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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

FEDERAL TRADE COMMISSION, and

COMMONWEALTH OF KENTUCKY  
*EX REL.* JACK CONWAY, ATTORNEY  
GENERAL OF KENTUCKY,  
Plaintiffs,

v.

DIRECT CONNECTION CONSULTING,  
INC., a corporation, also d/b/a SureTouch  
Long Distance;

DIGICOM, LLC, a limited liability  
company, also d/b/a DigiTouch Long  
Distance;

ELLIOTT BORENSTEIN, individually  
and as an owner, officer or manager of  
Direct Connection Consulting, Inc., and  
Digicom, LLC; and

JOANN R. (JODY)WINTER, individually  
and as an owner, officer or manager of  
Direct Connection Consulting, Inc., and  
Digicom, LLC,  
Defendants.

Case No. 1:08-cv-1739-TCB

**FINAL JUDGMENT AND  
ORDER OF PERMANENT  
INJUNCTION**

This matter comes before the Court on stipulation of Plaintiffs, Federal Trade Commission and Commonwealth of Kentucky *ex rel.* Jack Conway, Attorney General of Kentucky (“Plaintiffs”), and Defendants, Direct Connection Consulting, Inc., d/b/a SureTouch Long Distance, Digicom, LLC, d/b/a DigiTouch Long Distance, and Elliott Borenstein (“Defendants”).

Plaintiffs commenced this action by filing their complaint for permanent injunction and other equitable relief pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101-6108, and the Kentucky Consumer Protection Act, KRS 367.010 *et seq.* The complaint alleged that Defendants, together with Defendant JoAnn R. (Jody) Winter, engaged in unfair and deceptive acts and practices in connection with the telemarketing of goods and services. Plaintiffs and Defendants have agreed to a settlement of this action without adjudication of any issue of fact or law, and without Defendants admitting liability for any of the violations alleged in the complaint.

THEREFORE, on the joint motion of the parties, and after having considered the submissions of the parties and being otherwise fully advised of all matters in the case, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

**FINDINGS**

1. This Court has jurisdiction over the subject matter of this case and personal jurisdiction over each of the Defendants.
2. Venue in this District is proper.
3. The activities of Defendants are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
4. The Plaintiffs have authority to seek the relief they have requested and the complaint states a claim upon which relief may be granted against the Defendants.
5. Defendants waive all rights to seek judicial review or otherwise challenge or contest the validity of this Final Judgment and Order of Permanent Injunction (“Final Order”).

6. Defendants further waive and release any claim Defendants may have against Plaintiffs, or any of Plaintiffs' employees, representatives or agents, including any claim they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, amended by Pub. L. 104-121, 110 Stat. 847, 863-64 (1996).

7. Defendants state that they have entered into this Final Order freely and without coercion. Defendants further state that they have read or otherwise been fully advised of the provisions of this Final Order and are fully prepared to abide by them.

8. This Final Order, and the relief awarded herein, is in addition to, and not in lieu of, any other remedies that may be provided by law, including both civil and criminal remedies.

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

10. Entry of this Final Order is in the public interest.

#### **DEFINITIONS**

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

1. "Asset" or "Assets" means any legal or equitable interest in, right to, or claim to, any real or personal property, including, but not limited to, "goods,"

“instruments,” “equipment,” “fixtures,” “general intangibles,” “inventory,” “checks,” or “notes,” (as these terms are defined in the Uniform Commercial Code), lines of credit, chattels, leaseholds, contracts, mail or other deliveries, shares of stock, lists of consumer names, accounts, credits, premises, receivables, deposits, reserve accounts, funds, any monies held for or on behalf of any Defendant or for the benefit of any Defendant, and all cash, wherever located.

2. "Assisting others" includes, but is not limited to, providing any of the following services to any person or entity: (a) performing customer service functions, including, but not limited to, receiving or responding to consumer complaints; (b) formulating or providing, or arranging for the formulation or provision of, any telephone sales script or any other marketing material; (c) performing marketing services of any kind; or (d) providing credit card merchant processing accounts, or otherwise providing access to a billing and collection system (such as a credit card, checking, savings, share or similar account, utility bill, telephone bill, mortgage loan account or debit card), or causing any charges to be made to such an account or utilizing such a system.

