

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

CASE NO. 8:04-cv-1955-T-23EAJ

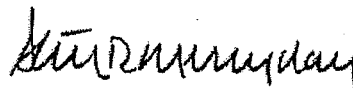
SPECIAL DATA PROCESSING
CORPORATION,

Defendant.

ORDER

The parties' application for a stipulated judgment for consumer redress and a permanent injunction (Doc. 2) is **GRANTED** and the "Stipulated Judgment for Consumer Redress and Order for Permanent Injunction" (Doc. 2) is **ADOPTED**. Accordingly, Special Data Processing Corporation is (1) subject to and (2) permanently enjoined and restrained from conduct in accordance with the terms of the permanent injunction (Doc. 2), which injunction is incorporated by reference and attached to this order. The Clerk is directed to enter judgment in favor of the plaintiff and against the defendant in the amount of **\$535,000**.

ORDERED in Tampa, Florida, on September 29, 2004.



STEVEN D. MERRYDAY
UNITED STATES DISTRICT JUDGE

Attachment

cc: Courtroom Deputy

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

SPECIAL DATA PROCESSING CORPORATION,

Defendant.

Civil Action No.

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

Plaintiff, the Federal Trade Commission, has filed a complaint for a permanent injunction, consumer redress, and other equitable relief pursuant to Sections 5(a), 13(b), and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a), 53(b), and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. §§ 6101 *et seq.*, charging Defendant with violating Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC's Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310.

Plaintiff Federal Trade Commission and Defendant Special Data Processing Corporation have agreed to the entry of this Stipulated Judgment for Consumer Redress and Order for Permanent Injunction ("Order") by this Court to resolve all matters of dispute between the Commission and Special Data Processing Corporation with respect to the conduct alleged in the complaint in this action without trial or final adjudication. Defendant Special Data Processing Corporation has waived all rights that may arise under the Equal Access to Justice Act, 28 U.S.C.

§ 2412, amended by Pub. L. 104-121, 110 Stat. 847, 863-64 (1996). Defendant also has waived all rights to seek judicial review of, or otherwise challenge or contest the validity of, this Order. Defendant also has waived service of a summons. By stipulating to the entry of this Order, Defendant does not admit that any law has been violated or that the facts as alleged in the complaint, other than the jurisdictional facts, are true.

NOW, THEREFORE, Plaintiff Federal Trade Commission and Defendant Special Data Processing Corporation, having requested the Court to enter this Order,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

FINDINGS

1. This Court has jurisdiction of the subject matter of this case and of the parties consenting hereto.
2. Venue is proper as to all parties in the Middle District of Florida.
3. The activities of Defendant are in or affecting commerce, as defined in the FTC Act, 15 U.S.C. § 44.
4. The complaint states a claim upon which relief may be granted against Defendant Special Data Processing Corporation under Sections 5(a), 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 53(b), and 57b, the Telemarketing Act, 15 U.S.C. §§ 6101 *et seq.*, and the FTC's Telemarketing Sales Rule, 16 C.F.R. Part 310.
5. Entry of this Order is in the public interest.

DEFINITIONS

1. "Defendant" means Special Data Processing Corporation and its successors and assigns.
2. "Charge" means any amount charged or debited to a consumer's credit card, checking,

savings, share or similar account, utility bill, telephone bill, mortgage loan account or debit card, or any similar form of collecting money from a consumer.

3. "Negative option feature" means, in an offer or agreement to sell or provide any goods or services, a provision under which the customer's silence or failure to take an affirmative action to reject goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer. Agreements with negative option features include, but are not limited to: (i) free-to-pay conversion agreements; (ii) continuity plans in which, subsequent to the consumer's agreement to the plan, the seller or provider automatically ships goods to a consumer unless the consumer notifies the seller or provider within a certain time not to ship the goods; and (iii) automatic renewal plans in which the seller automatically renews the agreement and charges the consumer unless the consumer cancels before the renewal; **provided, however**, that the fact that payments under a contract will be made in installments does not by itself mean that an agreement has a negative option feature.
4. "Membership service" means any arrangement whereby persons who purportedly agree to the arrangement (often called "members") receive specified benefits over a period of time, including but not limited to, travel benefits, health benefits, home protection, credit card protection, legal services and discounts on goods and services; **provided, however**, that the term "membership service" shall not include magazine subscriptions.
5. "Telemarketing" means any activity (including, but not limited to, initiating or receiving telephone calls; managing others who initiate or receive telephone calls; contracting or employing others who initiate or receive telephone calls; operating an enterprise that

initiates or receives telephone calls; or owning an enterprise that initiates or receives telephone calls) that involves attempts to induce consumers to purchase any item, product, good, service, investment, partnership interest, trust interest or other beneficial interest, or to enter a contest for a prize, by means of telephone sales presentations, either exclusively or in conjunction with the use of other forms of marketing; **provided, however,** that the term "telemarketing" shall not include transactions that are not completed until after a face-to-face contact between the seller or solicitor and the consumer solicited, and the consumer is not required to pay or authorize payment until after such a presentation; **Provided further,** that for purposes of Part I of this Order (requiring compliance with the TSR), the definition of telemarketing shall be consistent with the definition set forth in the TSR, 16 C.F.R. Part 310 (effective as of December 31, 1995, amended as of March 31, 2003, and as it may be amended subsequently).

