

ROBB EVANS & ROBB EVANS & ASSOCIATES LLC

Receiver of

FTN Promotions, Inc. dba Suntasia, Inc.

Suntasia Marketing, Inc. and Capital Vacations, et al.

11450 Sheldon Street

Sun Valley, California 91352-1121

Telephone No.: (818) 768-8100

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Federal Trade Commission v. FTN Promotions dba Suntasia, Inc., et al.

CASE No. 8:07-CV-1279-T-3-TGW

**Stipulated Order for Permanent Injunction and
Final Judgment Against Defendants Travel Agents Direct, LLC and
John Louis Smith II**

Filed December 30, 2008

this Stipulated Order for Permanent Injunction and Final Judgment Against Defendants Travel Agents Direct, LLC, and John Louis Smith II (“Order”) without a trial or adjudication of any issue of law or fact herein.

NOW THEREFORE, the Plaintiff and Defendants TAD and Smith, having requested the Court to enter this Order, and the Court having considered the Order reached between the parties, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

FINDINGS

1. This is an action by the Commission instituted under Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, the Telemarketing Act, 15 U.S.C. §§ 6101-6108, and the TSR, 16 C.F.R. Part 310. Pursuant to these statutes and regulations, the Commission has the authority to seek the relief contained herein.

2. The Commission’s Complaint states a claim upon which relief may be granted under Sections 5(a), 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 53(b) and 57b, the Telemarketing Act, 15 U.S.C. §§ 6101-6108, and the TSR, 16 C.F.R. Part 310.

3. This Court has jurisdiction over the subject matter of this case and has jurisdiction over the parties hereto.

4. Venue in the United States District Court for the Middle District of Florida is proper pursuant to 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b) and (c).

5. The alleged activities of Defendants TAD and Smith are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

6. Defendants TAD and Smith, without admitting the allegations set forth in the Commission’s Complaint, agree to entry of this stipulated Order.

7. Defendants TAD and Smith waive: (a) all rights to seek judicial review or otherwise challenge or contest the validity of this Order; (b) any claim that they may have against the Commission, its employees, representatives, or agents; (c) all claims under the Equal Access to Justice Act, 28 U.S.C. § 2412, *as amended by* Pub. L. 104-121, 110 Stat. 847, 863-64 (1996); and (d) any rights to attorney's fees that may arise under said provision of law. The Commission and Defendants TAD and Smith shall each bear their own costs and attorney's fees incurred in this action.

8. This Order is in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law.

9. Entry of this Order is in the public interest.

ORDER

DEFINITIONS

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

1. **"Plaintiff"** means the Federal Trade Commission ("Commission" or "FTC").
2. **"Defendants"** means FTN Promotions, Inc., dba Suntasia Inc., Suntasia Marketing, Inc., and Capital Vacations; Guardian Marketing Services, Corp., dba Guardian Escrow Service; Strategia Marketing, LLC; Co-Compliance, LLC; JPW Consultants, Inc., dba Freedom Gold, Variety!, Credit Life, and Freedom Ring ULD; Travel Agents Direct, LLC, dba Travel Agents Go Direct, Floridaway, Travel Life Go Direct, Florida Direct, and Lucid Long Distance; Agent's Travel Network Inc., dba Florida Passport; Bay Pines Travel, Inc.; Suntasia Properties, Inc.; Bryon W. Wolf; Roy A. Eliasson; Alfred H. Wolf; Donald L. Booth; Jeffrey P. Wolf; and John Louis Smith II, and each of them, by whatever names each may be known, and

any successors, assigns, subsidiaries, and affiliates, and any fictitious business entities or business names created or used by these entities, or any of them.

3. **“Stipulating Defendants”** means Defendants Travel Agents Direct, LLC, and John Louis Smith II, and each of them, by whatever names each may be known, and any successors, assigns, subsidiaries, and affiliates.

