

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.: H-01-1255
)	
PAULA L. GARRETT,)	
d/b/a Discreet Data Systems,)	
)	
Defendant.)	
)	
)	

**STIPULATED FINAL JUDGMENT AND ORDER FOR PERMANENT INJUNCTION
AND MONETARY RELIEF AGAINST DEFENDANT
PAULA L. GARRETT, also doing business as Discreet Data Systems**

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), commenced this action on April 17, 2001, by filing a Complaint pursuant to Sections 5(a) and 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a) and 53(b), and Section 522(a) of the Gramm-Leach-Bliley Act (“GLB Act”), 15 U.S.C. § 6822(a), charging Defendant Paula L. Garrett with engaging in unfair or deceptive acts or practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and practices in violation of Section 521 of the GLB Act, 15 U.S.C. § 6821, in connection with the procurement, sale and offering for sale, of customer information of a financial institution.

The Commission and Defendant have now agreed to a settlement of this action. Accordingly, the Commission and Defendant consent to entry of this Stipulated Final Judgment and Order ("Order") without trial or adjudication of any issue of law or fact herein.

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

FINDINGS

1. This is an action by the Commission instituted under Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. § 53(b). The Complaint seeks permanent injunctive relief and monetary relief against Defendant in connection with the procurement, sale and offering for sale, of customer information of a financial institution.
2. This Court has jurisdiction over the subject matter of this case and over Defendant under 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and on 15 U.S.C. §§ 45(a)(1), 53(b), and 6822(a). Venue in the Southern District of Texas is proper as to all parties under 28 U.S.C. § 1391(b) and 15 U.S.C. § 53(b).
3. The Complaint states a claim upon which relief may be granted against Defendant under Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b), and Sections 521(a) and 522(a) of the GLB Act, 15 U.S.C. §§ 6821(a) and 6822(a).
4. The Commission has the authority under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), to seek the relief it has requested.
5. Defendant was properly served with the Complaint and Summons in this matter.
6. The activities of Defendant charged in the Complaint are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

7. Defendant enters into this Order freely and without coercion, and acknowledges that she understands the provisions of this Order and is prepared to abide by its terms.
8. Defendant waives all rights to seek appellate review or otherwise challenge or contest the validity of this Order. Defendant further waives and releases any claims she may have against the Commission, its employees, representatives, or agents.
9. Defendant agrees that this Order does not entitle her to seek or to obtain attorneys' fees as a prevailing party under the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended by Pub.L.104-121, 110 Stat. 847, 863-4 (1996), and Defendant further waives any right to attorneys' fees that may arise under said provision of law.
10. Entry of this Order is in the public interest.

DEFINITIONS

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

1. "Person" means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.
2. "Defendant" means Paula L. Garrett, d/b/a Discreet Data Systems, and her assigns, agents, servants, employees or affiliates, and those persons in active concert or participation with her who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division or other device.
3. The terms "customer," "customer information of a financial institution," and "financial institution" have the same meanings as set out in Sections 527(1), 527(2), and 527(4)(A) of the GLB Act, respectively, 15 U.S.C. §§ 6827(1), 6827(2), and 6827(4)(A).

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

I. PROHIBITED BUSINESS ACTIVITIES

IT IS THEREFORE ORDERED that, in connection with the obtaining, offering for sale, or sale of customer information of a financial institution, Defendant is hereby permanently restrained and enjoined from:

- A. Making, or assisting in the making, directly or by implication, any false or misleading statement about Defendant's identity, purpose or right to receive customer information;
- B. Requesting a person to obtain customer information of a financial institution knowing or consciously avoiding knowing that the person will obtain, or attempt to obtain, the information from the institution in any manner described in Section A of this Paragraph, or in any manner that violates Section 521 of the GLB Act, 15 U.S.C. § 6821;
- C. Disclosing, disseminating, distributing, or selling customer information of a financial institution.
Provided, however, that Defendant may disclose, disseminate, distribute or sell such customer information (1) with the prior written consent of the consumer to whom such information

relates, (2) to a law enforcement agency, or (3) as required by any law, regulation or court order; and

- D. Making or assisting in making, directly or by implication, any statement of material fact that is false or misleading.

Provided, further, that no provision of this Paragraph shall be construed to prevent Defendant from engaging in conduct otherwise permissible under Section 521(g) of the GLB Act, 15 U.S.C. § 6821(g).

II. GRAMM-LEACH-BLILEY ACT PROHIBITIONS

IT IS FURTHER ORDERED that, in connection with the advertising, promotion, obtaining, offering for sale, or sale of customer information of a financial institution, Defendant is hereby permanently restrained and enjoined from violating or assisting others in violating any provision of Section 521 of the GLB Act, 15 U.S.C. § 6821, as it now exists or may hereafter be amended. A copy of the “Fraudulent Access to Financial Information” provisions of the Gramm-Leach-Bliley Act, 15 U.S.C. § § 6821-6827, is attached to this Order and is hereby incorporated as if recited herein.

