

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 14-81395-CIV-Marra/Matthewman

**Federal Trade Commission and State of
Florida,**

Plaintiffs,

v.

Inbound Call Experts, LLC, et al.,

Defendants.

**STIPULATED FINAL ORDER FOR PERMANENT INJUNCTION AND
MONETARY JUDGMENT AS TO PC CLEANER, INC.,
NETCOM3 GLOBAL, INC., NETCOM3, INC., D/B/A
NETCOM3 SOFTWARE INC., AND CASHIER MYRICKS**

Plaintiffs, the Federal Trade Commission (“FTC” or “Commission”) and the State of Florida, Office of the Attorney General (“State of Florida”) (hereinafter “Plaintiffs”) filed an Emergency Complaint for Permanent Injunction and Other Equitable Relief, subsequently amended as First Amended Complaint for Permanent Injunction and Other Equitable Relief (“Complaint”) pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and under the Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”), Fla. Stat. § 501.201 et seq.

Plaintiffs, on the one hand, and Defendants PC Cleaner, Inc., Netcom3 Global, Inc., Netcom3, Inc., d/b/a Netcom3 Software Inc., and Cashier Myricks, on the other hand, stipulate to the entry of this Stipulated Final Order for Permanent Injunction and Monetary Judgment (“Order”) to resolve all matters in dispute in this action between them.

Therefore, it is ordered as follows:

FINDINGS

1. This Court has jurisdiction over this matter.

2. The Complaint charges that Defendants participated in deceptive acts or practices in violation of Section 5 of the FTC Act, U.S.C. § 45, and Section 501.204 of the FDUTPA.

3. Only for purposes of this action, Defendants admit the facts necessary to establish jurisdiction.

4. The parties agree that this Order resolves all allegations in the Complaint.

5. Defendants waive and release any claim they may have against the Plaintiffs, the Receiver, and their agents.

6. Defendants waive any claim that they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order, and agree to bear their own costs and attorney fees.

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

8. There is no just reason for delay in entering this Final Order.

DEFINITIONS

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

1. “**Computer**” means any cell phone, smartphone, tablet, laptop computer, desktop computer, or any other electronic device on which a software program, code, script, or other content can be downloaded, installed or run.

2. “**Corporate Defendants**” means PC Cleaner, Inc., Netcom3 Global, Inc., Netcom3, Inc., d/b/a Netcom3 Software Inc., and their successors and assigns.

3. “**Defendants**” means Cashier Myricks and all of the Corporate Defendants, individually, collectively, or in any combination.

4. “**Lead Acceptor**” means any Person that, in exchange for consideration, accepts leads from any Defendant, accepts consumer information from any Defendant, or otherwise communicates with any of Defendants’ customers for purposes of making a sale separate from the sale of Defendants’ own products. For purposes of this Order, “Lead Acceptor” does not include Defendants or Defendants’ officers, agents, and/or employees.

5. “**Person**” means any natural person or entity, including but not limited to any individual, firm, corporation, company, partnership, association, trade association, business trust, public agency, department, bureau, board, or any other form of public, private or legal entity.

6. “**Plaintiffs**” means the FTC and the State of Florida.

7. “**Tech Support Product or Service**” means any plan, program, software, or service marketed to repair, maintain or improve a Computer’s performance or security, including registry cleaners, anti-virus programs and Computer or software diagnostic services.

I.

Prohibition Against Misrepresentations

It is hereby ordered that Defendants, Defendants’ officers, agents, and employees, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the marketing, advertising, promotion, distribution, offering for sale, or sale of any goods or services, are hereby permanently restrained and enjoined from:

A. Misrepresenting, or assisting others in misrepresenting, expressly or by implication, that they have identified problems or other issues on consumers’ Computers that will affect the performance or security of consumers’ Computers;

B. Misrepresenting, or assisting others in misrepresenting, expressly or by implication, any other fact material to consumers concerning any good or service, such as: the total costs; any material restrictions, limitations, or conditions; or any material aspect of its performance, efficacy, nature or central characteristics;

C. Using, or assisting others in using, any false or misleading statement to induce any person to pay for goods or services; or

D. Any acts or practices that violate FDUTPA, Chapter 501, Part II, Florida Statutes, including the use of any false or misleading statement to induce any person to pay for goods or services.