4. **“Asset”** or **“Assets”** means any legal or equitable interest in, right to, or claim to, any real or personal property, including, but not limited to, “goods,” “instruments,” “equipment,” “fixtures,” “general intangibles,” “inventory,” “checks,” or “notes,” (as these terms are defined in the Uniform Commercial Code), lines of credit, chattels, leaseholds, contracts, mail or other deliveries, shares of stock, lists of consumer names, accounts, credits, premises, receivables, funds, and all cash, wherever located.

5. **“Billing Information”** means any data that enables any person to access a consumer’s account, such as a credit card, checking, savings, share or similar account, utility bill, mortgage loan account, or debit card.

6. **“Consumer”** means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

7. **“Document”** or **“Documents”** is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a) and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, into reasonably usable form through detection devices. A draft or nonidentical copy is a separate Document within the meaning of the term.

8. **“Material”** means likely to affect a person’s choice of, or conduct regarding, goods or services.

9. **“Negative Option Feature”** means, in an offer or agreement to sell or provide any product or service, a provision under which the consumer’s silence or failure to take an affirmative action to reject products or services or to cancel the agreement is interpreted by the seller or provider as acceptance of the offer. Agreements with Negative Option Features include, but are not limited to: (I) free-to-pay conversion agreements in which the consumer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if he or she does not take affirmative action to cancel before the end of that period; (ii) continuity plans in which, subsequent to the consumer’s agreement to the plan, the seller or provider automatically ships products to a consumer unless the consumer notifies the seller or provider within a certain time not to ship the products; and (iii) automatic renewal plans in which the seller or provider automatically renews the agreement and charges the consumer unless the consumer cancels before the renewal.

10. **“Person”** or **“Persons”** means a natural person, an organization or other legal entity, including a corporation, partnership, sole proprietorship, limited liability company, association, cooperative, or any other group or combination acting as an entity.

11. **“Assisting Others”** means knowingly providing any of the following services to any person or entity: (a) performing customer service functions for any person or entity, including, but not limited to, receiving or responding to consumer complaints; (b) formulating or providing, or arranging for the formulation or provision of, any telephone sales script or any other marketing material for any person or entity; (c) performing marketing services of any kind

for any person or entity; or (d) providing credit card merchant processing accounts, or otherwise providing access to a billing and collection system (such as a credit card, checking, savings, share or similar account, utility bill, telephone bill, mortgage loan account or debit card), or causing any charges to be made to such an account or utilizing such a system.

12. **“Telemarketing”** means any plan, program, or campaign (whether or not covered by the Telemarketing Sales Rule, 16 C.F.R. Part 310) that is conducted to induce the purchase of goods or services or the payment of money by means of the use of one or more telephones.

13. **“Clear and Conspicuous”** or **“Clearly and Conspicuously”** means:

a. in print communications, the message shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears;

b. in communications disseminated orally, the message shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it;

c. in communications made through an electronic medium (such as television, video, radio, and interactive media such as the Internet, online services and software), the message shall be presented simultaneously in both the audio and visual portions of the communication. In any communication presented solely through visual or audio means, the message may be made through the same means in which the communication is presented. In any communication disseminated by means of an interactive electronic medium such as software, Internet, or online services, a disclosure must be unavoidable and presented prior to the consumer incurring any financial obligation. Any audio message shall be delivered in a volume and cadence sufficient for any ordinary consumer to hear and comprehend it. Any visual

message shall be of a size and shade, with a degree of contrast to the background against which it appears and shall appear on the screen for a duration and in a location sufficiently noticeable for an ordinary consumer to read and comprehend it; and

d. regardless of the medium used to disseminate it, the message shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the message shall be used in any communication.

I.

