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12
13 UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
14

15 FEDERAL TRADE COMMISSION,
16
Plaintiff
17 v.
18 NATIONAL SUPPLY & DISTRIBUTION
CENTER, INC., a corporation, et al.,
19
Defendants.

CV-99-12828 HLH (AJWx)

STIPULATED FINAL
JUDGMENT AND ORDER FOR
PERMANENT INJUNCTION
AND OTHER EQUITABLE
RELIEF AS TO DEFENDANT
LARRY ELLIS

20
21 Plaintiff, the Federal Trade Commission ("FTC" or
22 "Commission"), filed a complaint on December 7, 1999 for permanent
23 injunction and other relief, pursuant to Sections 13(b) and 19 of
24 the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b),
25 57(b), and Section 6(b) of the Telemarketing and Consumer Fraud
26 and Abuse Prevention Act, 15 U.S.C. § 6105(b), charging defendants
27 National Supply and Distribution Center Inc. ("NSDC"), Data
28 Distribution Services, Inc. ("DDS"), and Steven Rayman with

1 engaging in unfair or deceptive acts or practices in connection
2 with the sale, offering for sale, or distribution of nondurable
3 office supplies, including photocopier toner, in violation of
4 Section 5 of the FTC Act, 15 U.S.C. § 45, and the FTC's
5 Telemarketing Sales Rule, 16 C.F.R. Part 310. On April 25, 2000,
6 plaintiff filed a second amended complaint naming Larry Ellis
7 ("Ellis"), Lee Siegel, and Scott Earl as additional defendants.

8 Now the Commission and defendant Ellis agree to a settlement
9 of this action without trial or adjudication of any issue of law
10 or fact herein. Without making any admission of liability, Ellis
11 consents to entry of this Stipulated Final Judgment and Order for
12 Permanent Injunction and Other Equitable Relief("Order").

13 **FINDINGS**

14 1. This is an action by the Commission instituted under
15 Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b,
16 and Section 6(b) of the Telemarketing and Consumer Fraud and Abuse
17 Prevention Act, 15 U.S.C. § 6105(b). The Second Amended Complaint
18 ("complaint") seeks both permanent injunctive relief and equitable
19 monetary relief in the form of consumer redress and/or
20 disgorgement.

21 2. The Court has jurisdiction over the subject matter of
22 this case, and jurisdiction over Ellis. Venue in the Central
23 District of California is proper as to Ellis.

24 3. The complaint states a claim upon which relief can be
25 granted as to Ellis.

26 4. The Commission has the authority under Sections 13(b)
27 and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and Section
28 6(b) of the Telemarketing and Consumer Fraud and Abuse Prevention

1 Act, 15 U.S.C. § 6105(b), to seek the relief it has requested
2 against Ellis.

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

6 6. By stipulating and consenting to the entry of this
7 Order, Ellis does not admit any of the allegations in the
8 complaint, except those contained in Paragraphs 1 through 5 above.

9 7. Entry of this Order is in the public interest.

10 8. Pursuant to Federal Rule of Civil Procedure 65(d), the
11 provisions of this Order are binding upon Ellis, and his agents,
12 servants, employees and attorneys, and all other persons or
13 entities in active concert or participation with him, who receive
14 actual notice of this Order by personal service or otherwise.

15 **DEFINITIONS**

16 A. "Document" is synonymous in meaning and equal in scope
17 to the usage of the term in Federal Rule of Civil Procedure 34(a),
18 and includes writings, drawings, graphs, charts, photographs,
19 audio and video recordings, computer records, and other data
20 compilations from which information can be obtained and
21 translated, if necessary, through detection devices into
22 reasonably usable form. A draft or non-identical copy is a
23 separate document within the meaning of the term.

24 B. "Consumer" means any person, including any individual,
25 group, unincorporated association, limited or general partnership,
26 corporation or other business entity, or government entity.

27 C. "Telemarketing" means any business activity which
28 involves, among other things, initiating or receiving telephone

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

15 D. "Assisting others" means knowingly providing any of the
16 following goods or services to another entity: (1) performing
17 customer service functions, including, but not limited to,
18 receiving or responding to consumer complaints; (2) formulating
19 or providing, or arranging for the formulation or provision of,
20 any telephone sales script or any other marketing material;
21 (3) providing names of, or assisting in the generation of,
22 potential customers; or (4) performing marketing services of any
23 kind.

