

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	Civil Action File
)	No. 1:08-cv-2053-WSD
v.)	
)	
U.S. WORK ALLIANCE, INC.; and)	
TYLER FRANKLIN LONG,)	
)	
Defendants.)	
_____)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter is before the Court on Plaintiff’s Federal Trade Commission’s (the “FTC”) Complaint for Preliminary and Permanent Injunction and Damages seeking injunctive relief against and damages from Defendants Tyler Franklin Long (“Long”) and U.S. Work Alliance (“Work Alliance”) [117].¹ The Court conducted evidentiary and motion hearings in this matter on June 27, 2008 (hearing on preliminary junction) and October 31, 2008 (hearing on Motions for Contempt) (the “June and October 2008 hearings”). On October 12, 2010, the Court conducted a trial on the claims asserted by the FTC and the defenses

¹Defendant Brenda M. Long agreed to a consent order in this matter and the claims against her were resolved. [116]

advocated by Defendants. In this action, the FTC alleges that Work Alliance and Long engaged in deceptive advertising and marketing of products to consumers. This is the Court's Findings of Fact and Conclusions of Law following the October 12, 2010, trial on the claims in this action.

I. FINDINGS OF FACT

Jurisdiction and Venue

This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331(a), 1337(a), and 1345, and 15 U.S.C. §§ 53(b) and 57(b). This action arises under 15 U.S.C. § 45(a)(1). (Admitted in Defendants' Answers and Objections, ¶ 2.) Venue in the United States District Court for the Northern District of Georgia is proper under 28 U.S.C. §§ 1391(b) and (c), and 15 U.S.C. § 53(b). (Admitted in Defendants' Answers and Objections, ¶ 3.)

Parties

Plaintiff, the Federal Trade Commission ("Commission"), is an agency of the United States Government. 15 U.S.C. §§ 41 et seq. The Commission is charged with enforcing Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The Commission is authorized to initiate federal district court proceedings, to enjoin violations of the FTC Act to secure appropriate equitable relief, and to obtain consumer redress. 15 U.S.C. §§ 53(b) and 57(b).

Defendant Work Alliance, was a Nevada limited liability company that had its principal place of business at 5515 Spalding Drive, Norcross, Georgia 30092. Work Alliance transacted business in this district. (Admitted in Defendants' Answers and Objections, ¶ 5.) Work Alliance operated under the name Exam Services, from January 2005 until mid-2008, and under the name Testing Authority, from mid-2008 until Work Alliance ceased operations in March 2009. (Long testimony [Oct. 12, 2010], p. 142, l. 21- p. 144, l. 4; PX 66 [Long], p. 52, l. 6 - p. 53, l. 3; PX 81[Long], p. 117, ll. 1-4; p. 195, l. 19 - p. 196, l. 2.)

Defendant Long was the owner, president, and ran the day-to-day operations of Work Alliance. (Long testimony [Oct. 12, 2010], p. 142, l. 10 - p. 143, l. 7; PX 66 [Long], p. 52, l. 6 - p. 53, l. 3.). Long resided in the Northern District of Georgia when this action was filed. (Admitted in Defendants' Answers and Objections, ¶ 6.)

The acts and practices of Defendants alleged in the Complaint were in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44. (Admitted in Defendants' Answers and Objections, ¶8.)

Defendants' Business Practices

From January 2005 until March 2009, Defendants marketed and sold employment goods and services, primarily a postal exam study guide ("Study Guide"), to consumers throughout the United States. (Long testimony [Oct. 12,

2010], p. 144, ll. 2-4; admitted in Defendants' Answers and Objections, ¶ 9.) The Study Guide was 300-pages and intended to prepare consumers to take the exam required for entry level positions with the United States Postal Service ("USPS").

(DX 5.) Each consumer who paid for the Study Guide received it in hard copy form and, after May 2008, also received a customer access identification number to access online certain test preparation course content, including:

- a. A learning style assessment, which was made available free of charge through an arrangement with the North Carolina State University;
- b. An on-line personality assessment;
- c. An on-line version of the postal exam study guide;
- d. Access to instructional videos depicting interview do's and don'ts;
- e. Helpful tips for preparing for an interview, how to dress for an interview, and how to prepare a resume; and
- f. An on-line practice exam (for an optional fee).

(Plott Affidavit, Docket No. 49, ¶9.)

Work Alliance, through June 27, 2008, sold approximately 710,000 Study Guides. (PX 81, p. 196, l. 14.) During the entirety of its operations, Work Alliance sold approximately 830,000 packages. (PX 80, Stipulated Fact No. 5.) Each package sold for \$129.45, with the exception of approximately 30,000

packages, which were sold at \$149.45. (PX 80, Stipulated Fact No. 6.)

Defendants advertised the Study Guides in newspapers and on internet websites.

Print Advertisements

Newspaper advertisements were placed in newspapers by Defendants' advertising broker. The advertisements appeared in several thousand newspapers across the country on at least a weekly basis. They primarily appeared in the classified sections of neighborhood-type newspapers under the headings of "Help Wanted," "Employment," or "Jobs." (Long testimony [Oct. 12, 2010], p. 144, ll. 5-24; DX 6; *e.g.*, PX 81 [Mirxaie], p. 160, ll. 15-18; p. 170, ll. 9-13; and p. 171, ll. 1-6; Salem testimony [Oct. 12, 2010], p. 8, ll. 11-12, 21-24; Rowan testimony [Oct. 12, 2010], p. 26, ll. 15-22; Groth testimony [Oct. 12, 2010], p. 36, l. 14 and p. 37, ll. 3-11.)

A representative newspaper advertisement stated:

POST OFFICE NOW HIRING!
Avg. Pay \$20/hr or \$57K annually
including Federal Benefits & OT.
Paid Training, Vacations. PT/FT.
1-800-XXX-XXXX USWA
EXT. 1650

(*Imperial Valley Press*, Imperial Valley, California newspaper, June 18, 2007, under the heading "Help Wanted." PX 39; see PX 40; PX 41.)

A representative magazine advertisement stated:

POST OFFICE NOW hiring. Avg. pay \$20/hour or
57K annually including Federal Benefits and OT.
Paid training. Vacations. PT/FT.
1-866-XXX-XXXX USWA

(*Little India* magazine October 2007, December 2007, and March 2008 editions,
PX 1, pp. 33-38; PX 47.)