PROHIBITED BUSINESS ACTIVITIES

IT IS THEREFORE ORDERED that in connection with the advertising, promoting, offering for sale, or sale of any product or service, Stipulating Defendants, and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, are hereby permanently restrained and enjoined from:

A. Misrepresenting, either orally or in writing, expressly or by implication, any Material fact, including but not limited to:

1. An affiliation with the Consumer's bank or other third party with whom the Consumer has conducted business;
2. The purpose for which a Consumer's Billing Information will be used;
3. Whether the Consumer's Billing Information is already possessed;
4. That a product or service is offered on a "free," " free trial," or "no obligation" basis, or words of similar import, denoting or implying the absence of any

obligation on the part of the recipient of the offer to affirmatively act in order to avoid charges if, in fact, a charge will be assessed pursuant to the offer unless the Consumer takes affirmative action to cancel;

5. The length of any trial or review period that Consumers receive before being charged or billed;

6. That the trial or review period will not begin to run until Consumers receive informational material in the mail;

7. The amount that a Consumer will be charged or billed;

8. That a Consumer will not be charged or billed;

9. Through, among other things, mailings, e-mail, billings, credit card charges, or checking account debits, that a Consumer purchased or agreed to purchase a product or service, or that a transaction has been authorized by a Consumer;

10. That a Consumer will not be charged or billed without the Consumer's authorization; and

11. The terms and conditions of any policies and practices regarding cancellations and refunds, including but not limited to, that (i) Consumers will be able to easily cancel prior to the assessment of any charges; (ii) Consumers' requests to cancel will be honored; (iii) Consumers are entitled to keep and to use any free gifts offered as an inducement for accepting a trial offer, even if they subsequently cancel; and (iv) Consumers will be able to obtain prompt refunds of any fees paid; and

B. Assisting Others who violate any provision of Paragraph A of this Section.

II.

REQUIRED DISCLOSURES

IT IS FURTHER ORDERED that in connection with the advertising, promoting, offering for sale, or sale of any product or service, Stipulating Defendants, and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, are hereby permanently restrained and enjoined from failing to Clearly and Conspicuously disclose, before Consumers are asked to pay money, submit consideration, or reveal Billing Information: all fees and costs; all Material conditions, limitations, or restrictions applicable to the purchase or receipt of the product or service that is the subject of the offer (including any promotion associated with “free” products or services, or products or services available on a trial basis); and all Material terms and conditions of any offer with a Negative Option Feature, including but not limited to:

A. The dollar amount of the first payment and when it will be charged, withdrawn, or become due; the dates or frequency (e.g., monthly, quarterly) of all subsequent charges or payment(s); and the dollar amount or range of costs of all subsequent charges or payments;

B. If a charge will be submitted for payment at the end of a trial or review period unless the Consumer cancels: this fact; when the trial period begins and ends; the length of the trial period; the specific steps and means by which a cancellation request must be submitted, including a telephone number or address to which a cancellation request may be directed; and the date or time by which a cancellation request must be received to avoid a charge; and

C. All Material conditions, limitations and restrictions on the ability of the Consumer to use any product or service that is offered “free,” “risk-free,” with “no obligation,” or as discounted or reduced in price, or words of similar import denoting or implying the absence of any obligation on the part of the recipient of such offer to pay or pay a greater amount for such product or service or to take affirmative action to avoid incurring payment or increased payment obligations, whether such product or service is the subject of the offer to the Consumer or such product or service is offered to a Consumer who accepts an offer for other products or services.

III.

EXPRESS AUTHORIZATION

IT IS FURTHER ORDERED that in connection with the advertising, promoting, offering for sale, or sale of any product or service, Stipulating Defendants, and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, are hereby permanently restrained and enjoined from directly or indirectly causing Billing Information to be submitted for payment, in connection with the marketing of any product or service, without the express informed consent of the Consumer, which shall include express informed consent to be charged for the product or service using a specified billing account, and the Clear and Conspicuous disclosure of the information identified in Section II, above, in close proximity prior to the Consumer’s express consent to purchase such products or services. In connection with the marketing of any product or service pursuant to an offer or agreement with a

