

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

FEDERAL TRADE COMMISSION,)

Plaintiff,)

v.)

Case No. 6:11-CV-1186-JA-TBS

DIRECT BENEFITS GROUP, LLC,)

a Wyoming limited liability company,)

also dba Direct Benefits Online, and)

Unified Savings;)

VOICE NET GLOBAL, LLC,)

a Wyoming limited liability company,)

also dba Thrifty Dial;)

SOLID CORE SOLUTIONS, INC.,)

a Utah corporation;)

WKMS, INC.,)

a Utah corporation;)

KYLE WOOD, individually and as owner,)

officer, or manager of Direct Benefits)

Group, LLC; and WKMS, Inc., and)

MARK BERRY, individually and as owner,)

officer, or manager of Voice Net Global,)

LLC; and Solid Core Solutions, Inc.,)

Defendants.)

_____ /

FINAL JUDGMENT AND ORDER
FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF

The Federal Trade Commission (“FTC” or “Commission”) brought this action for injunctive and monetary equitable relief against Direct Benefits Group, LLC, Voice Net

Global, LLC, Solid Core Solutions, Inc., WKMS, Inc., Kyle Wood, and Mark Berry (collectively “Defendants”). In the Complaint, the FTC asserted two counts against the Defendants for unfair and deceptive practices in violation of Section 5(a) of the Federal Trade Commission Act (the “FTC Act” or “Act”), 15 U.S.C. § 45(a). The FTC requested injunctive and monetary equitable relief against the Defendants under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b).

The Court conducted a four-day bench trial on November 27-30, 2012. On July 18, 2013, the Court issued a Memorandum Decision and Order by which it issued its findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52(a). After carefully reviewing all of the evidence, testimony, and arguments presented by the parties’ counsel, the Court concluded that the FTC had proven by a preponderance of the evidence that all the Defendants were liable for unfair and deceptive acts and practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), because they had debited consumers’ bank accounts without consent and failed to adequately disclose that financial information gathered to further consumers’ payday loan applications would also be used to charge the consumers for enrollment in programs offering products and services that were unrelated to payday loans. The Court found that a permanent injunction against all Defendants is appropriate because there is a reasonable likelihood of future violations. The Court also found that monetary equitable relief against all Defendants is proper in the amount of \$9,512,172. The Court further directed the FTC to file a proposed judgment and permanent injunction consistent with the Court’s decision by July 29, 2013. On that date, the FTC filed its proposed final judgment

and order for permanent injunction. The Defendants then filed objections to the FTC's submission, and the FTC responded to those objections. Based upon the record established in this case, and for the reasons set forth in the Court's Memorandum Decision and Order, the Court enters this Final Judgment and Order for Permanent Injunction and Other Equitable Relief ("Order").

DEFINITIONS

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

- A. **"Billing information"** means any data that enables any person to access a consumer's financial account, including but not limited to a credit card, checking, savings, share or similar account, utility bill, mortgage loan account, or debit card.
- B. **"Corporate Defendants"** means Direct Benefits Group LLC, also d/b/a Direct Benefits Online and d/b/a Unified Savings; Voice Net Global LLC, also d/b/a Thrifty Dial; Solid Core Solutions, Inc.; and WKMS, Inc., and their successors and assigns.
- C. **"Defendants"** means all of the Individual Defendants and the Corporate Defendants, individually, collectively, or in any combination.
- D. **"Individual Defendants"** means Kyle Wood and Mark Berry.
- E. **"Material"** means likely to affect a person's choice of, or conduct regarding, goods or services.
- F. **"Receivership Defendants"** means the Corporate Defendants.

I.

BAN REGARDING THE REUSE OF BILLING INFORMATION

IT IS THEREFORE ORDERED that Defendants are hereby permanently restrained and enjoined from reusing billing information obtained from a consumer, or from assisting others in using billing information obtained from a consumer, in any sale of a good or service when that billing information was initially collected:

- A. for the purpose or purported purpose of evaluating eligibility, facilitating an application, or securing offers for any good or service, or
- B. in connection with the advertising, promoting, offering for sale, selling, or distributing of any good or service.