II.

Lead Acceptor Review, Termination and Recordkeeping

It is further ordered that:

A. Defendants shall, within ninety (90) days of the date of entry of this Order and every six months thereafter, review whether each of Defendants' existing Lead Acceptors engages in any conduct described in Section I of this Order. Defendants will immediately terminate their business relationship with any Lead Acceptor if this review or any other evidence the Defendants obtain reveals that the Lead Acceptor engages in any such conduct.

B. Prior to entering into a business relationship with any prospective Lead Acceptor, Defendants shall review whether the Lead Acceptor engages in any conduct described in Section I of this Order. Defendants will not establish a business relationship with any Lead Acceptor if this review or any other evidence the Defendants obtain reveals that the Lead Acceptor engages in any such conduct.

C. Reviewing a Lead Acceptor, for the purposes of Paragraphs A and B, above, must include all steps reasonably necessary to determine whether a Lead Acceptor engages in any conduct described in Section I of this Order. Such steps may include obtaining and reading the Lead Acceptor's sales scripts, obtaining and listening to audio, video, or other recordings of randomly-selected interactions between the Lead Acceptor and consumers, and obtaining and reading consumer complaints against the Lead Acceptor.

D. Defendants shall create and maintain records of: all Lead Acceptor and prospective Lead Acceptor reviews conducted pursuant to Paragraphs A and B, above; all Lead Acceptor terminations made pursuant to Paragraph A, above; and all refusals to do business with prospective Lead Acceptors made pursuant to Paragraph B, above. Such records will include documentation of the review process, procedures, and implementation, pursuant to Paragraph C, above, as well as the status and outcome of the review. These records shall be maintained pursuant to Section VIII.D of this Order.

III.

Monetary Judgment and Partial Suspension

It is further ordered that:

A. Judgment in the amount of twenty-nine million, five hundred thirty-nine thousand, six hundred twenty-eight dollars and eleven cents (\$29,539,628.11) is entered in favor of the Plaintiffs against the Defendants, jointly and severally, as equitable monetary relief.

B. Defendants are ordered to pay Plaintiffs by making payment to the Commission two hundred fifty-eight thousand dollars (\$258,000), including the proceeds from the sale of the 2012 Bentley and 2013 Range Rover automobiles listed in Item 16 of the Financial Statement of Cashier Myricks signed on October 2, 2015, which amount Defendants stipulate their undersigned counsel holds in escrow for no purpose other than payment to the Commission. Such payment must be made within 7 days of entry of this Order by electronic fund transfer in accordance with instructions previously provided by a representative of the Commission. Upon such payment, the remainder of the judgment is suspended, subject to the Subsections below.

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

- 1) The Financial Statement of Cashier Myricks signed on October 2, 2015, including the attachments; and
- 2) The Financial Statements of Corporate Defendants PC Cleaner, Inc., Netcom3 Global, Inc., and Netcom3, Inc., d/b/a Netcom3 Software Inc., signed by Cashier Myricks on October 2, 2015, including the attachments
- 3) The Declaration signed by Cashier Myricks on May 5, 2016, and all documents referenced therein, including the attachments thereto.

D. The suspension of the judgment will be lifted as to any Defendant if, upon motion by the Commission or the State of Florida, the Court finds that Defendant failed to disclose any

material asset, materially misstated the value of any asset, or made any other material misstatement or omission in the financial representations identified above.

E. If the suspension of the judgment is lifted, the judgment becomes immediately due as to that Defendant in the amount specified in Subsection A above (which the parties stipulate only for purposes of this Section represents the consumer injury, less any payment previously made pursuant to this Section, plus interest computed from the date of entry of this Order).

F. Defendants relinquish dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets.

G. The facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of the Plaintiffs in a proceeding to enforce its rights to any payment or monetary judgment pursuant to this Order, such as a non-dischargeability complaint in any bankruptcy case.

H. The facts alleged in the Complaint establish all elements necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral estoppel effect for such purposes.

I. Defendants acknowledge that their Taxpayer Identification Numbers (Social Security Numbers or Employer Identification Numbers), which Defendants must submit to the Plaintiffs, may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. §7701.