6. "Third party" means (a) any entity that is not owned or controlled by Defendant, and (b) any person who is not acting in his or her capacity as an officer or employee of Defendant or any entity owned or controlled by Defendant.
7. "Assisting others" means knowingly providing any of the following services to any person or entity: (a) performing customer service functions for any person or entity, including, but not limited to, receiving or responding to consumer complaints; (b) formulating or providing, or arranging for the formulation or provision of, any telephone sales script or any other marketing material for any person or entity; (c) performing marketing services of any kind for any person or entity; or (d) providing credit card merchant processing accounts, or otherwise providing access to a billing and collection

system, such as a credit card, checking, savings, share or similar account, utility bill, telephone bill, mortgage loan account or debit card.

8. "Billing information" means any data that enables any person to access to a customer's account, such as a credit card, checking, savings, share or similar account, utility bill, mortgage loan account or debit card.
9. "Free-to-pay conversion" means, in an offer or agreement to sell or provide any goods or services, a provision under which a customer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if he or she does not take affirmative action to cancel before the end of that period.
10. "Preacquired account information" means any information that enables a seller or telemarketer to cause a charge to be placed against a customer's or donor's account without obtaining the account number directly from the customer or donor during the telemarketing transaction pursuant to which the account will be charged.

I.

VIOLATIONS OF TELEMARKETING SALES RULE

IT IS FURTHER ORDERED that Defendant, and its officers, agents, employees, all other persons or entities within the scope of Fed.R.Civ.P. 65, and all those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, or other device, are hereby permanently restrained and enjoined from violating any provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310 (effective as of December 31, 1995, amended as of March 31, 2003, and as it may be amended subsequently), including but not

limited to:

- A. the provisions requiring specified disclosures in connection with the sales of goods or services, including the sale of goods or services with a negative option feature and upsells, set forth in Sections 310.3(a)(1) and 310.4(d) (as amended as of March 31, 2003 and as it may be amended subsequently);
- B. the provisions prohibiting misrepresentations in connection with the sale of goods or services, including the sale of goods or services with a negative option feature and upsells, set forth in Sections 310.3(a)(2) and 310.3(a)(4) (as amended as of March 31, 2003 and as it may be amended subsequently); and
- C. the provisions regarding the submission of billing information for payment, or the collection or attempt to collect payment for goods or services, in transactions involving preacquired account information, either in conjunction with or without a free-to-pay conversion plan, set forth in Sections 310.3(a)(3) and 310.4(a)(6) (as amended as of March 31, 2003 and as it may be amended subsequently).

II.

PROHIBITED BUSINESS PRACTICES

IT IS ORDERED that Defendant, and its officers, agents, employees, all other persons or entities within the scope of Fed.R.Civ.P. 65, and all those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, or other device, in connection with (1) the telemarketing of any membership service pursuant to an offer or agreement with a negative option feature or (2) soliciting the purchase of any other good

or service during a single telemarketing transaction after a consumer has already purchased a different good or service and provided billing information in connection with such purchase, are hereby permanently restrained and enjoined from making, or causing or assisting others to make, expressly or by implication, any false or misleading representation, including but not limited to:

- A. Falsely representing (1) the amount that a consumer will be charged or billed for any goods or services, (2) that a consumer will not be charged or billed for any goods or services, (3) the timing or manner of any charge or bill (including but not limited to the date of the charge and whether it will be a credit card charge or a checking account debit), or (4) that a consumer will not be charged or billed without the consumer's authorization; and
- B. Falsely representing, through, *inter alia*, mailings, email, billings, credit card charges and checking account debits, that a consumer purchased or agreed to purchase goods or services, or that a transaction has been authorized by a consumer.

III.

PROHIBITED FAILURES TO DISCLOSE

IT IS FURTHER ORDERED that Defendant, and its officers, agents, employees, all other persons or entities within the scope of Fed.R.Civ.P. 65, and all those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, or other device, in connection with (1) the telemarketing of any membership service pursuant to an offer or agreement with a negative option feature or (2) soliciting the purchase of

any other good or service during: (a) a single telemarketing call after a consumer has already purchased a different good or service and provided billing information in connection with such purchase; and (b) any subsequent telephone call during which defendant, or any third party on behalf of defendant, verifies or attempts to verify the consumer's purchase of any good or service during a previous telemarketing call, are hereby permanently restrained and enjoined from failing to disclose, clearly and conspicuously, all material terms and conditions for the purchase of any such goods or services, including but not limited to:

- A. The fact, if true, that a good or service is offered on behalf of a seller that is a separate entity from the seller doing the telemarketing, and, if so, the identity of that seller;
- B. The number of required payments (if more than one), the date(s) or time period(s) at which the payment(s) will be required or charged, and the amount of the payment(s); **provided**, if there is not a known fixed amount for a future payment, such as the automatic renewal of an annual membership service fee, Defendant must disclose how the renewal fee or other future payment will be determined (e.g., the annual fee then in effect); **provided further**, if the number of payments is undetermined at the time of the sale, Defendant must disclose the frequency of the payments (e.g., every month or every year while the agreement is in effect);
- C. The fact, if true, that the billing information the seller already possesses, either because the consumer previously provided it to the seller, or the seller obtained it from another source, will be used to bill or charge the consumer;
- D. If the consumer will be automatically billed at the end of a trial period unless the

consumer cancels: this fact; the length of the trial period and when it begins if it begins sooner than upon the consumer's receipt of the written confirmation required by the proviso immediately following Subpart III.G; the manner in which a cancellation request may be submitted; the date or time period by which a cancellation request must be received if different from the date the trial period ends; and either a telephone number or address to which a cancellation request may be directed or the fact, if true, that such information will be included in written materials provided to the consumer within a reasonable period prior to the date by which a cancellation request must be received; **provided, however,** for purposes of this Subpart, Defendant may disclose the telephone number or address to which a cancellation request may be directed after and in close proximity to the consumer's express consent as set forth in Part IV;

- E. If the seller automatically ships goods to a consumer or automatically renews a membership, subscription or agreement for goods or services that is offered on a periodic basis, unless the consumer notifies the seller within a certain time not to ship or renew: this fact; the manner in which a notice not to ship or renew may be submitted; the date or time period by which a notice not to ship or renew must be received to avoid shipment or renewal (*e.g.*, two weeks after consumer advised of an upcoming shipment); and either a telephone number or address to which such a notice may be directed or the fact, if true, that such information will be included in written materials provided to the consumer within a reasonable period prior to the date by which such a notice must be received; **provided, however,** for purposes

of this Subpart, Defendant may disclose the telephone number or address to which such a notice may be directed after and in close proximity to the consumer's express consent as set forth in Part IV;

F. All material conditions, limitations and restrictions on the ability of the consumer to use any trial membership, information kit, good or service that is offered "free," "risk-free," with "no obligation," or words of similar import denoting or implying the absence of any obligation on the part of the recipient of such offer to pay for the trial membership, information kit, good or service or to take affirmative action to avoid incurring payment obligations; and

G. All material conditions, limitations and restrictions on the ability of the consumer to use any good or service offered for "free" or with "no obligation," or as discounted or reduced in price, or words of similar import, to a consumer who accepts an offer for other goods or services subject to this Part;

provided that, in connection with the telemarketing of any goods or services subject to this Part pursuant to an offer or agreement with a free-to-pay conversion feature, Defendant, within a reasonable time prior to billing or charging the consumer for such goods or services, must provide the consumer with a document disclosing, clearly and conspicuously, all material terms and conditions of the sale, including but not limited to those set forth in this Part; **provided further** that these disclosures are in addition to and not in lieu of those disclosures required by the TSR, as amended March 31, 2003, and as it may be amended subsequently.

IV.

EXPRESS INFORMED CONSENT

IT IS FURTHER ORDERED that Defendant, and its officers, agents, employees, all other persons or entities within the scope of Fed.R.Civ.P. 65, and all those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, or other device, in connection with (1) the telemarketing of any membership service pursuant to an offer or agreement with a negative option feature or (2) soliciting the purchase of any other good or service during: (a) a single telemarketing call after a consumer has already purchased a different good or service and provided billing information in connection with such purchase; and (b) any subsequent telephone call during which defendant, or any third party on behalf of defendant, verifies or attempts to verify the consumer's purchase of any good or service during a previous telemarketing call, are hereby permanently restrained and enjoined from submitting billing information for payment, transferring billing information to a third party, or collecting or attempting to collect payment for goods or services, directly or indirectly, without the express informed consent of the consumer evidenced as follows:

- A. To obtain a consumer's express informed consent, Defendant must disclose all of the following information to the consumer, clearly and conspicuously, and in close proximity to, the consumer's express consent to purchase goods or services:
1. The amount and manner of the billing or payment for such goods or services, including but not limited to, the disclosures set forth in Subparts B and C of Part III of this Order, prior to obtaining the consumer's express consent;
 2. All of the disclosures set forth in Subparts A, D, E, F and G of Part III of

this Order, prior to obtaining the consumer's express consent, unless otherwise specifically provided in Subparts III.D and E, **provided, however,** nothing in this Subpart shall prohibit Defendant from obtaining informed consent by making such disclosures to the consumer, clearly and conspicuously, in a print advertisement or print promotional or marketing material to which the consumer was responding, provided that Defendant has reliable evidence that it made such written disclosures to the consumer; and

3. To the extent not already disclosed pursuant to Subpart A.1 of this Part, sufficient information to enable the consumer to reasonably identify which specific account will be charged to collect payment for those goods or services that are the subject of the sales offer; and