III. MONETARY RELIEF

IT IS FURTHER ORDERED that Defendant shall pay \$2,000.00 to the Commission by certified check or wire transfer within 15 business days of entry of the Order.

- A. No portion of the payment as herein provided shall be deemed a payment of any fine, penalty, forfeiture, or punitive assessment.

- B. In the event of any default on any obligation of Defendant to make payment under

this Paragraph, interest computed pursuant to 28 U.S.C. § 1961(a), shall accrue from the date of default to the date of payment.

C. All funds paid pursuant to this Paragraph shall be deposited by the Commission to the Treasury as disgorgement.

IV. RIGHT TO REOPEN

IT IS FURTHER ORDERED that the Commission's agreement to and the Court's approval of this Order is expressly premised upon the truthfulness, accuracy, and completeness of Defendant Paula L. Garrett's business records and sworn testimony regarding Defendant's revenues attributable to financial asset searches that violate Section 521 of the GLB Act, 15 U.S.C. § 6821, and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and related information submitted to the Commission, which contain material information relied upon by the Commission in negotiating and agreeing to the terms of this Order.

IT IS FURTHER ORDERED that if the Commission should have evidence that the above-referenced information failed to disclose any significant revenue attributable to violative financial asset searches, or that Defendant materially misrepresented the revenues so attributable, or made any other material misrepresentation or omission, the Commission may move that the Court reopen this Order for the sole purpose of allowing the Commission to modify Defendant's monetary liability. Should this judgment be modified as to the monetary liability of the Defendant, this Order, in all other respects, shall remain in full force. Any proceedings instituted under this Paragraph shall be in addition to and not in lieu of any other proceedings the Commission may initiate to enforce this Order. Solely for the purposes of reopening or enforcing this Paragraph, Defendant waives any right to contest any of the allegations set forth in the Complaint filed in this matter.

V. LIFTING OF ASSET FREEZE

IT IS FURTHER ORDERED that the freeze against the assets of Defendant Paula L. Garrett pursuant to Paragraph II of the Stipulated Preliminary Injunction entered by this Court on April 19, 2001, shall be lifted upon receipt of funds in payment of the monetary relief ordered in Part III of this Order.

VI. PROHIBITION ON DISCLOSING INFORMATION FROM ASSET SEARCHES

IT IS FURTHER ORDERED that Defendant is permanently restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing (i) the name, address, social security number, telephone number, e-mail address, credit card number, or other identifying information, or (ii) any bank or brokerage account number or balance, or financial asset information of any kind, of any person who was, at any time, the subject of an asset search by Defendant or by any agents, servants, employees, or contractors of Defendant.

Provided, however, that Defendant may disclose such information (1) with the written consent of the consumer to whom such information relates, (2) to a law enforcement agency, or (3) as required by any law, regulation, or court order.

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, in connection with any business engaged in whole or in part in advertising, promotion, obtaining, offering for sale, or sale of customer information of a financial institution, where she is the majority owner, or directly or indirectly manages or controls the business, Defendant Paula L. Garrett shall:

A. Provide a copy of this Order to, and obtain a signed and dated acknowledgment of receipt of same from, each officer or director, each individual serving in a management capacity, all personnel involved in financial asset searches of consumers, including but not limited to agents and independent contractors, and all sales personnel, whether designated as employees, agents, consultants, independent contractors, or otherwise, immediately upon employing or retaining any such persons: and

B. Maintain for a period of three (3) years after creation and, upon reasonable notice, make available to representatives of the Commission, the original signed and dated acknowledgments of the receipt of copies of this Order, as required in Section A of this Paragraph.

VIII. MONITORING COMPLIANCE OF EMPLOYEES, AGENTS AND INDEPENDENT CONTRACTORS

IT IS FURTHER ORDERED that in connection with any business engaged in whole or in part in advertising, promotion, obtaining, offering for sale, or sale of customer information of a financial institution, where she is the majority owner, or directly or indirectly manages or controls the business, Defendant Paula L. Garrett is hereby permanently restrained and enjoined from failing to take reasonable steps sufficient to monitor and ensure that all employees, agents and independent contractors comply with Paragraphs I and II of this Order.

IX. DOCUMENT RETENTION

IT IS FURTHER ORDERED that Defendant Paula L. Garrett, and her successors and assigns, shall maintain for at least five (5) years from the date of service of this Order and, upon written request by FTC employees, make available to the FTC for inspection and copying:

A. All records and documents necessary to demonstrate fully her compliance with each provision of this Order, including, but not limited to, financial and other business records, order forms, invoices, employee training materials, and scripts;

B. All records and documents necessary to demonstrate her compliance with the requirements of the Sections 521-527 of the GLB Act, 15 U.S.C. § 6821-6827 inclusive, specifically including, but not limited to, Section 521(g) of the GLB Act, 15 U.S.C. § 6821(g), in the event that Defendant intends to rely upon this exception to the prohibited business practices described in Paragraph I; and

C. Copies of any complaints received by Defendant regarding Defendant's sale of customer information of a financial institution.

X. COMPLIANCE REPORTING

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

A. Sixty (60) days after the date of entry of this Order, Defendant Paula L. Garrett shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth the manner and form in which the Defendant has complied and is complying with this Order;

B. For a period of five (5) years from the date of entry of this Order, if Defendant re-enters business as an information broker, is employed by an information broker, or acts as the agent of an information broker, Defendant shall provide, within thirty (30) days after such change of employment, a report to the Commission including her current employment, business address, business

telephone number, a description of business activities, and a statement of Defendant's duties and responsibilities in connection with the business or employment;

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

Associate Director, Division of Financial Practices
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580
Re: FTC v. Paula L. Garrett (dba Discreet Data Systems); and

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

XI. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that the Commission is authorized to monitor Defendant's compliance with this Order by all lawful means, including but not limited to, the following:

A. The Commission is authorized, without further leave of court, to obtain discovery from any person in the manner provided by Chapter V of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 26-37, including the use of compulsory process pursuant to Fed. R. Civ. P. 45, for the purpose of monitoring and investigating Defendant's compliance with any provision of this Order;

B. The Commission is authorized to use representatives posing as clients, consumers, bank employees, private investigators, suppliers and other persons to Defendant, 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; and

C. 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 investigate whether Defendant has violated any provision of this Order, Section 5 of the FTC Act, 15 U.S.C. § 45, or Section 521 of the GLB Act, 15 U.S.C. § 6821.

XII. ACCESS TO PREMISES, RECORDS, AND PERSONS

IT IS FURTHER ORDERED that, for a period of 5 years from the date of entry of this Order, for the purpose of further determining compliance with this Order, Defendant shall permit representatives of the Commission, within three (3) business days of receipt of written notice from the Commission:

A. Access during normal business hours to any office, or facility storing documents, of any business where Defendant is the majority owner of the business or directly or indirectly manages or controls the business, and where the business is engaged in information brokering.

In providing such access, such Defendant shall permit representatives of the Commission to inspect and copy all documents relevant to any matter contained in this Order; and shall permit Commission representatives to remove documents relevant to any matter contained in this Order for a period not to exceed five (5) business days so that the documents may be inspected, inventoried, and copied; and

B. To interview the officers, directors and employees, including all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, of any business to which Section A of this Paragraph applies, concerning matters relating to compliance with the terms of this Order. The persons interviewed may have counsel present.

Provided that, upon application of the Commission and for good cause shown, the Court may enter an *ex parte* order granting immediate access to Defendant's business premises for the purposes of inspecting and copying all documents relevant to any matter contained in this Order.

XIII. ACKNOWLEDGMENT

IT IS FURTHER ORDERED that, within five (5) business days after receipt by Defendant of this Order as entered by the Court, Defendant Paula L. Garrett shall submit to the Commission a truthful sworn statement, in the form shown on Appendix A hereto, that shall acknowledge receipt of this Order.

XIV. COSTS AND ATTORNEYS FEES

IT IS FURTHER ORDERED that each party to this Order bear its own costs and attorneys fees incurred in connection with this action.

XV. RETENTION OF JURISDICTION

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

STIPULATED AND AGREED TO BY:

FOR THE PLAINTIFF:

Dated: _____, 2001

Christopher W. Keller
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
(202) 326-3159
Attorney for Plaintiff

FOR THE DEFENDANT:

Dated: _____, 2001

Guy L. Womack
402 Main, Suite 6 North
Houston, Texas 77002
(713) 224-8815
Attorney for Defendant

Dated: _____, 2001

Paula L. Garrett

IT IS SO ORDERED.

Dated: _____, 2001

UNITED STATES DISTRICT JUDGE

APPENDIX A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

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FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.: H-01-1255
)	
PAULA L. GARRETT,)	
d/b/a Discreet Data Systems,))	
)	
Defendant.)	
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AFFIDAVIT OF PAULA L. GARRETT

Paula L. Garrett, being duly sworn, hereby states and affirms as follows:

1. My name is Paula L. Garrett. My current residence is _____.
I am a citizen of the United States and am over 18 years of age. I have personal knowledge of the facts set forth in this Affidavit.

2. I am the Defendant in FTC v. Paula L. Garrett d/b/a Discreet Data Systems, Civil Action No. H - 01-1255 in the United District Court for the Southern District of Texas, Houston Division.

3. On _____, 2001, I received a copy of the Stipulated Final Judgment and Order of Permanent Injunction, which was signed by the Honorable Melinda Harmon and entered by the Court on _____, 2001. A true and correct copy of the Order I received is attached 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 _____, 2001, at _____.

Paula L. Garrett

State of Texas, County of _____
Subscribed and sworn to before me this ____ day of _____, 2001.

Notary Public
My Commission expires: _____ __, 20__