J. All money paid to the Plaintiffs pursuant to this Order may be deposited into a fund administered by the Commission or its designee on behalf of both the Commission and the State of Florida, to be used for equitable relief, including consumer redress and any attendant expenses for the administration of any redress fund. If a representative of the Plaintiffs decides that direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, the Plaintiffs may apply any remaining money for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to

Defendants' practices alleged in the Complaint. Any money not used for such equitable relief shall be divided between the Commission and the State of Florida to be deposited to the U.S. Treasury as disgorgement and the State of Florida Department of Legal Affairs Escrow Fund. Defendants have no right to challenge any actions the Plaintiffs or their representatives may take pursuant to this Subsection.

IV.

Customer Information

It is further ordered that Defendants and their officers, agents, and employees, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, are permanently restrained and enjoined from directly or indirectly failing to provide sufficient customer information to enable the Plaintiffs to efficiently administer consumer redress. If a representative of the Plaintiffs requests in writing any information related to redress, Defendants must provide it, in the form prescribed by the Plaintiffs, within 14 days.

V.

Cooperation

It is further ordered that Defendants must fully cooperate with representatives of the Commission and the State of Florida in this case and in any investigation related to or associated with the transactions or the occurrences that are the subject of the Complaint. Defendants must provide truthful and complete information, evidence, and testimony. Cashier Myricks must appear, and Corporate Defendants must cause their officers, employees, representatives, or agents to appear, for interviews, discovery, hearings, trials, and any other proceedings that Commission or State of Florida representatives may reasonably request upon ten (10) days written notice, or other reasonable notice, at such places and times as such representative may designate, without the service of a subpoena.

VI.

Order Acknowledgments

It is further ordered that Defendants obtain acknowledgments of receipt of this Order:

A. Each Defendant, within seven (7) days of entry of this Order, must submit to the Plaintiffs an acknowledgment of receipt of this Order sworn under penalty of perjury.

B. For five (5) years after entry of this Order, Cashier Myricks, for any business of which he, individually or collectively with any other Defendants, is the majority owner or controls directly or indirectly, and each Corporate Defendant, must deliver a copy of this Order to:

- 1) All principals, officers, directors, and LLC managers and members;
- 2) All employees, agents, and representatives having managerial responsibilities for conduct related to the subject matter of the Order; and
- 3) Any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting.

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

C. From each individual or entity to which a Defendant delivered a copy of this Order under this Section, that Defendant must obtain, within thirty (30) days, a signed and dated acknowledgment of receipt of this Order.

VII.

Compliance Reporting

It is further ordered that Defendants make timely submissions to the Plaintiffs:

A. One year after entry of this Order, each Defendant must submit a compliance report, sworn under penalty of perjury:

- 1) Each Defendant must:
 - a) Identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Plaintiffs may use to communicate with Defendant;

- b) Identify all of the Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses;
 - c) Describe the activities of each business disclosed under the paragraph above, including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant (which Cashier Myricks must describe if he knows or should know due to his own involvement);
 - d) Describe in detail whether and how that Defendant is in compliance with each Section of this Order; and
 - e) Provide a copy of each Order Acknowledgment obtained pursuant to the Section of this Order entitled "Order Acknowledgement," unless previously submitted to the Plaintiffs.
- 2) Additionally, Cashier Myricks must:
- a) Identify all of his telephone numbers and all of his physical, postal, email and Internet addresses, including all of his residences;
 - b) Identify all business activities, including any business for which he performs services whether as an employee or otherwise and any entity in which he has any ownership interest; and
 - c) Describe in detail his involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership.

B. For ten (10) years after entry of this Order, each Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

- 1) Each Defendant must report any change in:
 - a) Any designated point of contact; or

- b) Its structure, if it is a Corporate Defendant; or
 - c) The structure of any entity that Defendant controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.
- 2) Additionally, Cashier Myricks must report any change in:
- a) Name, including aliases or fictitious name, or residence address; or
 - b) Title or role in any business activity, including any business for which Cashier Myricks performs services whether as an employee or otherwise and any entity of which Cashier Myricks has direct or indirect control, and identify the name, physical address, and any Internet address of the business or entity.

C. Each Defendant must submit to the Plaintiffs notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Defendant within 14 days of its filing.

