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9 For Plaintiff Federal Trade Commission

10
11 **UNITED STATES DISTRICT COURT**
12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
13 **OAKLAND DIVISION**

14 FEDERAL TRADE COMMISSION,

15 Plaintiff,

16 v.

Case No. C-03-2139-SBA

17 KEN CHASE
d/b/a Free Do Not Call List.org, and
18 d/b/a National Do Not Call List.US,

19 Defendant.

20
21 **STIPULATED FINAL ORDER FOR PERMANENT INJUNCTION**
22 **AND OTHER EQUITABLE RELIEF**

23 This matter comes before the Court on the stipulation of Plaintiff Federal Trade
24 Commission ("Commission" or "FTC"), and Defendant Ken Chase d/b/a Free Do Not Call
25 List.org and National Do Not Call List.US. On May 6, 2003 the Commission filed its
26 complaint for a permanent injunction and other relief in this matter, pursuant to Section
27 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b). The parties

28 Stipulated Final Order C-03-2139-SBA

1 subsequently agreed to a stipulated preliminary injunction which was entered by the Court
2 on July 29, 2003. The parties now agree to the following Stipulated Final Order for
3 Permanent Injunction and Other Equitable Relief (the "Final Order").

4 It is hereby **ORDERED, ADJUDGED, and DECREED** as follows:

5 **FINDINGS**

- 6 1. This Court has jurisdiction over the subject matter of this case and over the
7 parties.
- 8 2. Venue is proper as to all parties in this District under 15 U.S.C. § 53(b) and
9 28 U.S.C. §§ 1391(b) and (c).
- 10 3. The activities of Defendant are in or affecting commerce, as defined in
11 Section 4 of the FTC Act, 15 U.S.C. § 44.
- 12 4. The Complaint alleges a claim for which relief may be granted against
13 Defendant under §§ 5(a)(1) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a)(1)
14 and 53(b).
- 15 5. The Commission and Defendant stipulate and agree to this Final Order to
16 settle and resolve all matters in dispute arising from the Complaint to the date
17 of entry of this Final Order.
- 18 6. Defendant has waived all rights that may arise under the Equal Access to
19 Justice Act, 28 U.S.C. § 2412, *amended by* Pub. L. 104-121, 110 Stat. 847,
20 863-64 (1996).
- 21 7. Defendant acknowledges that he has read the provisions of this Final Order
22 and has agreed to abide by them.
- 23 8. Defendant waives all rights to seek appellate review or otherwise challenge or
24 contest the validity of this Final Order.
- 25 9. By stipulating to this Final Order, Defendant does not admit or deny liability
26 in this matter.
- 27 10. Entry of this Final Order is in the public interest.

1 DEFINITIONS

2 1. "Defendant" means the named defendant in this action, Ken Chase, and any
3 entity through which he does business, including but not limited to Free Do Not Call List.org
4 and National Do Not Call List.US.

5 2. "Document" is synonymous in meaning and equal in scope to the usage of the
6 term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs,
7 charts, photographs, audio and video recordings, computer records, and other data
8 compilations from which information can be obtained and translated, if necessary, through
9 detection devices into reasonably usable form. A draft or non-identical copy is a separate
10 document-within the meaning of the term.

11 ORDER

12 I.

13 **PROHIBITION AGAINST DECEPTIVE REPRESENTATIONS**

14 **IT HEREBY ORDERED** that in connection with the advertising, marketing,
15 offering for sale, sale, or providing of any goods or services, Defendant, and his officers,
16 agents, servants and employees, as well as those persons in active concert or participation
17 with them who receive actual notice of this Final Order by personal service or otherwise, are
18 hereby prohibited from making or assisting others in making, expressly or by implication,
19 orally or in writing, any representation that they can "preregister" or otherwise arrange for
20 consumers' telephone numbers to be placed on the Federal Trade Commission's National
21 Do Not Call Registry.

