

05-CV-00265-ORD

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

FEDERAL TRADE COMMISSION,  
  
Plaintiff,  
  
v.  
  
9125-8954 QUEBEC INC., D.B.A. GLOBAL  
MANAGEMENT SOLUTIONS, a Canadian  
corporation;  
9125-8947 QUEBEC INC., D.B.A.  
COMMUTEL MARKETING, and D.B.A.  
MARKETING USA, a Canadian corporation;  
6050808 CANADA INC., D.B.A.  
AMERICAN BUSINESS SOLUTIONS, a  
Canadian corporation;  
TY NGUYEN, individually and as a director or  
officer of Global Management Solutions and  
Commutel Marketing/Marketing USA;  
CORY KORNELSON, individually and as a  
director or officer of Global Management  
Solutions;  
BYRON STECZKO, individually and as a  
director or officer of Commutel  
Marketing/Marketing USA;  
PHONG ANH VO, individually and as a  
director or officer of Commutel  
Marketing/Marketing USA;  
KELLY NGUYEN, individually and as a  
director or officer of American Business  
Solutions; and  
MINH TAM VO, individually and as a director  
or officer of American Business Solutions,  
  
Defendants.

Case No. C05-0265 TSZ

~~(Proposed)~~  
**STIPULATED FINAL JUDGMENT  
AND ORDER FOR PERMANENT  
INJUNCTION AS TO DEFENDANT  
PHONG ANH VO**

Plaintiff Federal Trade Commission ("Commission" or "FTC"), pursuant to Section 13(b)  
of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), filed its Complaint for

1 Injunctive and Other Equitable Relief, including consumer redress, alleging that defendants  
2 9125-8954 Quebec Inc., d.b.a. Global Management Solutions; 9125-8947 Quebec Inc., d.b.a.  
3 Commutel Marketing and Marketing USA; 6050808 Canada Inc., d.b.a. American Business  
4 Solutions; Ty Nguyen, a.k.a. Hiep Manh Nguyen; Cory Kornelson; Byron Steczko; Kelly  
5 Nguyen, a.k.a. Phu Minh Huy Nguyen, and Minh Tam Vo engaged in deceptive acts and  
6 practices in connection with telemarketing business directories and/or listings in business  
7 directories to U.S. consumers, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

8 The Commission later filed an Amended Complaint adding Phong Anh Vo as a defendant.

9 The Commission and defendant Phong Anh Vo have consented to the entry of this  
10 Stipulated Final Judgment and Order for Permanent Injunction ("Order"), which resolves all  
11 matters and claims in dispute between them arising from the Complaint up to the date of entry of  
12 this Order, on the following terms and conditions, without a trial or adjudication of any issue of  
13 law or fact.

14 NOW, THEREFORE, the Commission and defendant Phong Anh Vo having requested  
15 the Court to enter this Order, it is **ORDERED, ADJUDGED, AND DECREED** as follows:

#### 16 FINDINGS

17 A. This is an action by the Commission instituted under Section 13(b) of the FTC  
18 Act, 15 U.S.C. § 53(b). Pursuant to this section, the Commission has the authority to seek the  
19 relief contained herein.

20 B. The Commission's Complaint states a claim upon which relief may be granted  
21 against defendant under Sections 5(a) and 13(b) of the Federal Trade Commission Act, 15 U.S.C.  
22 §§ 45(a) and 53(b).

23 C. This Court has jurisdiction over the subject matter of this case and all parties  
24 hereto. Venue in the Western District of Washington at Seattle is proper.

25 D. The alleged activities of defendant are in or affecting commerce, as defined in  
26 Section 4 of the FTC Act, 15 U.S.C. § 44.

27 E. The parties shall each bear their own costs and attorney's fees incurred in this  
28

1 action and have waived all claims under the Equal Access to Justice Act, 28 U.S.C. § 2412,  
2 amended by Pub. L. 104-121, 110 Stat. 847, 863-64 (1996), and all rights to seek judicial review  
3 or otherwise to challenge the validity of this Order.

4 F. This Order does not constitute, and shall not be interpreted to constitute, either an  
5 admission by defendant or a finding by the Court that defendant has engaged in any violations of  
6 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), or any other law or regulation.