B. Defendant must use one of the following means to evidence that the Defendant has obtained the consumer's express informed consent:

1. Express written authorization by the consumer, which includes the consumer's signature (the term "signature" includes a verifiable electronic or digital form of signature, to the extent such form of signature is recognized as a valid signature under applicable federal law or state contract law);
2. The consumer's express oral agreement to purchase the goods or services and authorization to submit a charge on a specified billing account for payment that is recorded and meets the following criteria:

- (a) For all inbound and outbound telemarketing calls, the recording must include the entire portion of any telephone call that relates to the goods or services that are the subject of the Defendant's offer, including all of the information Defendant is required to disclose pursuant to Subpart A of this Part;
- (b) The recording can be identified and located by either the consumer's name or telephone number; and
- (c) A copy of the recording is provided upon request to the consumer, the consumer's bank, credit card company or other billing entity, state attorney general or consumer protection agency or the Commission; or

- 3. Express informed consent that is verified by an independent third party verifier ("TPV") that meets the requirements of Part V of this Order;

provided, however, that the requirements of Part IV are in addition to and not in lieu of the requirements of the TSR, as amended March 31, 2003, and as it may be amended subsequently.

V.

THIRD PARTY VERIFICATION

IT IS FURTHER ORDERED that, if the Defendant chooses to use a third party verifier ("TPV") as described in Subpart B.3 of Part IV of this Order, the following requirements apply:

- A. The Defendant must give written notice to the Commission's Associate Director for Enforcement at least twenty (20) days prior to the use of a TPV; **provided that** the Commission's Associate Director for Enforcement, at his or her sole

discretion, may reject the selected TPV at any time, and, within thirty (30) days of receipt of a written notification from the Commission's Associate Director for Enforcement that the TPV has been rejected, the Defendant must cease using the TPV;

- B. The TPV must not be owned, managed, controlled, or directed by the Defendant, or any business entity owned or controlled, directly or indirectly by the Defendant or its partners, and must not have any financial incentive to confirm orders for the Defendant;
- C. Defendant must not be on the telephone line during the verification by the TPV;
- D. The TPV must, by telephone confirm that the consumer has agreed to the offer of goods or services, and has authorized billing for such goods or services, by the method and subject to the terms and conditions of the offer, and ensure that no misrepresentations have been made and no material information has been omitted during the sales call by describing the material terms and conditions of the offer in a clear and conspicuous manner (including, but not limited to, those enumerated in Part III of this Order) and asking whether the consumer agrees to the described terms and conditions;
- E. Unless the consumer, during the verification by the TPV, affirmatively and unambiguously states that he or she agreed to each material term and condition of the offer, the sale will not be considered properly verified, and Defendant must not enforce or attempt to enforce any obligation whatsoever against any consumer in connection with such unverified sale; and

- F. If the TPV verifies that Defendant obtained the consumer's informed consent that is express to purchase goods or services through:
1. A live interaction between the verifier and the consumer, the TPV must tape record the entire telephone call between the verifier and the consumer; or
 2. An automated system, such as an interactive voice response system, the TPV must maintain records showing when the confirmation occurred, how the content of the telephone call was created and how the consumer's responses were recorded.

VI.

CONSUMER REDRESS

IT IS FURTHER ORDERED that:

- A. Judgment is hereby entered against Defendant in the amount of Five Hundred Thirty Five Thousand Dollars (\$535,000);
- B. No later than the date of entry of this Order, Defendant shall pay to the Commission Five Hundred Thirty Five Thousand Dollars (\$535,000), which payment shall be by wire transfer pursuant to instructions provided by the Commission;
- C. All funds paid pursuant to this Part shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including but not limited to consumer redress and any attendant expenses for the administration of any redress fund. At the sole discretion of the Commission, (1) such funds may

be combined with funds paid to the Commission in other actions relating to the conduct of Triad Discount Buying Service, Inc., Ira Smolev, or any entities affiliated with Ira Smolev; and (2) such funds shall be distributed as redress to consumers and used to pay administrative costs associated with the payment of redress to consumers. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to the Defendant's practices alleged in the complaint. Any funds not used for such equitable relief shall be deposited to the Treasury as disgorgement. Defendant shall have no right to challenge the Commission's choice of remedies under this Part. Defendant acknowledges and agrees that (1) all money paid pursuant to this Order is irrevocably paid to the FTC for purposes of settlement between the parties, (2) Defendant has no right to object to the manner or contents of any disbursement plan, and (3) in the event of bankruptcy of Defendant, Defendant acknowledges that the funds are not part of the debtor's estate, nor does the estate have any claim or interest therein; and

D. In the event of any default in payment, Defendant also shall pay interest on the unpaid redress amount from the date of default to the date of payment, as computed pursuant to 28 U.S.C. § 1961.

VII.