II.

INJUNCTION REQUIRING CONSENT TO BILL

IT IS FURTHER ORDERED that Defendants and their officers, agents, servants, employees, and attorneys, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or indirectly, including by assisting others, in connection with the advertising, marketing, promoting, offering for sale, selling, or distributing of any good or service, are hereby permanently restrained and enjoined from:

- A. Failing to disclose, clearly and conspicuously, and in close proximity to any request for billing information:

1. the name of the seller or provider of the good or service;
 2. a description of the good or service;
 3. that the consumer will be charged for the good or service;
 4. the amount of each and every charge for the good or service; and
 5. the terms of any refund, cancellation, exchange, or repurchase policies, or if there are no policies, a statement of that fact; and
- B. Charging or attempting to charge any consumer unless the consumer has provided express informed consent to be charged. For an Internet transaction, express informed consent includes, at a minimum, requiring consumers to input their full billing information in conjunction with providing an express written authorization. The express written authorization must include the consumer's signature (the term "signature" includes a verifiable electronic or digital form of signature, to the extent such form of signature is recognized as a valid signature under applicable federal law or state contract law) in a manner that clearly evidences the consumer's express agreement to be charged the amount disclosed for each specific good or service.

III.

PROHIBITION AGAINST MAKING MISREPRESENTATIONS RELATING TO ANY GOOD OR SERVICE

IT IS FURTHER ORDERED that Defendants and their officers, agents, servants, employees, and attorneys, and all other persons or entities in active concert or participation

with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or indirectly, including by assisting others, in connection with the advertising, promoting, marketing, offering for sale, selling, or distributing of any good or service are hereby permanently restrained and enjoined from misrepresenting, or assisting others in misrepresenting, expressly or by implication:

- A. The purpose(s) for which a consumer's billing information will be used;
- B. The method by which a consumer will be assessed a fee, charge, or debit;
- C. The total costs to purchase, receive, or use, or the quantity of, the good or service;
- D. Any material restriction, limitation, or condition to purchase, receive, or use the good or service; and
- E. Any material aspect of the performance, efficacy, nature, or central characteristics of the good or service.

IV.

REQUIREMENT TO DISPOSE OF CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Defendants and their officers, agents, servants, employees, and attorneys, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or indirectly, are permanently restrained and enjoined from:

- A. Disclosing, using, or benefitting from customer information, including the

name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a customer's account (including a bank account, credit card, debit card, or other financial account or other Billing Information), of any person that was obtained by any Defendant in connection with the advertising, promoting, marketing, offering for sale, selling, or distributing of any good or service, through the date of entry of this Order; and

- B. Failing to destroy such customer information in all forms in their possession, custody, or control within thirty (30) days after receipt of written direction to do so from a representative of the Commission. *Provided, however,* that customer information need not be disposed of, and may be disclosed, to the extent requested by a government agency or required by a law, regulation, or court order.

V.

MONETARY JUDGMENT AND CONSUMER RESTITUTION

IT IS FURTHER ORDERED that:

- A. Judgment in the amount of nine million, five hundred twelve thousand, one hundred seventy-two dollars (\$9,512,172) is entered in favor of the FTC and against Defendants, jointly and severally, as equitable monetary relief.
- B. In partial satisfaction of the monetary judgment, within fifteen (15) days of

entry of this Order, Defendant Kyle Wood shall deliver to the Receiver, or his designated representative, possession of the 2006 Mercedes E-350 identified in Defendant Kyle Wood's financial statement dated July 28, 2011. Upon the Receiver's request, Defendant Kyle Wood shall promptly transfer title to the vehicle to the Receiver or his designated transferee. The Receiver or his designated agent shall sell the vehicle and add the proceeds from the sale to the receivership estate. Any transfer fees, taxes, or other payments mandated from a transferor by law shall be paid from the proceeds of the sale at the time the vehicle is sold.

