

ROBB EVANS & ASSOCIATES LLC

Receiver of

The Rodis Law Group, Inc.

America's Law Group

The Financial Group, Inc. dba Tax Relief ASAP

Federal Trade Commission v. Data Medical Capital, Inc, et al.

CASE No. SA-CV-99-1266 AHS (EEx)

Supplemental Order Modifying Stipulated Final Judgment and Order

Filed March 16, 2010

NOTE: CHANGES MADE BY
THE COURT

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Federal Trade Commission,

Plaintiff,

v.

Data Medical Capital, Inc., et al.,

Defendants.

SACV-99-1266 AHS (EE_x)

**Supplemental Order Modifying
Stipulated Final Judgment and
Order**

Plaintiff Federal Trade Commission (“FTC” or the “Commission”), pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, seeks to modify certain provisions of the Stipulated Final Judgment and Order for Permanent Injunction, Disgorgement and Monetary Relief Against Defendant Bryan D’Antonio a/k/a Brian D’Antonio and Data Medical Capital, Inc., also doing business as Datamed and Medco that this Court entered on July 13, 2001 (“Stipulated Final Order”).

Having considered the arguments and evidence presented, and having previously found D’Antonio in contempt of the Stipulated Final Order as set forth in the Court’s Findings of Fact and Conclusions of Law filed on January 15, 2010, the Court hereby finds that D’Antonio’s contumacious conduct constitutes a significant change in circumstances warranting modification. Mere compliance

1 with the Stipulated Final Order is detrimental to the public interest, and thus it
2 requires modification pursuant to Rule 60(b) to achieve its purpose of protecting
3 consumers.

4 **DEFINITIONS**

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

6 1. ***“Assisting others”*** includes, but is not limited to, providing any of
7 the following goods or services to another person: (A) performing customer
8 service functions, including, but not limited to, receiving or responding to
9 consumer complaints; (B) formulating or providing, or arranging for the
10 formulation or provision of, any telephone sales script or any other marketing
11 material, including but not limited to, the text of any Internet website, email, or
12 other electronic communication; (C) providing names of, or assisting in the
13 generation of, potential customers; (D) performing marketing services of any
14 kind; or (E) acting or serving as an owner, officer, director, manager, or principal
15 of any entity. **(Supercedes definition in Stipulated Final Order.)**

16 2. ***“Contempt Defendants”*** means Bryan D’Antonio, The Rodis Law
17 Group, America’s Law Group, and The Financial Group, Inc., doing business as
18 Tax Relief ASAP.

19 3. ***“Person”*** means a natural person, organization, or other legal entity,
20 including a corporation, partnership, proprietorship, association, cooperative, or
21 any other group or combination acting as an entity.

22 4. ***“Order”*** shall mean the provisions of the Stipulated Final Order and
23 Supplemental Final Order as read together. All of the definitions provided in the
24 Stipulated Final Order also apply for the purposes of this Supplemental Final
25 Order unless specifically modified herein.

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1 **SUPPLEMENTAL FINAL ORDER**

2 **I.**

3 **EFFECT ON PRIOR COURT ORDERS**

4 **IT IS HEREBY ORDERED** that the Stipulated Final Order shall remain
5 in full force and effect. Except as expressly provided herein, nothing contained
6 in this Supplemental Final Order shall alter, modify, or limit in any way the terms
7 and conditions of the Stipulated Final Order.

8 **II.**

9 **PROHIBITED REPRESENTATIONS RELATING TO ANY GOODS OR**
10 **SERVICES**

11 **(Supersedes Only that Portion of § II of the Stipulated Final Order from**
12 **Page 7, Line 17 through Page 8, Line 2. The Remainder of § II Shall Remain**
13 **in Full Force and Effect)**

14 **IT IS FURTHER ORDERED** that D'Antonio and his agents, servants,
15 employees, and attorneys, and those persons or entities in active concert or
16 participation with any of them who receive actual notice of this Order by personal
17 service, facsimile transmission, email, or otherwise, whether acting directly or
18 through any corporation, subsidiary, division, or other device, in connection with
19 the advertising, marketing, promotion, offering for sale or sale of any good,
20 service, plan, or program are hereby permanently restrained and enjoined from
21 misrepresenting or assisting others in misrepresenting, expressly or by
22 implication, any material fact, including but not limited to:

23 A. Any material aspect of the nature or terms of any refund,
24 cancellation, exchange, or repurchase policy, including, but not limited to, the
25 likelihood of a consumer obtaining a full or partial refund, or the circumstances
26 in which a full or partial refund will be granted to the consumer;

27 B. The total costs to purchase, receive, or use, and the quantity of, the
28 good or service;

1 C. Any material restriction, limitation, or condition to purchase,
2 receive, or use the good or service; and

3 D. Any material aspect of the performance, efficacy, nature, or
4 characteristics of the good or service.

5 **III.**

6 **COMPLIANCE MONITORING**

7 **(Supersedes §§ XI and XII of the Stipulated Final Order)**

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

- 10 A. Within ten (10) days of receipt of written notice from a representative of
11 the Commission, D'Antonio shall submit additional written reports, which
12 are true and accurate and sworn to under penalty of perjury; produce
13 documents for inspection and copying; appear for deposition; and provide
14 entry during normal business hours to any business location in
15 D'Antonio's possession or direct or indirect control to inspect the business
16 operation;
- 17 B. In addition, the Commission is authorized to use all other lawful means,
18 including but not limited to:
- 19 1. obtaining discovery from any person, without further leave of court,
20 using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36,
21 45 and 69;
 - 22 2. having its representatives pose as consumers and suppliers to
23 Contempt Defendants, their employees, or any other entity managed
24 or controlled in whole or in part by any Contempt Defendant,
25 without the necessity of identification or prior notice; and
- 26 C. D'Antonio shall permit representatives of the Commission to interview any
27 employer, consultant, independent contractor, representative, agent, or
28 employee who has agreed to such an interview, relating in any way to any

1 names within ten (10) days of the date of such change;

- 2 2. D'Antonio shall notify the Commission of any changes in structure
3 of any business entity that D'Antonio directly or indirectly controls,
4 or has an ownership interest in, that may affect compliance
5 obligations arising under this Order, including but not limited to:
6 incorporation or other organization; a dissolution, assignment, sale,
7 merger, or other action; the creation or dissolution of a subsidiary,
8 parent, or affiliate that engages in any acts or practices subject to this
9 Order; or a change in the business name or address, at least thirty
10 (30) days prior to such change, provided that, with respect to any
11 such change in the business entity about which D'Antonio learns
12 less than thirty (30) days prior to the date such action is to take
13 place, he shall notify the Commission as soon as is practicable after
14 obtaining such knowledge.

15 B. One hundred eighty (180) days after the date of entry of this Supplemental
16 Final Order and annually thereafter for a period of ten (10) years,
17 D'Antonio shall provide a written report to the FTC, which is true and
18 accurate and sworn to under penalty of perjury, setting forth in detail the
19 manner and form in which he has complied and is complying with this
20 Order. This report shall include, but not be limited to:

- 21 1. D'Antonio's then-current residence address, mailing addresses, and
22 telephone numbers;
- 23 2. D'Antonio's then-current employment status (including self-
24 employment), including the name, addresses, and telephone numbers
25 of each business that he is affiliated with, employed by, or performs
26 services for; a detailed description of the nature of the business; and
27 a detailed description of his duties and responsibilities in connection
28 with the business or employment;

1 3. A copy of each acknowledgment of receipt of this Order, obtained
2 pursuant to the Section titled "Distribution of Order;" and

3 4. Any other changes required to be reported under Subsection A of
4 this Section.

5 C. D'Antonio shall notify the Commission of the filing of a bankruptcy
6 petition within fifteen (15) days of filing.

7 D. For the purposes of this Order, D'Antonio shall, unless otherwise directed
8 in writing by the Commission's authorized representatives, send all reports
9 and notifications required by this Order to the Commission, to the
10 following address:

11 Associate Director for Enforcement

12 Federal Trade Commission

13 600 Pennsylvania Avenue, N.W., Room NJ-2122

14 Washington, D.C. 20580

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16 D'Antonio shall send such reports or notifications by overnight courier or
17 first-class mail, and D'Antonio shall contemporaneously send an electronic
18 version of such report or notification to the Commission at:

19 DEBrief@ftc.gov.

20 E. For purposes of the compliance reporting and monitoring required by this
21 Order, the Commission is authorized to communicate directly with
22 D'Antonio.

23 **V.**

24 **RECORD KEEPING PROVISIONS**

25 **(Supersedes § IX of the Stipulated Final Order)**

26 **IT IS FURTHER ORDERED** that, for a period of ten (10) years from the
27 date of entry of this Supplemental Final Order, D'Antonio and any business for
28 which he is the majority owner or directly or indirectly controls, are hereby

1 restrained and enjoined from failing to create and retain the following records:

- 2 A. Accounting records that reflect the cost of goods or services sold, revenues
3 generated, and the disbursement of such revenues;
- 4 B. Personnel records accurately reflecting: the name, address, and telephone
5 number of each person employed in any capacity by such business,
6 including as an independent contractor; that person's job title or position;
7 the date upon which the person commenced work; and the date and reason
8 for the person's termination, if applicable;
- 9 C. Customer files containing the names, addresses, phone numbers, dollar
10 amounts paid, quantity of items or services purchased, and description of
11 items or services purchased, to the extent such information is obtained in
12 the ordinary course of business;
- 13 D. Complaints and refund requests, whether received directly or indirectly,
14 such as through a third party, and any responses to those complaints or
15 requests;
- 16 E. Copies of all sales scripts, training materials, advertisements, or other
17 marketing materials; and
- 18 F. All records and documents necessary to demonstrate full compliance with
19 each provision of this Order, including but not limited to, copies of
20 acknowledgments of receipt of this Order required by the Sections titled
21 "Distribution of Order" and "Acknowledgment of Receipt of Order" and
22 all reports submitted to the FTC pursuant to the Sections titled
23 "Compliance Monitoring" and "Compliance Reporting."

24 **VI.**

25 **DISTRIBUTION OF ORDER**

26 **(Supersedes § VIII of the Stipulated Final Order)**

27 **IT IS FURTHER ORDERED** that, for a period of ten (10) years from the
28 date of entry of this Supplemental Final Order, D'Antonio shall deliver copies of

1 the Order as directed below:

- 2 A. For any business that D'Antonio controls, directly or indirectly, or in
3 which D'Antonio has a majority ownership interest, he must deliver a copy
4 of this Order to: (1) all principals, officers, directors, and managers of that
5 business; (2) all employees, agents, and representatives of that business
6 who engage in conduct related to the subject matter of the Order; and
7 (3) any business entity resulting from any change in structure set forth in
8 Subsection A.2 of the Section titled "Compliance Reporting." For current
9 personnel, delivery shall be within five (5) days of service of this
10 Supplemental Final Order upon D'Antonio. For new personnel, delivery
11 shall occur prior to them assuming their responsibilities. For any business
12 entity resulting from any change in structure set forth in Subsection A.2 of
13 the Section titled "Compliance Reporting," delivery shall be at least ten
14 (10) days prior to the change in structure.
- 15 B. For any business where D'Antonio is not a controlling person of the
16 business but otherwise engages in conduct related to the subject matter of
17 this Order, he must deliver a copy of this Order to all principals and
18 managers of such business before engaging in such conduct.
- 19 C. D'Antonio must secure a signed and dated statement acknowledging
20 receipt of the Order, within thirty (30) days of delivery, from all persons
21 receiving a copy of the Order pursuant to this Section.

22 **VII.**

23 **ACKNOWLEDGMENT OF RECEIPT**
24 **OF SUPPLEMENTAL FINAL ORDER**

25 **(Supersedes § XIII of the Stipulated Final Order)**

26 **IT IS FURTHER ORDERED** that, D'Antonio, within five (5) business
27 days of receipt of this Supplemental Final Order as entered by the Court, must
28 submit to the Commission a truthful sworn statement acknowledging receipt of

1 this Supplemental Final Order.

2 **VIII.**

3 **EXTENSION OF TIME PERIODS**

4 **IT IS FURTHER ORDERED** that the time periods in Sections IV
5 through VI, of this Supplemental Final Order shall be tolled during any period of
6 time during which D'Antonio is incarcerated.

7 **IX.**

8 **CONTINUED JURISDICTION**

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

11 **IT IS SO ORDERED.**

12 DATED: March 16, 2010.

13
14 ALICEMARIE H. STOTLER
15 Alicemarie H. Stotler
16 United States District Judge
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