

APPENDIX B

SUMMARY OF COURT ORDER ENTERED IN
FTC v. IRA SMOLEV, ET AL. FOR DEFENDANT BRUCE TURIANSKY
ON _____

DEFINITIONS

1. “Assisting others” means knowingly providing any of the following services to any person or entity: (a) performing customer service functions for any person or entity, including, but not limited to, receiving or responding to consumer complaints; (b) formulating or providing, or arranging for the formulation or provision of, any telephone sales script or any other marketing material for any person or entity; (c) performing marketing services of any kind for any person or entity, or (d) providing credit card merchant processing accounts, or otherwise providing access to a billing and collection system, such as a credit card, checking, savings, share or similar account, utility bill, telephone bill, mortgage loan account or debit card.

2. “Billing information” means any data that describes, constitutes or provides access to a billing and collection system, such as a credit card, checking, savings, share or similar account, utility bill, telephone bill, mortgage loan account or debit card.

3. “Charge” means any amount charged or debited to a consumer’s credit card, checking, savings, share or similar account, utility bill, telephone bill, mortgage loan account or debit card, or any similar form of collecting money from a consumer.

4. With respect to advertisements and promotional and marketing materials, "clear(ly) and conspicuous(ly)" means:

- a. In an advertisement communicated through an electronic medium (such as television, video, radio, and interactive electronic media such as software,

the Internet and online services), the disclosure must be presented simultaneously in both the audio and visual portions of the advertisement; **provided, however,** that in any advertisement presented solely through visual or audio means, the disclosure may be made through the same means in which the advertisement is presented; **provided further,** that in any advertisement disseminated by means of an interactive electronic medium such as software, the Internet, or online services, a disclosure made through the use of a hyperlink will not be deemed "clear and conspicuous" unless the hyperlink itself is clear and conspicuous, is clearly identified as a hyperlink, is labeled to convey the nature and relevance of the information it leads to, is on the same Web page, online service page, or other electronic page and proximate to the triggering representation, and takes the consumer directly to the disclosure on the click-through electronic page or other display window or panel. The audio disclosure must be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The visual disclosure must be of a size and shade, and must appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it; and

- b. In a print advertisement or any print promotional or marketing material, the disclosure must be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, and in print that contrasts with the background against which it appears.

The disclosure must be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement, promotional or marketing material.

5. "Membership service" means any arrangement whereby persons who purportedly agree to the arrangement (often called "members") receive specified benefits over a period of time, including but not limited to, travel benefits, health benefits, home protection, credit card protection, legal services and discounts on goods and services.

6. An offer or agreement with a "negative option" feature means an offer or agreement to sell or provide any goods or services under which (a) a consumer must take an affirmative action to reject goods or services or cancel the agreement, and (b) the consumer's silence or failure to reject goods or services or to cancel the agreement is interpreted by the seller or provider as acceptance or continuing acceptance of the goods or services. Agreements with negative option features include, but are not limited to, agreements in which the consumer, subsequent to agreeing to the offer, will automatically be billed or charged at the end of a trial period (whether or not there is a fee for the trial period) unless the consumer cancels, and continuity plans in which, subsequent to the consumer's agreement to the plan, the seller or provider automatically ships goods to a consumer unless the consumer notifies the seller or provider within a certain time not to ship the goods.

7. A "partner" of Defendant means any third party that contracts with Defendant to provide telemarketing or other marketing services in connection with any transaction wherein Defendant provides, offers to provide or arranges for others to provide goods or services to consumers in exchange for consideration.

8. "Renewal" means an extension beyond the original term of a membership, subscription or agreement for goods or services that are offered on a periodic basis.

9. "Telemarketing" means any business activity that involves attempts to induce consumers to purchase any item, good, service, partnership interest, trust interest or other beneficial interest, or to enter a contest for a prize, by means of telephone sales presentations, either exclusively or in conjunction with the use of other forms of marketing; **provided** that the term "telemarketing" does not include transactions that are not completed until after a face-to-face contact between the seller or solicitor and the consumers solicited; **provided further**, that for the purposes of Part III of this Order, the definition of telemarketing will be consistent with 16 C.F.R. § 310.2.

10. "Third party" means (a) any entity that is not owned or controlled by Defendant, and (b) any person who is not acting in his or her capacity as an officer or employee of Defendant or any entity owned or controlled by Defendant.

NOTE: Each of the following Order provisions applies to Defendant, and his officers, agents, employees, and attorneys, and all those persons or entities in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, or other device. The effective date of this Order is the date it was entered by the Court.

