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12
13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA

15
16 FEDERAL TRADE COMMISSION,

17 Plaintiff

18 v.

19 NATIONAL SUPPLY & DISTRIBUTION
CENTER, INC., a corporation, et al.,
20 Defendants.

CV-99-12828 HLH (AJWx)

21 STIPULATED ORDER FOR
22 PERMANENT INJUNCTION
AND SETTLEMENT OF
23 CLAIMS FOR MONETARY
RELIEF AS TO
24 DEFENDANTS NATIONAL
SUPPLY AND
25 DISTRIBUTION CENTER,
INC., DATA
26 DISTRIBUTION SERVICES,
INC., AND STEVEN
27 RAYMAN

28 Plaintiff, the Âé¶¹´«Ã½ Trade Commission ("FTC" or
"Commission"), filed a complaint on December 7, 1999 seeking a
permanent injunction and other equitable relief, pursuant to
Sections 13(b) and 19 of the Âé¶¹´«Ã½ Trade Commission Act ("FTC
Act"), 15 U.S.C. §§ 53(b), 57(b), and Section 6(b) of the

1 Telemarketing and Consumer Fraud and Abuse Prevention Act, 15
2 U.S.C. § 6105(b), against defendants National Supply and
3 Distribution Center Inc. ("NSDC"), Data Distribution Services,
4 Inc. ("DDS"), and Steven Rayman ("Rayman"). On April 25, 2000,
5 plaintiff filed a second amended complaint naming Larry Ellis, Lee
6 Siegel, and Scott Earl as additional defendants.

7 Now the Commission and defendants NSDC, DDS, and Rayman agree
8 to a settlement of this action, including violations alleged in
9 the second amended complaint of the FTC Act and the FTC's
10 Telemarketing Sales Rule, without trial or adjudication of any
11 issue of law or fact herein. The Commission and defendants NSDC,
12 DDS, and Rayman consent to entry of this Stipulated Order for
13 Permanent Injunction and Settlement of Claims for Monetary Relief
14 ("Order").

15 **FINDINGS**

16 1. This is an action by the Commission instituted under
17 Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b,
18 and Section 6(b) of the Telemarketing and Consumer Fraud and Abuse
19 Prevention Act, 15 U.S.C. § 6105(b).

20 2. The Court has jurisdiction over the subject matter of
21 this case, and jurisdiction over the defendants NSDC, DDS and
22 Rayman. Venue in the Central District of California is proper as
23 to NSDC, DDS and Rayman.

24 3. The complaint states a claim upon which relief can be
25 granted as to defendants NSDC, DDS and Rayman.

26 4. The Commission has the authority under Sections 13(b)
27 and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and Section
28 6(b) of the Telemarketing and Consumer Fraud and Abuse Prevention

1 Act, 15 U.S.C. § 6105(b), to seek the relief it has requested
2 against defendants NSDC, DDS and Rayman.

3 5. The activities of defendants NSDC, DDS and Rayman
4 described in the complaint are in or affecting commerce, as
5 defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

6 6. Nothing in this Order shall be construed as a finding or
7 a conclusion of law that the defendants engaged in any violation
8 of law or fraud, misrepresentation, breach of fiduciary duty, or
9 gross negligence committed in a professional capacity, except as
10 noted in Paragraphs V.D. and VI. of this Order.

11 7. Entry of this Order is in the public interest.

12 **DEFINITIONS**

13 A. "Defendants" shall refer inclusively to NSDC, DDS and
14 Rayman, and any combination thereof.

15 B. "Document" is synonymous in meaning and equal in scope
16 to the usage of the term in Rule of Civil Procedure 34(a),
17 and includes writings, drawings, graphs, charts, photographs,
18 audio and video recordings, computer records, and other data
19 compilations from which information can be obtained and
20 translated, if necessary, through detection devices into
21 reasonably usable form. A draft or non-identical copy is a
22 separate document within the meaning of the term.

23 C. "Consumer" means any person, including any individual,
24 group, unincorporated association, limited or general partnership,
25 corporation or other business entity.

