

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK
ALBANY DIVISION**

Federal Trade Commission,)	
)	01-CV-1537 TJM
)	
Plaintiff,)	
)	
v.)	
)	
R & R Consultants, Inc.,)	STIPULATED JUDGMENT AND ORDER FOR PERMANENT INJUNCTION
a corporation d/b/a Coast to Coast)	
Benefits, R & R, Peace and)	
Quiet, Consumer Alert, R & R Financial,)	
Consumer Information Services;)	
)	
Coast to Coast Benefits, Inc.,)	
a corporation;)	
)	
Reuben Ross,)	
individually, and as an officer of)	
R & R Consultants, Inc. and Coast to Coast)	
Benefits, Inc., also d/b/a R & R, Peace))	
and Quiet, Consumer Alert, R & R)	
Financial, Consumer Information Services;)	
)	
Defendants.)	
)	

Plaintiff, Federal Trade Commission (“Commission” or “FTC”), filed its complaint for a permanent injunction and other relief in this matter, pursuant to Sections 13(b) and 19(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b(a), and the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101 *et seq.*, charging that Defendants engaged in unfair or deceptive acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, and the Commission Trade Regulation Rule entitled the “Telemarketing Sales Rule,” 16 C.F.R. Part

310. The Commission and Defendants, as hereinafter defined, hereby stipulate to the entry of and request the Court to enter this Stipulated Judgment and Order for Permanent Injunction (“Order”) to resolve all matters of dispute between them in this action.

IT IS THEREFORE STIPULATED, AGREED, AND ORDERED as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter and the parties pursuant to 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), and 6101(b), and 28 U.S.C. §§ 1331, 1337(a), and 1345.

2. Venue is proper as to all parties in the Northern District of New York pursuant to 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b), (c), and (d).

3. The activities of Defendants are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

4. The Complaint states a claim upon which relief may be granted against Defendants under Sections 5(a)(1), 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 53(b), and 57b.

5. Defendants have entered into this Order freely and without coercion. Defendants further acknowledge that they have read the provisions of this Order and are prepared to abide by them.

6. The Plaintiff and Defendants, by and through their counsel, have agreed that the entry of this Order resolves all matters of dispute between them.

8. Defendants agree 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, 863-64 (1996), and Defendants further waive any rights to attorneys' fees that may arise under said provision of law.

9. This Order is in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law.

10. Entry of this Order is in the public interest.

11. This Order does not constitute and shall not be interpreted to constitute either an admission by Defendants or a finding by the Court that Defendants have engaged in any violations of law.

DEFINITIONS

A. "Assets" means any legal or equitable interest in, right to, or claim to, any real and personal property, including but not limited to chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, premises, contracts, mail or other deliveries, shares of stock, lists of consumer names, inventory, checks, notes, accounts, credits, receivables, funds, and all cash, wherever located.

B. "Defendants" means R & R Consultants, Inc., d/b/a Coast to Coast Benefits, R & R, Peace and Quiet, Consumer Alert, R & R Financial, and Consumer Information Services; Coast to Coast Benefits, Inc.; and Reuben Ross, individually, and as an officer of R & R Consultants, Inc. and Coast to Coast Benefits, Inc., also d/b/a R & R, Peace and Quiet, Consumer Alert, R & R Financial, and Consumer Information Services, and their officers, agents, servants, employees, subsidiaries,

affiliates, successors, assigns, and all persons or entities in active concert or participation with them who receive notice of this Order by personal service or otherwise.

C. “Document” is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes writing order by pessPuof peS4mous inmeaactive conce f peS4mo

grants, loans, financing, credit or debit cards, or other extensions of credit; (2) improve, or arrange to improve, any consumer's credit card record, credit history, or credit rating; (3) provide advice or assistance to any consumer with regard to any activity or service the purpose of which is to improve a consumer's credit record, credit history, or credit rating; (4) provide consumers, arrange for consumers to receive, or assist consumers in receiving, debt consolidation, debt relief, or other credit counseling; (5) provide consumers, arrange for consumers to receive, or assist consumers in receiving, credit monitoring.