3. "Billing information" means any data that enables any person to access a customer's or donor's account, such as a credit card, checking, savings, share or similar account, utility bill, mortgage loan account, or debit card.

4. "Corporate Defendants" means Direct Connection Consulting, Inc., d/b/a SureTouch Long Distance, Digicom, LLC d/b/a DigiTouch Long Distance, their successors and assigns, and by whatever other names each may be known.

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

6. "Defendants" means Elliott Borenstein and the corporate Defendants, individually, collectively, or in any combination.

7. "Document" means writings, drawings, graphs, charts, photographs, sound recordings, images, and any other data or data compilations stored in any medium from which information can be obtained and translated, if necessary, into reasonably usable form and is synonymous in meaning and equal in scope to the usage of the term in the Federal Rules of Civil Procedure 34(a). A draft or non-identical copy of a document is a separate document within the meaning of the term.

8. "Individual Defendant" means Elliott Borenstein, and by whatever

other name he may be known.

9. "Material" means likely to affect a person's choice of, or conduct regarding, goods or services or a charitable donation.

10. "Person" means a natural person, an organization or other legal entity, including a corporation, partnership, sole proprietorship, limited liability company, association, cooperative, or any other group or combination acting as an entity.

11. "Plaintiffs" means the Federal Trade Commission ("Commission" or "FTC") and the Commonwealth of Kentucky *ex rel.* Jack Conway, Attorney General of Kentucky ("Commonwealth of Kentucky" or "Kentucky").

12. "Receiver" means Pat Huddleston, III, the receiver appointed over the corporate Defendants by the Court.

13. "Receivership Defendants" means the corporate Defendants.

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

15. "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, as that term is defined in the Telemarketing Sales Rule, 16 C.F.R. Part 310.

### **I. BOND REQUIREMENT**

**IT IS THEREFORE ORDERED** that the Defendants are each permanently restrained and enjoined from telemarketing, or assisting others engaged in telemarketing, whether acting directly or through any person, trust, corporation, limited liability company, subsidiary, division, or other device, unless such Defendant first obtains a performance bond in the principal sum of \$5,000,000 US dollars (Five Million Dollars). The terms and conditions of the bond requirement shall be as follows:

A. The bond sought by any Defendant shall be conditioned upon compliance by such Defendant with the FTC Act; the Telemarketing Act; the Kentucky Consumer Protection Act; and the provisions of this Final Order. The bond shall be deemed continuous and remain in full force and effect as long as such Defendant engages in telemarketing, or assisting others engaged in telemarketing, whether acting directly or through any person, trust, corporation, limited liability company, subsidiary, division, or other device, and for at least three (3) years thereafter. The bond shall cite this Final Order as the subject matter



of the bond, and shall provide surety thereunder against financial loss due, in whole or in part, to any violation by such Defendant of the FTC Act; the Telemarketing Act; the Kentucky Consumer Protection Act; or the provisions of this Final Order;

B. The bond shall be an insurance agreement providing surety for financial loss that is issued by a surety company (i) admitted to do business in each state in which such Defendant does business and (ii) that holds a Federal Certificate of Authority as Acceptable Surety on Federal Bond and Reinsuring. Such bond shall be in favor of (a) the FTC, for the benefit of any party injured as a result of any violation of the FTC Act, the Telemarketing Act, or the provisions of this Final Order while engaged in telemarketing, or assisting others engaged in telemarketing whether acting directly or through any person, trust, corporation, limited liability company, subsidiary, division, or other device; (b) the Commonwealth of Kentucky, for the benefit of any party injured as a result of any violation of the Kentucky Consumer Protection Act or the provisions of this Final Order while engaged in telemarketing, or assisting others engaged in telemarketing whether acting directly or through any person, trust, corporation, limited liability company, subsidiary, division, or other device; and (c) any consumer so injured.