A local employment guide advertisement stated:

POST OFFICE NOW HIRING!
Avg. Pay \$20/hour \$57K Annually
Including Federal Benefits & Overtime.
Placed by AdSource, not USPS who hires.
1-866-XXX-XXXX.

(*The Employment Guide*, publication for the Indianapolis, Indiana area for the
weeks of August 11-17, 2008, and August 18-24, 2008, PX 48, pp. 2-3, 6-7, 11-13;
similar ad in PX 83 advertisement in Wilkes-Barre, Pennsylvania, discussed at
Salem testimony [Oct. 12, 2010], p. 9, ll. 19-22; similar ad in PX 42 for the
Augusta, Georgia, area.)

Revised advertisements began being published beginning on November 1,
2008. The revised advertisement stated:

Jobs with USPS & merchant services
Avg pay \$20-30/hr, \$50-60K/yr,
Placed by Testing Authority, test prep materials,
not affiliated w/USPS, who hires.
(1-866-XXX-XXXX)

(DX 14.)

Even after the November 1, 2008, revised advertisement began to appear, the original add language continued to be published in some newspapers. For example, the pre-revision advertisement copy was published in the *Creative Loafing* newspaper in Atlanta, Georgia, during the weeks of January 28 – February 3, 2009, February 18-24, 2009, February 25 – March 2, 2009, and March 4-10, 2009. (PX 77.)

On-line Advertisements

Work Alliance presented three websites to advertise its postal test preparation materials. (Admitted by Defendants in Defendants' Answers and Objections, ¶ 10.) These website were www.examservices.us, www.postalexamregistration.us, and www.workalliance.com. (PX 1, ¶¶ 11-12)

In June 2008, the landing page for these websites contained the following advertisement:

POST OFFICE NOW HIRING!
Average Starting Pay for Post Office Jobs is \$20.00/hour.
Postal Jobs Offer Full Federal Benefits, Paid Training,
Vacations. No Experience Necessary! Exam Services Operators
Standing By 7 A.M. Until Midnight EST – 7 Days a Week

Call Today!
1-800-XXX-XXXX

Minimum Requirements To qualify for Post Office Jobs:
—Must be at least 18 years of age.
—Must be a U.S. Citizen or have a Green Card.

If you have met these requirements, that's great!

You are now eligible for positions with the U.S. Postal Service.
Call 1-800-XXX-XXXX

(PX 1, pp. 49, 51.)

The website advertisement also contained the following text in a highlighted box:

OPEN POSITIONS:

- Window Clerks
- Mail Carriers
- Mail Handlers
- Mail Processors
- Corporate Positions
- Other Positions

(PX 1, pp. 49, 51.)

At the website address for Exam Services, the following statement appeared: “Exam Services is the office that aids in your employment with the US Postal Service.” (PX 1, p. 42.) In the “Frequently Asked Questions” section of the website Defendants stated, “[w]e are Testing Authority, the office that helps candidates with the postal battery exam.” (PX 75, p. 15.)

Scripts

Consumers who called the toll-free numbers listed in the newspaper, magazine, and website advertisements interacted with Defendant’s call center employees. (Salem testimony [Oct. 12, 2010], p. 10, ll. 1-9; Rowan testimony [Oct. 12, 2010], p. 28, ll. 3-5; Groth testimony [Oct 12, 2010], p. 29, ll. 1-6; Gibbs Testimony [Oct. 12, 2010], p. 51, ll. 6-12; Barton testimony [Oct. 12, 2010], p. 63,

ll. 14-24.) Work Alliance employed about 250 sales representatives to interact with consumers who called the toll-free numbers. These sales representatives followed scripts written by Work Alliance. Tyler Long was substantially involved in overseeing the script development. (PX 66 [Long Dep.], pp. 49-50, 98; PX 87 [Dartiest-Lee Depo.], p. 50, ll. 3-6; Long testimony [Oct. 12, 2010], p. 150, ll. 5-9.)

An early script, dated June 6, 2005, instructed sales representatives to say: “We appreciate your interest, and have a few questions to verify your eligibility.” After asking about age, citizenship, education, and willingness to take a drug screen test, the script directed the salesperson to tell the consumer:

Wonderful! You are eligible. Let me review some information with you. Full-time employees receive full federal benefits, retirement, paid training, and paid time off. Part-time positions are also available. Entry level positions include window clerk, mail carrier, mail handler, and mail processor.

(PX 44, p. 1.) The June 6, 2005, script directed the salesperson to mention the need for applicants to take a postal exam prior to obtaining employment with the Postal Service. The script called for sales representatives to say:

There is an exam all applicants must take to work for the post office; it’s called the Postal Battery Exam. Have you taken this exam before? . . . The first step to getting a job with the U.S. Postal Service is to take this exam, and we can help you get registered over the phone today.

(Id.)

The script then mentioned the study materials offered:

It's very important that you prepare for this exam, and study the materials we are going to send to you. You can only take the exam once a year, and the higher your score, the higher starting salary you will receive. You will be paid a minimum of \$17.75 per hour, up to \$59 per hour, depending on your score.

Now, the postal service only wants serious applicants to apply, and there is a one-time registration of \$99.50.² This is refunded back to you, if you don't pass the exam, or, if you are not offered a job after your very first interview. We thank you for your interest, and the next step is to process your registration.

(Id.)

The June 6, 2005, script also contained an "Answering Questions and Objections" section. For example, if a caller asked: "Are you the post office?" the script instructed the sales representative to state: "We are the office that helps new candidates prepare for the postal battery exam." (PX 44, p. 3.) If a caller asked "[w]here would I be placed?", the Script instructed the employee to respond by stating "[o]nce you are registered with us, you will be applying within a 20-30 mile radius of where you live." (PX 44, p. 3.)

A new version of the script went into use on November 5, 2006. This script instructed sales representatives to state the following to consumers who responded to advertisements:

Congratulations, you are eligible for positions with the US Postal Service. Full-time employees receive full federal benefits, retirement, paid training, overtime and paid vacation. Entry level positions include . . .

² This amount apparently did not include shipping, which brought the total cost to \$129.45. The Defendants later charged as much as \$149.45.

window clerk, mail carrier, rural carrier, mail handler and mail processor. Now, _____, would any one of those positions be of interest to you? That's great. There is an exam all applicants must pass in order to work for the US Postal Service. It's called the "Postal Battery Exam." Have you taken this exam before . . . ? I can help you get registered to take this exam in your area. It's very important you achieve a high score, because the higher score you get, the sooner you can begin working.

(PX 69, p.2; PX 66, p. 152.) The November 15, 2006, script instructed sales representatives to say "[t]ypically you are placed in a position within 30 miles of where you live." (Long testimony [Oct. 12, 2010], p. 147, ll. 11-15.) Other scripts dated "Late '07-Early '08," "1st quarter '08," and "May 2008" instructed sales representatives to greet callers as follows: "Thank you for calling about the postal positions." (PX 70, p. 2; PX 71, p. 3; PX 72, p. 4.) In these later scripts, after a few preliminary questions, the script instructed sales representatives to state:

Congratulations, you are eligible for positions with the US Postal Service. Full-time employees receive full federal benefits, retirement, paid training, overtime and paid vacation. Entry level positions include . . . window clerk, mail carrier, rural carrier, mail handler, and mail processor. Now, (Mr. or Mrs.) Jones, would any one of those positions be of interest to you? . . . That's great! There is an exam all applicants must pass in order to work for the US Postal Service. It's called the "Postal Battery Exam." Have you taken this exam before (Mr. or Mrs.) Jones? . . . I can help you get registered to take this exam in your area, and it's very important you achieve a high score, because the higher score you get, the sooner you can begin working.

(PX 70, p. 2; PX 71, pp. 2-3; see PX 72, p. 4.)

The November 2008 script concluded with a statement of the total price of the study guide package and a verification of mailing and payment information.

The script instructed a sales representative to state the following before the price of the Study Guide was given: “[t]hank you for your interest in the postal positions.” (PX 66, pp. 570.)

The script changed significantly in January 2009, after the court’s October 31, 2008, contempt motion hearing in this case. Beginning in January 2009, the script directed sales representatives to state specifically that Work Alliance was not affiliated with the USPS. When this change was made “the call volume declined dramatically.” (PX 87 [Dartiest-Lee Depo.], p. 59, ll. 10-15.)

The January 2009 script, while requiring sales representative to disclaim any relationship to the USPS, continued to instruct sales representatives to refer to the USPS and the availability of USPS jobs. For example, the script called for sales representatives to state at the beginning of a conversation: “Thank you for calling about the postal positions.” (DX 1, p. 2.) Other statements in the script included “Full time employees receive federal benefits . . . retirement . . . paid training . . . and paid vacation. Entry level positions include window clerk . . . mail carrier . . . rural carrier . . . mail handler . . . and mail processor. Would any of these positions be of interest to you? . . . You are looking to get started as soon as possible, right?” (DX 1, p. 2.)

How Salespeople Handled the Scripts

Sales representatives were expected to adhere to the script that was in place at the time. (PX 87 [Dartiest-Lee Depo.], p. 50, ll. 3-6.) If a consumer asked if Defendants were the Post Office, sales representatives were directed to state: “No, we are Exam Services.” (PX 81, p. 83, l. 17 – p. 84, l. 4.) Other employees responded to the question of whether Defendant was the USPS by stating “we [are] Exam Services [or Testing Authority], the company that provide[s] people with the study guide for the postal exam.” (PX 87 [Dartiest-Lee Depo.], p. 8, ll. 19-24.)

One representative told a consumer that postal service jobs existed within 30 miles of his home. (Barton testimony [Oct.12, 2010], p. 64, ll. 7-14.) Another sales representative told a consumer “I’m the manager, so I will make sure that you will get a job. Trust us. And just you need to pay” (PX 81 [Roman], p. 14, ll. 13-16.) Sales representatives occasionally departed from the script. “[S]ome people, you know, followed through the guidelines and handled the script exactly how it was supposed to be, regard[less] if they got a sale or not. Some people said what they had to say to get a sale, you know; their checks depended on it.” (PX 87 [Dartiest-Lee Depo.], p. 12, ll. 1-5.)

Sales representatives sometimes described the fee charged by Defendants as either a “registration” or an “enrollment” fee, rather than as a fee for test preparation materials. (PX 82 [O’Leary testimony], p. 69, ll. 12-25.) Sales

representatives sometimes described positions that are available in a Post Office, the benefits available to Post Office employees, and that typically individuals who are hired by the Post Office are employed within 30 miles of the employee's home. (PX 82 [O'Leary testimony], p. 70, l. 16 - p. 71, l. 3.)

Some sales representatives told consumers who called that they were more likely to be successful in passing the postal examination if they used Defendant's test materials while others said that the materials would give them a real advantage. (PX 53, ¶¶ 3-8; PX 54, ¶¶ 3-6.) Some sales representatives told consumers that jobs were available at the USPS in the local areas where Defendants' customers lived. (Salem testimony [Oct. 12, 2010], p. 10, ll. 5-13; Rowan testimony [Oct. 12, 2010], p. 28, l. 16 - p. 29, l. 1; Gibbs testimony [Oct. 12, 2010], p. 55, ll. 16-22; Barton testimony [Oct. 12, 2010], p. 64, ll. 7-14; PX 87 [Dartiest-Lee], p. 9, ll. 3-5.) Work Alliance's website main page stated: "The USPS has over 750,000 employees and is growing every day with an average of 1000 entry level job openings each week." (PX 75, p.1 for Testing Authority in 2008.) The www.postalexamregistration.us website stated: "Now Hiring 2008 Post Office Jobs . . . If you met these requirements (age and citizenship status), that's great! You are now eligible for positions with the U.S. Post Office and we can help you with the next step." (PX 1, pp. 84, 88, 91, 92.)

Some positions at the Post Office were available during the time period that Defendants were operating, but they were generally for temporary employees, including rural carrier associates. (Gandhi testimony [Oct. 12, 2010], p. 92, l. 11 - p. 93, l. 13.) A rural carrier associate is a part-time position with a very high turnover rate. (Gandhi testimony [Oct. 12, 2010], p. 106, l. 11 - p. 107, l. 13.)

Work Alliance's employee training materials identify the following representations to consumers as an offense for which an employee may be terminated:

- Never guarantee there will be positions available in their area
- Never guarantee there are specific positions available
- Never guarantee they will get a specific score using our study guide (for example 90%)
- Never say or insinuate that we are part of or affiliated with the post office
- Never say "we do the hiring" or recruitment for the postal positions
- Never act as if you are a postal employee
- Never portray yourself as if you are affiliated with the post office
- Never guarantee a customer they will make a specific amount of money, we only state an average
- Never guarantee someone a job or a position
- Never give any guarantees that we cannot uphold legitimately
- Never say or indicate that our registration fee is like a deposit down for possible employment or for the exam; never suggest that it is a deposit for anything.

(DX 27, p. 21.) There was little evidence that employees were disciplined for violations of this policy.

Charges and Refunds

Defendants charged a fee for their postal exam study guide materials of between \$129.45 and \$149.45. (PX 80, Stipulated Fact No. 6; Salem testimony [Oct. 12, 2010], p. 12, ll. 6-15; Rowan testimony [Oct. 12, 2010], p. 30, ll. 1-6; Groth testimony [Oct. 12, 2010], p. 39, l. 10; p. 42, ll. 1-4; Barton testimony [Oct. 12, 2010], p. 65, ll. 10-14.) Defendants told consumers that the fee for the materials was refundable.

Consumers were eligible for a refund if they met any of the following criteria:

- a. They did not pass the Postal Battery Exam;
- b. They were interviewed but not offered a job;
- c. There had been no job opening within 100 miles of the individual's location within the last 12 months; or
- d. Upon successful completion of one week of work at the Postal Service³

(PX 63 at 8.) Many consumers sought, but did not receive, a refund although they were not able to take the exam and because jobs generally were not available in their local areas. (PX 81 [Roman], p. 20, l. 14 – p. 21, l. 10; Salem testimony [Oct. 12, 2010], p. 15, ll. 12-24; Rowan testimony [Oct. 12, 2010], p. 32, ll. 8-9; Groth

³ In 2007, in response to the USPS input, Work Alliance expanded its refund policy to include the conditions set out in subsections (c) and (d). (PX 81, p. 126, l. 20 – p. 127, l. 17.) Before this change the distance was 30 miles.

testimony [Oct. 12, 2010], p. 42, ll. 23-24.) Numerous other consumers found Work Alliance products and services helpful (PX 81, p. 184, l. 9 – p. 186, l. 14) and gained employment with the USPS. (PX 81, p. 189, ll. 15-23.)

Work Alliance received less than one thousand formal consumer complaints through the Better Business Bureau and Federal Trade Commission. (PX 81, p.105, ll. 7-21.) Approximately 5% to 7% of the inbound calls to Work Alliance's sales representatives included or concerned customer complaints. (PX 81, p. 225, l. 21 – p. 227, l. 4.)

Work Alliance frequently gave refunds to consumers who complained, even though such consumers did not meet Work Alliance's refund criteria. (PX 81, p. 128, lines 14-20.) Some consumers requested a refund because their spouse objected to the purchase, they changed their mind about the purchase, or they decided not to pursue work with the Postal Service. (Long testimony [Oct. 12, 2010], p. 190, ll. 5-9.) Work Alliance estimates that it gave refunds to ten times as many consumers as actually met Work Alliance's refund criteria. (Id., p. 189, ll. 16-22.) Approximately nine out of every ten refunds were provided by Work Alliance as a gesture of goodwill. (Id.)

Work Alliance states that about eight percent (8%) of its customers requested a refund. (Id., p. 189, ll. 11-15.) Work Alliance provided refunds to approximately five percent (5%) of its customers, and an additional approximately

one and one half percent (1.5%) of its customers received refunds by initiating “charge-backs” through their credit card companies. (Id., p. 188, l. 19 – p. 189, l. 10.) A total of approximately six and one-half percent (6.5%) of Work Alliance’s customers received a refund. (Id. at p. 189, ll. 8-10.)

The July 8, 2008 Temporary Restraining Order

Following its June 27, 2008 evidentiary hearing, the Court entered its Order on July 8, 2008, providing injunctive relief agreed to by parties in this action (the “Temporary Restraining Order”). (Docket No. 27.) After entry of the Temporary Restraining Order, Work Alliance changed its advertising copy to comply with the Court’s instructions to spell out the word “affiliated.” (See DX 6, p. 2; PX 82, p. 98, ll. 3-11.) To ensure that the publications received the newly updated language in compliance with the Temporary Restraining Order, Work Alliance requested and obtained a copy of each insertion order provided by its advertising broker to each of the various publication networks to ensure the ordered change was made. (See DX 6; Docket No. 50, Mirzaie Affidavit, ¶11.)

At the time the consent injunction was entered, Work Alliance had a Quality Assurance (“QA”) department charged with analyzing the effectiveness of sales representatives’ sales efforts and compliance with Company policies. The QA Department also was charged with addressing Work Alliance’s compliance with

various changes it including to comply with the Temporary Restraining Order. (PX 63, Monitor's Initial Report, p. 6.)

Work Alliance modified its policies and practices in response to the concerns raised by the Court in the June 27, 2008, hearing and the Temporary Restraining Order. For example, Work Alliance's website main page, www.workalliance.com, was changed to include a disclaimer link in a font approximately twice the size of the pre-existing link font size, and it was bolded, italicized and underlined to draw the consumer's attention. (Id., p. 9-10.) The disclaimer stated:

Testing Authority is neither affiliated with nor endorsed by the United States Postal Service or any government agency. Our material has been designed to assist individuals to better prepare for the Postal Battery Exam (Exams 460 and 473). Testing Authority does not guarantee a particular score on the exam nor can we control when the USPS will offer the exam in your local area or when jobs will be available in your local area.

(DX 8.) The above referenced disclaimer also stated the following:

Please Note: The United States Postal Service offers study materials free of charge at www.usps.com or your local post office. Publication 60-A is a 32 page orientation guide for exam 473. Publication 60-E is a 32 page orientation guide for exam 460.

(Id.)

A consumer could not purchase materials or services, nor interact with any Work Alliance sales representatives, through Work Alliance's website, www.testingauthorityinc.net. The only method by which a consumer could speak

with a Work Alliance sales representative was by calling an 800 number. (Docket No. 49, Plott Affidavit, ¶7.) Beginning in January 2009, Work Alliance ensured that, upon calling one of Work Alliance's toll-free telephone numbers and before speaking to any of Work Alliance's sales representatives, each consumer first heard a recorded disclaimer stating that "[w]hile operators are well-informed and able to guide callers, they are not authorized to make hiring decisions and are not employees or agents of the U.S. Postal Service, which makes no endorsement of any third party preparation services." (Id.; PX 82, p. 71, ll. 16-23.) They further were advised that sales representatives cannot discuss or guarantee the availability of any specific USPS positions in any given area at any given time. (PX 82, p. 100, ll. 12-16.)

Work Alliance also modified its sales scripts. (Docket No. 49, Plott Affidavit, ¶10.) If sales representatives were asked by a consumer whether the company was affiliated with, working for or on behalf of, or otherwise endorsed by the USPS, the sales representative was instructed to respond: "We are Testing Authority, a for profit company, and are not affiliated in any way with the USPS." (Id.)

Work Alliance also removed from its sales script all language suggesting that, if the consumer used Work Alliance's materials, the consumer would improve

his or her score on the Postal Battery Exam by any specific point value or percentage. (Docket No. 49, Plott Affidavit, ¶ 11.)⁴

After Work Alliance ceased operations on March 9, 2009, the Defendants have not been engaged in the business of selling postal exam or other study materials. (Long Testimony [Oct. 12, 2010], p. 196, ll. 16-18.)

II. CONCLUSIONS OF LAW

Section 5 of the FTC Act⁵

A. Misrepresentations and Materiality

Plaintiff brought this case pursuant to Sections 5 and 13 of the Federal Trade Commission Act (the “FTC Act”), 15 U.S.C. §§ 45(a) and 53(b). Section 5 of the FTC Act prohibits “unfair or deceptive acts or practices in or affecting commerce.” 15 U.S.C. §45 (a). 15 U.S.C. §45(n) defines “unfair” acts or practices for purposes of Section 5 of the FTC Act:

[Plaintiff] shall have no authority under this section or section [15 U.S.C. § 57a] to declare unlawful an act or practice on the grounds that such act or practice is unfair *unless the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition.* In determining whether an act or practice is unfair, the Commission may

⁴ Work Alliance failed to replace the use of “AdSource” with “Testing Authority” in its print advertising following entry of the Temporary Restraining Order. (PX 82, p. 100, ll. 4–11.) The change was made following the October 31, 2008 hearing. (Id.)

⁵The Court finds jurisdiction and venue in this court are proper. 15 U.S.C. §§ 45(a) 53(b); 28 U.S.C. § 1331.

consider established public policies as evidence to be considered with all other evidence. Such public policy considerations may not serve as a primary basis for such determination. (Emphasis Added.)

“An act or practice is *unfair* under Section 5 [of the FTC Act] if it results in substantial consumer injury that is not reasonably avoidable and is not outweighed by any countervailing benefits to consumers or to competition.” FTC v. Windward Mktg. Ltd., No. 1:96-cv-615F, 1997 WL 33642380, at *10 (N.D. Ga., Sept 30, 1997).

To establish that the Defendants engaged in deceptive acts and practices in violation of Section 5 of the FTC Act, the Commission must demonstrate that the Defendants made: (1) a representation; (2) that is likely to mislead consumers acting reasonably under the circumstances; and (3) that the representation was material. FTC v. Tashman, 318 F. 3d 1273, 1277 (11th Cir. 2003); FTC v. Nat'l Urological Group, Inc., 645 F. Supp.2d 1167, 1188 (N.D. Ga. 2008), *aff'd*, 356 Fed.Appx. 358 (11th Cir. 2009).

“An act or practice is *deceptive* under Section 5 [of the FTC Act] if it involves a material representation or omission that is likely to mislead consumers acting reasonably under the circumstances.” Windward Mktg., 1997 WL 33642380 at *9. “A representation or omission is material if it is of the kind usually relied on by a reasonably prudent person.” Id.

“A claim is considered material if it involves information that is important to consumers and, hence, [is] likely to affect their choice of, or conduct regarding, a product.” Nat’l Urological Group, 645 F. Supp. 2d at 1190 (*quoting* FTC v. QT, Inc., 448 F. Supp. 2d 908, 960 (N.D. Ill. 2006)). The question is whether the misrepresentations were likely to mislead some consumers acting reasonably under the circumstances because the net impression created for them was deceptive. *See* Tashman, 318 F. 3d at 1283. “Express claims, or deliberately made implied claims, used to induce the purchase of a particular product or service are presumptively material.” Nat’l Urological Group, 645 F. Supp. 2d at 1190 (*quoting* Windward Mktg., 1997 WL 33642380, at *10).

The Commission is not required to prove that every consumer actually relied upon the misrepresentations to prevail. McGregor v. Chierico, 206 F. 3d 1378, 1388 (11th Cir. 2000). “A presumption of actual reliance arises once the [FTC] has proved that the defendant made material misrepresentations, that they were widely disseminated, and that consumers purchased the defendant’s product.” McGregor, 206 F. 3d at 1388 (citing FTC v. Figgie Int’l, Inc., 994 F. 2d 595, 605-06 (9th Cir. 1993)).

Disclaimers or qualifications in any particular advertisement are not adequate to avoid liability for deceptive advertising unless they are sufficiently prominent and unambiguous to change the apparent meaning of claims and to

leave accurate impression. Removatron Int’l Corp. v. FTC, 884 F.2d 1489, 1497 (1st Cir. 1989). The FTC can prove its claim though a small number of injured consumers. See Figgie Int’l, 994 F.2d at 605-06. From this small sample, a court can infer a pattern or practice of deceptive behaviour. See FTC v. Sec. Rare Coin & Bullion Corp., 931 F.2d 1312, 1316 (8th Cir. 1991).

Ultimately, it is for the Court, not the FTC, to determine whether a violation of the FTC Act has occurred. FTC v. Colgate-Palmolive Co., 380 U.S. 374, 385 (1965). “[W]hile informed judicial determination is dependent upon enlightenment gained from administrative experience, in the last analysis the words ‘deceptive practices’ set forth a legal standard and they must get their final meaning from a judicial construction.” Id. at 385.

The Court finds that the Commission has demonstrated by a preponderance of the evidence that Defendants made misleading claims that (a) Defendants were connected with, affiliated with, or endorsed by the USPS; (b) postal positions were currently available in the geographic areas where Defendants’ advertisements appeared; (c) consumers who used Defendants’ materials were more likely to pass the postal exam than consumers who did not use Defendants’ materials; and (d) consumers who received a passing score on the postal exam were assured employment with the USPS.

The Court also finds that the Commission has demonstrated by a preponderance of the evidence that Defendants misrepresentations were material within the meaning of Section 5 of the FTC Act.

While the Court finds that Defendants made material misleading statements to consumers causing some consumers to purchase Work Alliances' test preparation materials, the Court finds further that the facts do not support that all purchasers were misled. That is, the Court finds the FTC has not presented sufficient evidence that all purchasers were misled into purchases. In fact, a large number of people who called the 800 number in response to misleading advertisement did not purchase the materials after interacting with Defendants' sales representatives. Moreover, the testimony of several witnesses at hearings conducted by the Court did not state they were misled into the purchases and some could not recall the advertisements they read or what they were told when they called the 800 number. (Gibbs testimony [Oct. 12, 2010], p. 50, l. 23 – p. 51, l. 5; Rowan testimony [Oct. 12, 2010], p. 32, l. 19 – p. 33, l. 13; Groth testimony [Oct. 12, 2010], p. 39, ll. 15-25; p. 45, ll. 9-22.) Two of the witnesses acknowledged that the advertisement did not mislead them to believe they were placed by the USPS. (Groth testimony [Oct. 12, 2010], p. 39, ll. 1-9; p. 44, ll. 12-16; Gibbs testimony [Oct. 12, 2010], p. 50, ll. 20-22.) The Court finds the evidence rebuts the presumption of actual reliance. McGregor, 206 F. 3d at 1388.

B. Liability of Tyler Long Individually

To find Defendant Long individually liable under Section 5 of the FTC Act and subject to an award of damages and injunctive relief, the FTC must show that Long individually participated directly in the practices or acts or had authority to control Work Alliance's conduct that constituted its Section 5(a) violations. FTC v. World Media Brokers, 415 F. 3d 758, 764 (7th Cir. 2005).

The FTC is not required to show that Long intended to deceive consumers but only that he had actual knowledge of material misrepresentations, was recklessly indifferent to the truth or falsity of a misrepresentation, or had an awareness of deceit along with an intentional avoidance of the truth. FTC v. Amy Travel Serv., Inc., 875 F.2d 564, 574 (7th Cir. 1989) (*quoting* FTC v. Kitco of Nevada, Inc., 612 F. Supp. 1282, 1292 (D. Minn. 1985)).

The Court finds that the Commission has demonstrated by a preponderance of the evidence that Long is individually liable for injunctive and monetary relief because he directly participated in the acts and practices of Work Alliance which give rise to its violations of Section 5 of the FTC Act and had authority to control Work Alliance acts and practices. Long had, at least, sufficient involvement in the Work Alliance conduct to establish the requisite knowledge for personal liability,

displaying actual knowledge of, reckless indifference to the truth of, or awareness of Work Alliance's acts and practices when violating Section 5 of the FTC Act.⁶

C. Consumer Injury

The Eleventh Circuit has held that “the full amount lost by consumers is an appropriate award of damages.” FTC v. Global Mktg. Grp., Inc., 594 F. Supp. 2d 1281, 1290 (M.D. Fla. 2008) (citing FTC v. Gem Merch. Corp., 87 F.3d 466, 470 (11th Cir. 1996)); see also, FTC v. Stefanchik, 559 F.3d 924, 931(9th Cir. 2009) (FTC Act designed to protect consumers from economic injuries and, award of full amount lost by consumers in appropriate measure).

The measure of damages that is appropriate to award in this case is complicated because of the confusing and inconsistent testimony of consumers offered by the FTC at the June and October hearings in this matter and in light of the small percentage of customers who complained about the materials or what they were told when they purchased them. The Court has reviewed the testimony of each of the consumers who presented evidence in this case. The Court finds, based on the testimony of the few consumer who testified that there is a thin foundation upon which to evaluate damages to consumers. The testimony was, at

⁶ The Defendants Tyler Long and Work Alliance are jointly and severally liable for the consumer injury because both were directly responsible for the acts and practices that violated the FTC Act. FTC v. Direct Mktg. Concepts, Inc., 648 F. Supp. 2d 202, 221 (D. Mass. 2009), *aff'd*, 624 F.3d 1, 17 (1st Cir. 2010); Nat'l Urological Group, 645 F. Supp. 2d at 1212–14; FTC v. Slimamerica, 77 F. Supp. 2d 1263, 1276 (S.D. Fla. 1999).

best, mixed. Most of the witnesses had poor memories of the ad they read, their reaction to or interpretation of the advertisements and what was communicated to them. (Gibbs testimony [Oct. 12, 2010], p. 50, l. 23 – p. 51, l. 5; Groth testimony [Oct. 12, 2010], p. 37, ll. 12-18.) Others could not recall what they were told on the phone during conversations with Work Alliance sales representatives. (Rowan testimony [Oct. 12, 2010], p. 32, l. 19 – p. 33, l. 13; Groth testimony [Oct. 12, 2010], p. 39, ll. 15-25; p. 45, ll. 9-22.) Still others admitted they were not misled. (Groth testimony [Oct. 12, 2010], p. 39, ll. 1-9; p. 44, ll. 12-16; Gibbs testimony [Oct. 12, 2010], p. 51, l. 16 – p. 52, l. 13; Barton testimony [Oct. 12, 2010], p. 73, ll. 5-23.) As a result, the Court is unable to conclude, on the record presented, that all of the persons who read Work Alliance advertisements engaged its representatives by telephone and bought the test preparation materials were deceived or suffered damage. The Court notes further that of the 11 million people who called Work Alliance to discuss the preparation materials only 830,000, or seven and one-half percent (7.5%) purchased the material offered. Of those who purchased the materials only approximately eight percent (8%) requested a refund of which most (six and one half percent (6.5%) of all who purchased the materials) were given a refund. This data, when contrasted with the equivocal and apocryphal consumer testimony offered by the FTC, is inconsistent and requires the Court to conclude that the FTC has not proved damages in the amount claimed.

The Court does conclude, based on its review of the record that, at most, one and one half percent (1.5%) of those who purchased the materials were misled into buying them, for a total of 12,450 customers. The materials were purchased on the average for \$130.17 per order.⁷ Accordingly, the Court finds by a preponderance of the evidence, that consumer damages resulting from Defendants' Section 5(a) violations is in the amount of \$1,620,616.50.