H. "Protection services" shall mean any offer, promise, or representation involving the removal or safeguarding from unauthorized use of consumer identity information, such as social security numbers, financial account information, and credit card numbers. The term includes, but is not necessarily limited to, removal of information from the Internet, from lists maintained by telemarketers, and from any other databases maintained by Defendants or by third parties.

I. "Direct mail" means any delivery system used to solicit consumers for the purchase of any goods or services or to provide any product, service, or printed material to any consumer including, but not limited to, the United States Postal Service, any express mail or overnight mail delivery service or other domestic or international mail or parcel service, whether publicly or privately owned.

ORDER

I.

IT IS ORDERED that Defendants are hereby restrained and enjoined from engaging, participating in, or assisting in any manner or in any capacity whatsoever, whether directly or indirectly, in concert with others, or through any intermediary, third party, business entity, or device, in the marketing, advertising, promotion, or selling of (1) any credit-related goods or services or (2) any protection services.

II.

IT IS FURTHER ORDERED that, in connection with the marketing, advertising, promotion, offering for sale or sale of other goods or services not covered by Section I, above, Defendants, whether directly or indirectly, in concert with others, or through any intermediary, third party, business entity, or device, are hereby restrained and enjoined from making any express or implied representation or omission of material fact that is false or misleading, in any manner, orally or in writing, to any consumer or entity, including, but not limited to, the following:

A. Falsely representing the cost, duration, nature, attributes, or refund policy associated with their goods or services;

B. Falsely representing that consumers purchased or agreed to purchase goods or services from Defendants, and therefore owe money to Defendants;

C. Failing to disclose promptly and in a clear and conspicuous manner that the purpose of the solicitation is to sell goods or services;

D. Falsely representing the reasons for, or the use that will be made of, Defendants' obtaining information associated with consumers' credit cards and debit cards and bank accounts,

including but not limited to account numbers, expiration dates, Social Security numbers in whole or in part, and mothers' maiden names;

E. Falsely representing any consumer's authorization for Defendants to post charges to any consumer's credit card account or debit card account or checking account;

F. Falsely representing an affiliation with a government consumer protection agency;

G. Falsely representing the purpose for which Defendants will use any consumers' charge card or bank account information; and

H. Falsely representing any information material to a consumer's decision to purchase Defendants' goods or services.

III.

IT IS FURTHER ORDERED that Defendants, whether directly or indirectly, in concert with others, or through any intermediary, third party, business entity, or device, are hereby restrained and enjoined from violating, or assisting or facilitating others in violating, any provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310.

IV. MONETARY JUDGMENT

IT IS FURTHER ORDERED that

A. Judgment in the amount of Ten Million Seven Hundred Thousand Dollars (\$10,700,000) in U.S. currency is hereby entered against Defendants R & R Consultants, Inc., Coast to Coast Benefits, Inc., and Reuben Ross, jointly and severally. Provided, however, that all of this amount except for One Hundred Eleven Thousand Three Hundred Fifty-Four Dollars (\$111,354) in U.S. currency shall be suspended until further order of the Court, and provided further that this

judgment shall be subject to the conditions set forth in Paragraph B of Section IV below. Defendants R & R Consultants, Inc., Coast to Coast Benefits, Inc., and Reuben Ross shall make the required payment of One Hundred Eleven Thousand Three Hundred Fifty-Four Dollars (\$111,354) in U.S. currency by certified or cashier's check to the Commission no later than ten (10) business days after entry of this Order.

B. The Commission's agreement to this Order is expressly premised upon the truthfulness, accuracy and completeness of their sworn financial statements and supporting documents submitted to the Commission, namely those of Defendant R & R Consultants dated October 15, 2001; those of Defendant Coast to Coast Benefits dated October 15, 2001; and those of Defendant Reuben Ross dated October 15, 2001; related supporting documents that were submitted to the Commission on October 30 and 31, 2001; and the declaration of Reuben Ross dated _____, 2002. Such financial statements and supporting documents contain material information upon which the Commission relied in negotiating and agreeing to this Order. If, upon motion by the Commission, this Court finds that Defendant R & R Consultants, Inc., Coast to Coast Benefits, Inc., or Reuben Ross has failed to disclose any material asset or materially misstated the value of any asset in the financial statements and related documents described above, or has made any other material misstatement or omission in the financial statements and related documents described above, the Court shall enter judgment in the amount of Ten Million Seven Hundred Thousand Dollars (\$10,700,000) in U.S. currency against such Defendant. The entire amount of the judgment would be rendered immediately due and payable by Defendants R & R Consultants, Inc., Coast to Coast Benefits, Inc., and Reuben Ross.

