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15 *Attorneys for the United States*

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 17 **UNITED STATES DISTRICT COURT**  
 18 **DISTRICT OF NEVADA**

19 UNITED STATES OF AMERICA,	}	Civil Case No: 2:18-cv-000283-JAD-PAL
20 Plaintiff,	}	
21 v.	}	<b>STIPULATED CONSENT DECREE</b>
22 KERN, et al.,	}	<b>AND FINAL JUDGMENT</b>
23 Defendants.	}	[ECF No. 30]

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 25  
 26 Plaintiff, the United States of America, brought this action against Patti A. Kern;  
 27 Advanced Allocation System, Inc.; Distribution Reporting Center, Inc.; Global Data Funding,  
 28 Inc.; Marketing Image Direct, Inc.; Montgomery Marketing, Inc. LLC.; North American

1 Disbursement Agency, Inc.; Pacific Allocation Systems, Inc.; Special Money Managers, Inc.; All  
2 American Awards, Inc.; Golden Products Service, Inc.; Edgar Del Rio; NSD Products, Inc.; Sean  
3 O'Connor; Epifanio Castro; New Generation Graphics, Inc.; Andrea Burrow; Stephen Fennell;  
4 and Neptune Data Services, Inc., by filing a complaint pursuant to the Fraud Injunction Statute,  
5 18 U.S.C. § 1345. This Court granted the United States' *ex parte* application for a temporary  
6 restraining order on February 20, 2018, finding that (1) the United States could likely succeed in  
7 proving that defendants are violating or are about to violate 18 U.S.C. §§ 1341 and 1349 by  
8 executing a scheme or artifice to defraud, or for obtaining money or property by means of false  
9 or fraudulent representations with the intent to defraud using the U.S. Mail; (2) the equities  
10 weigh in favor of an injunction; and (3) an injunction is in the public's interest. Finding good  
11 cause to do so, on March 2, 2018, the Court extended the temporary restraining order until April  
12 24, 2018.

13 Defendant Patti A. Kern (hereinafter the "Settling Defendant") would assert defenses and  
14 deny liability in this action; make no admission of fact, law, liability or wrong doing and has  
15 agreed to this Consent Decree and Final Judgment to avoid the delay, uncertainty,  
16 inconvenience and expense of protracted litigation. Plaintiff and Settling Defendant stipulate to  
17 entry of this Consent Decree and Final Judgment ("Consent Decree") to resolve all matters in  
18 dispute in this action between them.

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

20 **FINDINGS**

- 21 1. This Court has jurisdiction over this matter and the parties.
- 22 2. The Complaint charges that defendants violated, are violating, or are about to  
23 violate 18 U.S.C. §§ 1341 and 1349 by executing schemes and artifices to defraud or for  
24 obtaining money or property my means of false or fraudulent representations with the intent to  
25 defraud, and, in so doing, use the United States Mail.
- 26 3. Settling Defendant neither admits nor denies any allegations in the Complaint,  
27 except as specifically stated in this Order. Only for purposes of this action, Settling Defendant  
28 admits the facts necessary to establish jurisdiction.

1 DEFINITIONS

2 1. "Caging Services" refers to opening mail; entering or inputting data about such  
3 mail into a database or forwarding such data; handling, forwarding, or depositing payments  
4 received in such mail, including currency, bank checks, certified checks, money orders, or credit  
5 card charge authorizations; or handling or forwarding any such mail;

6 2. "Covered Materials" refers to any materials that contain advertisements,  
7 solicitations, promotions, and/or any other materials:

8 a. that represent, directly or indirectly, expressly or impliedly that the recipient has  
9 won, will win, or will receive cash, awards, or prizes;

10 b. that represent, directly or indirectly, expressly or impliedly that the recipient will  
11 receive delivery of cash, awards, or other prizes in return for payment of a fee;

12 c. that offer for sale information regarding sweepstakes or lotteries;

13 d. that represent, directly or indirectly, expressly or impliedly, that the recipient of  
14 the solicitation was specifically selected to receive the mailing based on a reason  
15 other than the fact that the recipient's name appears on a mailing list;

16 e. that offer for a fee the following items or services:

17 i. Wealth-Building Programs, meaning instructions, reports, or programs  
18 which provide purportedly guaranteed results or methods for making  
19 money or an item purportedly guaranteed to provide the user with luck or  
20 wealth. This definition is not intended to cover programs, services,  
21 publications or seminars which provide information with respect to  
22 investments, business strategies, employment, career enhancements and  
23 the like, which do not guarantee results, other than a guarantee of  
24 satisfaction;

25 ii. Psychics, meaning persons (actual or fictitious) that are presented in  
26 mailed solicitations or other solicitations to consumers as having psychic,  
27 clairvoyant, or other such similar special abilities; or

28 f. that contain any material false or misleading representations.