7 G. Entry of this Order is in the public interest.

#### 8 DEFINITIONS

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

10 A. "Asset" means any legal or equitable interest in, right to, or claim to, any real and  
11 personal property including, but not limited to, chattels, goods, instruments, equipment, fixtures,  
12 general intangibles, effects, leaseholds, mail or other deliveries, inventory, checks, notes,  
13 accounts, credits, receivables, funds, monies, and all cash, wherever located.

14 B. "Assisting" means providing substantial assistance or support to any  
15 person. For purposes of this Order, providing substantial assistance or support includes, but is  
16 not limited to: (a) preparing, printing or transmitting invoices; (b) recording or verifying sales  
17 solicitations; (c) performing customer service functions including, but not limited to, receiving or  
18 responding to consumer complaints, obtaining or receiving identifying and financial information  
19 from consumers, and communicating with consumers on behalf of the seller or telemarketer;  
20 (d) developing, providing or arranging for the development or provision of sales scripts or any  
21 other marketing material; (e) verifying, processing, fulfilling or arranging for the fulfillment of  
22 orders; (f) developing, providing or arranging for the provision of names of potential customers;  
23 (g) collecting or arranging for the collection of accounts receivable or other amounts owed;  
24 (h) providing or arranging for the provision of post office boxes or the services of commercial  
25 mail receiving agencies; or (i) performing or providing marketing services of any kind.

26 C. "Corporate defendants" means 9125-8954 Quebec Inc., d.b.a. Global  
27 Management Solutions; and 9125-8947 Quebec Inc., d.b.a. Commute! Marketing and Marketing  
28

1 USA.

2 D. "Customer" or "Consumer" means any person who is or may be required to pay  
3 for goods or services offered for sale or sold by the corporate defendants.

4 E. "Defendant" means Phong Anh Vo.

5 F. "Document" is synonymous in meaning and equal in scope to the usage of the  
6 term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts,  
7 photographs, audio and video recordings, computer records, and other data compilations from  
8 which information can be obtained and translated, if necessary, through detection devices into  
9 reasonably usable form. A draft or non-identical copy is a separate document within the meaning  
10 of the term.

11 G. "Material" means likely to affect a person's choice of, or conduct regarding,  
12 goods or services.

13 H. "Person" means any natural person and any organization or other legal entity,  
14 including a corporation, partnership, sole proprietorship, limited liability company, association,  
15 cooperative, government agency, or any other group or combination acting as an entity.

16 I. "Telemarketing" means a plan, program or campaign which is conducted to  
17 induce the purchase of goods or services or a charitable contribution, by use of one or more  
18 telephones and which involves more than one interstate telephone call.

19 **ORDER**

20 **I. PROHIBITED BUSINESS ACTIVITIES**

21 **IT IS THEREFORE ORDERED** that defendant, his successors and assigns, and his  
22 officers, agents, servants, employees, and attorneys, and those persons in active concert or  
23 participation with him who receive actual notice of this Order by personal service or otherwise,  
24 whether acting directly or through any person, trust, corporation, subsidiary, division, or other  
25 device, in connection with the advertising, promoting, telemarketing, offering for sale, selling or  
26 distributing of any good or service to U.S. residents, are hereby permanently restrained and  
27 enjoined from:  
28

1 A. Misrepresenting, expressly or by implication:

- 2 1. That consumers have previously authorized the purchase of a good or  
3 service;
- 4 2. That consumers have agreed to purchase a good or service;
- 5 3. That consumers have a trial period during which they can review a good or  
6 service without incurring financial obligation;
- 7 4. That consumers owe money for a good or service;
- 8 5. Any material fact regarding a good or service; and
- 9 6. Any material fact regarding the terms, conditions, and limitations of any  
10 refund or guarantee policy;

11 B. Failing to disclose in outbound telemarketing calls to consumers, promptly and in  
12 a clear and conspicuous manner: (1) the identity of the seller; (2) that the purpose of the call is to  
13 sell goods or services; and (3) the nature of the goods or services;

14 C. Failing to disclose in outbound telemarketing calls to consumers, in a clear and  
15 conspicuous manner, all material terms, conditions, and limitations of any refund or guarantee  
16 policy, or any policy of non-refundability;

