

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF IOWA

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CLERK U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF IA

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STATE OF IOWA ex rel. Thomas J. Miller,  
Attorney General of Iowa

Plaintiff,

v.

TELEDRAFT, INC., a Delaware corporation,

AL SLATEN, individually and in his  
corporate capacity, and

DAN WOLFE, individually and in his  
corporate capacity,

Defendants.

Civil No. 4:04 - CV - 90507

**STIPULATION FOR SETTLEMENT AND AGREED FINAL JUDGMENT**

WHEREAS, Plaintiff filed its Complaint, as amended, for a permanent injunction and other relief in this matter pursuant to the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101 et seq.; the Telemarketing Sales Rule, 16 C.F.R. Part 310; the Iowa Consumer Fraud Act, Iowa Code § 714.16 (2005); the Iowa Loan Broker Act, Iowa Code Ch. 535C (2005); and Iowa Code § 714.16A providing for additional penalties in connection with consumer frauds against older Iowans; and Defendants have answered, denying Plaintiff's allegations of unlawful conduct; all parties have submitted the instant Stipulation For Settlement And Agreed Final Judgment

purporting to resolve the instant litigation. The Court makes the following findings and enters the following orders.

### **FINDINGS**

1. Subject matter jurisdiction over the federal claim(s) is conferred upon this Court by 28 U.S.C. §§ 1331 and 1337(a), and by 15 U.S.C. § 6103(a). Supplemental jurisdiction over the state claim is conferred upon this Court by 28 U.S.C. § 1367.
2. Venue in the Southern District of Iowa is proper as to all parties under 15 U.S.C. § 6103(e) and under 28 U.S.C. § 1391.
3. This Order does not constitute and shall not be interpreted as an admission by Defendants that they have engaged in violations of any law or regulations.
4. Unless the context otherwise requires, for purposes of the requirements of this Consent Judgment “Defendants” refers to each Defendant separately, as well as to any combination of the individual Defendants, and the corporate Defendant, and “telemarketing” shall mean, unless the context otherwise requires, a plan, program, or campaign conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones, whether or not the goods or services serving as the inducement are actually provided, and whether or not the charitable contribution is ever applied as represented.

### **PERMANENT INJUNCTION**

**IT IS THEREFORE ORDERED** that Defendants, and each of them, and their

successors, assigns, officers, agents, servants, employees, and those persons in active concert or participation with them who have actual notice of this Order, whether acting directly or through any corporation, subsidiary, division, or other entity (hereinafter "Defendants et al."), are hereby restrained and enjoined from violating the Telemarketing Sales Rule, 16 C.F.R. Part 310, including without limitation violating: (a) the prohibition of 16 C.F.R. § 310.3(b) against a person's providing "substantial assistance or support" to any seller or telemarketer when that person "knows or consciously avoids knowing" that the telemarketer is engaged in acts or practices that violate 16 C.F.R. § 310.3(a) (relating *inter alia* to complete and accurate disclosures and representations) or that violate 16 C.F.R. § 310.4 (relating *inter alia* to goods or services represented to improve a person's credit, and to loans or other extensions of credit involving an advance fee); and (b) the prohibition of 16 C.F.R. § 310.3(c) against credit card laundering.

**IT IS FURTHER ORDERED** that Defendants et al. are hereby restrained and enjoined from violating the Iowa Consumer Fraud Act, Iowa Code § 714.16 (2005), including without limitation by processing from any bank account in Iowa an ACH debit that such Defendants know or should know, at the time the transaction is processed, is derived from deceptive or misleading acts or practices, or other conduct that violates the Iowa Consumer Fraud Act, Iowa Code § 714.16 (2005).