C. In accordance with 31 U.S.C. § 7701, the Defendants are hereby required, unless they have done so already, to furnish to the Commission their respective taxpayer identifying numbers (social security numbers or employer identification numbers) which shall be used for purposes of collecting and reporting on any delinquent amount arising out of Defendants' relationship with the government.

D. Defendant Ross is further required, unless he has done so already, to provide the Commission with clear, legible and full-size photocopies of all valid driver's licenses he possesses, which will be used for reporting and compliance purposes.

E. Defendants agree that the facts as alleged in the Complaint filed in this action shall be taken as true for the purpose of a nondischargeability complaint in any bankruptcy proceeding.

F. Proceedings instituted under this Section 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 Commission may initiate to enforce this Order.

V. COMMISSION'S USE OF MONETARY JUDGMENT

IT IS FURTHER ORDERED that all funds paid pursuant to Section IV of this Order shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including but not limited to consumer redress and any attendant expenses for the administration of any redress fund. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendants' practices alleged in the complaint. Any funds not used for such equitable relief shall be

deposited to the United States Treasury as disgorgement. Defendants shall have no right to challenge the Commission's choice of remedies under this Section.

VI. ASSET FREEZE

IT IS FURTHER ORDERED that, upon entry of this Order, the freeze of Defendants' assets set forth in the Stipulated Order of Preliminary Injunction shall be dissolved.

VII. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that within ten (10) business days of receipt of this Order as entered by the Court, Defendants R & R Consultants, Inc., Coast to Coast Benefits, Inc., and Reuben Ross shall submit to the Commission a truthful sworn statement, in the form shown on Appendix A, that shall acknowledge receipt of this Order.

VIII. DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that, for a period of seven (7) years from the date of entry of this Order, Defendants R & R Consultants, Inc., Coast to Coast Benefits, Inc., and Reuben Ross shall:

A. Provide a copy of this Order to, and obtain a signed and dated acknowledgment of receipt of same from, each officer and director, each individual serving in a management capacity, all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, within five (5) business days after receipt of this Order, and thereafter immediately upon employing any such person, for any business that the Defendants R & R Consultants, Inc., Coast to Coast Benefits, Inc., or Reuben Ross directly or indirectly manage, control, or have a majority ownership interest in, that is engaged in

“telemarketing” or “direct mail” as defined in this Order, or assisting others engaged in these activities;
and

B. Maintain for a period of five (5) years after creation, and upon reasonable notice, make available to representatives of the Commission, the original signed and dated acknowledgments of receipt of copies of this Order, as required in Paragraph A of this Section VIII.

IX. 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 seven (7) years after the date of entry of this Order, Defendants shall notify the Commission in writing of the following:

1. Any changes in residence, mailing addresses and telephone numbers of Defendant Ross, within ten (10) days of the date of such change;
2. Any changes in employment status (including self-employment) of Defendant Ross, within ten (10) days of such change. Such notice shall include the name and address of each business that the Defendant is affiliated with or employed by, a statement of the nature of the business, and a statement of the Defendant’s duties and responsibilities in connection with the business or employment;
3. Any proposed change in the structure of Defendants R & R Consultants, Coast to Coast Benefits, or any business entity that Defendant Ross directly or indirectly 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 ten (10) days prior to the effective date of any such change; and

4. Any proposed change in the structure of Defendants R & R Consultants, Coast to Coast Benefits, or any business entity engaged in “telemarketing” that Defendant Ross directly or indirectly manages, 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 ten (10) days prior to the effective date of any such change;

