

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 0:15-cv-60423-WJZ

**FEDERAL TRADE COMMISSION,
STATES OF COLORADO, FLORIDA,
INDIANA, KANSAS, MISSISSIPPI,
MISSOURI, NORTH CAROLINA,
OHIO, TENNESSEE, and WASHINGTON,**

Plaintiffs,

v.

CARIBBEAN CRUISE LINE, INC., et al.

Defendants.

RECEIVED
ATTORNEY GENERAL OF OHIO

MAY 14 2019

CONSUMER PROTECTION SECTION
PUBLIC INSPECTION FILE

**STIPULATED ORDER FOR
PERMANENT INJUNCTION AND CIVIL PENALTY JUDGMENT
AGAINST CARRIBBEAN CRUISE LINE, INC.**

The Federal Trade Commission (“Commission” or “FTC”), and the States of Colorado, Florida, Indiana, Kansas, Mississippi, Missouri, North Carolina, Ohio and Washington through their Attorneys General, and the State of Tennessee through the Tennessee Regulatory Authority (collectively, “Plaintiffs”), filed their First Amended Complaint for civil penalties, permanent injunction, and other relief in this matter, pursuant to Sections 5(a), 5(m)(1)(A), 13(b), 16(a) and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), 56(a) and 57b, and Section 6 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (the “Telemarketing Act”), 15 U.S.C. § 6105. Caribbean Cruise Line, Inc. (“CCL”) has waived service of the summons, the Complaint, and the First Amended Complaint. Plaintiffs and CCL stipulate to the entry of this Stipulated Order for Permanent Injunction and Civil Penalty Judgment (“Order”) to resolve all matters in dispute in this action between them.

THEREFORE, IT IS ORDERED as follows:

FINDINGS

1. This Court has jurisdiction over this matter.
2. The First Amended Complaint charges that CCL engaged in deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC's Telemarketing Sales Rule (the "TSR"), as amended, 16 C.F.R. Part 310, in the Telemarketing of its products and services.
3. CCL neither admits nor denies any of the allegations in the First Amended Complaint, except as specifically stated in this Order. Only for purposes of this action, CCL admits the facts necessary to establish jurisdiction.
4. CCL waives any claim that it may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order, and agrees to bear its own costs and attorney fees. CCL waives and releases any claims that it may have against Plaintiffs, the Commission, and their agents that relate to this action.
5. CCL and Plaintiffs waive all rights to appeal or otherwise challenge or contest the validity of this Order.

DEFINITIONS

For the purpose of this Order, the following definitions apply:

- A. **"Caller Identification Service"** means a service that allows a telephone subscriber to have the telephone number, and, where available, name of the calling party transmitted contemporaneously with the telephone call, and displayed on a device in or connected to the subscriber's telephone..
- B. **"CCL"** means Caribbean Cruise Line, Inc., and its successors and assigns.
- C. **"Do Not Call request"** means a statement by a person that indicates that he or she does

not wish to receive telephone calls initiated to induce the purchase of goods or services or to solicit charitable contributions.

D. **“Entity-Specific Do Not Call List”** means a list of telephone numbers maintained by a Seller or Telemarketer of persons who have previously stated that they do not wish to receive Outbound Telephone Calls made by or on behalf of the Seller or Telemarketer.

E. **“Established Business Relationship”** means a relationship between a Seller and a person based on: (a) the person’s purchase, rental, or lease of the Seller’s goods or services or a financial transaction between the Seller and person, within the eighteen months immediately preceding the date of the Telemarketing call; or (b) the person’s inquiry or application regarding a product or service offered by the Seller, within the three months immediately preceding the date of a Telemarketing call.

F. **“Lead Generator”** means any person that provides, in exchange for consideration, consumer information to a Seller or Telemarketer for use in the Telemarketing of any goods or services.

G. **“National Do Not Call Registry”** means the National Do Not Call Registry, which is the “do-not-call” registry maintained by the Commission pursuant to 16 C.F.R. § 310.4(b)(1)(iii)(B).

H. **“Outbound Telephone Call”** means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution.

I. **“Representatives”** means the following who receive actual notice of this Order by personal service or otherwise: CCL’s officers, agents, servants, employees, and those persons in active concert or participation with them.

J. **“Seller”** means any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange

for consideration, whether or not such person is under the jurisdiction of the Commission.