26 D. "Telemarketing" means any business activity (which
27 includes, but is not limited to, initiating or receiving telephone
28 calls, managing others who initiate or receive telephone calls,

1 operating an enterprise that initiates or receives telephone
2 calls, owning an enterprise that initiates or receives telephone
3 calls, or otherwise participating as an officer, director,
4 employee or independent contractor in an enterprise that initiates
5 or receives telephone calls), that involves attempts to induce
6 consumers to purchase any item, good, service, partnership
7 interest, trust interest or other beneficial interest, or to enter
8 a contest for a prize, by means of telephone sales presentations,
9 either exclusively or in conjunction with the use of other forms
10 of marketing. *Provided* that the term "telemarketing" shall not
11 include transactions that are not completed until after a face-to-
12 face contact between the seller or solicitor and the consumer
13 solicited.

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

23 F. The terms "and" and "or" have both conjunctive and
24 disjunctive meanings.

25 G. "Employment" includes any affiliation with any business,
26 including the performance of services as an officer, owner,
27 manager, supervisor, employee, consultant, or independent
28 contractor; and "Employer" includes any and all individuals or

1 entities for whom defendant Rayman performs services as an
2 employee, consultant, or independent contractor.

3 H. A requirement that any defendant "notify the Commission"
4 shall mean that the defendant, or his counsel, shall send the
5 necessary information via first-class mail, costs prepaid, to the
6 Associate Director for $\hat{A}é\mathbb{1}'\langle\tilde{A}\frac{1}{2}$, $\hat{A}é\mathbb{1}'\langle\tilde{A}\frac{1}{2}$ Trade Commission, 600
7 Pennsylvania Avenue NW, Washington, D.C. 20580. Attn: FTC v.
8 NSDC, Inc. et al., No. 99-12828 HLH (AJWx) (U.S. Dist. Ct., C.D.
9 Cal.).

10 I. BAN ON TELEMARKETING

11 **IT IS HEREBY ORDERED** that defendants, whether acting directly
12 or through any corporation, limited liability company, subsidiary,
13 division or other device, are hereby permanently restrained and
14 enjoined from engaging or participating in telemarketing, or
15 assisting others who are engaging or participating in
16 telemarketing. Provided however, that this prohibition shall not
17 apply to legal services defendant Rayman provides in response to
18 requests of a legal client or to contracts for legal services to
19 be provided by defendant Rayman in response to requests of a legal
20 client, solely in the context of an attorney/client relationship
21 with such client.

22 II. PROHIBITED BUSINESS ACTIVITIES

23 A. **IT IS FURTHER ORDERED** that, in connection with the
24 advertising, marketing, promoting, offering for sale, or sale of
25 any good or service, defendants, and their agents, servants,
26 employees, and all persons or entities directly or indirectly
27 under their control, and all other persons or entities in active
28 concert or participation with any one of them, who receive actual

1 notice of this Order by personal service or otherwise, are hereby
2 permanently restrained and enjoined from:

3 1. Misrepresenting, expressly or by implication, that
4 any consumer, or any consumer's employee or other representative,
5 ordered any good or service that was shipped, provided, and/or
6 billed to the consumer;

7 2. Misrepresenting, expressly or by implication, any
8 association with a consumer's regular supplier or provider of a
9 good or service, or any association with the manufacturer of any
10 product or equipment used by the consumer in conjunction with a
11 good or service;

12 3. Misrepresenting, expressly or by implication, any
13 previous business transactions including any previous sales of any
14 goods or services;

15 4. Misrepresenting, expressly or by implication, a
16 consumer's obligation to pay for any goods or services or
17 attendant charges or fees;

18 5. Misrepresenting, expressly or by implication, the
19 price of goods or services; or

20 6. Misrepresenting, expressly or by implication, any
21 other fact material to a consumer's decision to buy or accept a
22 good or service.