24 E. The terms "and" and "or" have both conjunctive and
25 disjunctive meanings.

26 F. "Employment" includes any affiliation with any business,
27 including the performance of services as an officer, owner,
28 manager, supervisor, employee, consultant, or independent

1 contractor; and "Employer" includes any and all individuals or
2 entities for whom Ellis performs services as an employee,
3 consultant, or independent contractor.

4 G. A requirement that any defendant "notify the Commission"
5 shall mean that the defendant shall send the specified information
6 via first-class mail, costs prepaid, to the Associate Director for
7 Enforcement, Federal Trade Commission, 600 Pennsylvania Avenue NW,
8 Washington, D.C. 20580. Attn: FTC v. NSDC, Inc. et al., No. 99-
9 12828 HLH (ANx) (U.S. Dist. Ct., C.D. Cal.).

10 **I. BAN ON TELEMARKETING**

11 **IT IS HEREBY ORDERED** that Ellis, whether acting directly or
12 through any corporation, limited liability company, subsidiary,
13 division or other device, is hereby permanently restrained and
14 enjoined from engaging or participating in telemarketing, or
15 assisting others who are engaging or participating in
16 telemarketing. It is understood that, for the purposes of this
17 paragraph of this Order, "telemarketing" shall be construed to
18 exclude telephone calls between a telemarketer and any business,
19 **provided, however,** that this exclusion shall not apply to calls
20 involving the retail sale of nondurable office or cleaning
21 supplies.

22 **II. PROHIBITED BUSINESS ACTIVITIES**

23 A. **IT IS FURTHER ORDERED** that, in connection with the
24 advertising, marketing, promoting, offering for sale, or sale of
25 any good or service, Ellis, and his agents, servants, employees,
26 and all persons or entities directly or indirectly under his
27 control, and all other persons or entities in active concert or
28 participation with any one of them, who receive actual notice of

1 this Order by personal service or otherwise, are hereby
2 permanently restrained and enjoined from:

3 1. Misrepresenting, expressly or by implication, that
4 any consumer, or any consumer's employee or other representative,
5 ordered any good or service that was shipped, provided, and/or
6 billed to the consumer when in fact such good or service was not
7 ordered by the consumer;

8 2. Misrepresenting, expressly or by implication, any
9 association with a consumer's regular supplier or provider of a
10 good or service, or any association with the manufacturer of any
11 product or equipment used by the consumer in conjunction with a
12 good or service;

13 3. Misrepresenting, expressly or by implication, any
14 previous business transactions including any previous sales of any
15 goods or services;

16 4. Misrepresenting, expressly or by implication, a
17 consumer's obligation to pay for any goods or services or
18 attendant charges or fees;

19 5. Misrepresenting, expressly or by implication, the
20 price of goods or services; or

21 6. Misrepresenting, expressly or by implication, any
22 other fact material to a consumer's decision to buy or accept a
23 good or service.

24 B. **IT IS FURTHER ORDERED** that Ellis and his agents,
25 servants, employees, and all persons or entities directly or
26 indirectly under his control, and all other persons or entities in
27 active concert or participation with him, who receive actual
28 notice of this Order by personal service or otherwise, are hereby

1 permanently restrained and enjoined from:

2 1. Violating Section 310.3(a)(4) of the Telemarketing
3 Sales Rule, 16 C.F.R. § 310.3(a)(4), by making false or misleading
4 statements to induce any consumer to pay for goods or services,
5 including statements that:

6 a. they are a consumer's regular supplier of
7 office supplies or associated with the manufacturer or
8 vendor of a consumer's photocopier;

9 b. the price of the office supplies used by a
10 consumer is about to increase substantially;

11 c. a consumer will be charged the same price for
12 office supplies that the consumer has been paying;

13 d. a consumer ordered the office supplies that
14 were shipped or billed to the consumer; and

15 e. if a consumer wants to return an unordered
16 shipment or a shipment ordered on the basis of false or
17 misleading statements, the consumer has an obligation to
18 pay a restocking fee;

19 2. Violating Section 310.4(d)(1) of the Telemarketing
20 Sales Rule, 16 C.F.R. § 310.4(d)(1), by failing in outbound
21 telephone calls to disclose promptly and in a clear and
22 conspicuous manner the identity of the seller;

23 3. Violating Section 310.4(d)(2) of the Telemarketing
24 Sales Rule, 16 C.F.R. § 310.4(d)(2), by failing in outbound
25 telephone calls to disclose promptly and in a clear and
26 conspicuous manner that the purpose of the call is to sell goods
27 or services;

28 4. Violating Section 310.3(b) of the Telemarketing

1 Sales Rule, 16 C.F.R. § 310.3(b), by providing substantial
2 assistance or support to any seller or telemarketer when that
3 person knows or consciously avoids knowing that the seller or
4 telemarketer is engaged in any act or practice that violates
5 Section 310.3(a) or Section 310.4 of the Telemarketing Sales Rule,
6 16 C.F.R §§ 310.3(a) or 310.4; or

7 5. Violating or assisting others in violating any
8 other provision of the Telemarketing Sales Rule, 16 C.F.R. Part
9 310.