- C. In partial satisfaction of the monetary judgment, within fifteen (15) days of entry of this Order, Defendant Mark Berry shall deliver to the Receiver, or his designated representative, possession of the following vehicles, identified in Defendant Mark Berry's financial statement dated July 29, 2011:

1. 2011 Nissan Maxima;
2. 2007 KTM Road Bike, registration number 103099035;
3. 2004 Suzuki Motorcycle;
4. 2010 KTM Dirt bike; and
5. 2010 BMW Motorcycle, registration number 111673973.

Upon the Receiver's request, Defendant Mark Berry shall promptly transfer title to these vehicles to the Receiver or his designated transferee. The Receiver or his designated agent shall sell the vehicles and add the proceeds from the sale to the receivership estate. Any transfer fees, taxes, or other payments mandated from a transferor by law shall be paid from the proceeds of

the sales at the time the vehicles are sold.

D. In partial satisfaction of the monetary judgment, the following frozen assets held by third parties in the name of, or for the benefit of, Defendants shall be transferred to the Commission as follows:

1. Within fifteen (15) days of receiving notice of this Order, Zions Bank, its parent corporation, subsidiaries, principals, and agents shall transfer to the Commission by wire transfer, in accordance with instructions to be provided by the Commission, all funds in the name of, or for the benefit of, Defendants, including but not limited to:
 - a. Account No. xxxxx4762, held in the name of Kyle and Alaina Wood; and
 - b. Account No. xxxxx2387, held in the name of Mark Berry.

2. Within fifteen (15) days of receiving notice of this Order, Deseret First Credit Union, its parent corporation, subsidiaries, principals, and agents shall transfer to the Commission by wire transfer, in accordance with instructions to be provided by the Commission, all funds in the name of, or for the benefit of, Defendants, including but not limited to:

Account No. xx1717, held in the name of Kyle and Alaina Wood.

3. Within fifteen (15) days of receiving notice of this Order, Wells Fargo Bank, its parent corporation, subsidiaries, principals, and agents shall transfer to the Commission by wire transfer, in accordance with

instructions to be provided by the Commission, all funds in the name of, or for the benefit of, Defendants, including but not limited to:

Account No. xxxxxx1559, held in the name of Mark Berry.

4. Within fifteen (15) days of receiving notice of this Order, Mountain America, its parent corporation, subsidiaries, principals, and agents shall transfer to the Commission by wire transfer, in accordance with instructions to be provided by the Commission, all funds in the name of, or for the benefit of, Defendants, including but not limited to:

Account No. xxx3127, held in the name of Mark Berry.

5. Within fifteen (15) days of receiving notice of this Order, E-Trade, its parent corporation, subsidiaries, principals, and agents shall transfer to the Commission by wire transfer, in accordance with instructions to be provided by the Commission, all funds in the name of, or for the benefit of, Defendants, including but not limited to:

Account No. xxxx-0341, held in the name of Mark Berry.

6. Within fifteen (15) days of receiving notice of this Order, Edward Jones, its parent corporation, subsidiaries, principals, and agents shall transfer to the Commission by wire transfer, in accordance with instructions to be provided by the Commission, all funds in the name of, or for the benefit of, Defendants, including but not limited to:

Account No. xxx-xxx17-1-5, held in the name of Mark Berry.

- E. In the event that it is necessary to execute additional documents to transfer or liquidate assets of any Defendants under this Order, or to dissolve and wind down the Receivership Defendants, Defendants shall execute such documents within three (3) days of a written request from the Receiver or the Commission.
- F. All money paid to the Commission pursuant to this Order may be deposited into a fund administered by the FTC or its designee to be used for equitable relief, including consumer redress and any attendant expenses for the administration of any redress fund. If a representative of the Commission decides that direct redress is wholly or partially impracticable or money remains after redress is completed, the Commission may apply any remaining money for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendants' practices as alleged in the Complaint. Any money not used for such equitable relief is to be deposited with the United States Treasury as disgorgement. Defendants shall have no right to challenge any actions the Commission or its representative may take pursuant to this Section.

