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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

1 consumers throughout the United States in violation of Section 5(a) of the FTC Act, 15
2 U.S.C. § 45(a), and the FTC's "Telemarketing Sales Rule" ("TSR"), 16 C.F.R. Part 310.

3 The Commission and Defendants have agreed to the entry of this Stipulated Final
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1 1. "Competent and Reliable Scientific Evidence" means tests, analyses,
2 research, or studies that have been conducted and evaluated in an objective manner by
3 qualified Persons, that are generally accepted in the profession to yield accurate and
4 reliable results, and that are sufficient in quality and quantity based on standards gener-
5 ally accepted in the relevant scientific fields, when considered in light of the entire body
6 of relevant and reliable scientific evidence, to substantiate that a representation is true.

7 2. "Corporate Defendant" means WordSmart Corporation, also d/b/a WS
8 Learning Center, and its successors and assigns.

9 3. "Defendant" or "Defendants" means the Individual Defendant and the
10 Corporate Defendant, individually, collectively, or in any combination.

11 4. "Established Business Relationship" means a relationship between a
12 seller and a Person based on: (a) the Person's purchase, rental, or lease of the seller's
13 goods or services or a financial transaction between the seller and Person, within the
14 eighteen months immediately preceding the date of the Telemarketing call; or (b) the
15 Person's inquiry or application regarding a good or service offered by the seller, within
16 the three months immediately preceding the date of a Telemarketing call.

17 5. "Individual Defendant" means David A. Kay.

18 6. "National Do Not Call Registry" means the "do-not-call" registry of
19 telephone numbers maintained by the Commission pursuant to 16 C.F.R. §
20 310.4(b)(1)(iii)(B).

21 7. "Outbound Telephone Call" means a telephone call initiated by a
22 Telemarketer to induce the purchase of goods or services or to solicit a charitable
23 contribution.

24 8. "Person" means a natural person, an organization or other legal entity,
25 including a corporation, partnership, sole proprietorship, limited liability company,
26 association, cooperative, or any other group or combination acting as an entity.

27 9. "Plaintiff" means the Federal Trade Commission.
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1 5. Consumers who use Defendants' goods or services will be able to
2 identify the meaning of any word they come across;

3 6. Consumers who use Defendants' goods or services will improve their
4 letter grades, SAT scores, ACT scores, GRE and GMAT scores, and IQ scores; or

5 7. Consumers who use Defendants' goods or services will perform better
6 in school, on standardized tests, or in other areas of life;

7 unless the representation is true, not misleading, and, at the time it is made, Defendants
8 possess and rely upon Competent and Reliable Scientific Evidence that substantiates the
9 representation;

10 B. Making, or assisting others in making, in any manner, expressly or by
11 implication, including through the use of a product name, endorsement, depiction,
12 trademark, or illustration, any representation not covered by Subsection A above about
13 the benefits, performance, or efficacy of any goods or services unless the representation is
14 true, not misleading, and, at the time it is made, Defendants possess and rely upon
15 competent and reliable evidence, which when appropriate must be Competent and
16 Reliable Scientific Evidence, that substantiates the representation; and

17 C. Misrepresenting, or assisting others in misrepresenting, in any manner,
18 expressly or by implication, including thr

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1 conditions; or any material aspect of their benefits, performance, efficacy, nature, or
2 central characteristics.

3 IV. PROHIBITIONS REGARDING TELEMARKETING

4 IT IS FURTHER ORDERED that, in connection with Telemarketing, Defendants
5 and their Representatives, whether acting directly or indirectly, are permanently re-
6 strained and enjoined from engaging in, causing others to engage in, or assisting others
7 engaging in, any of the following practices:

8 A. Initiating any Outbound Telephone Call to any Person at a telephone number
9 on the National Do Not Call Registry, unless Defendants prove that:

10 1. Defendants have obtained the express agreement, in writing, of such
11 Person to place calls to that Person. Such written agreement shall clearly evidence such
12 Person's authorization that calls made by or on behalf of Defendants may be placed to
13 that Person, and shall include the telephone number to which the calls may be placed and
14 the signature of that Person; or

15 2. Defendants have an Established Business Relationship with such
16 Person, and that Person has not previously stated that he or she does not wish to receive
17 Outbound Telephone Calls made by or on behalf of Defendants;

18 B. Initiating any Outbound Telephone Call to a Person when that Person has
19 previously stated that he or she does not wish to receive an Outbound Telephone Call
20 made by or on behalf of Defendants;

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1 2. Defendants or their Representatives, for each Telemarketing call
2 placed, allow the telephone to ring for at least fifteen seconds or four rings before
3 disconnecting an unanswered call;

4 3. Whenever a live operator is not available to speak with the Person
5 answering the call within two seconds after the Person's completed greeting, Defendants
6 or their Representatives promptly play a recorded message that states Defendants' name
7 and telephone number; and

8 4. Defendants or their Representatives retain records establishing
9 compliance with the preceding three conditions.

10 V. PROHIBITION ON COLLECTING ON ACCOUNTS

11 IT IS FURTHER ORDERED that Defendants and their Representatives, whether
12 acting directly or indirectly, are hereby restrained and enjoined from attempting to
13 collect, collecting, or assigning any right to collect payment from any consumer who
14 purchased or agreed to purchase any good or service from any Defendant prior to entry of
15 this Order.