22 II.

23 **PROHIBITION ON MISREPRESENTATIONS**

24 **IT FURTHER ORDERED** that in connection with the advertising, marketing,
25 offering for sale, sale, or provision of any goods or services, Defendant, and his officers,
26 agents, servants and employees, as well as those persons in active concert or participation
27 with them who receive actual notice of this Final Order by personal service or otherwise, are

1 hereby prohibited from making or assisting others in making, expressly or by implication,
2 orally or in writing, any misrepresentation that they can arrange for consumers to be placed
3 on any telemarketer's do not call list.

4 **III.**

5 **CONSUMER REDRESS**

6 **IT IS FURTHER ORDERED** that Defendant shall, to the extent he has not already
7 done so, within 10 days of entry of this Final Order:

- 8 (A) Provide full refunds to all consumers who subscribed to services offered by
9 Defendant at National Do Not Call List.US.
- 10 (B)- Provide the FTC a list of all consumers who subscribed to services offered by
11 Defendant through Free Do Not Call List.org and National Do Not Call
12 List.US. Such list shall include the names and any contact information
13 Defendant has for each such consumer.

14 **IV.**

15 **PROHIBITION ON SHARING SUBSCRIBER INFORMATION**

16 **IT IS FURTHER ORDERED** that Defendant and his officers, agents, servants,
17 employees, and attorneys, as well as those persons in active concert or participation with
18 them who receive actual notice of this Final Order by personal service or otherwise, are
19 hereby prohibited from selling, transferring, sharing or otherwise releasing information about
20 the consumers who have subscribed to services offered through Free Do Not Call List.org or
21 National Do Not Call List.US to any person or entity, other the Federal Trade Commission.

22 **V.**

23 **COMPLIANCE MONITORING**

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

- 26 (A) Within twenty (20) days of receipt of written notice from a representative of
27 the Commission, Defendant shall submit additional written reports, sworn to under penalty

1 of perjury; produce documents for inspection and copying; appear for deposition; and/or
2 provide entry during normal business hours to any business location in Defendant's
3 possession or direct or indirect control to inspect the business operation;

4 (B) In addition, the Commission is authorized to monitor compliance with this
5 Final Order by all other lawful means, including but not limited to the following:

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

8 (2) posing as consumers and suppliers to Defendant, his employees, or any other
9 entity managed or controlled in whole or in part by Defendant, without the
10 necessity of identification or prior notice;

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

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

20 VI.

21 COMPLIANCE REPORTING BY DEFENDANT

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

24 (A) For a period of three (3) years from the date of entry of this Final Order,
25 Defendant shall notify the Commission of the following:

26 (1) Any changes in Defendant's residence, mailing addresses, and telephone
27 numbers, within ten (10) days of the date of such change;

1 (2) Any changes in Defendant's employment status (including self-employment)
2 within ten (10) days of the date of such change. Such notice shall include the
3 name and address of each business that Defendant is affiliated with,
4 employed by, or performs services for; a statement of the nature of the
5 business; and a statement of Defendant's duties and responsibilities in
6 connection with the business; and

7 (3) Any changes in Defendant's name or use of any aliases or fictitious names.

8 (B) One hundred eighty (180) days after the date of entry of this Final Order,
9 Defendant shall provide a written report to the FTC, sworn to under penalty of perjury,
10 setting forth in detail the manner and form in which he has complied and is complying with
11 this Final Order.

12 This report shall include, but not be limited to:

- 13 (1) Any changes required to be reported pursuant to subparagraph (A) above;
- 14 (2) A copy of each acknowledgment of receipt of this Final Order obtained by
15 Defendant pursuant to Paragraph VIII.
- 16 (3) Confirmation of Defendant's full compliance with Paragraph III, Consumer
17 Redress.

18 (C) For the purposes of this Final Order, Defendant shall, unless otherwise
19 directed by the Commission's authorized representatives, mail all written notifications to the
20 Commission to:

21 Eileen Harrington
22 Associate Director, Division of Marketing Practices
23 Federal Trade Commission
24 600 Pennsylvania Ave., NW #238
25 Washington, D.C. 20580
26 Re: FTC v. Ken Chase, Civil Action No. 03-2139-SBA

27 (D) For purposes of the compliance reporting required by this Paragraph, the
28 Commission is authorized to communicate directly with Defendant.