K. “**Telemarketer**” means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor.

L. “**Telemarketing**” means a plan, program, or campaign which is conducted to induce the purchase of goods or services by use of one or more telephones, and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog which: contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation.

ORDER

I. PROHIBITION AGAINST ABUSIVE TELEMARKETING PRACTICES IN VIOLATION OF THE TSR

IT IS ORDERED that CCL and its Representatives, whether acting directly or indirectly, in connection with Telemarketing, are permanently restrained and enjoined from engaging in, or causing others to engage in, the following practices:

A. Initiating any Outbound Telephone Call to a person when that person’s telephone number is on the “do-not-call” registry, maintained by the Commission, of persons who do not wish to receive outbound telephone calls to induce the purchase of goods or services, unless:

1. CCL has obtained the express agreement, in writing, of such person to place calls to that person. Such written agreement shall clearly evidence

such person's authorization that calls made by or on behalf of CCL may be placed to that person, and shall include the telephone number to which the calls may be placed and the signature (including an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law) of that person; or

2. CCL has an Established Business Relationship with such person, and that person has not stated that he or she does not wish to receive Outbound Telephone Calls made by or on behalf of CCL.

B. Initiating any Outbound Telephone Call to a person when that person has previously stated that he or she does not wish to receive an Outbound Telephone Call made by or on behalf of CCL, unless subsequent to such statement, CCL has:

1. obtained another express agreement as specified in Section I.A.1 above;
or
2. has a new Established Business Relationship with such person.

C. Initiating any Outbound Telephone Call where CCL or its Representatives fail to transmit or cause to be transmitted the telephone number, and, when made available by the Telemarketer's carrier, the name of the Telemarketer, to any caller identification service in use by a recipient of a Telemarketing call; provided that it shall not be a violation to substitute (for the name and phone number used in, or billed for, making the call) the name of the seller or charitable organization on behalf of which a Telemarketing call is placed, and the seller's or charitable

organization's customer or donor service telephone number, which is answered during regular business hours.

- D. Initiating any Outbound Telephone Call that delivers a prerecorded message, other than a prerecorded message permitted for compliance with the call abandonment safe harbor in § 310.4(b)(4)(iii) of the TSR, unless in any such call to induce the purchase of any good or service, the seller has obtained from the recipient of the call an express agreement, in writing, that:
1. CCL obtained only after a clear and conspicuous disclosure that the purpose of the agreement is to authorize the seller to place prerecorded calls to such person;
 2. CCL obtained without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service;
 3. evidences the willingness of the recipient of the call to receive calls that deliver prerecorded messages by or on behalf of CCL; and
 4. includes such person's telephone number and signature (including an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law).
- E. Violating the Telemarketing Sales Rule, 16 C.F.R. Part 310, attached as Appendix A.
- F. The requirements of this Section do not apply to marketing or solicitation not governed by the TSR.

II. LEAD GENERATOR REVIEW, NOTICE AND TERMINATION

IT IS FURTHER ORDERED that:

- A. CCL or its Representatives shall, within ninety (90) days of the date of entry of this Order:
 - 1. Review and determine the methods used by CCL's existing Lead Generators to obtain the leads sold or offered for sale to CCL and, if those leads were obtained by means of an Outbound Telephone Call that does not comply with this Order, CCL shall immediately cease purchasing leads from the Lead Generator unless and until CCL confirms that the Lead Generator is in compliance pursuant to the requirements specified in Section II.B below;
 - 2. Provide, electronically or otherwise, CCL's existing Lead Generators that use Outbound Telephone Calls to generate leads with: (i) a copy of this Order; and (ii) a written notice stating that, if such Lead Generator sells any leads to CCL that do not comply with this Order, CCL will immediately cease purchasing leads from such Lead Generator; and
 - 3. Obtain from all of CCL's existing Lead Generators provided notice pursuant to Section II.A.2 above an electronic acknowledgment or other signed and dated statement acknowledging receipt of this Order and the written notice set forth in the preceding subparagraph.
- B. Prior to purchasing leads from any new Lead Generator, CCL shall:
 - 1. Review and determine the methods used by the Lead Generator to obtain leads offered for sale to CCL and, if those leads were obtained by means

of a telephone call that does not comply with this Order, CCL is prohibited from purchasing such leads;

2. For any Lead Generator previously terminated pursuant to Section II.A.1 above, conduct additional reviews, as specified in Section II.B.1 above, on a quarterly basis for one (1) year to ensure continued compliance with this Order;
3. Provide, electronically or otherwise, CCL's Lead Generators that use Outbound Telephone Calls to generate leads with: (i) a copy of this Order; and (ii) a written notice stating that, if such Lead Generator sells any leads to CCL that do not comply with this Order, CCL will immediately cease purchasing leads from such Lead Generator; and
4. Obtain from each new Lead Generator provided notice pursuant to Section II.B.3 above an electronic acknowledgment or other signed and dated statement acknowledging receipt of this Order and the written notice set forth in the preceding subparagraph.

III. MONETARY JUDGMENT FOR CIVIL PENALTY AND PARTIAL SUSPENSION

IT IS FURTHER ORDERED that:

- A. Judgment in the amount of Seven Million Seven Hundred Thirty Thousand Dollars (\$7,730,000) is entered in favor of Plaintiffs against CCL as a civil penalty.
- B. CCL is ordered to pay to Plaintiffs, by making payments totaling Five Hundred Thousand Dollars (\$500,000), which, as CCL stipulates upon the execution of this Order, its undersigned counsel now holds in escrow for no purpose other than

payment to Plaintiffs, apportioned as follows:

1. \$200,000 to the Treasurer of the United States;
2. \$24,094.11 to the State of Colorado;
3. \$63,751.61 to the State of Florida;
4. \$26,342.51 to the State of Indiana;
5. \$19,995.47 to the State of Kansas;
6. \$20,163.34 to the State of Mississippi;
7. \$25,433.28 to the State of Missouri;
8. \$31,999.45 to the State of North Carolina;
9. \$34,973.21 to the State of Ohio;
10. \$26,213.18 to the State of Tennessee; and
11. \$27,033.85 to the State of Washington (which the Attorney General shall use for the recovery of its costs and attorneys' fees in investigating and litigating this matter, future monitoring and enforcement of this Order, future enforcement of RCW 19.86, or for any lawful purpose in the discharge of the Attorney General's duties at the sole discretion of the Attorney General).

Such payment must be made within seven (7) days of entry of this Order by electronic fund transfer or certified check in accordance with instructions provided by representatives of the Plaintiffs. Upon such payment, the remainder of the judgment is suspended, subject to the Subsections below.

- C. The Commission's and Plaintiffs' agreement to the suspension of part of the judgment is expressly premised upon the truthfulness, accuracy, and completeness of CCL's sworn financial statements and related documents (collectively, "financial representations") submitted to the Commission, namely:

1. the Financial Statement of Corporate Defendant Caribbean Cruise Line,

- Inc. signed on March 5, 2014, including the attachments; and
2. the supplemental financial information provided via electronic mail by CCL's counsel on April 7, April 17, May 14 and June 12, 2014, including the attachments.
- D. The suspension of the judgment will be lifted if, upon motion by the Commission or Plaintiffs, the Court finds that CCL failed to disclose any material asset, materially misstated the value of any asset, or made any other material misstatement or omission in the financial representations identified above.
- E. If the suspension of the judgment is lifted, the judgment becomes immediately due in the amount specified in Subsection A above (which the parties stipulate only for purposes of this Section represents the amount of the civil penalty for the violations alleged in the First Amended Complaint), less any payment previously made pursuant to this Section, plus interest computed from the date of entry of this Order.

IV. ADDITIONAL MONETARY PROVISIONS

IT IS FURTHER ORDERED that:

- A. CCL relinquishes dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets.
- B. The facts alleged in the First Amended Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of the Commission in a proceeding to enforce its rights to any payment or monetary judgment pursuant to this Order.

- C. CCL acknowledges that its Taxpayer Identification Number (Social Security Number or Employer Identification Number), which CCL previously submitted to the Commission, may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. § 7701.

V. COOPERATION

IT IS FURTHER ORDERED that CCL must fully cooperate with representatives of Plaintiffs and the Commission in this case and in any investigation related to or associated with the transactions or the occurrences that are the subject of the First Amended Complaint. CCL must provide truthful and complete information, evidence, and testimony. CCL must cause its Representatives to appear for interviews, discovery, hearings, trials, and any other proceedings that a Plaintiff or Commission representative may reasonably request upon ten (10) days written notice, or other reasonable notice, at such places and times as a Plaintiff or Commission representative may designate, without the service of a subpoena.

VI. ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that CCL obtain acknowledgments of receipt of this Order:

- A. CCL, within seven (7) days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.
- B. For three (3) years after entry of this Order, CCL must deliver a copy of this Order to: (1) all principals, officers, directors, and ESOP managers; (2) all employees of CCL who participate in conduct related to the subject matter of the Order; (3) all principals, officers, directors, and managers of CCL's agents and representatives where such agents or representatives participate in conduct related to the subject matter of the Order; and (4) any business entity resulting from any

change in structure as set forth in the Section titled Compliance Reporting.

Delivery must occur within seven (7) days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

- C. From each individual or entity to which CCL delivered a copy of this Order pursuant to Section VI.B above, CCL must obtain, within thirty (30) days, a signed and dated acknowledgment of receipt of this Order.

VII. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that CCL make timely submissions to the Commission:

- A. One year after entry of this Order, CCL must submit a compliance report, sworn under penalty of perjury, in which CCL must:
1. identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission and Plaintiffs may use to communicate with CCL;
 2. identify all of CCL's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses;
 3. describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other defendant in this matter;
 4. describe in detail whether and how CCL is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.

- B. For ten (10) years after entry of this Order, CCL must submit a compliance notice, sworn under penalty of perjury, within fourteen (14) days of any change in the following:
1. any designated point of contact; or
 2. the structure of CCL or any entity that CCL has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.
- C. CCL must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against CCL within fourteen (14) days of its filing.
- D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____” and supplying the date, signatory’s full name, title (if applicable), and signature.
- E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

The subject line must begin: FTC v. Caribbean Cruise Line, Inc., et al.

VIII. RECORDKEEPING

IT IS FURTHER ORDERED that CCL must create certain records for ten (10) years after entry of the Order, and retain each such record for five (5) years. Specifically, CCL in connection with Telemarketing must create and retain the following records:

- A. accounting records showing the revenues from all goods or services sold;
- B. personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;
- C. records of all consumer complaints, whether received directly or indirectly, such as through a third party, and any response;
- D. all records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission; and
- E. all records relating to Lead Generators from whom CCL purchased leads, including contracts with such Lead Generators.

IX. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring CCL's compliance with this Order, including the financial representations upon which part of the judgment was suspended and any failure to transfer any assets as required by this Order:

- A. Within fourteen (14) days of receipt of a written request from a representative of the Commission or Plaintiffs, CCL must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents for inspection and copying. The

Commission and Plaintiffs are also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

- B. For matters concerning this Order, the Commission and Plaintiffs are authorized to communicate directly with CCL. CCL must permit representatives of the Commission and Plaintiffs to interview any employee or other person affiliated with CCL who has agreed to such an interview. The person interviewed may have counsel present.
- C. The Commission and Plaintiffs may use all other lawful means, including posing, through their representatives as consumers, suppliers, or other individuals or entities, to CCL or any individual or entity affiliated with CCL, without the necessity of identification or prior notice. Nothing in this Order limits 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.
- D. The Compliance Monitoring is limited to the period of time that CCL is subject to Compliance Reporting as set forth in Section VII.B. above.

X. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

SO ORDERED this ____ day of _____, 2015.

UNITED STATES DISTRICT JUDGE

SO STIPULATED AND AGREED:

FOR PLAINTIFFS:

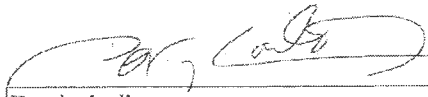
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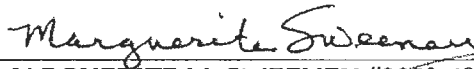
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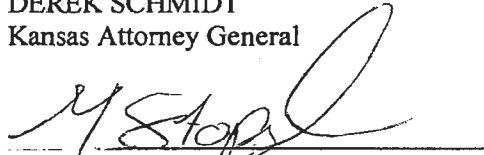
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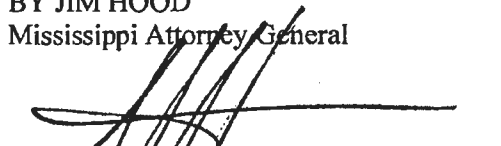
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Date: 8/22/14

Robert Mitchell
AS PRESIDENT OF CARIBBEAN CRUISE LINE, INC.