

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

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

WEBSOURCE MEDIA, L.L.C., et al.,

Defendants.

Civ. No.: H-06-1980

**STIPULATED FINAL JUDGMENT AND ORDER FOR PERMANENT INJUNCTION
AGAINST MARC R. SMITH**

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), filed its Amended Complaint for a permanent injunction and other equitable relief in this matter pursuant to Sections 5(a) and 13(b) of the Federal Trade Commission Act, 15 U.S.C. §§ 45(a) and 53(b) charging the Defendants WebSource Media, L.L.C., WebSource Media L.P., BizSitePro, L.L.C., Eversites, L.L.C., Telsource Solutions, Inc., Telsource International, Inc., Marc R. Smith, Kathleen A. Smalley, Keith D. Hendrick, Steven L. Kennedy, John O. Ring, and James E. McCubbin, Jr. (“Named Defendants”), with unfair and deceptive acts and practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45. The Named Defendants have all denied the allegations in the Amended Complaint.

Plaintiff Commission, by and through its attorneys, and Defendant Marc R. Smith have agreed to entry of this Stipulated Final Judgment and Order for Permanent Injunction (“Final Judgment and Order”) by this Court in order to resolve all claims against Defendant Marc R.

Smith in this action. The Commission and Defendant Marc R. Smith have consented to entry of this Final Judgment and Order without trial or adjudication of any issue of law or fact herein and without Defendant Marc R. Smith admitting liability for any of the violations alleged in the Amended Complaint.

Being fully advised in the premises and acting upon the joint motion of the parties to enter this Final Judgment and Order,

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

1. This Court has jurisdiction over the subject matter of this case and personal jurisdiction over Defendant Marc R. Smith;
2. The Complaint states a claim upon which relief may be granted against Defendant Marc R. Smith under Sections 5 and 13(b) of the FTC Act, 15 U.S.C. §§ 45 and 53(b);
3. Venue in this district is proper under 28 U.S.C. § 1391(b) and 15 U.S.C. § 53(b);
4. The activities of Defendant Marc R. Smith are “in or affecting commerce” as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44;
5. Entry of this Final Judgment and Order is in the public interest;
6. Defendant Marc R. Smith has read and fully understands the Complaint against him and the provisions of this Final Judgment and Order, and he freely enters into this Final Judgment and Order; and
7. Defendant Marc R. Smith has waived all claims under the Equal Access to Justice Act, 28 U.S.C. § 2412, and all rights to seek judicial review or otherwise challenge the validity of this Final Judgment and Order. The parties shall each bear their own costs and attorney’s fees incurred in this action. Nothing herein shall prohibit any Named Defendant from pursuing any

claims it may have against any other Named Defendant for any other legal and/or equitable relief, including but not limited to attorneys' fees, indemnity, and contribution.

DEFINITIONS

For the purpose of this Final Judgment and Order, the following definitions shall apply:

A. **"Assets"** means any legal or equitable interest in, right to, or claim to, any real and personal property, including but not limited to "goods," "instruments," "equipment," "fixtures," "general intangibles," "inventory," "checks," "notes" (as these terms are defined in the Uniform Commercial Code), and all chattel, leaseholds, contracts, mail or other deliveries, shares of stock, lists of consumer names, accounts, credits, premises, receivables, funds, and cash, wherever located.

B. **"Named Defendants"** means WebSource Media, L.L.C., WebSource Media L.P., BizSitePro, L.L.C., Eversites, L.L.C., Telsource Solutions, Inc., Telsource International, Inc., Marc R. Smith, Kathleen A. Smalley, Keith D. Hendrick, Steven L. Kennedy, John O. Ring, and James E. McCubbin, Jr.

C. **"Assisting others"** means knowingly providing any of the following goods or services to another entity: (1) performing customer service functions, including, but not limited to, receiving or responding to consumer complaints; (2) formulating or providing, or arranging for the formulation or provision of, any telephone sales script or any other marketing material; (3) providing names of, or assisting in the generation of, potential customers; or (4) performing marketing or billing services of any kind.

