

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

[REDACTED]

Kathleen A. Smalley in this action. The Commission and Defendant Kathleen A. Smalley have consented to entry of this Final Judgment and Order without trial or adjudication of any issue of law or fact herein and without Defendant Kathleen A. Smalley admitting liability for any of the violations alleged in the Amended Complaint.

Being fully advised in the premises and acting upon the joint motion of the parties to enter this Final Judgment and Order,

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

This Court has jurisdiction over the subject matter of this case and hereby

[REDACTED]

pursuing any claims it may have against any other Named Defendant for any other legal and/or equitable relief, including but not limited to attorney's fees, in addition to the relief requested above.

**DEFINITIONS**

For the purpose of this Final Judgment and Order, the following definitions shall apply:

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

B. "Named Defendants" means WebSource Media, LLC, WLF, and M. J. D.

and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations stored in any medium from which the information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

E. **“Telemarketing”** means a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call. The term does not

include the solicitation of sales through the mailing of a catalog which: contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year when the person making the solicitation is a

but not limited to: design, hosting and maintenance of web pages and websites, providing

Internet access or e-mail accounts, and establishing domain names and virtual domain names.

I. **“Authorized Purchaser”** means any person who has the authority to bind the person who would be responsible for payment of any charges associated with the telemarketing transaction.

J. **“Material terms of the offer”** means all terms material to an authorized purchaser’s decision to purchase, including, but not limited to:

1. the fact that the authorized purchaser will be billed unless the authorized purchaser takes affirmative action to cancel;
2. the account which will be billed if the authorized purchaser does not

3. the length of any trial period before a charge is assessed;
4. the amount of each charge and the frequency of each charge if the authorized purchaser does not cancel within the trial period;

5. the toll-free telephone number, if any, for the authorized purchaser to call to cancel the offer.

signature is recognized as a valid signature under applicable federal law or state contract law.

L. **“Express oral authorization”** means oral authorization which is audio-recorded by an independent third-party and made available upon request to the authorized purchaser, the authorized purchaser’s bank, credit card company, or telephone company, and which evidences clearly both the authorized purchaser’s authorization of payment from a particular account for the goods or services which are the subject of the telemarketing transaction and the authorized purchaser’s receipt of all of the material terms of the offer of goods or services prior to the

authorization. An audio recording of the authorized purchaser’s receipt of all of the material terms of the offer of goods or services prior to the

**ORDER**

**I. PROHIBITED MISREPRESENTATIONS**

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that in connection with the telemarketing, advertising, promotion, offering for sale, or sale of any Internet services, Defendant Kathleen A. Smalley, her agents, servants, employees, and attorneys, and all other

Final Judgment and Order by personal service or otherwise, whether acting directly or through any business entity, corporation, subsidiary, affiliate, division, or other device, are hereby

~~permanently restrained and enjoined from misrepresenting, advertising, promoting, offering for sale, or sale of any Internet services.~~

subsidiary, affiliate, division, or other device, are hereby permanently restrained and enjoined

from directly or indirectly purchasing, or attempting to purchase, any of the following securities:

money from any authorized purchaser without the authorized purchaser's express informed



attendant expenses of administration of decedent's estate. ...

C. Within ten (10) days of entry of this Final Judgment and Order, defendant

not limited to, consumer redress and any attendant expenses for the administration of any redress

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 the Defendants' practices alleged in the Complaint. Any funds not used for such

misrepresentation or omission, the Commission may move that the Court reopen this Final Judgment and Order for the sole purpose of allowing the Commission to modify the monetary liability of Defendant Kathleen A. Smalley. If the Court finds that Defendant Kathleen A. Smalley failed to disclose any material asset, materially misrepresented the value of any asset, or made any other material misrepresentation or omission in the above-referenced financial statements and information, the Court shall reinstate the suspended judgment against her, in

favor of the Commission in the amount of ~~SEVENTY SEVEN MILLION SEVEN HUNDRED~~

THOUSAND DOLLARS (24,700,000), which she and the Commission stipulate is the amount

of consumer injury caused by the New England Consumer Council, Inc. and its affiliates.