C. Said Defendant shall provide a copy of the bond required by this Section to the Associate Director of Enforcement, as set forth in Section VIII. D, at least ten days prior to the commencement of the activity for which the bond is required;

D. The bond required by this Final Order shall be in addition to, and not in lieu of, any bond required by federal, state or local law, or the order of another court;

E. Said Defendant shall not disclose the existence of any performance bond required by this Section to any consumer without also disclosing clearly and prominently, at the same time, "AS REQUIRED BY ORDER OF THE U.S. DISTRICT COURT, NORTHERN DISTRICT OF GEORGIA, IN SETTLEMENT OF CHARGES OF VIOLATIONS OF THE FTC ACT, THE TELEMARKETING ACT AND THE KENTUCKY CONSUMER PROTECTION ACT"; and

F. The bond shall be executed in favor of the Commission or the Commonwealth of Kentucky if either of them demonstrate to this Court by a preponderance of the evidence that, after the effective date of this Final Order, said Defendant has violated any condition of the bond, whether acting directly or

through any person, trust, corporation, limited liability company, subsidiary, division, or other device.

## **II. PROHIBITED BUSINESS ACTIVITIES**

**IT IS FURTHER ORDERED** that, in connection with the advertising, marketing, promoting, offering for sale, or sale of any good or service, Defendants and their officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, members, partners, corporations, subsidiaries, affiliates, successors and assigns, and all other persons or entities in active concert or participation with any of them who receive actual notice of this Final Order by personal service, facsimile, or otherwise, whether acting directly or through any trust, corporation, subsidiary, division or other device, or any of them, are hereby permanently restrained and enjoined from:

A. Misrepresenting, directly or indirectly, expressly or by implication, any material fact, including, but not limited to, misrepresenting that:

1. Defendants are contacting consumers from, or on behalf of, or are otherwise affiliated with a major retailer or a consumer's credit card company;

2. Defendants will provide consumers with free goods or services or assistance with unwanted credit card charges; or
3. Consumers' credit card accounts will not be charged or their bank accounts will not be debited;

B. Misrepresenting, directly or indirectly, expressly or by implication, the nature, characteristic or use of any offered good or service;

C. Charging consumers' credit cards or debiting consumers' bank accounts without obtaining from the consumer his or her express agreement to be charged for the goods or services;

D. Assisting others who violate any provisions of Paragraphs A, B or C of this Section;

E. Violating, or assisting others who violate, any provision of the TSR, including, but not limited, to:

1. Section 310.3(a)(2)(i) of the TSR, 16 C.F.R. § 310.3(a)(2)(i), by misrepresenting, directly or by implication, the total costs to purchase, receive or use, any goods or services that are the subject of a sales offer;

2. Section 310.3(a)(2)(vii) of the TSR, 16 C.F.R. § 310.3(a)(2)(vii), by misrepresenting, directly or by implication, that Defendants are calling from, on behalf of, or are otherwise affiliated with a major retailer or a consumer's credit card company;
3. Section 310.4(d) of the TSR, 16 C.F.R. § 310.4(d), by failing to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving a call:
  - (a) the identity of the seller;
  - (b) that the purpose of the call is to sell goods or services;
  - and
  - (c) the nature of the goods or services;
4. Section 310.3(a)(1)(vii) of the TSR, 16 C.F.R. § 310.3(a)(1)(vii), by failing to disclose truthfully, in a clear and conspicuous manner, before a consumer pays for the goods and services offered, all material terms and conditions of any negative option feature, including, but not limited to:

- (a) that the consumer's account will be charged unless the consumer takes an affirmative action to avoid the charge;
  - (b) the date(s) the charge(s) will be submitted for payment; and
  - (c) the specific steps the consumer must take to avoid the charge(s);
5. Section 310.4(a)(6) of the TSR, 16 C.F.R. § 310.4(a)(6), by causing billing information to be submitted for payment, directly or indirectly, without the express informed consent of the consumer; and
6. Section 310.4(b)(1)(iii)(A) of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(A), by engaging in, or causing others to engage in, initiating outbound telemarketing calls to persons who had previously stated that they do not wish to receive calls made by or on behalf of Defendants;

