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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA – PHOENIX DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
v.)	No. CV 10-0696-PHX-LOA
DIRECT MARKETING ASSOCIATES, CORP .,))	
and JOHN M. RAINEY, JR.)	
)	
Defendants.)	

**STIPULATED FINAL JUDGMENT AND ORDER FOR CIVIL PENALTIES,
PERMANENT INJUNCTION, AND OTHER EQUITABLE RELIEF**

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission (“FTC” or “Commission”), is concurrently filing its Complaint herein, which alleges that Defendants Direct Marketing Associates, Corp., and John M. Rainey, Jr., have engaged in violations of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a) (“FTC Act”), and section 604 of the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681b. Defendants have been represented by the attorney whose name appears hereafter. The parties have agreed to entry of this Stipulated Final Judgment and Order for Civil Penalties, Permanent Injunction, and Other Equitable Relief (“Order”) to resolve all matters in dispute in this action without trial or adjudication of any issue of law or fact herein and without Defendants admitting the truth of, or liability for, any of the matters alleged in the Complaint. Defendants have waived service of the Summons and Complaint.

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

FINDINGS

1
2 1. This Court has jurisdiction over the subject matter of this action and over
3 Defendants.

4 2. Venue in this district is proper under 28 U.S.C. §§ 1391(b)-(c), 28 U.S.C.
5 § 1395(a), and 15 U.S.C. § 53(b).

6 3. The activities of Defendants are in or affecting commerce, as defined in
7 section 4 of the FTC Act, 15 U.S.C. § 44.

8 4. The Complaint states a claim upon which relief may be granted against
9 Defendants under sections 5(a), 13(b), and 16(a) of the FTC Act, 15 U.S.C. §§ 45(a),
10 53(b), and 56(a), and under section 621(a) of the FCRA, 15 U.S.C. § 1681s(a).

11 5. Defendants make no admissions to the allegations in the Complaint, other
12 than the jurisdictional facts.

13 6. Defendants waive: (a) all rights to seek appellate review or otherwise
14 challenge or contest the validity of this Order; (b) any claim Defendants may have against
15 the Commission, its employees, representatives, or agents that relate to the matter stated
16 herein; (c) all claims under the Equal Access to Justice Act, 28 U.S.C. § 2412, as
17 amended by Pub. L. 104-121, 110 Stat. 847, 863-64 (1996); and (d) any rights to
18 attorneys' fees that may arise under said provision of law.

19 7. This action and the relief awarded herein are in addition to, and not in lieu
20 of, other remedies as may be provided by law, including both civil and criminal remedies.

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

22 **DEFINITIONS**

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

24 1. "Consumer report", "consumer reporting agency", and "firm offer of credit"
25 have the same meanings as in sections 603(d), 603(f), and 603(l) of the FCRA, 15 U.S.C.
26 §§ 1681a(d), 1681a(f), and 1681a(l).

27 2. "Individual Defendant" means John M. Rainey, Jr.
28

1 3. "Corporate Defendant" means Direct Marketing Associates, Corp., and its
2 successors and assigns.

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

5 5. "Commerce" means as defined in Section 4 of the Federal Trade
6 Commission Act, 15 U.S.C. § 44.

7 **ORDER**

8 **I. CIVIL PENALTY**

9 **IT IS ORDERED** that:

10 A. Judgment in the amount of One Hundred Fifty-Seven Thousand Dollars
11 (\$157,000) is hereby entered against Defendants, jointly and severally, as a civil penalty
12 for violations of the FCRA pursuant to section 621(a) of the Fair Credit Reporting Act, 15
13 U.S.C. § 1681s(a). Based on Defendants' sworn representations in financial statements
14 and information, full payment for the foregoing civil penalty judgment is suspended,
15 contingent upon the accuracy and completeness of the financial statements and
16 information, as set forth in Subparagraph B of this Paragraph.

17 B. Plaintiff's agreement to this Order is expressly premised upon the truthfulness,
18 accuracy and completeness of the Defendants' sworn financial statements and supporting
19 documents submitted to the Commission, which include material information upon which
20 Plaintiff relied in negotiating and agreeing to this Order. If, upon motion by Plaintiff, this
21 Court finds that any Defendant has failed to disclose any material asset or materially
22 misstated the value of any asset in the financial statements and information submitted to
23 the Commission, or has made any other material misstatement or omission in the financial
24 statements and related documents described above, then this Order shall be reopened and
25 suspension of the judgment against that particular Defendant shall be lifted for the
26 purpose of requiring payment of a civil penalty in the full amount of the judgment
27 (\$157,000). Provided, however, that in all other respects this Order shall remain in full
28 force and effect, unless otherwise ordered by the Court.

