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 CENTRAL DISTRICT OF CALIFORNIA  
 BY DEPUTY

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11 ATTORNEYS FOR PLAINTIFF  
 FEDERAL TRADE COMMISSION

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

(BQRx)

NM

no-06502

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

Civ. No.

COMPLAINT FOR INJUNCTION AND  
OTHER EQUITABLE RELIEF

1 Plaintiff, the Federal Trade Commission ("FTC" or "Commission"),  
2 for its complaint alleges:

3 1. The FTC brings this action under Section 13(b) of the  
4 Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to  
5 secure a permanent injunction, preliminary injunctive relief,  
6 rescission of contracts, restitution, disgorgement, appointment of a  
7 receiver, and other equitable relief for defendants' deceptive acts  
8 or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C.  
9 § 45(a).

#### 10 JURISDICTION AND VENUE

11 2. This Court has jurisdiction over this matter pursuant to 28  
12 U.S.C. §§ 1331, 1337(a), and 1345, as well as 15 U.S.C. §§ 45(a) and  
13 53(b).

14 3. Venue in the United States District Court for the Central  
15 District of California is proper under 28 U.S.C. §§ 1391(b) and (c),  
16 as well as under 15 U.S.C. § 53(b).

#### 17 PARTIES

18 4. Plaintiff, the Federal Trade Commission, is an independent  
19 agency of the United States Government created by statute. 15 U.S.C.  
20 §§ 41 et seq. The Commission is charged, inter alia, with  
21 enforcement of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which  
22 prohibits unfair or deceptive acts or practices in or affecting  
23 commerce. The Commission is authorized to initiate federal district  
24 court proceedings, by its own attorneys, to enjoin violations of the  
25 FTC Act and to secure such equitable relief as may be appropriate in  
26 each case, including restitution for injured consumers. 15 U.S.C.  
27 § 53(b).

1 5. Defendant Productive Marketing, Inc. ("Productive"), is a  
2 California corporation and does or has done business as Data  
3 Information Services, Data Services, National Property Services, and  
4 Formula Solutions. Its principal place of business is 506 Chapala  
5 Street, Santa Barbara, California 93101. Productive transacts  
6 business in the Central District of California.

7 6. Defendant Matthew B. Hyman is an officer and director of  
8 Productive. At all times material to this complaint, acting alone or  
9 in concert with others, he has formulated, directed, controlled or  
10 participated in the acts and practices of Productive, including the  
11 acts and practices set forth in this complaint. He resides and  
12 transacts business in the Central District of California.

13 7. Defendant Zachary A. Hyman is an officer and director of  
14 Productive. At all times material to this complaint, acting alone or  
15 in concert with others, he has formulated, directed, controlled or  
16 participated in the acts and practices of Productive, including the  
17 acts and practices set forth in this complaint. He resides and  
18 transacts business in the Central District of California.

19 8. Defendant Joshua Hyman is an officer and director of  
20 Productive. At all times material to this complaint, acting alone or  
21 in concert with others, he has formulated, directed, controlled or  
22 participated in the acts and practices of Productive, including the  
23 acts and practices set forth in this complaint. He resides and  
24 transacts business in the Central District of California.

25 COMMERCE

26 9. At all times material to this complaint, defendants have  
27 maintained a substantial course of trade in or affecting commerce, as  
28 "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' COURSE OF CONDUCT

1  
2 10. Since at least 1997, defendants have advertised and  
3 telemarketed information about seized vehicles and foreclosed homes  
4 to consumers throughout the United States. Defendants sell listings  
5 of seized vehicles and foreclosed homes to consumers, along with  
6 bound publications containing general information about purchasing  
7 seized vehicles and foreclosed homes.

8 11. Since at least 1997, in the course of advertising and  
9 telemarketing their materials on seized vehicles and foreclosed  
10 homes, defendants have disseminated or have caused the dissemination  
11 of advertisements throughout the United States, via local newspapers  
12 and online Internet classified services, that advertise to consumers  
13 current local listings of seized vehicles and foreclosed homes.

Defendants' Marketing Practices

14  
15 12. Consumers who call the toll-free telephone numbers provided  
16 in the advertisements are connected to defendants' telemarketers, who  
17 typically tell consumers that government seized vehicles or  
18 foreclosed homes in good condition can be purchased by the public at  
19 substantially reduced prices. Defendants' telemarketers typically  
20 tell consumers, among other things, that "brand new" 1998 or 1999  
21 vehicles are sold at public auto auctions for an average of \$1400.