Negative Option Feature, the following requirements must be met to evidence express informed consent:

A. Obtaining the Consumer's express written authorization to purchase the product or service that is the subject of the transaction and the Consumer's authorization to assess a charge against a specified account for payment for the product or service. Such authorization must include the Consumer's signature (the term "signature" includes a verifiable electronic or digital form of signature, to the extent such form of signature is recognized as a valid signature under applicable federal law or state contract law); or

B. Obtaining the Consumer's express oral authorization to purchase the product or service that is the subject of the transaction and the Consumer's authorization to assess a charge against a specified account for payment for that product or service that is audio-recorded, as follows:

1. The recording must evidence that the Consumer, during that transaction, at a minimum, has provided the last four (4) digits of the account number to be charged;
2. The recording must evidence that the disclosure requirements of Section II, above, have been complied with;
3. The recording must include the entirety of the transaction;
4. The recording can be identified and located by either the Consumer's name or telephone number; and
5. A copy of the recording is provided upon request to the Consumer, the Consumer's bank, credit or debit card company, or other billing entity,

state attorney general or consumer protection agency, and the Commission.

IV.

TELEMARKETING SALES RULE

IT IS FURTHER ORDERED that Stipulating Defendants, and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, are hereby permanently restrained and enjoined from violating, or Assisting Others in violating, any provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310, as currently promulgated or as it may hereafter be amended, including, but not limited to:

A. Section 310.3(a)(2)(vii) of the TSR, 16 C.F.R. § 310.3(a)(2)(vii), by misrepresenting, directly or by implication, an affiliation with, or endorsement or sponsorship by, any person or government entity;

B. Section 310.3(a)(1)(vii) of the TSR, 16 C.F.R. § 310.3(a)(1)(vii), by failing to disclose truthfully, in a Clear and Conspicuous manner, before a Consumer pays for the goods or services offered, all Material terms and conditions of the Negative Option Feature, including, but not limited to, the following: (1) the fact that the Consumer's account will be charged unless the Consumer takes affirmative action to avoid the charge; (2) the date(s) the charge(s) will be submitted for payment; and (3) the specific steps the Consumer must take to avoid the charge(s);

C. Section 310.3(a)(2)(iv) of the TSR, 16 C.F.R. § 310.3(a)(2)(iv), by misrepresenting, directly or by implication, any Material aspect of the nature or terms of any refund, cancellation, exchange, or repurchase policies;

D. Section 310.4(d) of the TSR, 16 C.F.R. § 310.4(d), by failing to disclose truthfully, promptly, and in a Clear and Conspicuous manner: (1) the identity of the seller; (2) that the purpose of the call is to sell goods or services; and (3) the nature of the goods or services;

E. Section 310.3(a)(3) of the TSR, 16 C.F.R. § 310.3(a)(3), by causing Billing Information to be submitted for payment, or collecting or attempting to collect payment for goods or services, directly or indirectly, without the Consumer's express verifiable authorization;

F. Section 310.4(a)(6) of the TSR, 16 C.F.R. § 310.4(a)(6), by causing Billing Information to be submitted for payment, directly or indirectly, without the Consumer's express informed consent; and

G. Section 310.4(a)(5) of the TSR, 16 C.F.R. § 310.4(a)(5), by receiving, for consideration, unencrypted Consumer account numbers for use in Telemarketing.

V.

CONSUMER REDRESS

IT IS FURTHER ORDERED that:

A. Stipulating Defendants TAD and Smith, jointly and severally, shall pay to the Commission the sum of Twenty-Five Thousand Dollars (\$25,000.00) in equitable monetary relief, including, but not limited to, consumer redress and/or disgorgement, within seven days of the date of entry of this Order. Payment shall be made to the Commission by wire transfer in

accordance with directions provided by the Commission, or by certified check or other guaranteed funds payable to and delivered to the Commission.