D. **"Document"** is synonymous in meaning and equal in scope to the usage of the term "documents or electronically stored information" in Federal Rule of Civil Procedure 34(a),

and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations stored in any medium 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.

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

F. **“Telemarketer”** means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor.

G. **“Person”** means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

H. **“Internet Services”** means any product or service that assists persons to access, use, search, browse, advertise on, communicate through, or do business on the Internet, including

but not limited to: design, hosting and maintenance of web pages and websites, providing Internet access or e-mail accounts, and establishing domain names and virtual domain names.

I. **“Authorized Purchaser”** means any person who has the authority to bind the person who would be responsible for payment of any charges associated with the telemarketing transaction.

J. **“Material terms of the offer”** means all terms material to an authorized purchaser’s decision to purchase, including, but not limited to:

1. the fact that the authorized purchaser will be billed unless the authorized purchaser takes affirmative action to cancel;
2. the account which will be billed if the authorized purchaser does not cancel;
3. the length of any trial period before a charge is assessed;
4. the amount of each charge and the frequency of each charge if the authorized purchaser does not cancel within the trial period;
5. a toll-free telephone number which may be utilized by the authorized purchaser to cancel prior to any billing; and
6. the terms and conditions of any refund policies.

K. **“Express written authorization”** means written authorization signed by the authorized purchaser which evidences clearly both the authorized purchaser’s receipt of all of the material terms of the offer of goods or services and the authorized purchaser’s subsequent authorization of payment from a specific account for the goods or services which are the subject of the telemarketing transaction. For purposes of this Final Judgment and Order, the term

“signed” shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

L. **“Express oral authorization”** means oral authorization which is audio-recorded by an independent third-party and made available upon request to the authorized purchaser, the authorized purchaser’s bank, credit card company, or telephone company, and which evidences clearly both the authorized purchaser’s authorization of payment from a particular account for the goods or services which are the subject of the telemarketing transaction and the authorized purchaser’s receipt of all of the material terms of the offer of goods or services prior to the authorization. An audio recording of the entire telemarketing transaction must be made and maintained, and the telemarketer may not participate in that portion of the telemarketing call which is recorded for the purpose of documenting the authorized purchaser’s express oral authorization to be billed for goods and services.

M. **“Express informed consent”** means either express written authorization or express oral authorization.

N. **“Verification recording”** means an audio-recording of some or all of a telemarketing transaction which is created for the purpose of documenting an authorized purchaser’s express oral authorization to purchase goods or services and to be billed for those goods or services.

O. **“Active concert and participation”** means “active concert and participation” as that term is used in and construed under Rule 65(d), Fed. R. Civ. P.

ORDER

I. PROHIBITED MISREPRESENTATIONS

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that in connection with the telemarketing, advertising, promotion, offering for sale, or sale of any Internet services, Defendant Marc R. Smith, his agents, servants, employees, and attorneys, and all other persons or entities in active concert or participation with him who receive actual notice of this Final Judgment and Order by personal service or otherwise, whether acting directly or through any business entity, corporation, subsidiary, affiliate, division, or other device, are hereby permanently restrained and enjoined from misrepresenting, expressly or by implication, any material fact, including, but not limited to, misrepresenting:

- A. That a free trial service will be cancelled automatically if the authorized purchaser does not affirmatively approve the continuation of the service;
- B. That a verification recording is being made for any purpose other than to document the authorized purchaser's express informed consent; and
- C. That an authorized purchaser is obligated to pay any charge for which the authorized purchaser has not given express informed consent.

