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3 Federal Trade Commission
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6 ATTORNEYS FOR PLAINTIFF

7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 _____

11)
12) **FEDERAL TRADE COMMISSION,**

CV-

13)
14) **Plaintiff,**

**STIPULATED FINAL JUDGMENT
AND ORDER FOR PERMANENT
INJUNCTION
AGAINST DEFENDANTS**

15)
16) **v.**

17)
18) **UNIVERSAL BANCOM, LLC, and**

19)
20) **JOHN SARABIA,**
21) **individually and doing**
22) **business as NISSAN BANCORP.**

23)
24) **Defendants.**
25)

26 Plaintiff, the Federal Trade Commission ("Commission")
27 has commenced this action by concurrently filing its Complaint
28 and this Stipulated Final Judgment and Order for Permanent

1 Injunction ("Order"). The Complaint seeks a permanent
2 injunction and other equitable relief pursuant to Sections
3 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"),
4 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer
5 Fraud and Abuse Prevention Act ("Telemarketing Act"), 15
6 U.S.C. §§ 6101-08, and charged Defendants Universal Bancom,
7 LLC ("Universal") and John Sarabia, individually and doing
8 business as Nissan Bancorp, with deceptive
9 acts and practices in connection with the sale, offering for
10 sale, or advertisement of merchant cards.

11 The Defendants have waived service of the Summons and
12 Complaint. The parties, represented by the attorneys whose
13 names appear hereafter, have agreed to the entry of this Order
14 and have requested that the Court enter the same to resolve
15 all matters in dispute in this action without trial or
16 adjudication of any issue of law or fact herein.

17 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** as follows:

18 **FINDINGS**

19 1. This Court has jurisdiction of the subject matter of
20 this case and of the parties consenting hereto;

21 2. Venue is proper as to all parties in the Central
22 District of California;

23 3. The activities of Defendants are in or affecting
24 commerce, as defined in Section 4 of the FTC Act, 15 U.S.C.
25 § 44;

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

1 Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310;

2 5. Defendants have waived all rights that may arise
3 under the Equal Access to Justice Act, 28 U.S.C. § 2412,
4 amended by Pub. L. 104-121, 110 Stat. 847, 863-64 (1996);

5 6. Defendants have waived all rights to seek appellate
6 review or otherwise challenge or contest the validity of this
7 Order, and have further waived and released any claim they may
8 have against the Commission, its employees, and agents;

9 7. Defendants enter into this Order freely, without
10 admitting liability for any allegation or charge made in the
11 Commission's Complaint, without coercion, and acknowledge that
12 they understand the provisions of this Order and are prepared
13 to abide by them.

14 8. Entry of this Order is in the public interest.

15 **ORDER**

16 **Definitions**

17 i. **"Defendants"** means Universal Bancom, LLC,
18 ("Universal") and John Sarabia, individually and doing
19 business as Nissan Bancorp ("Sarabia").

20 ii. **"Merchant Card"** means a card that can be used only
21 to buy goods or services at specific merchants that are owned,
22 controlled, or affiliated with the issuing entity, unlike
23 general purpose credit cards such as Visa or MasterCard credit
24 cards or their functional equivalent.

25 iii. **"Telemarketing"** means any business activity (which
26 includes, but is not limited to, initiating or receiving
27 telephone calls, managing others who initiate or receive
28 telephone calls, operating an enterprise that initiates or

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

14 iv. "**Assisting Others**" means knowingly providing any of
15 the following goods or services to another entity:

16 (A) performing customer service functions, including, but
17 not limited to, receiving or responding to consumer
18 complaints; (B) formulating or providing, or arranging for the
19 formulation or provision of, any telephone sales script or any
20 other marketing material; (C) providing names of, or assisting
21 in the generation of, potential customers; (D) hiring,
22 recruiting or training personnel; (E) advising or consulting
23 others on the commencement or management of a business
24 venture; or (F) performing marketing services of any kind.

25 vi. "**Document**" is synonymous in meaning and equal in
26 scope to the usage of the term in Federal Rule of Civil
27 Procedure 34(a), and includes writings, drawings, graphs,
28 charts, photographs, audio and video recordings, computer

1 records, and other data compilations from which information
2 can be obtained and translated, if necessary, through
3 detection devices into reasonably usable form. A draft or
4 non-identical copy is a separate document within the meaning
5 of the term.