**PROHIBITED BUSINESS PRACTICES:
MISLEADING REPRESENTATIONS
PART II OF THE ORDER**

IT IS FURTHER ORDERED that Defendant Bruce Turiansky [and all others to whom the Order applies, *see* "NOTE" above] are hereby permanently restrained and enjoined from making, or causing or assisting others to make, expressly or by implication, any false or misleading representation in connection with the advertising,

promoting, marketing, offering for sale, sale, or distribution of any goods or services in or affecting commerce, including but not limited to:

- A. Falsely representing, through, *inter alia*, mailings, email, billings, credit card charges and checking account debits, that a consumer purchased or agreed to purchase goods or services, or that a transaction has been authorized by a consumer;
- B. Falsely representing (1) the amount that a consumer will be charged or billed for any goods or services; (2) that a consumer will not be charged or billed for any goods or services; (3) the timing or manner of any charge or bill; or (4) that a consumer will not be charged or billed without the consumer's authorization;
- C. Making any representation that a consumer will receive a trial membership, or that any information kit, good or service is offered "free," "risk-free," with "no obligation," or words of similar import denoting or implying the absence of any obligation on the part of the recipient of such offer to pay for the information kit, good or service or to take affirmative action to avoid incurring payment obligations, without disclosing clearly and conspicuously, and in close proximity to such representation, prior to requesting the consumer's authorization to be charged or billed for the offered trial membership, information kit, good or service, or any other goods or services:
 - 1. Any obligation of the consumer associated with accepting the offered trial membership, information kit, good or service

(including, but not limited to, payment of shipping and handling fees, the obligation to purchase other goods or services, the obligation to accept a trial membership or trial period, and the obligation to cancel or take other affirmative action to avoid incurring payment obligations and the manner in which such a cancellation request may be submitted);

2. The amount and number of payments (if more than one) that will or may be required, and the circumstances under which additional payments may be required; and
3. All material conditions, limitations and restrictions on the ability of the consumer to use the offered trial membership, information kit, good or service; and

D. Making any representation that a consumer who accepts an offer for goods or services will receive an additional good or service for “free” or with “no obligation,” or as discounted or reduced in price, or words of similar import, without disclosing clearly and conspicuously, and in close proximity to such representation, prior to requesting the consumer’s authorization to be charged or billed for the goods or services with which the purportedly free or discounted good or service is offered, all material conditions, limitations and restrictions on the ability of the consumer to use any such purportedly free or discounted good or service.

**VIOLATIONS OF TELEMARKETING SALES RULE
PART III OF THE ORDER**

IT IS FURTHER ORDERED that Defendant Bruce Turiansky [and all others to whom the Order applies, *see* “NOTE” above] are hereby permanently restrained and enjoined from violating any provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310, as in effect now or as it may be amended.

**PROHIBITED FAILURES TO DISCLOSE
PART IV OF THE ORDER**

IT IS FURTHER ORDERED that Defendant Bruce Turiansky [and all others to whom the Order applies, *see* “NOTE” above], in connection with the advertising, promoting, marketing, offering for sale, sale, or distribution of any goods or services by means of telemarketing or the Internet, by or on behalf of Defendant, or any entity controlled, owned, directly or indirectly, or managed, by Defendant, must affirmatively disclose, clearly and conspicuously, before obtaining the consumer’s express authorization to bill or charge the consumer for any such goods or services, all material terms and conditions for the purchase of any such goods or services, including but not limited to:

- A. That a purpose of the call or other solicitation is to sell goods or services;
- B. The fact, if true, that a good or service is offered on behalf of a seller that is a separate entity from the seller doing the telemarketing, and, if so, the name of the separate seller and the entity to which payment will be made;
- C. The number of payments (if more than one), the date(s) or time period(s) at which the payment(s) will be required or charged, the amount of the payment(s), and the total cost;

- D. The fact, if true, that the billing information the seller already possesses, either because the consumer previously provided it to the seller or the seller obtained it from another source, will be used to bill or charge the consumer;
- E. The terms of the seller's refund, cancellation, exchange, or repurchase policies;
- F. If the consumer will be automatically billed at the end of a trial period unless the consumer cancels: this fact; the length of the trial period; the manner in which a cancellation request may be submitted; the date or time period by which a cancellation request must be received; and either a telephone number or address to which a cancellation request may be directed or the fact, if true, that such information will be included in written materials provided to the consumer within a reasonable period prior to the date by which a cancellation request must be received; and
- G. If the seller automatically ships goods to a consumer or automatically renews a membership, subscription or agreement for goods or services that is offered on a periodic basis, unless the consumer notifies the seller within a certain time not to ship or renew: this fact; the manner in which a notice not to ship or renew may be submitted; the date or time period by which a notice not to ship or renew must be received to avoid shipment or renewal; and either a telephone number or address to which such a notice may be directed or the fact, if true, that such information will be included in written materials provided to the consumer within a reasonable period

prior to the date by which such a notice must be received;

