

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

**Case No. 00-7599-CIV-HURLEY/LYNCH**

**FEDERAL TRADE COMMISSION,**

**Plaintiff,**

**vs.**

**AUTOMATED TRANSACTION CORP., et al.,**

**Defendants.**

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**STIPULATED JUDGMENT AND ORDER FOR  
PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), having filed its Complaint for Injunctive and Other Equitable Relief in this matter pursuant to Sections 5(a) and 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a) and 53(b), and the parties, having agreed to resolve their dispute without adjudication or admission of any issue of fact or law,

THEREFORE, pursuant to stipulation of the parties, it is hereby **ORDERED, ADJUDGED and DECREED** as follows:

**FINDINGS**

1. This Court has jurisdiction over the subject matter of this case and the parties hereto.
2. Venue is proper as to all parties in the Southern District of Florida under 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b) and (c).

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

4. The Complaint alleges a claim upon which relief may be granted against Defendants under Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b).

5. The Commission and Defendants stipulate and agree to this Order to settle and resolve all matters in dispute arising from the Complaint to the date of entry of this Order, and agree that this Order constitutes a settlement agreement pursuant to Federal Rule of Evidence 408. Defendants do not admit any of the allegations set forth in the Complaint, other than jurisdictional facts.

6. Defendants acknowledge that they have read the provisions of this Order and have agreed to abide by them.

7. Defendants waive all rights to seek judicial review or otherwise challenge or contest the validity of this Order.

8. Defendants waive and release any claim they may have against the Commission and its employees, representatives or agents.

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

### **DEFINITIONS**

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

1. The “900-Number Rule” or “Rule” means the FTC’s Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992, 16 C.F.R. Part 308, as currently promulgated or as it may hereafter be amended.

2. “ANI,” or “automatic number identification,” refers to a system that electronically

captures the telephone number from which a call has been placed. ANI systems are similar to services popularly known as “caller ID” services.

3. “Audiotext service(s)” means live or recorded audio information, delivered via telephone transmission, for which the caller pays a per-call or per-time-interval charge that is greater than, or in addition to, the charge for transmission of the call, and which is accessed through use of telephone numbers with a prefix of 800 or other number widely understood to be toll free, international dialing patterns, or a telephone number with a prefix of 900 or other prefix designated by the Federal Communications Commission in accordance with 47 U.S.C. § 228(b)(5).

4. “Chargeback” means an occurrence in which a bank that has issued a credit or debit card to a consumer charges back to a merchant’s bank a charge by the merchant that appeared on the consumer’s credit card or debit account statement.

5. A “corresponding provision” of the 900-Number Rule, 16 C.F.R. Part 308, or of any specific provision of the 900-Number Rule, refers to any duly enacted regulation that amends, augments or replaces the provision to which “corresponding provision” refers.

6. “Defendants” means Automated Transaction Corp. (“ATC”), a Delaware corporation, WWW Provider Co., a company, Edward S. Lipton (“Lipton”), individually and as an officer of ATC and owner of WWW Provider Co., and any entity through which they do business, and each of them individually or in any combination, their successors, assigns, officers, agents, servants and employees.

7. “Document” is equal in scope and synonymous in meaning with 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 non-identical copy is a separate document within the meaning of the term.

8. “Internet” means a worldwide system of linked computer networks that use a common protocol to deliver and receive information. The “Internet” includes but is not limited to the following forms of electronic communication: electronic mail (“email”), file transfers, the World Wide Web, newsgroups, Internet Relay Chat, audio and video.

9. “Internet service(s)” refers to goods or services provided for a charge or fee over the Internet.

10. “Edward S. Lipton” and “Lipton” refer to Edward S. Lipton, named as a defendant in FTC v. Automated Transaction Corp., et al., Case No. 00-7599-CIV- Hurley/Lynch (S.D. Fla.).

11. “Permanent Receiver” and “Receiver” refer to Jane W. Moscovitz, Esq., and her employees, representatives and agents.

12. “Presubscription or comparable arrangement” has the meaning provided by § 308.2(e) of the 900-Number Rule, 16 C.F.R. § 308.2(e), as currently promulgated, or any corresponding provision of the Rule as it may hereafter be amended.

