

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FEDERAL TRADE COMMISSION;
the states and commonwealths of
ALABAMA, CALIFORNIA, COLORADO,
CONNECTICUT, DELAWARE, FLORIDA,
GEORGIA, ILLINOIS, INDIANA, IOWA,
KANSAS, KENTUCKY, LOUISIANA,
MAINE, MARYLAND, MASSACHUSETTS,
MICHIGAN, MISSOURI, MONTANA,
NEBRASKA, NEVADA, NEW HAMPSHIRE,
NEW JERSEY, NEW MEXICO, NEW YORK,
NORTH CAROLINA, OHIO, OKLAHOMA,
OREGON, PENNSYLVANIA, TENNESSEE,
TEXAS, UTAH, VIRGINIA, WASHINGTON,
WEST VIRGINIA, WISCONSIN, WYOMING;
and the DISTRICT OF COLUMBIA,

Case Number 21-10174
Honorable David M. Lawson

Plaintiffs,

v.

ASSOCIATED COMMUNITY SERVICES, INC.,
CENTRAL PROCESSING SERVICES, LLC,
COMMUNITY SERVICES APPEAL, LLC,
THE DALE CORP., DIRECTELE, INC.,
ROBERT WILLIAM BURLAND,
RICHARD T. COLE, AMY BURLAND,
BARBARA COLE, SCOT STEPEK,
NIKOLE GILSTORF, ANTONIO G. LIA,
and JOHN LUCIDI,

Defendants.

CONSENT JUDGMENT

On January 26, 2021, the United States Federal Trade Commission, along with 38 states and the District of Columbia, commenced this civil action by filing a complaint alleging that the defendants illegally and deceptively procured tens of millions of dollars in bogus donations from hundreds of millions of Americans, through more than 1.3 billion unsolicited telephone calls. The 167-page pleading charges that the defendants' conduct violated dozens of state and federal

statutes regulating telecommunications and consumer trade, and the plaintiffs sought preliminary and permanent injunctive relief, monetary awards of civil penalties authorized by the numerous statutes that were violated, and recovery of their costs and attorney fees.

The parties have filed stipulations severally to resolve all of the claims against various groups of defendants. The Court has reviewed the pleadings and the parties' statements of stipulated facts. The glossary of terms specified by the parties and the facts admitted by their mutual consent are incorporated herein and relied upon by the Court in making the following findings. *See* Stipulation for Entry of Consent Judgment (ECF No. 47). The Court finds based on the representations of the parties that it has subject matter jurisdiction over the federal claims pleaded in the complaint and supplemental jurisdiction via 28 U.S.C. § 1367 over the state law claims. The Court finds that it has personal jurisdiction over each of the defendants, all of whom have consented to be bound by the judgment of this Court. The Court has considered the terms of the parties' proposed settlement and finds that it is a fair, adequate, and reasonable resolution of a genuine controversy between them, the agreed injunctive relief and monetary penalties comprise reasonable redress for the grievances alleged, and the public interest favors approval. The Court further finds that it should retain jurisdiction to enforce the terms of this Consent Judgment.

Accordingly, judgment hereby is entered in favor of the plaintiffs against Defendant John Lucidi, and all of the following is **ORDERED AND ADJUDGED**:

I. BAN ON FUNDRAISING

Defendant Lucidi is permanently restrained and enjoined from Fundraising or providing Fundraising Services to any Nonprofit Organization, whether directly or indirectly. This includes controlling, directly or indirectly, holding an ownership interest in, or receiving any payment or other financial benefit from any Person engaged in Fundraising or the provision of Fundraising Services.

II. BAN ON ROBOCALLS

Defendant Lucidi is permanently restrained and enjoined from:

A. Initiating, causing others to initiate, or assisting others in initiating, any Outbound Telephone Call that plays or delivers a prerecorded message, including, but not limited to, any Outbound Telephone Call that uses soundboard technology to play prerecorded audio clips, whether acting directly or through an intermediary, unless Defendant Lucidi proves that such prerecorded message was delivered for the purpose of compliance with 16 C.F.R. § 310.4(b)(4)(iii);

B. Controlling, holding a managerial post in, consulting for, serving as an officer, having any revenue sharing agreement with, or holding any ownership interest, share, or stock in any company that engages in conduct prohibited in Subsection II.A above. Provided, however, that it is not a violation of this Consent Judgment to own a non-controlling interest in a publicly-traded company that engages in such conduct.