6 **I.**

7 **RESTRICTIONS ON SELLING OR MARKETING MERCHANT CARDS**

8 **IT IS THEREFORE ORDERED** that Defendants, as well as their
9 successors, assigns, officers, agents, directors, servants,
10 employees, salespersons, independent contractors,
11 corporations, subsidiaries, parent corporations, owners, and
12 all other persons or entities in active concert or
13 participation with them who receive actual notice of this
14 Order by personal service or otherwise, whether acting
15 directly or through any corporation, limited liability
16 company, subsidiary, division, or other entity, are hereby
17 permanently restrained and enjoined from engaging in or
18 receiving any remuneration of any kind whatsoever from
19 advertising, marketing, promoting, offering for sale, or
20 selling any merchant card.

21 **II.**

22 **PROHIBITED BUSINESS ACTIVITIES**

23 **IT IS THEREFORE ORDERED** that Defendants, as well as their
24 successors, assigns, officers, agents, directors, servants,
25 employees, salespersons, independent contractors,
26 corporations, subsidiaries, parent corporations, owners, and
27 all other persons or entities in active concert or
28 participation with them who receive actual notice of this

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1 "THIS CARD CANNOT BE USED TO PURCHASE PRODUCTS OR
2 SERVICES FROM MOST MERCHANTS OR RETAILERS.
3 SIGNIFICANT RESTRICTIONS APPLY. READ ALL TERMS AND
4 CONDITIONS."

5 **IT IS FURTHER ORDERED** that, in connection with the
6 advertising, marketing, promoting, telemarketing, offering for
7 sale, or sale of any good or service, Defendants, as well as
8 their successors, assigns, officers, agents, directors,
9 servants, employees, salespersons, independent contractors,
10 corporations, subsidiaries, parent corporations, owners, and
11 all other persons or entities in active concert or
12 participation with them who receive actual notice of this
13 Order by personal service or otherwise, whether acting
14 directly or through any corporation, limited liability
15 company, subsidiary, division, or other entity, are hereby
16 permanently restrained and enjoined from misrepresenting,
17 expressly or by implication, any fact material to a consumer's
18 decision to buy or accept the good or service.

19 **IT IS FURTHER ORDERED** that Defendants, as well as their
20 successors, assigns, officers, agents, directors, servants,
21 employees, salespersons, independent contractors,
22 corporations, subsidiaries, parent corporations, owners, and
23 all other persons or entities in active concert or
24 participation with them who receive actual notice of this
25 Order by personal service or otherwise, whether acting
26 directly or through any corporation, limited liability
27 company, subsidiary, division, or other entity, are hereby
28 permanently restrained and enjoined from:

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1 upon motion by the Commission to the Court, the Court finds
2 that a Defendant, in its above-referenced financial statement
3 and information, failed to disclose any asset with a value in
4 excess of \$1,000, materially misrepresented the value of any
5 asset, or made any other material misrepresentation or
6 omission, the suspension of the monetary judgment will be
7 terminated and the entire judgment amount of \$340,000 will be
8 immediately due and payable. For purposes of this Section,
9 and any subsequent proceedings to enforce payment, including
10 but not limited to a non-dischargeability complaint filed in a
11 bankruptcy proceeding, Defendants waive any right to contest
12 any of the allegations set forth in the Complaint filed in
13 this matter or the \$340,000 judgment referenced above.

14 **V.**

15 **CUSTOMER LISTS**

16 **IT IS FURTHER ORDERED** that Defendants, as well as their
17 successors, assigns, officers, agents, directors, servants,
18 employees, salespersons, independent contractors,
19 corporations, subsidiaries, parent corporations, owners, and
20 all other persons or entities in active concert or
21 participation with them who receive actual notice of this
22 Order by personal service or otherwise, whether acting
23 directly or through any corporation, limited liability
24 company, subsidiary, division, or other entity, are
25 permanently restrained and enjoined from selling, renting,
26 leasing, transferring, or otherwise disclosing the name,
27 address, telephone number, social security number, credit card
28 number, bank account number, e-mail address, or other

1 identifying information of any person who paid any money to
2 any Defendant, who was solicited to pay money to Defendants,
3 or whose identifying information was obtained for the purpose
4 of soliciting them to pay money to Defendants, in connection
5 with the sale or offer for sale of merchant cards, at any time
6 prior to the date this Order is entered. *Provided* that any
7 party subject to this provision may disclose such identifying
8 information to a law enforcement agency or as required by any
9 law, regulation, or court order.

