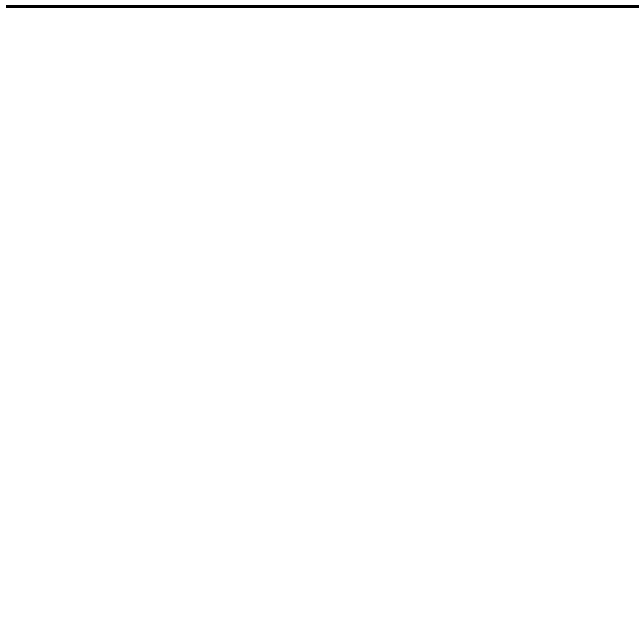


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1 relief pursuant to Section 13(b) of the Federal Trade Commission Act
2 ("FTC Act"), 15 U.S.C. § 53(b), charging defendants Productive
3 Marketing, Inc., dba Data Information Services, Data Services, and
4 National Property Services, and Matthew B. Hyman and Zachary A.
5 Hyman, also dba Formula Solutions and Foreclosure Solutions, and
6 Joshua Hyman, with deceptive acts and practices in connection with
7 the advertising and telemarketing of auction information guides to
8 consumers throughout the United States. The Commission's complaint
9 alleges that defendants' deceptive acts and practices violate Section
10 5(a) of the FTC Act, 15 U.S.C. § 45(a).

11 The Commission and defendants Productive Marketing, Inc.,
12 Matthew B. Hyman and Zachary A. Hyman (collectively "defendants"),
13 having been represented by counsel and acting by and through such
14 counsel, have consented to the entry of this Stipulated Order for
15 Permanent Injunction with Consumer Redress and Other Equitable Relief
16 as to Productive Marketing, Inc., Matthew B. Hyman and Zachary A.
17 Hyman ("Stipulated Order") without a trial or adjudication of any
18 issue of law or fact herein.

19 NOW, THEREFORE, the Commission and defendants, having requested
20 the Court to enter this Stipulated Order, it is **ORDERED, ADJUDGED,**
21 **AND DECREED** as follows:

22 FINDINGS

23 1. This is an action by the Commission instituted under
24 Section 13(b) of the FTC Act, 15 U.S.C. § 53(b). Pursuant to this
25 section, the Commission has the authority to seek the relief
26 contained herein.

1 2. The Commission's complaint states a claim upon which relief
2 may be granted against defendants under Sections 5 and 13(b) of the
3 FTC Act, 15 U.S.C. §§ 45 and 53(b).

4 3. This Court has jurisdiction over the subject matter of this
5 case and all parties hereto. Venue in the Central District of
6 California is proper.

7 4. The alleged activities of defendants are in or affecting
8 commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

9 5. Defendants deny the allegations set forth in the
10 Commission's complaint; nonetheless, defendants agree to entry of
11 this Stipulated Order.

12 6. The parties shall each bear their own costs and attorney's
13 fees incurred in this action and have waived all claims under the
14 Equal Access to Justice Act, 28 U.S.C. § 2412, and all rights to seek
15 judicial review, or otherwise to challenge the validity of this
16 Stipulated Order.

17 7. Entry of this Stipulated Order is in the public interest.

18 ORDER

19 **DEFINITIONS**

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

22 1. **"Assets"** means any legal or equitable interest in, right
23 to, or claim to, any real and personal property, including but not
24 limited to chattel, goods, instruments, equipment, fixtures, general
25 intangibles, effects, leaseholds, mail or other deliveries,
26 inventory, checks, notes, accounts, credits, receivables (as those
27 terms are defined in the Uniform Commercial Code), and all cash,
28 wherever located.

