

The Honorable Stephen M. McNamee

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA
AT PHOENIX

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

VECTOR DIRECT MARKETING, LLC;
MIKE STAFFORD; and LISA MILLER,

Defendants.

Case No. CV04 0095 PHX SMM

**STIPULATED PERMANENT
INJUNCTION AND FINAL
JUDGMENT**

(Proposed)

Plaintiff, the Federal Trade Commission ("FTC"), filed its Complaint in this matter on January 15, 2004. The Court entered an Ex Parte Temporary Restraining Order With Asset Freeze and Order To Show Cause Why Preliminary Injunction Should Not Issue on January 21, 2004, against defendants Vector Direct Marketing, LLC, Mike Stafford and Lisa Miller. On January 30, 2004, the court entered a Stipulated Preliminary Injunction as to Lisa Miller, a Preliminary Injunction on a default basis against Vector Direct Marketing, LLC, now defunct, and extended by stipulation the Temporary Restraining Order as to Mike Stafford until February 12, 2004. Stafford subsequently stipulated to entry of a Preliminary Injunction that was entered by the Court on February 16, 2004. Defendants Miller and Stafford and the FTC, have now agreed to entry of this Stipulated Permanent Injunction by this Court in order to resolve all matters in dispute between them in this action. Stafford and the FTC are represented by the undersigned counsel. Defendant Miller, who is not represented by counsel, enters into this Order freely and without coercion, and acknowledges that she has carefully

1 read and understands the provisions of this Order and is prepared to abide by its terms. Defendants
2 have consented to the entry of this Order without trial or adjudication of any issue of law or fact
3 herein, and this Order shall not constitute an admission of liability by defendants nor constitute
4 evidence of liability against defendants in any matter relating to the facts alleged in the FTC's
5 Complaint. **NOW, THEREFORE**, these defendants and the FTC having requested the Court to enter
6 this Order, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

7 **FINDINGS**

8 1. This Court has jurisdiction of the subject matter of this case and of the parties
9 consenting hereto.

10 2. The complaint states a claim upon which relief may be granted against the defendants
11 under Sections 5 and 13(b) of the FTC Act, 15 U.S.C. §§ 45 and 53(b).

12 2. Venue is proper as to all parties in the District of Arizona.

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

15 4. The complaint states a claim upon which relief may be granted against defendants under
16 Sections 5 and 13(b) of the FTC Act, 15 U.S.C. §§ 45 and 53(b).

17 5. Defendants have waived all rights to seek judicial review or otherwise challenge or
18 contest the validity of this Order, and further waive and release any claim defendants may have against
19 the FTC, its employees, and agents, including any rights that may arise under the Equal Access to
20 Justice Act, 28 U.S.C. § 2412, amended by Pub. L. 104-121, 110 Stat. 847, 863-64 (1996).

21 6. The parties shall each bear their own costs and attorneys' fees incurred in this action.

22 **DEFINITIONS**

23 1. "Defendants" means Mike Stafford and Lisa Miller.

24 2. "Telemarketing" means a plan, program, or campaign that is conducted to induce the
25 purchase of goods or services by use of one or more telephones.

26 **I. PROHIBITED BUSINESS ACTIVITIES**

27 IT IS THEREFORE ORDERED that defendants, and their agents, servants, employees, and
28 those persons in active concert or participation with them who receive actual notice of this Order by

1 personal service or otherwise, in connection with the advertising, offering for sale, or sale of any
2 products or services via telemarketing, are hereby permanently restrained and enjoined from:

3 A. Making, or assisting others in making, expressly or by implication, orally or in writing,
4 any statement or representation of material fact that is false or misleading, including but not limited to
5 false or misleading statements that consumers' personal information, such as social security, credit
6 card, and bank account numbers, appear on telemarketing lists, making the consumers a likely target
7 for fraud, and that defendants will cause consumers' personal financial information to be removed
8 from the telemarketing lists that include that information.

9 B. Causing charges to be billed to consumers' credit cards, or causing consumers' bank
10 accounts to be debited, without the consumers' authorization and express informed consent.

11 C. Using threats or intimidation to induce consumers who have attempted to stop payment
12 to pay for defendants' products and services.

13 D. Failing to comply with the TSR, 16 C.F.R. Part 310, as attached hereto as Attachment
14 A, or as subsequently amended.

15 **II. MONETARY JUDGMENT**

16 IT IS FURTHER ORDERED that:

17 A. Judgment in the amount of \$810,972.46 is entered against defendants as restitution for
18 consumer injury; provided, however, that this judgment shall be suspended until further order of the
19 Court pursuant to Section III of this order (Right to Reopen), and provided further that this judgment
20 shall be subject to the conditions set forth in Section III.