II. PROHIBITED BILLING PRACTICES

IT IS FURTHER ORDERED that in connection with the telemarketing, advertising, promotion, offering for sale, or sale of any Internet services, Defendant Marc R. Smith, his agents, servants, employees, and attorneys, and all other persons or entities in active concert or participation with him who receive actual notice of this Final Judgment and Order by personal service or otherwise, whether acting directly or through any business entity, corporation,

subsidiary, affiliate, division, or other device, are hereby permanently restrained and enjoined from, directly or indirectly, billing or receiving money, or assisting others in billing or receiving money, from any authorized purchaser without the authorized purchaser's express informed consent.

III. INJUNCTION AGAINST PROVIDING CUSTOMER LISTS

IT IS FURTHER ORDERED that Defendant Marc R. Smith is hereby permanently restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, social security number, or other identifying information of any person who purchased services from the Named Defendants at any time prior to the date this Final Judgment and Order is entered. *Provided*, however, that Defendant Marc R. Smith may disclose such identifying information to a law enforcement agency or as required by any law, regulation, or court order.

IV. MONETARY JUDGMENT

IT IS FURTHER ORDERED that:

A. Judgment in the amount of TWENTY-FOUR MILLION, SEVEN HUNDRED THOUSAND DOLLARS (\$24,700,000) is entered against Defendant Marc R. Smith; *provided*, however, that upon the fulfillment of the payment obligations of Paragraphs IV.B. and IV.C. of this Final Judgment and Order by Defendant Marc R. Smith, this judgment shall be suspended until further order of the Court, and *provided* further that this judgment shall be subject to the conditions set forth in Paragraph V of this Final Judgment and Order.

B. Defendant Marc R. Smith shall be liable for payment of equitable monetary relief, including, but not limited to, consumer redress and/or disgorgement, and for paying any attendant

expenses of administration of any redress fund, in the amount of FIFTEEN THOUSAND DOLLARS (\$15,000).

C. Within ten (10) days of entry of this Final Judgment and Order, defendant Marc R. Smith shall turn over the entire payment of FIFTEEN THOUSAND DOLLARS (\$15,000) to the Commission in the form of a wire transfer or certified or cashier's check made payable to the Commission, or such agent as the Commission may direct.

D. Time is of the essence for the payment specified above. In the event that Defendant Marc R. Smith does not fulfill, or only partially fulfills, the payment obligations set forth in this Paragraph, Defendant Marc R. Smith shall be immediately liable for payment of TWENTY-FOUR MILLION, SEVEN HUNDRED THOUSAND DOLLARS (\$24,700,000), which is the entire amount of the judgment, plus interest, less any payments already made. Notwithstanding any other provision of this Final Judgment and Order, Defendant Marc R. Smith agrees that, if he fails to meet the payment obligations set forth in this Paragraph, the facts as alleged in the Complaint filed in this matter shall be taken as true in any subsequent litigation filed by the Commission to enforce its rights pursuant to this Final Judgment and Order, including, but not limited to, a nondischargeability complaint in any subsequent bankruptcy proceeding.

E. All funds paid pursuant to this Final Judgment and Order 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 any attendant expenses for the administration of any redress fund. In the event that 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 Defendants' practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the Treasury of the United States as disgorgement.

Defendant Marc R. Smith shall have no right to challenge the Commission's choice of remedies under this Section.

F. Defendant Marc R. Smith shall have no right to contest the manner of distribution chosen by the Commission. No portion of any payments under the judgment herein shall be deemed a payment of any fine, penalty, or punitive assessment.

V. FINANCIAL STATEMENTS

IT IS FURTHER ORDERED that:

A. The Commission's agreement to and the Court's approval of this Final Judgment and Order are expressly premised upon the truthfulness, accuracy, and completeness of the financial statements and information provided to the Commission by Defendant Marc R. Smith on or about June 19, 2006, March 6, 2007, March 21, 2007, March 28, 2007, April 4, 2007, April 10, 2007, and April 12, 2007, which contain material information relied upon by the Commission in negotiating and agreeing to the terms of this Final Judgment and Order.

