTHER ORDERED that the freeze on the Stipulating Individual Defendants' assets pursuant to the Stipulated Preliminary Injunction as to Defendants Big Dog Solutions, LLC, PC Help Desk US, LLC, Inbound Call Specialist LLC, Christopher J. Costanza, and Suzanne Harris (the "Big Dog Preliminary Injunction") entered on July 28, 2016 (Dkt. No. 53) is modified to permit the payments and other transfers identified in Section V above. The freeze on the Stipulating Receivership Defendants' assets shall remain in effect until such time as the Receiver receives payment of all Court-approved fees and expenses of the Receiver and the Receiver is discharged pursuant to Section X of this Order. Upon completion of all payments and other obligations identified in in Sections V and X, the asset freeze is dissolved as to Stipulating Defendants. A financial institution shall be entitled to rely upon a letter from Plaintiffs stating that the freeze on a Stipulating Defendant's assets has been lifted.

SECTION VIII: CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Stipulating Defendants, their officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, are permanently restrained and enjoined from directly or indirectly:

A. Failing to provide sufficient customer information to enable the Commission to administer efficiently consumer redress. If a representative of the Commission requests in writing any information related to redress, Defendants must provide such information if it is in their possession, custody, or control, in the form prescribed by the Commission, within fourteen (14) days.

B. Disclosing, using, or benefiting 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), that any Stipulating Defendant obtained prior to entry of this Order.

C. Failing to destroy such customer information in all forms in their possession, custody, or control within thirty (30) days after receipt of written direction to do so from a representative of the Plaintiffs.

Provided, however, that customer information need not be destroyed, and may be disclosed, to the extent requested by a government agency or required by law, regulation, or court order.

SECTION IX: COOPERATION

IT IS FURTHER ORDERED that Stipulating Defendants must fully cooperate with representatives of Plaintiffs in this case and in any investigation related to or associated with the transactions or the occurrences that are the subject of the Complaint. Such Defendants must provide truthful and complete information, evidence, and testimony. Such Stipulating Individual Defendants must appear and such Stipulating Receivership Defendant must cause their officers, employees, representatives, or agents to appear for interviews, discovery, hearings, trials, and any other proceedings that a Commission or State of Florida representative may reasonably request upon five (5) days written notice, or other reasonable notice, at such places and times as a Commission or State of Florida representative may designate, without the service of a subpoena; *provided that*, for any such trial, deposition, or other FTC proceeding that occurs outside of the geographic boundaries of the United States District Court for the Southern District of Florida, the Defendant shall be entitled to standard expenses pursuant to 28 U.S.C. § 1821, but shall appear without the service of a subpoena.

SECTION X: TERMINATION OF RECEIVERSHIP

IT IS FURTHER ORDERED that the appointment of Jeffrey Schneider as Receiver over Stipulating Receivership Defendants pursuant to Section VIII of the Big Dog Preliminary Injunction is hereby continued in full force and effect except as modified by this Section.

A. The Receiver is directed and authorized to accomplish the following within sixty (60) days after entry of this Order:

1. Complete, as necessary, the liquidation of the assets of the Stipulating Receivership Defendants;

2. Prepare and file with the Court a final report describing the Receiver's activities with respect to Stipulating Receivership Defendants pursuant to this Order and the Big Dog Preliminary Injunction, and a final application for compensation and expenses; and

3. Upon the Court's approval of the Receiver's final application for compensation and expenses with respect to Stipulating Receivership Defendants, distribute to the Commission any remaining liquid assets at the conclusion of the Receiver's duties.

B. Upon completion of the above tasks, the duties of the Receivership over Stipulating Receivership Defendants shall terminate, and the Receiver shall be discharged as to Stipulating Receivership Defendants only.

SECTION XI: ORDER ACKNOWLEDGEMENTS

IT IS FURTHER ORDERED that Stipulating Defendants obtain acknowledgments of receipt of this Order:

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

B. For five (5) years after entry of this Order, each Stipulating Individual Defendant for any business that such Defendant, individually or collectively with any other Defendant, is the majority owner or controls directly or indirectly, and each Stipulating Receivership Defendant, must deliver a copy of this Order to:

1. All principals, officers, directors, and LLC managers and members;
2. All employees, agents, and representatives who participate in conduct related to the subject matter of this Order; and
3. Any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting.

Delivery must occur within seven (7) days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

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

SECTION XII: COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Stipulating Defendants make timely submissions to the Commission:

A. One year after entry of this Order, each Stipulating Defendant must submit a compliance report sworn under penalty of perjury.

1. Each Stipulating Defendant must:

a. Identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with such Stipulating Defendant;

b. Identify all of that Stipulating Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses;

c. Describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant (which a Stipulating Individual Defendant must describe if such Individual Defendant knows or should know due to such Individual Defendant's own involvement);

d. Describe in detail whether and how that Stipulating Defendant is in compliance with each Section of this Order; and

e. Provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission;

2. Additionally, each Stipulating Individual Defendant must:

a. Identify all telephone numbers and all physical, postal, email and Internet addresses, including all residences;

b. Identify all business activities, including any business for which such Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest; and

c. Describe in detail such Defendant's involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership.

B. For twenty (20) years after entry of this Order, each Stipulating Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

1. Each Stipulating Defendant must report any change in:

- a. Any designated point of contact; or
- b. The structure of any Stipulating Receivership Defendant or any entity that Stipulating Defendant has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

2. Additionally, each Stipulating Individual Defendant must report any change in:

a. Name, including aliases or fictitious name, or residence address; or

b. Title or role in any business activity, including any business for which such Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest, and identify the name, physical address, and any Internet address of the business or

entity.

C. Each Stipulating Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or any similar proceeding by or against such Defendant within 14 days of its filing.

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

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: *FTC v. Big Dog Solutions LLC, et al.* (X160045).

SECTION XIII: RECORDKEEPING

IT IS FURTHER ORDERED that Stipulating Defendants must create certain records for 20 years after entry of the Order, and retain each such record for five (5) years. Specifically, Stipulating Receivership Defendants and each Stipulating Individual Defendant for any business that such Defendant, individually or collectively with any other Defendant, is a majority owner or

controls directly or indirectly, must create and maintain the following records:

- A. Accounting records showing the revenues from all goods or services sold.
- B. Personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name, addresses, and telephone numbers; job title or position; dates of service; and, if applicable, the reason for termination.
- C. Records of all consumer complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response.
- D. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission.
- E. A copy of each unique advertisement or other marketing material.

SECTION XIV: COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Stipulating Defendants' compliance with this Order, including the financial statements upon which part of the judgment was suspended and any failure to transfer any assets as required by this Order:

- A. Within 14 days of receipt of a written request from a representative of any Plaintiff, each Stipulating Defendant must submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents for inspection and copying.

Plaintiffs are also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

B. For matters concerning this Order, Plaintiffs are authorized to communicate directly with each Stipulating Defendant. Stipulating Defendants must permit representatives of Plaintiffs to interview any employee or other person affiliated with any Defendant who has agreed to such an interview. The person interviewed may have counsel present.

C. Plaintiffs may use all other lawful means, including posing, through its representatives, as consumers, suppliers, or other individuals or entities, to Stipulating Defendants or any individual or entity affiliated with Stipulating Defendants, without the necessity of identification or prior notice. 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.

D. Upon written request from a representative of Plaintiffs, any consumer reporting agency must furnish consumer reports concerning Stipulating Individual Defendants, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. §1681b(a)(1).


SECTION XV: RETENTION OF JURISDICTION

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

SO ORDERED.

Dated: May 11, 2017

ENTERED:


John Robert Blakey
United States District Judge