III. PROHIBITION AGAINST ABUSIVE CALLING PRACTICES

Defendant Lucidi, Defendant Lucidi's officers, agents, employees, and all other Persons in active concert or participation with him, who receive actual notice of this Consent Judgment, whether acting directly or indirectly, in connection with Telemarketing, are permanently restrained and enjoined from engaging in, causing others to engage in, or assisting others to engage in, any of the following practices:

A. Causing any telephone to ring, or engaging any Person in telephone conversation, repeatedly or continuously with intent to annoy, abuse, or harass any Person at the called number;
or

B. Initiating any Outbound Telephone Call to a Person when that Person has previously stated that he or she does not wish to receive a telephone call from the Person initiating the call or the Person on whose behalf the call is initiated.

IV. PROHIBITION AGAINST MISREPRESENTATIONS

Defendant Lucidi, Defendant Lucidi's officers, agents, employees, and all other Persons in active concert or participation with him, who receive actual notice of this Consent Judgment, whether acting directly or indirectly, in connection with promoting or offering for sale any good or service, or soliciting a Contribution, are permanently restrained and enjoined from misrepresenting, or assisting others in misrepresenting, expressly or by implication:

- A. The nature or purpose of any good, service, or Contribution, or the nature, purpose or mission of any Person on whose behalf Defendant Lucidi is soliciting Contributions;
- B. That any Contribution is tax deductible, in whole or in part;
- C. The purpose for which any Contribution will be used;
- D. The percentage or amount of any Contribution that will go to any Person or to any particular program or activity of the Person on whose behalf Contributions are being solicited; and
- E. Any fact material to consumers' decisions concerning any good or service or the use of a Contribution by any Person.

V. MANDATORY DISCLOSURE THAT CONTRIBUTIONS ARE NOT TAX DEDUCTIBLE

Defendant Lucidi, Defendant Lucidi's officers, agents, employees, and all other Persons in active concert or participation with him, who receive actual notice of this Consent Judgment, whether acting directly or indirectly, in connection with soliciting for Contributions that are not tax-deductible, are permanently restrained and enjoined from failing to disclose, Clearly and

Conspicuously, and prior to requesting any Contribution, orally or in writing, that any such Contribution is not deductible for federal and/or state income tax purposes as a charitable donation.

VI. PROHIBITION ON VIOLATING THE TELEMARKETING SALES RULE

Defendant Lucidi, Defendant Lucidi's officers, agents, and employees, and all other Persons in active concert or participation with him, who receive actual notice of this Consent Judgment, whether acting directly or indirectly, are permanently restrained and enjoined from engaging in, causing others to engage in, or assisting others engaging in violating the Telemarketing Sales Rule, 16 C.F.R. Part 310.

VII. COMPLIANCE WITH STATE LAW

Defendant Lucidi, Defendant Lucidi's officers, agents, employees, and all other Persons in active concert or participation with him, who receive actual notice of this Consent Judgment, whether acting directly or indirectly, in connection with the sale of any good or service or soliciting Contributions to Nonprofit Organizations, are permanently restrained and enjoined from violating, causing others to violate, or assisting others in violating any provision

VIII. COOPERATION

Defendant Lucidi:

A. Shall cooperate fully with Plaintiffs' representatives in this case, including in any investigation into compliance by any of the Defendants with this Consent Judgment, and in any investigation related to or associated with the conduct, transactions, occurrences, telephone calls, pre-recorded messages, or Persons that are the subject of the Complaint. Defendant Lucidi must provide truthful and complete information, evidence, and testimony. Defendant Lucidi must appear for interviews, discovery, hearings, trials, and any other proceedings that any Plaintiff's representative may reasonably request upon seven days' written notice, or other reasonable notice,

at such places and times as each Plaintiff's representative may designate, without the service of a subpoena.

B. Further, to assist the Plaintiffs with any investigation related to or associated with the transactions or the occurrences that are the subject of the Complaint, and with monitoring Defendant Lucidi's compliance with this Consent Judgment, Defendant Lucidi consents, for purposes of the Electronic Communications Privacy Act, in relevant part at 18 U.S.C. §§ 2701-2712, to the disclosure by electronic communications service providers and remote computing service providers of the contents of his auto-dialed, Telemarketing, or prerecorded telephone communications and records or other information pertaining to his auto-dialed, Telemarketing, or prerecorded telephone communications. Defendant Lucidi further agrees to execute, within five days of a request from any Plaintiff's representative, any forms or other documents evidencing his consent that may be required by such electronic communications service providers or remote computing service providers.