B. All funds paid pursuant to this Order shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including, but not limited to, consumer redress, and any attendant expenses for the administration of such equitable relief fund. Stipulating Defendants shall cooperate fully to assist the Commission in identifying Consumers who may be entitled to redress pursuant to this Order. If the Commission determines, in its sole discretion, that redress to Consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including Consumer information remedies) as it determines to be reasonably related to Defendants' practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the United States Treasury as disgorgement. Stipulating Defendants shall have no right to challenge the Commission's choice of remedies under this Section, and shall have no right to contest the manner of distribution chosen by the Commission. This judgment for equitable monetary relief is solely remedial in nature and is not a fine, penalty, punitive assessment, or forfeiture;

C. In the event of any default on Stipulating Defendants' obligation to make payment under this Section, interest, computed pursuant to 28 U.S.C. § 1961, as amended, shall accrue from the date of default to the date of payment, and shall immediately become due and payable;

D. In accordance with 31 U.S.C. § 7701, Stipulating Defendants are hereby required, unless they already have done so, to furnish to the Commission 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 their relationship with the government. Stipulating Defendant Smith is further required, unless he already has done so, to provide the Commission with clear, legible and full-size photocopies of all valid driver's licenses that he possesses, which will be used for reporting and compliance purposes;

E. Stipulating Defendants agree that the facts as alleged in the Complaint filed in this action shall be taken as true, without further proof, in the event of any subsequent proceedings or litigation to enforce this Order or to collect amounts due pursuant to this Section, including, but not limited to, a nondischargeability complaint in any bankruptcy case; and

F. Proceedings instituted under this Section are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings the Commission may initiate to enforce this Order.

VI.

RIGHT TO REOPEN

IT IS FURTHER ORDERED that:

A. By agreeing to this Order, Stipulating Defendants reaffirm and attest to the truthfulness, accuracy, and completeness of the financial statements signed by Stipulating Defendants and provided to the Commission, including all attachments and subsequent amendments and corrections thereto. Plaintiff's agreement to this Order is expressly premised upon the truthfulness, accuracy, and completeness of Stipulating Defendants' financial condition, as represented in the financial statements and attachments submitted to the Commission, namely the financial statements of Travel Agents Direct, LLC, and John Louis

Smith II, dated August 7, 2007, which contain material information upon which Plaintiff relied in negotiating and agreeing to the terms of this Order;

B. If, upon motion of the FTC, the Court finds that any Stipulating Defendant failed to disclose any material Asset, materially misrepresented the value of any Asset, or made any other material misrepresentation in or omission from Stipulating Defendant's sworn financial statement or supporting documents, the Court shall enter judgement against all Stipulating Defendants, in favor of the Commission, in the amount of Forty Million Dollars (\$40,000,000.00) (an estimate of the total amount of consumer injury caused by Defendants during the time that Stipulating Defendants were involved), and the entire amount of the judgment shall become immediately due and payable, less any amount already paid. *Provided, however,* that, in all other respects, this Order shall remain in full force and effect, unless otherwise ordered by the Court; and

C. Any proceedings instituted under this Section shall be in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including, but not limited to, contempt proceedings, or any other proceedings that the Commission or the United States might initiate to enforce this Order. For purposes of this Section, Stipulating Defendants waive any right to contest any of the allegations in the Commission's Complaint.

VII.

PROHIBITION ON COLLECTION AND DISCLOSURE OF CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Stipulating Defendants, and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, whether acting

directly or through any trust, corporation, subsidiary, division, or other device, or any of them, are hereby permanently restrained and enjoined from:

A. Causing any withdrawal, assessment of a fee, or payment to be made against any Consumer account, or otherwise causing collection of, or attempts to collect payment, directly or indirectly, from a Consumer, for any order for any product or service offered or provided to Consumers by any Defendant, or by any entity owned or controlled directly or indirectly by any Defendant, where the purported authorization for such order occurred prior to the effective date of this Order;

B. Selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, Social Security number, account number, e-mail address, or other financial or identifying information of any Person about whom any Defendant obtained such information in connection with the activities alleged in the Complaint; and

C. Benefitting from or using the name, address, telephone number, Social Security number, account number, e-mail address, or other financial or identifying information of any Person about whom any Defendant obtained such information in connection with the activities alleged in the Complaint.