10 A copy of the Telemarketing Sales Rule is appended to this
11 Order as Attachment A and is incorporated herein as if fully
12 rewritten. In the event that the Telemarketing Sales Rule is
13 amended by the Commission in a manner which would create a new or
14 different standard applicable to Ellis's obligations under this
15 Order, Ellis's compliance with the Telemarketing Sales Rule as so
16 amended shall not be deemed a violation of this Order.

17 **III. PROHIBITIONS AGAINST DISTRIBUTION OF CUSTOMER LISTS**

18 **IT IS FURTHER ORDERED** that Ellis, and his agents, servants,
19 employees, and all persons or entities directly or indirectly
20 under his control, and all other persons or entities in active
21 concert or participation with him, who receive actual notice of
22 this Order by personal service or otherwise, are permanently
23 restrained and enjoined from selling, renting, leasing,
24 transferring or otherwise disclosing the name, address, telephone
25 number, credit card number, bank account number or other
26 identifying information of any person who paid any money to
27 defendants NSDC or DDS at any time, in connection with the
28 offering for sale or sale of any good or service; **provided,**

1 **however**, that Ellis may disclose such identifying information as
2 requested by any law enforcement agency or as required by any law,
3 regulation or court order, including to the Commission pursuant to
4 this Order.

5 **IV. ACKNOWLEDGMENT OF RECEIPT OF ORDER AND REAFFIRMATION OF**
6 **FINANCIAL STATEMENT**

7 **IT IS FURTHER ORDERED** that, within five (5) business days
8 after being provided with notice of entry of this Order, Ellis
9 shall submit to the Commission a truthful sworn statement, in the
10 form shown on Appendix 1, that shall acknowledge receipt of this
11 Order as entered and shall reaffirm and attest to the
12 truthfulness, accuracy, and completeness of Ellis's January 26,
13 2000 financial statement and his October 28, 2000 financial
14 statement. The Commission is authorized to verify all information
15 provided in the financial statements with all appropriate third
16 parties, including, but not limited to, financial institutions.

17 **V. MONETARY JUDGMENT**

18 **IT IS FURTHER ORDERED** that:

19 A. Judgment in the amount of \$220,000 is entered in favor
20 of the Commission against Ellis. Within five (5) days of entry of
21 this Judgment, Ellis shall transfer to Plaintiff by wire transfer
22 or certified or cashier's check \$120,000 from funds held by him in
23 an independent escrow account, as partial payment of this
24 Judgment. In the event of any default in payment, which default
25 continues for ten (10) days beyond the due date of payment, the
26 entire unpaid judgment, together with interest, as computed
27 pursuant to 28 U.S.C. § 1961, from the date of default to the date
28 of payment, shall immediately become due and payable.

1 B. Any assets collected by the Commission pursuant to the
2 judgment set forth in this Part shall be deposited into an account
3 to be maintained by the Commission or its agent. Upon the final
4 disposition of this action, such funds shall be either (1) used to
5 provide consumer redress and any administrative costs associated
6 with providing such redress; or (2) paid to the U.S. Treasury as
7 equitable disgorgement, if the Commission in its sole discretion
8 deems that consumer redress is impractical. If the Commission in
9 its sole discretion determines that consumer redress is practical,
10 it shall submit a plan for the disbursement of funds to the Court
11 for review and approval. Ellis shall have no right to contest the
12 manner of distribution chosen by the Commission. Ellis forever
13 disclaims all right, title, and interest in all sums paid to
14 plaintiff. None of these funds shall be returned to Ellis, his
15 successors, heirs, or assigns.

16 C. Within five (5) days after receiving notice of entry of
17 this Order, Ellis is hereby required, in accordance with 31 U.S.C.
18 §7701, to furnish to the Commission his social security number,
19 which may be used for purposes of collecting and reporting on any
20 delinquent amount arising out of this Order; and

21 D. Ellis further stipulates for purposes of the settlement
22 only that the facts as alleged in the Commission's complaint in
23 this action shall be taken as true in the event of any subsequent
24 litigation to collect amounts due pursuant to this Order,
25 including but not limited to a nondischargeability complaint in
26 any bankruptcy proceeding.

