

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. \_\_\_\_\_ - CIV \_\_\_\_\_

U.S. District Judge \_\_\_\_\_ /U.S. Magistrate Judge \_\_\_\_\_

FEDERAL TRADE COMMISSION,  
Plaintiff,  
v.  
LISTDATA COMPUTER SERVICES, INC.  
a Florida corporation,  
Defendant.

**STIPULATED ORDER FOR PERMANENT INJUNCTION AND OTHER RELIEF**

Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), has filed a complaint for permanent injunction and other equitable relief pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), charging defendant with assisting and facilitating the commission of deceptive and abusive telemarketing acts and practices, in violation of Section 310.3(b) of the Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310.

The Commission and defendant Listdata Computer Services, Inc. (defendant or “Listdata”), having been represented by counsel and acting by and through such counsel, have consented to the entry of this Stipulated Order for Permanent Injunction and Other Relief (“Stipulated Order” or “Order”) without a trial or adjudication of any issue of law or fact herein.

NOW, THEREFORE, the Commission and defendant having requested the Court to enter this Stipulated Order, it is ORDERED, ADJUDGED, AND DECREED as follows:

## **FINDINGS**

1. This is an action by the Commission instituted under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b). Pursuant to this section, the Commission has the authority to seek the relief contained herein.
2. The Commission's complaint states a claim upon which relief may be granted against defendant under 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 - 6108.
3. This Court has jurisdiction over the subject matter of this case and all parties hereto. Venue in the Southern District of Florida is proper.
4. The alleged activities of defendant are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
5. The parties shall each bear their own costs and attorney's fees incurred in this action and have waived all claims under the Equal Access to Justice Act, 28 U.S.C. § 2412, and all rights to seek judicial review, or otherwise to challenge the validity of this Stipulated Order.
6. Entry of this Stipulated Order is in the public interest.

## **DEFINITIONS**

1. "Seller" shall have the meaning set forth in Section 310.2(z) of the Telemarketing Sales Rule, 16 C.F.R. § 310.2(z).
2. "Telemarketer" shall have the meaning set forth in Section 310.2(bb) of the Telemarketing Sales Rule, 16 C.F.R. § 310.2(bb).
3. "Telemarketing" shall have the meaning set forth in Section 310.2(cc) of the Telemarketing Sales Rule, 16 C.F.R. § 310.2(cc).

## **ORDER**

### **I. PROHIBITED PRACTICES**

IT IS THEREFORE ORDERED that, in connection with the management, rental, or sale of direct marketing lists for use in telemarketing, defendant Listdata, its successors and assigns, and each of its officers, agents, servants, and employees, and those persons in active concert or participation with it who receive actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from:

A. Providing substantial assistance or support to any seller or telemarketer while knowing or consciously avoiding knowing that the seller or telemarketer is engaged in any act or practice that violates Sections 310.3(a), 310.3(c), 310.3(d), or 310.4 of the Telemarketing Sales Rule, 16 C.F.R. §§ 310.3(a), 310.3(c), 310.3(d), or 310.4; and

B. Failing to obtain and review sample scripts from any seller or telemarketer prior to renting or selling any list to that seller or telemarketer in order to ensure that the rental or sale of any such list does not assist the seller or telemarketer in violating Sections 310.3(a)(1)(iv) and (vi), 310.3(a)(2)(vii), 310.4(a)(2), (3), and (4), and 310.4(d) and (e) of the Telemarketing Sales Rule.

### **II. CONSUMER REDRESS**

IT IS FURTHER ORDERED that:

A. A judgment for equitable monetary relief in the amount of one hundred thousand dollars (\$100,000) is hereby entered against defendant Listdata Computer Services, Inc. Defendant shall satisfy this judgment within ten (10) days of the date of entry of this Order by the Court, by wire transfer of funds in accord with directions provided by the FTC. All funds paid pursuant to this Paragraph 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 to pay any attendant costs for the administration of any redress fund. If 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 equitable redress shall be deposited to the United States Treasury as disgorgement. Defendant shall have no right to challenge the Commission's choice of remedies under this Paragraph. No portion of the payment pursuant to this Paragraph shall be deemed a payment of any fine, penalty, or punitive assessment.

B. In the event of any default in the above payment schedule, which default continues for ten (10) days beyond the due date of payment, the entire unpaid amount together with interest, as computed under 28 U.S.C. § 1961, from the date of default until the date of payment, shall immediately become due and payable.

