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13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**
15 **WESTERN DIVISION**

16
17 FEDERAL TRADE COMMISSION,
18 Plaintiff,
19 v.
20 PRODUCTIVE MARKETING, INC., DBA
DATA INFORMATION SERVICES, DATA
21 SERVICES, NATIONAL PROPERTY
SOLUTIONS, a California
22 corporation, and MATTHEW B.
HYMAN, ZACHARY A. HYMAN, and
23 JOSHUA HYMAN, individually and
24 as officers of Productive
Marketing, Inc.,
25 Defendants.
26

Civ. No. 00-06502NM(BQRx)
**STIPULATED ORDER FOR
PERMANENT INJUNCTION AS TO
JOSHUA HYMAN**

27 Plaintiff, the Federal Trade Commission ("Commission" or
28

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

13 The Commission and defendant Joshua Hyman, having been
14 represented by counsel and acting by and through such counsel,
15 have consented to the entry of this Stipulated Order for
16 Permanent Injunction ("Stipulated Order") without a trial or
17 adjudication of any issue of law or fact herein.

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

21 **FINDINGS**

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

26 2. The Commission's complaint states a claim upon which
27 relief may be granted against defendant under Sections 5 and
28 13(b) of the FTC Act, 15 U.S.C. §§ 45 and 53(b).

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

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

7 5. Defendant denies the allegations set forth in the
8 Commission's complaint; nonetheless, defendant agrees to entry
9 of this Stipulated Order.

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

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

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1 to pay for goods or services offered through telemarketing.

2 3. **"Defendant"** means Joshua Hyman, by whatever names he
3 might be known, as well as his successors, assigns, officers,
4 agents, directors, servants, employees, salespersons,
5 independent contractors, attorneys, corporations, subsidiaries,
6 affiliates, all other persons or entities directly or indirectly
7 under his control or under common control with him, and all
8 other persons or entities in active concert or participation
9 with him who receive actual notice of this Stipulated Order by
10 personal service or otherwise, whether acting directly or
11 through any corporation, subsidiary, division, or other device.

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

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

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

27 7. **"Information guide"** means any document that is
28 advertised, offered for sale, or offered in conjunction with the

1 sale or marketing of any other item or service, and which is
2 represented to contain information on how or where consumers may
3 obtain vehicles or other consumer products at auction, or how or
4 where to find properties for sale.

5 **I.**

6 **PROHIBITED BUSINESS ACTIVITIES**

7 **IT IS FURTHER ORDERED** that defendant and his agents,
8 servants, employees, attorneys, and all persons or entities
9 directly or indirectly under his control, and all other persons
10 or entities in active concert or participation with him who
11 receive actual notice of this Stipulated Order by personal
12 service or otherwise, and each such person, are hereby
13 permanently restrained and enjoined from:

14 A. Falsely representing, expressly or by implication,
15 that a consumer's checking account or credit card information
16 will not be used for the purpose of debiting the consumer's bank
17 account or billing the consumer's credit card account;

18 B. Using a consumer's credit card, checking, or bank
19 account number, or any portion thereof, to obtain payment from
20 the consumer's credit card, checking, or bank account, unless
21 defendant has disclosed to the consumer, immediately prior to
22 and subsequent to obtaining the number, the fact that such
23 information would be used to obtain payment from the consumer's
24 credit card, checking, or bank account, and the amount and
25 approximate date of the transaction;

26 C. Causing a consumer to be billed through his or her
27 credit card or local telephone exchange carrier account for any
28 product or service unless defendant has obtained the consumer's

1 express verifiable authorization to do so;

2 D. Debiting or charging a consumer's credit, bank, or

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1 price of a single information guide, and that the cost of a
2 single information guide will be charged to consumers' checking
3 or credit card accounts;

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

8 **II.**

9 **RIGHT TO REOPEN**

10 **IT IS FURTHER ORDERED** that, the Commission's agreement to
11 this Stipulated Order is expressly premised upon the financial
12 condition of defendant, as represented in the financial
13 information defendant provided to the Commission under cover of
14 letters from counsel for defendant, dated July 7, August 7, and
15 August 18, 2000 (hereinafter "financial statement"), which
16 con

1 instituted under this Section are in addition to, and not in
2 lieu of, any other civil or criminal remedies that may be
3 provided by law, including but not limited to contempt
4 proceedings, or any other proceedings that the Commission or the
5 United States might initiate to enforce this Stipulated Order.