F. Violating, or assisting others who violate, any provision of the Kentucky Consumer Protection Act, KRS 367.010 *et. seq.*, including, but not limited, to:

1. KRS 367.170, by engaging in unfair, false, misleading, or deceptive acts or practices in the conduct of trade or commerce;
2. KRS 367.46957, by failing to provide Kentucky consumers with a Notice of Cancellation Rights required by KRS 367.46963;
3. KRS 367.46955(5), by causing Kentucky consumers' credit card accounts to be charged without having obtained consumers' express written authorization or provided consumers the notice required in KRS 367.46961;
4. KRS 367.46955 (10), by directing or permitting employees to use a fictitious name or not to use their name while making a telephone solicitation to Kentucky consumers;
5. KRS 367.46955 (19), by engaging in any unfair, false, misleading, or deceptive practice or act as part of a telephone solicitation; and
6. KRS 367.46953 by:
  - (a) allowing their employees to use fictitious names;

- (b) failing to identify the product being offered within the first 30 seconds of the call; and
- (c) failing to inquire whether the consumers were interested in receiving a sales call within the first 30 seconds of the call.

### **III. PROHIBITION AGAINST DISTRIBUTION OF CUSTOMER INFORMATION**

IT IS FURTHER ORDERED that Defendants and their officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, members, partners, corporations, subsidiaries, affiliates, successors and assigns, and all other persons or entities in active concert or participation with them who receive actual notice of this Final Order by personal service, facsimile, or otherwise, whether acting directly or through any trust, corporation, subsidiary, division or other device, are permanently restrained and enjoined from selling, renting, leasing, transferring or otherwise disclosing the individual name, address, telephone number, email address, social security number, billing information, or other identifying information of any person who provided any such information to Defendants at any time in connection with the advertising, marketing, promoting, offering for sale, or sale of any goods or services; *provided, however*, that



Defendants may disclose such identifying information to any law enforcement or regulatory agency, or as required by any law, regulation or court order.

#### **IV. MONETARY JUDGMENT AND CONSUMER REDRESS**

IT IS FURTHER ORDERED that:

A. Judgment is hereby entered in favor of the Commission and against Defendants, jointly and severally, in the amount of fifteen million, six hundred and seventeen thousand, and fifteen dollars and eleven cents (\$15,617,015.11).

B. Judgment is hereby entered in favor of the Commonwealth of Kentucky and against Defendants, jointly and severally, in the amount of ninety-thousand, nine hundred and two dollars and seventy-five cents (\$90,902.75). Out of this amount, the Attorney General for the Commonwealth of Kentucky shall make restitution to consumers as deemed practicable in his sole discretion and retain an amount in reimbursement of the Commonwealth's reasonable attorneys fees and litigation costs and expenses in the amount of \$15,000.

C. Except as provided in Section V of this Final Order, entitled "Right to Reopen as to Monetary Judgment," the judgments shall be suspended as to the Commission and the Commonwealth of Kentucky on satisfaction of the following conditions:

1. SunTrust Bank shall, within five (5) business days of the date of entry of this Final Order, transfer to the Commission or its designated agent any and all assets held on account for any Defendant, exclusive of those accounts held jointly with Beverly Bost Borenstein;
2. Wachovia Bank shall, within five (5) business days of the date of entry of this Final Order, transfer to the Commission or its designated agent any and all assets held on account for any Defendant;
3. Bank of America shall, within five (5) business days of the date of entry of this Final Order, transfer to the Commission or its designated agent any and all assets held on account for any Defendant;
4. Richard Maresco, Janna Maresco and American Reading Club, by and through their attorneys, shall, within five (5) business days of the date of the entry of this Final Order, transfer to the Commission or its designated agent \$40,000.00 (forty-thousand dollars) in monies owed to Defendant Borenstein in settlement

of action No. CAFN04-cv-0083 filed in the Georgia Superior Court, Forsyth County, Georgia;