Provided, however, that Stipulating Defendants may disclose identifying information to a law enforcement agency or as required by any law, regulation, or court order.

VIII.

COOPERATION WITH FTC COUNSEL

IT IS FURTHER ORDERED that Stipulating Defendants shall, in connection with this action or any concurrent or subsequent investigations related to, or associated with, the

transactions or the occurrences that are the subject of the FTC's Complaint, cooperate in good faith with the FTC and appear or cause its officers, employees, representatives, or agents to appear at such places and times as the FTC shall reasonably request, after written notice, for interviews, conferences, pretrial discovery, review of documents, and for such other matters as may be reasonably requested by the FTC. If requested in writing by the FTC, Stipulating Defendants shall appear or cause its officers, employees, representatives, or agents to appear and provide truthful testimony in any trial, deposition, or other proceeding related to or associated with the transactions or the occurrences that are the subject of the Complaint, without the service of a subpoena.

IX.

MONITORING COMPLIANCE OF SALES PERSONNEL

IT IS FURTHER ORDERED that, in connection with any business where (1) Stipulating Defendant Smith is the majority owner of the business or directly or indirectly manages or controls the business, and where (2) the business is engaged in, or is Assisting Others engaged in the promotion, offering for sale, or sale of any product or service to Consumers, Stipulating Defendants, and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, are hereby permanently restrained and enjoined from:

A. Failing to take reasonable steps sufficient to monitor and ensure that all employees and independent contractors engaged in sales or other customer service functions

comply with Sections I-IV of this Order. These steps shall include adequate monitoring of sales presentations or other calls with Consumers, and shall also include, at a minimum, the following: (1) listening to the oral representations made by Persons engaged in sales or other customer service functions; (2) establishing a procedure for receiving and responding to Consumer complaints; and (3) ascertaining the number and nature of Consumer complaints regarding transactions in which each employee or independent contractor is involved;

B. Failing promptly to investigate fully any Consumer complaint received by any business to which this Section applies; and

C. Failing to take adequate corrective action with respect to any employee or independent contractor whom Stipulating Defendants determine is not complying with this Order. This corrective action may include training, disciplining, and/or terminating such employee or independent contractor.

X.

COMPLIANCE MONITORING

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

A. Within ten (10) days of receipt of written notice from a representative of the Commission, Stipulating Defendants each shall submit additional written reports, sworn to or affirmed under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in such Stipulating Defendant's possession or direct or indirect control to inspect the business operation;

B. In addition, the Commission is authorized to monitor compliance with this Order by all other lawful means, including, but not limited to, the following:

1. obtaining discovery from any Person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;

2. posing as Consumers and suppliers to Stipulating Defendants, their employees, or any other entity managed or controlled in whole or in part by them, without the necessity of identification or prior notice; and

C. Stipulating Defendants shall permit representatives of the Commission 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.

Provided, however, that nothing in this Order shall 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)).

XI.