DISTRIBUTION OF ORDER BY DEFENDANT

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, Defendant must:

- A. Provide a copy of this Order to, and obtain a signed and dated acknowledgment of receipt from, each officer or director and each individual serving in a management capacity who has responsibility with respect to the subject matter of this Order; and provide a summary of this Order, as set forth in Appendix A to, and obtain a signed and dated acknowledgment of receipt from, all sales and sales verification personnel and all personnel involved in responding to consumer complaints or inquiries who have responsibility with respect to the subject matter of this Order, whether such persons are designated as employees, consultants, independent contractors or otherwise; **provided however**, that the Defendant must deliver the Order or a summary of the Order as set forth in Appendix A, as appropriate, to current personnel within thirty (30) days after the date of service of the Order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities; and
- B. Maintain for a period of three (3) years after creation, and, within fifteen (15) days of receipt of a written request, make available to representatives of the Commission, the original signed and dated acknowledgments of the receipt of copies of this Order, as required in Subpart A of this Part.

VIII.

RECORD-KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry

of this Order, Defendant, and its officers, agents, employees, all other persons or entities within the scope of Fed.R.Civ.P. 65, and all those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, or other device, in connection with (1) the telemarketing of any membership service pursuant to an offer or agreement with a negative option feature or (2) soliciting the purchase of any other good or service during a single telemarketing transaction after a consumer has already purchased a different good or service and provided billing information in connection with such purchase, 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. Complaint and refund requests (whether received directly, indirectly or through any third party, in writing or by telephone) and any responses to those complaints

or requests to the extent such information is obtained in the ordinary course of business;

- E. Copies of all sales scripts, training materials, advertisements, or other marketing materials; and
- F. Each tape recording of a telemarketing call made pursuant to Part IV of the Order.

IX.

COMPLIANCE MONITORING

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

- A. Within fifteen (15) days of receipt of written notice from a representative of the Commission, Defendant shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in Defendant's possession or direct or indirect control to inspect the business operation;
- B. In addition, the Commission is authorized to monitor compliance with this Order by all other lawful means, including but not limited to the following:
 - 1. obtaining discovery from any person, without further leave of court, using the procedures proscribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45; and
 - 2. posing as consumers and suppliers to Defendant's employees, or any other entity managed or controlled in whole or in part by Defendant, without the

necessity of identification or prior notice;

Provided 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)); and

- C. Defendant shall upon reasonable notice 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.

X.

COMPLIANCE REPORTING BY DEFENDANT

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

- A. For a period of five (5) years from the date of entry of this Order, Defendant shall notify the Commission of any changes in corporate structure that may affect compliance obligations arising under this Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at

least thirty (30) days prior to such change, *provided* that, with respect to any proposed change in the corporation about which the Defendant learns less than thirty (30) days prior to the date such action is to take place, 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, Defendant shall provide a written report to the Commission, sworn to under penalty of perjury, setting forth in detail the manner and form in which it has complied and is complying with this Order. This report shall include, but not be limited to:

1. Any changes required to be reported pursuant to Subpart A above;
2. A copy of each acknowledgment of receipt of this Order obtained by Defendant pursuant to Part VII;

C. For the purposes of this Order, Defendant shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Associate Director for Enforcement
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
Re: FTC v. Special Data Processing Corporation

D. For purposes of the compliance reporting required by this Part, the Commission is authorized to communicate directly with Defendant.

XI.

TAXPAYER IDENTIFICATION NUMBER

IT IS FURTHER ORDERED that Defendant must, in accordance with 31 U.S.C. § 7701, furnish to the Commission its taxpayer identifying number (employer identification number), which shall be used for purposes of collecting and reporting on any delinquent amount arising out of such Defendant's relationship with the government.

XII.

ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANT

IT IS FURTHER ORDERED that 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.

XIII.

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.

STIPULATED AND AGREED TO BY:



SPECIAL DATA PROCESSING CORPORATION

By: William H. Hood, III, CEO



LINDA A. GOLDSTEIN

~~Hall Dickler Kent Goldstein & Wood LLP~~

~~909 Third Avenue~~

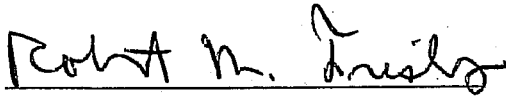
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ELAINE D. KOLISH
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Bureau of Consumer Protection
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JAMES REILLY DOLAN
Assistant Director for Enforcement
Bureau of Consumer Protection
Federal Trade Commission

Attorneys for Plaintiff

SO ORDERED, this _____ day of _____.