1 C. Defendants relinquish all dominion, control, and title to any funds paid to the
2 fullest extent permitted by law. Defendants shall make no claim to or demand return of
3 the funds, directly or indirectly, through counsel or otherwise.

4 D. This judgment represents a civil penalty owed to the United States
5 Government, is not compensation for actual pecuniary loss, and, therefore, is not subject
6 to discharge under the Bankruptcy Code pursuant to 11 U.S.C. § 523(a)(7). Defendants
7 agree that the facts as alleged in the complaint filed in this action shall be taken as true,
8 without further proof, in any subsequent civil litigation filed by or on behalf of the
9 Commission to enforce its rights to any payment or money judgment pursuant to this
10 Order.

11 **II. PROHIBITION AGAINST VIOLATIONS OF SECTION 5 OF THE FTC ACT**

12 **IT IS FURTHER ORDERED** that Defendants, and their officers, agents,
13 servants, employees and all persons or entities in active concert or participation with any
14 of them, who receive actual notice of this Order by personal service or otherwise, whether
15 acting directly or through any business entity, corporation, subsidiary, division, affiliate,
16 or other device, in connection with the advertising, promotion, or offering of any
17 extension of credit or financing are hereby permanently restrained and enjoined from:

18 A. Misrepresenting, expressly or by implication, the availability of credit or
19 financing; or

20 B. Making any representation, expressly or by implication, that a consumer
21 has been pre-approved for, or otherwise will or is likely to receive an extension of credit
22 or financing unless Defendants know or take reasonable steps to know that the entity that
23 is identified as the source of credit or financing is legally and financially able to provide
24 the credit or financing to all consumers who reasonably can be expected to respond to the
25 offer and obtain credit or financing from the entity, and, in the case of firm offers of
26 credit, who meet the qualifications for the firm offer of credit.

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1 **III. PROHIBITION AGAINST VIOLATIONS OF THE FCRA**

2 **IT IS FURTHER ORDERED** that Defendants and all officers, agents, servants,
3 employees and all persons or entities in active concert or participation with any of them,
4 who receive actual notice of this Order by personal service or otherwise, whether acting
5 directly or through any business entity, corporation, subsidiary, division, affiliate, or other
6 device, are hereby permanently restrained and enjoined from obtaining any consumer
7 report from a consumer reporting agency unless the report is obtained for a purpose
8 authorized by section 604 of the FCRA, 15 U.S.C. § 1681b.

9 **IV. COMPLIANCE MONITORING**

10 **IT IS FURTHER ORDERED** that, for the purpose of monitoring and
11 investigating compliance with any provision of this Order:

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

18 B. In addition, the Commission is authorized to monitor compliance with this
19 Order by all other lawful means, including but not limited to:

- 20 1. obtaining discovery from any person, without further leave of Court,
21 using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36,
22 and 45.
- 23 2. posing as consumers and suppliers to Defendants, their employees,
24 or any other entity managed or controlled in whole or in part by any
25 Defendant, without the necessity of identification or prior notice.

26 C. Defendants each shall permit representatives of the Commission to
27 interview any employer, consultant, independent contractor, representative, agent, or
28

1 employee who has agreed to such an interview, relating in any way to any conduct subject
2 to this Order. The person interviewed may have counsel present.

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

8 **V. COMPLIANCE REPORTING**

9 **IT IS FURTHER ORDERED** that, in order that compliance with the provisions
10 of this Order may be monitored:

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

12 1. The Individual Defendant shall notify the Commission of the
13 following:

14 a. Any changes in his residence, mailing addresses, and
15 telephone numbers, within ten (10) days of the date of such
16 change;

17 b. Any changes in his employment status (including self-
18 employment), and any change in his ownership in any
19 business entity, within ten (10) days of the date of such
20 change. Such notice shall include the name and address of
21 each business that he is affiliated with, employed by, creates
22 or forms, or performs services for; a detailed description of
23 the nature of the business; and a detailed description of his
24 duties and responsibilities in connection with the business or
25 employment; and

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

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

1. For the Individual Defendant:
 - a. his then-current residence address, mailing addresses, and telephone numbers;
 - b. his then-current employment status (including self-employment), including the name, addresses, and telephone numbers of each business that he is affiliated with, employed by, or performs services for; a detailed description of the nature of the business; and a detailed description of his duties

- 1 and responsibilities in connection with the business or
2 employment; and
3 c. Any other changes required to be reported under Subsection A
4 of this Section.
5 2. For all Defendants:
6 a. A copy of each acknowledgment of receipt of this Order,
7 obtained pursuant to the Section titled “Distribution of
8 Order”; and
9 b. Any other changes required to be reported under Subsection A
10 of this Section.

11 C. Each Defendant shall notify the Commission of the filing of a bankruptcy
12 petition by such Defendant within fifteen (15) days of filing.

13 D. For the purposes of this Order, Defendants shall, unless otherwise directed
14 by the Commission’s authorized representatives, send by overnight courier all reports and
15 notifications required by this Order to the Commission, to the following address:

16 Associate Director for Enforcement
17 Federal Trade Commission
18 600 Pennsylvania Avenue, N.W., Room NJ-2122
19 Washington, D.C. 20580
20 RE: FTC v. Direct Marketing Associates, Corp, and John Rainey

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

24 E. For purposes of the compliance reporting and monitoring required by this
25 Order, the Commission is authorized to communicate directly with each Defendant.

26 **VI. RECORD KEEPING PROVISIONS**

27 **IT IS FURTHER ORDERED** that, for a period of eight (8) years from the date of
28 entry of this Order, Corporate Defendant and Individual Defendant (for all entities where
he is the majority owner of the business or otherwise controls the business) and their
agents, employees, officers, corporations, and those persons in active concert or

1 participation with them who receive actual notice of this Order by personal service or
2 otherwise, are hereby restrained and enjoined from failing to retain the following records:

3 A. Copies of all training materials that relate to Defendants' activities as
4 alleged in the Complaint and Defendants' compliance with the provisions of this Order;

5 B. Copies of each separate advertisement or piece of promotional material
6 prepared by the Defendants for which the Defendants access consumer reports to obtain a
7 list of consumers to receive the offer, and copies of all records and documents necessary
8 to show the business for which the material was prepared, the lender providing the section
9 604 permissible purpose for obtaining the information under the FCRA, the consumer
10 reporting agency that provided the consumer report information, the number of
11 consumers whose names were provided, the date the names were obtained, and the date or
12 dates on which the advertisements or promotional materials were distributed; and

13 C. All other records and documents necessary to demonstrate full compliance
14 with each provision of this Order, including but not limited to, copies of
15 acknowledgments of receipt of this Order, required by the Sections titled "Distribution of
16 Order" and "Acknowledgment of Receipt of Order" and all reports submitted to the FTC
17 pursuant to the Section titled "Compliance Reporting."

18 **VII. DISTRIBUTION OF ORDER**

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

21 A. Corporate Defendant: The Corporate Defendant must deliver a copy of this
22 Order to (1) all of its principals, officers, directors, and managers; (2) all of its employees,
23 agents, and representatives who engage in conduct related to the subject matter of the
24 Order; and (3) any business entity resulting from any change in structure set forth in
25 Subsection A.2 of the Section titled "Compliance Reporting." For current personnel,
26 delivery shall be within five (5) days of service of this Order upon the Corporate
27 Defendant. For new personnel, delivery shall occur prior to them assuming their
28 responsibilities. For any business entity resulting from any change in structure set forth in

1 Subsection A.2 of the Section titled “Compliance Reporting,” delivery shall be at least ten
2 (10) days prior to the change in structure.

3 B. Individual Defendant as Control Person: For any business that the
4 Individual Defendant controls, directly or indirectly, or in which he has a majority
5 ownership interest, he must deliver a copy of this Order to (1) all principals, officers,
6 directors, and managers of that business; (2) all employees, agents, and representatives of
7 that business who engage in conduct related to the subject matter of the Order; and
8 (3) any business entity resulting from any change in structure set forth in Subsection A.2
9 of the Section titled “Compliance Reporting.” For current personnel, delivery shall be
10 within five (5) days of service of this Order upon such Defendant. For new personnel,
11 delivery shall occur prior to them assuming their responsibilities. For any business entity
12 resulting from any change in structure set forth in Subsection A.2 of the Section titled
13 “Compliance Reporting,” delivery shall be at least ten (10) days prior to the change in
14 structure.

15 C. Individual Defendant as employee or non-control person: For any business
16 where the Individual Defendant is not a controlling person of a business but otherwise
17 engages in conduct related to the subject matter of this Order, he must deliver a copy of
18 this Order to all principals and managers of such business before engaging in such
19 conduct.

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

23 **VIII. ACKNOWLEDGMENT OF RECEIPT OF ORDER**

24 **IT IS FURTHER ORDERED** that each Defendant, within five (5) business days
25 of receipt of this Order as entered by the Court, must submit to the Commission a truthful
26 sworn statement acknowledging receipt of this Order.

27 **IX. RETENTION OF JURISDICTION**

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

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X. COSTS AND ATTORNEYS' FEES

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IT IS FURTHER ORDERED that each party shall bear its own costs and
attorneys' fees incurred in connection with this action.

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IT IS SO ORDERED:

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1 The parties, by their respective counsel, hereby consent to the terms and conditions
2 of the Stipulated Order as set forth above and consent to the entry thereof.

3 FOR THE UNITED STATES OF AMERICA:
4

5 TONY WEST
Assistant Attorney General

6 DENNIS BURKE
7 United States Attorney
District of Arizona
8

9 EUGENE M. THIROLF, Director
10 KENNETH L. JOST, Deputy Director
Civil Division
Office of Consumer Litigation

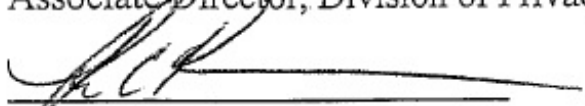
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13 DANIEL K. CRANE-HIRSCH
Trial Attorney
14 United States Department of Justice
Office of Consumer Litigation
15 PO Box 386
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16 Facsimile: 202-514-8742
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17 Telephone: 202-616-8242

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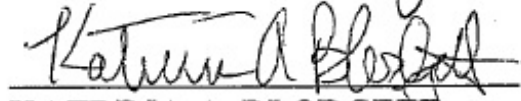
1 FOR THE FEDERAL TRADE COMMISSION:

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Maneesha Mithal
Associate Director, Division of Privacy and Identity Protection

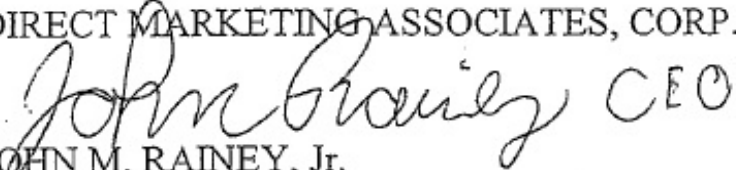

REBECCA E. KUEHN
Assistant Director, Division of Privacy and Identity Protection


WILLIAM HAYNES

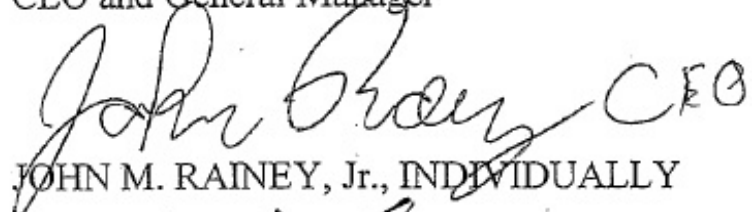

KATRINA A. BLODGETT
Attorneys
Division of Privacy and Identity Protection
Federal Trade Commission
600 Pennsylvania Ave. NW
Washington, DC 20580

1 FOR THE DEFENDANTS:

2 DIRECT MARKETING ASSOCIATES, CORP.

3  CEO

4 JOHN M. RAINEY, Jr.
5 CEO and General Manager

6  CEO

7 JOHN M. RAINEY, Jr., INDIVIDUALLY

8 

9
10
11 L. JEAN NOONAN, Esq.
12 Hudson and Cook
13 1020 19th St. N.W.
14 7th Floor
15 Washington, D.C. 20036

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