22 13. Defendants' telemarketers also tell consumers that the  
23 information for a program - either seized vehicles or foreclosed  
24 homes - sells for \$49.50, although the price sometimes varies.  
25 Consumers who agree to purchase either the program for seized  
26 vehicles or the program for foreclosed homes are asked to provide the  
27 telemarketers with their credit card or checking account numbers.  
28

1 The \$49.50 cost for one program, plus shipping and handling, is then  
2 charged or debited to those accounts.

3 14. Shortly thereafter, defendants ship to consumers either a  
4 bound publication entitled "The Auction Catalog", along with  
5 photocopied pages headed "[consumer's state] Auction Listings," or a  
6 bound publication entitled "The Property Catalog" along with  
7 photocopied pages containing property listings of homes purportedly  
8 for sale in the consumer's state, depending on which program  
9 consumers have ordered.

#### 10 Unauthorized Charges

11 15. In the course of advertising and telemarketing defendants'  
12 materials on seized vehicles and foreclosed homes, defendants'  
13 telemarketers frequently charge consumers for materials the consumers  
14 did not agree to purchase.

15 16. In some instances, defendants obtain consumers' credit card  
16 or bank account information under false pretenses - for example, by  
17 claiming that the information is needed for verification purposes  
18 only - and then use the information to charge consumers' credit cards  
19 or bank accounts. In doing so, defendants' telemarketers reassure  
20 consumers who provide their account information that no charges will  
21 be assessed to those accounts, or that no charges will be assessed  
22 until the expiration of a free trial period.

23 17. Consumers who provide their credit card or checking account  
24 information to defendants' telemarketers for defendants' purported  
25 verification purposes only later discover that defendants in fact  
26 have charged or debited their accounts without the consumers'  
27 authorization for the full price of one or both of defendants'  
28 programs.

1 18. In other instances, when consumers agree to purchase one of  
2 defendants' programs and defendants' telemarketers have obtained the  
3 consumers' credit card or checking account information, defendants'  
4 telemarketers proceed to inform consumers that defendants have  
5 another program. For example, if a consumer has agreed to purchase  
6 the seized vehicle information, defendants' telemarketers offer to  
7 send the foreclosed home information as well. In many instances,  
8 however, defendants' telemarketers expressly state that the second  
9 program will be provided to the consumer at no extra charge or do not  
10 disclose that there is an additional charge for the second program.

11 19. Although consumers may have authorized defendants to charge  
12 or debit their credit card or checking accounts for the cost of the  
13 single program they actually ordered, consumers later learn that  
14 defendants have charged them for the additional program as well,  
15 resulting in charges or debits in an amount nearly double the amount  
16 they had authorized.

#### 17 Undisclosed Refund Policy

18 20. In the course of advertising and telemarketing defendants'  
19 materials on seized vehicles and foreclosed homes, defendants'  
20 telemarketers typically tell consumers that they may return the  
21 materials for a full refund if they are not completely satisfied.  
22 Defendants' telemarketers also tell consumers, expressly or by  
23 implication, that the refund request must be made within 90 days of  
24 purchase or that consumers should use the materials for 90 days.

25 21. Consumers learn only upon receiving defendants' materials  
26 that, under defendants' written refund policy, consumers must satisfy  
27 previously undisclosed conditions in order to obtain refunds.

28

1 22. Those conditions include, but are not limited to, the  
2 following: (1) consumers must use defendants' materials for at least  
3 90 days before applying for a refund; (2) defendants "highly  
4 recommend" that consumers provide proof that they attended at least  
5 two of the auctions listed in those materials; (3) consumers must  
6 return defendants' materials in resalable condition; and (4)  
7 consumers must obtain a return authorization number from a Productive  
8 customer service representative. Defendants' materials also inform  
9 consumers that they will be assessed a 20% restocking fee if they  
10 fail to comply with any or all of these conditions.

11 23. These conditions on the receipt of a refund are not clearly  
12 and conspicuously disclosed to consumers when they place their  
13 orders. The effect of these refund conditions, which are disclosed  
14 for the first time after consumers receive defendants' materials, is  
15 to discourage consumers from seeking refunds.

16 VIOLATIONS OF SECTION 5 OF THE FTC ACT

17 COUNT ONE

18 24. In numerous instances, in the course of offering for sale  
19 or selling their materials on seized vehicles and foreclosed homes,  
20 defendants have represented, expressly or by implication, that they  
21 will not use consumers' checking account or credit card information  
22 for the purposes of debiting consumers' bank accounts or billing  
23 consumers' credit card accounts without consumers' authorization.

24 25. In truth and in fact, in numerous instances, defendants  
25 have proceeded to use consumers' checking account or credit card  
26 information for the purposes of debiting consumers' bank accounts or  
27 billing consumers' credit card accounts without consumers'  
28 authorization.

1 26. Therefore, the representation set forth in Paragraph 24  
2 was, and is, false and misleading and constitutes a deceptive act or  
3 practice in violation of Section 5(a) of the FTC Act, 15 U.S.C.  
4 § 45(a).