Provided, that if Defendant Bruce Turiansky, or any entity controlled, owned, directly or indirectly, or managed by Defendant, obtains a consumer's billing information to purchase any goods or services and then further solicits the purchase of other goods or services, Defendant, or such entity, must affirmatively disclose all material terms and conditions for the purchase of each additional good or service, including but not limited to those set forth in this Part, before obtaining the consumer's express authorization to bill or charge the consumer for such additional good or service; and **provided further**, that, in connection with the advertising, promoting, marketing, offering for sale, sale, or distribution of any goods or services pursuant to an offer or agreement with a negative option feature, Defendant, prior to billing or charging the consumer for such goods or services, must provide the consumer with a document disclosing, clearly and conspicuously, all material terms and conditions of the sale, including but not limited to those set forth in this Part.

**EXPRESS VERIFIABLE AUTHORIZATION FOR SALES
PART V OF THE ORDER**

IT IS FURTHER ORDERED that Defendant Bruce Turiansky [and all others to whom the Order applies, *see* "NOTE" above], in connection with the advertising, promoting, marketing, offering for sale, sale, or distribution of any goods or services by means of telemarketing or the Internet, by or on behalf of Defendant, or any entity controlled, owned, directly or indirectly, or managed, by Defendant, are hereby permanently restrained and enjoined from submitting billing information for payment, transferring billing information to a third party, or collecting or attempting to collect

payment for goods or services, directly or indirectly, without the consumer's express verifiable authorization as follows:

A. Such express verifiable authorization must clearly evidence the consumer's name, the consumer's express authorization to purchase the goods or services and of the amount and manner of the billing or payment for such goods and service, and the date of the consumer's express authorization, and that all of the following information has been disclosed to the consumer, clearly and conspicuously, and in close proximity to, the consumer's express authorization:

1. The amount and manner of the billing or payment for such goods or services, including but not limited to, the disclosures set forth in Subparts C and D of Part IV of this Order, prior to the consumer's express authorization (*e.g.*, during the express automated electronic authorization referenced in Subpart B.4 of this Part, such disclosures must be made prior to the time the consumer inputs the personal identification number);
2. All of the disclosures set forth in Subparts A, B, E, F and G of Part IV of this Order, prior to the consumer's express authorization, **provided, however,** for purposes of this Subpart, the express verifiable authorization may evidence, if true, that such disclosures have previously been disclosed to the consumer, clearly and conspicuously, in a print advertisement or print promotional or marketing material;

3. To the extent not already disclosed pursuant to Subpart A.1 of this Part, the consumer's specific billing information, including the name of the account and the account number, that will be used to collect payment for the goods or services that are the subject of the sales offer; and
 4. A telephone number for consumer inquiry that is answered during normal business hours;
- B. For the sale of any goods or services by means of telemarketing, the consumer's express authorization will be deemed verifiable only if one of the following means is employed:
1. Express written authorization by the consumer, which includes the consumer's signature (the term "signature" includes a verifiable electronic or digital form of signature, to the extent such form of signature is recognized as a valid signature under applicable federal law or state contract law);
 2. Express oral authorization that is verified by an independent third party verifier ("TPV") that meets the requirements of Part VI of this Order;
 3. Express oral authorization that is tape recorded, and meets the following criteria:
 - a. For telemarketing conducted by Defendant and any entities owned or controlled, directly or indirectly, or managed, by Defendant, and their officers, agents, and employees, the

tape recording must include the entire telephone call during which the consumer gave oral authorization;

- b. For telemarketing conducted by Defendant's partners, the tape recording must include the entire portion of the telephone call that relates to the goods and services that are the subject of Defendant's sales offer and during which the consumer gave oral authorization; and
 - c. A copy of the tape recording is provided upon request to the consumer, the consumer's bank, credit card company or other billing entity, state attorney general or consumer protection agency or the Commission; and
4. Express automated electronic authorization in which the consumer provides the authorization by calling a toll-free telephone number used exclusively for such authorizations and by inputting a personal identification number that has been mailed to the consumer at the consumer's home address.