**VI. COMPLIANCE MONITORING**

**IT IS FURTHER ORDERED** that, for the purpose of monitoring and investigating compliance with any provision of this Final Judgment and Order:

A. Within twenty (20) days of receipt of written notice from a representative of the Commission Defendant Kathleen A. Smalley shall submit additional written reports sworn to

under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in her possession or under her direct or indirect control to inspect the

information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

**VII. COMPLIANCE REPORTING BY DEFENDANT**

~~IT IS FURTHER ORDERED that in order that compliance with the provisions of 15 U.S.C. § 45(a)(1) be~~

Final Judgment and Order may be monitored:

- A. For a period of five (5) years from the date of entry of this Final Judgment and Order,

<sup>1</sup> Defendant Kathleen A. Smalley shall notify the Commission of the C.F.R. 101.11

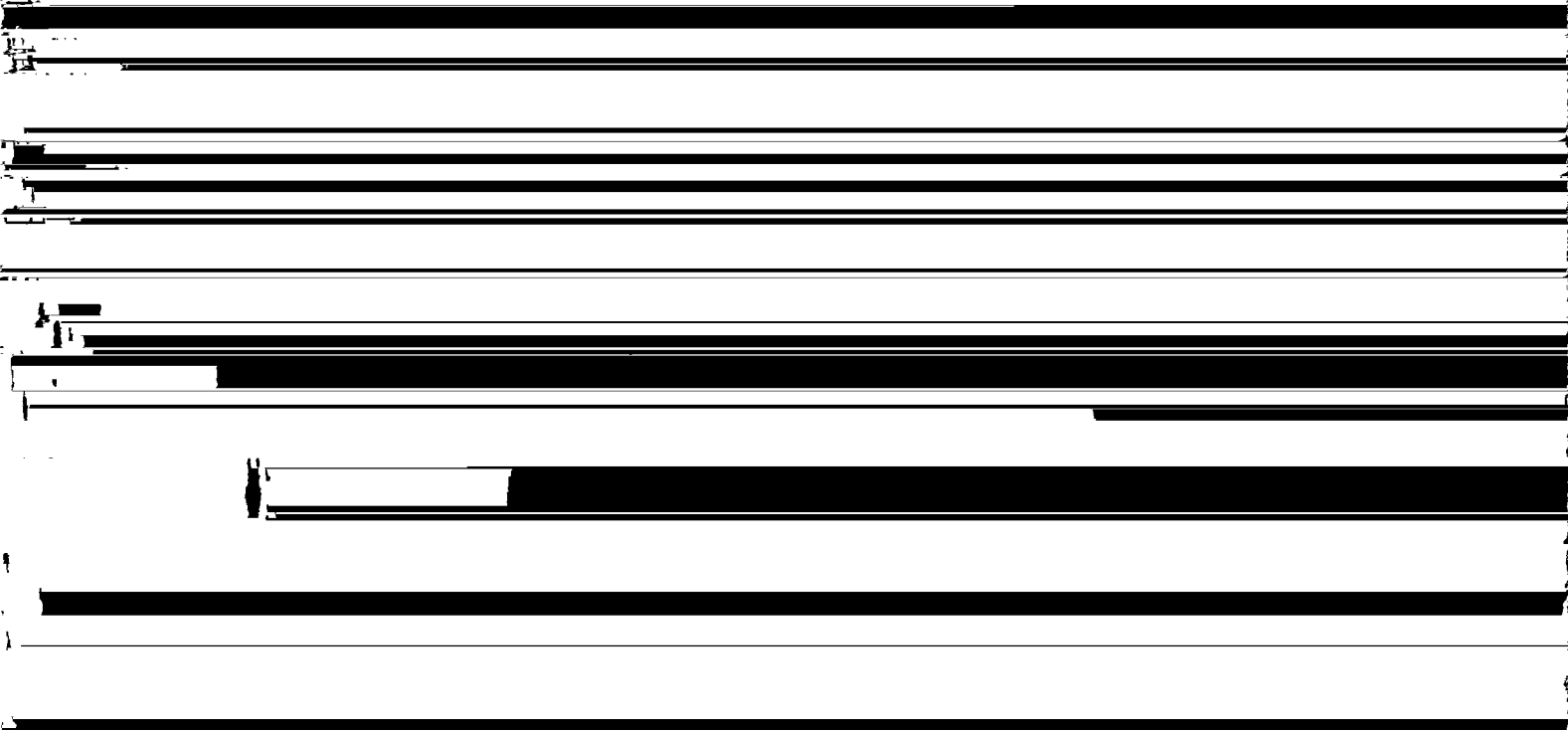
assignment, sale, merger, or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Final Judgment and Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at

proposed change in the corporation about which Defendant Kathleen A. Smalley learns less than thirty (30) days prior to the date such action is to take place, she shall notify the Commission as soon as is practicable after obtaining such knowledge