**IT IS FURTHER ORDERED** that Defendants et al. shall refrain from processing from any bank account an ACH debit that Defendants know or should know, at the time

the transaction is processed, (a) is derived from conduct that involves telemarketing, and (b) either violates the National Automated Clearing House Association's ("NACHA") Operating Guidelines, entitled Telephone-Initiated Entries, ("the TEL Rule"), as currently written or as hereafter amended, or would violate the TEL Rule but for a mischaracterization of the source or nature of the debit, for example, by applying an incorrect standard entry class code.

**IT IS FURTHER ORDERED** that, without limiting the foregoing injunctive provisions, and in order to ensure that Defendants are apprised of facts necessary to refrain from facilitating unlawful activity, Defendants et al. shall, in connection with the processing of ACH debits that Defendants know or should know are derived from transactions involving telemarketing, refrain from failing to:

A. Perform due diligence information gathering concerning each entity, and the principals of such entity, for which Defendants process or may undertake processing ACH debits ("Client Entity"). Without diminishing the foregoing requirement, to the extent that any the Client Entity conducts any significant feature of its operations outside the United States or one or more principals of the Client Entity reside outside the United States (hereinafter "Client Entity With Extraterritorial Ties," a potential subset of all Client Entities), the above due diligence standard shall require Defendants to acquire information in a quantity and of a quality sufficient to exclude any reasonable suspicion that the entity is

engaged in telemarketing activity that violates any of the following laws or rules, as currently written or hereafter amended: the Telemarketing Sales Rule, the TEL Rule, or, as to transactions involving Iowa consumers, the Iowa Consumer Fraud Act.

B. Decline to continue processing or undertake processing (as applicable) for a Client Entity that fails to provide information within its possession or control that is reasonably necessary for Defendant to meet its obligations under the law and this Stipulation For Settlement And Agreed Final Judgment.

C. Actively monitor no less frequently than on a weekly basis the return rates of each Client Entity for which Defendant performs such processing.

**IT IS FURTHER ORDERED** that, in the event that Defendants are alleged in a proceeding to enforce this Consent Judgment to have violated any of its provisions in connection with services performed for a Client Entity With Extraterritorial Ties, and Plaintiff makes a prima facie case that such violation(s) occurred, a rebuttable presumption shall arise that Defendants had the knowledge, willfulness, and/or intent required to establish contempt of the applicable Orders herein.

**IT IS FURTHER ORDERED** that Defendants et al. shall cease processing as soon as practicable but in any event within three (3) business days for a Client Entity the ACH debits of which are reported to exceed a rate of 2.5 % (or such lower rate as NACHA may hereafter adopt in connection with the reporting provisions currently set

forth at Subsection 2.11.3 of the NACHA Operating Rules) attributable to unauthorized returns. "Unauthorized returns" for purposes of this requirement means the combination of all returns coded R07, R10 and/or R29.

**IT IS FURTHER ORDERED** that if Defendants process more than ten (10) transactions for a Client Entity in any given week and (a) such Client Entity's rate of transactions returned for insufficient funds (NACHA Return Reason Code R01) is reported to exceed 6.0 % for any four-week period; or (b) such Client Entity's rate of transactions returned due to a previously active account having been closed by action of the customer or the Receiving Depository Financial Institution (NACHA Return Code R02), or returned because the account number does not correspond to the individual identified in the entry or the account number designated is not an open account (NACHA Return Reason Code R03), or returned because the account number is not valid (NACHA Return Reason Code R04), are reported to total in excess of 2.0 % for any four-week period, the Defendants shall undertake a thorough investigation of the Client Entity's operations, such investigation to be completed within fifteen (15) business days, and shall cease processing as soon as practicable but in any event within three (3) business days if such investigation suggests any reasonable likelihood that the Client Entity is engaged in telemarketing activity that violates the Telemarketing Sales Rule, the TEL Rule, or, as to transactions involving Iowa consumers, the Iowa Consumer Fraud Act. If Defendants' investigation does not trigger the above cessation of processing, Defendants may continue

processing for the Client Entity in question and need not investigate that Client Entity again for a 4-month period, unless an additional or different cause to investigate arises.