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

3 3. **"Defendants"** means Productive Marketing, Inc., Matthew B.
4 Hyman, and Zachary A. Hyman, and each of them, by whatever names each
5 might be known, as well as their successors, assigns, officers,
6 agents, directors, servants, employees, salespersons, independent
7 contractors, attorneys, corporations, subsidiaries, affiliates, all
8 other persons or entities directly or indirectly under their control
9 or under common control with them, and all other persons or entities
10 in active concert or participation with them who receive actual
11 notice of this Stipulated Order by personal service or otherwise,
12 whether acting directly or through any corporation, subsidiary,
13 division, or other device.

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

22 5. **"Person"** means any individual, group, unincorporated
23 association, limited or general partnership, corporation, or other
24 business entity.

25 6. **"Telemarketing"** means a plan, program, or campaign which is
26 conducted to induce the purchase of goods or services by use of one
27 or more telephones and which involves more than one interstate
28 telephone call.

1 B. Using a consumer's credit card, checking, or bank account
2 number, or any portion thereof, to obtain payment from the consumer's
3 credit card, checking, or bank account, unless defendants have
4 disclosed to the consumer, immediately prior to and subsequent to
5 obtaining the number, the fact that such information would be used to
6 obtain payment from the consumer's credit card, checking, or bank
7 account, and the amount and approximate date of the transaction;

8 C. Causing a consumer to be billed through his or her credit
9 card or local telephone exchange carrier account for any product or
10 service unless defendants have obtained the consumer's express
11 verifiable authorization to do so;

12 D. Debiting or charging a consumer's credit, bank, or checking
13 account in an amount greater than the amount authorized by the
14 consumer or on a date earlier than the date authorized by the
15 consumer;

16 E. Falsely representing, expressly or by implication, any
17 aspect of obtaining a refund, including but not limited to, the ease
18 with which a consumer can obtain a refund;

19 F. Failing to disclose in a clear and conspicuous manner,
20 prior to purchase, all material terms and conditions of defendants'
21 refund or cancellation policies, or the fact that refunds or
22 cancellations are not provided;

23 G. Misrepresenting, either orally or in writing, expressly or
24 by implication, that:

25 (1) defendants will provide consumers with documents or
26 information that will enable them to find local auctions where they
27 can purchase merchandise at prices substantially below their fair
28 market value, including but not limited to, misrepresenting that late

1 model used vehicles sell at public auto auctions for an average price
2 of \$1400;

3 (2) defendants will provide consumers with documents or
4 information that will enable them to locate and purchase foreclosed
5 or repossessed homes at prices substantially below their fair market
6 values; or

7 (3) defendants will send consumers either a single
8 information guide, or more than one information guide or other
9 product or service, whether marketed, offered for sale or sold
10 through the defendants or any other person, as a package for the
11 price of a single information guide, and that the cost of a single
12 information guide will be charged to consumers' checking or credit
13 card accounts;

14 H. Falsely representing any other material fact in connection
15 with the marketing, advertising, offering for sale or sale of any
16 good or service, including but not limited to, information guides.

17 I. Provided, however, that nothing in this Section or in any
18 other Section of this Stipulated Order shall void any of the ban
19 provisions set forth in Section I of this Stipulated Order.

20 III.

21 CONSUMER REDRESS

22 **IT IS FURTHER ORDERED** that:

23 A. Judgment in the amount of \$100,000 is hereby entered in
24 favor of the Commission against defendants Matthew B. Hyman and
25 Zachary A. Hyman for equitable monetary relief including, but not
26 limited to, consumer redress and payment of any attendant expenses of
27 administering any redress fund. If the Commission determines, in its
28 sole discretion, that redress to consumers is wholly or partially

1 impracticable, any funds not so used shall be paid to the United
2 States Treasury in lieu of redress. Defendants shall have no right
3 to contest the manner of distribution chosen by the Commission. The
4 Commission in its sole discretion may use a designated agent to
5 administer consumer redress. The Commission and defendants
6 acknowledge and agree that this judgment for equitable monetary
7 relief is solely remedial in nature and is not a fine, penalty,
8 punitive assessment, or forfeiture;

9 B. The Commission shall file a satisfaction of judgment in
10 the event defendants Matthew B. Hyman and Zachary A. Hyman pay a
11 total of \$100,000 to the Receiver appointed by the Court pursuant to
12 the Preliminary Injunction With Asset Freeze and Order Continuing
13 Receivership entered by this Court on June 28, 2000 ("Receiver"). The
14 payment shall be made to the Receiver by certified check or other
15 guaranteed funds made payable to Susan I. Montgomery and delivered to
16 Susan I. Montgomery, at Gumpport, Reitman & Montgomery, 550 South Hope
17 Street, Suite 825, Los Angeles, California 90071-2627, or by wire
18 transfer in accord with directions provided by the Receiver;

19 C. In the event of any default in the above payment continuing
20 for ten (10) days beyond the due date of payment, unless any
21 defendant cures the default within thirty (30) days of receiving
22 written notice of default from the Commission, the Commission shall
23 have no obligation under this Order to file a satisfaction of
24 judgment unless the entire judgment of \$100,000, plus any applicable
25 interest, is paid in full; and

26 D. Defendants Matthew B. Hyman and Zachary A. Hyman are hereby
27 required, in accordance with 31 U.S.C. § 7701, to furnish to the
28 Commission and the Receiver their respective taxpayer identifying

1 numbers (social security numbers or employer identification numbers),
2 which shall be used for purposes of collecting and reporting on any
3 delinquent amount arising out of such persons' relationship with the
4 government.

5 E. For purposes of any subsequent proceedings to enforce
6 payments required by this Section or by Section IV, infra, including
7 but not limited to a non-dischargeability complaint filed in a
8 bankruptcy proceeding, defendants waive any right to contest any
9 allegations in the Commission's complaint.

10 **IV.**

11 **RIGHT TO REOPEN**

12 **IT IS FURTHER ORDERED** that, within five (5) business days after
13 written notice of the date of entry of this Stipulated Order,
14 defendants shall each submit to the Commission a truthful sworn
15 statement (in the form shown on **Appendix A** to this Stipulated Order)
16 that shall reaffirm and attest to the truthfulness, accuracy, and
17 completeness of their respective financial statements, namely the
18 financial information defendants provided to the Commission under
19 cover of letters from their attorney dated July 7, August 7, and
20 August 18, 2000 (hereinafter "financial statements"). The
21 Commission's agreement to this Stipulated Order is expressly premised
22 upon the financial condition of defendants, as represented in those
23 financial statements, which contain material information upon which
24 the Commission relied in negotiating and agreeing upon this
25 Stipulated Order.

26 If upon motion of the Commission, the Court finds that any
27 defendant failed to file the sworn statement required by this
28 Section, or that any defendant failed to disclose any material asset,

1 materially misrepresented the value of any asset, or made any other
2 material misrepresentation or omission from the financial statements,
3 or that defendants Matthew B. Hyman and/or Zachary A. Hyman failed to
4 pay as required by Section III of this Stipulated Order, the Court
5 shall enter judgment against defendants Matthew B. Hyman and Zachary
6 A. Hyman, in favor of the Commission, in the amount of \$16,000,000,
7 and the entire amount of the judgment shall become immediately due
8 and payable, less any amount already paid.

9 Provided, however, that in all other respects, this judgment
10 shall remain in full force and effect, unless otherwise ordered by
11 the Court; and provided further, that proceedings instituted under
12 this Section are in addition to, and not in lieu of, any other civil
13 or criminal remedies that may be provided by law, including but not
14 limited to contempt proceedings, or any other proceedings that the
15 Commission or the United States might initiate to enforce this
16 Stipulated Order.

17 V.

18 **CONTINUATION OF RECEIVERSHIP**

19 **IT IS FURTHER ORDERED** that Receiver appointed by the Court shall
20 continue with the full power of an equity receiver and under the
21 terms set forth in Paragraphs IV through X of the Preliminary
22 Injunction With Asset Freeze and Order Continuing Receivership
23 entered by this Court on June 28, 2000. The Receiver shall submit a
24 proposal to the Court for the disposition of the receivership assets,
25 distribution of the net proceeds to all creditors of the estate,
26 including the Commission, and termination of the receivership.

1 VI.

2 DISSOLUTION OF ASSET FREEZE

3 IT IS FURTHER ORDERED that upon entry of this Stipulated Order,
4 the freeze against the assets of defendants Matthew B. Hyman and
5 Zachary A. Hyman ordered by the Court on June 19, 2000, and extended
6 thereafter, shall be lifted permanently.

7 VII.

8 PROHIBITION ON DISSEMINATING CUSTOMER LISTS

9 IT IS FURTHER ORDERED that defendants are permanently restrained
10 and enjoined from selling, renting, leasing, transferring, or
11 otherwise disclosing the name, address, telephone number, social
12 security number, credit card number, bank account number, e-mail
13 address, or other identifying information of any person who paid any
14 money to any defendant, or whose identifying information was obtained
15 for the purpose of soliciting them to pay money to any defendant at
16 any time prior to the date this Stipulated Order is entered, in
17 connection with the sale of the products or services referenced in
18 the complaint. Provided, however, that defendants may provide such
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1 IX.

2 DISTRIBUTION OF ORDER BY DEFENDANTS

3 IT IS FURTHER ORDERED that, for a period of three(3) years from
4 the date of entry of this Stipulated Order, defendants shall:

5 A. Provide a copy of this Stipulated Order to, and obtain a
6 signed and dated acknowledgment of receipt of same from, each officer
7 or director and each individual serving in a management capacity,
8 whether designated as employees, immediately upon employing or
9 retaining such persons, for any business in which: (1) any defendant
10 is an owner of the business or directly or indirectly manages or
11 controls the business; and (2) the business is engaged in or assists
12 others in engaging in telemarketing;

13 B. Provide a copy of this Stipulated Order, and obtain a
14 signed and dated acknowledgment of receipt of same from, all
15 personnel involved in responding to customer complaints or inquiries,
16 and all sales personnel, whether designated as employees or engaged
17 in telemarketing or the supervision of telemarketing, or otherwise,
18 immediately upon employing or retaining any such persons, for any
19 business in which: (1) any defendant is an owner of the business or
20 directly or indirectly manages or controls the business; and (2) the
21 business is engaged in or assists others in engaging in
22 telemarketing; and

23 C. Maintain for a period of three (3) years after execution
24 and, upon reasonable notice, make available to representatives of the
25 Commission the original signed and dated acknowledgments of the
26 receipt of copies of this Stipulated Order as required in subsections
27 A and B of this Section.

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1 **XI.**

2 **RECORDKEEPING**

3 **IT IS FURTHER ORDERED** that, for a period of three (3) years from
4 the date of entry of this Stipulated Order, defendants, in connection
5 with any business in which: (1) any defendant is an owner of the
6 business or directly or indirectly manages or controls the business;
7 and (2) the business is engaged in or assists others in engaging in
8 telemarketing, are hereby restrained and enjoined from failing to
9 create, and from failing to retain for a period of three (3) years
10 following the date of such creation, unless otherwise specified:

11 A. Books, records, and accounts that, in reasonable detail,
12 accurately and fairly reflect the cost of goods or services sold,
13 revenues generated, and the disbursement of such revenues;

14 B. Records accurately reflecting: the name, address, and
15 telephone number of each person employed in any capacity by such
16 business, including as an independent contractor; that person's job
17 title or position; the date upon which the person commenced work; and
18 the date and reason for the person's termination, if applicable. Any
19 business subject to this Section shall retain such records for any
20 terminated employee for a period of two (2) years following the date
21 of termination;

22 C. Records containing the names, addresses, telephone numbers,
23 dollar amounts paid, quantity of items or services purchased, and
24 description of items or services purchased, for all customers to whom
25 such business has sold, invoiced, or shipped any goods or services;

26 D. Records that reflect, for every customer complaint or
27 refund request, whether received directly or indirectly or through
28 any third party:

1 1. the customer's name, address, telephone number, and
2 the dollar amount paid by the customer;

3 2. the written complaint or refund request, if any, and
4 the date of the complaint or refund request;

5 3. the basis of the complaint, including the name of any
6 sales person complained against, and the nature and result of
7 any investigation conducted concerning any complaint;

8 4. each response and the date of the response;

9 5. any final resolution and the date of the resolution;
10 and

11 6. in the event of a denial of a refund request, the
12 reason for the denial; and

13 E. Copies of all sales scripts, training materials,
14 advertisements, or other marketing materials utilized; provided that
15 copies of all sales scripts, training materials, advertisements, or
16 other marketing materials utilized shall be retained for three (3)
17 years after the last date of dissemination of any such materials.