6 **III.**

7 **PROHIBITION ON DISSEMINATING CUSTOMER LISTS**

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

21 **IV.**

22 **ACKNOWLEDGMENT OF RECEIPT**

23 **IT IS FURTHER ORDERED** that, within five (5) business days
24 after receipt by defendant of this Stipulated Order as entered
25 by the Court, defendant shall submit to the Commission a
26 truthful sworn statement, in the form shown on **Appendix A**, that
27 shall acknowledge receipt of this Stipulated Order.
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1 V.

2 DISTRIBUTION OF ORDER BY DEFENDANT

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

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

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

25 C. Maintain for a period of three (3) years after
26 execution and, upon reasonable notice, make available to
27 representatives of the Commission the original signed and dated
28 acknowledgments of the receipt of copies of this Stipulated

1 Order as required in subsections A and B of this Section.

2 **VI.**

3 **MONITORING BY DEFENDANT**

4 **IT IS FURTHER ORDERED** that defendant, in connection with
5 any business in which: (1) defendant is an owner of the business
6 or directly or indirectly manages or controls the business; and
7 (2) the business is engaged in, or assists others in engaging in
8 telemarketing, is hereby permanently restrained and enjoined
9 from:

10 A. Failing to take reasonable steps sufficient to monitor
11 and ensure that all employees and independent contractors
12 engaged in sales or other customer service functions comply with
13 Section I of this Stipulated Order. Such steps shall include
14 adequate monitoring of sales presentations or other calls with
15 customers, and shall also include, at a minimum, the following:
16 (1) listening to the oral representations made by persons
17 engaged in sales or other customer service functions; (2)
18 establishing a procedure for receiving and responding to
19 customer complaints; and (3) ascertaining the number and nature
20 of customer complaints regarding transactions in which each
21 employee or independent contractor is involved; provided that
22 this Section does not authorize or require defendant to take any
23 steps that violate any federal, state, or local law;

24 B. Failing to investigate promptly and fully any customer
25 complaint received by any business to which this Section
26 applies; and

27 C. Failing to take corrective action with respect to any
28 sales person whom defendant determines is not complying with

1 this Stipulated Order, which may include training, disciplining,
2 and/or terminating such sales person.

3 **VII.**

4 **RECORD KEEPING**

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

14 A. Books, records, and accounts that, in reasonable
15 detail, accurately and fairly reflect the cost of goods or
16 services sold, revenues generated, and the disbursement of such
17 revenues;

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

26 C. Records containing the names, addresses, telephone
27 numbers, dollar amounts paid, quantity of items or services
28 purchased, and description of items or services purchased, for

1 all customers to whom such business has sold, invoiced, or
2 shipped any goods or services;

3 D. Records that reflect, for every customer complaint or
4 refund request, whether received directly or indirectly or
5 through any third party:

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

8 2. the written complaint or refund request, if any,
9 and the date of the complaint or refund request;

10 3. the basis of the complaint, including the name of
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1 A. For a period of three (3) years from the date of entry
2 of this Stipulated Order, defendant shall notify the Commission
3 of the following:

4 1. Any changes in defendant's residence, mailing
5 address, or telephone numbers, within ten (10) days of the
6 date of such change;

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

14 3. Any proposed change in the structure of any
15 business entity owned or controlled by defendant, such as
16 creation, incorporation, dissolution, assignment, sale,
17 merger, creation, or dissolution of subsidiaries, proposed
18 filing of a bankruptcy petition, or change in the corporate
19 name or address, or any other change that could affect
20 compliance obligations arising out of this Stipulated
21 Order, thirty (30) days prior to the effective date of any
22 proposed change; provided, however, that with respect to
23 any proposed change in the business about which defendant
24 learns less than thirty (30) days prior to the date such
25 action is to take place, the defendant shall notify the
26 Commission as soon as is practicable after learning of such
27 proposed change;

28 B. One hundred eighty (180) days after the date of entry

1 of this Stipulated Order, defendant shall provide a written
2 report to the Commission, sworn to under penalty of perjury,
3 setting forth in detail the manner and form in which that
4 defendant has complied and is complying with this Stipulated
5 Order. This report shall include but not be limited to:

6 1. Defendant's then-current residence address and
7 telephone number;

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

12 3. A copy of each acknowledgment of receipt of this
13 Stipulated Order or summary thereof obtained by defendant
14 pursuant to Section V, supra; and

15 4. A statement describing the manner in which
16 defendant has complied and is complying with Sections I,
17 III, V, VI, and VII of this Stipulated Order;

18 C. Upon written request by a representative of the
19 Commission, defendant shall submit additional written reports
20 (under oath, if requested) and produce documents on fifteen (15)
21 days' notice with respect to any conduct subject to this
22 Stipulated Order;