21 B. If any funds are paid pursuant to this section and Section III (Right to Reopen), those
22 funds shall be deposited into a fund administered by the FTC or its designated agent to be used for
23 equitable relief, including, but not limited to, restitution and any attendant expenses for the
24 administration of any monetary fund. In the event that direct restitution for consumers is wholly or
25 partially impracticable or funds remain after restitution is completed, the FTC may apply any
26 remaining funds for any other equitable relief (including consumer information remedies) that it
27 determines to be reasonably related to the defendants' practices alleged in the complaint. Any funds
28 not used for this equitable relief shall be deposited into the U.S. Treasury as disgorgement. Defendants
shall have no right to challenge the FTC's choice of remedies under this section.

1 C. The FTC and defendants acknowledge and agree that no portion of this judgment for
2 equitable monetary relief shall be deemed a fine, penalty, punitive assessment, or forfeiture.

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

5 III. RIGHT TO REOPEN AS TO MONETARY JUDGMENT

6 IT IS FURTHER ORDERED that:

7 A. By agreeing to this order, defendants reaffirm and attest to the truthfulness, accuracy,
8 and completeness of the Financial Statement of Lisa Miller, dated 2/09/04 and submitted to the FTC;
9 the financial records of Vector Direct Marketing, LLC, provided to the FTC on 1/30/04; and the
10 Financial Statement of Mike Stafford dated 2/17/04 and submitted to the FTC (designated collectively
11 as the "Financial Statements"). Plaintiff's agreement to this order is expressly premised upon the
12 truthfulness, accuracy, and completeness of defendants' financial condition, as represented in the
13 Financial Statements referenced above, which contain material information upon which plaintiff relied
14 in negotiating and agreeing to the terms of this order.

15 B. If, upon motion by plaintiff, this Court finds that defendants failed to disclose any
16 material asset, or materially misrepresented the value of any asset, or made any other material
17 misrepresentation in or omission from the Financial Statements, the Court shall reinstate the suspended
18 judgment against such defendant, in favor of the FTC, in the amount of \$810,972.46, which the
19 defendants and the FTC stipulate is the amount of consumer injury jointly and severally caused by the
20 defendants, as set forth in Paragraph II.A of this Order. Provided, however, that in all other respects
21 this Order shall remain in full force and effect unless otherwise ordered by the Court.

22 C. In accordance with 31 U.S.C. § 7701, defendants are hereby required, unless they have
23 done so already, to furnish to the FTC their respective taxpayer identifying numbers (social security
24 number or employer identification number) which shall be used for purposes of collecting and
25 reporting on any delinquent amount arising out of defendants' relationship with the government.

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

1 **IV. PROHIBITION ON DISCLOSING CUSTOMER INFORMATION**

2 IT IS FURTHER ORDERED that defendants, their agents, servants, and employees, and those
3 persons in active concert or participation with them who receive actual notice of this Order by personal
4 service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division,
5 affiliate, or other device, are hereby permanently restrained and enjoined from selling, renting, leasing,
6 transferring, or otherwise disclosing the name, address, telephone number, social security number, or
7 other identifying information of any person who purchased or paid to participate in defendants' do-not-
8 call or fraud protection products or services at any time prior to the date this Order is entered.
9 Provided, however, that defendants may disclose identifying information to a law enforcement agency
10 or as required by any law, regulation, or court order.

11 **V. TRAINING, MONITORING, AND VERIFICATION**

12 **IT IS FURTHER ORDERED** that defendants, their agents, servants, employees, and those
13 persons in active concert or participation with them who receive actual notice of this Order by personal
14 service or otherwise, in connection with any business where (1) any defendant is the majority owner of
15 the business or directly or indirectly manages or controls the business, and (2) the business involves
16 the advertising, offering for sale, or sale of any product or service via telemarketing , are hereby
17 permanently restrained and enjoined from:

18 A. Failing to take reasonable steps sufficient to monitor and ensure that all employees and
19 independent contractors engaged in sales or other customer service functions comply with Paragraph I
20 of this Order. These steps shall include adequate monitoring of sales presentations or other calls with
21 consumers, and shall also include, at a minimum, the following: (1) listening to the oral representations
22 made by persons engaged in sales or other customer service functions; (2) establishing a procedure for
23 receiving and responding to consumer complaints; and (3) ascertaining the number and nature of
24 consumer complaints regarding transactions in which each employee or independent contractor is
25 involved.