IX. DONOR INFORMATION

Defendant Lucidi and Defendant Lucidi's officers, agents, employees, and all other Persons in active concert or participation with him, who receive actual notice of this Consent Judgment, are permanently restrained and enjoined from directly or indirectly:

A. Disclosing, using, or benefitting from any information about any Donor solicited by Defendants ACS, CPS, and CSA, including the name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a Donor's account (including a credit card, bank account, or other financial account);

B. Failing to destroy such Donor information in all forms in their possession, custody, or control within 10 days after entry of this Consent Judgment; and

C. Failing to provide a sworn statement certifying they have destroyed such Donor information in all forms in their possession, custody, or control within 15 days after entry of this Consent Judgment.

Provided, however, that Donor information need not be disposed of, and may be disclosed, to the extent requested by a government agency or required by law, regulation, or court order.

X. MONETARY JUDGMENT AND PARTIAL SUSPENSION

Judgment hereby is entered against Defendant Lucidi as follows:

A. Judgment in the amount of One Hundred Ten Million Sixty-Three Thousand Eight Hundred Forty-Three Dollars and no cents (\$110,063,843.00) is entered in favor of Plaintiffs against Defendant Lucidi as equitable monetary relief.

B. Defendant Lucidi shall pay Twenty-five Thousand Dollars and no cents (\$25,000.00). This sum will be paid to one or more charities as a Contribution as set forth below, following subsequent motion by the State Plaintiffs and order of this Court.

C. Defendant Lucidi stipulates that his undersigned counsel holds the monies owed pursuant to Paragraph X.B in a client trust account for no purpose other than payment to the Florida Department of Legal Affairs Escrow Fund (“Florida Escrow Fund”).

D. The monies owed by Defendant Lucidi and held in a client trust account by his undersigned counsel shall be transferred within three (3) days of entry of this Consent Judgment to the Florida Escrow Fund, which shall hold this amount for no purpose other than future payment to one or more charities as a Contribution, unless otherwise ordered by this Court. This transfer shall be made by wire transfer, cashier’s check, or other certified funds made payable to the Florida Department of Legal Affairs Escrow Fund.

E. Upon completion of all payments and requirements described in Paragraphs X.C and X.D, the remainder of the judgment is suspended, subject to Paragraphs X.F and X.H.

F. Plaintiffs' agreement to the suspension of part of the judgment is expressly premised upon the truthfulness, accuracy, and completeness of Defendant Lucidi's sworn financial statements and related documents (collectively referred to as "Financial Representations") submitted to the Plaintiffs, namely:

1. Financial statement of John Lucidi, executed on February 26, 2020;
2. Supplemental attachments to the February 26, 2020 financial statement, including bank statements and tax returns, produced by Defendant Lucidi's undersigned counsel to the Commission on March 16, 2020;
3. Statements of financial position for Phoenix Outreach Group, Inc., dated December 31, 2019 and April 30, 2020, produced by Defendant Lucidi's undersigned counsel to the Commission on May 19, 2020; and
4. The sworn declaration of Defendant John Lucidi, executed on December 23, 2020.

G. The suspension of the judgment will be lifted if, upon motion by any Plaintiff, the Court finds that Defendant Lucidi failed to disclose any material asset, materially misstated the value of any asset, or made any other material misstatement or omission in the Financial Representations identified above.

H. If the suspension of the judgment is lifted, the judgment becomes immediately due in the amount specified in Paragraph X.A (which the parties stipulate only for purposes of this Section represents the consumer injury that the Complaint alleges was caused by ACS, CPS, and CSA, and for which Defendant Lucidi is jointly and severally liable), less any payment previously made by Defendant Lucidi pursuant to this Section, or by ACS, CPS, CSA, Robert William "Bill" Burland, Richard "Dick" T. Cole, Amy Burland, Barbara Cole, Nikole Gilstorf (a/k/a Nikole Luton

and/or Nikole Dicks), Antonio “Tony” Lia, and Scot Stepek pursuant to any other order entered in connection with this matter, plus interest computed from the date of entry of this Consent Judgment.