27 **VI. RIGHT TO REOPEN**

28 **IT IS FURTHER ORDERED** that the Commission's agreement to this

1 Stipulation and Order with respect to Ellis is expressly premised
2 upon the truthfulness, accuracy and completeness of Ellis's
3 January 26, 2000 financial statement and his October 28, 2000
4 financial statement. Said financial statements contains material
5 information upon which the FTC has relied in negotiating and
6 agreeing to the terms of this Order. If, upon motion by the
7 Commission to the Court, the Court finds that defendant Ellis
8 failed to submit to the Commission the sworn statement required by
9 Paragraph IV of this Order, or failed to disclose any material
10 asset with a value exceeding \$1,000, or materially misrepresented
11 the value of any asset, or made any other material
12 misrepresentation in or omission from his financial statements
13 described above, the Court shall enter judgment for consumer
14 redress in the amount of \$7,616,657 against defendant Ellis in
15 favor of the Commission, less any amount previously received from
16 any defendant in this action, unless defendant Ellis proves that
17 any and all such omissions or misrepresentations were
18 unintentional. Defendant Ellis has no right to contest any of the
19 allegations in the Commission's complaint in this matter in any
20 proceeding brought pursuant to this paragraph, but he can
21 introduce evidence that any alleged material misrepresentation or
22 omission made by him in his financial statements was
23 unintentional. If the financial statements failed to disclose a
24 material asset or materially misrepresented the value of an asset,
25 and if defendant Ellis proves that any and all such omissions or
26 misrepresentations were unintentional, the Court shall order that
27 defendant Ellis turn over to the Commission any and all omitted
28 assets or the fair market value of such omitted assets, or, if the

1 value of an asset was materially misrepresented, the difference in
2 the actual fair market value and the value given in the financial
3 statements; provided, however, that in all other respects this
4 Order shall remain in full force and effect unless otherwise
5 modified by an order of this Court.

6 **VII. RECORD-KEEPING**

7 **IT IS FURTHER ORDERED that**, for a period of five (5) years
8 from the date of entry of this Order, Ellis and his agents,
9 servants, employees, attorneys, and companies or partnerships
10 subject to Ellis's control, are hereby restrained and enjoined
11 from failing to create, and to retain, in a location under their
12 control, for a period of three (3) years following the date of
13 such creation, unless otherwise specified:

14 A. Books, records and accounts that, in reasonable detail,
15 accurately and fairly reflect the cost of goods or services sold,
16 revenues generated, and the disbursement of such revenues for all
17 business entities owned, managed, or controlled by Ellis, directly
18 or indirectly;

19 B. Records that accurately reflect: the name, address, and
20 telephone number of each person employed in any capacity by Ellis,
21 directly or indirectly, or through any business owned, managed or
22 controlled by Ellis, directly or indirectly, including as an
23 independent contractor; that person's job title or position; the
24 date upon which the person commenced work; and the date and reason
25 for the person's termination, if applicable. The parties subject
26 to this Section shall retain such records for any terminated
27 employee for a period of two (2) years following the date of
28 termination;

1 C. Records about any transaction between (1) Ellis,
2 directly or indirectly, or through any business owned, managed or
3 controlled by Ellis, directly or indirectly, and (2) any customer;
4 such records to include the following: the customer's name; his
5 or her address; his or her telephone number; a description of the
6 good, service, or interest purchased; the dollar amounts the
7 customer paid; the sales agent; and the date of the sale;

8 D. For every complaint or refund request by any customer of
9 Ellis or by any customer of any business owned, managed or
10 controlled by Ellis, directly or indirectly, whether such
11 complaint or refund request is received directly or indirectly or
12 through any third party, records that reflect:

13 (1) the customer's name, address, telephone number and
14 the dollar amount paid by the customer;

15 (2) the written complaint, if any, and the date of the
16 complaint or refund request;

17 (3) the basis of the complaint, including but not
18 limited to the name of any salesperson or agent
19 complained against, and the nature and result of any
20 investigation conducted concerning the validity of the
21 complaint;

22 (4) each response and the date of the response;

23 (5) any final resolution and the date of the
24 resolution; and

25 (6) in the event of a denial of a refund request, the
26 reason for such denial, or if the complaint was cured,
27 the basis for determining that the complaint was cured;

28 E. Copies of all sales scripts, training materials,

1 advertisements, or other marketing materials utilized.

