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JS-6

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

) Case No. CV-16-1643-MWF (AJWx)
)
)
UNITED STATES OF AMERICA,) STIPULATED FINAL ORDER FOR
) PERMANENT INJUNCTION AND
Plaintiff,) CIVIL PENALTY JUDGMENT
)
v.)
)
KFJ MARKETING, LLC, et al.)
)
Defendants.)
)
)
)

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission (“Commission” or “FTC”), filed its Complaint for Civil Penalties, Permanent Injunction, and Other Relief, subsequently amended as Amended Complaint for Civil Penalties, Permanent Injunction, and other Relief, (“Complaint”) pursuant to Sections 5(a), 5(m)(1)(A), 13(b), 16(a), and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), 56(a), and 57b, and Section 6 of the

1 Telemarketing and Consumer Fraud and Abuse Prevention Act (the “Telemarketing
2 Act”), 15 U.S.C. § 6105. Defendants filed their Answer to the Complaint, in which
3 Defendants denied the charges in the Complaint. Plaintiff and Defendants stipulate to
4 the entry of this Stipulated Final Order for Permanent Injunction and Civil Penalty
5 Judgment (“Order”) to resolve all matters in dispute in this action between them.

6 THEREFORE, IT IS ORDERED as follows:

7 **FINDINGS**

- 8 1. This Court has jurisdiction over this matter.
- 9 2. The Complaint charges that Defendants engaged in acts or practices in violation
10 of the FTC’s Telemarketing Sales Rule (the “TSR” or “Rule”), as amended, 16 C.F.R.
11 Part 310.
- 12 3. Defendants neither admit nor deny any of the allegations in the Complaint,
13 except as specifically stated in this Order. Only for purposes of this action, Defendants
14 admit the facts necessary to establish jurisdiction.
- 15 4. Defendants waive any claim that they may have under the Equal Access to
16 Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the
17 date of this Order, and agree to bear their own costs and attorneys’ fees. Defendants
18 waive and release any claims that they may have against Plaintiff, the Commission,
19 and their agents that relate to this action.
- 20 5. Defendants and Plaintiff waive all rights to appeal or otherwise challenge or
21 contest the validity of this Order.

22 **DEFINITIONS**

23 For the purpose of this Order, the following definitions apply:

- 24
- 25 A. “**Caller Identification Service**” means a service that allows a telephone
26 subscriber to have the telephone number, and, where available, name of the calling
27 party transmitted contemporaneously with the telephone call, and displayed on a
28 device in or connected to the subscriber’s telephone.

1 B. “**Corporate Defendants**” means KFJ Marketing, LLC; Sunlight Solar
2 Leads, LLC; and Go Green Education, also doing business as Go Green Leads and
3 myleadgroup.

4 C. “**Defendants**” means all of the Individual Defendants and the Corporate
5 Defendants, individually, collectively, or in any combination.

6 D. “**Entity-Specific Do Not Call List**” means a list of telephone numbers
7 maintained by a Seller or Telemarketer of persons who have previously stated that they
8 do not wish to receive Outbound Telephone Calls made by or on behalf of the Seller or
9 Telemarketer.

10 E. “**Established Business Relationship**” means a relationship between a
11 Seller and a person based on: (a) the person’s purchase, rental, or lease of the Seller’s
12 goods or services or a financial transaction between the Seller and person, within the
13 eighteen months immediately preceding the date of the Telemarketing call; or (b) the
14 person’s inquiry or application regarding a product or service offered by the Seller,
15 within the three months immediately preceding the date of a Telemarketing call.

16 F. “**Individual Defendants**” means Francisco J. Salvat and Julio E. Salvat.

17 G. “**Lead Generator**” means any person that provides, in exchange for
18 consideration, consumer information to a Seller or Telemarketer for use in the
19 marketing of any goods or services.

20 H. “**National Do Not Call Registry**” means the “do-not-call” registry of
21 telephone numbers maintained by the Commission pursuant to 16 C.F.R.
22 § 310.4(b)(1)(iii)(B).

23 I. “**Outbound Telephone Call**” means a telephone call initiated by a
24 Telemarketer to induce the purchase of goods or services or to solicit a charitable
25 contribution.

26 J. “**Person**” means any individual, group, unincorporated association,
27 limited or general partnership, corporation, or other business entity.

28 K. “**Seller**” means any person who, in connection with a Telemarketing

1 transaction, provides, offers to provide, or arranges for others to provide goods or
2 services to the customer in exchange for consideration, whether or not such person is
3 under the jurisdiction of the Commission.