I. Payments on the judgment shall be made to the Florida Escrow Fund if the Court has not approved one or more charities to receive the Contribution pursuant to Paragraph X.J. Such payments shall be made by wire transfer, cashier’s check, or other certified funds made payable to the Florida Department of Legal Affairs Escrow Fund. If the Court has approved one or more charities to receive a Contribution pursuant to Paragraph X.J, then any such payments shall be made to the approved charities.

J. The State Plaintiffs shall identify one or more charities to recommend to this Court as suitable to receive the Contribution. Within 90 days of entry of this Consent Judgment, the State Plaintiffs shall submit to this Court a motion and proposed order recommending one or more recipients for the Contribution, the amount to be paid to any approved recipient, and the manner and timeframe for such payment. All monies paid by Defendant Lucidi and held in the Florida Escrow Fund shall be distributed only as authorized and directed by this Court. Defendant Lucidi shall have no right to challenge any recommendations regarding any Contribution or monetary distribution made by the State Plaintiffs.

K. Defendant Lucidi understands that any Contribution to a charity described herein is being made in lieu of consumer restitution and not on behalf of Defendant Lucidi. Therefore, Defendant Lucidi stipulates that he will not claim any tax deduction, credit, or other benefit related to any Contribution to a charity discussed in this Consent Judgment.

XI. ADDITIONAL MONETARY PROVISIONS

A. Defendant Lucidi relinquishes dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Consent Judgment and may not seek the return of any assets.

B. The facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil or administrative litigation by or on behalf of any Plaintiff, including in a proceeding to enforce the right to any payment or monetary judgment pursuant to this Consent Judgment, such as a nondischargeability complaint in any bankruptcy case, and in any bond enforcement action by any State Plaintiff.

C. The facts alleged in the Complaint establish all elements necessary to sustain an action by any Plaintiff pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Consent Judgment will have collateral estoppel effect for such purposes.

D. Defendant Lucidi acknowledges that his Social Security Number, which he previously submitted to Plaintiffs, may be used for collecting and reporting on any delinquent amount arising out of this Consent Judgment, in accordance with 31 U.S.C. § 7701.

XII. JUDGMENT ACKNOWLEDGMENTS

Defendant Lucidi shall acknowledge receipt of this Consent Judgment as follows:

A. Defendant Lucidi, within seven days of entry of this Consent Judgment, must submit to Plaintiff Federal Trade Commission an acknowledgment of receipt of this Consent Judgment sworn under penalty of perjury.

B. For 15 years after entry of this Consent Judgment, Defendant Lucidi, for any business that he, individually or collectively with any other Defendant named in this matter, is the majority owner or controls directly or indirectly, must deliver a copy of this Consent Judgment to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees having

managerial responsibilities for Telemarketing and all agents and representatives who participate in Telemarketing; 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 days of entry of this Consent Judgment for current personnel. For all others, delivery must occur before they assume their responsibilities.

C. From each individual or entity to which Defendant Lucidi delivered a copy of this Consent Judgment, Defendant Lucidi must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Consent Judgment.

XIII. COMPLIANCE REPORTING

Defendant Lucidi shall make timely submissions to the Federal Trade Commission and, on behalf of the State Plaintiffs, to the Office of the Michigan Attorney General, according to the following terms:

A. One year after entry of this Consent Judgment, Defendant Lucidi must submit a compliance report, sworn under penalty of perjury:

1. Defendant Lucidi must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission and the State Plaintiffs may use to communicate with Defendant Lucidi; (b) identify all of Defendant Lucidi'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 or Telemarketing conducted, the means of advertising, marketing, sales, and Telemarketing, and the involvement of any other Defendant (which Defendant Lucidi must describe if he knows or should know due to his own involvement); (d) describe in detail whether and how Defendant Lucidi is in compliance with each Section of this Consent Judgment; and (e) provide a copy of each Consent Judgment Acknowledgment obtained pursuant to this Consent

Judgment, unless previously submitted to the FTC and the Office of the Michigan Attorney General.

2. Additionally, Defendant Lucidi 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 Defendant Lucidi performs services whether as an employee or otherwise, and any entity in which Defendant Lucidi has any ownership interest; and (c) describe in detail Defendant Lucidi's involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership.