2
3 **VIII. MONITORING OF DEFENDANT ELLIS**

4 **IT IS FURTHER ORDERED** that, in order to monitor compliance
5 with this Order:

6 A. Ellis shall notify the Commission within five (5) days
7 after receiving notice of the entry of this Order, of (1) his
8 residence address and mailing address; (2) his telephone
9 number(s); (3) the name, address and telephone number of his
10 employer, if any; (4) the full names of his employer's principals,
11 if any; (5) the names of his supervisors, if any; and (6) a
12 description of his employer's activities, if any, and Ellis's
13 duties and responsibilities;

14 B. One hundred and twenty days (120) days after the date of
15 entry of this Order, Ellis certify to the Commission, signed under
16 penalty of perjury, regarding his past and present efforts to
17 comply with this Order;

18 C. For a period of five (5) years from the date of entry of
19 this Order, Ellis shall notify the Commission within ten (10) days
20 of any changes in his residence or mailing addresses or employment
21 status. Notice of changes in his employment status shall include:
22 (1) the new employer's name, address and telephone number, if any;
23 (2) the full names of the employer's principals, if any; (3) if
24 applicable, the names of Ellis's supervisors, and (4) a
25 description of the employer's activities, and Ellis's duties and
26 responsibilities, if any;

27 D. For a period of five (5) years from the date of entry of
28 this Order, Ellis shall notify the Commission of any proposed

1 change in the structure of any business entity owned or controlled
2 by Ellis, directly or indirectly, such as creation, incorporation,
3 dissolution, assignment, sale, merger, creation or dissolution of
4 subsidiaries, proposed filing of a bankruptcy petition, or change
5 in the business or corporate name or address, or any other change
6 that may affect compliance obligations arising out of this Order,
7 thirty (30) days prior to the effective date of any proposed
8 change; **provided, however**, that, with respect to any proposed
9 change in the business entity about which Ellis learns less than
10 thirty (30) days prior to the date such action is to take place,
11 Ellis shall notify the Commission as soon as is practicable after
12 learning of such proposed change.

13 **IX. ACCESS TO BUSINESS PREMISES**

14 **IT IS FURTHER ORDERED** that, for a period of five (5) years
15 from the date of entry of this Order, Ellis shall permit
16 representatives of the Commission, within seven (7) days of
17 receipt of written notice from the Commission:

18 A. Access during normal business hours to any office, or
19 facility storing documents, of any business owned by Ellis, or of
20 which Ellis is a principal, director, officer, partner, or other
21 controlling party, to inspect and copy, at cost to the Commission,
22 all documents belonging to such business or Ellis, relating in any
23 way to any matter subject to this Order; and shall permit
24 Commission representatives to remove documents relating in any way
25 to any matter subject to this Order for a period not to exceed two
26 business days so that the documents may be inspected, inventoried,
27 and copied. It is understood, however, that Ellis and his counsel
28 may be present during the Commission's access to such business

1 premises pursuant to this Section, and that Ellis may apply, with
2 notice to the Commission, for a protective order limiting the
3 Commission's access to documents pursuant to this Section based on
4 privilege or other appropriate grounds;

5 B. Refrain from interfering with any duly authorized
6 representatives of the Commission interviewing employers,
7 employees (whether designated as employees, consultants,
8 independent contractors or otherwise), or agents, about any matter
9 relating in any way to any matter subject to this Order;

10 C. Upon written request by any duly authorized
11 representative of the Commission, submit answers to written
12 interrogatories (under oath, if requested), and produce documents,
13 on reasonable notice, relating in any way to any matter subject of
14 this Order.

15 **X. FTC'S AUTHORITY TO MONITOR COMPLIANCE**

16 **IT IS FURTHER ORDERED** that the Commission is authorized to
17 monitor the compliance of Ellis with this Order by all lawful
18 means, including but not limited to the following means:

19 A. The Commission is authorized, without further leave of
20 court, to obtain discovery from any person in the manner provided
21 by Chapter V of the Federal Rules of Civil Procedure, Fed. R. Civ.
22 P. 26-37, including the use of compulsory process pursuant to Fed.
23 R. Civ. P. 45, for the purpose of monitoring and investigating the
24 compliance of Ellis with this Order;

25 B. The Commission is authorized to use representatives
26 posing as consumers and suppliers to Ellis, to the employees of
27 Ellis, or to any other entity managed or controlled in whole or in
28 part by Ellis, without the necessity of identification or prior

1 notice;

2 C. Nothing in this Order shall limit the Commission's
3 lawful use of compulsory process, pursuant to Sections 9 and 20 of
4 the FTC Act, 15 U.S.C. §§49, 57b-1, to investigate whether Ellis
5 has violated any provision of this order or Section 5 of the FTC
6 Act, 15 U.S.C. §45, or the Commission's Telemarketing Sales Rule,
7 16 C.F.R. Part 310;

8 D. For purposes of the compliance reporting required by
9 this section, the Commission is authorized to communicate directly
10 with Ellis.

