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16
17 IN THE UNITED STATES DISTRICT COURT
18 FOR THE CENTRAL DISTRICT OF CALIFORNIA
19 WESTERN DIVISION

20 _____)
UNITED STATES OF AMERICA,)

21 Plaintiff,)

22 v.)

23 DIRECTV, Inc., et al.)
24 _____)

Civ. No.

STIPULATED JUDGMENT
AND ORDER FOR PERMANENT
INJUNCTION AGAINST
COMMUNICATIONS CONCEPTS,
LLC, AND JIM TURNER

25
26 Plaintiff, the United States of America, acting upon
27 notification and authorization to the Attorney General by the
28 Federal Trade Commission ("FTC" or the "Commission"), has

1 commenced this action by filing the complaint herein, and
2 defendants Communication Concepts, LLC, and Jim Turner have
3 waived service of the summons and complaint. Plaintiff and the
4 above-named defendants, represented by the attorneys whose names
5 appear hereafter, have agreed to settlement of this action.

6 **THEREFORE**, on the joint motion of the parties, it is hereby
7 **ORDERED, ADJUDGED AND DECREED** as follows:

8 **FINDINGS**

9 1. This Court has jurisdiction over the subject matter and
10 the parties pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and
11 1355, and 15 U.S.C. §§ 45(m)(1)(A), 53(b), 56(a), and 57b.

12 2. Plaintiff and Defendants consent to Jurisdiction and
13 Venue in this District.

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

16 4. Defendant Communication Concepts admits that it has
17 engaged in telemarketing of goods or services on behalf of
18 DIRECTV, Inc, after October 17, 2003. Defendant Communication
19 Concepts admits that, while it was engaged in telemarketing of
20 goods and services on behalf of DIRECTV, Inc. after October 17,
21 2003, Defendant Communication Concepts violated the Telemarketing
22 Sales Rule by making outbound calls to phone numbers in the
23 National Do Not Call Registry.

24 5. The complaint states a claim upon which relief may be
25 granted against Defendant, under Sections 5(a), 5(m)(1)(A),
26 13(b), and 19 of the Federal Trade Commission Act ("FTC Act"), 15
27 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), and 57b.

1 4. The "Telemarketing Sales Rule" or "Rule" means the FTC
2 Rule entitled "Telemarketing Sales Rule," 16 C.F.R. § 310,
3 attached hereto as Appendix A.

4 5. "Customer" means any person who is or may be required
5 to pay for goods or services offered through telemarketing.

6 6. "Person" means any individual, group, unincorporated
7 association, limited or general partnership, corporation, or
8 other business entity.

9 7. "Telemarketing" means a plan, program, or campaign
10 which is conducted to induce the purchase of goods or services or
11 a charitable contribution, by use of one or more telephones and
12 which involves more than one interstate telephone call. The term
13 does not include the solicitation of sales through the mailing of
14 a catalog which: contains a written description or illustration
15 of the goods or services offered for sale; includes the business
16 address of the seller; includes multiple pages of written
17 material or illustrations; and has been issued not less
18 frequently than once a year, when the person making the
19 solicitation does not solicit customers by telephone but only
20 receives calls initiated by customers in response to the catalog
21 and during those calls takes orders only without further
22 solicitation. For purposes of the previous sentence, the term
23 "further solicitation" does not include providing the customer
24 with information about, or attempting to sell, any other item
25 included in the same catalog which prompted the customer's call
26 or in a substantially similar catalog.

27 8. "Seller" means any person who, in connection with a
28 telemarketing transaction, provides, offers to provide, or

1 arranges for others to provide goods or services to the customer
2 in exchange for consideration, whether or not such person is
3 under the jurisdiction of the Federal Trade Commission.

4 9. "Telemarketer" means any person who, in connection with
5 telemarketing, initiates or receives telephone calls to or from a
6 customer or donor.

7 10. "National Do Not Call Registry" means the National Do
8 Not Call Registry maintained by the Federal Trade Commission
9 pursuant to 16 C.F.R. § 310.4(b)(1)(iii)(B).

10 11. "Established business relationship" means a
11 relationship between the seller and a person based on: (a) the
12 person's purchase, rental, or lease of the seller's goods or
13 services or a financial transaction between the person and
14 seller, within the eighteen (18) months immediately preceding the
15 date of the telemarketing call; or (b) the person's inquiry or
16 application regarding a product or service offered by the seller,
17 within the three (3) months immediately preceding date of a
18 telemarketing call.

19 **ORDER**

20 **I. PROHIBITION AGAINST ABUSIVE TELEMARKETING PRACTICES**

21 IT IS ORDERED that, in connection with telemarketing,
22 Defendants and their Representatives are hereby permanently
23 restrained and enjoined from engaging in, causing other persons
24 to engage in, or assisting other persons to engage in, violations
25 of the Telemarketing Sales Rule, including but not limited to:

26 A. Initiating any outbound telephone call to a any person
27 at a telephone number on the National Do Not Call Registry unless
28 the seller provides documentation demonstrating that:

1 (1) the seller has obtained the express agreement, in
2 writing, of such person to place calls to that person.
3 Such written agreement shall clearly evidence such
4 person's authorization that calls made by or on behalf
5 of a specific party may be placed to that person, and
6 shall include the telephone number to which the calls
7 may be placed and the signature of that person; or

8 (2) the seller has an established business
9 relationship with such person and that person has not
10 previously stated that he or she does not wish to
11 receive outbound telephone calls made by or on behalf
12 of the seller; or

13 B. Initiating any outbound telephone call to a person when
14 that person has previously stated that he or she does not wish to
15 receive an outbound telephone call made by or on behalf of the
16 seller whose goods or services are being offered or made by or on
17 behalf of the charitable organization for which a charitable
18 contribution is being solicited; or

19 C. Initiating any outbound telephone call to a telephone
20 number within a given area code without first paying the required
21 annual fee for access to the telephone numbers within that area
22 code that are on the National Do Not Call Registry; and

23 D. Abandoning any outbound telephone call to a person by
24 failing to connect the call to a live operator within two seconds
25 of the person's completed greeting, unless the following four
26 conditions are met:

1 1. Defendants employ technology that ensures
2 abandonment of no more than three percent of all calls answered
3 by a person, measured per day per calling campaign;

4 2. Defendants for each telemarketing call placed,
5 allow the telephone to ring for at least fifteen seconds or four
6 rings before disconnecting an unanswered call;

7 3. Whenever a live operator is not available to speak
8 with the person answering the call within two seconds after the
9 person's completed greeting, the seller or telemarketer promptly
10 plays a recorded message that states the name and telephone
11 number of the seller on whose behalf the call was placed; and

12 4. Defendants retain records, in accordance with 16
13 C.F.R. § 310.5 (b)-(d), establishing compliance with the
14 preceding three conditions;

15 *Provided, however,* that if the Commission promulgates any
16 rule that modifies or supersedes the Telemarketing Sales Rule, in
17 whole or part, Defendants shall comply fully and completely with
18 all applicable requirements thereof, on and after the effective
19 date of any such rule.

20 **II. CIVIL PENALTY AND RIGHT TO REOPEN**

21 **IT IS FURTHER ORDERED** that:

22 A. Judgment in the amount of two hundred five thousand
23 dollars (\$205,000) is hereby entered against Defendant
24 Communication Concepts, as a civil penalty, pursuant to Section
25 5(m)(1)(A) of the Federal Trade Commission Act, 15 U.S.C.
26 § 45(m)(1)(A). Based upon Defendant Communication Concept 's
27 sworn representations in financial statements, full payment for
28 the foregoing judgment is suspended except for Twenty-Five

1 Thousand Dollars (\$25,000), contingent upon the accuracy and
2 completeness of the financial statements as set forth in
3 subparagraphs E and F of this Paragraph.

4 B. Within five (5) days of receipt of notice of the entry
5 of this Order, Defendant Communication Concepts shall transfer
6 Twenty-Five Thousand Dollars (\$25,000) in the form of a wire
7 transfer or certified or cashier's check made payable to the
8 Treasurer of the United States. The check or written
9 confirmation of the wire transfer shall be delivered to:

10 Director, Office of Consumer Litigation, U.S. Department of
11 Justice Civil Division, P.O. Box 386, Washington, DC 20044. The
12 cover letter accompanying the check shall include the title of
13 this litigation and a reference to DJ# 102-3316.

14 C. Defendant Communication Concepts shall cooperate fully
15 with Plaintiff and the Commission and its agents in all attempts
16 to collect the amount due pursuant to this Paragraph if Defendant
17 Communication Concepts fails to pay fully the amount due at the
18 time specified herein. In such an event, Defendants agree to
19 provide Plaintiff and the Commission with its federal and state
20 tax returns for the preceding two years, and to complete new
21 standard-form financial disclosure forms fully and accurately
22 within ten (10) business days of receiving a request from
23 Plaintiff or the Commission to do so. Defendant Communication
24 Concepts further authorizes Plaintiff and the Commission to
25 verify all information provided on the financial disclosure form
26 of Defendant Communication Concepts with all appropriate third
27 parties, including but not limited to financial institutions.

1 D. Upon payment by Defendant Communication Concepts as
2 provided in subparagraph B of this Paragraph, the remainder of
3 the civil penalty judgment shall be suspended subject to the
4 conditions set forth in subparagraph E of this Paragraph.

5 E. Plaintiff's agreement to this Order is expressly
6 premised upon the truthfulness, accuracy, and completeness of
7 Defendant Communication Concept 's sworn financial statements and
8 supporting documents submitted to the Commission on October 28,
9 2004 and May 6, 2005, which include material information upon
10 which Plaintiff relied in negotiating and agreeing to this Order.
11 If, upon motion by Plaintiff, this Court finds that Defendant
12 Communication Concepts has failed to disclose any material asset
13 or materially misstated the value of any asset in the financial
14 statements and related documents described above, or has made any
15 other material misstatement or omission in the financial
16 statements and related documents described above, then this Order
17 shall be reopened and suspension of the judgment shall be lifted
18 for the purpose of requiring payment of civil penalty in the full
19 amount of the judgment (\$205,000), less the sum of all amounts
20 paid to the Treasurer of the United States pursuant to
21 subparagraph B of this Paragraph. *Provided, however,* that in all
22 other respects this Order shall remain in full force and effect,
23 unless otherwise ordered by the Court.

24 F. In accordance with 31 U.S.C. § 7701, Defendant
25 Communication Concepts is hereby required, unless it has done so
26 already, to furnish to Plaintiff and the FTC its taxpayer
27 identifying number(s) (social security numbers or employer
28 identification numbers) which shall be used for purposes of

1 collecting and reporting on any delinquent amount arising out of
2 Defendant Communication Concept's relationship with the
3 government.

4 G. Defendant Communication Concepts agrees that the facts
5 as alleged in the complaint filed in this action shall be taken
6 as true in any subsequent litigation filed by Plaintiff or the
7 Commission to enforce their rights pursuant to this Order,
8 including but not limited to a nondischargeability complaint in
9 any subsequent bankruptcy proceeding.

10 H. Proceedings instituted under this Paragraph are in
11 addition to, and not in lieu of, any other civil or criminal
12 remedies as may be provided by law, including any other
13 proceedings that the Plaintiff may initiate to enforce this
14 Order.

15 III. RECORD KEEPING PROVISIONS

16 IT IS FURTHER ORDERED that for a period of five (5) years
17 from the date of entry of this Order, Defendants, and their
18 successors and assigns, shall maintain and make available to the
19 Plaintiff or Commission, within seven (7) days of the receipt of
20 a written request, business records demonstrating compliance with
21 the terms and provisions of this Order.

22 IV. DISTRIBUTION OF ORDER BY DEFENDANT AND 23 ACKNOWLEDGMENTS OF RECEIPT

24 IT IS FURTHER ORDERED that Defendants, and their successors
25 and assigns, shall within thirty (30) days of the entry of this
26 Order, provide a copy of this Order with Appendix A to all of its
27 owners, principals, members, officers, and directors, as well as
28 managers, agents, servants, employees, and attorneys having

1 decision-making authority with respect to the subject matter of
2 this Order; secure from each such person a signed statement
3 acknowledging receipt of a copy of this Order; and shall, within
4 ten (10) days of complying with this Paragraph, file an affidavit
5 with the Court and serve the Commission, by mailing a copy
6 thereof, to the Associate Director for Marketing Practices,
7 Bureau of Consumer Protection, Federal Trade Commission, 600
8 Pennsylvania Ave., N.W., Washington, D.C. 20580, setting forth
9 the fact and manner of its compliance, including the name and
10 title of each person to whom a copy of the Order has been
11 provided.