B. One hundred and eighty (180) days after the date of entry of this Final Judgment and Order, Defendant Kathleen A. Smalley shall provide a written report to the Commission, sworn to under penalty of perjury, setting forth in detail the manner and form in which she has

5. A list of all names under which Defendant Kathleen A. Smalley has conducted or currently conducts business since entry of this Final Judgment and Order;
  6. A list of all entities through which Defendants Kathleen A. Smalley and each of her businesses has submitted, directly or indirectly, billings, including, but not limited to, telephone Local Exchange Carriers, billing aggregators, and credit card processors;
  7. The names, addresses, and telephone numbers of all consumers who, after entry of this Final Judgment and Order, have made complaints to, and/or requested refunds from, Defendants Kathleen A. Smalley and each of her businesses; and
  8. A list of all domain names and web page addresses Defendant Kathleen A. Smalley has registered or used in connection with telemarketing or marketing through the Internet.
- C. For the purposes of this Final Judgment and Order, Defendant Kathleen A.

Smalley shall, unless otherwise ordered by the Court, be responsible for providing the information requested in this Order.



**VIII. RECORD KEEPING PROVISIONS**

**IT IS FURTHER ORDERED** that, for a period of eight (8) years from the date of entry

of this Final Judgment and Order, Defendant Kathleen A. Smalley, is

employees, and attorneys, and all other persons or entities in active concert or participation with her who receive actual notice of this Final Judgment and Order by personal service or otherwise, whether acting directly or through any business entity, corporation, subsidiary, division, affiliate, or other device, in connection with any business which involves telemarketing or the advertising, promotion, offering for sale, or sale of Internet services, are hereby restrained and enjoined from failing to create and retain the following records:

A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;



result of any investigation conducted concerning the complaint or request; (5) each response and the date of such response to the complaint or request; (6) any final resolution of the complaint or

request, and the date of such resolution; and (7) in the event of a denial of any resolution, the reason for the denial;

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

F. Copies of all contracts or agreements with telephone companies;

G. Copies of all contracts or agreements with telemarketers;

H. Copies of all contracts or agreements with billing aggregators;

I. Records reflecting contacts with customers regarding customer service (1) if

Final Judgment and Order as directed below:

A. **Defendant Kathleen A. Smalley as control person:** For any business that Defendant Kathleen A. Smalley controls, directly or indirectly, or in which she has a majority ownership interest, she must deliver a copy of this Final Judgment and Order to all principals, officers, directors, and managers of that business. She must also deliver copies of this Final Judgment and Order to all employees, agents, and representatives of that business who engage in conduct related to the subject matter of this Final Judgment and Order. For current personnel, delivery shall be within five (5) days of service of this Final Judgment and Order upon

Defendant. For new personnel, delivery shall be made to their personnel files.

B. **Defendant Kathleen A. Smalley as employee or non-control person:** For any

business where Defendant Kathleen A. Smalley is not a controlling person of the business but

**XI. COOPERATION WITH COMMISSION COUNSEL.**

**IT IS FURTHER ORDERED** that Defendant Kathleen A. Smalley shall, in connection with this action or any subsequent investigations related to or associated with the transactions or

~~the occurrence that are the subject of this Commission's investigation.~~

cooperate in good faith with the Commission and appear at such places and times as the

~~Commission shall reasonable request after written notice for interviews, conferences, material~~

entered in this case on February 1, 2007 and the Order Amending Second Modified Decision

Injunction, entered in this case on February 21, 2007, shall be lifted permanently as to Defendant Kathleen A. Smalley.

**XIII. RETENTION OF JURISDICTION**

**IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for purposes of construction, modification and enforcement of this Final Judgment and Order.

**IT IS SO ORDERED.**

ENTERED, this 17<sup>th</sup> day of July, 2007.

**SO STIPULATED:**

**FOR THE PLAINTIFF:**

**WILLIAM BLUMENTHAL**  
General Counsel

**DEANYA T. KUECKELHAN**  
Regional Director  
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ATTORNEYS FOR PLAINTIFF  
FEDERAL TRADE COMMISSION

**FOR THE DEFENDANT:**

  
**KATHLEEN A. SMALLEY**

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