UNITED STATES DISTRICT JUDGE

APPENDIX A

SUMMARY OF COURT ORDER ENTERED IN FTC V. SPECIAL DATA PROCESSING CORPORATION ON [INSERT THE DATE OF THE ORDER'S ENTRY]

DEFINITIONS

1. "Defendant" means Special Data Processing Corporation and its successors and assigns.
2. "Charge" means any amount charged or debited to a consumer's credit card, checking, savings, share or similar account, utility bill, telephone bill, mortgage loan account or debit card, or any similar form of collecting money from a consumer.
3. "Negative option feature" means, in an offer or agreement to sell or provide any goods or services, a provision under which the customer's silence or failure to take an affirmative action to reject goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer. Agreements with negative option features include, but are not limited to: (i) free-to-pay conversion agreements; (ii) continuity plans in which, subsequent to the consumer's agreement to the plan, the seller or provider automatically ships goods to a consumer unless the consumer notifies the seller or provider within a certain time not to ship the goods; and (iii) automatic renewal plans in which the seller automatically renews the agreement and charges the consumer unless the consumer cancels before the renewal; **provided, however**, that the fact that payments under a contract will be made in installments does not by itself mean that an agreement has a negative option feature.
4. "Membership service" means any arrangement whereby persons who purportedly agree to the arrangement (often called "members") receive specified benefits over a period of time, including but not limited to, travel benefits, health benefits, home protection, credit

card protection, legal services and discounts on goods and services; **provided, however,** that the term "membership service" shall not include magazine subscriptions.

5. "Telemarketing" means any activity (including, but not limited to, initiating or receiving telephone calls; managing others who initiate or receive telephone calls; contracting or employing others who initiate or receive telephone calls; operating an enterprise that initiates or receives telephone calls; or owning an enterprise that initiates or receives telephone calls) that involves attempts to induce consumers to purchase any item, product, good, service, investment, partnership interest, trust interest or other beneficial interest, or to enter a contest for a prize, by means of telephone sales presentations, either exclusively or in conjunction with the use of other forms of marketing; **provided, however,** that the term "telemarketing" shall not include transactions that are not completed until after a face-to-face contact between the seller or solicitor and the consumer solicited, and the consumer is not required to pay or authorize payment until after such a presentation; **Provided further,** that for purposes of Part I of this Order (requiring compliance with the TSR), the definition of telemarketing shall be consistent with the definition set forth in the TSR, 16 C.F.R. Part 310 (effective as of December 31, 1995, amended as of March 31, 2003, and as it may be amended subsequently).
6. "Third party" means (a) any entity that is not owned or controlled by Defendant, and (b) any person who is not acting in his or her capacity as an officer or employee of Defendant or any entity owned or controlled by Defendant.
7. "Assisting others" means knowingly providing any of the following services to any person or entity: (a) performing customer service functions for any person or entity,

including, but not limited to, receiving or responding to consumer complaints; (b) formulating or providing, or arranging for the formulation or provision of, any telephone sales script or any other marketing material for any person or entity; (c) performing marketing services of any kind for any person or entity; or (d) providing credit card merchant processing accounts, or otherwise providing access to a billing and collection system, such as a credit card, checking, savings, share or similar account, utility bill, telephone bill, mortgage loan account or debit card.

8. "Billing information" means any data that enables any person to access to a customer's account, such as a credit card, checking, savings, share or similar account, utility bill, mortgage loan account or debit card.
9. "Free-to-pay conversion" means, in an offer or agreement to sell or provide any goods or services, a provision under which a customer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if he or she does not take affirmative action to cancel before the end of that period.
10. "Preacquired account information" means any information that enables a seller or telemarketer to cause a charge to be placed against a customer's or donor's account without obtaining the account number directly from the customer or donor during the telemarketing transaction pursuant to which the account will be charged.

NOTE: Each of the following Order provisions applies to Defendant, and its officers, agents, employees, all other persons or entities within the scope of Fed.R.Civ.P. 65, and all those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, or other device. The effective date of the Order is the date the Order was entered by the Court.

**VIOLATIONS OF TELEMARKETING SALES RULE
PART I OF THE ORDER**

Defendant is permanently restrained and enjoined from violating any provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310 (effective as of December 31, 1995, amended as of March 31, 2003, and as it may be amended subsequently), including but not limited to:

- A. the provisions requiring specified disclosures in connection with the sales of goods or services, including the sale of goods or services with a negative option feature and upsells, set forth in Sections 310.3(a)(1) and 310.4(d) (as amended as of March 31, 2003 and as it may be amended subsequently);
- B. the provisions prohibiting misrepresentations in connection with the sale of goods or services, including the sale of goods or services with a negative option feature and upsells, set forth in Sections 310.3(a)(2) and 310.3(a)(4) (as amended as of March 31, 2003 and as it may be amended subsequently); and
- C. the provisions regarding the submission of billing information for payment, or the collection or attempt to collect payment for goods or services, in transactions involving preacquired account information, either in conjunction with or without a free-to-pay conversion plan, set forth in Sections 310.3(a)(3) and 310.4(a)(6) (as amended as of March 31, 2003 and as it may be amended subsequently).