VI.

**CONTINUATION OF RECEIVERSHIP TO WIND DOWN RECEIVERSHIP
ESTATE AND LIQUIDATE ASSETS**

IT IS FURTHER ORDERED that Brian McDowell continues as Receiver for the Receivership Defendants, with the full power of an equity receiver, for the purpose of taking the necessary steps to wind down the businesses of the Receivership Defendants, liquidate the assets of the Receivership Defendants, liquidate any other assets transferred to the Receiver, and pay any net proceeds to the FTC to satisfy the monetary judgment in this Order. The Receiver shall be the agent of this Court, and solely the agent of this Court, in acting as Receiver under this Order. The Receiver shall be accountable directly to this Court, and is authorized and directed to:

- A. Continue to exercise full control over the Receivership Defendants and continue to collect, marshal, and take custody, control, and possession of the receivership estate with full power to collect, receive, and take possession of all goods, chattels, rights, credits, monies, effects, lands, leases, books and records, limited partnership records, work papers, and records of accounts, including computer-maintained information, contracts, financial records, monies on hand in banks and other financial institutions, and other papers and documents of other individuals, partnerships, or corporations whose interests are now held by or under the direction, possession, custody, or control of the Receivership Defendants;
- B. Make payments and disbursements from the receivership estate that are

necessary or advisable for carrying out the directions of, or exercising the authority granted by, this Order. The Receiver shall apply to the Court for prior approval of any payment of any debt or obligation incurred by the Receivership Defendants prior to the date of entry of the temporary restraining order in this action, except payments that the Receiver deems necessary or advisable to secure and liquidate assets of the Receivership Defendants, such as rental payments or payment of liens;

- C. Provide the FTC, upon request, with any customer records or other business records of the Receivership Defendants;
- D. Continue to compromise, adjust, or otherwise dispose of any or all actions or proceedings instituted in the past or in the future against the Receiver in its role as Receiver, or against the Receivership Defendants, as the Receiver deems necessary and advisable to carry out the Receiver's mandate under this Order;
- E. Continue to perform all acts necessary or advisable to complete an accounting of the Receivership assets, and prevent unauthorized transfer, withdrawal, or misapplication of assets;
- F. Continue to maintain accurate records of all receipts and expenditures that he makes as Receiver;
- G. Continue to maintain bank accounts created as designated depositories for funds of the Receivership Defendants, and make all payments and disbursements from the Receivership estate from such an account;

- H. Perform all incidental acts that the Receiver deems advisable or necessary to execute his duties under this Order, including but not limited to: (1) the movement and storage of any equipment, furniture, records, files, or other physical property of the Receivership Defendants; and (2) the retention, employment, or dismissal of auctioneers or other professionals to assist in the liquidation of the Receivership Defendants' assets;
- I. Continue to cooperate with reasonable requests for information or assistance from any state or federal law enforcement agency;
- J. Dispose of, or arrange for the disposal of, the records of the Receivership Defendants, including transferring to the Commission, to the extent practicable, consumer contact information, including the consumers' names, addresses, telephone numbers, and e-mail addresses; and
- K. Distribute to the Commission, without further order of the Court, the funds received from the sale of the Assets.

VII.

COMPENSATION OF RECEIVER

IT IS FURTHER ORDERED that the Receiver and all personnel hired by the Receiver, including counsel to the Receiver and accountants, are entitled to reasonable compensation for the performance of duties pursuant to this Order and for the cost of actual out-of-pocket expenses incurred by them, from the assets now held by or in the possession or

control of the Receiver. The Receiver shall apply to the Court for approval of specific amounts of compensation and expenses and must not increase the hourly rates used as the bases for such fee applications without prior approval of the Court.