17 D. Violating the Telemarketing Sales Rule, 16 C.F.R. Part 310, including any  
18 amendments thereto; and

19 E. Assisting others who violate any provision of Section I of this Order.

20 **II. PROHIBITED DISCLOSURE OF CUSTOMER INFORMATION**

21 **IT IS FURTHER ORDERED** that defendant, his successors and assigns, and his  
22 officers, agents, servants, employees, and attorneys, and those persons in active concert or  
23 participation with him who receive actual notice of this Order by personal service or otherwise,  
24 whether acting directly or through any person, trust, corporation, subsidiary, division or other  
25 device, are hereby permanently restrained and enjoined from selling, renting, leasing, transferring  
26 or otherwise disclosing the name, address, telephone number, Social Security number, credit card  
27 number, bank account number, e-mail address or other identifying information of any person who  
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1 paid any money to defendant or any corporate defendant at any time prior to entry of this Order  
2 for the corporate defendants' business directory and/or listing in the business directory.  
3 *Provided, however,* that defendant may disclose such identifying information to a law  
4 enforcement agency or as required by any law, regulation or court order.

### 5 **III. CEASING COLLECTION ON ACCOUNTS**

6 **IT IS FURTHER ORDERED** that defendant, his successors and assigns, and his  
7 officers, agents, servants, employees, and attorneys, and those persons in active concert or  
8 participation with him who receive actual notice of this Order by personal service or otherwise,  
9 whether acting directly or through any person, trust, corporation, subsidiary, division or other  
10 device, are hereby permanently restrained and enjoined from collecting or attempting to collect  
11 payment for the corporate defendants' business directory and/or listing in the business directory,  
12 directly or through any third party, on any account established prior to entry of this Order.

### 13 **IV. MONETARY JUDGMENT**

14 **IT IS FURTHER ORDERED** that:

15 A. Judgment is hereby entered against defendant in the amount of \$1,618,268 (US)  
16 as restitution for consumer injury; *provided, however,* that this judgment shall be suspended  
17 subject to the conditions set forth in Section V of this Order; and

18 B. All funds paid pursuant to this Order shall be deposited into a fund administered  
19 by the Commission or its agent to be used for equitable relief, including but not limited to  
20 consumer redress, and any attendant expenses for the administration of such equitable relief. In  
21 the event that direct redress to consumers is wholly or partially impracticable or funds remain  
22 after redress is completed, the Commission may apply any remaining funds for such other  
23 equitable relief (including consumer information remedies) as it determines to be reasonably  
24 related to the defendant's practices alleged in the Complaint. Any funds not used for such  
25 equitable relief shall be deposited to the U.S. Treasury as disgorgement. Defendant shall have no  
26 right to challenge the Commission's choice of remedies under this Section. Defendant shall have  
27 no right to contest the manner of distribution chosen by the Commission. No portion of any  
28

1 payments under the judgment shall be deemed a payment of any fine, penalty or punitive  
2 assessment. Defendant agrees that the facts as alleged in the Complaint filed in this action shall  
3 be taken as true for purposes of any subsequent proceedings to enforce payment required by this  
4 Section.

5 **V. RIGHT TO REOPEN AND TERMINATE SUSPENSION**

6 **IT IS FURTHER ORDERED** that, by agreeing to this Order, defendant reaffirms and  
7 attests to the truthfulness, accuracy, and completeness of the financial disclosure form ("financial  
8 statement"), executed on August 26, 2005, provided to the Commission. Plaintiff's agreement to  
9 this Order is expressly premised upon the truthfulness, accuracy, and completeness of  
10 defendant's financial condition as represented in the financial statement referenced above, which  
11 contains material information upon which plaintiff relied in negotiating and agreeing to the terms  
12 of this Order. If, upon motion by the Commission, this Court finds that defendant failed to  
13 disclose any material asset, materially misrepresented the value of any asset, or made any other  
14 material misrepresentation in or omission from the financial statement, the Court shall enter  
15 judgment against the defendant, in favor of the Commission, in the amount of \$1,618,268 (US)  
16 and the entire amount shall become immediately due and payable; *provided, however*, that, in all  
17 other respects, this Order shall remain in full force and effect unless otherwise ordered by the  
18 Court; and *provided further*, that proceedings instituted under this Section are in addition to and  
19 not in lieu of any other civil or criminal remedies as may be provided by law, including any other  
20 proceedings the Commission may initiate to enforce this Order.