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 five (5) years from the date of entry of this Order,

1. Stipulating Defendant Smith shall notify the Commission of the following:

a. Any changes in residence, mailing addresses, and telephone numbers of Stipulating Defendant Smith, within ten (10) days of the date of such change;

b. Any changes in employment status (including self-employment) of Stipulating Defendant Smith, and any change in the ownership interest of Stipulating Defendant Smith 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 that Stipulating Defendant Smith is affiliated with, employed by, creates or forms, or performs services for; a statement of the nature of the business; and a statement of Stipulating Defendant Smith's duties and responsibilities in connection with the business or employment; and

c. Any changes in Stipulating Defendant Smith's name or use of any aliases or fictitious names; and

2. Stipulating Defendants shall notify the Commission of any changes in corporate structure of Stipulating Defendant TAD or any business entity that Stipulating Defendant Smith directly or indirectly control(s), or has an ownership interest in, that may affect compliance obligations arising under this Order, including, but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of a bankruptcy petition;

or a change in the corporate or business entity's name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any proposed change in the corporation or business entity about which Stipulating Defendants learn less than thirty (30) days prior to the date such action is to take place, Stipulating Defendants shall notify the Commission as soon as is practicable after obtaining such knowledge.

B. One hundred eighty (180) days after the date of entry of this Order, Stipulating Defendants each shall provide a written report to the Commission, sworn to under penalty of perjury, setting forth in detail 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. For Stipulating Defendant Smith:

a. The then-current residence address, mailing addresses, and telephone numbers of Stipulating Defendant Smith;

b. The then-current employment and business addresses and telephone numbers of Stipulating Defendant Smith, a description of the business activities of each such employer or business, and the title and responsibilities of Stipulating Defendant Smith for each such employer or business; and

c. Any other changes required to be reported under Paragraph A of this Section.

2. For all Stipulating Defendants:

a. A copy of each acknowledgment of receipt of this Order, obtained pursuant to Section XIII.D; and

b. Any other changes required to be reported under Paragraph A of this Section.

C. For the purposes of this Order, Stipulating Defendants shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Associate Director for Enforcement
Federal Trade Commission
601 New Jersey Avenue N.W.
Washington, D.C. 20580
Re: *FTC v. FTN Promotions, Inc., et al.*
Civil Action No. 8:07-cv-1279-T-30TGW (M.D. Fla. 2007)

D. For purposes of the compliance reporting and monitoring required by this Order, the Commission is authorized to communicate directly with Stipulating Defendants.

XII.

RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this Order, for any business where (1) Stipulating Defendant Smith is the majority owner of the business or directly or indirectly manages or controls the business, and where (2) the business is engaged in, or is Assisting Others engaged in the promotion, offering for sale, or sale of any product or service to Consumers, Stipulating Defendants, and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, are hereby permanently 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 services purchased, to the extent such information is obtained in the ordinary course of business;

D. Complaints and refund requests (whether received directly, indirectly or through any 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 Section XIII.D, and all reports submitted to the FTC pursuant to Section XI.

XIII.

DISTRIBUTION OF ORDER

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, Stipulating Defendants shall deliver copies of the Order as directed below:

A. **Corporate Defendant:** Stipulating Defendant TAD must deliver a copy of this Order to all of its principals, officers, directors, and managers. Such Defendant also must deliver copies of this Order to all of its employees, agents, and representatives who engage in conduct related to the subject matter of the Order. For current personnel, delivery shall be within five (5) days of service of this Order upon Stipulating Defendants. For new personnel, delivery shall occur prior to them assuming their responsibilities.

B. **Stipulating Defendant Smith as Control Person:** For any business that Stipulating Defendant Smith controls, directly or indirectly, or in which such Defendant has a majority ownership interest, Stipulating Defendant Smith must deliver a copy of this Order to all principals, officers, directors, and managers of that business. Stipulating Defendant Smith must also deliver copies of this Order to all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the Order. For current personnel, delivery shall be within five (5) days of service of this Order upon Stipulating Defendant Smith. For new personnel, delivery shall occur prior to them assuming their responsibilities.

C. **Stipulating Defendant Smith as Employee or Non-Control Person:** For any business where Stipulating Defendant Smith is not a controlling person of a business but otherwise engages in conduct related to the subject matter of this Order, Stipulating Defendant Smith must deliver a copy of this Order to all principals and managers of such business before engaging in such conduct; and

D. Stipulating 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.

XIV.