VIII.

RECEIVER'S FINAL REPORT AND DISBURSEMENT OF ASSETS

IT IS FURTHER ORDERED that

- A. The Receiver must complete all duties within one hundred twenty (120) days after entry of this Order, but any party or the Receiver may request that the Court extend the Receiver's term for good cause.
- B. No later than one hundred twenty (120) days from the date of the entry of this Order, the Receiver shall file and serve on the parties a report (the "Final Report") to the Court that details the steps taken to dissolve the receivership estate. The Final Report must include an accounting of the receivership estate's finances and total assets and a description of what other actions, if any, must be taken to wind down the receivership;
- C. No later than fifteen (15) days after submission of the Final Report, the Receiver shall file an application for payment of compensation and expenses associated with performance of his duties as Receiver;
- D. The Court will review the Final Report and any objections to the report and, absent a valid objection, will issue an order directing that the Receiver:

1. Pay the reasonable costs and expenses of administering the receivership, including compensation of the Receiver and the Receiver's personnel authorized by Section IX of this Order or other orders of this Court and the actual out-of-pocket costs incurred by the Receiver in carrying out its duties; and
 2. Pay all remaining funds to the FTC or its designated agent.
- E. If subsequent actions (such as the completion of tax returns or further actions to recover funds for the receivership estate) are appropriate, the Receiver shall file an additional report or reports (the "Supplemental Reports") describing the subsequent actions and a subsequent application for the payment of fees and expenses related to the subsequent actions.
- F. With Court approval, the Receiver may hold back funds for a specified period as a reserve to cover additional fees and costs related to actions to be addressed in a Supplemental Report. If the Receiver does not make a supplemental application for fees and expenses within the specified period, or if funds remain in the reserve fund after the payment of fees and expenses approved by the Court in response to such a supplemental application, all funds in the reserve fund shall be immediately paid to the FTC or its designated agent.

IX.

LIFTING OF ASSET FREEZE

IT IS FURTHER ORDERED that the freeze of Defendants' assets set forth in the Preliminary Injunction Order [Doc. 71], entered by this Court on August 19, 2011, shall be lifted to the extent necessary to transfer Defendants' assets consistent with this Order, and upon completion of all such transfers, shall be lifted permanently.

X.

ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Defendants obtain acknowledgments of receipt of this Order:

- A. Each Defendant, within seven (7) days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.
- B. For five (5) years after entry of this Order, each Individual Defendant or any business that such Defendant, individually or collectively with any other Defendants, is the majority owner or controls, directly or indirectly, and each Corporate Defendant, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives who have participated in offering payday loans, membership clubs, long-distance phone services, or credit-related goods or

services; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within seven (7) days of entry of this Order for current personnel. To all others, delivery must occur before they assume their responsibilities.

- C. From each individual or entity to which a Defendant delivers a copy of this Order, that Defendant must obtain, within thirty (30) days, a signed and dated acknowledgment of receipt of this Order.

XI.

COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Defendants make timely submissions to the Commission:

- A. One (1) year after entry of this Order, each Defendant must submit a compliance report, sworn under penalty of perjury.
1. Each Defendant must: (a) identify the primary physical, postal, and email address, and telephone number, as designated points of contact, that representatives of the Commission may use to communicate with Defendant; (b) identify all of that Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and

sales, and the involvement of any other Defendant (which Individual Defendants must describe if they know or should know due to their own involvement); (d) describe in detail whether and how that Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission;

2. Additionally, each Individual Defendant must: (a) identify all telephone numbers and all physical, postal, email, and Internet addresses, including all residences; (b) identify all business activities, including any business for which such Defendant performs services, whether as an employee or otherwise, and any entity in which such Defendant has any ownership interest; and (c) describe in detail such Defendant's involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership interest.