23 B. **IT IS FURTHER ORDERED** that defendants and their agents,
24 servants, employees, and all persons or entities directly or
25 indirectly under their control, and all other persons or entities
26 in active concert or participation with any one of them, who
27 receive actual notice of this Order by personal service or
28 otherwise, are hereby permanently restrained and enjoined from:

1 1. Violating Section 310.3(a)(4) of the Telemarketing
2 Sales Rule, 16 C.F.R. § 310.3(a)(4), by making false or misleading
3 statements to induce any consumer to pay for goods or services,
4 including statements that:

5 a. they are a consumer's regular supplier of
6 office supplies or associated with the manufacturer or
7 vendor of a consumer's photocopier;

8 b. the price of the office supplies used by a
9 consumer is about to increase substantially;

10 c. a consumer will be charged the same price for
11 office supplies that the consumer has been paying;

12 d. a consumer ordered the office supplies that
13 were shipped or billed to the consumer; and

14 e. if a consumer wants to return an unordered
15 shipment or a shipment ordered on the basis of false or
16 misleading statements, the consumer has an obligation to
17 pay a restocking fee;

18 2. Violating Section 310.4(d)(1) of the Telemarketing
19 Sales Rule, 16 C.F.R. § 310.4(d)(1), by failing in outbound
20 telephone calls to disclose promptly and in a clear and
21 conspicuous manner the identity of the seller;

22 3. Violating Section 310.4(d)(2) of the Telemarketing
23 Sales Rule, 16 C.F.R. § 310.4(d)(2), by failing in outbound
24 telephone calls to disclose promptly and in a clear and
25 conspicuous manner that the purpose of the call is to sell goods
26 or services;

27 4. Violating Section 310.3(b) of the Telemarketing
28 Sales Rule, 16 C.F.R. § 310.3(b), by providing substantial

1 assistance or support to any seller or telemarketer when that
2 person knows or consciously avoids knowing that the seller or
3 telemarketer is engaged in any act or practice that violates
4 Section 310.3(a) or Section 310.4 of the Telemarketing Sales Rule,
5 16 C.F.R §§ 310.3(a) or 310.4; or

6 5. Violating or assisting others in violating any
7 other provision of the Telemarketing Sales Rule, 16 C.F.R. Part
8 310.

9 A copy of the Telemarketing Sales Rule is appended to this
10 Order as Attachment A and is incorporated herein as if fully
11 rewritten. In the event that the Telemarketing Sales Rule is
12 amended by the Commission in a manner which would create a new or
13 different standard applicable to defendants' obligations under
14 this Order, defendants' compliance with the Telemarketing Sales
15 Rule as so amended shall not be deemed a violation of this Order.

16 **III. PROHIBITIONS AGAINST DISTRIBUTION OF CUSTOMER LISTS**

17 **IT IS FURTHER ORDERED** that defendants, and their agents,
18 servants, employees, and all persons or entities directly or
19 indirectly under their control, and all other persons or entities
20 in active concert or participation with any one of them, who
21 receive actual notice of this Order by personal service or
22 otherwise, are permanently restrained and enjoined from selling,
23 renting, leasing, transferring or otherwise disclosing the name,
24 address, telephone number, credit card number, bank account number
25 or other identifying information of any person who paid any money
26 to defendants NSDC or DDS at any time, in connection with the
27 offering for sale or sale of any good or service; **provided,**
28 **however,** that defendants may disclose such identifying information

1 to a law enforcement agency or as required by any law, regulation
2 or court order, and shall disclose such identifying information to
3 the Commission pursuant to this Order.

4 **IV. ACKNOWLEDGMENT OF RECEIPT OF ORDER AND REAFFIRMATION OF**
5 **FINANCIAL STATEMENT**

6 **IT IS FURTHER ORDERED** that, within five (5) business days
7 after entry of this Order, defendant Rayman shall submit to the
8 Commission a truthful sworn and notarized statement, in the form
9 shown on Appendix 1, that shall acknowledge receipt of this Order
10 as entered and shall reaffirm and attest to the truthfulness,
11 accuracy, and completeness of defendant Rayman's January 28, 2000
12 financial statement. The Commission is authorized to verify all
13 information provided in the financial statement with all
14 appropriate third parties, including, but not limited to,
15 financial institutions.