**PROHIBITED BUSINESS PRACTICES
PART II OF THE ORDER**

In connection with (1) the telemarketing of any membership service pursuant to an offer or agreement with a negative option feature or (2) soliciting the purchase of any other good or

service during a single telemarketing transaction after a consumer has already purchased a different good or service and provided billing information in connection with such purchase, Defendant is permanently restrained and enjoined from making, or causing or assisting others to make, expressly or by implication, any false or misleading representation, including but not limited to:

1. Falsely representing (1) the amount that a consumer will be charged or billed for any goods or services, (2) that a consumer will not be charged or billed for any goods or services, (3) the timing or manner of any charge or bill (including but not limited to the date of the charge and whether it will be a credit card charge or a checking account debit), or (4) that a consumer will not be charged or billed without the consumer's authorization; and
2. Falsely representing, through, *inter alia*, mailings, email, billings, credit card charges and checking account debits, that a consumer purchased or agreed to purchase goods or services, or that a transaction has been authorized by a consumer.

**PROHIBITED FAILURES TO DISCLOSE
PART III OF THE ORDER**

In connection with (1) the telemarketing of any membership service pursuant to an offer or agreement with a negative option feature or (2) soliciting the purchase of any other good or service during: (a) a single telemarketing call after a consumer has already purchased a different good or service and provided billing information in connection with such purchase; and (b) any

subsequent telephone call during which defendant, or any third party on behalf of defendant, verifies or attempts to verify the consumer's purchase of any good or service during a previous telemarketing call, Defendant is permanently restrained and enjoined from failing to disclose, clearly and conspicuously, all material terms and conditions for the purchase of any such goods or services, including but not limited to:

1. The fact, if true, that a good or service is offered on behalf of a seller that is a separate entity from the seller doing the telemarketing, and, if so, the identity of that seller;
2. The number of required payments (if more than one), the date(s) or time period(s) at which the payment(s) will be required or charged, and the amount of the payment(s); **provided**, if there is not a known fixed amount for a future payment, such as the automatic renewal of an annual membership service fee, Defendant must disclose how the renewal fee or other future payment will be determined (*e.g.*, the annual fee then in effect); **provided further**, if the number of payments is undetermined at the time of the sale, Defendant must disclose the frequency of the payments (*e.g.*, every month or every year while the agreement is in effect);
3. The fact, if true, that the billing information the seller already possesses, either because the consumer previously provided it to the seller, or the seller obtained it from another source, will be used to bill or charge the consumer;
4. If the consumer will be automatically billed at the end of a trial period unless the consumer cancels: this fact; the length of the trial period and when it begins if it begins sooner than upon the consumer's receipt of the written confirmation

required by the proviso immediately following Subpart III.G; the manner in which a cancellation request may be submitted; the date or time period by which a cancellation request must be received if different from the date the trial period ends; and either a telephone number or address to which a cancellation request may be directed or the fact, if true, that such information will be included in written materials provided to the consumer within a reasonable period prior to the date by which a cancellation request must be received; **provided, however,** for purposes of this Subpart, Defendant may disclose the telephone number or address to which a cancellation request may be directed after and in close proximity to the consumer's express consent as set forth in Part IV;

5. If the seller automatically ships goods to a consumer or automatically renews a membership, subscription or agreement for goods or services that is offered on a periodic basis, unless the consumer notifies the seller within a certain time not to ship or renew: this fact; the manner in which a notice not to ship or renew may be submitted; the date or time period by which a notice not to ship or renew must be received to avoid shipment or renewal (*e.g.*, two weeks after consumer advised of an upcoming shipment); and either a telephone number or address to which such a notice may be directed or the fact, if true, that such information will be included in written materials provided to the consumer within a reasonable period prior to the date by which such a notice must be received; **provided, however,** for purposes of this Subpart, Defendant may disclose the telephone number or address to which such a notice may be directed after and in close proximity to the consumer's

express consent as set forth in Part IV;

6. All material conditions, limitations and restrictions on the ability of the consumer to use any trial membership, information kit, good or service that is offered "free," "risk-free," with "no obligation," or words of similar import denoting or implying the absence of any obligation on the part of the recipient of such offer to pay for the trial membership, information kit, good or service or to take affirmative action to avoid incurring payment obligations; and
7. All material conditions, limitations and restrictions on the ability of the consumer to use any good or service offered for "free" or with "no obligation," or as discounted or reduced in price, or words of similar import, to a consumer who accepts an offer for other goods or services subject to this Part;

provided that, in connection with the telemarketing of any goods or services subject to this Part pursuant to an offer or agreement with a free-to-pay conversion feature, Defendant, within a reasonable time prior to billing or charging the consumer for such goods or services, must provide the consumer with a document disclosing, clearly and conspicuously, all material terms and conditions of the sale, including but not limited to those set forth in this Part; **provided further** that these disclosures are in addition to and not in lieu of those disclosures required by the TSR, as amended March 31, 2003, and as it may be amended subsequently.