26 B. Failing promptly to investigate fully any consumer complaint received by any business
27 to which this section applies.

28 C. Failing to take adequate corrective action with respect to any employee or

1 independent contractor who defendant determines is not complying with this Order. This corrective
2 action may include training, disciplining, and/or terminating such employee or independent contractor.

3 **VI. RECORD KEEPING**

4 **IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry of this
5 Order, defendants, in connection with any business where (1) any defendant is the majority owner of
6 the business or directly or indirectly controls the business and (2) the business is engaged in conduct
7 that is the subject of this Order, are hereby permanently restrained and enjoined from failing to create
8 and retain for a period of three (3) years from the date of their creation the following records:

9 A. Records that reflect sales revenues received and the cost of generating those sales;

10 B. Personnel records accurately reflecting: the name, address, and telephone number of
11 each person employed in any capacity by such business, including as an independent contractor; that
12 person's job title or position; the date upon which the person commenced work; and the date and
13 reason for the person's termination, if applicable;

14 C. Files containing the name, address, and phone number for each customer;

15 D. Records of all complaints, cancellation or refund requests, and requests to be removed
16 from call lists made to any toll-free number operated by defendants, and a written record disclosing the
17 name and telephone number of the caller, the date of the call, and the nature of the call;

18 E. Written complaints and refund requests (whether received directly, indirectly or through
19 any third party) and any responses to those written complaints or requests; and

20 F. Copies of any contract or agreement used in any telemarketing endeavor and all scripts,
21 training materials, advertisements, or other sales materials used by defendants.

22 **VII. COMPLIANCE REPORTING BY DEFENDANTS**

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

25 A. For a period of five (5) years from the date of entry of this Order the defendants shall
26 notify the FTC of the following:

- 27 1. any change in their residence, mailing address, or telephone number, within ten
28 (10) days of the date of such change;

2. any change in their employment status (including self-employment) within ten (10) days of the date of such change; such notice shall include the name and address of each business that the defendant is affiliated with, employed by, or performs services for; a statement of the nature of the business; and a statement of the defendant's duties and responsibilities in connection with the business;
3. any changes in their name or use of any aliases or fictitious names.

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

1. any changes required to be reported pursuant to Section VII.A;
2. a copy of each acknowledgment of receipt of this Order obtained by defendants pursuant to Section IX.

C. For purposes of the compliance reporting required by this Section, the FTC is authorized to communicate directly with each defendant.

VIII. 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 FTC, each 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 such defendant's possession or direct or indirect control to inspect the business operation.

B. In addition, the FTC 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;

1 2. posing as customers and suppliers to defendants, or any other entity managed or
2 controlled in whole or in part by them, without the necessity of identification or
3 prior notice;

4 *Provided* that nothing in this Order shall limit the FTC's lawful use of compulsory process,
5 pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49 and 57b-1, to obtain any documentary
6 material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in
7 or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

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

12 **IX. DISTRIBUTION OF ORDER BY DEFENDANTS**

13 **IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry of this
14 Order defendants shall deliver a copy of this Order to the principals, officers, directors, managers and
15 employees under defendants' control for any business that (1) any defendant owns or that employs or
16 contracts for personal services from them and (2) has responsibilities with respect to the subject matter
17 of this Order. Defendants shall secure from each such person a signed and dated statement
18 acknowledging receipt of the Order within three (3) days after the date of service of the Order or the
19 commencement of the employment relationship.

20 **X. ACKNOWLEDGMENT OF RECEIPT OF ORDER**

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

24 **XI. SERVICE ON FTC**

25 **IT IS FURTHER ORDERED** that, for the purposes of this Order, defendants shall, unless
26 otherwise directed by the FTC's authorized representatives, mail to the FTC any correspondence,
27 pleadings, or notifications related to this Order to:
28

1 Regional Director
2 Federal Trade Commission
3 915 Second Avenue, Suite 2896
4 Seattle, WA 98174
5 RE: *FTC v. Vector Direct Marketing, LLC*, et al.

6 **XII. RETENTION OF JURISDICTION**

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

9 DATED this ____ day of _____, 2004.

10 Stephen M. McNamee
11 U.S. District Judge

12 Presented by:

13 DEFENDANTS

14 Lisa Miller, individually
15 Pro Se

16 Richard Neuheisel
17 Attorney for Defendant Mike Stafford

18 PLAINTIFF

19 Eleanor Durham
20 For Federal Trade Commission
21 915 2nd Ave., Rm. 2896
22 Seattle, WA 98174
23 206-220-6350