16 **V. MONETARY JUDGMENT**

17 **IT IS FURTHER ORDERED** that:

18 **A.** Solely for the purpose of entry of this Order,
19 defendants NSDC and DDS are jointly and severally liable for
20 payment of equitable monetary relief, including, but not limited
21 to, consumer redress and the cost of any attendant expenses of
22 administration of any redress fund, in the amount of \$7,616,657.
23 This liability does not attach to defendant Rayman in his
24 individual or corporate capacity.

25 **B.** Solely for the purpose of entry of this Order in the
26 amount of \$400,000, defendant Rayman shall pay the Commission
27 \$400,000 by wire transfer or certified or cashier's check within
28 90 days of the date of entry of this Order. In the event of any

1 default in payment, which default continues for ten (10) days
2 beyond the due date of payment, the entire unpaid amount, together
3 with interest, as computed pursuant to 28 U.S.C. § 1961, from the
4 date of default to the date of
5 payment, shall immediately become due and payable.

6 C. Any assets collected by the Commission pursuant to the
7 this Paragraph of this Order shall be deposited into an account to
8 be maintained by the Commission or its agent. Upon the final
9 disposition of this action, such funds shall be either (1) used to
10 provide consumer redress and any administrative costs associated
11 with providing such redress; or (2) paid to the U.S. Treasury as
12 equitable disgorgement, if the Commission in its sole discretion
13 deems that consumer redress is impractical. If the Commission in
14 its sole discretion determines that consumer redress is practical,
15 it shall submit a plan for the disbursement of funds to the Court
16 for review and approval. Defendants shall have no right to
17 contest the manner of distribution chosen by the Commission.
18 Defendants forever disclaim all right, title, and interest in all
19 sums paid to plaintiff. None of these funds shall be returned to
20 any of the defendants, their successors, heirs, or assigns.

21 D. Defendants further agree that the facts as alleged in
22 the Commission's complaint in this action shall be taken as true
23 in the event of any subsequent litigation to collect amounts due
24 pursuant to this Order, including but not limited to a
25 nondischargeability complaint in any bankruptcy proceeding.

1
2 **VI. RIGHT TO REOPEN**

3 **IT IS FURTHER ORDERED** that the Commission's agreement to this
4 Order with respect to defendant Rayman is expressly premised upon
5 the truthfulness, accuracy and completeness of defendant Rayman's
6 January 28, 2000 financial statement. Said financial statement
7 contains material information upon which the FTC has relied in
8 negotiating and agreeing to the terms of this Order. If, upon
9 motion by the Commission to the Court, the Court finds that
10 defendant Rayman failed to submit to the Commission the sworn
11 statement required by Paragraph IV of this Order, or failed to
12 disclose any material asset with a value exceeding \$1,000, or
13 materially misrepresented the value of any asset, or made any
14 other material misrepresentation in or omission from his financial
15 statement described above, the Court shall enter judgment for
16 consumer redress in the amount of \$7,616,657 against defendant
17 Rayman in favor of the Commission, less any amount previously
18 received from any defendant in this action, unless defendant
19 Rayman proves that any and all such omissions or
20 misrepresentations were unintentional. Defendant Rayman has no
21 right to contest any of the allegations in the Commission's
22 complaint in this matter in any proceeding brought pursuant to
23 this paragraph, but he can introduce evidence that any alleged
24 material misrepresentation or omission made by him in his
25 financial statement was unintentional. If the financial statement
26 failed to disclose a material asset or materially misrepresented
27 the value of an asset, and if defendant Rayman proves that any and
28 all such omissions or misrepresentations were unintentional, the
Court shall order that defendant Rayman turn over to the

1 Commission any and all omitted assets or the fair market value of
2 such omitted assets, or, if the value of an asset was
3 misrepresented, the difference in the actual fair market value and
4 the value given in the financial statement; provided, however,
5 that in all other respects this Order shall remain in full force
6 and effect unless otherwise ordered by this Court.

7 **VII. RECORD-KEEPING**

8 **IT IS FURTHER ORDERED** that, for a period of three years from
9 the date of entry of this Order, defendants and their agents,
10 servants, employees, attorneys, and all other persons or entities
11 in active concert or participation with them, who receive actual
12 notice of this Order by personal service or otherwise, are hereby
13 restrained and enjoined from failing to create, and to retain, in
14 a location under their control, for a period of three (3) years
15 following the date of such creation, unless otherwise specified:

16 A. Books, records of cash disbursements and receipts, bank
17 and other financial account statements, and accountants' reports
18 that, in reasonable detail, accurately reflect the assets and
19 liabilities, owners' equity, sources of revenue, expenses, and
20 disposition of assets for all business entities owned, managed, or
21 controlled by defendants, directly or indirectly;

22 B. Records that accurately reflect: the name, address, and
23 telephone number of each person employed in any capacity by
24 defendants, directly or indirectly, or through any business owned,
25 managed or controlled by defendants, directly or indirectly,
26 including as an independent contractor; that person's job title or
27 position; the date upon which the person commenced work; and the
28 date and reason for the person's termination, if applicable. The

1 parties subject to this Section shall retain such records for any
2 terminated employee for a period of two (2) years following the
3 date of termination;

4 C. Records about any transaction between (1) defendants,
5 directly or indirectly, or through any business owned, managed or
6 controlled by defendants, directly or indirectly and (2) any
7 customer, such records to include the following: the customer's
8 name; his or her address; his or her telephone number; a
9 description of the good, service, or interest purchased; the
10 dollar amounts the customer paid; the sales agent; and the date of
11 the sale;

12 D. Records that reflect, for every complaint or refund
13 request by any customer of defendants, directly or indirectly, or
14 by any customer of any business owned, managed or controlled by
15 defendants, directly or indirectly whether such complaint or
16 refund request is received directly or indirectly or through any
17 third party:

18 (1) the customer's name, address, telephone number and
19 the dollar amount paid by the customer;

20 (2) the written complaint, if any, and the date of the
21 complaint or refund request;

22 (3) the basis of the complaint, including but not
23 limited to the name of any salesperson or agent
24 complained against, and the nature and result of any
25 investigation conducted concerning the validity of the
26 complaint;

27 (4) each response and the date of the response;

28 (5) any final resolution and the date of the

1 resolution; and

2 (6) in the event of a denial of a refund request, the
3 reason for such denial, or if the complaint was cured,
4 the basis for determining that the complaint was cured;

5 E. Copies of all sales scripts, training materials,
6 advertisements, or other marketing materials utilized;

7 F. The requirements of this Part of this Order shall not
8 apply to any professional business entity through which defendant
9 Rayman provides legal services in response to requests for legal
10 services by legal clients, solely in the context of an
11 attorney/client relationship with such clients.

12 **VIII. MONITORING OF DEFENDANT RAYMAN**

13 **IT IS FURTHER ORDERED** that, in order to monitor compliance
14 with this Order:

15 A. Defendant Rayman or his counsel shall provide to the
16 Commission, within five days of the entry of this Order, a
17 statement signed by defendant Rayman of (1) his residence address
18 and mailing address; (2) his telephone number(s); (3) the name,
19 address and telephone number of his employer; (4) the full names
20 of his employer's principals; (5) if applicable, the names of his
21 supervisors; and (6) a description of his employer's activities,
22 and defendant Rayman's duties and responsibilities;

23 B. One hundred and twenty days (120) days after the date of
24 entry of this Order, defendant Rayman or his counsel shall provide
25 a written report to the Commission, signed by defendant Rayman
26 under penalty of perjury, detailing (1) his residence address and
27 mailing address; (2) his telephone number(s); (3) the name,
28 address and telephone number of his employer; (4) the full names

1 of his employer's principals; (5) if applicable, the names of his
2 supervisors; (6) a description of his employer's activities and
3 defendant Rayman's duties and responsibilities; and (7) his past
4 and present efforts to comply with the provisions of this Order;

5 C. For a period of three years from the date of entry of
6 this Order, defendant Rayman shall notify the Commission within
7 ten days of any changes in his residence or mailing addresses or
8 employment status. Notice of changes in his employment status
9 shall include: (1) the new employer's name, address and telephone
10 number; (2) the full names of the employer's principals; (3) if
11 applicable, the names of defendant Rayman's supervisors, and (4) a
12 description of the employer's activities, and defendant Rayman's
13 duties and responsibilities. Such notice may be provided by
14 counsel but must be signed by defendant Rayman;

15 D. For a period of three years from the date of entry of
16 this Order, defendant Rayman shall notify the Commission of any
17 proposed change in the structure of any and every business entity
18 of which defendant Rayman is the majority owner, or which he
19 otherwise controls, such as creation, incorporation, dissolution,
20 assignment, sale, merger, creation or dissolution of subsidiaries,
21 proposed filing of a bankruptcy petition, or change in the
22 business or corporate name or address, or any other change that
23 may affect compliance obligations arising out of this Order,
24 thirty days prior to the effective date of any proposed change;
25 *provided, however,* that this requirement shall not apply to any
26 professional business entity through which defendant Rayman
27 provides legal services in response to requests for legal services
28 by legal clients, solely in the context of an attorney/client

1 relationship with such clients; *provided further* that, with
2 respect to any proposed change in the business entity about which
3 defendant learns less than thirty days prior to the date such
4 action is to take place, defendant Rayman shall notify the
5 Commission as soon as is practicable after learning of such
6 proposed change.

7 **IX. ACCESS TO BUSINESS PREMISES**

8 **IT IS FURTHER ORDERED** that, for a period of three years from
9 the date of entry of this Order, defendants shall permit
10 representatives of the Commission, within seven days of receipt of
11 written notice from the Commission:

12 A. access during normal business hours to any office, or
13 facility storing documents, of any and every business entity of
14 which defendant Rayman is the majority owner, or which he
15 otherwise controls, and of any business owned by defendants NSDC
16 or DDS or of which NSDC or DDS is a principal, director, officer,
17 partner, or other controlling party, to inspect and copy all
18 documents belonging to such business or defendant, relating in any
19 way to any matter subject to this Order; and shall permit
20 Commission representatives to remove documents relating in any way
21 to any matter subject to this Order for a period not to exceed
22 five business days so that the documents may be inspected,
23 inventoried, and copied. *Provided*, that defendants and their
24 counsel may be present during the Commission's access to such
25 business premises pursuant to this Section, and *provided further*,
26 that defendants may apply, with appropriate notice to the
27 Commission, for a protective order limiting the Commission's
28 access to documents pursuant to this Section based on privilege or

1 other appropriate grounds;

2 B. refrain from interfering with any duly authorized
3 representatives of the Commission interviewing employers,
4 employees (whether designated as employees, consultants,
5 independent contractors or otherwise), or agents, about any matter
6 relating in any way to any matter subject to this Order;

7 C. upon written request by any duly authorized
8 representative of the Commission, submit written reports (under
9 oath, in requested), and produce documents, on forty-eight hours
10 notice, relating in any way to any matter subject of this Order;

11 D. the requirements of this Paragraph shall not apply to
12 any professional business entity through which defendant Rayman
13 provides legal services in response to requests for legal services
14 by legal clients, solely in the context of an attorney/client
15 relationship with such clients.

16 **X. FTC'S AUTHORITY TO MONITOR COMPLIANCE**

17 **IT IS FURTHER ORDERED** that the Commission is authorized to
18 monitor the compliance of defendants with this Order by all lawful
19 means, including but not limited to the following means:

20 A. The Commission is authorized, without further leave of
21 court, to obtain discovery from any person in the manner provided
22 by Chapter V of the 1963 Rules of Civil Procedure, Fed. R. Civ.
23 P. 26-37, including the use of compulsory process pursuant to Fed.
24 R. Civ. P. 45, for the purpose of monitoring and investigating the
25 compliance of defendant Rayman with this Order;