5. Defendant Borenstein shall, within five (5) business days of the date of the entry of this Final Order, cause to be transferred to the Commission or its designated agent all assets held on account in Ebor Management's Standardized 401(k) Profit Sharing Plan and Trust;
6. Defendant Borenstein shall immediately surrender to the Receiver all right, title and interest to, and possession of, his 1958 Piper Tri-Pacer Airplane, GA N9229D. The Receiver shall liquidate this asset in accordance with Section VI of this Final Order, entitled "Receivership Provisions."
7. Defendants shall provide full cooperation to the Receiver in carrying out his duties pursuant to Section VI of the Final Order, including the collection of receivership property, the liquidation of property held by or to be surrendered to the Receiver for liquidation, and the winding up of the affairs of the Receivership Defendants.

C. Funds paid over to the Commission or its agents pursuant to this Section, and Sections V and VI of this Final Order, shall be deposited into a fund administered by the Commission or its designated representative to be used for equitable relief, including but not limited to consumer redress and any attendant expenses for the administration of any redress fund. Defendants will cooperate fully to assist the Commission in identifying consumers who may be entitled to redress pursuant to this Final Order. In the event that direct redress to consumers is wholly or partially impracticable, or funds remain after redress is completed, the Commission may apply funds for any other equitable relief (including consumer information remedies) that it determines to be reasonably related to Defendants' practices alleged in the complaint. Any funds not used for such equitable relief shall be deposited into the U.S. Treasury as disgorgement. Defendants shall have no right to challenge the Commission's choice of remedies under this Section.

D. Defendants surrender all claims to dominion, control of, and title to all funds paid over to the Commission to the fullest extent permitted by law. Defendants shall make no claim to or demand return of the funds, directly or indirectly, through counsel or otherwise.

E. Defendants agree that the facts as alleged in the complaint filed in this action shall be taken as true without further proof in any bankruptcy case or subsequent civil litigation pursued by the Commission to enforce its rights to any payment or money judgment pursuant to this Final Order, including but not limited to a nondischargeability complaint in any bankruptcy case. Defendants further stipulate and agree that the facts alleged in the complaint establish all elements necessary to sustain an action pursuant to, and that this Final Order shall have collateral estoppel effect for purposes of, Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A).

F. Defendants acknowledge and agree that the judgment entered pursuant to this Section is equitable monetary relief, solely remedial in nature, and is not a fine, penalty, punitive assessment, or forfeiture.

G. Defendants are hereby required, in accordance with 31 U.S.C. § 7701, to furnish to the Commission their taxpayer identifying numbers (social security number or employer identification number), which shall be used for purposes of collecting and reporting on any delinquent amount arising out of this Final Order.

H. Unless he has done so already, Defendant Borenstein shall provide the Commission with a clear, legible and full-size photocopy of all valid driver's licenses he possesses, which will be used for reporting and compliance purposes.

I. Any proceedings to lift the suspension of judgment instituted under this Section is in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings the Commission may initiate to enforce this Final Order.

#### **V. RIGHT TO REOPEN AS TO MONETARY JUDGMENT**

IT IS FURTHER ORDERED that:

A. By agreeing to this Final Order, Defendants reaffirm and attest to truthfulness, accuracy and completeness of their sworn testimony given at their financial disclosure depositions on November 18, 2008 and November 24, 2008, and the truthfulness, accuracy, and completeness of their written financial statements. This Court's Final Order, and the Plaintiffs' agreement to enter into this Final Order, are expressly premised upon the truthfulness, accuracy, and completeness of each of the Defendants' financial conditions, as represented in the Financial Statements and sworn testimony referenced above, which contain

material information upon which the Plaintiffs relied in negotiating and agreeing to the terms of this Final Order.