10 **VI.**

11 **DISTRIBUTION OF ORDER BY DEFENDANTS**

12 **IT IS FURTHER ORDERED** that, for a period of five (5)
13 years from the date of entry of this Order, Defendants shall:

14 A. Provide a copy of this Order to, and obtain a signed
15 and dated acknowledgment of receipt of same from, each officer
16 or director, each individual serving in a management capacity,
17 all personnel involved in responding to consumer complaints or
18 inquiries, and all sales personnel, whether designated as
19 employees, consultants, independent contractors or otherwise,
20 immediately upon employing or retaining any such persons, for
21 any business where

22 1. either Defendant Universal or Sarabia is the majority
23 owner of the business or directly or indirectly manages or
24 controls the business, and where

25 2. the business uses telemarketing or mail solicitations
26 to market or sell its products or services, or assists others
27 using telemarketing or mail solicitations to market or sell
28 their products or services.

1 B. Maintain for a period of three (3) years after
2 creation, and upon reasonable notice, make available to
3 representatives of the Commission, the original signed and
4 dated acknowledgments of the receipt of copies of this Order,
5 as required in Subsection A.

6 **VII.**

7 **MONITORING COMPLIANCE OF SALES PERSONNEL**

8 **IT IS FURTHER ORDERED** that Defendants, in connection with
9 any business where

10 1. Defendant Universal or Sarabia is the majority owner
11 of the business or directly or indirectly manages or controls
12 the business, and where

13 2. the business uses telemarketing or mail solicitations
14 to market or sell its products or services, or assists others
15 using telemarketing or mail solicitations to market or sell
16 their products or services,

17 are hereby permanently restrained and enjoined from:

18 A. Failing to take reasonable steps sufficient to
19 monitor and ensure that all employees and independent
20 contractors engaged in sales or other customer service
21 functions comply with Section II of this Order. Such steps
22 shall include adequate monitoring of sales presentations or
23 other calls with customers, and shall also include, at a
24 minimum, the following: (1) listening to the oral
25 representations made by persons engaged in sales or other
26 customer service functions; (2) establishing a procedure for
27 receiving and responding to consumer complaints; and (3)
28 ascertaining the number and nature of consumer complaints

1 regarding transactions in which each employee or independent
2 contractor is involved; provided that this Section does not
3 authorize or require the Defendants to take any steps that
4 violate any federal, state, or local laws;

5 B. Failing to investigate promptly and fully any
6 consumer complaint to which this Section applies; and

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

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1 title or position; the date upon which the person
2 commenced work; and the date and reason for the
3 person's termination, if applicable;

4 (C) Customer files containing the names, addresses,
5 phone numbers, dollar amounts paid, quantity of
6 items or services purchased, and description of
7 items or services purchased, to the extent such
8 information is obtained in the ordinary course of
9 business;

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

13 (E) Copies of all sales scripts, training materials,
14 advertisements, or other marketing materials.

15 **IX.**

16 **COMPLIANCE REPORTING BY DEFENDANTS**

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

19 A. For a period of five (5) years from the date of entry
20 of this Order, Defendants shall notify the Commission of the
21 following:

22 1. Any changes in Defendant Sarabia's residence,
23 mailing addresses, and telephone numbers, or
24 Defendant Universal's business, mailing
25 addresses and telephone numbers, within ten (10)
26 days of the date of such change;

27 2. Any changes in Defendant Sarabia's employment
28 status (including self-employment) within ten

1 (10) days of such change. Such notice shall
2 include the name and address of each business
3 that Defendant Sarabia is affiliated with or
4 employed by, a statement of the nature of the
5 business, and a statement of Defendant Sarabia's
6 duties and responsibilities in connection with
7 the business or employment; and

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

26 B. One hundred eighty (180) days after the date of
27 entry of this Order, Defendants shall provide a written report
28 to the FTC, sworn to under penalty of perjury, setting forth

1 in detail the manner and form in which Defendants have

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Assistant Regional Director
Western Region - Los Angeles
Federal Trade Commission
10877 Wilshire Blvd., Suite 700
Los Angeles, California 90024

Re:Re:

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

6 C. Nothing in this Order shall limit the Commission's
7 lawful use of compulsory process, pursuant to Sections 9 and
8 20 of the FTC Act, 15 U.S.C. §§ 49 and 57b-1, to investigate
9 whether Defendants have violated any provision of this Order,
10 the FTC Act or the TSR.

11 **XI.**

12 **ACCESS TO BUSINESS PREMISES**

13 **IT IS FURTHER ORDERED** that, for a period of five (5)
14 years from the date of entry of this Order, for the purpose of
15 further determining compliance with this Order, Defendants
16 shall, within three (3) business days of receipt of written
17 notice from the Commission, permit representatives of the
18 Commission:

19 A. Access during normal business hours to any office, or
20 facility storing documents, of any business where

21 1. Defendant Universal or Sarabia is the majority owner
22 of the business or directly or indirectly manages or
23 controls the business, and where

24 2. the business uses telemarketing or mail
25 solicitations to market or sell its products or services,
26 or assists others using telemarketing or mail
27 solicitations to market or sell their products or
28 services.

1 In providing such access, Defendants shall permit
2 representatives of the Commission to inspect and copy all
3 documents relevant to any matter contained in this Order; and
4 shall permit Commission representatives to remove documents
5 relevant to any matter contained in this Order for a period
6 not to exceed five (5) business days so that the documents may
7 be inspected, inventoried, and copied; and

8 B. To interview the officers, directors, and employees,
9 including all personnel involved in responding to consumer
10 complaints or inquiries, and all sales personnel, whether
11 designated as employees, consultants, independent contractors
12 or otherwise, of any business to which Subsection A applies,
13 concerning matters relating to compliance with the terms of
14 this Order. The person interviewed may have counsel present.

15 *Provided* that, upon application of the Commission and for
16 good cause shown, the Court may enter an *ex parte* order
17 granting immediate access to Defendants' business premises for
18 the purposes of inspecting and copying all documents relevant
19 to any matter contained in this Order.

20 **XII.**

21 **ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS AND**

22 **REAFFIRMATION DEFBY D3**

23 **14**

24 **1Y D3**

25 **eO#oR#H#0#1#3 may**

1 Financial Statements and the documents listed in Attachment A
2 hereto.

3 **XIII.**

4 **COSTS AND ATTORNEYS FEES**

5 **IT IS FURTHER ORDERED** that each party to this Order shall
6 bear its own costs and attorney's fees incurred in connection
7 with this action.

8 **XIV.**

9 **CONTINUED JURISDICTION**

10 **IT IS FURTHER ORDERED** that this Court shall retain
11 jurisdiction of this matter for all purposes.

12 **XV.**

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Dated: _____

UNITED STATES DISTRICT JUDGE

ATTACHMENT A

List of Documents Upon Which Commission Relied

1) Financial Statement of Business Entity Defendant - Nissan Bancorp, signed by John Sarabia on 2/13/02

2) Financial Statement of Business Entity Defendant - Universal Bancom, signed by John Sarabia, undated but submitted to FTC on 2/14/02

3) Financial Statement of Individual Defendant - John Sarabia, signed by John Sarabia on 1/31/02

1 ATTACHMENT B

2 UNITED STATES DISTRICT COURT
3 CENTRAL DISTRICT OF CALIFORNIA

4	FEDERAL TRADE COMMISSION,)	CV-
5	Plaintiff,)	
6	vs.)	AFFIDAVIT OF DEFENDANT
7	UNIVERSAL BANCOM, LLC, and)	JOHN SARABIA
8	JOHN SARABIA,)	
9	individually and doing)	
10	business as NISSAN BANCORP.)	
	Defendants.)	

11 John Sarabia, being duly sworn, hereby states and affirms as
12 follows:

13 1. My name is John Sarabia. My current residence
14 address is [street address, city, state, zip code, country].

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

18 2. I am a Defendant in FTC v. Universal Bancom, LLC and
19 John Sarabia, individually and doing business as Nissan
20 Bancorp, CV 02-_____ (United States District Court for the
21 Central District of California).

22 3. On _____, I received a copy of the Stipulated
23 Final Judgment and Order for Permanent Injunction Against
24 Defendants Universal Bancom, LLC and John Sarabia,
25 individually and doing business as Nissan Bancorp, which was
26 signed by the Honorable _____ [name of U.S.
27 District Judge] and entered by the Court on _____,
28

1 My Commission Expires:
2 _____

3 **CERTIFICATE OF SERVICE**
4

5 I, Barbara Y.K. Chun, certify as follows:

6 I am over the age of 18 and am employed by the Federal
7 Trade Commission. My business address is 10877 Wilshire Blvd.
8 Suite 700, Los Angeles, CA 90024. On April _____, 2002 I
9 caused the attached "**Stipulated Final Judgment and Order for**
10 **Permanent Injunction Against Defendants**" to be served by pre-
11 paid, first class U.S. mail to the following:
12

13 Paul L. Gabbert, Esq.
14 2115 Main St.
15 Santa Monica, CA 90405
Counsel for Defendants

16 I declare under penalty of perjury that the foregoing is
17 true and correct.
18

19 Dated: April _____, 2002

20 Barbara Y.K. Chun
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