26 B. The Commission is authorized to use representatives
27 posing as consumers and suppliers to defendants, to the employees
28 of defendants, or to any other entity managed or controlled in

1 whole or in part by defendants, without the necessity of
2 identification or prior notice;

3 C. Nothing in this Order shall limit the Commission's
4 lawful use of compulsory process, pursuant to Sections 9 and 20 of
5 the FTC Act, 15 U.S.C. §§49, 57b-1, to investigate whether
6 defendants have violated any provision of this order or Section 5
7 of the FTC Act, 15 U.S.C. §45, or the Commission's Telemarketing
8 Sales Rule, 16 C.F.R. Part 310;

9 D. For purposes of the compliance reporting required by
10 this section, the Commission is authorized to communicate directly
11 with defendant Rayman.

12 **XI. WAIVER OF CLAIMS**

13 Defendants waive all claims under the Equal Access to Justice
14 Act, 28 U.S.C. § 2412, *as amended by Pub. L. 104-121,*
15 *110 Stat. 847, 863-64 (1996),* and all rights to seek appellate
16 review or otherwise challenge or contest the validity of this
17 Order, or the temporary or preliminary orders entered in this
18 proceeding, and further waive and release any claim they may have,
19 based on facts about which they knew or should have known, against
20 the FTC, the Receiver, or their employees, agents, or
21 representatives.

22 **XII. APPEARANCE FOR TESTIMONY**

23 **IT IS FURTHER ORDERED** that defendant Rayman shall appear for
24 his deposition and trial or other hearing testimony in this
25 action, upon written, reasonable notice to his counsel of record,
26 without the service of a subpoena or payment of any witness fee,
27 and shall provide complete and truthful testimony, subject to
28 Rayman's constitutional rights. Defendant Rayman agrees to

1 provide, upon request of the Commission, complete and truthful
2 testimony by affidavit, subject to his constitutional rights.

3 **XIII. CONTINUATION OF RECEIVERSHIP**

4 **IT IS FURTHER ORDERED** that Jean Morris, Esq. shall continue
5 as permanent receiver for defendants NSDC and DDS, with full
6 powers of a permanent receiver, as set forth in the order for
7 preliminary injunction entered in this matter on December 16,
8 1999, and including full liquidation powers.

9 **XIV. ASSET FREEZE**

10 **IT IS FURTHER ORDERED** that the freeze of defendant Rayman's
11 assets, ordered in the preliminary injunction entered on December
12 16, 1999, shall be lifted in its entirety after payment of the
13 \$400,000 monetary settlement described in Paragraph V of this
14 Order and after execution of the sworn affidavit described in
15 Paragraph IV of this Order, and upon filing of a Notice of Payment
16 and Receipt of Sworn Affidavit by the Commission

17 **IT IS FURTHER ORDERED** that upon entry of this Order the asset
18 freeze shall be lifted to the extent necessary for the sole
19 purpose of satisfying the monetary settlement and that upon entry
20 of this Order the FTC shall forthwith expunge the lis pendens
21 previously filed on properties owned by defendant Rayman.

22 **XV. COSTS AND ATTORNEYS FEES**

23 **IT IS FURTHER ORDERED** that each party to this Order bear its
24 own costs and attorneys fees incurred in connection with this
25 action.

26 **XVI. RETENTION OF JURISDICTION**

27 **IT IS FURTHER ORDERED** that this Court shall retain
28 jurisdiction of this matter for purposes of construction,

1 modification and enforcement of this Order.

2 **XVII. ENTRY OF THIS ORDER**

3 **IT IS FURTHER ORDERED** that, pursuant to Rule of
4 Procedure 54(b), that there is no just reason for delay and the
5 Clerk of Court immediately shall enter this Order as final as to
6 defendants NSDC, DDS and Rayman.

7 **SO STIPULATED:**

8
9 _____
10 STEPHEN RAYMAN

11 APPROVED AS TO FORM
12 AND CONTENT

13 _____
14 JOHN M. POTTER (SBN 165843)
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Receiver for NATIONAL SUPPLY
& DISTRIBUTION CENTER, INC.
AND DATA DISTRIBUTION SERVICES, INC.

