

United States District Court

Southern District of Alabama
Charles R. Diard, Jr., Clerk of Court
113 St. Joseph Street
Mobile, AL 36602

To: **ALAN PHELPS**

Company :

Fax Number : **2025148742**

From : **United States District Court - Southern District of Alabama**

Fax Number : **334-694-4673**

Phone Number **334-690-2371**

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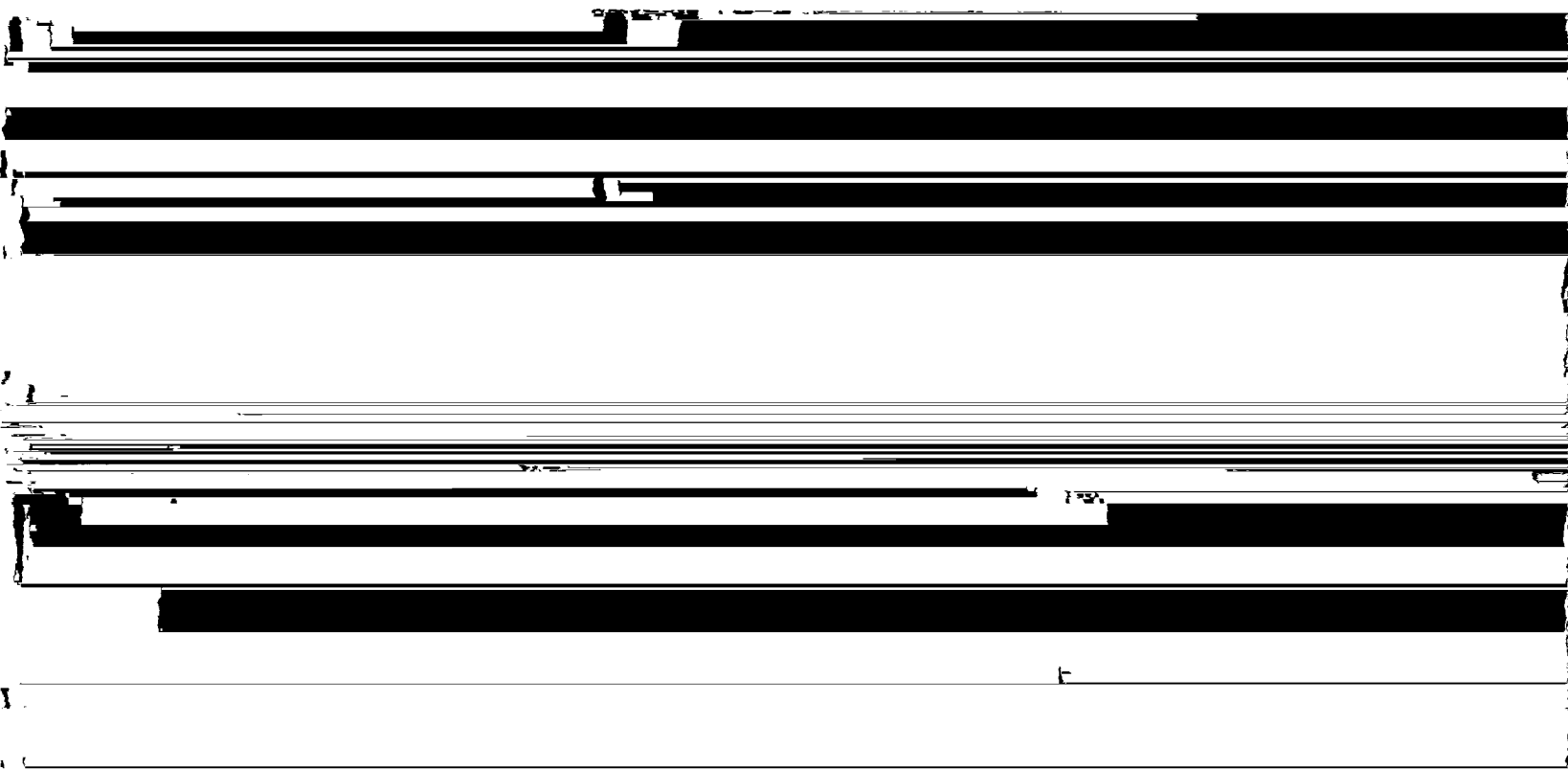
0122

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

UNITED STATES OF AMERICA,)
)
 PLAINTIFF,)
)
 v.)
)
 UNIVEND, LLC, an Alabama limited liability company,)
)
 and)
)
 PAUL HALL, individually and as an officer of the)
 corporation,)
)
 DEFENDANTS.)

Civil Action No.:
02-0433-P-L

FILED FEB 13 2003 PM 1 05 USDC ALS



represented by the attorneys whose names appear hereafter, have agree to settlement of this action without adjudication of any issue of fact or law, and without the Defendants admitting liability for any of the violations alleged in the Complaint.

~~WHEREFORE~~ on the joint motion of the parties, it is hereby ORDERED

ADJUDGED AND DECREED as follows:

FINDINGS

1 This Court has jurisdiction over the subject matter and the parties

5. Defendants have entered into this Stipulated Judgment and Order ("Order") freely and without coercion. Defendants further acknowledge that they

6. Plaintiff and Defendants hereby waive all rights to appeal or otherwise challenge or contest the validity of this Order.

7. Defendants have agreed that this Order does not entitle Defendants to seek or to obtain attorneys' fees as a prevailing party under the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended by Pub. L. 104-121, 110 Stat. 847, 863-

2. "Business Venture" means any written or oral business arrangement,

[REDACTED]

participant or purchaser:

- a) pays consideration for the right or means to offer, sell, or distribute goods or services (whether or not identified by a trademark, service mark, trade name, advertising, or other commercial symbol); and
- b) receives the promise of, or actual advice, instruction, or assistance

5. "Franchise" and "Franchisor" are defined as those terms are defined

in Sections 436.2(a) and (c) of the Franchise Rule, 16 C.F.R. § 436.2(a) - 16 C.F.R. § 436.2(c)

and include "business opportunity ventures" as defined in Sections 436.2(a)(1)(ii)

and (c) of the Rule, 16 C.F.R. § 436.2(a)(1)(ii) - 16 C.F.R. § 436.2(c)

8. "Representatives" means the Defendants' successors, assigns, officers, agents, servants, employees and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise.

9. "Telemarketing" means the advertising, offering for sale, or sale of ~~any good or service to any person by means of telephone sales presentations, either~~

exclusively or in conjunction with the use of other advertising.

10 "IFOC format" is defined as the Uniform Franchise Offering

A. Failing to provide any prospective franchisee with a complete and accurate basic disclosure document containing all the information in the form required by Sections 436.1(a)(1)-(24) of the Franchise Rule, in the manner and within the time frame prescribed by the Rule;

B. Failing to provide any prospective franchisee with an earnings claim document as required by Sections 436.1(b)-(e) of the Franchise Rule, in the

manner and within the time frame prescribed by the Rule;

Provided, however, that if the Commission promulgates a trade regulation

rule or rules that modify or supersede the Franchise Rule, in which case

[REDACTED]

- [REDACTED]
- B. The income, profit or sales volume actually achieved by prior purchasers;
 - C. The length of time that it is likely to take a purchaser to recoup the entire purchase price or investment;
 - D. The independence or authenticity of any third-party references, including persons represented to be prior purchasers, that are provided to potential purchasers;
 - E. The amount of competition within, or a purchaser's territorial rights to, any geographic territory;
 - F. The availability or existence of profitable locations in a purchaser's geographic area; and
 - G. The terms and conditions of any assurances, refunds or guarantees of profitability that relate to any location service or company to which a defendant refers a purchaser.

III. USE OF REFERENCES

IT IS FURTHER ORDERED that in connection with the advertising, telemarketing, offering for sale, licensing, contracting, sale or other promotion, in or affecting commerce of any Franchise Business Master Licensee

[REDACTED]

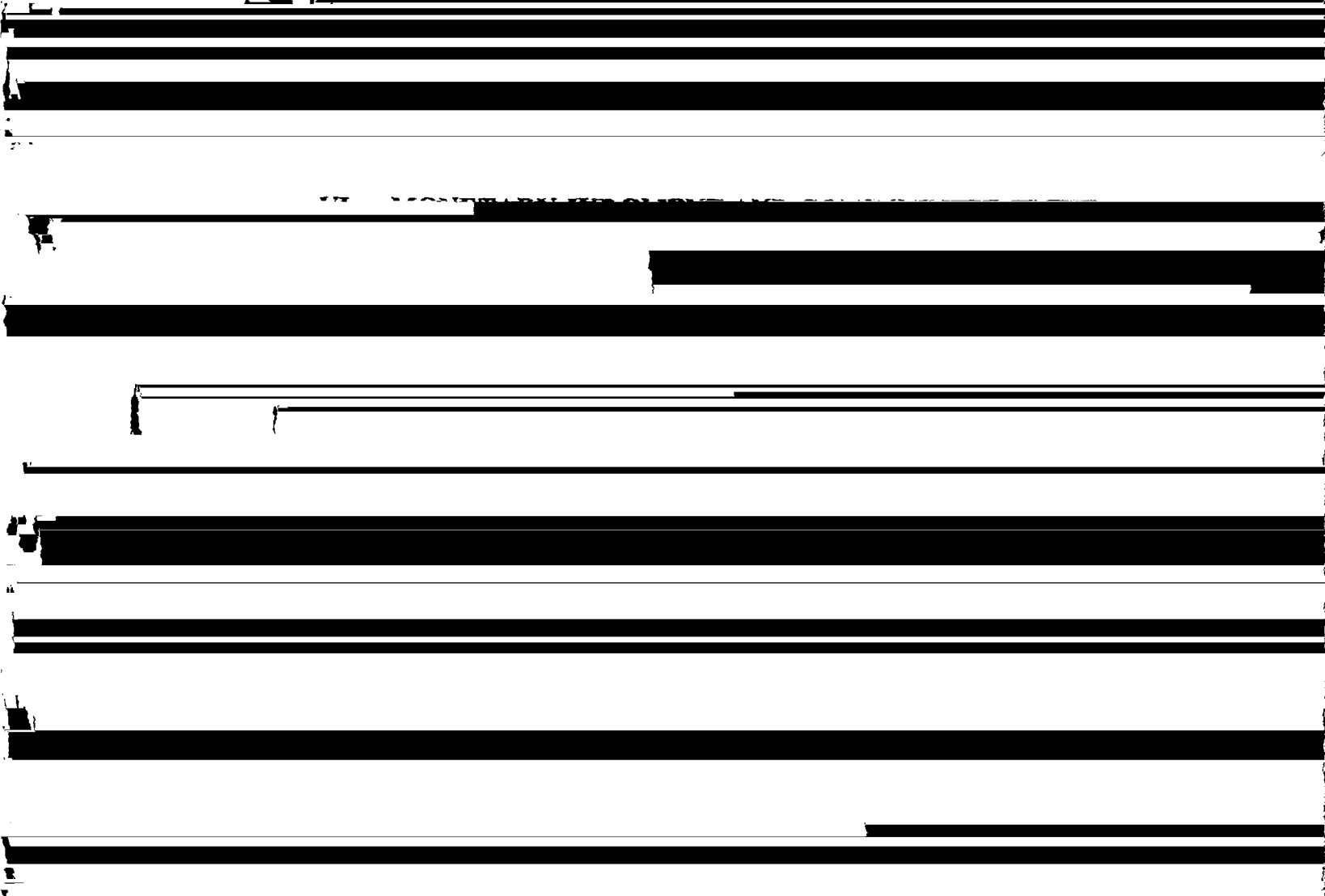
names of any references other than identifying previous purchasers as mandated by
the Franchise Rule in effect at the time of such advertising, telemarketing, offering

for sale, licensing, contracting, sale or other promotion. In the event Defendants
market any Franchise, Business Venture, or income-generating product or service

introduce any such product or service

transferring or otherwise disclosing the name, address, telephone number, credit card number, bank account number, e-mail address, or other identifying information of any person who paid any money to any Defendant at any time prior to entry of this Order, in connection with the advertising, promotion, telemarketing, offering for sale or sale of any Franchise, Business Venture or income-generating product or service; *provided, however*, that Defendants may disclose such identifying information to a law enforcement agency, or as required by any law, regulation (including the limited disclosures required by the Franchise

Rule 23 or court order



B. All funds paid pursuant to this Paragraph shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief

appropriate third parties, including but not limited to financial institutions.

D. In the event of default on the payment required to be made by this Paragraph, the entire monetary judgment, together with interest computed under 28

U.S.C. § 1961 accrued from the date of default until the date of payment shall

driver's licenses he possesses, which will be used for collection, reporting and compliance purposes.

G. Proceedings instituted under this Paragraph are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings the Plaintiff or Commission may initiate to enforce this Order.

H. Within thirty (30) days of entry of this Order, the Defendants shall notify each credit bureau to which either Defendant previously reported any non-payment by any of Defendants' customers or franchisees (with the intent or result that a negative item was placed on the customer's or franchisee's credit report) that such negative item should be removed from the customer's or client's credit report.

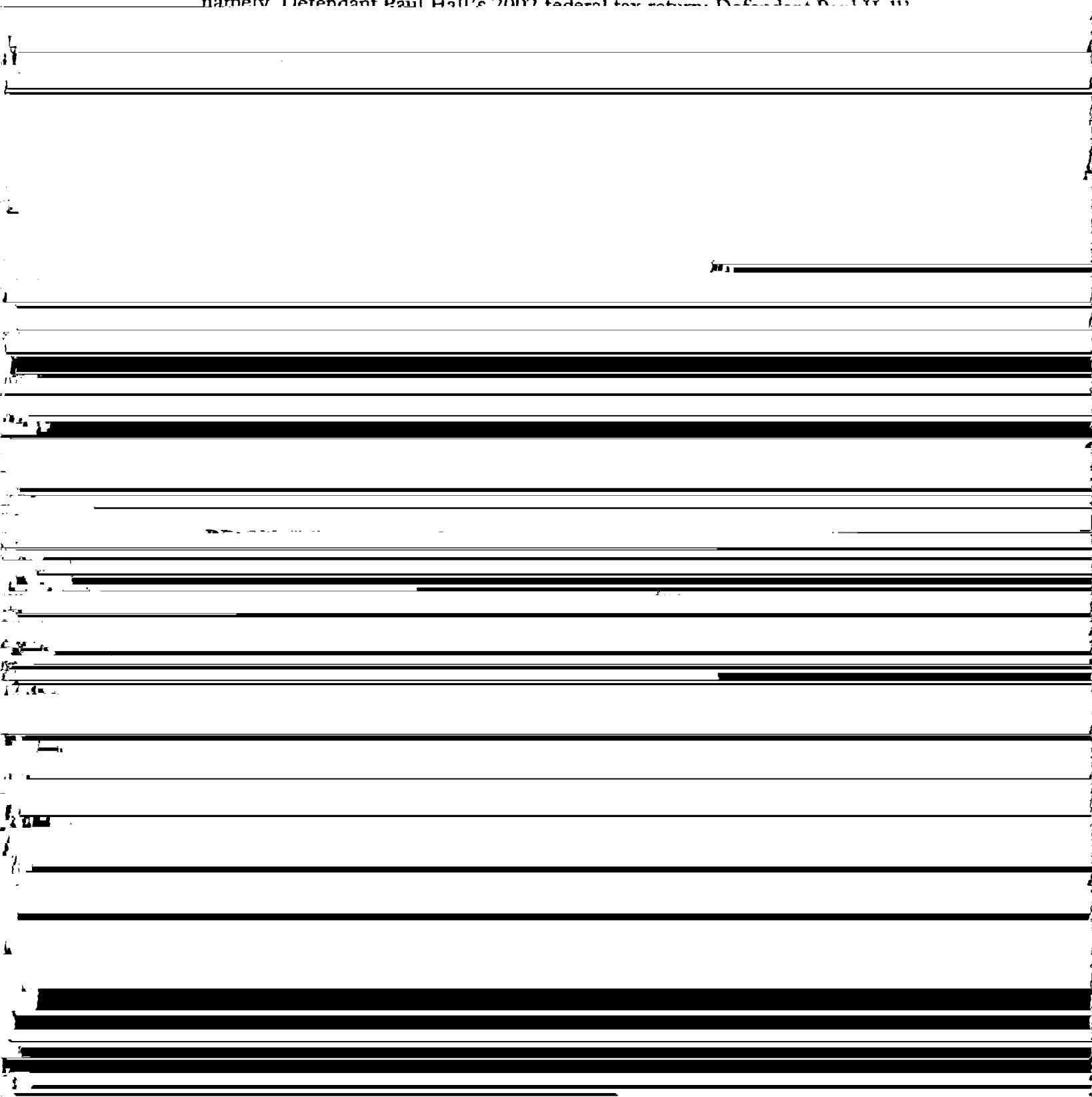
I. Defendants are enjoined from enforcing any judgment they obtained prior to entry of this Order against any customer or franchisee related to payment of amounts due to Defendants in connection with the sale of any franchise or business opportunity.

VII. ACCURACY OF FINANCIAL INFORMATION

IT IS FURTHER ORDERED that Plaintiff's and the Commission's agreement to and the Court's approval of this Order is expressly premised upon the

truthfulness, accuracy, and completeness of the financial statements and

information provided by each of the Defendants and their counsel to the Plaintiff;
namely Defendant Paul Hall's 2002 federal tax returns. Defendant Paul H. W.



**VIII. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY
DEFENDANTS**

IT IS FURTHER ORDERED that within five (5) business days of receipt of

the Order, the Defendant shall file with the Court

in support of the Order a truthful sworn statement in the form shown on Appendix A that

B. Maintain for a period of three (3) years after creation, and upon reasonable notice make available to representatives of Plaintiff or the Commission.

the original signed and dated acknowledgments of receipt of copies of this Order, as required in Subsection A of this Paragraph.

X. COMPLIANCE REPORTING BY DEFENDANTS

~~IT IS FURTHER ORDERED that in order that compliance with the~~

provisions of this Order may be monitored:

A. For a period of three (3) years after the date of entry of this Order, the Defendants shall notify the FTC in writing of the following:

- 1) Any changes in the residence, mailing addresses and telephone

any business entity that the Individual Defendant directly or indirectly manages, controls or has a majority ownership interest in, such as creation, incorporation, dissolution (including the dissolution of any subsidiaries), assignment, proposed filing of a bankruptcy petition, or sale or merger

resulting in the emergence of a successor corporation, or any other change in that entity, including a change in the corporate name or address, that may affect any compliance obligation arising out of this Order, at least thirty (30)

days prior to the effective date of any such change.

with respect to any proposed change in that

1) The Individual Defendant's then current residence address, mailing addresses and telephone numbers;

2) The Individual Defendant's then current employment and business

[REDACTED]

0433 P.L. in the Southern District of Alabama by Defendant Paul Yellow

Associate Director for Marketing Practices
Federal Trade Commission
600 Pennsylvania Ave. N.W. - Room 238
Washington, DC 20580

E. For the purposes of this Order, Defendants shall, unless otherwise directed by a representative of Plaintiff, identify all written notifications to Plaintiff as provided in reference to DJ# 102-3104, and mail them to:


Director, Office of Consumer Litigation
U.S. Department of Justice - Civil Division
P.O. Box 386
Washington, D.C. 20044

XI. MONITORING COMPLIANCE OF SALES PERSONNEL

IT IS FURTHER ORDERED that in connection with any business that any

Defendant directly or indirectly manages, controls or has a majority ownership interest in, that is engaged in the sale or distribution of any Franchise, Business Venture, or income-generating product or service, or assisting others engaged in these activities, Defendants and their Representatives are hereby permanently restrained and enjoined from:

A. Failing to take reasonable steps sufficient to monitor and ensure that all employees and independent contractors engaged in sales or other customer service functions comply with Paragraphs I, II, and III of this Order. Such steps shall include adequate monitoring of sales presentations or other calls with customers, and shall also include, at a minimum, the following:

- 1) Listening to the oral representations made by persons engaged in sales or other customer service functions;
 - 2) Establishing a procedure for receiving and responding to consumer complaints; and
 - 3) ~~Ascertaining the number and nature of consumer complaints regarding~~
-
- 

B. Failing promptly to investigate fully any consumer complaint received

by any business to which this Defendant

[REDACTED]

C. Failing to take corrective action with respect to any sales person

whom any Defendant or Representative determines is not compliant with this

[REDACTED]

Order, which may include training, disciplining, and/or terminating such sales person;

Provided, however, that this Paragraph XI does not authorize or require

[REDACTED]

A. Books, records and accounts that, in reasonable detail, accurately and

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

B. Records containing the name, address, telephone number and social

request, including the name of any salesperson complained about; (5) the nature and result of any investigation conducted concerning the complaint or refund request; (6) each response and the date of the response to the complaint or refund request; and (7) any final resolution of the complaint or refund request, and the date of the resolution; and (8) in the event of a denial of a refund request, the reason for the denial; and

E. Copies of all sales scripts, training materials, advertisements, or other marketing materials utilized, which shall be retained for three (3) years after the last date of their dissemination or use.

XIII. ACCESS TO BUSINESS PREMISES

IT IS FURTHER ORDERED that for a period of five (5) years from the date of entry of this Order, for the purposes of determining or securing compliance with its provisions, the Defendants and their Representatives shall grant to representatives of Plaintiff and the Commission, within three (3) business days of receipt of written notice from Plaintiff or the Commission:

A. Access during normal business hours to any office or facility storing documents of any business that any of the Defendants directly or indirectly manages, controls, or has a majority ownership interest in, that is engaged in the sale or distribution of any Franchise, Business Venture, or income-generating

product or service, or assisting others engaged in such activities. In providing such access, Defendants shall permit representatives of Plaintiff or the Commission to inspect and copy all documents relevant to any matter contained in this Order; and shall permit representatives of Plaintiff or the Commission to remove such documents for a period not to exceed five (5) business days so that the documents

may be inspected, inventoried, and copied; and

B. The opportunity to interview, without restraint or interference, officers, directors, employees, contractors, and agents, including all personnel involved in responding to consumer complaints or inquiries and all sales personnel, whether designated as employees, consultants, independent contractors,

XIV. AUTHORITY TO MONITOR COMPLIANCE

IT IS FURTHER ORDERED THAT...

[REDACTED]

promulgated and enforced by the Commission, including the Franchise Rule, 16
C.F.R. § 436.

bear its own costs and attorneys' fees incurred in connection with this action.

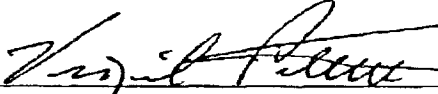
XVI. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that the Commission shall retain jurisdiction over this matter.

XVII. COMPLETE SETTLEMENT

The parties, by their respective counsel, hereby consent to entry of the foregoing Order which shall constitute a final judgment and order in this matter. The parties further stipulate and agree that the entry of the foregoing Order shall constitute a full, complete and final settlement of this action.


SO ORDERED this 13th day of Feb, _____.



HON. VIRGIL PITTMAN
Senior United States District Judge

FOR DEFENDANTS:

FOR PLAINTIFF:


PAUL H. HALL,
Individually and as President

ROBERT D. McCALLUM, JR.
Assistant Attorney General
Civil Division
U.S. Department of Justice