1 United States residents where such lists will be used to address any Covered  
2 Materials;

3 G. compiling Customer Lists as defined in Paragraph 3;

4 H. performing, or causing others to perform, Caging Services on correspondence  
5 transmitted through the United States mail in response to any Covered Materials;

6 I. performing, or causing others to perform, Payment Processing Services for  
7 payments received from U.S. residents in response to any Covered Materials; or

8 J. acting as a consultant (whether paid or unpaid) for any person engaged in any of  
9 the conduct described in Subparagraph I(A)-(I), above.

10 **RETENTION OF CUSTOMER LISTS AND COVERED MATERIALS**

11 II. Within twenty-one (21) days of entry of this Consent Decree, the Settling  
12 Defendant is ordered to provide to Settling Defendant's legal counsel all copies of (1) any  
13 Customer Lists and (2) any Covered Materials that are currently in her possession, custody or  
14 control. Settling Defendant shall also provide a copy of such Customer Lists and Covered  
15 Materials to counsel of record for the United States in this matter and shall not retain in her  
16 possession or control any copies of such Customer Lists or Covered Materials. Within twenty-  
17 one (21) days of entry of this Consent Decree, Settling Defendant shall also direct any third  
18 parties that are in custody of Settling Defendant's Customer Lists and Covered Materials,  
19 excluding Settling Defendant's legal counsel, to provide all copies of such materials to counsel  
20 of record for the United States in this matter and not to retain any copies of such materials in the  
21 third party's possession, custody or control, provided however that these third parties may also  
22 provide a copy of such Customer Lists and Covered Materials to their own retained counsel.  
23 Within twenty-eight (28) days of entry of this Consent Decree, Settling Defendant shall provide  
24 counsel of record for the United States a certification in the form attached here as Exhibit A,  
25 sworn under penalty of perjury before a local notary, detailing what materials, if any, were  
26 provided to Settling Defendant's legal counsel and to counsel of record for the United States in  
27 this matter, and certifying that Settling Defendant no longer has in her possession any such  
28 materials.

1 **NOTICE TO THIRD PARTIES**

2 III. Within twenty one (21) days of entry of this Consent Decree, Settling Defendant  
3 shall provide copies of this Consent Decree to all direct mailers, graphic designers/artists, list  
4 brokers, printer/distributors, mailing houses, caging services, and/or payment processors with  
5 which she reasonably has determined she has done business since January 1, 2016 with respect to  
6 any Covered Materials distributed through the United States mail. Within ten (10) days of entry  
7 of this Consent Decree, Settling Defendant shall provide proof of such notice to the Court and  
8 the United States, including the name and addresses of the entities and/or individuals to whom  
9 the notice was sent, how the notice was sent, when the notice was sent, and a copy of the notice.

10 **OWNERSHIP OF MAIL**

11 IV. Settling Defendant disclaims any ownership interest in mail responsive to any  
12 Covered Materials. The United States Postal Inspection Service is authorized to open any and all  
13 United States Mail that was detained pursuant to any order of this Court and any mail responsive  
14 to Covered Materials in its possession, custody, or control. The United States Postal Inspection  
15 Service shall return any currency, bearer instruments (including but not limited to money orders  
16 and travelers checks), and any personal effects that can be positively identified with its sender  
17 contained in any mail opened pursuant to this paragraph. This return shall include a letter  
18 notifying the sender of the disposition of this matter, attached here as Exhibit B. The United  
19 States Postal Inspection Service is authorized to destroy any and all remaining detained mail  
20 (including but not limited to envelopes, order forms, correspondence, personal checks, and  
21 payment card information (PCI)).


22 **ORDER ACKNOWLEDGEMENT**

23 V. Within five (5) days after entry of this Consent Decree, the Settling Defendant is  
24 ordered to submit to the United States' counsel of record in this action a written  
25 acknowledgement of this Consent Decree sworn under penalty of perjury.  
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1 XII. This Consent Decree shall constitute a final judgment and order in this action as  
2 to Settling Defendant.

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4 IT IS SO ORDERED

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7 \_\_\_\_\_  
8 UNITED STATES DISTRICT JUDGE  
9 Jennifer A. Dorsey

10 DATED: April 18, 2018  
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1 IT IS HEREBY AGREED:

2 THE UNITED STATES OF AMERICA

3 DAYLE ELIESON  
4 United States Attorney

5 TROY K. FLAKE  
6 Assistant United States Attorney  
7 501 Las Vegas Blvd. South, Suite 1100  
8 Las Vegas, Nevada 89101

9 CHAD A. READLER  
10 Acting Assistant Attorney General  
11 Civil Division

12 ETHAN P. DAVIS  
13 Deputy Assistant Attorney General

14 GUSTAV W. EYLER  
15 Acting Director  
16 Consumer Protection Branch

17 JILL P. FURMAN  
18 Deputy Director

19 Dated: 4/9/2018


20   
21 JACQUELINE BLAESI-FREED  
22 Trial Attorney  
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DEFENDANT

Dated: 04/11/2018

  
PATTI A. KERN

Dated: 4/11/18

  
SHELDON S. LUSTIGMAN  
ANDREW B. LUSTIGMAN  
Olshan Frome Wolosky LLP  
1325 Avenue of the Americans  
New York, New York 10019

*Attorneys for PATTI A. KERN*

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**Exhibit A**

**Exhibit A**

**Certification**

I, \_\_\_\_\_, hereby declare as follows:

Pursuant to Paragraph II of the Stipulated Consent Decree and Final Judgment entered on \_\_\_\_\_, 2018 (the “Consent Decree”) in *United States v. Kern, et al.*, 2:18-cv-000283-JAD-PAL (D. Nev.)