25 **IT IS SO ORDERED**

26
27 DATED: _____

HARRY L. HUPP
UNITED STATES DISTRICT JUDGE

1
2 **APPENDIX 1**

3 DEBRA A. VALENTINE
General Counsel
4 Âé¶¹´«Ã½ Trade Commission

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12 Attorneys for Plaintiff

13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA

15 FEDERAL TRADE COMMISSION,

16 Plaintiff

17 v.

18 NATIONAL SUPPLY & DISTRIBUTION
CENTER, INC., a corporation, et al.,

19 Defendants.

CV-99-12828 HLH
(AJWx)

20 DEFENDANT STEVEN
RAYMAN'S AFFIDAVIT
21 RE:
(1)ACKNOWLEDGMENT OF
SERVICE OF STIPULATED
ORDER FOR PERMANENT
INJUNCTION AND
SETTLEMENT OF CLAIMS
FOR MONETARY RELIEF;
AND
22 (2)REAFFIRMATION OF
JANUARY 28, 2000
23 FINANCIAL STATEMENT

24
25 Steven Rayman, being duly sworn, hereby states and affirms:

26 1. I am a defendant in the above-entitled action. My current
27 residence address is 3927 Black Bird Way, Calabasas, CA 91302. I
28 am a citizen of the United States and over the age of eighteen. I

1 have personal knowledge of the facts set forth in this Affidavit.

2 2. I have entered into a Stipulated Order for Permanent
3 Injunction and Settlement of Claims for Monetary Relief
4 ("Stipulated Order"). I read the provisions of the Stipulated
5 Order, including Attachment A (the Telemarketing Sales Rule, 16
6 C.F.R. Part 310) before signing it. I understand all the
7 provisions of the Stipulated Order and agree to be bound by the
8 Stipulated Order.

9 3. On _____, 2000, I received a copy of the Stipulated Order
10 which was signed by a United States District Judge and entered by
11 the Court on _____, 2000. A true and correct copy of the
12 Stipulated Order that I received, including Attachment A (the
13 Telemarketing Sales Rule), is appended to this affidavit. The
14 Stipulated Order, including Attachment A (the Telemarketing Sales
15 Rule), was _____ pages in length. I reviewed the document and
16 confirmed it was the document I had previously signed.

17 4. In January 2000 I provided to Plaintiff _____ Trade
18 Commission ("Commission") a completed and signed document titled
19 "Financial Statement of Individual Defendant" ("Financial
20 Statement"), which I dated January 28, 2000.

21 5. I understand that my Financial Statement contains material
22 information upon which the Commission relied in negotiating and
23 agreeing to the terms in the Stipulated Order related to my
24 payment of a monetary judgment of \$400,000.

25 6. I hereby reaffirm and attest to the truthfulness, accuracy,
26 and completeness of my January 28, 2000 Financial Statement.

27 7. I understand that if, upon motion by the Commission, the
28 Court finds that the Financial Statement I submitted failed to

1 disclose any material asset, or materially misrepresented the
2 value of any asset, or finds that I made any other material
3 misrepresentation in or omission from these documents, a judgment
4 amount of \$7,616,657 will be entered by the Court unless I prove
5 that any and all such misrepresentations or omissions were
6 unintentional. I also understand that if I prove that any and all
7 such misrepresentations or omissions were unintentional, the Court
8 will order me to turn over to the Commission any and all such
9 omitted assets or their fair market value, or, if an asset was
10 misrepresented, the difference in the actual fair market value and
11 the value given in the financial statement.

12
13 I declare under penalty of perjury under the laws of the United
14 States that the foregoing is true and correct. Executed on _____,
15 2000, at _____, California.

16
17 _____
18 Steven Rayman

19 State of _____, City of _____

20 Subscribed and sworn to before me this ___ day of _____, 2000.

21
22 _____
23 Notary Public
24 My Commission Expires:
25
26
27
28