B. For 15 years after entry of this Consent Judgment, Defendant Lucidi must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

1. Defendant Lucidi must report any change in: (a) any designated point of contact; or (b) the structure of any Corporate Defendant or any entity that Defendant Lucidi has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Consent Judgment, 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 Consent Judgment.

2. Additionally, Defendant Lucidi 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 Defendant Lucidi performs services whether as an employee or otherwise, and any entity in which Defendant Lucidi has any ownership interest, and identify the name, physical address, and any Internet address of the business or entity.

C. Defendant Lucidi must submit to the Commission and to the Office of the Michigan Attorney General notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Defendant within 14 days of its filing.

D. Any submission required by this Consent Judgment 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 Consent Judgment 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
600 Pennsylvania Avenue NW
Washington, DC 20580

The subject line must begin: FTC, et al. v. Associated Community Services, Inc., et al., Case No. _____.

F. Unless otherwise directed by a representative of the Office of the Michigan Attorney General in writing, all submissions to the Office of the Michigan Attorney General pursuant to this Consent Judgment must be emailed to AG-COD@michigan.gov or sent to:

Michigan Department of Attorney General
Corporate Oversight Division
PO Box 30736
Lansing, MI 48909

The subject line must begin: FTC, et al. v. Associated Community Services, Inc., et al. Case No. _____.

G. Defendant Lucidi expressly consents to the sharing of any and all documents submitted as part of his compliance reporting to any Plaintiff with all other Plaintiffs.

XIV. RECORDKEEPING

Defendant Lucidi must create certain records for 15 years after entry of the Consent Judgment and retain each such record for five years. Specifically, for any business that Defendant Lucidi, individually or collectively with any other Defendant, is a majority owner or controls directly or indirectly, must create and retain the following records:

A. Accounting records showing the revenues from all goods or services sold, or Telemarketing;

B. Personnel records showing, for each individual providing services, whether as an employee or otherwise, that individual's name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;

C. Records of all consumer or Donor 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 Consent Judgment, including all submissions to the Commission and to the Office of the Michigan Attorney General;

E. A copy of each unique advertisement or other marketing material; and

F. Defendant Lucidi shall provide any records created and retained as a result of this Consent Judgment to any Plaintiff upon request within 10 days of the receipt of such request.

XV. COMPLIANCE MONITORING

For the purpose of monitoring Defendant Lucidi's compliance with this Consent Judgment, and any failure to transfer any assets as required by this Consent Judgment Defendant Lucidi shall comply with the following compliance monitoring procedures:

A. Within 14 days of receipt of a written request from a representative of any Plaintiff, Defendant Lucidi 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. Each Plaintiff 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. Nothing in this Consent Judgment limits any Plaintiff's lawful demand for documents or other evidence pursuant to applicable law.

B. For matters concerning this Consent Judgment, each Plaintiff is authorized to communicate directly with Defendant Lucidi. Defendant Lucidi must permit representatives of any Plaintiff to interview any employee or other individual affiliated with Defendant Lucidi who has agreed to such an interview. The individual interviewed may have counsel present.

C. Any Plaintiff may use all other lawful means, including posing, through its representatives as consumers, donors, suppliers, or other individuals or entities, to Defendant Lucidi or any individual or entity affiliated with Defendant Lucidi, without the necessity of identification or prior notice. Nothing in this Consent Judgment 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, nor limits State Plaintiffs' lawful use of relevant state laws governing pre-suit investigation and discovery.

D. Upon written request from a representative of any Plaintiff, any consumer 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).

XVI. STATE COURT ENFORCEMENT

Without limiting any other provisions of this Consent Judgment, each State Plaintiff shall have the authority to enforce or seek sanctions for violations of this Consent Judgment

independently in a court of general jurisdiction in its state, if that State Plaintiff has reason to believe that Persons in its state have been or will be affected. No approval from any other Plaintiff is required. Defendant Lucidi consents to any such state court's jurisdiction for purposes of enforcing the terms of this Consent Judgment.

XVII. RETENTION OF JURISDICTION

The Court retains jurisdiction over this matter for purposes of construction, modification, and enforcement of this Consent Judgment **through March 30, 2036**. Any party may file a motion on or before that date either to extend or shorten the term for the Court's retention of jurisdiction, setting forth good grounds showing why further Court supervision is or is not required.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: March 31, 2021