B. If, upon motion by Plaintiffs, this Court should find that one or more Defendant failed to disclose any material asset, or materially misrepresented the value of any asset, or made any other material misrepresentation in or omission from their financial statements or sworn testimony, the Court shall reinstate the suspended judgment against such Defendant, in favor of the Commission, in the amount of \$15,707,917.86, which Plaintiffs and Defendants stipulate is the amount of consumer injury jointly and severally caused by the Defendants and their co-Defendant JoAnn R. (Jody) Winter, less any payments made to the Plaintiffs, plus interest from the entry date of this Final Order, pursuant to 28 U.S.C. § 1961. *Provided, however*, that in all other respects, this Final Order shall remain in full force and effect unless otherwise ordered by the Court.

## **VI. RECEIVERSHIP PROVISIONS**

IT IS FURTHER ORDERED that:

A. Except as modified by this Section of the Final Order, the receivership imposed by this Court shall continue in the manner set forth in the Order of Preliminary Injunction (Doc. 77).

B. The Receiver shall take all steps necessary to immediately wind down the affairs of the receivership Defendants.

C. The Receiver shall take all steps necessary to liquidate all receivership assets and those assets that are surrendered to the Receiver pursuant to Section IV of this Final Order.

D. The Receiver shall continue to be entitled to compensation for the performance of his duties pursuant to this Final Order, from the assets of the receivership Defendants, at the billing rate previously agreed to by the Receiver. Within 30 days after entry of this Final Order, and every 30 days thereafter until completed, the Receiver shall file with the Court, and serve on the parties, an accounting and request for the payment of such reasonable compensation.

C. Upon the liquidation of any asset held by or surrendered to the Receiver, the Receiver shall, at the FTC's request, immediately transfer all proceeds to the FTC or its designated representative in partial satisfaction of the judgment pursuant to Paragraphs IV and V of this Final Order. The Receiver is authorized to withhold a reasonable sum, not to exceed ten percent (10%) for costs, fees and expenses.



D. Upon approval of the Receiver's final report and request for payment, the Receiver shall apply to terminate the receivership, and any funds remaining after payment of the Receiver's final request for payment shall be remitted to the FTC or its designated representative.

E. Within five (5) days of termination of the receivership, the Receiver shall return all records of the Receivership Defendants in his possession relating to their financial affairs to the individual Defendants so that they may prepare and file all necessary income tax returns. The Receiver is also directed to promptly turn over to Plaintiffs all records containing the customer information described in Section III of this Final Order.

F. Defendants, their officers, employees, agents, servants, attorneys, representatives, predecessors, successors, assigns and affiliates, release and discharge the Receiver and those that he employed in this matter from any and all claims, demands, actions, causes of actions, or suits that now exist or may hereafter accrue, whether known or unknown that relate to this Final Order or to the lawsuit that is the subject of this Final Order.

## VII. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of (i) monitoring and investigating compliance with any provision of this Final Order and (ii) investigating the accuracy of any Defendants' financial statements upon which the Plaintiffs' agreement to this Final Order is expressly premised:

A. Within ten (10) days of receipt of written notice from a representative of the Plaintiffs, Defendants each shall submit additional written reports, which are true and accurate and sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and provide entry during normal business hours to any business location in each such Defendant's possession or direct or indirect control to inspect the business operation;

B. In addition, the Plaintiffs are authorized to use all other lawful means, including, but not limited to:

1. obtaining discovery from any person, without further leave of the Court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, 45 and 69;
2. posing as consumers and suppliers to Defendants, their employees, or any other entity managed or controlled in whole

or in part by any Defendant, without the necessity of identification or prior notice; and

C. Defendants each shall permit representatives of the Plaintiffs 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 Order. The person interviewed may have counsel present. *Provided however*, that nothing in this Final 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, 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)).

### **VIII. COMPLIANCE REPORTING**

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

A. For a period of five (5) years from the date of entry of this Final Order,

1. Each individual Defendant shall notify the Commission of the following:

- a. Any changes in such Defendant's residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;
  - b. Any changes in such Defendant's employment status (including self-employment), and any change in such Defendant's ownership 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 such Defendant is affiliated with, employed by, creates or forms, or performs services for; a detailed description of the nature of the business; and a detailed description of such Defendant's duties and responsibilities in connection with the business or employment; and
  - c. Any changes in such Defendant's name or use of any aliases or fictitious names;
2. Defendants shall notify the Commission of any changes in structure of any corporate Defendant or any business entity that any Defendant directly or indirectly controls, or has an

ownership interest in, that may affect compliance obligations arising under this Final Order, including but not limited to: incorporation or other organization; a dissolution, assignment, sale, merger, or other action; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Final Order; or a change in the business name or address, at least thirty (30) days prior to such change, provided that, with respect to any proposed change in the business entity about which a Defendant learns less than thirty (30) days prior to the date such action is to take place, such Defendant shall notify the Commission as soon as is practicable after obtaining such knowledge.