**IT IS FURTHER ORDERED** that, in connection with each entity engaged in telemarketing for which Defendants began to perform ACH processing after October 7, 2004, Defendants shall, for a period of three (3) years, retain, and make available to the Iowa Attorney General upon reasonable requests therefor: a copy of the entity's merchant application and telemarketing script(s); a complete record of all (other) materials and information gathered as part of the above-ordered "due diligence" requirement; a complete record of all communications, including without limitation e-mail communications, between such entity and one or more Defendants; a complete record of any investigations triggered by this Consent Judgment; and a complete record of all return rate data and complaints (if any) relating to such entity.

**IT IS FURTHER ORDERED** that Defendants shall exert diligent efforts to keep abreast of trends and developments relating to the various ways in which consumers are victimized by telemarketing fraud, which efforts shall include, without limitation, thorough review of relevant informational materials that have been or are hereafter provided by Plaintiff to Defendants, and thorough review no less frequently than monthly of the Federal Trade Commission website; in any subsequent action enforcing this Consent Judgment or alleging facilitation by Defendants of telemarketing fraud, the

knowledge that Defendants could acquire through compliance with this paragraph shall be imputed to Defendants.

**IT IS FURTHER ORDERED** that Defendants shall not create, operate, or exercise any control over any business entity engaged in the processing of ACH transactions for telemarketers, including any partnership, limited partnership, joint venture, sole proprietorship or corporation, without first providing Plaintiff with a written statement disclosing: (a) the name of the business entity; (b) the address and telephone number of the business entity; (c) the names of the business entity's officers, directors, principals, managers and employees; and (d) a detailed description of the business entity's intended activities.

**IT IS FURTHER ORDERED** that Defendants shall within five days of the filing of this Stipulation For Settlement And Agreed Final Judgment provide a copy hereof to each employee and independent contractor having any duties directly or indirectly relating to the provision of services to businesses engaged in telemarketing, and shall hereafter provide a copy within five (5) days to each employee and independent contractor who assumes such duties.

**IT IS FURTHER ORDERED** that Defendants pay to Plaintiff, at or before the filing of this Consent Judgment, the sum of \$43,533.13 to be used by Plaintiff to provide restitution to consumers who suffered financial loss as a result of Defendants' having withdrawn money from their accounts on behalf of telemarketers between August 1, 2003



and the date of this Stipulation For Settlement And Agreed Final Judgment. To the extent that restitution cannot be provided to particular consumers after reasonable efforts, Plaintiff may deposit such restitution into the consumer fraud enforcement fund referred to in Iowa Code § 714.16A (2005).

**IT IS FURTHER ORDERED** that if the consumer restitution data provided to Plaintiff by Defendants for purposes of the foregoing paragraph excludes any consumers who should be included, or otherwise understates the amount of restitution, and such exclusion or understatement is not attributable to isolated, good faith inadvertence, Defendants shall be jointly and severally liable to Plaintiff for a civil penalty in the amount of \$200,000.00.

**IT IS FURTHER ORDERED** that Defendants pay to Plaintiff, at or before the filing of this Stipulation For Settlement And Agreed Final Judgment, the sum of \$35,000.00 to be deposited by Plaintiff into the consumer fraud enforcement fund referred to in Iowa Code § 714.16A (2005).

**IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for all purposes.

**SO ORDERED:**

DATED this 9th day of December, 2005.




**Robert W. Pratt**  
United States District Judge

**APPROVED:**

**PLAINTIFF**

Date: 12-8-05



Steve St. Clair  
Attorney for Plaintiff  
Iowa Department of Justice

**DEFENDANTS**

Date: 11/30/2005



Teledraft, Inc., by its President

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Date: 11/30/2005



Al Slaten


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Date: 11/30/2005

  
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Dan Wolfe

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Date: 11/30/2005

  
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Hector E. Lora  
Cove & Associates, PA  
Attorney for All Defendants