11 **XI. WAIVER OF CLAIMS**

12 Ellis waives all claims under the Equal Access to Justice
13 Act, 28 U.S.C. § 2412, *as amended by Pub. L. 104-121,*
14 *110 Stat. 847, 863-64 (1996),* and all rights to seek appellate
15 review or otherwise challenge or contest the validity of this
16 Order, or the temporary or preliminary orders entered in this
17 proceeding, and further waives and releases any claim he may have
18 against the FTC, the Receiver, or their employees, agents, or
19 representatives.

20 **XII. COSTS AND ATTORNEYS FEES**

21 **IT IS FURTHER ORDERED** that each party to this Order bear its
22 own costs and attorneys fees incurred in connection with this
23 action.

24 **XIII. RETENTION OF JURISDICTION**

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

28

APPENDIX 1

DEBRA A. VALENTINE
General Counsel
Federal Trade Commission

CONSTANCE VECELLIO
PABLO M. ZYLBERGLAIT
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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION,

Plaintiff

v.

NATIONAL SUPPLY & DISTRIBUTION
CENTER, INC., a corporation, et al.,

Defendants.

CV-99-12828 HLH
(AJWx)

DEFENDANT ELLIS'S
DECLARATION RE:
(1)ACKNOWLEDGMENT OF
SERVICE OF STIPULATED
FINAL JUDGMENT AND
ORDER; AND
(2)REAFFIRMATION OF
FINANCIAL STATEMENTS

Larry Ellis, being duly sworn, hereby states and affirms:

1. I am a defendant in the above-entitled action. My current
residence address is _____.

I am a citizen of the United States and over the age of eighteen.

I have personal knowledge of the facts set forth in this
Declaration.

2. I agreed to entry of a Stipulated Final Judgment and Order

1 ("Stipulated Order") against me to settle the charges in the
2 Commission's Complaint. I read the provisions of the Stipulated
3 Order, including Attachment A (the Telemarketing Sales Rule, 16
4 C.F.R. Part 310) before signing it. I understand all the
5 provisions of the Stipulated Order. By signing the Stipulated
6 Order I agreed that I will be bound by the Stipulated Order.

7 3. On _____, 2000, I received a copy of the Stipulated Order
8 which was signed by a United States District Judge and entered by
9 the Court on _____, 2000. A true and correct copy of the
10 Stipulated Order that I received, including Attachment A (the
11 Telemarketing Sales Rule), is appended to this declaration. The
12 Stipulated Order, including Attachment A (the Telemarketing Sales
13 Rule), was _____ pages in length. I reviewed the document and
14 confirmed it was the document I had previously signed.

15 4. In January 2000 I provided to Plaintiff Federal Trade
16 Commission ("Commission") a completed and signed document titled
17 "Financial Statement of Individual Defendant" ("Financial
18 Statement"), which I dated January 26, 2000. In October 2000, I
19 provided to an updated copy of my Financial Statement, which I
20 dated October 28, 2000.

21 5. I understand that my Financial Statements contain material
22 information upon which the Commission relied in negotiating and
23 agreeing to the terms in the Stipulated Order related to the
24 monetary judgment of \$220,000.

25 6. I hereby reaffirm and attest to the truthfulness, accuracy,
26 and completeness of my January 26, 2000 Financial Statement and my
27 October 28, 2000 Financial Statement.

28 7. I understand that if, upon motion by the Commission, the

1 Court finds that the Financial Statements I submitted failed to
2 disclose any material asset, or materially misrepresented the
3 value of any asset, or finds that I made any other material
4 misrepresentation in or omission from these documents, a judgment
5 amount of \$7,616,657 will be entered by the Court.

6
7 I declare under penalty of perjury under the laws of the
8 United States that the foregoing is true and correct. Executed on
9 _____, 2000, at _____, California.

10
11 _____
12 Larry Ellis