B. One hundred eighty (180) days after the date of entry of this Final Order and annually thereafter for a period of five (5) years, Defendants each shall provide a written report to the FTC, which is true and accurate and sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this Final Order. This report shall include, but not be limited to:

1. For the individual Defendant:
  - a. such Defendant's then-current residence address, mailing addresses, and telephone numbers;
  - b. such Defendant's then-current employment status (including self-employment), including the name, addresses, and telephone numbers of each business that such Defendant is affiliated with, employed by, or performs services for; a detailed description of the nature of the business; and a detailed description of such Defendant's duties and responsibilities in connection with the business or employment; and
  - c. Any other changes required to be reported under Subsection A of this Section.
2. For all Defendants:
  - a. A copy of each acknowledgment of receipt of this Final Order, obtained pursuant to the Section titled "Distribution of Final Order;" and

b. Any other changes required to be reported under Subsection A of this Section.

C. Each Defendant shall notify the Commission of the filing of a bankruptcy petition by such Defendant within fifteen (15) days of filing.

D. For the purposes of this Final Order, Defendants shall, unless otherwise directed by the Commission's authorized representatives, send by overnight courier all reports and notifications required by this Final Order to the Commission, to the following address:

Associate Director for Enforcement  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W., Room NJ-2122  
Washington, D.C. 20580  
RE: *FTC v. Direct Connection Consulting, Inc.*

*Provided that*, in lieu of overnight courier, Defendants may send such reports or notifications by first-class mail, but only if Defendants contemporaneously send an electronic version of such report or notification to the Commission at: [DEBrief@ftc.gov](mailto:DEBrief@ftc.gov).

E. For purposes of the compliance reporting and monitoring required by this Final Order, the Commission is authorized to communicate directly with each Defendant.

### **IX. RECORD KEEPING PROVISIONS**

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this Final Order, Defendants and those businesses where any Defendant is the majority owner or otherwise controls the business and their agents, employees, officers, corporations, and those persons in active concert or participation with them who receive actual notice of this Final Order by personal service, facsimile, or otherwise, are hereby restrained and enjoined from failing to create and/or 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; 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. Complaints and refund requests (whether received directly, indirectly, or through any third party) and any responses to those complaints or requests;

E. Copies of all sales scripts, training materials, advertisements, or other marketing materials, including websites and weblogs; and

F. All records and documents necessary to demonstrate full compliance with each provision of this Final Order, including but not limited to, copies of acknowledgments of receipt of this Final Order required by Sections titled "Distribution of Final Order" and "Acknowledgment of Receipt of Final Order" and all reports submitted to the FTC pursuant to the Section titled "Compliance Reporting."

#### **X. DISTRIBUTION OF FINAL ORDER**

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Final Order, Defendants shall deliver copies of the Final Order as directed below:

A. Corporate Defendant: Each corporate Defendant must deliver a copy

of this Final Order to (1) all of its principals, officers, directors, and managers; (2) all of its employees, agents, and representatives who engage in conduct related to the subject matter of the Final Order; and (3) any business entity resulting from any change in structure set forth in Subsection A.2 of Section IX. For current personnel, delivery shall be within five (5) days of service of this Final Order upon such Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities. For any business entity resulting from any change in structure set forth in Subsection A.2 of Section IX, delivery shall be at least ten (10) days prior to the change in structure.