B. If the Commission should have evidence that the above-referenced financial statements and information failed to disclose any material asset the value of which exceeds \$1,000, materially misrepresented the value of any asset, or made any other material misrepresentation or omission, the Commission may move that the Court reopen this Final Judgment and Order for the sole purpose of allowing the Commission to modify the monetary liability of Defendant Marc R. Smith. If the Court finds that Defendant Marc R. Smith failed to

disclose any material asset, materially misrepresented the value of any asset, or made any other material misrepresentation or omission in the above-referenced financial statements and information, the Court shall reinstate the suspended judgment against him, in favor of the Commission, in the amount of TWENTY-FOUR MILLION, SEVEN HUNDRED THOUSAND DOLLARS (\$24,700,000), which he and the Commission stipulate is the amount of consumer injury caused by the Named Defendants, as set forth in Paragraph IV.A. of this Final Judgment and Order. *Provided*, however, that in all other respects this Final Judgment and Order shall remain in full force and effect unless otherwise ordered by the Court. 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 Final Judgment and Order. Solely for the purposes of reopening or enforcing this Paragraph, Defendant Marc R. Smith hereby waives any right to contest any of the allegations set forth in the Complaint filed in this matter and agrees that the facts as alleged in the Complaint filed in this matter shall be taken as true, without further proof, in any subsequent litigation filed by or on behalf of the Commission to collect any unpaid amount or otherwise enforce its rights pursuant to this Final Judgment and Order, including a nondischargeability complaint filed in any bankruptcy case.

C. Proceedings initiated under this Paragraph are in addition to, and not in lieu of, any other civil or criminal penalties that may be provided by law, including any other proceedings the Plaintiff may initiate to enforce this Final Judgment and Order.

VI. COMPLIANCE MONITORING

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

A. Within twenty (20) days of receipt of written notice from a representative of the Commission, Defendant Marc R. Smith 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 his possession or under his direct or indirect control to inspect the business operation;

B. In addition, the Commission is authorized to monitor compliance with this Final Judgment and 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 consumers and suppliers to Defendant Marc R. Smith, his employees, or the employees of any entity he manages or controls in whole or in part, without the necessity of identification or prior notice; and

C. Defendant Marc R. Smith shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Final Judgment and Order. The person interviewed may have counsel present.

Provided, however, that nothing in this Final Judgment and 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)).

VII. COMPLIANCE REPORTING BY DEFENDANT

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

- A. For a period of five (5) years from the date of entry of this Final Judgment and Order,
1. Defendant Marc R. Smith shall notify the Commission of the following:
 - a. Any changes in his residence, mailing address, and/or telephone number within ten (10) days of the date of such change;
 - b. Any changes in his employment status (including self-employment), and any change in his ownership interest in any business entity, within ten (10) days of the date of such change. Such notice shall include the name and address of each business that Defendant Marc R. Smith is affiliated with, employed by, creates or forms, or performs services for; a statement of the nature of the business; and a statement of his duties and responsibilities in connection with the business or employment; and
 - c. Any changes in his name or use of any aliases or fictitious names; and
 2. Defendant Marc R. Smith shall notify the Commission of any changes in corporate structure of any business entity that he directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Final Judgment and Order, including, but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that

engages in any acts or practices subject to this Final Judgment and 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 Defendant Marc R. Smith learns less than thirty (30) days prior to the date such action is to take place, he shall notify the Commission as soon as is practicable after obtaining such knowledge.