12 **V. NOTIFICATION OF BUSINESS CHANGES**

13 **IT IS FURTHER ORDERED** that each Defendant, and its
14 successors and assigns, shall notify the Associate Director for
15 Marketing Practices, Bureau of Consumer Protection, Federal Trade
16 Commission, 600 Pennsylvania Ave., N.W., Washington, D.C. 20580,
17 at least thirty (30) days prior to any change in such Defendant's
18 business, including, but not limited to, merger, incorporation,
19 dissolution, assignment, and sale, which results in the emergence
20 of a successor corporation, the creation or dissolution of a
21 subsidiary or parent, or any other change, which may affect such
22 Defendant's obligations under this Order.

23 **VI. NOTIFICATION OF INDIVIDUAL'S AFFILIATION**

24 **IT IS FURTHER ORDERED** that Defendant Jim Turner shall, for a
25 period of ten (10) years from the date of entry of this Order,
26 notify Associate Director for Marketing Practices, Bureau of
27 Consumer Protection, Federal Trade Commission, 600 Pennsylvania
28 Ave., N.W., Washington, D.C. 20580, within thirty (30) days of

1 his affiliation with a new business or employment whose
2 activities include telemarketing or his affiliation with a new
3 business or employment in which his duties involve the sale or
4 offering for sale of satellite programming.

5 **VII. COMMUNICATION WITH DEFENDANTS**

6 **IT IS FURTHER ORDERED** that for the purposes of compliance
7 reporting, Plaintiff and the Commission are authorized to
8 communicate directly with Defendants.

9 **VIII. FEES AND COSTS**

10 **IT IS FURTHER ORDERED** that each party to this Order hereby
11 agrees to bear its own costs and attorneys' fees incurred in
12 connection with this action.

13 **IX. SEVERABILITY**

14 **IT IS FURTHER ORDERED** that the provisions of this Order are
15 separate and severable from one another. If any provision is
16 stayed or determined to be invalid, the remaining provisions
17 shall remain in full force and effect.

18 **X. RETENTION OF JURISDICTION**

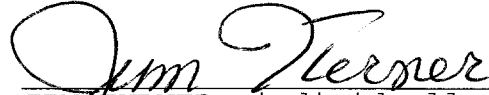

19 **IT IS FURTHER ORDERED** that this Court shall retain
20 jurisdiction of this matter for purposes of construction,
21 modification and enforcement of this Order.

22 **XI. COMPLETE SETTLEMENT**

23 The parties hereby consent to entry of the foregoing Order
24 which shall constitute a final judgment and order in this matter.
25 The parties further stipulate and agree that the entry of the
26 foregoing Order shall constitute a full, complete and final
27 settlement of this action.

1 JUDGMENT IS THEREFORE ENTERED in favor of Plaintiff and
2 against Defendants, pursuant to all the terms and conditions
3 recited above.

4
5 **FOR THE DEFENDANTS:**

6 
7 JIM TURNER, individually
8 
9 COMMUNICATION CONCEPTS, LLC
10 JIM TURNER,
11 President, Communication
12 Concepts, LLC
13 4802 Old Hickory Blvd.
14 Hermitage, TN 37076

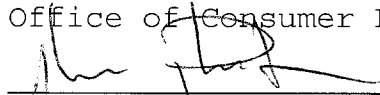
FOR THE PLAINTIFF:

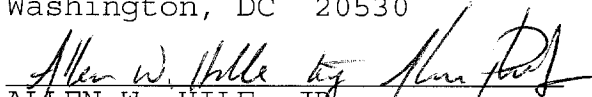
PETER D. KEISLER, JR.
Assistant Attorney General
Civil Division
U.S. DEPARTMENT OF JUSTICE

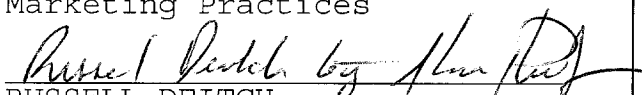
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26 RUSSELL DEITCH
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600 Pennsylvania Ave, N.W.,
Washington, DC 20580

IT IS SO ORDERED.

DATED: _____

UNITED STATES DISTRICT JUDGE