1 VII.

2 RECORD KEEPING PROVISIONS

3 IT IS FURTHER ORDERED that, for a period of six (6) years from the date of
4 entry of this Final Order, Defendant and his agents, employees, officers, corporations,
5 successors, and assigns, and those persons in active concert or participation with them who
6 receive actual notice of this Final Order by personal service or otherwise, are hereby
7 restrained and enjoined for any business where the Defendant is the majority owner or
8 otherwise controls the business from failing to create and retain the following records:

- 9 (A) Accounting records that reflect the cost of goods or services sold, revenues
10 -- generated, and the disbursement of such revenues;
- 11 (B) Personnel records accurately reflecting: the name, address,ⁱ and telephone
12 number of each person employed in any capacity by such business, including
13 as an independent contractor; that person's job title or position; the date upon
14 which the person commenced work; and the date and reason for the person's
15 termination, if applicable;
- 16 (C) Customer files containing the names, addresses, phone numbers, dollar
17 amounts paid, quantity of items or services purchased, and description of
18 items or services purchased, to the extent such information is obtained in the
19 ordinary course of business;
- 20 (D) Complaints and refund requests (whether received directly, indirectly or
21 through any third party) and any responses to those complaints or requests;
22 and
- 23 (E) Copies of all sales scripts, training materials, advertisements, or other
24 marketing materials.
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VIII.

DISTRIBUTION OF ORDER BY DEFENDANT

IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry of this Final Order, Defendant shall deliver a copy of this Final Order to the principals, officers, directors, managers and employees under Defendant's control for any business that (a) employs or contracts for personal services from Defendant and (b) has responsibilities with respect to the subject matter of this Final Order. Defendant shall secure from each such person a signed and dated statement acknowledging receipt of the Final Order within thirty (30) days after the date of service of the Final Order or the commencement of the employment relationship.

IX.

ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANT

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

X.

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 Final Order.

So Stipulated,

ATTORNEYS FOR PLAINTIFF

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Federal Trade Commission
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ELIZABETH A. HONE
BRAD WINTER
600 Pennsylvania Avenue NW
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Telephone: 202-326-3207
202-326-2597
Facsimile: 202-326-3395

Dated: December 3, 2003

DEFENDANT

Ken Chase
KEN CHASE (184292)
141 Caribe Isle
Novato, CA 94949
415-682-8883

Dated: October 15, 2003

ATTORNEY FOR DEFENDANT

Timothy Walton
TIMOTHY WALTON (184292)
Pierce & Shearer
2465 E. Bayshore Rd, Suite 403
Palo Alto, CA 94303
Telephone: 650-843-1900
Facsimile: 650-843-1999

Dated: October 26, 2003

SO ORDERED, this 3rd day of December, 2003, at 1:00p. pm.

/s/ Sandra Brown Armstrong
United States District Judge

(Attachment A to the Stipulated Final Order)

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For Plaintiff Federal Trade Commission

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

Case No. C-03-2139-SBA

KEN CHASE
d/b/a Free Do Not Call List.org, and
d/b/a National Do Not Call List.US,

Defendant.

AFFIDAVIT OF DEFENDANT KEN CHASE

Ken Chase, being duly sworn, hereby states and affirms as follows:

1. My name is Ken Chase. My current residence address is

_____. I am a citizen of the
United States and am over the age of eighteen. I have personal knowledge of the facts set
forth in this Affidavit.

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2. I am a defendant in FTC v. Ken Chase, (United States District Court for the Northern District of California).

3. On the date of _____, I received a copy of the Stipulated Final Order for Permanent Injunction and Other Equitable Relief, which was signed by the Honorable Judge Sandra Brown Armstrong and entered by the Court on _____. A true and correct copy of the Stipulated Final Order for Permanent Injunction and Other Equitable Relief is appended to this Affidavit.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on this date of _____, at the city and state of _____,

Ken Chase

State of _____, City of _____

Subscribed and sworn to before me
this ____ day of _____, 200__.

Notary Public
My Commission Expires:
