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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

FEDERAL TRADE COMMISSION

Plaintiff,

v.

DAVID SCOTT MARLEAU, individually and as an officer or director of Jedi Investments, LLC, Impact Fundraising, LLC, Millenium Fundraising, LLC, and PC Marl, Inc.; JEDI INVESTMENTS, LLC, a Washington limited liability company; IMPACT FUNDRAISING, LLC, a Washington limited liability company; MILLENIUM FUNDRAISING, LLC, a Washington limited liability company; and PC MARL, INC., an Oregon corporation,,

Defendants.

Civil No. C09-5289BHS

**STIPULATED FINAL
JUDGMENT AND ORDER FOR
PERMANENT INJUNCTION**

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), has filed a complaint for permanent injunction and other relief, pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101-6108, charging defendants David Scott Marleau, Jedi Investments, LLC, Impact Fundraising, LLC,

1 Millenium Fundraising, LLC, and PC Marl, Inc., with engaging in deceptive acts or practices in
2 connection with the solicitation of charitable contributions by telephone and mail in violation of
3 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a) and the Commission’s Telemarketing Sales Rule
4 (“TSR”), 16 C.F.R. Part 310. The Commission and defendants acting by and through counsel,
5 for the purpose of full and final settlement of the matters alleged in the complaint filed in this
6 case, have agreed to entry of this Stipulated Order for Permanent Injunction without a trial or
7 adjudication of any issue of law or fact therein.

8 NOW, THEREFORE, the Commission and defendants having requested the Court to
9 enter this Order, **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** as follows:

10 **FINDINGS**

11 1. This is an action by the Commission under Section 13(b) of the FTC Act, 15 U.S.C.
12 §§ 53(b) and 57b, the Telemarketing Act, 15 U.S.C. §§ 6101-6108, and the TSR, 16 C.F.R. Part
13 310. Pursuant to these statutes and regulations, the Commission has the authority to seek the
14 relief contained herein.

15 2. The Commission’s complaint states a claim upon which relief may be granted against
16 defendants under Sections 5(a), 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 53(b), and
17 57b, the Telemarketing Act, 15 U.S.C. §§ 6101-6108, and the TSR, 16 C.F.R. Part 310.

18 3. This Court has jurisdiction of the subject matter of this case and all the parties hereto.
19 Venue in the Western District of Washington is proper.

20 4. The alleged activities of defendants are in or affecting commerce, as defined in
21 Section 4 of the FTC Act, 15 U.S.C. § 44.

22 5. The parties shall each bear their own costs and attorney’s fees incurred in this action
23 and have waived all claims under the Equal Access to Justice Act, 28 U.S.C. § 2412.

24 6. Defendants have waived all rights to seek appellate review or otherwise challenge or
25 contest the validity of this Order.

26 7. Defendants have waived and released any claims that they may have against the
27 Commission or its employees, agents, or representatives.

28 8. Entry of this Order is in the public interest.

DEFINITIONS

For purposes of this Order, the following definitions shall apply:

1. "And" as well as "or" have both conjunctive and disjunctive meanings.

2. "Assisting others" includes, but is not limited to: (a) formulating or providing, or arranging to formulate or provide, any telephone script or any other solicitation materials; (b) formulating or mailing, or arranging to formulate or mail, any solicitation, receipt, invoice, or any other materials sent to donors; (c) providing or arranging to provide the names of donors; (d) arranging for continuing affiliation between any person and any purported nonprofit organization for the purpose of soliciting donations; (e) providing or arranging to provide customer service functions including, but not limited to, receiving or responding to donor questions or complaints, or accepting or handling any refund requests; or (f) providing consultation services to any person engaged in the business of fundraising or telemarketing.

3. "Corporate Defendants" means Jedi Investments, LLC, Impact Fundraising, LLC, Millenium Fundraising, LLC, and PC Marl, Inc. and their successors and assigns.

4. "Defendants" means the Individual Defendant and all of the Corporate Defendants, individually, collectively, or in any combination.

5. "Donation" or "charitable contribution" means any donation or gift of money or any other thing of value.

6. "Donor" or "consumer" means any person solicited to make a charitable contribution.

7. "Fundraising" means a plan, program, or campaign which is conducted to induce charitable contributions by mail, telephone, electronic mail, or any other means.

8. "Individual Defendant" means David Scott Marleau.

9. "Nonprofit organization" means any person that is, or is represented to be, a nonprofit entity or that has, or is represented to have, a charitable purpose, specifically including any entity that purports to benefit, either in whole or in part, purported law enforcement, firefighting, or veterans' organizations, personnel, or programs, or individuals who suffer from an illness or injury or handicap.

10. "Person" means a natural person, organization or other legal entity, including a

1 corporation, partnership, proprietorship, limited liability company, association, cooperative,
2 government agency, or any other group or combination acting as an entity.

3 11. "Solicitor" means any person who solicits a donation or charitable contribution.

4 12. "Telemarketing" means a plan, program, or campaign which is conducted to induce
5 the purchase of goods or services or a charitable contribution, by use of one or more telephones
6 and which involves more than one interstate telephone call.

7 **ORDER**

8 **I. PROHIBITED PRACTICES- REPRESENTATIONS AND OMISSIONS**

9 IT IS ORDERED that defendants, their officers, agents, servants, employees, independent
10 contractors, and those persons in active concert or participation with them who receive actual
11 notice of this Order by personal service, or otherwise, are hereby permanently restrained and
12 enjoined from the following practices in connection with engaging, participating, or assisting
13 others in fundraising or telemarketing, whether directly, indirectly, in concert with others, or
14 through any corporation, division or other device:

15 A. Making, or assisting others to make, expressly or by implication, orally or in writing, any
16 statement or representation of material fact that is false or misleading including, but not limited
17 to, any false or misleading representation:

18 1. Concerning the organization, program or benefits that a donor's contribution will
19 support; including but not limited to any false or misleading representation that donated funds
20 will be used to:

21 a. Assist veterans and/or the families of soldiers by operating a specific, substantial
22 charitable program that provides financial assistance to the families of American soldiers
23 fighting overseas; provides care packages to veterans in Veterans Administration hospitals
24 across the country; or provides financial support to veterans' memorials;

25 b. Support police or sheriffs injured in the line of duty by operating a specific,
26 substantial charitable program that (1) assists qualified police officers injured in the line of duty,
27 and their families, by paying mortgages, auto loans, and medical bills, and other costs not
28 covered by their departments; or (2) provides a scholarship program to disabled officers and their

1 families;

2 c. Assist disabled firefighters by operating a specific, substantial charitable program
3 that assists qualified disabled firefighters injured in the line of duty, especially during the
4 interval between the injury and the onset of official government benefits, by providing cash
5 benefits to pay necessary living expenses such as mortgages, rent, medical coverage, and costs
6 not covered by their departments; or provide death benefits to the families of firefighters killed
7 in the line of duty; or

8 d. Assist children with cancer and their families by operating a specific, substantial
9 charitable program to provide services to children suffering from cancer and their families,
10 including funding gifts, camps, and transportation to and from cancer treatments.

11 2. That a donor's contribution will be used for any general or specific charitable
12 purpose;

13 3. That a donor's contribution will directly benefit individuals or groups in the donor's
14 state or local area, or will otherwise be spent in the donor's state or local area;

15 4. That a donor has agreed to make a charitable contribution;

16 5. Concerning a charitable organization's or telemarketer's affiliation with any law
17 enforcement, firefighting, veterans', or children's cancer organization, or any other person or
18 entity;

19 6. That the charitable organization is affiliated with, or sponsored or endorsed by, any
20 person or government entity; or

21 7. That most of the donor's contribution will be used to fund the program services
22 described to the donor.

23 B. In connection with fundraising, failing to disclose in each script, brochure, or other
24 solicitation material, and failing to ensure that telemarketers disclose during the initial telephone
25 contact with any donor, and in any follow-up contact:

26 1. How the donations raised through the fundraising will be utilized for charitable
27 purposes;

28 2. If asked by any consumer, the percentage or amount of any charitable contribution

1 that will go to a charitable organization or to any particular charitable program;

2 3. That the solicitor is, or is employed by, a professional fundraiser; and

3 4. The city and state of the nonprofit organization's principal place of business.

4 II. SUBSTANTIATION

5 IT IS FURTHER ORDERED that defendants, their officers, agents, servants, employees,
6 independent contractors, and those persons in active concert or participation with them who
7 receive actual notice of this Order by personal service or otherwise, in connection with
8 fundraising, are hereby permanently restrained and enjoined from failing to ascertain and
9 document, before entering into any agreement to solicit for any nonprofit organization or other
10 person, and again every year until defendants stop soliciting for the nonprofit organization or
11 other person:

12 A. That the nonprofit organization or other person is registered, if it is required to be
13 registered, and that it operates consistently with its stated purpose;

14 B. That all initial, rebuttal, and other scripts, brochures, and other solicitation materials used
15 by defendants for the nonprofit organization or other person, do not misrepresent:

16 1. The identity of the solicitor or telemarketer;

17 2. The programs or services, if any, funded by the solicited contributions;

18 3. The geographic area or areas within which any programs or services are provided; or

19 4. The portion of any donations or contributions that will be, or has previously been,
20 applied to the charitable purpose;

21 C. That the nonprofit organization or other person has provided the programs or services
22 described in the solicitation scripts and in other solicitation materials used by defendants during
23 the most recent fiscal or calendar year, *provided that*, if such programs or services will be or
24 have been provided for the first time during the current calendar or fiscal year, the substantiation
25 shall be sufficient if it identifies or describes the program's intended beneficiaries and intended
26 local communities and includes the organization's written plan and itemized budget for
27 delivering these benefits during the current calendar or fiscal year. For purposes of this
28 provision, "substantiation" means copies of thank you letters, canceled checks, or other evidence

1 showing that the nonprofit organization or other person undertakes the programs described in the
2 solicitation materials used by defendants; and

3 D. That more than an incidental amount of the contributions received by the nonprofit
4 organization or other person are spent on the programs or services described in the solicitation
5 scripts and in other solicitation materials used by defendants during the most recent fiscal or
6 calendar year, including by reviewing a financial statement of the nonprofit organization or other
7 person for each year and accounting period during the past two calendar or fiscal years (or for
8 the period of the organization's operation, if less than two years) or, if the organization has filed
9 a Form 990 or other tax return with the Internal Revenue Service at any time during the past
10 three calendar or fiscal years, by reviewing copies of each Form 990 or other tax return filed by
11 or on behalf of the organization during that time, *provided that*, if such programs or services will
12 be or have been provided for the first time during the current calendar or fiscal year, the
13 substantiation shall be sufficient if it identifies or describes the program's intended beneficiaries
14 and intended local communities and includes the organization's written plan and itemized budget
15 for delivering these benefits during the current calendar or fiscal year.

16 III. TELEMARKETING SALES RULE COMPLIANCE

17 IT IS FURTHER ORDERED that defendants, their officers, agents, servants, employees,
18 independent contractors, and those persons in active concert or participation with them who
19 receive actual notice of this Order by personal service or otherwise are hereby permanently
20 restrained and enjoined from violating, or assisting others in violating, any provision of the TSR,
21 16 C.F.R. Part 310, as currently promulgated or as it hereafter may be amended, including, but
22 not limited to:

23 A. Section 310.3(a)(4) of the TSR, 16 C.F.R. § 310.3(a)(4), by making a false or misleading
24 statement to induce any person to pay for goods or services or to induce a charitable
25 contribution;

26 B. Section 310.3(d)(3) of the TSR, 16 C.F.R. § 310.3(d)(3), by misrepresenting, directly or
27 by implication, the purpose for which any charitable contribution will be used;
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1 C. Section 310.3(d)(4) of the TSR, 16 C.F.R. § 310.3(d)(4), by misrepresenting, directly or
2 by implication, the percentage or amount of a charitable contribution that will go to a charitable
3 organization or to any particular charitable program;

4 D. Section 310.3(d)(6) of the TSR, 16 C.F.R. § 310.3(d)(6), by misrepresenting, directly or
5 by implication, a charitable organization's or telemarketer's affiliation with, or endorsement or
6 sponsorship by, any person or government entity;

7 E. Section 310.4(a)(6) of the TSR, 16 C.F.R. § 310.4(a)(6), by causing billing information
8 to be submitted for payment, directly or indirectly, without the express informed consent of the
9 customer or donor; and

10 F. Section 310.4(b)(1)(iii)(A) of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(A), by initiating any
11 outbound telephone call to a person when that person previously has stated that he or she does
12 not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or
13 services are being offered or made on behalf of the charitable organization for which a charitable
14 contribution is being solicited.
15

16 **IV. TRAINING, MONITORING, AND VERIFICATION**

17 IT IS FURTHER ORDERED that defendants, their officers, agents, servants, employees,
18 independent contractors, and those persons in active concert or participation with them who
19 receive actual notice of this Order by personal service or otherwise, in connection with
20 fundraising or telemarketing, are hereby permanently restrained and enjoined from:

21 A. Failing to provide initial and rebuttal scripts approved by the nonprofit organization or
22 other person, to each solicitor who will solicit for the nonprofit organization or other person,
23 prior to soliciting donations for that nonprofit organization or other person;

24 B. Failing to take steps sufficient to train and monitor each of its solicitors so that the
25 solicitor follows the authorized scripts and complies with the requirements of the Sections of this
26 Order titled "Prohibited Practices- Representations and Omissions" and "Telemarketing Sales
27 Rule Compliance." Such steps shall include, but not be limited to, daily random monitoring of
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1 solicitation calls made by each solicitor. Those employees conducting the monitoring shall
2 maintain a log listing the solicitors and calls monitored and noting any material
3 misrepresentations or omissions;

4 C. Failing to print a toll-free number for either the defendants or the relevant nonprofit
5 organization or other person on every invoice or receipt provided to donors by defendants;

6 D. Failing to establish a procedure for receiving and responding to consumer complaints;

7
8 E. Failing to investigate promptly and fully any complaint or inquiry received about a
9 solicitation made by any employee or independent contractor and to create and maintain a
10 written record of the investigation and any results; or

11 F. Failing to take corrective action with respect to any employee or independent contractor
12 whom defendants determine is not complying with this Order, which may include training,
13 disciplining, and/or terminating such employee or independent contractor.

14 **V. SUSPENDED MONETARY JUDGMENT**

15 IT IS FURTHER ORDERED that:

16 A. Judgment, in the form of equitable monetary relief, is hereby entered against the
17 corporate defendants only, jointly and severally, in the amount of one million, six hundred
18 eighty-nine thousand, six hundred twenty five dollars and eighty-three cents (\$1,689,625.83);
19 *provided, however,* that this judgment shall be suspended subject to the conditions set forth in
20 the Section of this Order titled “Right to Reopen.”

21 B. All funds paid pursuant to this Order shall be deposited into a fund administered by the
22 Commission or its agent to be used for equitable relief, including, but not limited to, consumer
23 redress, and any attendant expenses for the administration of such equitable relief fund.
24 Defendants shall cooperate fully to assist the Commission in identifying consumers who may be
25 entitled to redress pursuant to this Order. If the Commission determines, in its sole discretion,
26 that redress to consumers is wholly or partially impracticable or funds remain after redress is
27 completed, the Commission may apply any remaining funds for such other equitable relief
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1 (including consumer education remedies) as it determines to be reasonably related to defendants'
2 practices alleged in the Complaint. Any funds not used for such equitable relief shall be
3 deposited to the United States Treasury as disgorgement. Defendants shall have no right to
4 challenge the Commission's choice of remedies under this Section, and shall have no right to
5 contest the manner of distribution chosen by the Commission. This judgment for equitable
6 monetary relief is solely remedial in nature and is not a fine, penalty, punitive assessment, or
7 forfeiture.

8 C. In the event of any default on corporate defendants' obligation to make payment under
9 this Section, interest, computed pursuant to 28 U.S.C. § 1961, as amended, shall accrue from the
10 date of default to the date of payment, and shall immediately become due and payable.

11 D. Corporate defendants relinquish all dominion, control, and title to the funds paid to the
12 fullest extent permitted by law. Corporate defendants shall make no claim to or demand return
13 of the funds, directly or indirectly, through counsel or otherwise.

14 E. Corporate defendants agree that the facts as alleged in the Complaint filed in this action
15 shall be taken as true without further proof in any bankruptcy case or subsequent civil litigation
16 pursued by the Commission to enforce its rights to any payment or money judgment pursuant to
17 this Order, including, but not limited to, a nondischargeability complaint in any bankruptcy case.
18 Corporate defendants further stipulate and agree that the facts alleged in the Complaint establish
19 all elements necessary to sustain an action pursuant to, and that this Order shall have collateral
20 estoppel effect for purposes of, Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. §
21 523(a)(2)(A).
22

23 F. In accordance with 31 U.S.C. § 7701, corporate defendants are hereby required, unless
24 they already have done so, to furnish to the Commission with taxpayer identifying numbers
25 (social security numbers or employer identification numbers), which shall be used for purposes
26 of collecting and reporting on any delinquent amount arising out of their relationship with the
27 government.

28 G. Proceedings instituted under this Section are in addition to, and not in lieu of, any other

1 civil or criminal remedies that may be provided by law, including any other proceedings the
2 Commission may initiate to enforce this Order.

3 **VI. RIGHT TO REOPEN**

4 A. IT IS FURTHER ORDERED that, by agreeing to this Order, corporate defendants
5 reaffirm and attest to the truthfulness, accuracy, and completeness of the Financial Disclosure
6 Forms and related materials transmitted to the FTC on April 22, 2009. Plaintiff's agreement to
7 this Order is expressly premised upon the truthfulness, accuracy, and completeness of corporate
8 defendants' representations regarding their financial condition in the Financial Disclosure Forms
9 referenced above, which contain material information upon which plaintiff relied in negotiating
10 and agreeing to the terms of this Order.

11 B. If, upon motion by the Commission, this Court finds that any corporate defendant failed
12 to disclose any material asset or source of income, or materially misrepresented the value of any
13 asset or source of income, or made any other material misrepresentation in or omission from the
14 Financial Disclosure Forms and related materials, the Court shall enter judgment against that
15 defendant, in favor of the Commission, in the amount of two million dollars (\$2,000,000), and
16 the entire amount of the judgment shall become immediately due and payable.

17 C. In all other respects, this Order shall remain in full force and effect unless otherwise
18 ordered by the Court.

19 D. Proceedings instituted under this Paragraph are in addition to, and not in lieu of, any
20 other civil or criminal remedies as may be provided by law, including any other proceedings the
21 Commission may initiate to enforce this Order. For purposes of this Paragraph, the corporate
22 defendants waive any right to contest any of the allegations in the Commission's Complaint.
23

24 **VII. CUSTOMER LISTS**

25 IT IS FURTHER ORDERED that defendants are permanently restrained and enjoined from
26 selling, renting leasing, transferring, or otherwise disclosing the name, address, telephone
27 number, credit card number, bank account number, e-mail address, or other identifying
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1 information of any person who paid money to any of the defendants at any time prior to the entry
2 of this Order, in connection with fundraising. Provided, however, that defendants may disclose
3 such identifying information to a law enforcement agency or as required by any law, regulation,
4 or court order.

5 **VIII. COMPLIANCE MONITORING**

6 IT IS FURTHER ORDERED that, for the purpose of (i) monitoring and investigating
7 compliance with any provision of this Order and (ii) investigating the accuracy of any corporate
8 defendant's financial statements upon which the Commission's agreement to this Order is
9 expressly premised:

10 A. Within ten (10) days of receipt of written notice from a representative of the
11 Commission, defendants shall submit additional written reports, which are true and accurate and
12 sworn to under penalty of perjury; produce documents for inspection and copying; appear for
13 deposition; and provide entry during normal business hours to any business location in any
14 defendant's possession or direct or indirect control to inspect the business or other entity's
15 operation;
16

17 B. In addition, the Commission is authorized to use all other lawful means, including but not
18 limited to:

19 1. Obtaining discovery from any person, without further leave of court, using the
20 procedures prescribed by Fed.R.Civ.P. 30, 31, 33, 34, 36, 45, and 69;

21 2. Posing as consumers and suppliers to defendants, their employees, or any other
22 business or other entity managed or controlled in whole or in part by any defendant, without
23 necessity of identification or prior notice; and

24 C. Defendants each shall permit representatives of the Commission to interview any
25 employer, consultant, independent contractor, representative, agent, or employee who has agreed
26 to such an interview, relating in any way to any conduct subject to this Order. The person
27 interviewed may have counsel present.
28

1 *Provided however*, that nothing in this Order shall limit the Commission's lawful use of
2 compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to
3 obtain any documentary material, tangible things, testimony, or information relevant to unfair or
4 deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. §
5 45(a)(1)).