B. For fifteen (15) years following entry of this Order, each Defendant must submit a compliance notice, sworn under penalty of perjury, within fourteen (14) days of any change in the following:

1. Each Defendant must report any change in: (a) any designated point of contact; or (b) the structure of any Corporate Defendant or any entity that Defendant has any ownership interest in or controls directly or

indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

2. Additionally, each Individual Defendant must report any change in: (a) name, including aliases or fictitious name, or residence address; or (b) title or role in any business activity, including any business for which such Defendant performs services, whether as an employee or otherwise, and any entity in which such Defendant has any ownership interest, and identify the name, physical address, and Internet address of the business or entity.
- C. Each Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or any similar proceeding by or against such Defendant within fourteen (14) days of its filing.
 - D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____” and supplying the date, signatory’s full name, title (if applicable), and signature.

- E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to:

Associate Director for Enforcement
Bureau of Consumer Protection
Federal Trade Commission
1600 Pennsylvania Avenue NW
Washington, DC 20580

The subject line must begin: FTC v. Direct Benefits Group, X 110043.

XII.

RECORDKEEPING

IT IS FURTHER ORDERED that Defendants must create certain records for fifteen (15) years after entry of the Order and retain each such record for five (5) years. Specifically, Corporate Defendants and each Individual Defendant for any business in which that Defendant, individually or collectively with any other Defendants, is a majority owner or controls directly or indirectly, must create and maintain the following records:

- A. Accounting records showing the revenues from all goods or services sold;
- B. Personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name; addresses; telephone numbers; job title or position; dates of service; and, if applicable, the reason for termination;

- C. Records of all consumer complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;
- D. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission; and
- E. A copy of each unique advertisement or other marketing material.

XIII.

COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Defendants' compliance with this Order and any failure to transfer any assets as required by this Order:

- A. Within 14 days of receipt of a written request from a representative of the Commission, each Defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents for inspection and copying. The Commission is also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.
- B. For matters concerning this Order, the Commission is authorized to communicate directly with each Defendant. Defendant must permit representatives of the Commission to interview any employee or other person

affiliated with any Defendant who has agreed to such an interview. The person interviewed may have counsel present.

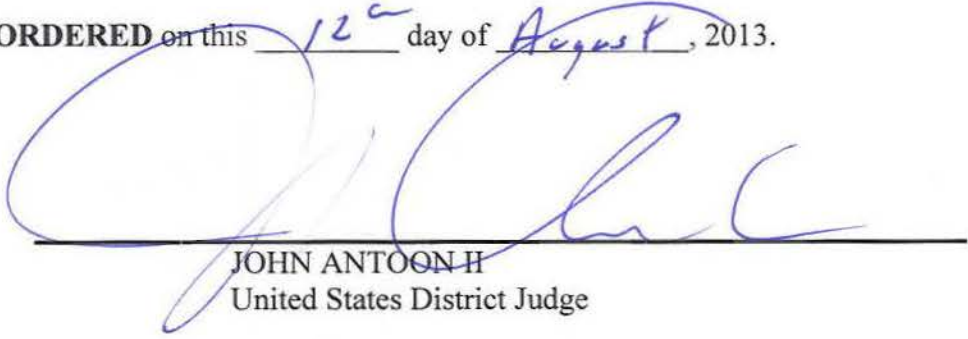
- C. The Commission may use all other lawful means, including posing, through its representatives, as consumers, suppliers, or other individuals or entities, to Defendants or any individual or entity affiliated with Defendants, without the necessity of identification or prior notice. Nothing in this Order limits 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.
- D. Upon written request from a representative of the Commission, any credit reporting agency must furnish consumer reports concerning Individual Defendants, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(1).

XIV.

RETENTION OF JURISDICTION

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

SO ORDERED on this 12th day of August, 2013.



JOHN ANTOON II
United States District Judge