B. One hundred and eighty (180) days after the date of entry of this Final Judgment and Order, Defendant Marc R. Smith shall provide a written report to the Commission, sworn to under penalty of perjury, setting forth in detail the manner and form in which he has complied and is complying with this Final Judgment and Order. This report shall include, but not be limited to:

1. His then-current residence address, mailing address(es), and telephone numbers;
2. His then-current employment and/or business addresses and telephone numbers, a description of the business activities of each of his employers and/or businesses, and his title and responsibilities for each such employer and/or business;
3. A copy of each acknowledgment of receipt of this Final Judgment and Order obtained pursuant to Paragraph IX of this Final Judgment and Order;
4. Any other changes required to be reported under Subparagraph A of this Paragraph;
5. A list of all names under which Defendant Marc R. Smith has conducted or currently conducts business since entry of this Final Judgment and Order;
6. A list of all entities through which Defendants Marc R. Smith and each of his

businesses has submitted, directly or indirectly, billings, including, but not limited to, telephone Local Exchange Carriers, billing aggregators, and credit card processors;

7. The names, addresses, and telephone numbers of all consumers who, after entry of this Final Judgment and Order, have made complaints to, and/or requested refunds from, Defendants Marc R. Smith and each of his businesses; and
8. A list of all domain names and web page addresses Defendant Marc R. Smith has registered or used in connection with telemarketing or marketing through the Internet.

C. For the purposes of this Final Judgment and Order, the Defendant Marc R. Smith shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Associate Director of Enforcement
Federal Trade Commission
600 Pennsylvania Ave, N.W.
Washington, D.C. 20580

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D. For purposes of the compliance reporting and monitoring required by this Final Judgment and Order, the Commission is authorized to communicate directly with Defendant Marc R. Smith.

VIII. RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this Final Judgment and Order, Defendant Marc R. Smith, his agents, servants, employees, and attorneys, and all other persons or entities in active concert or participation with him who receive

actual notice of this Final Judgment and Order by personal service or otherwise, whether acting directly or through any business entity, corporation, subsidiary, division, affiliate, or other device, in connection with any business which involves telemarketing or the advertising, promotion, offering for sale, or sale of Internet services, are hereby restrained and enjoined from failing to create and retain the following records:

A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;

B. 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 or as leased employee; 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;

C. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;

D. Records that reflect, for every written or oral consumer complaint or refund request received, whether directly or indirectly or through any third party: (1) the customer's name, address, and telephone number; (2) the written complaint or request, if any; (3) the basis of the complaint or request, including the name of any salesperson referenced; (4) the nature and result of any investigation conducted concerning the complaint or request; (5) each response and the date of such response to the complaint or request; (6) any final resolution of the complaint or request, and the date of such resolution; and (7) in the event of a denial of any resolution, the reason for the denial;

E. Copies of all sales scripts, training materials, advertisements, or other promotional or marketing materials;

F. Copies of all contracts or agreements with telephone companies;

G. Copies of all contracts or agreements with telemarketers;

H. Copies of all contracts or agreements with billing aggregators;

I. Records reflecting contacts with customers regarding customer service: (1) the customer's name, address, and telephone number; (2) the stated reason for the contact; (3) the nature and reason for any and all actions taken as a result of the customer service contact, including any actions taken solely from the impetus of any defendant;

J. All audio-recordings made in accordance with the provisions of this Final Judgment and Order; and

K. All records and documents necessary to demonstrate full compliance with each provision of this Final Judgment and Order, including, but not limited to, copies of acknowledgments of receipt of this Final Judgment and Order, required by Paragraph IX, and all reports submitted to the FTC pursuant to Paragraph VII.

IX. DISTRIBUTION OF FINAL JUDGMENT AND ORDER BY DEFENDANT

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Final Judgment and Order, Defendant Marc R. Smith shall deliver copies of this Final Judgment and Order as directed below:

A. **Defendant Marc R. Smith as control person:** For any business that Defendant Marc R. Smith controls, directly or indirectly, or in which he has a majority ownership interest, he must deliver a copy of this Final Judgment and Order to all principals, officers, directors, and

managers of that business. He must also deliver copies of this Final Judgment and Order to all employees, agents, and representatives of that business who engage in conduct related to the subject matter of this Final Judgment and Order. For current personnel, delivery shall be within five (5) days of service of this Final Judgment and Order upon Defendant. For new personnel, delivery shall occur prior to their assuming their responsibilities.