13. “Processor” means a person, organization, or entity that provides services to facilitate some aspect of electronic commerce payments, including but not limited to billing, reporting, settlement, and operational services involving a merchant, the merchant’s bank, and the cardholder’s bank.

14. “Donald Tetro” and “Tetro” refer to Donald Tetro, named as a defendant in FTC v. Automated Transaction Corp., et al., Case No. 00-7599-CIV- Hurley/Lynch (S.D. Fla.), and any business in which Tetro is the majority owner or that he directly or indirectly manages or controls.

15. “Tetro Order” means the Stipulated Judgment and Order for Permanent Injunction and Other Equitable Relief signed by Tetro, individually and on behalf of World Telnet, Inc., and approved by the Court, in settlement of the FTC’s claims against Tetro and World Telnet, Inc., in FTC v. Automated Transaction Corp., et al., Case No. 00-7599-CIV- Hurley/Lynch (S.D. Fla.).

16. “Webmaster” means a person who designs, develops and operates a website on the Internet that directs potential customers to Defendants’ websites.

17. “World Wide Web” means a system used on the Internet for cross-referencing and retrieving information. A “website” is a set of electronic documents, usually a home page and subordinate pages, readily viewable on a computer by anyone with access to the Internet, standard software, and knowledge of the website’s location or address.

## I.

### **PROHIBITED REPRESENTATIONS**

**IT IS THEREFORE ORDERED** that, in connection with advertising, promoting, offering, selling or billing for goods or services sold by telephone, or on or through the Internet, the World Wide Web or any website, or responding to consumer inquiries or complaints, Defendants are hereby permanently restrained and enjoined from making, directly or through an intermediary, expressly or by implication, orally or in writing, any misrepresentation of material fact, including but not limited to:

- A. Any misrepresentation that a consumer purchased or agreed to purchase goods or services;
- B. Any misrepresentation that a consumer purchased or agreed to purchase a good or service because Defendants are in possession of personal information about the consumer, including without limitation the consumer's Social Security number;
- C. Any misrepresentation that a consumer owes money to Defendants for goods or services; or
- D. Any misrepresentation that a consumer has authorized a purchase.

**II.**

**COMPLIANCE WITH THE 900-NUMBER RULE**

**IT IS FURTHER ORDERED** that Defendants shall not violate the 900-Number Rule, 16 C.F.R. Part 308, or as it may hereinafter be amended. A copy of the 900-Number Rule is attached hereto as *Appendix A* and incorporated by reference.

**III.**

**PROHIBITED PRACTICES REGARDING BILLING FOR SERVICES PROVIDED THROUGH TELEPHONE NUMBERS WIDELY UNDERSTOOD TO BE TOLL FREE**

**IT IS FURTHER ORDERED** that Defendants are hereby permanently enjoined from offering, directly or through any corporation, subsidiary or other entity, audiotext services through an 800 number, 888 number or other telephone number advertised as or widely understood to be toll-free, in a manner that would result in a fee or charge unless:

- A. The cost of such service is billed only to a credit or debit card subject to the dispute resolution requirements of the Truth in Lending Act, 15 U.S.C. §§ 1601 *et seq.*, and

Regulation Z, 12 C.F.R. § 226, *provided, however*, that if the 900-Number Rule is hereafter amended to permit creation of a presubscription or comparable arrangement by disclosure of a credit or debit card account number, then the cost of such service may be billed to such card; or

B. Prior to billing a consumer by direct mail, Defendants establish with the consumer who will be billed a presubscription or comparable arrangement that meets the requirements 16 C.F.R. § 308.2(e)(1), as currently promulgated, or any corresponding provision of the Rule as it may hereafter be amended, *provided further that* Defendants shall assess no charge against any consumer as a result of the call in which the presubscription or comparable arrangement is established.

Nothing in this Paragraph III relieves Defendants of their obligation to comply fully with the 900-Number Rule, 16 C.F.R. Part 308, or as it may hereinafter be amended, including without limitation Section 308.5(i) of the 900-Number Rule, 16 C.F.R. § 308.5(i), as currently promulgated, or any corresponding provision of the Rule as it may hereafter be amended.

#### IV.

#### **PROHIBITED CREDIT CARD AND DEBIT ACCOUNT BILLING PRACTICES**

**IT IS FURTHER ORDERED** that Defendants are permanently restrained and enjoined from assessing any charge to a consumer's credit card or debit account for any goods or services prior to:

A. Obtaining from the consumer his or her credit card or debit account number, its expiration date, the consumer's street or post office box number and zip code;

B. Utilizing an independent third party to submit the transaction to the Visa USA, Inc. ("Visa") or MasterCard International ("MasterCard") address verification system ("AVS") to

verify that the information obtained from the consumer matches the information contained in the Visa or MasterCard database and to obtain Visa's or MasterCard's authorization to bill, *provided that* for a period of three (3) years from the date this Order is entered either, (1) Defendants, at least ten (10) days prior to employing an independent third party to provide AVS services, notify the FTC in writing of the identity of the independent third party that they have selected, and the FTC does not object, in writing, to the selection within ten (10) days of receiving the written notification, or, (2) the Court, upon noticed motion, approves the independent third party that Defendants select to provide AVS services;

C. Making a good faith effort to ensure that the name of the corporation, merchant or other entity either providing the service billed for or billing for the service, is disclosed on the consumer's credit or debit card statement in a form by which a reasonable consumer would recognize the name; and

D. Notifying the FTC in writing of any new procedures they plan to implement in place of sub-paragraph B, above, in the event that Visa or MasterCard change their verification procedures and thereby make infeasible Defendants' compliance with sub-paragraph B, *provided that* the FTC does not object, in writing, to Defendants' new procedures within ten (10) days of receiving Defendants' written notification, or, (2) the Court, upon noticed motion, approves Defendants' use of the new procedures.

Nothing in this Paragraph IV relieves Defendants of their obligation to comply with the 900-Number Rule, 16 C.F.R. Part 308, or as it may hereinafter be amended.



**V.**

**REQUIRED CONFIRMATIONS AND CANCELLATIONS**

**IT IS FURTHER ORDERED** that Defendants shall send or cause to be sent to every consumer who signs up for any of Defendants' websites after the date of this Order, an email confirming the consumer's agreement to purchase Defendants' services. The email shall be sent to the address provided by the consumer within forty-eight (48) hours of the consumer's purchase of Defendants' services and must clearly and conspicuously set forth at least the following information: (1) identity of the website from which the services are to be purchased; (2) the billing method, price, and cancellation policy and procedures for the services; (3) the party that operates the site, including without limitation the party that operates the site pursuant to a licensing agreement; and (4) the corporate, merchant or other entity name that will appear on the consumer's credit or debit card statement as the service provider or billing entity. If a consumer signs up for more than one of Defendants' websites, Defendants shall send or cause to be sent to the consumer a separate email for each website. *Provided, however,* that no inference shall be drawn against Defendants in the event the email(s) they send to consumers are returned to Defendants as undeliverable at the email address(es) that the consumers provide to Defendants.

**VI.**

**PROHIBITED BUSINESS PRACTICES**

**IT IS FURTHER ORDERED** that Defendants are hereby restrained and enjoined from:

- A. Turning any consumer's account over to a debt collector without first complying with the provisions set forth in Paragraphs I, II, III, IV and V, above;
- B. Continuing collection efforts through use of collection agencies against any

consumer to whom Defendants sent a direct mail bill prior to November 8, 2000, the date of the entry of the Stipulated Preliminary Injunction With Asset Freeze, Appointment of Permanent Receiver and Other Equitable Relief in this matter; or

C. Failing to cause a consumer's account to be credited in full within five (5) business days of learning that the consumer has been billed in violation of any provision set forth in Paragraphs I, II, III, IV and V, above.

## VII.

### **CREDIT AND DEBIT CARD FRAUD DETECTION AND PREVENTION**

**IT IS FURTHER ORDERED** that to detect and prevent credit and debit card fraud Defendants shall, at a minimum, employ the measures described in *Appendix B* in each and every credit and debit card transaction. Defendants reserve the right to supplement, modify, or replace these measures to strengthen their fraud detection, *provided that* for a period of three (3) years from the date this Order is entered either, (1) the FTC, after being duly notified by Defendants in writing, does not object, in writing, within ten (10) days of written notification, to the measures proposed by Defendants, or (2) the Court, upon noticed motion, approves the measures.

## VIII.

### **WEBMASTER FRAUD DETECTION AND PREVENTION**

**IT IS FURTHER ORDERED** that, to prevent fraud by their Webmasters, Defendants shall utilize certain fraud detection measures. These measures shall include at a minimum the items described in *Appendix C*. Defendants reserve the right to supplement, modify, or replace these measures to strengthen their fraud detection, *provided that* for a period of three (3) years from the date this Order is entered either, (1) the FTC, after being duly notified by Defendants in

writing, does not object, in writing, within ten (10) days of written notification, to the measures proposed by the Defendants, or (2) the Court, upon noticed motion, approves the measures.

## **IX.**

### **BOND REQUIREMENT**

**IT IS FURTHER ORDERED** that Defendants, individually or in any combination, are hereby permanently restrained and enjoined from (1) billing or collecting fees for audiotext or Internet services, or (2) assisting others in billing or collecting fees for audiotext or Internet services, unless they first obtain a performance bond in the principal sum of ONE HUNDRED THOUSAND DOLLARS (\$100,000), *provided that* one performance bond in the amount of ONE HUNDRED THOUSAND DOLLARS (\$100,000) shall meet the bonding requirement of this Paragraph IX of this Order and of Paragraph IX, or other corresponding paragraph, of the Tetro Order, in the event that Defendants, individually or in any combination, or Tetro, engages in any conduct for which either Defendants, under this Order, or Tetro, under the Tetro Order, is required to post a bond. A violation of this Order, the Tetro Order, Section 5 of the FTC Act, 15 U.S.C. § 45(a), or the 900-Number Rule, 16 C.F.R. Part 308, or as it may hereinafter be amended, by any of the Defendants, as defined herein, or Tetro, as defined herein, shall entitle the Commission to execute upon the entire corpus of the bond pursuant to subparagraph F of this Paragraph IX, or the corresponding provision of the Tetro Order.

A. The bond shall be deemed continuous and remain in full force and effect as long as Defendants or Tetro, individually or in any combination, continue to engage in conduct that requires the posting of the bond, and for at least one (1) year after Defendants or Tetro, individually or in any combination, have ceased to engage in such conduct. The bond shall cite

this Order and the Tetro Order as the subject matter of the bond, and shall provide surety thereunder against financial loss resulting from whole or partial failure of performance due, in whole or in part, to any violation of Section 5 of the FTC Act, the 900-Number Rule, the provisions of this Order, the Tetro Order, or to any other violation of law.

B. The performance bond required pursuant to this Paragraph IX shall be an insurance agreement providing surety for financial loss issued by a surety company that is admitted to do business in each of the states in which Defendants, or Tetro, individually or in any combination, do business and that holds a Federal Certificate of Authority As Acceptable Surety On Federal Bond and Reinsuring. Such performance bond shall be in favor of both: (1) the Federal Trade Commission for the benefit of any consumer injured as a result of any violation of Section 5 of the FTC Act, the 900-Number Rule, or the provisions of this Order or the Tetro Order by Defendants or Tetro, or Defendants' or Tetro's officers, agents, servants or employees, whether acting directly or through any entity, corporation, subsidiary, division or other device; and (2) any consumer so injured.

C. The bond required pursuant to this Paragraph IX is in addition to, and not in lieu of, any other bond required by any other federal, state or local law, or by any other court order not entered in this action.

D. At least ten (10) business days before the commencement of billing for audiotext or Internet services, or assisting others engaged in billing for audiotext or Internet services, individually or in concert with Tetro, Defendants shall provide the bond required by this Paragraph IX to the Associate Director for Marketing Practices at the address specified in Paragraph XII of this Order.

E. No Defendant or Defendant's officers, agents, servants, or employees, whether acting directly or through any entity, corporation, subsidiary, division or other device, shall disclose the existence of a performance bond required by this Paragraph IX to any consumer without also disclosing clearly and prominently, at the same time, the following phrase: "This bond is required by Order of the U.S. District Court, in the case FTC v. Automated Transaction Corp., et al., Case No. 00-7599-CIV- Hurley/Lynch (S.D. Fla.), in settlement of allegations that the Defendants engaged in unfair and deceptive acts and practices in connection with their billing for Internet and audiotext services." The disclosure shall be set forth in a clear and conspicuous manner, separated from all other text, in 100% black ink against a light background, in print at least as large as the main text of the sales material or document, and enclosed in a box containing only the required disclosure.

F. If, upon motion by the Commission, the Court finds that a Defendant or Defendant's officers, agents, servants, or employees, or Tetro, or Tetro's officers, agents, servants, or employees, whether acting directly or through any entity, corporation, subsidiary, division or other device, has violated Section 5 of the FTC Act, the 900-Number Rule, this Order or the Tetro Order, the Commission may institute court proceedings to execute against the performance bond required by this Paragraph IX. Proceedings instituted under this sub-paragraph F are in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any other proceedings the Commission may initiate to enforce this Order.

**X.**

**RECORD KEEPING PROVISIONS**

**IT IS FURTHER ORDERED THAT**, for a period of three (3) years from the date of entry of this Order, Defendants and their agents, employees, officers, and servants, corporations, successors, and assigns, in connection with any business where a Defendant is the majority owner of the business or directly or indirectly manages or controls the business, and where the business engages in billing or collecting fees for audiotext or Internet services, or assisting others in billing or collecting fees for audiotext or Internet services, are hereby restrained and enjoined from failing to have such business create, and from failing to have such business retain for a period of three (3) years following the date of such creation, unless otherwise specified:

A. Books, records and accounts that, in reasonable detail, accurately and fairly reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues.

B. Records accurately reflecting the name, address, and telephone number of each person employed in any capacity by such business, including without limitation 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. Records containing the first and last names as provided by the consumer, the credit or debit card number, the numeric portion of the credit or debit card billing address, user identification name, password, dollar amounts paid, description of items or services purchased, and email verification data obtained pursuant to Paragraph V of this Order, for all consumers to whom such business has sold or charged for Internet services.

D. Records containing the credit or debit card number, the numeric portion of the

credit or debit card billing address, dollar amounts paid, and description of items or services purchased, including call duration, for all audiotext consumers who such business has charged or caused to be charged by debit or credit card.

E. Records containing the names, addresses, phone numbers, personal identification numbers, dollar amounts paid, and description of items or services purchased, including ANI records and call duration, for all audiotext consumers who such business has charged or caused to be charged by direct mail bill.

F. All records, reports and analyses generated or created in connection with the Webmaster fraud detection and prevention measures required under Paragraph VIII and *Appendix C* of this Order.

G. Records that reflect every refund request, whether received directly by Defendants, by Defendants' Webmasters, or by individuals for whom or entities for which Defendants provide transactions processing services, with information including:

- (1) For audiotext consumers billed by direct mail, the consumer's name, address and dollar amount paid by the consumer;
- (2) For audiotext consumers billed by credit or debit card, the consumer's credit or debit card number, the numeric portion of the billing address and the dollar amount paid by the consumer;
- (3) For Internet consumers billed by credit or debit card, the consumer's first and last names, as provided by the consumer, the consumer's credit or debit card number, the numeric portion of the billing address and the dollar amount paid by the consumer;

- (4) The written refund request, if any, and the date of the complaint or refund request;
- (5) The basis of the refund request, including the name of any business entity complained against, and, in the event that a refund is not issued automatically without an investigation, the nature and result of any investigation conducted concerning any complaint;
- (6) Each response and the date of the response;
- (7) Any final resolution and the date of the resolution; and
- (8) In the event of a denial of a refund request, the reason for the denial.

H. Copies of all sales scripts, training materials, advertisements, or other marketing materials utilized. Copies of all said sales scripts, training materials, advertisements, or other marketing materials utilized shall be retained by Defendants for three (3) years after the last date of dissemination of any such materials.

## **XI.**

### **NON-DISCLOSURE OF CONSUMER LISTS**

**IT IS FURTHER ORDERED** that Defendants are permanently restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address, Social Security number, telephone number, credit card number, bank account number, email address, or other identifying information of any person who paid any money to them, at any time prior to entry of this Order, in connection with the advertising, marketing, sale, or purchase of any product or service in commerce, except as necessary to comply with this Order.



## **XII.**

### **COMPLIANCE REPORTING**

**IT IS FURTHER ORDERED** that:

A. For a period of three (3) years from the date of entry of this Order, Defendants shall notify the Commission in writing at the address listed in sub-paragraph C, below, of the following: (1) any changes in their business address, residential address or primary telephone number, within ten (10) days of the date of such change; and (2) any changes in their employment status (including self-employment) within ten (10) days of such change. All notices provided pursuant to this sub-paragraph A shall include the name and address of each business that Defendants are affiliated with or employed by, a statement of the nature of the business, and a statement of Defendants' duties and responsibilities in connection with the business or employment.

B. Beginning six (6) months from the date of the entry of this Order, and continuing thereafter on a semi-annual basis, on the first day of June and December of each year through December 31, 2004, Defendants shall supply staff of the Federal Trade Commission with reports containing the following information for any business in which a Defendant is an officer, director, manager, partner, majority owner, or otherwise controls:

- (1) A list of all 800-number telephone lines operated by the business,
- (2) A list of all websites owned and operated by the business, including domain names and IP addresses;
- (3) A list of all websites licensed by the business to third parties, including:
  - (a) domain names and IP addresses; and
  - (b) the names, addresses, and phone

numbers of the third parties;

(4) Records of all credits given by Defendants to customers for audiotext or Internet services provided by Defendants or the individuals for whom or entities for which they bill, including: (a) all identifying information as to customers, such as names, addresses, phone numbers, credit or debit card number, and email addresses, and (b) all identifying information as to credits, such as order/sign up date, billing date, credit issuance date and credit reason codes;

(5) Records of all chargebacks for audiotext services or Internet services provided by Defendants or the individuals for whom or entities for which they bill, including: (a) all identifying information as to customers, such as names, addresses, phone numbers, credit or debit card number, and email addresses, and (b) all identifying information as to chargebacks, such as order/sign up date, billing date, and chargeback issuance date; and

(6) The names of all parties with whom the business has entered into processing or customer service relationships, the dates these relationships were established, and the services performed by each party to the relationship.

The records of items 1, 4 and 5 above shall be supplied in computer text, in a format which will be mutually agreed upon by the parties, or, if not, ordered by the Court. The records for items 2, 3 and 6 may be supplied in either computer text or hard text format.

All records furnished pursuant to this sub-paragraph B shall be used solely to determine Defendants' compliance with this Order and shall not be used by or disclosed to anyone outside the FTC, except as required by law.

C. For the purposes of this Order, Defendants shall, unless otherwise directed by the Commission's representatives, address all written communications to the Commission to:

Associate Director for Marketing Practices  
Federal Trade Commission  
Room 238  
600 Pennsylvania Ave, N.W.  
Washington, DC 20580  
Re: FTC v. Automated Transaction Corp., et al., Case No. 00-7599-CIV-  
Hurley/Lynch (S.D. Fla.)

D. For the purposes of this Paragraph XII, "employment" includes the performance of services as an employee, consultant, or independent contractor, and "employers" includes any individual or entity for whom Defendants perform services as an employee, consultant or independent contractor.

E. The Commission shall notify Defendants within thirty (30) days of receiving the reports furnished pursuant to this Paragraph XII in the event the reports are inadequate as to form. Defendants shall have ten (10) to correct the inadequacies the Commission identifies, *provided, however*, that nothing in this sub-paragraph E limits Defendants' obligation to supply truthful reports under penalty of perjury.

F. For purposes of the compliance reporting required by this Paragraph XII only, the Commission is authorized to communicate directly with Defendants.

### **XIII.**

#### **AUTHORITY TO MONITOR COMPLIANCE**

**IT IS FURTHER ORDERED** that the Commission is authorized to monitor Defendants' compliance with this Order for three (3) years by all lawful means, including but not limited to the following:

A. The Commission is authorized, without further leave of the Court, to obtain discovery from any person in the manner provided by Chapter V of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 26-34 and 36-37, including the use of compulsory process pursuant to Fed. R. Civ. P. 45, for the purpose of monitoring Defendants' compliance with any provision of this Order.

B. The Commission is authorized to use representatives posing as consumers to Defendants or to any entity managed or controlled in whole or in part by any Defendant, without the necessity of identification or prior notice; and

C. 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 investigate whether Defendants have violated any provision of this Order, Section 5 of the FTC Act, 15 U.S.C. §§ 45, the 900-Number Rule, 16 C.F.R. Part 308, the Truth in Lending Act, 15 U.S.C. §§ 1601-1666j, as amended, and its implementing Regulation Z, 12 C.F.R. § 226, or the Electronic Fund Transfer Act, 15 U.S.C. §§ 1693-1693r, as amended, and its implementing Regulation E, 12 C.F.R. § 205.

#### **XIV.**

##### **ACCESS TO BUSINESS PREMISES**

**IT IS FURTHER ORDERED** that, for a period of three (3) years from the date of entry of this Order, for the purpose of further determining compliance with this Order, Defendants shall permit representatives of the Commission, within five (5) business days of receipt of written notice from the Commission, to do the following:

A. To have access during normal business hours to any office, or facility storing documents, of any business where a Defendant is the majority owner of the business, or controls the business. In providing such access, Defendants shall permit representatives of the Commission to inspect and copy, at the Commission's expense, all documents relevant to any matter contained in this Order and shall permit Commission representatives to remove, for a period of five (5) business days, documents relevant to any matter contained in this Order so that the documents may be inspected, inventoried, and copied; and

B. To interview the officers, directors, and employees, including all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, of any business to which sub-paragraph A of this Paragraph XIV applies, concerning matters relating to compliance with the terms of this Order. If any of the above-mentioned persons agree to be interviewed, the person interviewed may have counsel present.

## **XV.**

### **ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS**

IT IS FURTHER ORDERED that, within five business days after entry of this Order, Defendants, and each of them, shall submit to the Commission at the address provided in sub-paragraph C of Paragraph XII, above, a truthful sworn statement, in the form shown in *Appendix D*, that shall acknowledge receipt of this Order and shall reaffirm that the financial statements Defendants previously submitted to the Commission were true, accurate and complete at the time Defendants submitted them to the Commission. The Commission's agreement to this Order is expressly premised on the truthfulness, accuracy and completeness of such financial

statements.

**XVI.**

**COOPERATION WITH COMMISSION COUNSEL**

**IT IS FURTHER ORDERED** that Defendants shall, in connection with this action or any subsequent investigations related to the transactions that are the subject of the Commission's Complaint, cooperate in good faith with the Commission and appear at such places and times as the Commission shall reasonably request, after written notice to such Defendant and his counsel of record, for interviews, conferences, discovery, review of documents, and for such other matters as may be reasonably requested by the Commission provided, however, that the Commission shall not request defendant Lipton's voluntary appearance at any location more than 50 miles outside of Fort Lauderdale, Florida. If requested in writing by the Commission, Defendants shall 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.

**XVII.**

**SERVICE OF ORDER BY DEFENDANTS**

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

A. Provide a copy of this Order to, and obtain a signed and dated acknowledgment of receipt of same from each officer or director, each individual serving in a management capacity, all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise,

immediately upon employing or retaining any such persons in connection with any business that advertises, promotes, offers, sells or bills for goods or services by telephone, or on or through the Internet, where a Defendant is an officer, director, manager, partner or majority owner; and

B. Maintain for a period of three (3) years after creation, and upon reasonable notice, make available to representatives of the Commission, the original signed and dated acknowledgments of the receipt of copies of this Order, as required by sub-paragraph A of this Paragraph XVII.

### **XVIII.**

#### **DISSOLUTION OF RECEIVERSHIP AND COMPENSATION OF RECEIVER**

**IT IS FURTHER ORDERED** that upon entry of this Order, the Receiver's duties and responsibilities as set forth in the Stipulated Preliminary Injunction With Asset Freeze, Appointment of Permanent Receiver and Other Equitable Relief, entered November 8, 2000, or as modified thereafter, shall immediately terminate. The Receiver shall, within forty-five (45) days of the date of entry of this Order, serve upon the parties and submit to the Court a final Request for Compensation ("Request"). Defendants reserve the right to challenge the Receiver's Request not later than ten (10) days after service of the Request, as computed in the Federal Rules of Civil Procedure. Upon the Court's approval of the Request, the Receiver and her employees, representatives and agents are discharged and relieved from all duties and responsibilities in this matter, and the Receiver's bond shall be exonerated.

**XIX.**

**COSTS**

**IT IS FURTHER ORDERED** that each party shall bear its own costs and attorneys' fees incurred in connection with this action.

**XX.**

**RETENTION OF JURISDICTION**

**IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for the purpose of enabling the parties to apply to the Court at any time for such further orders and directives as may be necessary or appropriate for the interpretation or modification of this Order, for the enforcement of compliance therewith, or for the punishment of violations thereof.

**XXI.**

**COMPLETE SETTLEMENT**

The parties hereby consent to entry of the foregoing Order, which shall constitute a final judgment and order in this matter. The parties further stipulate and agree that the entry of the foregoing Order shall constitute a full, complete and final settlement of this action. Defendants waive any rights they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended by P.L. 104-121, 110 Stat. 847, 863-864 (1996), and Defendants further waive any rights to attorneys' fees that may arise under said provision of law.



**DONE AND ORDERED**, this \_\_\_\_\_ day of \_\_\_\_\_, 2001, in

\_\_\_\_\_, Florida.

\_\_\_\_\_  
Daniel T.K. Hurley  
United States District Judge

**FOR DEFENDANTS**

**FOR PLAINTIFF**

DATED: \_\_\_\_\_

DATED: \_\_\_\_\_

\_\_\_\_\_  
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DATED: \_\_\_\_\_

[Name] \_\_\_\_\_  
[Title] \_\_\_\_\_  
For Defendant Automated Transaction Corp.

DATED: \_\_\_\_\_

[Name] \_\_\_\_\_  
[Title] \_\_\_\_\_  
For Defendant WWW Provider Co.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Defendant Edward S. Lipton

Copies to:

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## APPENDIX B

To prevent credit and debit card fraud, Defendants shall perform or cause to be performed, *at a minimum*, the following measures in each and every credit and debit card transaction:

- A. Blocking high fraud countries;
- B. Blocking high risk credit card bank identification numbers (“BINs”);
- C. Blocking all credit cards numbers in the negative database of the Defendants or their processor;
- D. Blocking selective static IP addresses;
- E. Limiting purchases by the same credit card to three (3) websites per month;
- F. Performing a duplicate membership check by credit card number and email address; and
- G. Performing a reverse IP verification by country.

The word “blocking” shall be construed to mean prevention of the usage of the items enumerated in this *Appendix B*.

## APPENDIX C

To prevent fraud by their Webmasters, Defendants shall utilize, or cause to be utilized, *at a minimum* the following fraud detection measures:

- A. Performing an analysis of the type of membership sign ups (*i.e.*, trial period or monthly membership) referred by Webmasters;
- B. Performing ratio analysis of the rate of customers referred from a Webmaster who sign up for Defendants' service, compared to the number of referrals to the site from the Webmaster;
- C. Performing duplicate IP address analysis;
- D. Performing analysis of customers who use one credit card on multiple sites; and
- E. Performing a ratio analysis of the rate of customers that convert from trial memberships to full memberships per Webmaster.

The analyses using the above measures shall be performed *at a minimum* on a weekly basis.

# APPENDIX D

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

**Case No. 00-7599-CIV-HURLEY/LYNCH**

**FEDERAL TRADE COMMISSION,**

**Plaintiff,**

**vs.**

**AUTOMATED TRANSACTION CORP., et al.,**

**Defendants.**

\_\_\_\_\_ /

**AFFIDAVIT OF [DEFENDANT]**

[Defendant], being duly sworn, hereby states and affirms as follows:

1. My name is [Defendant]. I am a defendant in the above-captioned civil action. 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. My current business address is \_\_\_\_\_. My current business telephone number is \_\_\_\_\_. My current residential address is \_\_\_\_\_. My current residential telephone number is \_\_\_\_\_.
3. On [date], I received a copy of the Stipulated Judgment And Order For Permanent Injunction And Other Equitable Relief, which was signed by the Honorable Daniel T.K. Hurley and entered by the Court on \_\_\_\_\_, 2001. A true and correct copy of the Order that I received is appended to this Affidavit.
4. I reaffirm and attest to the truthfulness, accuracy and completeness of the financial statement that I submitted to the Federal Trade Commission on or about \_\_\_\_\_.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on \_\_\_\_\_, 2001, at \_\_\_\_\_.

\_\_\_\_\_  
[Defendant's Signature]

State of \_\_\_\_\_, City of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 2001.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_