6 **IX. COMPLIANCE REPORTING**

7 IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Order
8 may be monitored:

9 A. For a period of five (5) years from the date of entry of this Order,

10 1. The individual defendant shall notify the Commission of the following:

11 a. Any changes in such defendant's residence, mailing addresses, and telephone
12 numbers, within ten (10) days of the date of such change;

13 b. Any changes in such defendant's employment status (including self-employment),
14 and any change in such defendant's ownership in any business or other entity, within ten (10)
15 days of the date of such change. Such notice shall include the name and address of each business
16 or other entity that such defendant is affiliated with, employed by, creates or forms, or performs
17 services for; a detailed description of the nature of the business or other entity; and a detailed
18 description of such defendant's duties and responsibilities in connection with the business or
19 other entity or employment; and
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21 c. Any changes in such defendant's name or use of any aliases or fictitious names;

22 2. Defendants shall notify the Commission of any changes in structure of any corporate
23 defendant or any business or other entity that any defendant directly or indirectly controls, or has
24 an ownership interest in, that may affect compliance obligations arising under this Order,
25 including but not limited to: incorporation or other organization; a dissolution, assignment, sale,
26 merger, or other action; the creation or dissolution of a subsidiary, parent, or affiliate that
27 engages in any acts or practices subject to this Order; or a change in the business or other
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1 entity's name or address, at least thirty (30) days prior to such change, *provided* that, with
2 respect to any proposed change in the business or other entity about which a defendant learns
3 less than thirty (30) days prior to the date such action is to take place, such defendant shall notify
4 the Commission as soon as is practicable after obtaining such knowledge.

5 B. One hundred eighty (180) days after the date of entry of this Order and annually
6 thereafter for a period of five (5) years, defendants each shall provide a written report to the
7 FTC, which is true and accurate and sworn to under penalty of perjury, setting forth in detail the
8 manner and form in which they have complied and are complying with this Order. This report
9 shall include, but not be limited to:

10 1. For the individual defendant:

11 a. Such defendant's then-current residence address, mailing addresses, and
12 telephone numbers;

13 b. Such defendant's then-current employment status (including self-employment),
14 including the name, addresses, and telephone numbers of each business or other entity that such
15 defendant is affiliated with, employed by, or performs services for; a detailed description of the
16 nature of the business or other entity; and a detailed description of such defendant's duties and
17 responsibilities in connection with the business or other entity or employment; and
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19 c. Any other changes required to be reported under Subsection A of this Section.

20 2. For all defendants:

21 a. A copy of each acknowledgment of receipt of this Order, obtained by defendant
22 pursuant to the Section titled "Distribution of Order;" and
23

24 b. Any other changes required to be reported under Subsection A of this Section.

25 C. Each defendant shall notify the Commission of the filing of a bankruptcy petition by such
26 defendant within fifteen (15) days of filing.

27 D. For the purposes of this Order, defendants shall, unless otherwise directed by the
28 Commission's authorized representatives, send by overnight courier all reports and notifications

1 required by this Order to the Commission, to the following address:

2 Associate Director for Enforcement
3 Federal Trade Commission
4 600 Pennsylvania Avenue, N.W., Room NJ-2122
5 Washington, D.C. 20580
6 RE: *FTC v. Marleau, et. al*

7 *Provided* that, in lieu of overnight courier, defendants may send such reports or notifications by
8 first-class mail, but only if defendants contemporaneously send an electronic version of such
9 report or notification to the Commission at: DEBrief@ftc.gov.

10 E. For purposes of the compliance reporting and monitoring required by this Order, the
11 Commission is authorized to communicate directly with each defendant.

12 **X. RECORD KEEPING PROVISIONS**

13 IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of
14 this Order, defendants, in connection with fundraising and telemarketing, and their agents,
15 employees, officers, corporations, and those persons in active concert or participation with them
16 who receive actual notice of this Order by personal service or otherwise, are hereby restrained
17 and enjoined from failing to create and retain the following records:

18 A. Accounting records that reflect the cost of good or services sold, revenues generated, and
19 the disbursement of such revenues;

20 B. Personnel records accurately reflecting: the name, address, and telephone number of each
21 person employed in any capacity by any business or other entity, including as an independent
22 contractor; that person's job title or position; the date upon which the person commenced work;
23 and the date and reason for the person's termination, if applicable;

24 C. Records accurately reflecting the names, addresses, and phone numbers of each donor
25 solicited by or on behalf of defendants, amounts paid, and description of donations made, to the
26 extent such information is obtained in the ordinary course of business;
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1 D. Complaints and refund requests (whether received directly, indirectly, or through any
2 third party) and any responses to those complaints or requests;

3 E. Copies of all telephone solicitation scripts, other solicitation materials, and websites;

4 F. Records accurately reflecting the name, address, and telephone number of each person
5 that any defendant is “assisting” as that term is defined and any contracts or other documents
6 memorializing the relationship; and

7
8 G. All records and documents necessary to demonstrate full compliance with each provision
9 of this Order, including but not limited to, copies of acknowledgments of receipt of this Order
10 required by the Sections titled “Distribution of Order” and “Acknowledgment of Receipt of
11 Order” and all reports submitted to the FTC pursuant to the Section titled “Compliance
12 Reporting.”

13 **XI. DISTRIBUTION OF ORDER**

14 IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this
15 Order, defendants shall deliver copies of the Order as directed below:

16 A. Corporate defendant: Each corporate defendant must deliver a copy of this Order to (1)
17 all of its principals, officers, directors, and managers; (2) all of its employees, agents, and
18 representatives who engage in conduct related to the subject matter of the Order; and (3) any
19 business or other entity resulting from any change in structure set forth in Subsection A.2 of the
20 Section titled “Compliance Reporting.” For current personnel, delivery shall be within five (5)
21 days of service of this Order upon such defendant. For new personnel, delivery shall occur prior
22 to them assuming their responsibilities. For any business or other entity resulting from any
23 change in structure set forth in Subsection A.2 of the Section titled “Compliance Reporting,”
24 delivery shall be at least ten (10) days prior to the change in structure.

25 B. Individual defendant as control person: For any business or other entity that an individual
26 defendant controls, directly or indirectly, or in which such defendant has a majority ownership
27 interest, such defendant must deliver a copy of this Order to (1) all principals, officers, directors,
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1 and managers of that business or other entity; (2) all employees, agents, and representatives of
2 that business or other entity who engage in conduct related to the subject matter of the Order;
3 and (3) any business or other entity resulting from any change in structure set forth in Subsection
4 A.2 of the Section titled "Compliance Reporting." For current personnel, delivery shall be
5 within five (5) days of service of this Order upon such defendant. For new personnel, delivery
6 shall occur prior to them assuming responsibilities. For any business or other entity resulting
7 from any change in structure set forth in Subsection A.2 of the section titled "Compliance
8 Reporting," delivery shall be at least ten (10) days prior to the change in structure.

9 C. Individual defendant as employee or non-control person: For any business or other entity
10 where an individual defendant is not a controlling person of a business or other entity but
11 otherwise engages in conduct related to the subject matter of this Order, such defendant must
12 deliver a copy of this Order to all principals and managers of such business or other entity before
13 engaging in such conduct.

14 D. Defendants must secure a signed and dated statement acknowledging receipt of the
15 Order, within thirty (30) days of delivery, from all persons receiving a copy of the Order
16 pursuant to this Section.

17 **XII. ACKNOWLEDGMENT OF RECEIPT OF ORDER**

18
19 IT IS FURTHER ORDERED that, within five (5) business days after receipt of this Order as
20 entered by the Court, each defendant shall submit to the Commission a truthful sworn statement
21 acknowledging receipt of this Order.

22 **XIII. RETENTION OF JURISDICTION**

23 IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for the
24 purposes of construction, modification, and enforcement of this Order.

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1 **XIV. ENTRY OF THIS JUDGMENT**

2 IT IS FURTHER ORDERED that, as there is no reason for delay, the Clerk of this Court is
3 hereby directed to enter this Order.

4 **SO ORDERED.**

5 Dated this 18th day of June, 2009.

7 
8 _____
9 BENJAMIN H. SETTLE

10 United States District Judge

11
12
13 **Stipulated, agreed to, and presented by:**

14
15 **FEDERAL TRADE COMMISSION**

DEFENDANTS

16
17
18 _____ /S/

19 David M. Horn

20 Tracy S. Thorleifson

21 Miry Kim

22 Attorneys for Plaintiff

23 Federal Trade Commission

_____ /S/

Gregory B. Lam

Copilevitz & Canter, LLC

Attorney for All Defendants

24 _____ /S/

25 David S. Marleau

26 Individual Defendant