

UNITED STATES OF AMERICA
THE FEDERAL TRADE COMMISSION

)
IN THE MATTER OF THE ISSUANCE)
OF A CIVIL INVESTIGATIVE DEMAND)
TO VERSATILE MARKETING) File No. _____
SOLUTIONS, INC. d/b/a VMS ALARMS)
and/or VMS)
_____)

PETITION TO QUASH OR TO LIMIT CIVIL INVESTIGATIVE DEMAND

REDACTED

PANNONE LOPES DEVEREAUX AND WEST LLC
James Ryan, Esq. (R.I. Bar No. 4042)
Brian J. Lamoureux, Esq. (R.I. Bar No. 6211)
Benjamin L. Rackliffe, Esq. (R.I. Bar No 7708)
317 Iron Horse Way, Suite 301
Providence, RI 02908
(401) 824-5100
(401) 824-5123 Facsimile

Counsel for Petitioner

Pursuant to Section 2.7(d)(1) of the Federal Trade Commission's ("FTC" or "Commission") Rules of Practice, 16 C.F.R. § 2.7(d)(1), and Section 20 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 57b-1(f)(1), Versatile Marketing Solutions, Inc. ("VMS" or "the Company") hereby files its Petition to Quash or Limit the Civil Investigative Demand (the "CID") served on VMS on or about June 4, 2012.

I. PRELIMINARY STATEMENT

The CID issued pursuant to the FTC's investigation (the "Investigation") of VMS' telemarketing methods and operations demands that VMS achieve the unachievable. Compliance with the FTC's broad and detailed CID within a twenty (20) day time frame is simply not possible. The CID, which contains sweeping document requests ("Requests") and a multitude of interrogatories ("Interrogatories") requiring expansive, yet detailed responses, places an overwhelming burden upon VMS. Despite VMS' good faith effort to seek an extension to respond and to sufficiently narrow the scope of the Commission's investigation, FTC's counsel is firm on the FTC's demand for full compliance within the prescribed twenty (20) day period. Accordingly, VMS hereby petitions to quash, or alternatively, to limit the CID.

A cursory review of the CID reveals its unjustifiable breadth. The CID contains over forty (40) Requests (many of which contain multiple subparts). These Requests are not reasonably limited in temporal scope by seeking documents over a three (3) year span up to, and including, the present day. Sufficient response by VMS would require the collection, review, processing, assembling and production of possibly tens or hundreds of thousands of pages of information, documents and data. It is a physical and technical impossibility to comply with such broad Requests in a twenty (20) day period.

The Interrogatories propounded by the FTC upon VMS are equally burdensome. The

CID contains twenty-six (26) far-reaching Interrogatories, virtually all of which are compounded with equally onerous subparts. Sufficient response would require VMS to research for, and thereafter draft, lengthy narratives which simply cannot be completed within the prescribed time frame.

II. ARGUMENT

Pursuant to its investigations under the FTC Act, the FTC is authorized to issue civil investigative demands to require the production of documents and other information. See 15 U.S.C. § 57b-1. However, compulsory process issued by the FTC is not self-executing and the FTC must petition a district court of the United States to seek enforcement of a Civil Investigative Demand. See SEC v. Arthur Young & Co., 584 F.2d 1018, 1024 (D.C. Cir. 1978) *cert. denied*, 439 U.S. 1071 (1979)(standing for the proposition that the federal courts serve as a guardian against abuses of federal agencies – there, with respect to a subpoena duces tecum issued by the SEC). Compulsory process by a federal agency is only enforceable in court when the disclosure sought is reasonable. See Oklahoma Press Publ'g Co. v. Walling, 327 U.S. 186, 208 (1946). Compulsory process is reasonable, and thereby enforceable, where the requests are: (i) reasonably relevant to the federal investigation; and (ii) are not unduly burdensome to produce. See F.T.C. v. Invention Submission Corp., 965 F.2d 1086, 1089 (D.C. Cir. 1992).

The CID should be quashed or the response date significantly extended because the Requests and Interrogatories are overly broad and unduly burdensome. More so, compliance with the CID would place a substantial and unjustifiable expense upon VMS and would constitute an untenable impediment to the conduct of its business operations.

A. The CID Imposes an Undue Burden on VMS Because the Time Period Provided for Compliance is Unachievable

As stated *supra*, the broad scope and compressed time frame make compliance by June 25, 2012 impossible. The forty (40) plus Requests (which include numerous subcomponents), require that VMS collect and assemble documents going back over a three (3) year period and stored at multiple Company locations throughout the United States. More so, the CID contains twenty-six (26) comprehensive Interrogatories, virtually all of which are compounded with equally burdensome subparts¹.

Abbreviated timetables insisted upon by the FTC with respect to requests for information understandably cause undue burden upon their respective respondents. The FTC Rules of Practice for Non-Adjudicative Proceedings, therefore, requires that propounded Civil Investigative Demands provide the responding party with "a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction[.]" See 16 C.F.R. §2.7(b)(1). Here, the twenty (20) day compliance period is entirely unreasonable given the comprehensive nature of the Requests and Interrogatories. One would be accurate in stating full compliance under the mandated time frame is an impossibility.

There are many illustrations which emphasize VMS' inability to timely comply with the CID. For example, Request D-33, subpart "a" seeks, among other things, audio recordings of "all Outbound Telephone Calls made by or on behalf of the Company[.]" As of June 21, 2012, VMS has over recordings saved electronically in its "Record All" servers. More than additional calls are recorded each day. Producing these recordings within the prescribed time frame.

¹ The FTC provides in its Rules of Practice for Adjudicative Proceedings that parties to administrative hearings "may serve upon any other party written interrogatories, not exceeding twenty-five (25) in number, including all discrete subparts" See 16 C.F.R. § 3.35(a). If by Rule, twenty five (25) interrogatories has been deemed adequate in the context of litigation, it is unusual that the FTC would now require interrogatories in an exceeding quantity to explore VMS' operations. The FTC's excess in this regard is simply an indication of the undue burden now being placed upon VMS, and one of many reasons, which in the aggregate, demonstrates why the time for compliance is unreasonable.

is a burdensome task on its own. Timely production becomes an impossibility, however, where, as here, the Company's telephone system indiscriminately records all outgoing phone calls, regardless of whether they relate to its telemarketing activities or not. The process of scrubbing over recordings in order to remove all nonresponsive, confidential and/or privileged conversations, a necessary prerequisite to VMS' production, underscores the impossibility of timely production on this Request. The fact that the above example is a mere subcomponent of a larger five (5) part Request, in a sea of over forty (40) (many multicomponent) Requests, underscores the point. Other examples exist, but the point is readily apparent.

Take for instance Request D-37. That Request seeks all records or other documents that identify twenty one (21) subsets of sought-after information specific to each and every outbound telephone call made by or on the behalf of VMS. Given the sheer volume of outbound calls made by VMS to date and the fact that VMS makes more than additional outbound calls per day, the initial task of vetting and assembling the requested records and documentation, compiled with VMS' ongoing obligation per the CID to produce new responsive records and documentation as they are generated, makes production unmanageable.

B. The CID is Overly Broad

The CID requests a vast and detailed amount of data, requiring the production of materials dating back approximately three (3) years, as well as documents, information and data not likely to be material and/or relevant for the FTC's purposes. A request for documents or other information is reasonable and enforceable only if its scope is "adequate, but not excessive, for the purposes of the relevant inquiry." See SEC v. Arthur Young & Co., 584 F.2d 1018, 1031 (D.C. Cir. 1978), *cert. denied*, 439 U.S. 1071 (1979). The breadth of the Requests in the CID at issue is excessive (not only because of the limited time frame allotted for compliance) because of the overwhelming

amount of documents and data that VMS would be required to collect, vet and produce in order to fully comply. The processing and prospective production of approximately [REDACTED] outbound telephone calls in response to a mere subpart of a Request, as highlighted *supra*, is but one of many illustrations as to the unjustifiable breadth of the CID.

C. Compliance with the CID's Interrogatories and Requests Would Adversely Affect the Normal Business Operations of VMS

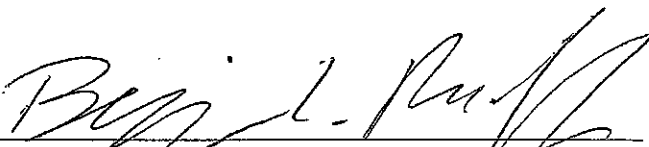
It is well established that a Civil Investigative Demand is considered unduly burdensome when a good faith effort at compliance would "threaten[] to unduly disrupt or seriously hinder" the business operations of the responding party. See F.T.C. v. Invention Submission Corp., 965 F.2d 1086, 1090 (D.C. Cir. 1992) citing FTC v. Texaco, Inc., 555 F.2d 862, 882 (D.C. Cir. 1979). VMS is a relatively small organization with relatively limited resources. It is not Google. In order for VMS to comply with the CID, it would be necessary for the Company to remove large pools of its employees from the conduct of its daily operations, and reassign human capital to the sole objective of processing and assembling documents and data, and to assist VMS' counsel in the development of answers to the vast breadth of information sought in response to the Interrogatories. It is likely that such reassignment would carry on for weeks. In an organization such as VMS, with relatively limited size and means, this necessarily results in a drastic disruption in the conduct of its business. The fact that the Commission has demanded response to the CID in a compressed timeframe only exacerbates the adverse effect that responding to the CID would have upon the Company in that timely response would require the dedication of increased man hours to meet the FTC's timeline. In all likelihood, this would drastically inhibit VMS' operations, and accordingly, the scope of the CID, therefore, is by definition, unduly burdensome. See F.T.C. v. Invention Submission Corp., 965 F.2d 1086, 1090 (D.C. Cir. 1992) citing FTC v. Texaco, Inc., 555 F.2d 862, 882 (D.C. Cir. 1979).

III. CONCLUSION

For all of the foregoing reasons, Versatile Marketing Solutions, Inc. hereby respectfully requests that the Commission quash the CID. In the alternative, VMS requests that the Commission modify the response date of the CID to provide VMS a reasonable time for compliance and that it otherwise limit the CID based upon the valid reasons set forth above.

Dated: June 22, 2012

Respectfully Submitted,
Petitioner,
Versatile Marketing Solutions, Inc.,
By its attorneys,

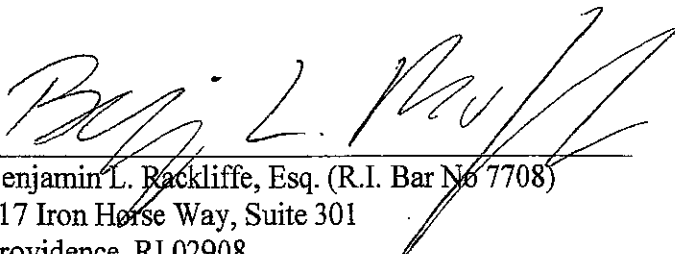


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CERTIFICATION PURSUANT TO 16 C.F.R. 4 2.7(d)(2)

I, Benjamin L. Rackliffe, counsel for Versatile Marketing Solutions, Inc. ("VMS"), hereby submit this statement in connection with VMS' Petition to Quash or Limit the Civil Investigative Demand (the "CID") propounded upon VMS by the Federal Trade Commission ("FTC") on or about June 4, 2012. On June 20, 2010 at 4:00 PM, Brian J. Lamoureux, Esq., of my office conferred with Bikram Bandy, counsel for the Commission, by telephone, in a good faith attempt to resolve the issues set forth in VMS' Petition. During that telephone call, my office proposed modifications to the CID, particularly with regard to the return date and the scope of certain request for production and interrogatories. Counsel for the FTC was not amenable to my office's proposed resolution which necessitated the filing of VMS' foregoing Petition.

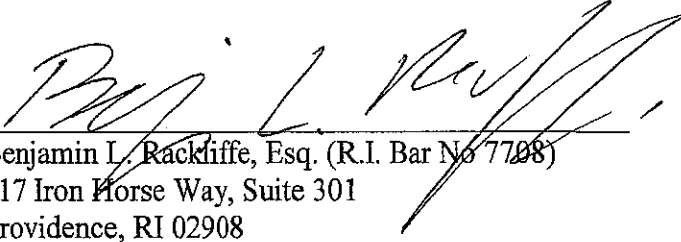
Dated: June 22, 2012


Benjamin L. Rackliffe, Esq. (R.I. Bar No 7708)
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Providence, RI 02908
(401) 824-5100
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CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of June, 2012, I caused the original and twelve (12) copies of the foregoing Petition to Quash or Limit Civil Investigative Demand to be filed by with the Secretary of The Federal Trade Commission, Office of the Secretary of the Federal Trade Commission, Room H-113, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580; along with a courtesy copy to Commission Counsel, Bikram Bandy at 600 Pennsylvania Avenue, NW, Mailstop H-286, Washington, DC 20580.

Dated: June 22, 2012


Benjamin L. Rackliffe, Esq. (R.I. Bar No 7708)
317 Iron Horse Way, Suite 301
Providence, RI 02908
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United States of America
Federal Trade Commission

CIVIL INVESTIGATIVE DEMAND

1. TO

Versatile Marketing Solutions, Inc., also d/b/a VMS Alarms or VMS
ATTN: Jasit Gotra, CEO
2720 N. Stemmons Frwy., Suite #300
Dallas, TX 75207

This demand is issued pursuant to Section 20 of the Federal Trade Commission Act, 15 U.S.C. § 57b-1, in the course of an investigation to determine whether there is, has been, or may be a violation of any laws administered by the Federal Trade Commission by conduct, activities or proposed action as described in Item 3.

2. ACTION REQUIRED

You are required to appear and testify.

LOCATION OF HEARING	YOUR APPEARANCE WILL BE BEFORE
	DATE AND TIME OF HEARING OR DEPOSITION

You are required to produce all documents described in the attached schedule that are in your possession, custody, or control, and to make them available at your address indicated above for inspection and copying or reproduction at the date and time specified below.

You are required to answer the interrogatories or provide the written report described on the attached schedule. Answer each interrogatory or report separately and fully in writing. Submit your answers or report to the Records Custodian named in Item 4 on or before the date specified below.

DATE AND TIME THE DOCUMENTS MUST BE AVAILABLE

JUN 25 2012

3. SUBJECT OF INVESTIGATION

See attached resolution.

4. RECORDS CUSTODIAN/DEPUTY RECORDS CUSTODIAN

Roberto Anguizola / Reeve Tyndall (202-326-2452)
Federal Trade Commission
600 Pennsylvania Ave., NW, Mailstop H-286
Washington, DC 20580

5. COMMISSION COUNSEL

Bikram Bandy - 202-326-2978
Federal Trade Commission
600 Pennsylvania Ave., NW, Mailstop H-286
Washington, DC 20580

DATE ISSUED

6/4/12

COMMISSIONER'S SIGNATURE

INSTRUCTIONS AND NOTICES

The delivery of this demand to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply. The production of documents or the submission of answers and report in response to this demand must be made under a sworn certificate, in the form printed on the second page of this demand, by the person to whom this demand is directed or, if not a natural person, by a person or persons having knowledge of the facts and circumstances of such production or responsible for answering each interrogatory or report question. This demand does not require approval by OMB under the Paperwork Reduction Act of 1980.

PETITION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any petition to limit or quash this demand be filed within 20 days after service, or, if the return date is less than 20 days after service, prior to the return date. The original and twelve copies of the petition must be filed with the Secretary of the Federal Trade Commission, and one copy should be sent to the Commission Counsel named in Item 5.

YOUR RIGHTS TO REGULATORY ENFORCEMENT FAIRNESS

The FTC has a longstanding commitment to a fair regulatory enforcement environment. If you are a small business (under Small Business Administration standards), you have a right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR (1-888-734-3247) or www.sba.gov/ombudsman regarding the fairness of the compliance and enforcement activities of the agency. You should understand, however, that the National Ombudsman cannot change, stop, or delay a federal agency enforcement action.

The FTC strictly forbids retaliatory acts by its employees, and you will not be penalized for expressing a concern about these activities.

TRAVEL EXPENSES

Use the enclosed travel voucher to claim compensation to which you are entitled as a witness for the Commission. The completed travel voucher and this demand should be presented to Commission Counsel for payment. If you are permanently or temporarily living somewhere other than the address on this demand and it would require excessive travel for you to appear, you must get prior approval from Commission Counsel.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

Form of Certificate of Compliance*

I/We do certify that all of the documents and information required by the attached Civil Investigative Demand which are in the possession, custody, control, or knowledge of the person to whom the demand is directed have been submitted to a custodian named herein.

If a document responsive to this Civil Investigative Demand has not been submitted, the objections to its submission and the reasons for the objection have been stated.

If an interrogatory or a portion of the request has not been fully answered or a portion of the report has not been completed, the objections to such interrogatory or uncompleted portion and the reasons for the objections have been stated.

Signature _____

Title _____

Sworn to before me this day

Notary Public

*In the event that more than one person is responsible for complying with this demand, the certificate shall identify the documents for which each certifying individual was responsible. In place of a sworn statement, the above certificate of compliance may be supported by an unsworn declaration as provided for by 28 U.S.C. § 1746.

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman
~~William E. Kovacic~~
J. Thomas Rosch
Edith Ramirez
Julie Brill

RESOLUTION DIRECTING USE OF COMPULSORY PROCESS IN A NONPUBLIC
INVESTIGATION OF TELEMARKETERS, SELLERS, SUPPLIERS, OR OTHERS

File No. 0123145

Nature and Scope of Investigation:


To determine whether unnamed telemarketers, sellers, or others assisting them have engaged or are engaging in: (1) unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45 (as amended); and/or (2) deceptive or abusive telemarketing acts or practices in violation of the Commission's Telemarketing Sales Rule, 16 C.F.R. pt 310 (as amended), including but not limited to the provision of substantial assistance or support — such as mailing lists, scripts, merchant accounts, and other information, products, or services — to telemarketers engaged in unlawful practices. The investigation is also to determine whether Commission action to obtain redress for injury to consumers or others would be in the public interest.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation for a period not to exceed five years from the date of issuance of this resolution. The expiration of this five-year period shall not limit or terminate the investigation or the legal effect of any compulsory process issued during the five-year period. The Federal Trade Commission specifically authorizes the filing or continuation of actions to enforce any such compulsory process after the expiration of the five-year period.

Authority to Conduct Investigation:

Sections 6, 9, 10, and 20 of the Federal Trade Commission Act, 15 U.S.C.
§§ 46, 49, 50, 57b-1 (as amended); and FTC Procedures and Rules of Practice, 16 C.F.R. §§ 1.1
et seq. and supplements thereto.

By direction of the Commission.


Donald S. Clark
Secretary

Issued: April 11, 2011

**CIVIL INVESTIGATIVE DEMAND
SCHEDULE FOR PRODUCTION OF DOCUMENTS AND
ANSWERS TO WRITTEN INTERROGATORIES**

I. DEFINITIONS

As used in this Civil Investigative Demand, the following definitions shall apply:

- A. **“Abandoned Call”** means any outbound telephone call where a person answers the call and the telemarketer or seller does not connect the call to a sales representative within two (2) seconds of the person’s completed greeting.
- B. **“And,”** as well as **“or,”** shall be construed both conjunctively and disjunctively, as necessary, in order to bring within the scope of any specification in this Schedule all information that otherwise might be construed to be outside the scope of the specification.
- C. **“Any”** shall be construed to include **“all,”** and **“all”** shall be construed to include the word **“any.”**
- D. **“Caller Identification Management Services”** means a service that relates to (i) providing Automated Number Identifiers (ANI), Calling Party Numbers (CPN) or Charge Numbers for use in making telephone calls; or (ii) the use of caller name or line information databases that associate names with telephone numbers, including alteration of the names associated with telephone numbers in these databases; or (iii) inquiries made to caller name or line information databases to identify the name associated with a number, including payments based upon such inquiries.
- E. **“Calling Party Number”** shall mean the subscriber line number or the directory number contained in the calling party number parameter of the call set-up message associated with an interstate call on a Signaling System 7 network (47 C.F.R. § 64.1600(c)), or other number that is or was provided to recipients of a call to identify the source of the telephone call or permit the recipients to respond to the call
- F. **“CID”** shall mean the Civil Investigative Demand, including the attached Resolution and this Schedule, and including the Definitions, Instructions, and Specifications.
- G. **“Company”** shall mean Versatile Marketing Solutions, Inc. also d/b/a VMS Alarms or VMS, its wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, and affiliates, and all directors, officers, employees, agents, consultants, and other persons working for or on behalf of the foregoing.
- H. **“Do Not Call Request”** means a statement by a person that he or she does not wish to receive telephone calls from the Company.
- I. **“Document”** shall mean the complete original and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or

location, of any written, typed, printed, transcribed, filmed, punched, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated or made, including but not limited to any advertisement, book, pamphlet, periodical, contract, correspondence, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, chart, graph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, agenda, minute, code book, label, drafts, or transcripts of audio or video recordings. **“Document” shall also include Electronically Stored Information.**

J. **“Each”** shall be construed to include **“every,”** and **“every”** shall be construed to include **“each.”**

K. **“Electronically Stored Information”** or **“ESI”** shall mean the complete original and any non-identical copy (whether different from the original because of notations, different metadata, or otherwise), regardless of origin or location, of any information created, manipulated, communicated, stored, or utilized in digital form, requiring the use of computer hardware or software. This includes, but is not limited to, electronic mail, instant messaging, videoconferencing, and other electronic correspondence (whether active, archived, or in a deleted items folder), word processing files, spreadsheets, databases, and video and sound recordings, whether stored on: cards; magnetic or electronic tapes; disks; computer hard drives, network shares or servers, or other drives; cloud-based platforms; cell phones, PDAs, computer tablets, or other mobile devices; or other storage media. **“ESI”** also includes such technical assistance or instructions as will enable conversion of such ESI into a reasonably usable form.

L. **“Entity-Specific Do Not Call List”** shall mean a list of telephone numbers or persons maintained by the Company or any entity acting on behalf of the Company from which the Company or any entity acting on behalf of the Company has received a Do Not Call Request.

M. **“FTC”** or **“Commission”** shall mean the Federal Trade Commission.

N. **“Identify”** or **“the identity of”** shall be construed to require identification of (a) natural persons by name, title, present business affiliation, present business address and telephone number, or if a present business affiliation or present business address is not known, the last known business and home addresses; and (b) businesses or other organizations by name, address, identities of natural persons who are officers, directors or managers of the business or organization, and contact persons, where applicable.

O. **“National Do Not Call Registry”** shall mean the registry of telephone numbers maintained by the Commission as set forth in 16 C.F.R. § 310.4(b)(1)(iii)(B).

P. **“Outbound Telephone Call”** shall mean a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution, including a telephone call initiated to deliver a recorded message describing sales events, encourage visits to retail stores, or promote online sales.

Q. **“Referring to”** or **“relating to”** shall mean discussing, describing, reflecting, containing, analyzing, studying, reporting, commenting, evidencing, constituting, setting forth, considering,

recommending, concerning, or pertaining to, in whole or in part.

R. "SAN" means a Subscriber Account Number assigned to an entity that has subscribed for access to the National Do Not Call Registry.

S. "Telemarketer" shall mean any person who, in connection with telemarketing, initiates or receives telephone calls to or from consumers.

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

U. "Voice Broadcasting Services" means initiating telephone calls to send, or providing software or support to others to allow the others to send, prerecorded messages to answering machines, voice mail systems, or persons, but does not include: (i) delivering messages designed to induce voting or the donation or gift of money or other thing of value to promote the success of a political party, committee or campaign; or (ii) delivering emergency or alert messages from a government authority.

V. "You" and "Your" shall mean the person or entity to whom this CID is issued and includes the "Company".

II. INSTRUCTIONS

A. **Sharing of Information:** The Commission often makes its files available to other civil and criminal federal, state, local, or foreign law enforcement agencies. The Commission may make information supplied by you available to such agencies where appropriate pursuant to the Federal Trade Commission Act and 16 C.F.R. § 4.11 (c) and (j). Information you provide may be used in any federal, state, or foreign civil or criminal proceeding by the Commission or other agencies.

B. **Meet and Confer:** You must contact **Bikram Bandy at 202-326-2978** as soon as possible to schedule a meeting (telephonic or in person) to be held within ten (10) days after receipt of this CID in order to confer regarding your response, including but not limited to a discussion of the submission of Electronically Stored Information and other electronic productions as described in these Instructions.

C. **Applicable time period:** Unless otherwise directed in the specifications, the applicable time period for the request shall be from **September 1, 2009 until the date of full and complete compliance with this CID.**

D. **Claims of Privilege:** If any material called for by this CID is withheld based on a claim of privilege or any similar claim, the claim must be asserted no later than the return date of this CID. In addition, pursuant to 16 C.F.R. § 2.8A(a), submit, together with the claim, a schedule of the items withheld, stating individually as to each item:

1. the type, specific subject matter, date, and number of pages of the item;
 2. the names, addresses, positions, and organizations of all authors and recipients of the item; and
-
3. the specific grounds for claiming that the item is privileged.

If only some portion of any responsive material is privileged, all non-privileged portions of the material must be submitted. A petition to limit or quash this CID shall not be filed solely for the purpose of asserting a claim of privilege. 16 C.F.R. § 2.8A(b).

E. **Document Retention:** You shall retain all documentary materials used in the preparation of responses to the specifications of this CID. The Commission may require the submission of additional documents at a later time during this investigation. Accordingly, you should suspend any routine procedures for document destruction and take other measures to prevent the destruction of documents that are in any way relevant to this investigation during its pendency, irrespective of whether you believe such documents are protected from discovery by privilege or otherwise. See 15 U.S.C. § 50; see also 18 U.S.C. §§ 1505, 1519.

F. **Petitions to Limit or Quash:** Any petition to limit or quash this CID must be filed with the Secretary of the Commission no later than twenty (20) days after service of the CID, or, if the return date is less than twenty (20) days after service, prior to the return date. Such petition shall set forth all assertions of privilege or other factual and legal objections to the CID, including all appropriate arguments, affidavits, and other supporting documentation. 16 C.F.R. § 2.7(d).

G. **Modification of Specifications:** If you believe that the scope of the required search or response for any specification can be narrowed consistent with the Commission's need for documents or information, you are encouraged to discuss such possible modifications, including any modifications of definitions and instructions, with the Commission counsel named above. All such modifications must be agreed to in writing by an Associate Director, Regional Director, or Assistant Regional Director. 16 C.F.R. § 2.7(c).

H. **Certification:** A responsible corporate officer shall certify that the response to this CID is complete. This certification shall be made in the form set out on the back of the CID form, or by a declaration under penalty of perjury as provided by 28 U.S.C. § 1746.

I. **Scope of Search:** This CID covers documents and information in your possession or under your actual or constructive custody or control including, but not limited to, documents and information in the possession, custody, or control of your attorneys, accountants, directors, officers, employees, and other agents and consultants, whether or not such documents and information were received from or disseminated to any person or entity.

J. **Document Production:** You shall produce the documentary material by making all responsive documents available for inspection and copying at your principal place of business. Alternatively, you may elect to send all responsive documents to **Reeve Tyndall, Federal Trade Commission, 600 Pennsylvania Ave., NW, Mailstop H-286, Washington, DC 20580.**

Because postal delivery to the Commission is subject to delay due to heightened security precautions, please use a courier service such as Federal Express or UPS. Notice of your intended method of production shall be given by mail or telephone to Bikram Bandy at 202-326-2978 at least five days prior to the return date.

K. Document Identification: Documents that may be responsive to more than one specification of this CID need not be submitted more than once; however, your response should indicate, for each document submitted, each specification to which the document is responsive. If any documents responsive to this CID have been previously supplied to the Commission, you may comply with this CID by identifying the document(s) previously provided and the date of submission. Documents should be produced in the order in which they appear in your files or as electronically stored and without being manipulated or otherwise rearranged; if documents are removed from their original folders, binders, covers, containers, or electronic source in order to be produced, then the documents shall be identified in a manner so as to clearly specify the folder, binder, cover, container, or electronic media or file paths from which such documents came. In addition, number by page (or file, for those documents produced in native electronic format) all documents in your submission, preferably with a unique Bates identifier, and indicate the total number of documents in your submission.

L. Production of Copies: Unless otherwise stated, legible photocopies (or electronically rendered images or digital copies of native electronic files) may be submitted in lieu of original documents, provided that the originals are retained in their state at the time of receipt of this CID. Further, copies of originals may be submitted in lieu of originals only if they are true, correct, and complete copies of the original documents; provided, however, that submission of a copy shall constitute a waiver of any claim as to the authenticity of the copy should it be necessary to introduce such copy into evidence in any Commission proceeding or court of law; and provided further that you shall retain the original documents and produce them to Commission staff upon request. Copies of marketing materials and advertisements shall be produced in color, and copies of other materials shall be produced in color if necessary to interpret them or render them intelligible.

M. Electronic Submission of Documents: The following guidelines refer to the production of any Electronically Stored Information ("ESI") or digitally imaged hard copy documents. Before submitting any electronic production, You must confirm with the Commission counsel named above that the proposed formats and media types will be acceptable to the Commission. The FTC requests Concordance load-ready electronic productions, including DAT and OPT load files.

- (1) **Electronically Stored Information:** Documents created, utilized, or maintained in electronic format in the ordinary course of business should be delivered to the FTC as follows:
 - (a) Spreadsheet and presentation programs, including but not limited to Microsoft Access, SQL, and other databases, as well as Microsoft Excel and PowerPoint files, must be produced in native format with extracted text and metadata. Data compilations in Excel spreadsheets, or in

delimited text formats, must contain all underlying data un-redacted with all underlying formulas and algorithms intact. All database productions (including structured data document systems) must include a database schema that defines the tables, fields, relationships, views, indexes, packages, procedures, functions, queues, triggers, types, sequences, materialized views, synonyms, database links, directories, Java, XML schemas, and other elements, including the use of any report writers and custom user data interfaces;

- (b) All ESI other than those documents described in (1)(a) above must be provided in native electronic format with extracted text or Optical Character Recognition (OCR) and all related metadata, and with corresponding image renderings as converted to Group IV, 300 DPI, single-page Tagged Image File Format (TIFF) or as color JPEG images (where color is necessary to interpret the contents);
 - (c) Each electronic file should be assigned a unique document identifier ("DocID") or Bates reference.
- (2) **Hard Copy Documents:** Documents stored in hard copy in the ordinary course of business should be submitted in an electronic format when at all possible. These documents should be true, correct, and complete copies of the original documents as converted to TIFF (or color JPEG) images with corresponding document-level OCR text. Such a production is subject to the following requirements:
- (a) Each page shall be endorsed with a document identification number which can be a Bates number or a document control number); and
 - (b) Logical document determination should be clearly rendered in the accompanying load file and should correspond to that of the original document; and
 - (c) Documents shall be produced in color where necessary to interpret them or render them intelligible.
- (3) **Telephone Connection Records:** Telephone connection and other database records may be submitted as (i) MS Access 2003 or earlier, (ii) delimited ASCII text files, with field names as the first record, or (iii) fixed-length flat files with appropriate record layout. Telephone number entries should consist of ten digits without additional characters. Date and time information should be in a single field with the date and time separated by a space, or separate fields for the date and time. For ASCII text files, field-level documentation must also be provided with the data, and delimiters and quote characters must not appear in the data.

- (4) For each document electronically submitted to the FTC, You should include the following metadata fields in a standard ASCII delimited Concordance DAT file:
- (a) **For electronic mail:** begin Bates or unique document identification number ("DocID"), end Bates or DocID, mail folder path (location of email in personal folders, subfolders, deleted or sent items), custodian, from, to, cc, bcc, subject, date and time sent, date and time received, and complete attachment identification, including the Bates or DocID of the attachments (AttachIDs) delimited by a semicolon, MD5 or SHA Hash value, and link to native file;
 - (b) **For email attachments:** begin Bates or DocID, end Bates or DocID, parent email ID (Bates or DocID), page count, custodian, source location/file path, file name, file extension, file size, author, date and time created, date and time modified, date and time printed, MD5 or SHA Hash value, and link to native file;
 - (c) **For loose electronic documents (as retrieved directly from network file stores, hard drives, etc.):** begin Bates or DocID, end Bates or DocID, page count, custodian, source media, file path, filename, file extension, file size, author, date and time created, date and time modified, date and time printed, MD5 or SHA Hash value, and link to native file;
 - (d) **For imaged hard copy documents:** begin Bates or DocID, end Bates or DocID, page count, source, and custodian; and where applicable, file folder name, binder name, attachment range, or other such references, as necessary to understand the context of the document as maintained in the ordinary course of business.
- (5) If You intend to utilize any de-duplication or email threading software or services when collecting or reviewing information that is stored in Your computer systems or electronic storage media, or if Your computer systems contain or utilize such software, You must contact the Commission counsel named above to determine whether and in what manner You may use such software or services when producing materials in response to this Request.
- (6) Submit electronic productions as follows:
- (a) With passwords or other document-level encryption removed or otherwise provided to the FTC;
 - (b) As uncompressed electronic volumes on size-appropriate, Windows-compatible, media;
 - (c) All electronic media shall be scanned for and free of viruses;

- (d) Data encryption tools may be employed to protect privileged or other personal or private information. The FTC accepts TrueCrypt, PGP, and SecureZip encrypted media. The passwords should be provided in advance of delivery, under separate cover. Alternate means of encryption should be discussed and approved by the FTC.
- (e) Please mark the exterior of all packages containing electronic media sent through the U.S. Postal Service or other delivery services as follows:

**MAGNETIC MEDIA – DO NOT X-RAY
MAY BE OPENED FOR POSTAL INSPECTION.**

- (7) All electronic files and images shall be accompanied by a production transmittal letter which includes:
 - (a) A summary of the number of records and all underlying images, emails, and associated attachments, native files, and databases in the production; and
 - (b) An index that identifies the corresponding consecutive document identification number(s) used to identify each person's documents and, if submitted in paper form, the box number containing such documents. If the index exists as a computer file(s), provide the index both as a printed hard copy and in machine-readable form (provided that the Commission counsel named above determines prior to submission that the machine-readable form would be in a format that allows the agency to use the computer files). The Commission counsel named above will provide a sample index upon request.

A Bureau of Consumer Protection Production Guide is available upon request from the Commission counsel named above. This guide provides detailed directions on how to fully comply with this instruction.

N. **Sensitive Personally Identifiable Information:** If any material called for by these requests contains sensitive personally identifiable information or sensitive health information of any individual, please contact us before sending those materials to discuss ways to protect such information during production.

For purposes of these requests, sensitive personally identifiable information includes: an individual's Social Security number alone; or an individual's name or address or phone number in combination with one or more of the following: date of birth, Social Security number, driver's license number or other state identification number, or a foreign country equivalent, passport number, financial account number, credit card number, or debit card number. Sensitive health information includes medical records and other individually identifiable health information relating to the past, present, or future physical or mental health or conditions of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision

of health care to an individual.

O. Information Identification: Each specification and sub-specification of this CID shall be answered separately and fully in writing under oath. All information submitted shall be clearly and precisely identified as to the specification(s) or subspecification(s) to which it is responsive.

P. Submission of Documents in lieu of Interrogatory Answers: Previously existing documents that contain the information requested in any written Interrogatory may be submitted as an answer to the Interrogatory. In lieu of identifying documents as requested in any Interrogatory, you may, at your option, submit true copies of the documents responsive to the Interrogatory, provided that you clearly indicate the specific Interrogatory to which such documents are responsive.

Q. Certification of Records of Regularly Conducted Activity: Attached is a Certification of Records of Regularly Conducted Activity, which may reduce the need to subpoena the Company to testify at future proceedings in order to establish the admissibility of documents produced in response to this CID. You are asked to execute this Certification and provide it with your response.

III. INTERROGATORIES

Please provide answers to the requests below, in writing and under oath.

- I- 1. State the names and titles of all officers, directors, principal stockholders, owners, and managers of the Company.
- I- 2. Describe the Company's practices for retaining or disposing of documents and data related to the Company's Telemarketing.
- I- 3. Describe the products and services the Company sells or offers for sale through the use of Telemarketing.
- I- 4. List the SAN(s), if any, used by the Company or on behalf of the Company to access the National Do Not Call Registry.
- I- 5. Describe any procedures established by the Company or by any entity acting on behalf of the Company to prevent initiating Outbound Telephone Calls to telephone numbers listed on the National Do Not Call Registry. For each such procedure identify:
 - a. the date(s) that the procedures were established and in effect;
 - b. the persons responsible for training personnel to implement such procedures;
 - c. any documents used to communicate such procedures;
 - d. the persons responsible for monitoring the effectiveness of such procedures; and

- e. the persons responsible for enforcing such procedures.
- I- 6. Describe the procedures, if any, used by the Company or any entity acting on behalf of the Company to determine whether the Company has an established business relationship with recipients of Outbound Telephone Calls to telephone numbers that are on the National Do Not Call Registry. For each such procedure identify:
- a. the date(s) that the procedures were established and in effect;
 - b. the persons responsible for training personnel to implement such procedures;
 - c. any documents used to communicate such procedures;
 - d. the persons responsible for monitoring the effectiveness of such procedures; and
 - e. the persons responsible for enforcing such procedures.
- I- 7. Describe the procedures, if any, used by the Company or any entity acting on behalf of the Company to determine whether the Company has the express written agreement of recipients of Outbound Telephone Calls whose telephone numbers are on the National Do Not Call Registry to receive Outbound Telephone Calls made by or on behalf of the Company. For each such procedure identify:
- a. the date(s) that the procedures were established and in effect;
 - b. the persons responsible for training personnel to implement such procedures;
 - c. any documents used to communicate such procedures;
 - d. the persons responsible for monitoring the effectiveness of such procedures; and
 - e. the persons responsible for enforcing such procedures.
- I- 8. Describe any procedures established by the Company for addressing and processing Do Not Call Requests made by recipients of Outbound Telephone Calls made by or on behalf of the Company. For each such procedure identify:
- a. the date(s) that the procedures were established and in effect;
 - b. the persons responsible for training personnel to implement such procedures;
 - c. any documents used to communicate such procedures;
 - d. the persons responsible for monitoring the effectiveness of such procedures; and
 - e. the persons responsible for enforcing such procedures.

- I- 9. Does the Company maintain an Entity-Specific Do Not Call List? If so, describe the following:
- a. the process by which Do Not Call Requests are added to the list;
 - b. the format of the list and how it is maintained;
 - c. where the list is maintained;
 - d. how often the list is updated;
 - e. who has access to the list;
 - f. whether and how the Company provides access to the list to persons or entities making Outbound Telephone Calls on behalf of the Company; and
 - g. how the Company uses the list to prevent Outbound Telephone Calls to telephone numbers on the list.
- I- 10. Describe any procedures established by the Company or by any entity acting on behalf of the Company to prevent initiating Outbound Telephone Calls to telephone numbers of persons who have made a Do Not Call Request to the Company. For each such procedure identify:
- a. the date(s) that the procedures were established and in effect;
 - b. the persons responsible for training personnel to implement such procedures;
 - c. any documents used to communicate such procedures;
 - d. the persons responsible for monitoring the effectiveness of such procedures; and
 - e. the persons responsible for enforcing such procedures.
- I- 11. Describe any procedures established by the Company or by any entity acting on behalf of the Company to prevent Abandoned Calls in violation of 16 C.F.R. § 310.4(b)(1)(iv). For each such procedure identify:
- a. the date(s) that the procedures were established and in effect;
 - b. the persons responsible for the training of personnel to implement such procedures;
 - c. any documents used to communicate such procedures;
 - d. the persons responsible for monitoring the effectiveness of such procedures; and
 - e. the persons responsible for enforcing such procedures.

I- 12. Describe the procedures, if any, used by the Company or any entity acting on behalf of the Company when Outbound Telephone Calls are: (a) answered by a person; or (b) answered by an answering machine or voice mail system. For each such procedure identify:

- a. the date(s) that the procedures were established and in effect;
- b. the persons responsible for the training of personnel to implement such procedures;
- c. any documents used to communicate such procedures;
- d. the persons responsible for monitoring the effectiveness of such procedures; and
- e. the persons responsible for enforcing such procedures.

I- 13. Describe the procedures, if any, used by the Company or any entity acting on behalf of the Company for disconnecting Outbound Telephone Calls that are not answered, including how long or how many rings occur before a call is disconnected. For each such procedure identify:

- a. the date(s) that the procedures were established and in effect;
- b. the persons responsible for the training of personnel to implement such procedures;
- c. any documents used to communicate such procedures;
- d. the persons responsible for monitoring the effectiveness of such procedures; and
- e. the persons responsible for enforcing such procedures.

I- 14. Describe any procedures established by the Company or by any entity acting on behalf of the Company to prevent Outbound Telephone Calls that deliver a prerecorded message in violation of 16 C.F.R. § 310.4(b)(1)(v)(B)(ii). For each such procedure identify:

- a. the date(s) that the procedures were established and in effect;
- b. the persons responsible for training personnel to implement such procedures;
- c. any documents used to communicate such procedures;
- d. the persons responsible for monitoring the effectiveness of such procedures; and
- e. the persons responsible for enforcing such procedures.

I- 15. Describe the procedures, if any, used by the Company or any entity acting on behalf of the Company to determine whether the Company has the call recipient's express written agreement to receive prerecorded Outbound Telephone Calls on behalf of the Company. For each such procedure identify:

- a. the date(s) that the procedures were established and in effect;
- b. the persons responsible for training personnel to implement such procedures;
- c. any documents used to communicate such procedures;
- d. the persons responsible for monitoring the effectiveness of such procedures; and
- e. the persons responsible for enforcing such procedures.

I- 16. Describe the procedures used by the Company or by any entity acting on behalf of the Company to ensure that any Outbound Telephone Calls that deliver a prerecorded message:

- a. offer an automated interactive voice or keypress-activated opt-out mechanism that permits recipients to assert Do Not Call Requests that meets the requirements set forth in 16 C.F.R. § 310.4(b)(1)(v)(B)(ii)(A)(1) – (3) for any call that could be answered in person;
- b. provide a toll-free telephone number that the call recipient can use to assert a Do Not Call Request that meets the requirements set forth in 16 C.F.R. § 310.4(b)(1)(v)(B)(ii)(B)(1) – (3) for a call that could be answered by an answering machine or voicemail service; and
- c. the opt-out mechanisms offered to recipients of such calls do, in fact, add the number of recipients who use the opt-out mechanism to the Company's Entity-Specific Do Not Call List.

I- 17. Does the Company or third-parties acting on behalf of the Company transmit a name and Calling Party Number to any caller identification service in use by the recipients of Outbound Telephone Calls made by or on the Company's behalf or otherwise comply with legal requirements set forth in 16 C.F.R. § 310.4(a)(8)? If so, please describe how, including whether the Company uses any Caller Identification Management Services in connection with any Outbound Telephone Calls made by or on behalf of the Company.

I- 18. If the Company utilizes any Caller Identification Management Services in connection with any Outbound Telephone Calls made by or on behalf of the Company, please identify the names and addresses of all third-parties that the Company uses to provide Caller Identification Management Services.

I- 19. For each telemarketing campaign conducted by or on behalf of the Company, state:

- a. a brief description of the goods, products, services, or events that were the subject of the campaign;
 - b. whether the campaign used answering machine detection to determine whether an Outbound Telephone Call was answered by a person or an answering machine;
 - c. whether the campaign involved the use of prerecorded messages and, if so, the content of the messages;
 - d. whether the Company or any entity acting on behalf of the Company accessed the National Do Not Call Registry prior to or during the campaign and, if so, how often;
 - e. whether Outbound Telephone calls made in connection with the campaign in which a prerecorded message was delivered: (1) offered an automated interactive voice or keypress-activated opt-out mechanism that permitted recipients to assert Do Not Call Requests; or (2) provided a toll-free telephone number that recipients could call to assert Do Not Call Requests, including the specific telephone number provided on the message;
 - f. the names and addresses of all persons, entities, employees, or independent contractors who initiated or participated in Outbound Telephone Calls for or on behalf of the Company as part of the campaign;
 - g. how the Company obtained the telephone numbers that were called in the campaign, including whether the Company utilized any lead generation services, telephone number lists purchased from a third-parties, telephone number dialing technology, dialers, or Voice Broadcasting Services; and
 - h. the name and address of any third-parties the Company utilized to obtain telephone numbers that were called in the campaign.
- I- 20. For each telemarketing campaign conducted by or on behalf of the Company, state:
- a. the total number of Outbound Telephone Calls made in connection with the campaign;
 - b. the total number of Outbound Telephone Calls made in connection with the campaign that were:
 - (1) answered by a person (rather than an answering machine or voice mail system);
 - (2) answered by an answering machine or voice mail system; and
 - (3) Abandoned Calls.

- c. the total number of Outbound Telephone Calls made in connection with the campaign to telephone numbers listed on the National Do Not Call Registry;
 - d. the total number of Outbound Telephone Calls made in connection with the campaign to persons who had previously made a Do Not Call Request or were on the Company's Entity-Specific Do Not Call List;
 - e. the total number of Do Not Call Requests made by recipients of Outbound Telephone Calls made in connection with the campaign;
 - f. the total number of Outbound Telephone Calls made in connection with the campaign to persons:
 - (1) with whom the Company had an established business relationship at the time such telephone calls were placed; and
 - (2) from whom the Company had obtained an express written and signed agreement clearly evidencing such persons' authorization to receive Outbound Telephone Calls made by or on behalf of the Company;
 - g. the total number of Outbound Telephone Calls made in connection with the campaign in which a prerecorded message was delivered;
 - h. the total number of Outbound Telephone Calls made in connection with the campaign in which a prerecorded message was delivered:
 - (1) after the call was answered by a person (rather than an answering machine or voice mail system);
 - (2) after the call was answered by an answering machine or voice mail service; and
 - (3) to persons from whom the Company had the call recipient's express written agreement to receive prerecorded Outbound Telephone Calls on behalf of the Company; and
 - i. the total number of Outbound Telephone Calls made in connection with the campaign in which a prerecorded message was delivered that was then transferred to a live representative.
- I- 21. For each telemarketing campaign conducted by or on behalf of the Company, state the following for each Outbound Telephone Call made as part of the campaign:
- a. the date, time, and duration of the call;
 - b. the telephone number called;

- c. the telephone number or network address used to make the call;
 - d. the Calling Party Number and company name that was transmitted to any caller identification service in use by the recipient of the call;
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- e. whether the call was answered by a person, answered by an answering machine or voice mail system, or not answered at all;
 - f. whether the call was an Abandoned Call;
 - g. whether the Company or any entity acting on behalf of the Company accessed the National Do Not Call Registry prior to making the call;
 - h. whether the call was to a telephone number that was on the National Do Not Call Registry, was on the Company's Entity-Specific Do Not Call List, or had previously made a Do Not Call Request to the Company;
 - i. whether, at the time of the call, the Company had an established business relationship with the recipient of the call;
 - j. whether, at the time of the call, the Company had obtained an express written and signed agreement clearly evidencing the call recipient's authorization to receive calls from or on behalf of the Company;
 - k. whether a prerecorded message was delivered during the call and, if so, the content of the message;
 - l. how the Company obtained the telephone number that was called;
 - m. the names and addresses of all persons, entities, employees, or independent contractors who initiated or participated in the call; and
 - n. whether the Company utilized the services of third-party to obtain the telephone number that was called and, if so, the name and address of that third-party.
- I- 22. If the Company claims that an Outbound Telephone Call to a telephone number on the National Do Not Call Registry was permitted because the Company had an established business relationship with a person at that telephone number at the time the call was placed, state:
- a. the specific entity with whom the person had an established business relationship;
 - b. the nature of the established business relationship (transaction or inquiry);
 - c. the date of the last transaction or inquiry;

- d. the product or service that was the subject of the alleged established business relationship;
 - e. the product or service that was the subject of the call; and

 - f. the nature of the last transaction or inquiry.
- I- 23. If the Company claims that an Outbound Telephone Call made by or on behalf of the Company to a telephone number on the National Do Not Call Registry was permitted because a person had given express written consent to receive such calls, state the date and manner in which such consent was obtained.
- I- 24. For each Outbound Telephone Call made on or on behalf of the Company in which a prerecorded message was delivered, state:
- a. whether the Company had the call recipient's express written agreement to receive prerecorded Outbound Telephone Calls on behalf of the Company;
 - b. whether the call was transferred to a live representative; and
 - c. whether the call offered an automated interactive voice or keypress-activated opt-out mechanism that permitted recipients to assert Do Not Call Requests or provided a toll-free telephone number that recipients could call to assert Do Not Call Requests.
- I- 25. If the Company claims that an Outbound Telephone Call that delivered a prerecorded message was permitted because a person at that telephone number had given the Company express written consent to receive calls from the Company that delivered prerecorded messages, state the date and manner in which such consent was obtained.
- I- 26. For each Calling Party Number transmitted to any caller identification service in use by the recipient of an Outbound Telephone Call made by or on behalf of the Company:
- a. identify the telephone number or network address to which calls placed to the Calling Party Number were directed through direct inward dialing or other call-forwarding or transfer service;
 - b. identify the entity, if any, who answered calls made to the Calling Party Number;
 - c. describe the prerecorded message, if any, delivered to persons who called the Calling Party Number; and
 - d. state whether the Company utilized the services of a Caller Identification Management Service in connection with the call, and if so, the name and address of the service.