I certify as follows (check all that apply):

\_\_\_\_\_ **No Lists or Covered Materials in Possession or Control.** As of the date of the Consent Decree, I did not have in my possession or control any Covered Materials, as defined in the Consent Decree, or any Customer Lists, as defined in the Consent Decree.

\_\_\_\_\_ **Lists Provided to Legal Counsel.** Pursuant to the Consent Decree, I have provided to my legal counsel all Covered Materials and Customer Lists. The materials provided to legal counsel are as follows:

<b>Materials (describe)</b>	<b>Counsel Name, Address, and Point of Contact</b>	<b>Date Provided</b>

(Attach additional sheets if necessary)

[Continued on next page]

\_\_\_\_\_ **Requests to Third Parties.** On the dates and in the manner listed below, I instructed the individuals identified below to provide to counsel for the United States all Covered Materials and Customer Lists, to the extent such individual has or had any such lists in his or her possession, and not to retain copies of any such materials or lists. I indicate below whether the individual, as of the date of this certification, has confirmed that he or she has complied with this directive and the date of such confirmation.

<b>Name of Third Party</b> (name of corporate entity, if applicable, and address)	<b>Communication of Instruction</b>	<b>Response</b>
Name of entity/individual contacted:  Address:	Date:  Manner (e.g., phone, mail, email):	<input type="checkbox"/> Confirmed lists and Covered Materials destroyed  Name of individual responding:  Date of confirmation:  Manner communicated (e.g., phone, mail, email):  or  <input type="checkbox"/> No response received within five business days
Name of entity/individual contacted:  Address:	Date:  Manner (e.g., phone, mail, email):	<input type="checkbox"/> Confirmed lists and Covered Materials destroyed  Name of individual responding:  Date of confirmation:  Manner communicated (e.g., phone email):  or  <input type="checkbox"/> No response received within five business days

(Attach additional sheets if necessary)

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated \_\_\_\_\_, and executed at \_\_\_\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or Printed Name and Title

State of [STATE]     )  
  ) ss.:  
County of [XXX]     )

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2018, before me, the undersigned notary public, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public/State of [STATE][

**Exhibit B**

**Exhibit B**



UNITED STATES POSTAL INSPECTION SERVICE

DOJ MAIL FRAUD TEAM

[Date]

First Name, Last Name

Address 1

Address 2

City, State Zip

Re: United States of America v. Kern, et al.  
Civil Case No: 2:18-cv-000283-JAD-PAL

Dear Sir/Madam:

We are writing you because you previously mailed **[merge field—money/bearer instrument/personal item and specific amount of remission]** in response to a letter claiming you were entitled to receive a cash prize. We are returning your **[merge field—money/bearer instrument/personal item and specific amount of remission]**.

The United States Department of Justice (DOJ) has filed civil charges against Patricia Kern; Advanced Allocation System, Inc.; Distribution Reporting Center, Inc.; Global Data Funding, Inc.; Marketing Image Direct, Inc.; Montgomery Marketing, Inc. LLC.; North American Disbursement Agency, Inc.; Pacific Allocation Systems, Inc.; Special Money Managers, Inc.; All American Awards, Inc.; Golden Products Service, Inc.; Edgar Del Rio; NSD Products, Inc.; Sean O'Connor; Epifanio Castro; New Generation Graphics, Inc.; Andrea Burrow; Stephen Fennell; and Neptune Data Services, Inc. The case, filed in the District of Nevada, alleged that the defendants conducted a scheme to defraud consumers through the mail. Specifically, DOJ alleged that the defendants solicited payments from consumers by sending letters representing that the recipient was entitled to receive a large cash prize or other valuable prize in return for a payment in the range of \$20 to \$30. DOJ alleged that these representations were fraudulent and that consumers who sent in payments did not receive the promised cash or prizes. The letters were sent in the names of multiple different companies and individuals.

On February 20, 2018, the United States District Court made a determination that DOJ could likely succeed in proving that defendants were engaging in a fraudulent scheme.

On [redacted] 2018, the District Court entered a permanent injunction against the defendants, prohibiting them from mailing advertisements representing that a consumer is entitled to receive a prize in return for a payment. This injunction also requires the U.S. Postal Inspection Service to return to consumers any currency or bearer instruments (such as money orders or travelers checks). Enclosed, please find the **[merge field—money/bearer instrument and specific amount of remission]** that was able to be identified as belonging specifically to you.

Should you have any questions about this notice, please contact Sabrina Holmes with the U.S. Postal Inspection Service at (202) 616-5634. For more information, visit **[insert URL for press release website.]**