D. Any submission to the Plaintiffs required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____” and supplying the date, signatory’s full name, title (if applicable), and signature.

E. Unless otherwise directed by a representative of the Plaintiffs in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to both:

Associate Director for Enforcement
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580;

and

South Florida Bureau Chief
Consumer Protection Division
Florida Attorney General
1515 N. Flagler Drive, Suite 900
West Palm Beach, FL 33401

The subject lines must begin: FTC v. Inbound Call Experts, LLC, et al.

VIII.

Recordkeeping

It is further ordered that Defendants must create certain records for ten (10) years after entry of the Order, and retain each such record for five (5) years. Specifically, Cashier Myricks and each Corporate Defendant, for any business that such Defendant, individually or collectively with any other Defendants, is a majority owner or controls directly or indirectly, must create and retain the following records:

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

IX.

Compliance Monitoring

It is further ordered that, for the purpose of monitoring Defendants' compliance with this Order, including the financial representations upon which part of the judgment was suspended and any failure to transfer any assets as required by this Order:

- A. Within 14 days of receipt of a written request from representatives of the Commission or the State of Florida, each Defendant must: submit additional compliance reports

or other requested information, which must be sworn under penalty of perjury; appear for depositions; produce recordings of sales calls with consumers; and produce documents for inspection and copying. Plaintiffs also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69, provided that Defendants, after attempting to resolve a dispute without court action and for good cause shown, may file a motion with this Court seeking an order for one or more of the protections set forth in Rule 26(c)..

B. For matters concerning this Order, Plaintiffs are authorized to communicate directly with each Defendant. Defendants must permit representatives of the Commission and the State of Florida to interview any employee or other person affiliated with any Defendant who has agreed to such an interview. The person interviewed may have counsel present.

C. Plaintiffs may use all other lawful means, including posing, through their representatives as consumers, suppliers, or other individuals or entities, to Defendants or any individual or entity affiliated with Defendants, without the necessity of identification or prior notice. Nothing in this Order limits the FTC's lawful use of compulsory process pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

D. Upon written request from a representative of the Commission or the State of Florida, any consumer reporting agency must furnish consumer reports concerning Cashier Myricks, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. §1681b(a)(1).


X.

Retention of Jurisdiction

It is further ordered that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

DONE AND ORDERED in Chambers at West Palm Beach, Florida, this 12th day of

JULY, 2016.



Kenneth A. Marra
United States District Judge

Copies furnished to:

Magistrate Judge William Matthewman
All counsel of record

So stipulated and agreed:

for Plaintiffs:

Federal Trade Commission

DAVID C. SHONKA
Acting General Counsel



Dated: July 11, 2016

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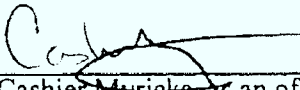


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Netcom3 Global, Inc., Netcom3,
Inc., d/b/a Netcom3 Software Inc.,
and Cashier Myricks:


PC Cleaner, Inc.

Dated: 5/5/16

By: 
Cashier Myricks, as an officer of
PC Cleaner, Inc.


Netcom3 Global, Inc.

Dated: 5/5/16


By: 
Cashier Myricks, as an officer of Netcom3
Global, Inc.

Netcom3, Inc., d/b/a Netcom3 Software Inc.

Dated: 5/5/16

By: 
Cashier Myricks, as an officer of Netcom3,
Inc., d/b/a Netcom3 Software Inc.

Dated: 5/5/16


Cashier Myricks, individually

Approved as to form only:

Dated:

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for Defendants PC Cleaner, Inc.,
Netcom3 Global, Inc., Netcom3,
Inc., d/b/a Netcom3 Software Inc.,
and Cashier Myricks:

PC Cleaner, Inc.

Dated:

By:

Cashier Myricks, as an officer of
PC Cleaner, Inc.

Netcom3 Global, Inc.

Dated:

By:

Cashier Myricks, as an officer of Netcom3
Global, Inc.

Netcom3, Inc., d/b/a Netcom3 Software Inc.

Dated:

By:

Cashier Myricks, as an officer of Netcom3,
Inc., d/b/a Netcom3 Software Inc.

Dated:

Cashier Myricks, individually

Approved as to form only:

Dated: 5/5/16

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