D. Injunctive Relief

Section 13(b) requires "proper proof" before injunctive relief is afforded. The FTC is required to show that (1) the defendant is violating the law; and, (2) that an injunction would be in the public interest. See e.g., FTC v. H.N. Singer, Inc., 668 F.2d 1107, 1110-11 (9th Cir. 1982); U.S. v. JS&A Grp., Inc., 716 F.2d 451, 455-56 (7th Cir. 1983). "The purpose of an injunction is to prevent future violations." U.S. v. W.T. Grant Co., 345 U.S. 629, 633 (1953). The FTC must satisfy the Court that relief is needed. Id. "The necessary determination is that there exists some cognizable danger of recurrent violation, something more than the mere possibility which serves to keep the case alive." Id. "To be considered are the bona fides of the expressed intent to comply, the effectiveness of the discontinuance and, in some cases, the character of the past violations." Id. The issuance or denial of a permanent injunction rests squarely within the discretion of

⁷ The Court reached this price by determining the weighted average of the number of packages sold at \$129.45 and the number of packages sold at \$149.45.

the Court. The grant of permanent injunctive power is intended to give the Court broad equitable authority to “grant any ancillary relief necessary to accomplish complete justice” H.N. Singer, 668 F.2d at 1113.

The Court concludes there is a cognizable danger that Work Alliance and Long especially, will engage in future violations of Section 5(a) of the FTC Act. The unusual circumstance of this case support this conclusion. The Court heard and evaluated Long’s testimony on two occasions. On both, the Court found that Long was not credible, particularly in his testimony that he did not intend to mislead any consumer and believed his advertisements and sales practices were above board and honest. The Court concludes otherwise.

Long personally, and Work Alliance, engaged in a calculated and clever plan to create misconceptions about the nature and value of the material offered. Long and Work Alliance knew that some percentage of those who read the advertisements and engaged in conversations with Work Alliance’s sales representatives would be misled into purchasing the study materials believing they would lead to passing of the USPS examination which in turn would qualify them for USPS jobs, most of which did not exist. The Court finds that Long and Work Alliance knew some small percentage of people – especially those desperate for employment –were susceptible to being misled and would believe the misrepresentations made, inducing these consumers to buy the training materials

and the promise Defendants claimed they offered. Defendants employed an effective sophisticated, subtle, and clever predatory sales strategy. That Long was committed to this misleading marketing of his product is evidenced by the information developed by the monitor appointed by the Court after the June 27, 2008 hearing. The monitor was charged with tracking and evaluating Defendant's compliance with the injunction the Court entered. The reports filed by the monitor disclosed that Defendant's effort to comply was at least ineffective, and more likely, defiant of the Court's requirement of candor and accuracy in Defendant's advertising and marketing of its product. (PX 53, Monitor's Notice of Failure Report; PX 54, Monitor's Notice of Second Failure Report.) Defendant's decision to pay only lip-service to many of the restraints imposed by the Court is evidence that their principle tactic was to protect their income stream by continuing to engage in misleading, deceptive conduct.⁸ That is to say, for those members of the public who tended to fall prey to Defendant's marketing methods, damages and injunctive relief, properly tailored, is proper and necessary. The injunctive relief

⁸ According to the court-appointed monitor, the salespeople's description of the fee charged by Defendants as either a "registration" fee or an "enrollment" fee created an impression of an affiliation with the Postal Service. (PX 82 [O'Leary testimony], p. 69, ll. 12-25; PX 54 ¶¶ 7-16.) In the monitoring of sales calls, the monitor listened to a number of sales employees advising potential customers that they were more likely to be successful with the Defendants' test materials and telling customers that the materials would give them a real advantage. (PX 53, ¶¶ 3-8; PX 54, ¶¶ 3-6.)

that is most appropriate and effective to address Defendant's conduct will focus on call center marketing of training services.

III. CONCLUSION

For the reason set forth in this Order, and the Court having found that Defendant Work Alliance and Defendant Long violated Section 5(c) of the Federal Trade Act causing damage to some consumers, the following judgment and injunctive relief are entered in this case:

JUDGMENT

IT IS HEREBY ORDERED that judgment is hereby entered jointly and severally against Defendants Work Alliance and Tyler Franklin Long in the amount of \$1,620,616.50 for equitable monetary relief, including but not limited to consumer redress and disgorgement.

A. All funds paid pursuant to this Order shall be deposited into a fund administered by the FTC or its agent to be used for equitable relief, including, but not limited to, consumer redress and any attendant expenses for the administration of any redress fund. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is complete, the FTC may apply any remaining funds for such other equitable relief (as allowed by the Court upon application of the FTC). Any funds not used for such equitable relief shall be

deposited to the Treasury as disgorgement. Defendants do not have the right to challenge the FTC's choice of remedies under this Paragraph.

B. Defendants shall cooperate fully with Plaintiff and its agents in all attempts to collect the amount due pursuant to this Paragraph if the Defendants fail to pay fully the amount due within sixty (60) days of the entry of this Order. In such event, Defendants agree to provide Plaintiff with their federal and state tax returns for the preceding two years, and to complete standard-form financial disclosure forms fully and accurately within ten (10) business days of receiving a request from the FTC.

C. In accordance with 31 U.S.C. § 7701, the Defendants are hereby required, unless they have done so already, to furnish to Plaintiff their taxpayer identifying numbers (social security numbers or employer identification numbers) which shall be used for purposes of collecting and reporting on any delinquent amount arising out of the Defendants' relationships with the government.

INJUNCTION

IT IS HEREBY FURTHER ORDERED that Defendants, whether acting directly or through any other person, corporation, partnership, subsidiary, division, or agent, are permanently restrained and enjoined from engaging in any business which advertises, markets, promotes, offers to sell or sells, any materials, services, programs or aids, in any form, including but not limited to, hard copy documents

or electronic and internet-based materials, to person or entities for use in seeking or applying for employment with any private, public, government or quasi-governmental entity in other than a supervisory position. For the purposes of this Order the phrase “in other than a supervisory position” shall mean a position that is paid an hourly wage or in which an employee supervises 20 or fewer people.