EXPRESS AND VERIFIABLE INFORMED CONSENT PART IV OF THE ORDER

In connection with (1) the telemarketing of any membership service pursuant to an offer or

agreement with a negative option feature or (2) soliciting the purchase of any other good or service during: (a) a single telemarketing call after a consumer has already purchased a different good or service and provided billing information in connection with such purchase; and (b) any subsequent telephone call during which defendant, or any third party on behalf of defendant, verifies or attempts to verify the consumer's purchase of any good or service during a previous telemarketing call, Defendant is permanently restrained and enjoined from submitting billing information for payment, transferring billing information to a third party, or collecting or attempting to collect payment for goods or services, directly or indirectly, without the express informed consent of the consumer evidenced as follows:

- A. To obtain a consumer's express informed consent, Defendant must disclose all of the following information to the consumer, clearly and conspicuously, and in close proximity to, the consumer's express consent to purchase goods or services:
 1. The amount and manner of the billing or payment for such goods or services, including but not limited to, the disclosures set forth in Subparts B and C of Part III of this Order, prior to obtaining the consumer's express consent;
 2. All of the disclosures set forth in Subparts A, D, E, F and G of Part III of this Order, prior to obtaining the consumer's express consent, unless otherwise specifically provided in Subparts III.D and E, **provided, however, nothing in this Subpart shall prohibit Defendant from obtaining informed consent by making such disclosures to the consumer, clearly and conspicuously, in a print advertisement or print promotional or marketing**

material to which the consumer was responding, provided that Defendant has reliable evidence that it made such written disclosures to the consumer; and

3. To the extent not already disclosed pursuant to Subpart A.1 of this Part, sufficient information to enable the consumer to reasonably identify which specific account will be charged to collect payment for those goods or services that are the subject of the sales offer; and

B. Defendant must use one of the following means to evidence that the Defendant has obtained the consumer's express informed consent:

1. Express written authorization by the consumer, which includes the consumer's signature (the term "signature" includes a verifiable electronic or digital form of signature, to the extent such form of signature is recognized as a valid signature under applicable federal law or state contract law);
2. The consumer's express oral agreement to purchase the goods or services and authorization to submit a charge on a specified billing account for payment that is recorded and meets the following criteria:
 - (a) For all inbound and outbound telemarketing calls, the recording must include the entire portion of any telephone call that relates to the goods or services that are the subject of the Defendant's offer, including all of the information Defendant is required to disclose pursuant to Subpart A of this Part;

- (b) The recording can be identified and located by either the consumer's name or telephone number; and
- (c) A copy of the recording is provided upon request to the consumer, the consumer's bank, credit card company or other billing entity, state attorney general or consumer protection agency or the Commission; or

- 3. Express informed consent that is verified by an independent third party verifier ("TPV") that meets the requirements of Part V of this Order;

provided, however, that the requirements of Part IV are in addition to and not in lieu of the requirements of the TSR, as amended March 31, 2003, and as it may be amended subsequently.

RECORD-KEEPING PROVISIONS PART VIII OF THE ORDER

For a period of three (3) years from the date of entry of this Order, in connection with (1) the telemarketing of any membership service pursuant to an offer or agreement with a negative option feature or (2) soliciting the purchase of any other good or service during a single telemarketing transaction after a consumer has already purchased a different good or service and provided billing information in connection with such purchase, Defendant is 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. Complaint and refund requests (whether received directly, indirectly or through any third party, in writing or by telephone) and any responses to those complaints or requests to the extent such information is obtained in the ordinary course of business;
- E. Copies of all sales scripts, training materials, advertisements, or other marketing materials; and
- F. Each tape recording of a telemarketing call made pursuant to Part IV of the Order.

Other Orders/Judgments

8:04-cv-01955-SDM-EAJ Federal Trade Commission v. Special Data Processing Corporation

U.S. District Court

Middle District of Florida

Notice of Electronic Filing

The following transaction was received from RFM, entered on 9/30/2004 at 2:36 PM EDT and filed on 9/30/2004

Case Name: Federal Trade Commission v. Special Data Processing Corporation

Case Number: 8:04-cv-1955

Filer:

Document Number: 5

Docket Text:

JUDGMENT in favor of plaintiff against defendant. Signed by Judge Deputy Clerk on 9/30/2004.
(RFM)

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1069447731 [Date=9/30/2004] [FileNumber=1524673-0]
] [1ba2a24897ae92e345546109fbd800242b9edaa6432b03aaece4225bf27f7fde0a7
e57d8b3ac74ce3a544459c06dac3362dadaeca92e8d509eb33156408b5cc8]]

8:04-cv-1955 Notice will be electronically mailed to:

8:04-cv-1955 Notice will be delivered by other means to:

Robert M. Frisby
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, DC 20580

Linda A. Goldstein
Manatt, Phelps & Phillips, LLP
1675 Broadway
New York, NY 10019

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

-vs-

Case No. 8:04-cv-1955-T-23EAJ

SPECIAL DATA PROCESSING
CORPORATION,

Defendant.

JUDGMENT IN A CIVIL CASE

Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that judgment is entered in favor of plaintiff and against defendant in the amount of \$535,000.00.

Date: September 30, 2004

SHERYL L. LOESCH, CLERK

By: S/
R. Moglia, Deputy Clerk

Copies furnished to:

Counsel of Record
Unrepresented Parties