B. One hundred eighty (180) days after the date of entry of this Order, Defendants R & R Consultants, Inc., Coast to Coast Benefits, Inc., and Reuben Ross shall provide a written report to the Commission, sworn to under penalty of perjury, setting forth in detail the manner and form in which the Defendants have complied and are complying with this Order. This report shall include but not be limited to:

1. The then-current residence address, mailing addresses and telephone numbers of Defendant Ross;

2. The then-current employment and business addresses and telephone numbers of Defendant Ross, a description of the business activities of each such employer or business, and the title and responsibilities of Defendant Ross for each such employer or business;

3. A copy of each acknowledgment of receipt of this Order obtained by Defendants pursuant to Section VIII; and

4. A statement describing the manner in which each Defendant has complied and is complying with Sections I, II, III, IV, X, and XIV of this Order;

C. Upon written request by a representative of the Commission, Defendants R & R Consultants, Inc., Coast to Coast Benefits, Inc., and Reuben Ross shall submit additional written reports (under oath, if requested) and produce documents on fifteen (15) days' notice with respect to any conduct that is subject to this Order;

D. For the purposes of this Order, Defendants shall, unless otherwise directed by a representative of the Commission, identify all written notifications to the FTC as provided in reference to FTC v. R & R Consultants, Inc., et al., United States District Court, Northern District of New York, Case No. 01-CV-1537(TJM), X02003, and mail them to:

Associate Director
Division of Marketing Practices
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. 238
Washington, DC 20580

E. For the purposes of this Section, “employment” includes the performance of services as an employee, consultant, or independent contractor; and “employers” include any individual or entity for whom Defendant Ross performs services as an employee, consultant, or independent contractor; and

F. For purposes of the compliance reporting required by this Section, the Commission is authorized to communicate directly with Defendants in writing, with a copy to counsel of record.

X. MONITORING COMPLIANCE OF SALES PERSONNEL

IT IS FURTHER ORDERED that Defendants R & R Consultants, Inc., Coast to Coast Benefits, Inc., and Reuben Ross, in connection with any business where (1) R & R Consultants, Inc., Coast to Coast Benefits, Inc., or Reuben Ross, and their d/b/a/s, successors and assigns, are the majority owner of the business or directly or indirectly manage or control the business, and where (2) the business is engaged in “telemarketing” or “direct mail” as defined in this Order or assisting or facilitating others engaged in these activities, are hereby 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

B. Failing promptly to investigate fully any consumer complaint received by any business to which this Section applies; and

C. Failing to take any corrective action with respect to any sales person whom Defendants determine is not complying with this Order, which may include training, disciplining, and/or terminating such sales person.

XI. RECORD-KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of seven (7) years from the date of entry of this Order, in connection with any business that any Defendant directly or indirectly manages, controls or has a majority ownership interest in, that is engaged in “telemarketing” or “direct mail” as defined in

C. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;

D. Complaint and refund requests (whether received directly, indirectly or through any third party) and any responses to those complaints or requests; and

E. Copies of all sales scripts, training materials, advertisements, or other marketing materials.

XII. ACCESS TO BUSINESS PREMISES

IT IS FURTHER ORDERED that, for a period of seven (7) years from the date of entry of this Order, for the purposes of determining or securing compliance with its provisions, the Defendants and their officers, directors, agents, servants, employees, salespersons, corporations, subsidiaries, affiliates, successors, assigns, and those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service, facsimile or otherwise, shall grant to representatives of the Commission, within ten (10) business days of receipt of written notice from the Commission:

A. Access during normal business hours to any office or facility storing documents of any business that any of Defendants directly or indirectly manages, controls, or has a majority ownership interest in, that is engaged in “telemarketing” or “direct mail” as defined in this Order, or assisting others engaged in such activities. In providing such access, Defendants shall permit representatives of the Commission to inspect and copy all documents relevant to any matter contained in this Order; and shall

permit representatives of 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;

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 or otherwise, of any business to which Paragraph A of this Section XII applies, regarding compliance with the provisions of this Order. Any person interviewed shall be advised that they may have counsel present. *Provided, however,* that the provisions of this Section shall not be construed to limit the Commission's statutory authority to apply to the Court for an *ex parte* order seeking immediate access to Defendants' business premises.