### **III. RIGHT TO REOPEN AS TO MONETARY JUDGMENT**

IT IS FURTHER ORDERED that:

A. The Commission's agreement to this Order, which requires payment of less than the full amount of consumer redress, is expressly premised upon the truthfulness, accuracy, and completeness of defendant's financial condition, as represented in the Financial Statement of Corporate Defendant, and the related documents and 2000-2003 federal tax returns sent to the FTC on February 17, 2004 and March 3, 2004 (designated collectively as the "Financial Statements"), which contain material information upon which the Commission relied in negotiating and agreeing to the terms of this order. By agreeing to this order, defendant reaffirms and attests to the truthfulness, accuracy, and completeness of the Financial Statements referenced above.

B. If, upon motion by the Commission, this Court finds that defendant failed to disclose any material asset, or materially misrepresented the value of any asset, or made any other material misrepresentation in or omission from the Financial Statements, the Court shall enter a judgment against the defendant, in favor of the Commission, in the amount of three hundred

sixteen thousand dollars (\$316,000). Provided, however, that in all other respects this order shall remain in full force and effect unless otherwise ordered by the Court.

C. In accordance with 31 U.S.C. § 7701, defendant is hereby required, unless it has done so already, to furnish to the FTC its employer identification number which shall be used for purposes of collecting and reporting on any delinquent amount arising out of defendant's relationship with the government.

D. Proceedings instituted under this section are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings the FTC may initiate to enforce this order.

#### **IV. 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) days of receipt of written notice from a representative of the Commission, defendant shall submit 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 any 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 prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;
2. posing as customers, clients or suppliers to defendant 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 and 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)).

C. Defendant shall permit representatives of the Federal Trade Commission to interview any 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.

#### **V. DISTRIBUTION OF ORDER BY DEFENDANT**

A. IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry of this Stipulated Order, defendant shall deliver a copy of this Order to all principals, officers, directors, managers, employees, agents, and representatives having responsibilities with respect to the subject matter of this Order, and shall secure from each such person a signed and dated statement acknowledging receipt of the Order. Defendant shall deliver this Order to current personnel within thirty (30) days after the date of service of this Order, and to new personnel within thirty (30) days after the person assumes such position or responsibilities.

#### **VI. COMPLIANCE REPORTING BY DEFENDANT**

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

A. For a period of three (3) years from the date of entry of this Order, defendant shall notify the Commission of the following:

1. Any changes in defendant's principal place of business, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;
  2. Any changes in defendant's name or use of any aliases or fictitious names;
- and

3. 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 Federal Trade 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, any changes required to be reported pursuant to paragraph A, above.

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:

Regional Director  
Northwest Region  
Federal Trade Commission  
915 Second Ave., Suite 2896  
Seattle, WA 98174

D. For purposes of the compliance reporting required by this Order, the Federal Trade Commission is authorized to communicate directly with defendant.

## **VII. RECORD KEEPING PROVISIONS**

IT IS FURTHER ORDERED that, for a period of six (6) years from the date of entry of this Order, in connection with telemarketing or with assisting others engaged in telemarketing, defendant and defendant's agents, employees, officers, servants, corporations, successors, and

assigns, and those persons in active concert or participation with them who receive actual notice of this Stipulated Order by personal service or otherwise, are hereby restrained and enjoined from failing to create and retain, unless otherwise specified:

A. 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; and

B. Customer files containing the names, addresses, phone numbers, sample scripts and mail pieces, and a description of the direct marketing lists rented or purchased, to the extent such information is obtained in the ordinary course of business.

#### **VIII. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANT**

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

#### **IX. 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.

**SO ORDERED** this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
United States District Judge



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The parties, by their respective counsel, hereby consent to the terms and conditions of the Stipulated Order as set forth above and consent to the entry thereof. Defendant waives any rights that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412.