B. Defendant Marc R. Smith as employee or non-control person: For any business where Defendant Marc R. Smith is not a controlling person of the business but otherwise engages in conduct related to the subject matter of this Final Judgment and Order, he must deliver a copy of this Final Judgment and Order to all principals and managers of such business before engaging in such conduct.

C. Defendant Marc R. Smith must secure a signed and dated statement acknowledging receipt of this Final Judgment and Order, within thirty (30) days of delivery, from all persons receiving a copy of the Final Judgment and Order pursuant to this Paragraph.

X. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that Defendant Marc R. Smith, within five (5) business days of receipt of this Final Judgment and Order as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Final Judgment and Order.

XI. COOPERATION WITH COMMISSION COUNSEL

IT IS FURTHER ORDERED that Defendant Marc R. Smith shall, in connection with this action or any subsequent investigations related to or associated with the transactions or the occurrences that are the subject of the Commission's Amended Complaint filed in this action, cooperate in good faith with the Commission and appear at such places and times as the

Commission shall reasonable request, after written notice, for interviews, conferences, pretrial discovery, review of documents, and for such other matters as may be reasonably requested by the Commission. If requested in writing by the Commission, Defendant Marc R. Smith shall appear and provide truthful testimony in any trial, deposition, or other proceeding related to or associated with the transactions or the occurrences that are the subject of the Amended Complaint filed in this action, without the service of a subpoena. Until this action has been resolved, either by settlement of all of the remaining parties or by full and final adjudication on the merits, Defendant Marc R. Smith shall suspend any procedures for document destruction and take other measures to prevent the destruction of all documents related to this litigation and the Named Defendants, including all documents relating to the acts and practices alleged in the Amended Complaint filed in this action, and retain such documents for production upon request of the Commission.

XII. LIFTING OF ASSET FREEZE

IT IS FURTHER ORDERED that, upon entry of this Final Judgment and Order for Permanent Injunction, the freeze against assets imposed by the Modified Preliminary Injunction Order, entered in this case on January 10, 2007, as modified by the Order Modifying or Clarifying Modified Preliminary Injunction Order and Related Memorandum Opinion and Order, entered in this case on February 1, 2007, and the Order Amending Second Modified Preliminary Injunction, entered in this case on February 21, 2007, shall be lifted permanently as to Defendant Marc R. Smith.

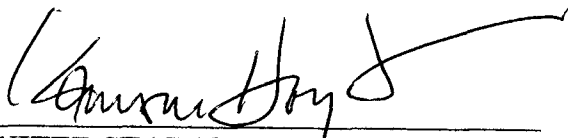
XIII. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for

purposes of construction, modification and enforcement of this Final Judgment and Order.

IT IS SO ORDERED.

ENTERED, this th 17 day of July, 2007.



UNITED STATES DISTRICT JUDGE

SO STIPULATED:

FOR THE PLAINTIFF:

WILLIAM BLUMENTHAL

General Counsel

DEANYA T. KUECKELHAN

Regional Director

Southwest Region



JAMES E. ELLIOTT

SUSAN E. ARTHUR

ELISEO N. PADILLA

Federal Trade Commission, Southwest Region

1999 Bryan Street, Suite 2150

Dallas, Texas 75201

(214) 979-9350 (Southwest Regional Office)

(214) 979-9373 (Mr. Elliott)

(214) 979-9370 (Ms. Arthur)

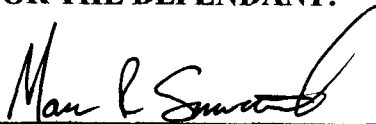
(214) 979-9382 (Mr. Padilla)

(214) 953-3079 (Facsimile)

ATTORNEYS FOR PLAINTIFF

FEDERAL TRADE COMMISSION

FOR THE DEFENDANT:



Marc R. Smith:

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