23 D. For the purposes of this Stipulated Order, defendant
24 shall, unless otherwise directed by the Commission's authorized
25 representatives, mail all written notifications to the
26 Commission to:

27 Federal Trade Commission
28 Director, Northwest Region
915 Second Avenue, Suite 2896

1 Seattle, Washington 98174
2 Re: FTC v. Productive Marketing, Inc.;

3 E. For the purposes of this Section, "employment"
4 includes the performance of services as an employee, consultant,
5 or independent contractor; and "employers" include any
6 individual or entity for whom defendant performs services as an
7 employee, consultant, or independent contractor; and

8 F. For purposes of the compliance reporting required by
9 this Section, the Commission is authorized to communicate
10 directly with defendant after providing to defendant and
11 defendant's counsel written notice five (5) days in advance of
12 any communication.

13 **IX.**

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

15 **IT IS FURTHER ORDERED** that the Commission is authorized to
16 monitor defendant's compliance with this Stipulated Order by all
17 lawful means, including but not limited to the following:

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

25 B. The Commission is authorized to use representatives
26 posing as consumers and suppliers to defendant, defendant's
27 employees, or any other entity managed or controlled in whole or
28 in part by defendant, without the necessity of identification or

1 prior notice; and

2 C. Nothing in this Stipulated Order shall limit the
3 Commission's lawful use of compulsory process, pursuant to
4 Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49 and 57b-1, to
5 investigate whether defendant has violated any provision of this
6 Stipulated Order or Section 5(a) of the FTC Act, 15 U.S.C.
7 § 45(a).

8 X.

9 ACCESS TO BUSINESS PREMISES

10 IT IS FURTHER ORDERED that, for a period of three (3) years
11 from the date of entry of this Stipulated Order, for the purpose
12 of further determining compliance with this Stipulated Order,
13 defendant shall permit representatives of the Commission, within
14 three (3) business days of receipt of written notice from the
15 Commission to defendant and defendant's counsel:

16 A. Access during normal business hours to any office, or
17 facility storing documents, of any business in which: (1)
18 defendant is an owner of the business or directly or indirectly
19 manages or controls the business; and (2) the business is
20 engaged in or assists others in engaging in telemarketing. In
21 providing such access, defendant shall permit representatives of
22 the Commission to inspect and copy all documents relevant to any
23 matter contained in this Stipulated Order, and shall permit
24 Commission representatives to remove documents relevant to any
25 matter contained in this Stipulated Order for a period not to
26 exceed five (5) business days so that the documents may be
27 inspected, inventoried, and copied; and

28 B. To interview the officers, directors, and employees,

1 including all personnel involved in responding to consumer
2 complaints or inquiries, and all sales personnel, whether
3 designated as employees, consultants, independent contractors or
4 otherwise, of any business to which Subsection A of this Section
5 applies, concerning matters relating to compliance with the
6 terms of this Stipulated Order. The persons interviewed may
7 have counsel present.

8 Provided that, upon application of the Commission and for
9 good cause shown, the Court may enter an ex parte

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1 Court is hereby directed to enter this Stipulated Order.

2 **XIV.**

3 **RETENTION OF JURISDICTION**

4 **IT IS FURTHER ORDERED** that the Court shall retain
5 jurisdiction of this matter for all purposes.

6 The Commission and defendant Joshua Hyman hereby stipulate
7 and agree to entry of the foregoing Stipulated Order, which
8 shall constitute a final judgment in this action as to defendant
9 Joshua Hyman.

10 SIGNED AND STIPULATED BY:

11 Dated: _____, 2000

NADINE S. SAMTER
MARY T. BENFIELD
FEDERAL TRADE COMMISSION

KENNETH H. ABBE (CA Bar #172416)
Federal Trade Commission
10877 Wilshire Boulevard, Suite
700
Los Angeles, California 90024

ATTORNEYS FOR PLAINTIFF

18
19 Dated: _____, 2000

JOSHUA HYMAN
Individually

22
23 APPROVED AS TO FORM:

24 Dated: _____, 2000

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

ATTORNEYS FOR DEFENDANT

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IT IS SO ORDERED.

Dated this ____ day of _____, 2000.

Honorable Nora M. Manella
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, <u>et al.</u> ,)	
)	
Defendants.)	
_____)	

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

1. My name is _____. My current residence address is _____.

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

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

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

1 to this Affidavit.

2

3 I declare under penalty of perjury under the laws of the
4 United States that the foregoing is true and correct. Executed
5 on [date], at [city and state].

6

7

[Full name of defendant]

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9 State of California
10 County of _____

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11 Subscribed and sworn to before me
12 this ____ day of _____, 2000.

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Notary Public
My Commission Expires:

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