**FOR THE PLAINTIFF FEDERAL TRADE COMMISSION**



Tracy S. Thorleifson  
Attorney for Plaintiff  
Federal Trade Commission, Northwest Region  
915 Second Avenue, Suite 2896  
Seattle, WA 98174  
206-220-4481  
206-220-6366 (fax)



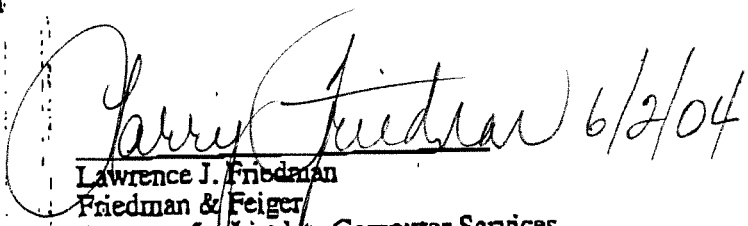
Charles A. Harwood  
Attorney for Plaintiff  
Federal Trade Commission,  
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**FOR DEFENDANT LISTDATA COMPUTER SERVICES**



5/28/04.

Warren Goff, President  
Listdata Computer Services, Inc.



Lawrence J. Friedman  
Friedman & Feiger  
Attorney for Listdata Computer Services  
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972-788-1400  
972-788-2667 (fax)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 04-61062 - CIV - \_\_\_\_\_

U.S. District Judge CIV - COOKE / U.S. Magistrate Judge /McALILEY

FILED BY: \_\_\_\_\_  
2004 AUG 11 PM 1:07  
CLERK OF U.S. DIST. CT.  
S.D. OF FL.-FTL.  
D.C.

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

LISTDATA COMPUTER SERVICES, INC.

a Florida corporation,

Defendant.

**COMPLAINT FOR PERMANENT INJUNCTION  
AND OTHER EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission ("Commission"), for its complaint alleges as follows:

1. The FTC brings this action under Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. § 6101 *et seq.*, against defendant Listdata Computer Services, Inc. ("ListData"), to secure a permanent injunction and other equitable relief for engaging in acts or practices in violation of the FTC's Trade Regulation Rule entitled "Telemarketing Sales Rule" ("TSR"), 16 C.F.R. Part 310.

**JURISDICTION AND VENUE**

2. Subject matter jurisdiction is conferred upon this Court by 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), 6105(b), and 28 U.S.C. §§ 1331, 1337(a), and 1345.

3. Venue in the Southern District of Florida is proper under 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b).

### **THE PARTIES**

4. Plaintiff, the Federal Trade Commission, is an independent agency of the United States Government created by statute. 15 U.S.C. § 41 *et seq.* The Commission enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits deceptive acts or practices in or affecting commerce. The Commission also enforces the Telemarketing Sales Rule, 16 C.F.R. Part 310, which prohibits deceptive or abusive telemarketing practices. The Commission may initiate federal district court proceedings to enjoin violations of the FTC Act and the Telemarketing Sales Rule, and to secure such equitable relief as may be appropriate in each case. 15 U.S.C. §§ 53(b), 57b, 6102(c), and 6105(b).

5. Defendant Listdata Computer Services, Inc. (“Listdata”), is a Florida corporation with its office and principal place of business located at 5300 N.W. 33<sup>rd</sup> Avenue, Suite 200, Fort Lauderdale, Florida 33309. Listdata engages in and transacts or has transacted business in this district.

### **COMMERCE**

6. At all times relevant to this complaint, the defendant has maintained a substantial course of conduct in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

### **DEFENDANT’S BUSINESS PRACTICES**

7. Listdata, a list management company, manages the marketing and sale or rental of various lists of consumer names, addresses, and telephone numbers on behalf of list owners. For a fee, Listdata promotes and markets the lists it manages to list brokers and others in the direct marketing industry who seek lists of consumers likely to respond to other telemarketing or direct mail offers.

8. Listdata typically requires prospective list renters to provide it with a sample mail piece or telemarketing script.

9. Listdata has routinely rented lists to telemarketers of advance fee credit products. The TSR prohibits requesting or receiving payment in advance of obtaining an extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit.

10. Some of the sample telemarketing scripts sent to Listdata and used by companies to which Listdata has rented its lists demonstrate – on their face – that these companies are engaged in violations of the TSR. A script provided to Listdata by 3971929 Canada Inc., for example, states that:

I'm an issuing agent with Credit Card Services... . [Y]ou have been approved with no problems for a Visa or Mastercard with a spending limit of up to \$2500.00. . . . [T]here is no annual fee . . . it's been replaced with a one-time, lifetime membership fee of only \$297.00.