XIII. AUTHORITY TO MONITOR COMPLIANCE

IT IS FURTHER ORDERED that the Commission is authorized to monitor Defendants' compliance with this Order by all lawful means, including, but not limited to, the following:

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

B. The Commission is authorized to use representatives posing as consumers or suppliers to Defendants, Defendants' employees, or any other entity managed or controlled in whole or in part by any Defendant, without the necessity of identification or prior notice; and

C. Nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49 and 57b-1, to investigate whether Defendants have violated any provision herein or Section 5 of the FTC Act, 15 U.S.C. § 45, or any applicable rule or regulation promulgated and enforced by the Commission, including the Telemarketing Sales Rule, 16 C.F.R. § 310.

XIV. PROHIBITIONS INVOLVING CONSUMER LISTS

IT IS FURTHER ORDERED that Defendants are hereby restrained and enjoined from selling, renting, leasing, 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 them in connection with the advertising, promotion, telemarketing, offering for sale, or sale of any product or service involving (1) credit-related goods or services, or (2) protection services for any product, area of marketing, or area of commerce, *provided however*, that Defendants may disclose such identifying information to a law enforcement agency, or as required by any law, regulation or court order.

XV. FEES AND COSTS

IT IS FURTHER ORDERED that each party to this Order hereby agrees to bear its own costs and attorneys' fees incurred in connection with this action.

XVI. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for the purpose of enabling the parties to apply to the Court at any time for such further orders and directives

as may be necessary or appropriate for the interpretation or modification of this Order, for the enforcement of compliance therewith, or for the punishment of violations thereof.

XVII. ENTRY OF THIS JUDGMENT

IT IS FURTHER ORDERED that, as there is no just reason for delay of entry of this judgment, pursuant to Fed. R. Civ. P. 54(b), the Clerk shall enter this Order immediately.

XVIII. COMPLETE SETTLEMENT

The parties 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.

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STIPULATED AND AGREED AS FOLLOWS:

FOR THE PLAINTIFF:

DATED: _____

David R. Spiegel, Esq.
NYS Bar No. 1592724
NDNY No. 511074
Brian Huseman, Esq.
Federal Trade Commission
600 PA Ave., NW, Room 238
Washington, D.C. 20580
202-326-3281; 202-326-3320
Attorneys for Plaintiff

FOR THE DEFENDANTS:

DATED: _____

Andrew N. Cove, Esq.
Cove & Associates
225 S. 21st St.
Hollywood, FL 33020
954-921-1121
Attorney for Defendants

DATED: _____

Deborah L. Kelly, Esq.
Hodgson, Russ
3 City Sq., 4th Floor
Albany, NY 12207
518-433-2402
Local Counsel for Defendants

DATED: _____

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APPENDIX A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK
ALBANY DIVISION

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Federal Trade Commission,)	01-CV-1537 TJM
)	
Plaintiff,)	
)	
v.)	
)	
R & R Consultants, Inc.,)	AFFIDAVIT OF RECEIPT
a corporation d/b/a Coast to Coast)	OF ORDER
Benefits, R & R, Peace and)	
Quiet, Consumer Alert, R & R Financial,)	
Consumer Information Services;)	
)	
Coast to Coast Benefits, Inc.,)	
a corporation;)	
)	
Reuben Ross,)	
individually, and as an officer of)	
R & R Consultants, Inc. and Coast to Coast)	
Benefits, Inc., also d/b/a R & R, Peace))	
and Quiet, Consumer Alert, R & R)	
Financial, Consumer Information Services;)	
)	
Defendants.)	
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_____, being duly sworn, hereby states and affirms as follows:

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

_____. I am a citizen of _____

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 the above captioned case.

3. On _____, I received a copy of the Stipulated Judgment and Order for Permanent Injunction, which was signed by the Honorable _____ and entered by the Court on _____, 2002. A true and correct copy of the Order I received is appended to this Affidavit.

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

[Full name of Defendant]

Executed on _____, _____, at _____ [city and state].

State of _____