IT IS FURTHER ORDERED that Defendants, their officers, agents, servants, employees, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from misrepresenting, or assisting others in misrepresenting in any advertising, marketing, promotion, sales offer or sales, any materials, facts, including but not limited to:

- a. Defendants affiliation with, approval or endorsed by, any person, business, government or quasi-governmental entity;
- b. The total costs to purchase, receive, or use, and the quantity of, the materials services or aids;
- c. Restrictions, limitations, or condition to purchase, receive, or use the materials, services or aids;
- d. The nature or terms of any refund, cancellation, exchange, or repurchase policy; and

- e. The performance and results possibly achieved using the materials, services or aids.

IT IS FURTHER ORDERED that Defendants, their agents, servants, employees, and attorneys, and all other persons or entities, in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from, either directly or indirectly:

- a. Disclosing, using, or benefitting from customer information, including the name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a customer's account (including credit card, bank account, or other financial account), of any person which Defendant obtained prior to entry of this Order in connecting with the advertising, marketing, promotion, offering for sale, or sale of those products and services declared in the Complaint filed in this action (the "Customer Information");
- b. Failing within thirty (30) calendar days after entry of this Order to dispose of the Customer Information in all forms in their possession, custody, or control. Disposal shall be by means that protect against unauthorized or inadvertent access to the Customer Information, such as by physical destruction any papers, and by erasing or destroying any electronic media such that it cannot be retrieved. Customer Information

that, on the date scheduled for destruction has been requested by a government agency or required by law, regulation, or court order to be disclosed is not subject to the destruction requirement in this Paragraph.

COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, the Commission is authorized to use all other lawful means, including but not limited to:

1. Obtaining discovery from any person using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, 45, and 69;
2. Having its representatives pose as consumers of Defendants, their employees, or any other entity managed or controlled in whole or in part by any Defendants, without the necessity of identification or prior notice; and;
3. Defendants shall permit representatives of the FTC, upon at least ten (10) calendar days notice, to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present and counsel for the Defendants may be present.

This Order shall not limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

COMPLIANCE REPORTING

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

- A. For a period of three (3) years from the date of entry of this Order,
 1. Defendants shall notify the FTC of the following:
 - a. any changes in any Defendants' residence or business offices, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;
 - b. any changes in Long's employment status (including self-employment), and any change in Long's ownership interest in any business entity, within ten (10) days of the date of such change. Such notice shall include the name and address of each business with which Long is affiliated, employed by, creates or forms, or performs services for, and

a detailed description of Long's duties and responsibilities in connection with the business or employment; and

c. any changes in Long's name or use of any aliases or fictitious names within ten (10) days of the date of such change.

B. One hundred eighty (180) days after the date of entry of this Order and thereafter on January 15, 2012 and 2013, and 2014, Defendants shall provide a written report to the FTC, which is true and accurate and sworn to under penalty of perjury, setting forth 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. Defendants' then-current residence addresses, mailing addresses, and telephone numbers;
2. Long's then-current employment status (including self-employment), including the name, addresses, and telephone number of each business that Individual Defendant is affiliated with, employed by, or performs services for; a detailed description of the nature of the business; and a detailed description of Individual Defendant's duties and responsibilities in connection with the business or employment;

3. Any other changes required to be reported under Subsection A of this Section;
 4. A copy of each acknowledgment of receipt of this Order, obtained pursuant to the Section titled "Distribution of Order;" and
 5. Any other changes required to be reported under Subsection A of this Section.
- C. Defendants shall notify the FTC of the filing of a bankruptcy petition by any Defendant within fifteen (15) days of filing.
- D. For the purposes of this Order, Defendants shall, unless otherwise directed by the Commission's authorized representatives, send by overnight courier all reports and notifications of the Commission that are required by this Order to:
- Associate Director for Enforcement
Bureau of Consumer Protection
Federal Trade Commission
Pennsylvania Avenue, N.W.
Washington, D.C. 20580
RE: FTC v. U.S. Work Alliance, Inc., et al
FTC Litigation Number X080050
- E. For purposes of the compliance reporting and monitoring required by this Order, the FTC is authorized to communicate directly with Defendants.

RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry of this Order, Defendants, for any business that is engaged in the business of advertising, marketing, promoting or selling materials, devices or aid to those seeking employment in non-supervisory positions for which any Defendant is the majority owner or directly or indirectly controls, are hereby restrained and enjoined from failing to create and retain the following records:

- A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
- B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;
- C. Customer files containing the names, addresses phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or series purchased, to the extent such information is obtained in the ordinary course of business;

- D. Complaints and refund requests (whether received directly or indirectly, such as through a third party) and any responses to those complaints or requests;
- E. Copies of all sales scripts, training materials, advertisements, or other marketing materials; and
- F. All Records and documents necessary to demonstrate full compliance with each provision of this Order, including but not limited to, copies of acknowledgments of receipt of this Order required by the Sections titled “Distribution of Order” and “Acknowledgement of Receipt of Order” and all reports submitted to the FTC pursuant to the Section titled “Compliance Reporting.”

DISTRIBUTION OF ORDER

IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry of this Order, Defendants shall deliver copies of this Order as directed below:

- A. For any business that any Defendant controls, directly or indirectly, or in which Defendant has a majority ownership interest, Defendants must deliver a copy of this Order to (1) all principals, agents, and representatives of that business; (2) all employees, agents, and representatives of that business who engage in conduct related to the

subject matter of the Order: and (3) any business entity resulting from any change in structure set forth in Subsection A.2 of the Section title "Compliance Reporting." For current personnel, delivery shall be within five (5) days of service of this Order upon Defendants. For new personnel, delivery shall occur prior to them assuming their responsibilities. For any business entity resulting from any change in structure set forth in Subsection A.2 of the Section title "Compliance Reporting," delivery shall be at least ten (10) days prior to the change in structure.

- B. For any business where a Defendant is not a controlling person of a business but otherwise engages in conduct related to the subject matter of this Order, Defendants must deliver a copy of this Order to all principals and managers of such business before engaging in such conduct;
- C. Defendants must secure a signed and dated statement acknowledging receipt of this Order, within thirty (30) days of delivery, from all persons receiving a copy of the Order pursuant to this Section.

ACKNOWLEDGMENT OF RECEIPT OF ORDER

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

IT IS SO ORDERED this 9th day of February, 2011.



WILLIAM S. DUFFEY, JR.
UNITED STATES DISTRICT JUDGE