**LIMITATION ON DISSEMINATING CONSUMERS'
INFORMATION (OPT-IN PROVISION)
PART VII OF THE ORDER**

IT IS FURTHER ORDERED that Defendant Bruce Turiansky [and all others to whom the Order applies, *see* "NOTE" above], in connection with any business or entity controlled, majority owned, directly or indirectly, or managed, by Defendant, are permanently restrained and enjoined from providing or disclosing to any third party, whether or not in exchange for payment or other consideration, any of the following consumer information:

- A. Billing information;
- B. Unique identifying information, such as social security number, date of birth, place of birth and mother's maiden name;
- C. Credit information;
- D. Income information; and
- E. Asset and liability information;

unless (1) Defendant has clearly and conspicuously disclosed to such consumer what information Defendant proposes to provide or disclose, the intended use of the information, and the person or entity to whom Defendant proposes to provide or disclose the information; and (2) the consumer has expressly authorized Defendant to provide or disclose such information; **provided, however**, that this Part does not apply to the disclosure of consumer information: (1) necessary to effectuate or administer a transaction for which Defendant has obtained the consumer's express verifiable authorization; (2) pursuant to Section 623 of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681s-2, to a "consumer reporting agency" as defined by Section 603(f) of the

FCRA, 15 U.S.C. § 1681a(f); or (3) to a law enforcement agency either voluntarily, or as required by any law, regulation, or court order.

**RECORD-KEEPING PROVISIONS
PART XIII OF THE ORDER**

IT IS FURTHER ORDERED that, for a period of ten (10) years from the date of entry of this Order, Defendant Bruce Turiansky [and all others to whom the Order applies, *see* “NOTE” above] are hereby restrained and enjoined from failing to create, and from failing to retain for a period of three (3) years following the date of such creation, unless otherwise specified, in connection with any business entity controlled, owned, directly or indirectly, or managed by Defendant:

- A. Books, records and accounts that, in reasonable detail, accurately and fairly reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues by such business;
- B. Each tape recording of a telemarketing call made pursuant to Part V of the Order;
- C. Records that accurately reflect the name, address, and telephone number of each person employed or retained in any capacity by such business, whether such person is designated as an employee, consultant, independent contractor or otherwise; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;
- D. Records that accurately reflect the names, addresses, phone numbers, dollar amounts paid, quantity of goods or services purchased, and

description of goods or services purchased, for all consumers to whom such business has sold, invoiced, billed, or shipped any goods or services;

- E. For every consumer complaint or refund request (including those by telephone), whether received directly or indirectly or through any third party, records that accurately reflect:
 - 1. The consumer's name, address, telephone number and the dollar amount paid by the consumer;
 - 2. The written complaint or the refund request, if any;
 - 3. The date of the complaint or refund request;
 - 4. The basis of the complaint, including the name of any salesperson complained against, and the nature and result of any investigation conducted concerning any complaint;
 - 5. Each response and the date of the response;
 - 6. Any final resolution and the date of the resolution; and
 - 7. In the event of a denial of a refund request, the reason for the denial;
- F. Copies of all sales scripts, training materials, advertisements, or other marketing materials utilized, and records that accurately reflect the time periods during which such materials were used and the persons and business entities that used such materials; **provided**, that these marketing materials and records must be retained for three (3) years after the last date of dissemination of any such marketing materials;
- G. For any credit card merchant processing accounts held, or set up, by Defendant Bruce Turiansky, directly or indirectly:

1. A copy of the contract providing the account;
 2. Records that accurately reflect the name, address and telephone number of the acquirer bank, and its credit card processor(s); and
 3. Copies of correspondence from VISA, MasterCard, any similar entity, and any acquirer bank or credit card processor; and
- H. Copies of any contracts providing the Defendant Bruce Turiansky with access to a billing and collection system, such as a credit card, checking, savings, share or similar account, utility bill, telephone bill, mortgage loan account or debit card;
- I. For each of Defendant's partners:
1. A copy of the contract and any amendments thereto between such partner and Defendant;
 2. Records that accurately reflect the name, address and telephone number of such partner;
 3. Records that accurately reflect all payments made to such partner by Defendant, all payments made to Defendant by such partner, the reasons for such payments, and how such payments were calculated; and
 4. Copies of any correspondence with Defendant's partners or any person or entity that relate to complaints from consumers, government entities or any other parties about the sales, billing or collection practices or any questionable activities of Defendant's partners.