21 **VI. DISSOLUTION OF ASSET FREEZE**

22 **IT IS FURTHER ORDERED** that the freeze against defendant's assets pursuant to  
23 Section II of the Preliminary Injunction entered by this Court on July 26, 2005, shall be lifted  
24 upon entry of this Order.

25 **VII. COMPLIANCE REPORTING BY DEFENDANT**

26 **IT IS FURTHER ORDERED** that, in order that compliance with the provisions of this  
27 Order may be monitored:  
28

1           A.     For a period of three (3) years from the date of entry of this Order, defendant shall  
2 notify the Commission of the following:

3                 1.     Any changes in his residence, mailing addresses, and telephone numbers,  
4                 within ten (10) days of the date of such change;

5                 2.     Any changes in his employment status (including self-employment), and  
6                 any change in his ownership in any business entity, within ten (10) days of the date of  
7                 such change. Such notice shall include the name and address of each business that he is  
8                 affiliated with, employed by, creates or forms, or performs services for; a statement of the  
9                 nature of the business; and a statement of his duties and responsibilities in connection  
10                with the business or employment;

11                3.     Any changes in his name or use of any aliases or fictitious names; and

12                4.     Any changes in the corporate structure of any business entity that he  
13                directly or indirectly controls, or has an ownership interest in, that may affect compliance  
14                obligations arising under this Order including, but not limited to, a dissolution,  
15                assignment, sale, merger or other action that would result in the emergence of a successor  
16                entity; the creation or dissolution of a subsidiary, parent or affiliate that engages in any  
17                acts or practices subject to this Order; the filing of a bankruptcy petition; or a change in  
18                the corporate name and address, at least thirty (30) days prior to such change, *provided*  
19                that, with respect to any proposed change in the corporation about which the defendant  
20                learns less than thirty (30) days prior to the date such action is to take place, defendant  
21                shall notify the Commission as soon as practicable after obtaining such knowledge;

22            B.     One hundred eighty (180) days after the date of entry of this Order, defendant  
23 shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail  
24 the manner and form in which he has complied and is complying with this Order. This report  
25 shall include, but not be limited to:

26                 1.     His then-current residence address, mailing addresses, and telephone  
27                 numbers;

28                 2.     His then-current employment and business addresses and telephone



1 numbers, a description of the business activities of each such employer or business, and  
2 his title and responsibilities for each such employer or business;

3 3. A copy of each acknowledgment of receipt of this Order obtained pursuant  
4 to Section X of this Order; and

5 4. Any other changes required to be reported under Section VII.A of this  
6 Order;

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

9 Associate Director for Enforcement  
10 Federal Trade Commission  
601 New Jersey Avenue, N.W.  
11 Washington, DC 20001

12 Re: *FTC v. Global Management Solutions, et al.*, C05-0265 TSZ

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

### 15 VIII. COMPLIANCE MONITORING

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

18 A. Within ten (10) days of receipt of written notice from a representative of the  
19 Commission, defendant shall submit additional written reports, sworn to under penalty of  
20 perjury; produce documents for inspection and copying; appear for deposition; and/or provide  
21 entry during normal business hours to any U.S. business location in defendant's possession, or  
22 direct or indirect control, to inspect the business operation;

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

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

27 2. Posing as consumers and suppliers to defendant, defendant's employees,  
28 or any other entity managed or controlled, in whole or in part, by defendant, without the

1 necessity of identification or prior notice; and

2 C. Defendant shall permit representatives of the Commission to interview any  
3 employer, consultant, independent contractor, representative, agent or employee who has agreed  
4 to such an interview, relating in any way to any conduct subject to this Order. The person  
5 interviewed may have counsel present.

6 *Provided, however,* that nothing in this Order shall limit the Commission's lawful use of  
7 compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49 and 57b-1,  
8 to obtain any documentary material, tangible things, testimony, or information relevant to unfair  
9 or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C.  
10 § 45(a)(1)).