4 L. “**Telemarketer**” means any person who, in connection with
5 Telemarketing, initiates or receives telephone calls to or from a customer or donor,
6 whether or not such person is under the jurisdiction of the Commission.

7 M. “**Telemarketing**” means a plan, program, or campaign which is
8 conducted to induce the purchase of goods or services or a charitable contribution, by
9 use of one or more telephones and which involves more than one interstate telephone
10 call.

11 **ORDER**

12
13 **I. Permanent Bans on Telemarketing, Robocalls, and Calling Telephone**
14 **Numbers Listed on the National Do Not Call Registry**

15 IT IS ORDERED that Corporate Defendants and Individual Defendant
16 Francisco J. Salvat, whether acting directly or through an intermediary, are
17 permanently restrained and enjoined from:

18 A. Engaging in, or assisting others to engage in, Telemarketing, which
19 includes, without limitation, providing others with access to automated dialing
20 systems, providing others with Caller ID numbers, and providing others with data lists
21 containing consumer information;

22 B. Initiating, causing others to initiate, or assisting others in initiating any
23 telephone call that plays or delivers a prerecorded message;

24 C. Initiating, causing others to initiate, or assisting others in initiating any
25 telephone call to any telephone number listed on the National Do Not Call Registry;
26 and

27 D. Holding any ownership interest, share, or stock in any business that
28 engages in any of the acts and practices listed in paragraphs A–C of this Section.

1 charitable contribution by the business.

2 It shall not be a violation of this Order for Individual Defendant Julio E. Salvat
3 to transmit a prerecorded message for compliance with 16 C.F.R. § 310.4(b)(4)(iii).

4
5 **V. Permanent Ban on Deceptive Caller ID Practices**

6 IT IS FURTHER ORDERED that Individual Defendant Julio E. Salvat, whether
7 acting directly or through an intermediary, is permanently restrained and enjoined from
8 initiating, causing others to initiate, or assisting others in initiating any Outbound
9 Telephone Call that:

10 A. Fails to transmit or cause to be transmitted the telephone number, and,
11 when made available by the Telemarketer’s carrier, the name of the Telemarketer, to
12 any Caller Identification Service in use by a recipient of a Telemarketing call; provided
13 that it shall not be a violation of this provision to substitute (for the name and phone
14 number used in, or billed for, making the call) the name of the Seller on behalf of
15 which a Telemarketing call is placed, and the Seller’s customer service telephone
16 number;

17 B. Displays a telephone number other than a number owned, rented, licensed
18 or subscribed to by Individual Defendant Julio E. Salvat, the Seller, or the Seller’s
19 Telemarketer;

20 C. Displays a telephone number that cannot receive inbound calls;

21 D. Displays a telephone number that is not equipped to process requests from
22 consumers asking to be added to an Entity Specific Do Not Call List; or

23 E. Displays a number that is not equipped to process requests from
24 consumers asking to be added to the Seller’s Entity Specific Do Not Call List.

25
26 **VI. Prohibition Against Abusive Telemarketing Practices**

27 IT IS FURTHER ORDERED that, in connection with Telemarketing, Individual
28 Defendant Julio E. Salvat, is permanently restrained and enjoined from engaging in,

1 causing others to engage in, or assisting others engaging in, any of the following
2 practices:

3 A. Initiating any Outbound Telephone Call to a person on behalf of a Lead
4 Generator, Seller, Telemarketer, or any other third-party when that person has
5 previously stated that he or she does not wish to receive an Outbound Telephone Call
6 made by or on behalf of that Lead Generator, Seller, Telemarketer, or third-party.

7 B. Failing to disclose truthfully, promptly, and in a clear and conspicuous
8 manner: (i) the identity of the Seller, (ii) that the purpose of the call is to sell goods or
9 services, and (iii) the nature of the goods or services.

10 C. Violating the Telemarketing Sales Rule, 16 C.F.R. Part 310, attached as
11 Appendix A.

12
13 **VII. Monetary Judgment for Civil Penalty and Partial Suspension**

14 IT IS FURTHER ORDERED that:

15 A. Judgment in the amount of 1.4 million dollars (\$1,400,000) is entered in
16 favor of Plaintiff against Defendants, jointly and severally, as a civil penalty.

17 B. Defendants are ordered to pay to Plaintiff, by making payment to the
18 Treasurer of the United States, one hundred fifty-five thousand Dollars (\$155,000),
19 which, as Defendants stipulate, their undersigned counsel holds in escrow for no
20 purpose other than payment to Plaintiff. Such payment must be made within 7 days of
21 entry of this Order by electronic fund transfer in accordance with instructions
22 previously provided by a representative of Plaintiff. Upon such payment, the
23 remainder of the judgment is suspended, subject to the Subsections below.

24 C. The Commission's and Plaintiff's agreement to the suspension of part of
25 the judgment is expressly premised upon the truthfulness, accuracy, and completeness
26 of Defendants' sworn financial statements and related documents submitted to the
27 Commission and Defendants' deposition testimony (collectively, "financial
28 representations"), namely:

- 1 1. The Financial Statement of Individual Defendant Francisco J.
- 2 Salvat signed on July 6, 2017, including the attachments and
- 3 documents submitted with the Financial Statement;
- 4 2. The Deposition testimony of Individual Defendant Francisco J.
- 5 Salvat, taken on May 31, 2017 and August 22, 2017;
- 6 3. The Financial Statement of Individual Defendant Julio E. Salvat
- 7 signed on July 6, 2017, including the attachments and documents
- 8 submitted with the Financial Statement;
- 9 4. The Deposition testimony of Individual Defendant Julio E. Salvat,
- 10 taken on June 1, 2017 and August 22, 2017;
- 11 5. The Financial Statement of Corporate Defendant Sunlight Solar
- 12 Leads, LLC signed on July 6, 2017, including the attachments and
- 13 documents submitted with the Financial Statement; and
- 14 6. The Deposition testimony of Individual Defendant Francisco J.
- 15 Salvat as a representative of the Corporate Defendants, taken on
- 16 May 31, 2017 and August 22, 2017.

17 D. The suspension of the judgment will be lifted as to any Defendant if, upon
18 motion by the Commission or Plaintiff, the Court finds that Defendant failed to
19 disclose any material asset, materially misstated the value of any asset, or made any
20 other material misstatement or omission in the financial representations identified
21 above.

22 E. If the suspension of the judgment is lifted, the judgment becomes
23 immediately due as to that Defendant in the amount specified in Subsection A above
24 (which the parties stipulate only for purposes of this Section represents the amount of
25 the civil penalty for the violations alleged in the Complaint), less any payment
26 previously made pursuant to this Section, plus interest computed from the date of entry
27 of this Order.

28 F. Defendants relinquish dominion and all legal and equitable right, title,

1 and interest in all assets transferred pursuant to this Order and may not seek the return
2 of any assets.

3 G. The facts alleged in the Complaint will be taken as true, without further
4 proof, in any subsequent civil litigation by or on behalf of the Commission, including
5 in a proceeding to enforce its rights to any payment or monetary judgment pursuant to
6 this Order.

7 H. Defendants agree that the judgment represents a civil penalty owed to the
8 government of the United States, is not compensation for actual pecuniary loss, and,
9 therefore, as to the Individual Defendants, it is not subject to discharge under the
10 Bankruptcy Code pursuant to 11 U.S.C. § 523(a)(7).

11 I. Defendants acknowledge that their Taxpayer Identification Numbers
12 (Social Security Numbers or Employer Identification Numbers), which Defendants
13 previously submitted to the Commission, may be used for collecting and reporting on
14 any delinquent amount arising out of this Order, in accordance with 31 U.S.C. § 7701.
15

16 **VIII. Customer Information**

17 IT IS FURTHER ORDERED that Defendants, their officers, agents, employees,
18 and attorneys, and all other persons in active concert or participation with them who
19 receive actual notice of this Permanent Injunction, are permanently restrained and
20 enjoined from directly or indirectly:

21 A. Disclosing, using, or benefitting from personal information, including the
22 name, address, telephone number, email address, social security number, other
23 identifying information, or any data that enables access to a person's account
24 (including a credit card, bank account, or other financial account), that any Defendant
25 obtained prior to entry of this Order in connection with the sale of solar panels and
26 installation services; and

27 B. Failing to destroy such personal information in all forms in their
28 possession, custody, or control within 30 days after entry of this Order.

1 compliance report, sworn under penalty of perjury:

- 2 1. Each Defendant must: (a) identify the primary physical, postal, and
3 email address and telephone number, as designated points of
4 contact, which representatives of the Commission and Plaintiff may
5 use to communicate with Defendant; (b) identify all of that
6 Defendant's businesses by all of their names, telephone numbers,
7 and physical, postal, email, and Internet addresses; (c) describe the
8 activities of each business, including the goods and services
9 offered, the means of advertising, marketing, and sales, and the
10 involvement of any other Defendant (which Individual Defendants
11 must describe if they know or should know due to their own
12 involvement); (d) describe in detail whether and how that
13 Defendant is in compliance with each Section of this Order; and (e)
14 provide a copy of each Order Acknowledgment obtained pursuant
15 to this Order, unless previously submitted to the Commission.
- 16 2. Additionally, each Individual must: (a) identify all telephone
17 numbers and all physical, postal, email and Internet addresses,
18 including all residences; (b) identify all business activities,
19 including any business for which such Defendant performs services
20 whether as an employee or otherwise and any entity in which such
21 Defendant has any ownership interest; and (c) describe in detail
22 such Defendant's involvement in each such business, including
23 title, role, responsibilities, participation, authority, control, and any
24 ownership.