11. Listdata rented lists to 3971929 Canada Inc., on numerous occasions in 2003. On other occasions in 2002, Listdata rented lists to Brentwood Capital, for another advance-fee credit offer. That script states, in part:

I'm pleased to inform you that you have been pre-approved for a MasterCard with a credit limit of up to \$3000.00. . . . There is a one-time fee of \$299.00. It's important you understand that this is not an application fee, but a guaranteed approval.

12. Because it is obvious from the face of the scripts that the TSR is being violated, Listdata should know that, by renting these companies lists of responsive consumers, it is assisting and facilitating in the unlawful marketing of advance fee credit products.

## VIOLATIONS OF THE TELEMARKETING SALES RULE

13. The Commission promulgated the Telemarketing Sales Rule, 16 C.F.R. Part 310, pursuant to Section 6102(a) of the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6102(a), to protect consumers from deceptive and abusive telemarketing. The TSR became effective December 31, 1995, and was subsequently amended effective March 31, 2003.

14. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c), and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), violations of the TSR constitute deceptive acts or practices in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

15. It is a violation of the TSR for any person to provide substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any practice that violates Sections 310.3(a) or (c) or 310.4 of the Rule. 16 C.F.R. § 310.3(b).

16. Section 310.4(4) of the Rule prohibits any seller or telemarketer from “Requesting or receiving payment of any fee or consideration in advance of obtaining a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit for a person.” 16 C.F.R. § 310.4(4).

17. On numerous occasions Listdata has substantially assisted sellers or telemarketers who are engaged in the sale of advance fee credit products, in violation of Section 310.4(4) of the TSR, by selling them lists of prospective customers.

18. ListData knows that these sellers or telemarketers are engaged in the sale of advance fee credit products because, prior to renting to them lists of prospective customers, ListData obtains copies of telemarketing scripts that on their face request an advance fee for a credit product, in violation of the TSR.

19. By providing substantial assistance and support to sellers or telemarketers, while knowing or consciously avoiding knowing that the sellers or telemarketers are engaged in the sale of advance fee credit products, defendant ListData has itself violated Section 310.3(b) of the Rule. 16 C.F.R. 310.3(b).

### **CONSUMER INJURY**

20. Consumers throughout the United States have suffered substantial monetary loss as a result of the defendant's unlawful acts or practices.

### **THIS COURT'S POWER TO GRANT RELIEF**

21. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other ancillary relief to prevent and remedy any violations of any provision of law enforced by the Commission.

22. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), authorize this Court to grant such relief as the Court finds necessary to redress injury to consumers or other persons resulting from Defendant's violations of the TSR, including rescission and reformation of contracts and refund of monies.

23. This Court, in the exercise of its equitable jurisdiction, may award other ancillary relief to remedy injury caused by Defendant's law violations.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, Federal Trade Commission, requests that this Court, as authorized by Section 13(b) and 19 of the FTC Act, 15 U.S.C. § 53(b) and 57b, and pursuant to its own equitable powers:

- a. Permanently enjoin Defendant from violating the TSR;
- b. Enter judgment against Defendant and in favor of Plaintiff for the violation

alleged in this Complaint;

- c. Award such relief as the Court finds necessary to redress injury to consumers resulting from the Defendant's violations of the Telemarketing Sales Rule and the FTC Act, including but not limited to, rescission of contracts, the refund of monies paid, and the disgorgement of ill-gotten monies and interest thereon by defendants; and
- d. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Respectfully submitted,

William E. Kovacic  
General Counsel

CHARLES A. HARWOOD  
Regional Director



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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
OFFICE OF THE CLERK OF COURT

**NOTICE TO COUNSEL OF RECORDS:  
YOUR NEW CASE FILING WAS ASSIGNED TO**

**JUDGE** CIV-COOKE / McALILEY

**04-61062**

**ALL FURTHER PLEADINGS ARE TO BE FILED IN  
(THE OFFICE CIRCLED) MIAMI, FORT LAUDERDALE,  
WEST PALM BEACH, WHERE THE ASSIGNED  
JUDGE IS CHAMBERED PURSUANT TO LOCAL RULE  
5.1B.**

CLERK, US DISTRICT COURT  
FEDERAL COURTHOUSE  
301 NORTH MIAMI AVENUE  
MIAMI, FLORIDA 33128-7788  
(305) 536-4131

CLERK, US DISTRICT COURT  
701 CLIMATIS STREET  
WEST PALM BEACH, FL 33401  
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CLERK, US DISTRICT COURT  
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