18 XII.

19 COMPLIANCE REPORTING BY DEFENDANTS

20 **IT IS FURTHER ORDERED** that, in order that compliance with the
21 provisions of this Stipulated Order may be monitored:

22 A. For a period of three (3) years from the date of entry of
23 this Stipulated Order, defendants shall notify the Commission of the
24 following:

25 1. Any changes in any defendants' residence, mailing
26 address, or telephone numbers, within ten (10) days of the date
27 of such change;

1 2. Any changes in any defendant's employment status
2 (including self-employment) within ten (10) days of such change.
3 Such notice shall include the name and address of each business
4 that such defendant is affiliated with or employed by, a
5 statement of the nature of the business, and a statement of
6 defendant's duties and responsibilities in connection with the
7 business or employment; and

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1 2. Defendant's then-current employment, business
2 addresses and telephone numbers, a description of the business
3 activities of each such employer, and defendant's titles and
4 responsibilities for each employer;

5 3. A copy of each acknowledgment of receipt of this
6 Stipulated Order or summary thereof obtained by defendant
7 pursuant to Section VIII, supra; and

8 4. A statement describing the manner in which defendant
9 has complied and is complying with Sections I, II, IX, and X of
10 this Stipulated Order;

11 C. Upon written request by a representative of the Commission,
12 defendants shall submit additional written reports (under oath, if
13 requested) and produce documents on fifteen (15) days' notice with
14 respect to any conduct subject to this Stipulated Order;

15 D. For the purposes of this Stipulated Order, defendants
16 shall, unless otherwise directed by the Commission's authorized
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1 F. For purposes of the compliance reporting required by this
2 Section, the Commission is authorized to communicate directly with
3 defendants Matthew B. Hyman and Zachary A. Hyman.

4 **XIII.**

5 **COMMISSION'S AUTHORITY TO MONITOR COMPLIANCE**

6 **IT IS FURTHER ORDERED** that the Commission is authorized to
7 monitor defendants' compliance with this Stipulated Order by all
8 lawful means, including but not limited to the following:

9 A. The Commission is authorized, without further leave of
10 Court, to obtain discovery from any person in the manner provided by
11 Chapter V of the Federal Rules of Civil Procedure, Fed. R. Civ. P.
12 26-37, including the use of compulsory process pursuant to Fed. R.
13 Civ. P. 45, for the purpose of monitoring and investigating
14 defendants' compliance with any provision of this Stipulated Order;

15 B. The Commission is authorized to use representatives posing
16 as consumers and suppliers to any defendant, any defendant's
17 employees, or any other entity managed or controlled in whole or in
18 part by any defendant, without the necessity of identification or
19 prior notice; and

20 C. Nothing in this Stipulated Order shall limit the
21 Commission's lawful use of compulsory process, pursuant to Sections 9
22 and 20 of the FTC Act, 15 U.S.C. §§ 49 and 57b-1, to investigate
23 whether defendants have violated any provision of this Stipulated
24 Order or Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

25 **XIV.**

26 **ACCESS TO BUSINESS PREMISES**

27 **IT IS FURTHER ORDERED** that, for a period of three (3) years from
28 the date of entry of this Stipulated Order, for the purpose of

1 further determining compliance with this Stipulated Order, defendants
2 shall permit representatives of the Commission, within three (3)
3 business days of receipt of written notice from the Commission:

4 A. Access during normal business hours to any office, or
5 facility storing documents, of any business in which: (1) any
6 defendant is an owner of the business or directly or indirectly
7 manages or controls the business; and (2) the business is engaged in
8 or assists others in engaging in telemarketing. In providing such
9 access, defendants shall permit representatives of the Commission to
10 inspect and copy all documents relevant to any matter contained in
11 this Stipulated Order, and shall permit Commission representatives to
12 remove documents relevant to any matter contained in this Stipulated
13 Order for a period not to exceed five (5) business days so that the
14 documents may be inspected, inventoried, and copied; and

15 B. To interview the officers, directors, and employees,
16 including all personnel involved in responding to consumer complaints
17 or inquiries, and all sales personnel, whether designated as
18 employees, consultants, independent contractors or otherwise, of any
19 business to which Subsection A of this Section applies, concerning
20 matters relating to compliance with the terms of this Stipulated
21 Order. The persons interviewed may have counsel present.

22 Provided that, upon application of the Commission and for good
23 cause shown, the Court may enter an ex parte order granting immediate
24 access to defendants' business premises for the purpose of inspecting
25 and copying all documents relevant to any matter contained in this
26 Stipulated Order.

27
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1 10877 Wilshire Boulevard, Suite 700
2 Los Angeles, California 90024

3 ATTORNEYS FOR PLAINTIFF

4 Dated: _____, 2000

5 MATTHEW B. HYMAN
6 Individually and as an officer of
7 Productive Marketing, Inc.

8 Dated: _____, 2000

9 ZACHARY A. HYMAN
10 Individually and as an officer of
11 Productive Marketing, Inc.

12 DEFENDANTS

13 APPROVED AS TO FORM:

14 Dated: _____, 2000

15 STEVE COCHRAN (SBN 105541)
16 LAURENCE G. SOLOV (SBN 175144)
17 KATTEN MUCHIN ZAVIS
18 1999 Avenue of the Stars, Suite 1400
19 Los Angeles, CA 90067-6042

20 ATTORNEYS FOR DEFENDANTS

21 **IT IS SO ORDERED.**

22 Dated this ____ day of _____, 2000.

23 _____
24 Honorable Nora M. Manella
25 United States District Judge

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APPENDIX A

to Federal Trade Commission v. Productive Marketing, Inc., et al.
Stipulated Order for Permanent Injunction with
Consumer Redress and Other Equitable Relief

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

_____)	
FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	Civ. No. 00-06502 NM (BQRx)
)	
PRODUCTIVE MARKETING, INC., <u>et al.</u> ,)	
)	
Defendants.)	
_____)	

I, _____, hereby state that the information contained in the Financial Statement of defendant _____ and related papers provided to the Federal Trade Commission on _____ [and as amended on _____, if applicable] was [were] true, accurate, and complete at such time.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: _____

1 APPENDIX B

2 to Federal Trade Commission v. Productive Marketing, Inc., et al.,
3 Stipulated Order for Permanent Injunction with
4 Consumer Redress and Other Equitable Relief

5
6 UNITED STATES DISTRICT COURT
7 FOR THE CENTRAL DISTRICT OF CALIFORNIA
8 WESTERN DIVISION

9
10 _____
11)
12 FEDERAL TRADE COMMISSION,)
13)
14 Plaintiff,)
15)
16 v.) Civ. No. 00-06502 NM (BQRx)
17)
18 PRODUCTIVE MARKETING, et al.,)
19)
20 Defendants.)
21 _____)

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23
24 [Name of defendant], being duly sworn, hereby states and affirms
25 as follows:

26 1. My name is _____. My current residence
27 address is _____. I am a
28

1 citizen of the United States and am over the age of eighteen. I have
2 personal knowledge of the facts set forth in this Affidavit.

3 2. I am a defendant in Federal Trade Commission v. Productive
4 Marketing, Inc., et al., (United States District Court for the
5 Central District of California).

6 3. On _____, I received a copy of the
7 Stipulated Order for Permanent Injunction with Consumer Redress and
8 Other Equitable Relief, which was signed by the Honorable Nora M.
9 Manella, and entered by the Court on _____. A true
10 and correct copy of the Order I received is appended to this
11 Affidavit.

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 [date],
15 at [city and state].

16
17 _____
18 [Full name of defendant]

19 State of California
20 County of _____

21 Subscribed and sworn to before me
22 this ____ day of _____, 2000.

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