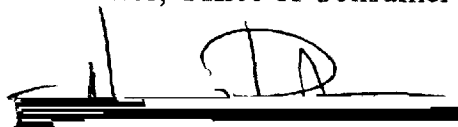


DAVID P. YORK
United States Attorney
Southern District of Alabama

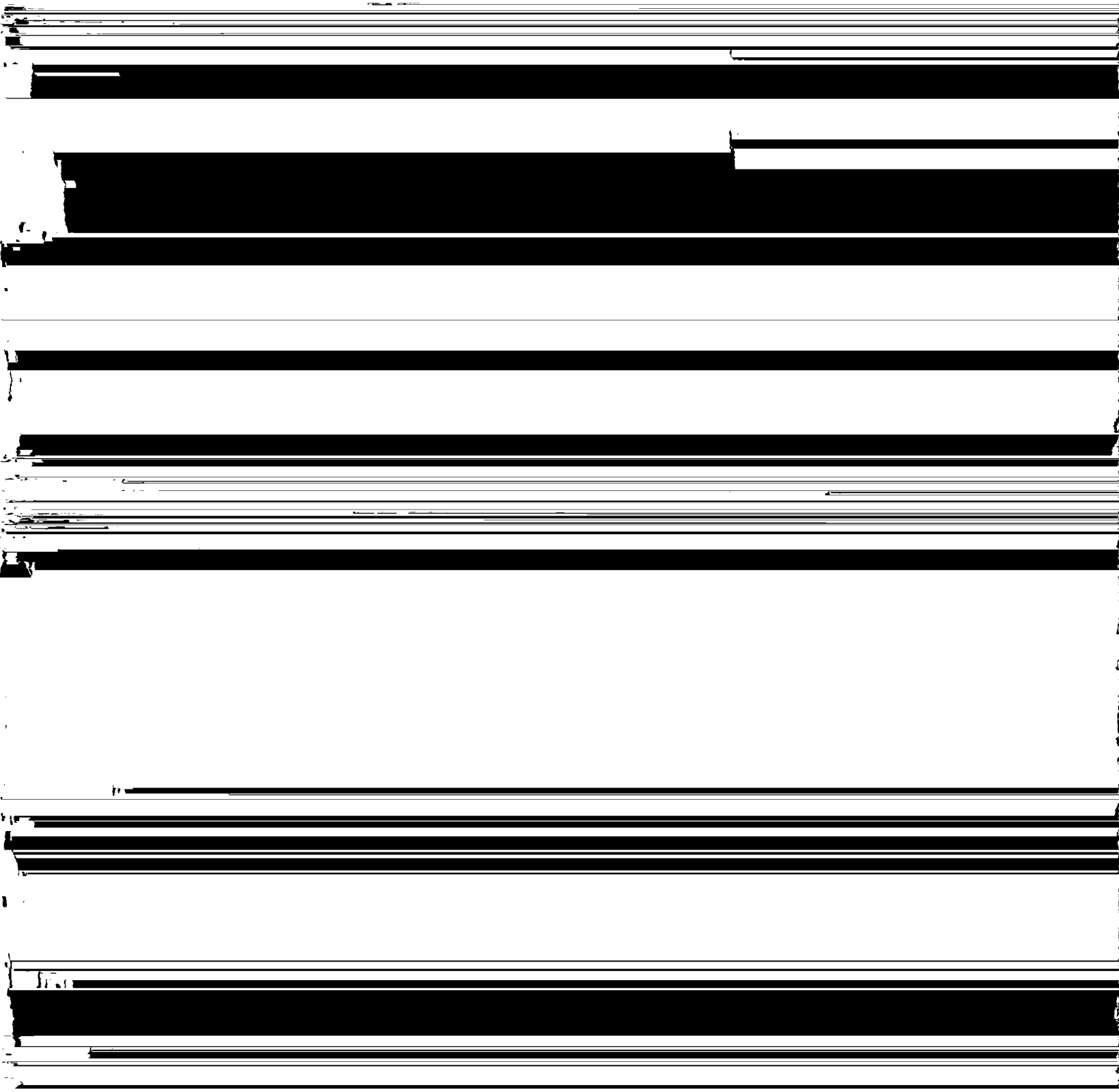
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Assistant United States Attorney
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EUGENE M. THIROLF
Director, Office of Consumer Litigation



APPENDIX A



[REDACTED]

of the facts set forth in this Affidavit

2. I am a Defendant in the above captioned case.

3. On _____, I received a copy of the Stipulated Order For

Permanent Injunction and Civil Penalties, which was signed by the U.S. District Court for the District of Columbia.