16 VI. MONETARY JUDGMENT AND PARTIAL SUSPENSION

17 IT IS FURTHER ORDERED that:

18 A. Judgment in the amount of Eighteen Million Seven Hundred Thousand
19 Dollars (\$18,700,000) is entered in favor of the Commission against the Individual
20 Defendant and the Corporate Defendant, each jointly and severally, as equitable monetary
21 relief.

22 B. Defendants are ordered to pay to the Commission One Hundred Forty-Seven
23 Thousand and Four Hundred Dollars (\$147,400), which, as Defendants stipulate, their
24 undersigned counsel holds in escrow for no purpose other than payment to the Commis-
25 sion. Such payment must be made within 7 days of entry of this Order by electronic fund
26 transfer in accordance with instructions previously provided by a representative of the
27 Commission. Upon such payment, the remainder of the judgment is suspended, subject to
28 the Subsections below.

1 C. The Commission's agreement to the suspension of part of the judgment is
2 expressly premised upon the truthfulness, accuracy, and completeness of Defendants'
3 sworn financial statements and related documents (collectively, "financial representa-
4 tions") submitted to the Commission, namely:

5 1. The Financial Statement of Individual Defendant David A. Kay
6 signed on January 7, 2014, including the attachments;

7 2. The Financial Statement of Corporate Defendant WordSmart Corpora-
8 tion signed by David A. Kay, President of WordSmart Corporation on December 18,
9 2013, including the attachments;

10 3. The additional documentation submitted by e-mail from Defendants'
11 counsel Helen Mac Murray to Commission counsel Kathleen Daffan and Danielle
12 Estrada dated November 8, 2013, attaching Corporate Defendant WordSmart Corpora-
13 tion's Combined Financial Statements for the period ending December 31, 2012;

14 4. The documentation submitted by file transfer protocol (FTP) on
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16 3. The additional documentation submitted by e-mail from Defendants'
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1 material asset, materially misstated the value of any asset, or made any other material
2 misstatement or omission in the financial representations identified above.

3 E. If the suspension of the judgment is lifted, the judgment becomes immedi-
4 ately due as to that Defendant in the amount specified in Subsection A above, which the
5 parties stipulate only for purposes of this Section represents the consumer injury and
6 unjust enrichment alleged in the Complaint, less any payment previously made pursuant
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1 consumers is wholly or partially impracticable or money remains after redress is com-
2 pleted, the Commission may apply any remaining money for such other equitable relief
3 (including consumer information remedies) as it determines to be reasonably related to
4 Defendants' practices alleged in the Complaint. Any money not used for such equitable
5 relief is to be deposited to the U.S. Treasury as disgorgement. Defendants have no right
6 to challenge any actions the Commission or its representatives may take pursuant to this
7 Subsection.

8 F. If any Defendant is in default on any obligations under this Section, then the
9 judgment amount, minus any payments previously made pursuant to this Section,
10 becomes immediately due. A further ten-day grace period or other such concession
11 concerning default is unlikely to be warranted.

12 G. If any Defendant fails to pay fully the amount due at the time specified,
13 Defendants must cooperate fully with the Commission and their representatives in all
14 attempts to collect the judgment. In such an event, Defendants agree to provide federal
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1 A. Failing to provide sufficient customer information to enable the Commission
2 to efficiently administer consumer redress. If a representative of the Commission requests
3 in writing any information related to redress, Defendants must provide it, in the form
4 prescribed by the Commission, within 14 days; and

5 B. Disclosing, using, or benefitting from customer information, including the
6 name, address, telephone number, email address, social security number, other identify-
7 ing information, or any data that enables access to a customer's account (including a
8 credit card, bank account, or other financial account), that any Defendant obtained prior
9 to entry of this Order in connection with the manufacturing, advertising, marketing,
10 promotion, offering for sale, sale, or distribution of any of Defendants' goods or services.

11 IX. COOPERATION

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1 (1) all principals, officers, directors, and LLC managers and members; (2) all employees,
2 agents, and representatives who participate in the conduct specified in Sections III-V; and
3 (3) any business entity resulting from any change

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1 requested information, which must be sworn under penalty of perjury; appear for
2 depositions; and produce documents for inspection and copying. The Commission is also
3 authorized to obtain discovery, without further leave of court, using any of the procedures
4 prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions),
5 31, 33, 34, 36, 45, and 69.

6 B. For matters concerning this Order, the Commission is authorized to
7 communicate directly with each Defendant. Defendants must permit representatives of
8 the Commission to interview any employee or other Person affiliated with any Defendant
9 who has agreed to such an interview. The Person interviewed may have counsel present.

10 C. The Commission may use all other lawful means, including posing, through
11 its representatives, as consumers, suppliers, or other individuals or entities, to Defendants
12 or any individual or entity affiliated with Defendants, without the necessity of identifica-
13 tion or prior notice. Nothing in this Order limits the Commission's lawful use of compul-
14 sory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

15 **XIV. RETENTION OF JURISDICTION**

16 **IT IS FURTHER ORDERED** that this Court retains jurisdiction of this matter for
17 purposes of construction, modification, and enforcement of this Order.

18 **IT IS SO ORDERED.**

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20 DATED: October 6, 2014
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