5 COUNT TWO

6 27. In numerous instances, in the course of offering for sale  
7 or selling their materials on seized vehicles and foreclosed homes,  
8 defendants have represented, expressly or by implication, that they  
9 will send consumers either a single set of materials, or the  
10 materials on both seized vehicles and foreclosed homes as a package  
11 for the cost of a single set of materials, and that the cost of a  
12 single set of materials will be charged to consumers' checking or  
13 credit card accounts.

14 28. In truth and in fact, defendants did not send consumers  
15 either a single set of materials, or the materials on both seized  
16 vehicles and foreclosed homes as a package for the cost of a single  
17 set of materials, but instead charged consumers' checking or credit  
18 card accounts for the cost of both sets of materials.

19 29. Therefore, the representation set forth in Paragraph 27  
20 was, and is, false and misleading and constitutes a deceptive act or  
21 practice in violation of Section 5(a) of the FTC Act, 15 U.S.C.  
22 § 45(a).

23 COUNT THREE

24 30. In numerous instances, in the course of offering for sale  
25 or selling their materials on seized vehicles and foreclosed homes,  
26 defendants have represented, expressly or by implication, that they  
27 will provide refunds to consumers upon request.  
28



1 31. In truth and in fact, defendants have failed to disclose  
2 that they actually impose additional conditions and restrictions that  
3 discourage consumers from seeking refunds or restrict the  
4 availability of refunds. These conditions and restrictions would be  
5 material to consumers in their decisions to purchase defendants'  
6 products.

7 32. In light of the representation in Paragraph 30 above, the  
8 failure to disclose that defendants actually impose additional refund  
9 conditions and restrictions is a deceptive act or practice in  
10 violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

11 COUNT FOUR

12 33. In numerous instances, in the course of offering for sale  
13 or selling their materials on seized vehicles, defendants have  
14 represented, expressly or by implication, that late model used  
15 vehicles sell at public auto auctions for an average price of \$1400.

16 34. In truth and in fact, late model used vehicles do not sell  
17 at public auto auctions for an average price of \$1400.

18 35. Therefore, the representation set forth in Paragraph 33  
19 was, and is, false and misleading and constitutes a deceptive act or  
20 practice in violation of Section 5(a) of the FTC Act, 15 U.S.C.  
21 § 45(a).

22 COUNT FIVE

23 36. Defendants have represented, expressly or by implication,  
24 that they possessed and relied upon a reasonable basis that  
25 substantiated the representation set forth in Paragraph 33, at the  
26 time the representation was made.

1 37. In truth and in fact, defendants did not possess and rely  
2 upon a reasonable basis that substantiated the representation set  
3 forth in Paragraph 33, at the time the representation was made.

4 38. Therefore, the representation set forth in Paragraph 36  
5 was, and is, false and misleading and constitutes a deceptive act or  
6 practice in violation of Section 5(a) of the FTC Act, 15 U.S.C.  
7 § 45(a).

#### 8 CONSUMER INJURY

9 39. Consumers throughout the United States have suffered and  
10 continue to suffer substantial monetary loss as a result of  
11 defendants' unlawful acts or practices. In addition, defendants have  
12 been unjustly enriched as a result of their unlawful practices.  
13 Absent injunctive relief by this Court, defendants are likely to  
14 continue to injure consumers, reap unjust enrichment, and harm the  
15 public interest.

#### 16 THIS COURT'S POWER TO GRANT RELIEF

17 40. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers  
18 this Court to grant injunctive and other ancillary relief, including  
19 consumer redress, disgorgement, and restitution, to prevent and  
20 remedy any violations of any provision of law enforced by the  
21 Commission.

22 41. This Court, in the exercise of its equitable jurisdiction,  
23 may award other ancillary relief to remedy injury caused by  
24 defendants' law violations.

#### 25 PRAYER FOR RELIEF

26 WHEREFORE, plaintiff, the Federal Trade Commission, requests  
27 that this Court, as authorized by Section 13(b) of the FTC Act,  
28 15 U.S.C. § 53(b), and pursuant to its own equitable powers:

1 1. Award plaintiff such temporary and preliminary injunctive  
2 and ancillary relief as may be necessary to avert the likelihood of  
3 consumer injury during the pendency of this action and to preserve  
4 the possibility of effective final relief;

5 2. Permanently enjoin defendants from violating the FTC Act as  
6 alleged herein;


7 3. Award such relief as the Court finds necessary to redress  
8 injury to consumers resulting from defendants' violations of the FTC  
9 Act, including but not limited to rescission of contracts, the refund  
10 of monies paid, and the disgorgement of ill-gotten monies; and

11 4. Award plaintiff the costs of bringing this action, as well  
12 as such other and additional relief, as the Court may determine to be  
13 just and proper.

14  
15 DATED: June 14, 2000

16 Respectfully Submitted,

17 DEBRA A. VALENTINE  
18 General Counsel

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