IV. DOCUMENT REQUESTS

Please produce copies of the following documents:

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- D- 1. All documents identified in your Interrogatory responses.
 - D- 2. All documents relating to the Company's practices for retaining or disposing of documents, records, and data related to the Company's Telemarketing services.
 - D- 3. The Company's Articles of Incorporation and By-Laws.
 - D- 4. All documents that identify any parents, subsidiaries, or affiliates of the Company.
 - D- 5. Organizational charts for the Company and any other documents describing the organization or responsibilities of Company personnel.
 - D- 6. The Company's tax returns, including all schedules and attachments thereto.
 - D- 7. All of the Company's books of account and financial records, including all balance sheets, income statements, profit and loss statements, and cash flow statements.
 - D- 8. All studies, reports, summaries, analyses, and other documents relating to the revenue that the Company receives from Telemarketing.
 - D- 9. All documents relating to access by the Company or by third-parties acting on behalf of the Company to the National Do Not Call Registry for purpose of initiating Outbound Telephone Calls on behalf of the Company.
 - D- 10. All documents that the Company has used to communicate to employees or third-parties acting on the Company's behalf about compliance with the National Do Not Call Registry.
 - D- 11. All documents relating to any procedures used by the Company or by third-parties acting on behalf of the Company to prevent initiating Outbound Telephone Calls to telephone numbers listed on the National Do Not Call Registry.
 - D- 12. All documents relating to any procedures used by the Company or third-parties acting on behalf of the Company to determine whether the Company has an established business relationship with recipients of Outbound Telephone Calls made by the Company or on the Company's behalf.
 - D- 13. If the Company claims that an Outbound Telephone Call to a telephone number on the National Do Not Call Registry was permitted because the Company had an established business relationship with a person at that telephone number at the time the call was placed, produce all documents sufficient to support your claim, including documents that identify the specific entity with whom the person had an established business relationship, the nature of the established business relationship (transaction or inquiry), the date of the last transaction or inquiry, the product or service that was the subject of

the alleged established business relationship, the product or service that was the subject of the call, and the nature of the last transaction or inquiry.

- D- 14. All documents relating to any procedures used by the Company or any third-parties acting on behalf of the Company to determine whether the Company has the express written agreement of recipients of Outbound Telephone Calls made by the Company or on the Company's behalf.
- D- 15. If the Company claims that an Outbound Telephone Call to a telephone number on the National Do Not Call Registry was permitted because a person had given express written consent to permit Telemarketing calls to that number, produce all documents sufficient to support your claim, including executed written consent forms and documents referencing the date and manner in which such consent was obtained.
- D- 16. All documents relating to any Entity-Specific Do Not Call List maintained by the Company.
- D- 17. All documents relating to Do Not Call Requests made by recipients of Outbound Telephone Calls made by or on behalf of the Company.
- D- 18. All documents relating to how the Company addresses and processes Do Not Call Requests made by recipients of Outbound Telephone Calls made by or on behalf of the Company.
- D- 19. All documents that the Company has used to communicate to employees or third-parties acting on the Company's behalf about compliance with Do Not Call Requests.
- D- 20. All documents relating to any procedures established by the Company or by any entity acting on behalf of the Company to prevent initiating Outbound Telephone Calls to telephone numbers of persons who have made a Do Not Call Request to the Company or are on the Company's Entity-Specific Do Not Call List.
- D- 21. All documents relating to any procedures established by the Company or by any entity acting on behalf of the Company to prevent Abandoned Calls.
- D- 22. All documents describing the actions performed by the Company when an Outbound Telephone Call is answered by a person, or answered by an answering machine or voice mail system, or not answered at all.
- D- 23. All documents relating to any procedures established by the Company or any entity action on behalf of the Company for disconnecting Outbound Telephone Calls that are not answered, including how long or how many rings occur before a call is disconnected.
- D- 24. All documents relating to any procedures established by the Company or entities acting on behalf of the Company to prevent initiating Outbound Telephone Calls that deliver a prerecorded message in violation of 16 C.F.R. § 310.4(b)(1)(v).

- D- 25. All documents that the Company has used to communicate to employees or third-parties acting on the Company's behalf about restrictions on the delivery of prerecorded messages to recipients of Outbound Telephone Calls made by or on behalf of the Company.
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- D- 26. If the Company claims that an Outbound Telephone Call that delivered a prerecorded message to a telephone number was permitted because a person at that telephone number had given the Company express written consent to receive calls from the Company that delivered prerecorded messages, produce all documents sufficient to support your claim, including executed written consent forms and documents referencing the date and manner in which such consent was obtained.
- D- 27. All documents relating to any procedures established by the Company or any entity acting on behalf of the Company to determine whether the Company has the call recipient's express written agreement to receive prerecorded Outbound Telephone Calls on behalf of the Company.
- D- 28. All documents relating to any procedures established by the Company or by any entity acting on behalf of the Company to ensure that any Outbound Telephone Calls that deliver a prerecorded message:
- a. offer an automated interactive voice or keypress-activated opt-out mechanism that permits recipients to assert Do Not Call Requests that meets the requirements set forth in 16 C.F.R. § 310.4(b)(1)(v)(B)(ii)(A)(1) – (3) for any call that could be answered in person;
 - b. provide a toll-free telephone number that the call recipient can use to assert a Do Not Call Request that meets the requirements set forth in 16 C.F.R. § 310.4(b)(1)(v)(B)(ii)(B)(1) – (3) for a call that could be answered by an answering machine or voicemail service; and
 - c. the opt-out mechanisms offered to recipients of such calls do, in fact, add the number of recipients who use the opt-out mechanism to the Company's Entity-Specific Do Not Call List.
- D- 29. All studies, reports, analyses, or other documents relating to whether automated interactive voice and/or keypress-activated opt-out mechanisms used by or on behalf of the Company or third-parties acting on behalf of the Company for Outbound Telephone Calls that deliver a prerecorded message are effective.
- D- 30. All documents relating to how the Company transmits a Calling Party Number and company name to any caller identification service in use by recipients of Outbound Telephone Calls made by or on the Company's behalf.
- D- 31. All documents relating to any Caller Identification Management Services utilized by the Company in connection with any Outbound Telephone Calls made by or on behalf of the

Company, including any contracts with third-parties to provide such services and any invoices, bills, or other documents relating to charges or payment for such services.

- D- 32. All documents relating to the Company's compliance with caller identification requirements set forth in 16 C.F.R. § 310.4(a)(8) relating to the transmission of the Company's name and Calling Party Number to any caller identification service in use by the recipients of Outbound Telephone Calls made by or on behalf of the Company, including any procedures established by the Company relating to compliance with caller identification requirements.
- D- 33. Audio recordings of the following:
- a. all Outbound Telephone Calls made by or on behalf of the Company;
 - b. all prerecorded messages delivered as part of any Outbound Telephone Calls made by or on behalf of the Company;
 - c. all return telephone calls made by persons who called the Calling Party Number that was transmitted to the caller identification service of the recipients of Outbound Telephone Calls made by or on behalf of the Company;
 - d. any prerecorded messages delivered to persons who called the Calling Party Number that was transmitted to the caller identification service of recipients of Outbound Telephone Calls made by or on behalf of the Company; and
 - e. any messages delivered to persons who activate an automated interactive voice and/or keypress-activated opt-out mechanism to assert a Do Not Call Request.
- D- 34. All transcripts, scripts, training materials, instructions, guidelines or other documents that contain or summarize the content of:
- a. messages, whether live or prerecorded, delivered during Outbound Telephone Calls made by or on behalf of the Company;
 - b. messages, whether live or prerecorded, delivered to persons who called the Calling Party Number that was transmitted to the caller identification service of recipients of Outbound Telephone Calls made by or on behalf of the Company; and
 - c. messages delivered to persons who activate an automated interactive voice and/or keypress-activated opt-out mechanism to assert a Do Not Call Request.
- D- 35. All documents or notes relating to or reflecting any changes, additions, deletions, alterations, or edits made to any transcripts, scripts, training materials, instructions, or guidelines used:

- a. by telemarketers to make Outbound Telephone Calls made by or on behalf of the Company; or
 - b. by Company employees or third-parties to respond to persons who called the Calling Party Number that was transmitted to the caller identification service of recipients of Outbound Telephone Calls made by or on behalf of the Company.
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D- 36. For each telemarketing campaign conducted by or on behalf of the Company, produce all data compilations, reports, tables, spreadsheets, or other documents that relate to the volume of calls made as part of the campaign, including:

- a. the total number of Outbound Telephone Calls made in connection with the campaign;
- b. the total number of Outbound Telephone Calls made in connection with the campaign that were:
 - (1) answered by a person (rather than an answering machine or voice mail system);
 - (2) answered by an answering machine or voice mail system; and
 - (3) Abandoned Calls.
- c. the total number of Outbound Telephone Calls made in connection with the campaign to telephone numbers listed on the National Do Not Call Registry;
- d. the total number of Outbound Telephone Calls made in connection with the campaign to persons who had previously made a Do Not Call Request or were on the Company's Entity-Specific Do Not Call List;
- e. the total number of Do Not Call Requests made by recipients of Outbound Telephone Calls made in connection with the campaign;
- f. the total number of Outbound Telephone Calls made in connection with the campaign to persons:
 - (1) with whom the Company had an established business relationship at the time such telephone calls were placed; or
 - (2) from whom the Company had obtained an express written and signed agreement clearly evidencing such persons' authorization to receive Outbound Telephone Calls made by or on behalf of the Company;
- g. the total number of Outbound Telephone Calls made in connection with the campaign in which a prerecorded message was delivered;

- h. the total number of Outbound Telephone Calls made in connection with the campaign in which a prerecorded message was delivered:
 - (1) after the call was answered by a person (rather than an answering machine or voice mail system);
 - (2) after the call was answered by an answering machine or voice mail service; and
 - (3) to persons from whom the Company had the call recipient's express written agreement to receive prerecorded Outbound Telephone Calls on behalf of the Company; and
- i. the total number of Outbound Telephone Calls made in connection with the campaign in which a prerecorded message was delivered that was then transferred to a live representative.

D- 37. Telephone connection records or other documents that are sufficient to identify the following for each Outbound Telephone Call made on or behalf of the Company:

- a. the telephone number to which the call was placed;
- b. the telephone number or network address from which the call was placed;
- c. the Calling Party Number and company name that was transmitted to any caller identification service in use by the recipient of the call;
- d. the date, time, and duration of the call;
- e. the goods, product, service, or event that was the subject of the call;
- f. the names and addresses of all persons, entities, employees, or independent contractors who initiated or participated in the call;
- g. how the Company obtained the number that was called, including whether the Company utilized any lead generation services, telephone number lists purchased from a third-party, telephone number dialing technology, dialers, or Voice Broadcasting Services;
- h. the name and address of any third-parties that the Company utilized to obtain the number that was called;
- i. whether the call employed answering machine detection to determine whether the call was answered by a person or an answering machine;
- j. whether the call was answered and, if so, whether the call was answered by a person or by an answering machine or voice mail service;

- k. whether the call was an Abandoned Call;
 - l. whether the Company or any entity acting on behalf of the Company accessed the National Do Not Call Registry prior to the call;
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- m. whether the call was to a telephone number listed on the National Do Not Call Registry;
 - n. whether the call was to a person who had previously made a Do Not Call Request to the Company or was on the Company's Entity-Specific Do Not Call List;
 - o. whether the recipient of the call made a Do Not Call Request;
 - p. whether, at the time of the call, the Company had an established business relationship with the recipient of the call;
 - q. whether, at the time of the call, the Company had obtained an express written and signed agreement from the recipient of the call clearly evidencing such person's authorization to receive Outbound Telephone Calls from or on behalf of the Company;
 - r. whether the call used a prerecorded message, and if so, the content of the message;
 - s. for persons who received an Outbound Telephone Call that delivered a prerecorded message, whether the Company had the call recipient's express written agreement to receive prerecorded Outbound Telephone Calls on behalf of the Company;
 - t. for Outbound Telephone Calls that delivered a prerecorded message, whether the call was subsequently transferred to a live representative; and
 - u. whether Outbound Telephone calls that delivered a prerecorded message: (1) offered an automated interactive voice or keypress-activated opt-out mechanism that permitted recipients to assert Do Not Call Requests; or (2) provided a toll-free telephone number that recipients could call to assert Do Not Call Requests, including the specific telephone number provided on the message.

D- 38. For all Calling Party Numbers and company names that were transmitted to any caller identification service in use by a recipient of Outbound Telephone Calls made by or on behalf of the Company, all documents reflecting:

- a. the telephone numbers or network addresses to which calls to the Calling Party Number were directed through direct inward dialing or other call-forwarding or transfer service;
- b. the entity, if any, who answered calls made to the Calling Party Number;

- c. if calls to the Calling Party Number were answered, the message delivered to persons who called the Calling Party Number; and
 - d. the name and address of any Caller Identification Management Service utilized by the Company in connection with the Calling Party Number and company name that was transmitted.
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D- 39. All correspondence, electronic mails, notes on conversations, work orders, and other documents that relate to the Company's use of any Voice Broadcasting Services, including: (a) the types of messages the Company delivers through the use of Voice Broadcasting Services; (b) the recipients of these messages; (c) the source of the telephone numbers to which the messages are delivered; (d) whether the persons whose telephone numbers are dialed have an established business relationship with the Company; (e) whether persons whose telephone numbers are to be dialed have authorized such calls; (f) any contracts, invoices, bills, or other documents relating to charges or payment for Voice Broadcasting Services.

D- 40. All documents (including any customer relationship management (CRM) data maintained by the Company or copies of complaints originally submitted to third parties, such as an office of a state attorney general, Better Business Bureau, or other organization) relating to any complaints regarding Outbound Telephone Calls made by or on behalf of the Company, including any complaints alleging that the Company or a third-party acting on the Company's behalf:

- a. has made Outbound Telephone Calls to telephone numbers listed on the National Do Not Call Registry;
- b. has made Outbound Telephone Calls to persons who have made a Do Not Call Request to the Company or to telephone numbers on the Company's Entity-Specific Do Not Call List;
- c. has failed to honor prior Do Not Call Requests;
- d. did not provide recipients of Outbound Telephone Calls an opportunity to assert a Do Not Call Request;
- e. has used threats, intimidation, or profane or obscene language during the call;
- f. has called repeatedly or continuously;
- g. has called before 8:00 AM or after 9:00 PM;
- h. has made Outbound Telephone Calls that delivered a prerecorded message without the caller's signed written consent to receive such calls; or
- i. has made Abandoned Calls.

- D- 41. Copies of all correspondence in response to any complaints submitted in response to Document Request No. D- 40.
- D- 42. All documents relating to any communications, inquiries, investigations, notices, citations, complaints, legal proceedings, litigations, threatened litigations, consent decrees, settlements, assurances of voluntary compliance, or other actions initiated by or involving any federal, state, or local law enforcement or regulatory agency concerning the Company's Telemarketing practices.
- D- 43. All documents relating to any complaints, notices, legal proceedings, litigations, threatened litigations, settlements, or other legal actions initiated by or involving any private individual concerning the Company's Telemarketing practices.
- D- 44. Any documents not otherwise being provided in response to these requests relating to the Company's compliance with 16 C.F.R. § 310.4(b)(1) and 16 C.F.R. § 310.4(a)(7) of the Telemarketing Sales Rule.

CERTIFICATION OF RECORDS OF REGULARLY CONDUCTED ACTIVITY
Pursuant to 28 U.S.C. § 1746

1. I, _____, have personal knowledge of the facts set forth below

and am competent to testify as follows:

2. I have authority to certify the authenticity of the records produced by Versatile Marketing Solutions, Inc. and attached hereto.
3. The documents produced and attached hereto by Versatile Marketing Solutions, Inc., are originals or true copies of records of regularly conducted activity that:
 - a) Were made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;
 - b) Were kept in the course of the regularly conducted activity of Versatile Marketing Solutions, Inc.; and
 - c) Were made by the regularly conducted activity as a regular practice of Versatile Marketing Solutions, Inc.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on _____, 2012.

Signature