B. Individual Defendant as Control Person: For any business that an individual Defendant controls, directly or indirectly, or in which such Defendant has a majority ownership interest, such Defendant must deliver a copy of this Final Order to (1) all principals, officers, directors, and managers of that business; (2) all employees, agents, and representatives of that business; and (3) any business entity resulting from any change in structure set forth in Subsection A.2 of Section IX. For current personnel, delivery shall be within five (5) days of service of this Final Order upon such Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities. For any business entity resulting from any change

in structure set forth in Subsection A.2 of Section IX, delivery shall be at least ten (10) days prior to the change in structure.

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

D. Defendants must secure a signed and dated statement acknowledging receipt of the Final Order, within thirty (30) days of delivery, from all persons receiving a copy of the Final Order pursuant to this Section.

#### **XI. COOPERATION WITH PLAINTIFFS' COUNSEL**

IT IS FURTHER ORDERED that each Defendant 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 Plaintiffs' complaint, cooperate in good faith with the Plaintiffs and appear, or cause its officers, employees, representatives, or agents to appear, at such places and times as the Plaintiffs shall reasonably request, after written notice, for interviews, conferences, pretrial discovery, review of documents, and for such other matters as may be

reasonably requested by the Plaintiffs. If requested in writing by the Plaintiffs, a Defendant shall appear, or cause its officers, employees, representatives, or agents to 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 complaint, without the service of a subpoena.

**XII. ACKNOWLEDGMENT OF RECEIPT OF FINAL ORDER**

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

**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 Order.

SO ORDERED, this 23<sup>rd</sup> day of March, 2009.




Timothy A. Batten  
United States District Judge

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**CONSENTED TO BY THE PARTIES**


**PLAINTIFFS**



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Federal Trade Commission  
Signed this 18<sup>th</sup> Day of March, 2009.

/s/ Valerie M. Verduce  
Federal Trade Commission  
225 Peachtree Street, Suite 1500  
Atlanta, Georgia 30303  
Telephone: 404-656-1355  
Email: vverduce@ftc.gov  
Georgia Bar No. 727066



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Commonwealth of Kentucky,  
*ex rel.* Jack Conway, Attorney General

/s/ TODD E. LEATHERMAN  
Assistant Attorney General  
Kentucky Office of Attorney General  
1024 Capital Center Drive  
Frankfort, KY 40601  
Telephone: (502) 696-5389  
Email: todd.leatherman@ag.ky.gov

**DEFENDANTS**



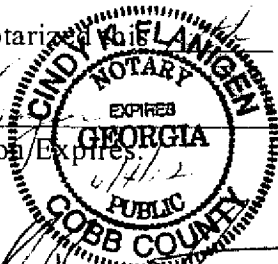
Counsel for Defendants Direct Connection Consulting, Inc; Digicom, LLC, and Elliott Borenstein


/s/ David A. Harris  
David A. Harris, Esq.  
Attorney Bar Number: 668708

**BOVIS, KYLE & BURCH, LLC**  
200 Ashford Center North, Suite 500  
Atlanta, GA 30338-2668  
Phone: 770-391-9100  
Fax: 770-668-0878  
Email: dah@boviskyle.com

Signed and Notarized this 12<sup>th</sup> day of 2008

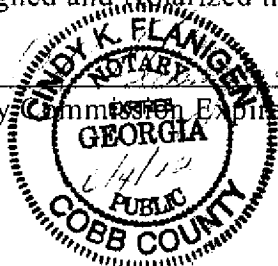
  
My Commission Expires:



  
Elliott Borenstein,  
in his individual capacity and as co-owner of Direct Connection Consulting, Inc., and Digicom, LLC

Signed and Notarized this 12<sup>th</sup> day of 2008

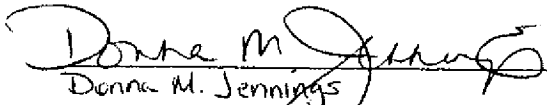
My Commission Expires:





JoAnn R. ("Jody") Winter,  
as co-owner of Direct Connection Consulting, Inc., and Digicom, LLC.

Signed and Notarized this 12/10 day of 2008



Donna M. Jennings  
My Commission Expires: June 9, 2012