25 B. For 20 years after entry of this Order, each Defendant must submit a
26 compliance notice, sworn under penalty of perjury, within 14 days of any change in the
27 following:

- 28 1. Each Defendant must report any change in: (a) any designated point

1 of contact; or (b) the structure of Corporate Defendant or any entity
2 that Defendant has any ownership interest in or controls directly or
3 indirectly that may affect compliance obligations arising under this
4 Order, including: creation, merger, sale, or dissolution of the entity
5 or any subsidiary, parent, or affiliate that engages in any acts or
6 practices subject to this Order.

7 2. Additionally, each Individual Defendant must report any change in:
8 (a) name, including aliases or fictitious name, or residence address;
9 or (b) title or role in any business activity, including any business
10 for which such Defendant performs services whether as an
11 employee or otherwise and any entity in which such Defendant has
12 any ownership interest, and identify the name, physical address,
13 and any Internet address of the business or entity.

14 C. Each Defendant must submit to the Commission notice of the filing of any
15 bankruptcy petition, insolvency proceeding, or similar proceeding by or against such
16 Defendant within 14 days of its filing.

17 D. Any submission to the Commission required by this Order to be sworn
18 under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746,
19 such as by concluding: “I declare under penalty of perjury under the laws of the United
20 States of America that the foregoing is true and correct. Executed on: _____” and
21 supplying the date, signatory’s full name, title (if applicable), and signature.

22 E. Unless otherwise directed by a Commission representative in writing, all
23 submissions to the Commission pursuant to this Order must be emailed to
24 DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to:
25 Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade
26 Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject
27 line must begin: United States v. KFJ Marketing, et al., Matter Number X160031.
28

1 **XI. Recordkeeping**

2 IT IS FURTHER ORDERED that Defendants must create certain records for 20
3 years after entry of the Order, and retain each such record for 10 years. Specifically,
4 Corporate Defendants and each Individual Defendant for any business that such
5 Defendant, individually or collectively with any other Defendants, is a majority owner
6 or controls directly or indirectly, must create and retain the following records:

7 A. Accounting records showing the revenues from all goods or services sold;

8 B. Personnel records showing, for each person providing services, whether
9 as an employee or otherwise, that person's: name; addresses; telephone numbers; job
10 title or position; dates of service; and (if applicable) the reason for termination;

11 C. Records of all consumer complaints and refund requests, whether received
12 directly or indirectly, such as through a third party, and any response; and

13 D. All records necessary to demonstrate full compliance with each provision
14 of this Order, including all submissions to the Commission.

15
16 **XII. Compliance Monitoring**

17 IT IS FURTHER ORDERED that, for the purpose of monitoring Defendants'
18 compliance with this Order, including the financial representations upon which part of
19 the judgment was suspended:

20 A. Within 14 days of receipt of a written request from a representative of the
21 Commission or Plaintiff, each Defendant must: submit additional compliance reports
22 or other requested information, which must be sworn under penalty of perjury; appear
23 for depositions; and produce documents for inspection and copying. The Commission
24 and Plaintiff are also authorized to obtain discovery, without further leave of court,
25 using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30
26 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

27 B. For matters concerning this Order, the Commission and Plaintiff are
28 authorized to communicate directly with each Defendant. Defendant must permit

1 representatives of the Commission and Plaintiff to interview any employee or other
2 person affiliated with any Defendant who has agreed to such an interview. The person
3 interviewed may have counsel present.

4 C. The Commission and Plaintiff may use all other lawful means, including
5 posing, through its representatives as consumers, suppliers, or other individuals or
6 entities, to Defendants or any individual or entity affiliated with Defendants, without
7 the necessity of identification or prior notice. Nothing in this Order limits the
8 Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the
9 FTC Act, 15 U.S.C. §§ 49, 57b-1.

10 D. Upon written request from a representative of the Commission or
11 Plaintiff, any consumer reporting agency must furnish consumer reports concerning
12 Individual Defendants, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15
13 U.S.C. §1681b(a)(1).

14
15 **XIII. Retention of Jurisdiction**

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

18
19 **SO ORDERED**, this 7th day of November, 2017.

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United States District Judge
Michael W. Fitzgerald