#### 11 IX. RECORD KEEPING

12 **IT IS FURTHER ORDERED** that, for a period of six (6) years from the date of entry of  
13 this Order, defendant, in connection with any business where (1) defendant is the majority owner,  
14 or directly or indirectly manages or controls the business, and (2) the business is engaged in  
15 telemarketing to U.S. residents, or in assisting others engaged in said business, and his agents,  
16 employees, corporations, successors and assigns, and those persons in active concert or  
17 participation with him who receive actual notice of this Order by personal service or otherwise,  
18 are hereby restrained and enjoined from failing to create and retain the following records:

19 A. Accounting records that reflect the cost of goods or services sold, revenues  
20 generated, and the disbursement of such revenues;

21 B. Personnel records accurately reflecting: the name, address, and telephone number  
22 of each person employed in any capacity by such business, including as an independent  
23 contractor; that person's job title or position; the date upon which the person commenced work;  
24 and the date and reason for the person's termination, if applicable;

25 C. Customer files containing the names, addresses, telephone numbers, dollar  
26 amounts paid, quantity of items or services purchased, and description of items or services  
27 purchased, to the extent such information is obtained in the ordinary course of business;

28 D. Complaints and refund requests (whether received directly, indirectly or through

1 any third party) and any responses to those complaints or requests;

2 E. Copies of all sales scripts, training materials, advertisements or other marketing  
3 materials; and

4 F. All records and documents necessary to demonstrate full compliance with each  
5 provision of this Order including, but not limited to, copies of acknowledgments of receipt of this  
6 Order required by Section XI of this Order and all reports submitted to the FTC pursuant to  
7 Section VIII of this Order.

8 **X. DISTRIBUTION OF ORDER BY DEFENDANT**

9 **IT IS FURTHER ORDERED** that, for a period of three (3) years from the date of entry  
10 of this Order, defendant shall deliver copies of this Order as directed below:

11 A. For any business that defendant controls, directly or indirectly, or in which he has  
12 a majority ownership interest, defendant must deliver a copy of this Order to all principals,  
13 officers, directors, and managers of that business. Defendant must also deliver copies of this  
14 Order to all employees, agents, and representatives of that business who engage in conduct  
15 related to telemarketing to U.S. residents. For current personnel, delivery shall be within five (5)  
16 days of service of this Order upon defendant. For new personnel, delivery shall occur prior to  
17 their assuming their responsibilities;

18 B. For any business where defendant is not a controlling person, but otherwise  
19 engages in conduct related to telemarketing to U.S. residents, defendant must deliver a copy of  
20 this Order to all principals and managers of such business before engaging in such conduct; and

21 C. Defendant must secure a signed and dated statement acknowledging receipt of  
22 this Order, within thirty (30) days of delivery, from all persons receiving a copy of the Order  
23 pursuant to this Section.

24 **XI. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANT**

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

**XII. COOPERATION WITH FTC COUNSEL**

**IT IS FURTHER ORDERED** that defendant shall, in connection with this action or any 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 his 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 required by the FTC. If requested in writing by the FTC, defendant shall appear, or cause his 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.

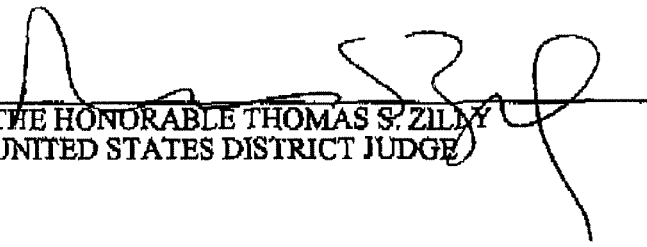
**XIII. INDEPENDENCE OF OBLIGATIONS**

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

**XIV. RETENTION OF JURISDICTION**


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

**SO ORDERED**, this 10<sup>th</sup> day of May, 2006.


  
THE HONORABLE THOMAS S. ZILLY  
UNITED STATES DISTRICT JUDGE

1 Presented by:

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3   
4 KATHRYN C. DECKER, WSBA #12389  
5 JULIE K. MAYER, WSBA #34638  
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20 Pro Se

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