ACKNOWLEDGMENT OF RECEIPT OF ORDER

IT IS FURTHER ORDERED that Stipulating Defendants, within five (5) business days of receipt of this Order as entered by the Court, must submit to the Commission a truthful sworn statement, in the form shown on **Attachment A** to this Order, acknowledging receipt of this Order.

XV.

DISSOLUTION OF ASSET FREEZE AND RECEIVERSHIP

IT IS FURTHER ORDERED that the freeze on the Assets of Stipulating Defendants shall remain in effect until the Commission has received all payments required by Section V.A above, *provided, however*, that Stipulating Defendants, with the express written consent of counsel for the Commission, may transfer funds to the extent necessary to make all payments required by Section V.A. Once Stipulating Defendants have fully complied with the requirements of Section V.A, the freeze against the Assets of Stipulating Defendants shall be lifted permanently. A financial institution shall be entitled to rely upon a letter from Plaintiff stating that the freeze on the Assets of Stipulating Defendants has been lifted.

At the same time that the Asset freeze is lifted permanently, as provided above, the receivership over Stipulating Defendant TAD shall be terminated.

With respect to all Defendants other than Stipulating Defendants TAD and Smith, the existing Asset freeze and receivership shall remain in full force and effect.

XVI.


SEVERABILITY

IT IS FURTHER ORDERED that the provisions of this Order are separate and severable from one another. If any provision is stayed or determined to be invalid, the remaining provisions shall remain in full force and effect.

IT IS THEREFORE ORDERED AND ADJUDGED that:

1. The Joint Motion of Plaintiff Federal Trade Commission and Defendants Travel Agents Direct, LLC, and John Louis Smith II for Entry of Stipulated Order for Permanent Injunction and Final Judgment Against Defendants Travel Agents Direct, LLC, and John Louis Smith (Dkt. #279) is **GRANTED**.
2. The Clerk is directed to enter **JUDGMENT** in favor of Plaintiff and against Defendants Travel Agents Direct, LLC, and John Louis Smith II, jointly and severally, in the amount of **\$25,000.00**.

DONE and ORDERED in Tampa, Florida on December 30, 2008.



JAMES S. MOODY, JR.
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel/Parties of Record

S:\Odds\2007\07-cv-1279:TAD Smith Final Order 279.frm

ATTACHMENT A

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

_____)
FEDERAL TRADE COMMISSION,)
)
Plaintiff,)
)
v.)
)
FTN PROMOTIONS, INC., a Florida)
corporation, dba Suntasia Inc., Suntasia)
Marketing, Inc., and Capital Vacations, <i>et al.</i> ,)
)
Defendants.)
_____)

Civ. No. 8:07-cv-1279-T-30TGW

**AFFIDAVIT ATTESTING TO
RECEIPT OF STIPULATED
ORDER FOR PERMANENT
INJUNCTION AND FINAL
JUDGMENT**

_____, being duly sworn, hereby states and affirms as follows:

1. My name is _____. My current residence address is _____ I am a citizen of the United States and am over the age of eighteen. I have personal knowledge of the facts set forth in this Affidavit.
2. I am a Defendant in *FTC v. FTN Promotions, Inc., et al.*, (United States District Court for the Middle District of Florida, Case Number 8:07-cv-1279-T-30TGW).
3. On _____ [date], I received a copy of the Stipulated Order for Permanent Injunction and Final Judgment Against Defendants Travel

Agents Direct, LLC, and John Louis Smith II, signed by the Honorable James S. Moody, Jr., and entered by the Court on _____ [date of entry of Order]. A true and correct copy of the Order I received is appended to this Affidavit.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on _____ [date], at _____ [city and state].

[Signature of Defendant]

[Print Full Name]

State of _____, City of _____

Subscribed and sworn to before me

this _____ day of _____, 200 ____.

Notary Public
My Commission Expires:
