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10 ATTORNEYS FOR PLAINTIFF
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 CENTRAL DISTRICT OF CALIFORNIA
 SANTA ANA OFFICE
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UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA
 SOUTHERN DIVISION

FEDERAL TRADE COMMISSION,
 Plaintiff,
 v.
 ELECTRONIC MEDICAL BILLING,
 INC., a Nevada corporation,
 doing business as EMB MARKETING
 and EMB INC., ESOFTE CADUCEI,
 INC., a Nevada corporation,
 JOHN C. MOORE, individually and
 as an officer of Electronic
 Medical Billing, Inc., and
 Esofte Caducei, Inc., and DAVID
 L. MILLER, individually and as
 an officer of Electronic
 Medical Billing, Inc.,
 Defendants.

Civ. No.
 SACV02-368 AHS (ANX)

STIPULATED FINAL JUDGMENT AND ORDER THEREON
 AND ORDER FOR PERMANENT
 INJUNCTION

ENTER ON ICMS
 APR 22 2003
 BY *[Signature]*

27 Plaintiff, the Federal Trade Commission ("Commission" or "FTC"),
 28 commenced this action on April 9, 2002, by filing its Complaint for

48

1 Permanent Injunction and Other Equitable Relief ("Complaint")
2 pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC
3 Act"), 15 U.S.C. § 53(b), charging that defendants Electronic Medical
4 Billing, Inc., d/b/a EMB Marketing and EMB Inc., Esoft Caducei, Inc.,
5 John C. Moore, and David L. Miller, were engaged in deceptive acts
6 and practices in violation of Section 5 of the FTC Act, 15 U.S.C.
7 § 45, in connection with the advertising, telemarketing, offering for
8 sale, and sale of work-at-home medical billing employment
9 opportunities.

10 The Commission and defendants Electronic Medical Billing, Inc.,
11 d/b/a EMB Marketing and EMB Inc., Esoft Caducei, Inc., John C. Moore,
12 and David L. Miller, having been represented by counsel and acting by
13 and through such counsel, have consented to the entry of this
14 Stipulated Final Judgment and Order for Permanent Injunction
15 ("Order") without a trial or adjudication of any issue of law or fact
16 herein.

17 NOW, THEREFORE, the Commission and defendants, having requested
18 the Court to enter this Order,

19 **IT IS ORDERED, ADJUDGED, AND DECREED** as follows:

20 **FINDINGS**

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

25 B. The Commission's Complaint states a claim upon which relief
26 may be granted against defendants under Sections 5 and 13(b) of the
27 FTC Act, 15 U.S.C. §§ 45 and 53(b).

28

1 C. This Court has jurisdiction over the subject matter of the
2 case and all parties hereto. Venue lies properly with this Court.

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

5 E. The parties shall each bear their own costs and attorney's
6 fees incurred in this action and have waived all claims under the
7 Equal Access to Justice Act, 28 U.S.C. § 2412, and all rights to seek
8 judicial review, or otherwise to challenge the validity of this
9 Order.

10 F. Entry of this Order is in the public interest.

11 **ORDER**

12 **Definitions**

13 A. "Assisting others" means providing any of the following
14 goods and services to any person or entity: (a) formulating or
15 providing, or arranging for the formulation or provision of, any
16 telephone sales script or any other marketing material; (b) hiring,
17 recruiting or training of personnel; (c) advising or consulting of
18 others on the commencement or management of a business venture; (d)
19 providing names, or assisting in the generation, of potential
20 customers; (e) performing customer service functions including, but
21 not limited to, receiving or responding to consumer complaints; (f)
22 performing marketing or telemarketing services of any kind; or (g)
23 acting as an officer or director of a business entity.

24 B. "Business venture" means any written or oral business
25 arrangement, however denominated, which consists of the payment of
26 any consideration for: (a) the right or means to offer, sell or
27 distribute goods or services (whether or not identified by a
28 trademark, service mark, trade name, advertising or other commercial

1 symbol); and (b) assistance to any person or entity in connection
2 with or incident to the establishment, maintenance or operation of a
3 new business or the entry by an existing business into a new line or
4 type of business.

5 C. "Consumer" means an actual or potential purchaser,
6 customer, licensee or natural person.

7 D. "Defendants" means Electronic Medical Billing, Inc., d/b/a
8 EMB Marketing and EMB Inc., Esoft Caducei, Inc., John C. Moore, and
9 David L. Miller, and each of them, by whatever names each might be
10 known, as well as their successors, assigns, officers, agents,
11 directors, servants, employees, salespersons, independent
12 contractors, corporations, subsidiaries, affiliates, all other
13 persons or entities directly or indirectly under their control or
14 under common control with them, and all other persons or entities in
15 active concert or participation with them who receive actual notice
16 of this Order by personal service or otherwise, whether acting
17 directly or through any corporation, subsidiary, division or other
18 device.

19 E. "Document" is synonymous in meaning and equal in scope to
20 the usage of the term in Federal Rule of Civil Procedure 34(a), and
21 includes writings, drawings, graphs, charts, photographs, audio and
22 video recordings, electronic mail ("email"), computer records, and
23 other data compilations from which information can be obtained and
24 translated, if necessary, through detection devices into reasonably
25 usable form. A draft or non-identical copy is a separate document
26 within the meaning of the term.

27 F. "Material" means likely to affect a person's choice of, or
28 conduct regarding, goods or services.

1 G. "Medical billing" means any service by which bills or
2 charges for medical services or products or medically related
3 services or products are sent, directly or indirectly, to a patient
4 or third party payor including, but not limited to, insurance
5 companies, on behalf of the physician, doctor or other provider of a
6 medical service or product or medically related service or product.

7 H. "Person" means any individual, group, unincorporated
8 association, limited or general partnership, corporation or other
9 business entity.

10 I. "Receivership defendants" means Electronic Medical Billing,
11 Inc., d/b/a EMB Marketing and EMB Inc., and Esoft Caducei, Inc.

12 J. "Telemarketing" means the advertising, offering for sale,
13 or sale of any item, product, good or service to any person by means
14 of telephone sales presentations, either exclusively or in
15 conjunction with the use of other forms or marketing.

16 K. "Work-at-home opportunity" means any program, plan, product
17 or service represented to enable or assist a participant or purchaser
18 to earn money while working at home.

19 **I. BAN ON CERTAIN ACTIVITIES**

20 **IT IS THEREFORE ORDERED** that defendants, whether directly or
21 indirectly, or through any corporation, business entity or person
22 under their control, are hereby permanently restrained and enjoined
23 from engaging, participating or assisting others in the advertising,
24 promoting, telemarketing, offering for sale or sale of any work-at-
25 home opportunity, including any work-at-home opportunity involving
26 medical billing.

1 a law enforcement agency or as required by any law, regulation or
2 court order.

3 **IV. CONSUMER REDRESS**

4 **IT IS FURTHER ORDERED** that:

5 A. Defendants shall pay to the FTC consumer redress in the
6 amount of \$50,000, for which they are jointly and severally liable,
7 within ten (10) days of entry of this Order. Payment shall be made to
8 the FTC by certified check or other guaranteed funds made payable to
9 and delivered to the FTC, or by wire transfer in accordance with
10 directions provided by the FTC;

11 B. All funds paid pursuant to this Section shall be deposited
12 into a fund administered by the Commission or its designated agent to
13 be used for equitable relief including, but not limited to, consumer
14 redress and any attendant expenses for the administration of any
15 redress fund. In the event that direct redress to consumers is
16 wholly or partially impracticable or funds remain after redress is
17 completed, the Commission may apply any remaining funds for such
18 other equitable relief (including consumer information remedies) as
19 it determines to be reasonably related to the defendants' practices
20 alleged in the Complaint. Any funds not used for such equitable
21 relief shall be deposited to the Treasury as disgorgement.

22 Defendants shall have no right to challenge the Commission's choice
23 of remedies under this Section;

24 C. In the event of any default in the payment set forth in
25 Section IV.A. of this Order, the amount of \$50,000, less the sum of
26 any payments made pursuant to Section IV.A., shall become immediately
27 due and payable by defendants, and interest computed pursuant to 28
28

1 U.S.C. § 1961, as amended, shall immediately begin to accrue on the
2 unpaid balance;

3 D. The Commission and defendants acknowledge and agree that no
4 portion of this judgment for equitable monetary relief shall be
5 deemed a fine, penalty, punitive assessment or forfeiture; and

6 E. For purposes of any subsequent proceedings to enforce
7 payments required by this Section or Section V of this Order
8 including, but not limited to, a non-dischargeability complaint filed
9 in a bankruptcy proceeding, defendants waive any right to contest any
10 allegations in the Commission's Complaint.

11 **V. RIGHT TO REOPEN**

12 **IT IS FURTHER ORDERED** that, by agreeing to this Order,
13 defendants reaffirm and attest to the truthfulness, accuracy, and
14 completeness of the financial statements that were prepared by
15 defendants John C. Moore and David L. Miller, and transmitted to the
16 Commission on April 15, 2002 (designated the "Financial Statements").
17 Plaintiff's agreement to this Order is expressly premised upon the
18 truthfulness, accuracy, and completeness of defendants' financial
19 condition as represented in the Financial Statements referenced
20 above, which contain material information upon which plaintiff relied
21 in negotiating and agreeing to the terms of this Order. If, upon
22 motion by plaintiff, this Court finds that any defendant failed to
23 disclose any material asset, or materially misrepresented the value
24 of any asset, or made any other material misrepresentation in or
25 omission from the Financial Statements, the Court shall enter a
26 judgment against defendants in favor of the Commission in the amount
27 of \$4,213,560.00, and the entire amount shall become immediately due
28 and payable.

1 Provided, however, that in all other respects, this Order shall
2 remain in full force and effect unless otherwise ordered by this
3 Court; and provided further that proceedings instituted under this
4 Section are in addition to, and not in lieu of, any other civil or
5 criminal remedies as may be provided by law, including any other,
6 proceedings plaintiff may initiate to enforce this Order.

7 VI. DISCHARGE OF RECEIVERSHIP

8 **IT IS FURTHER ORDERED** that the appointment by this Court of
9 Adrian B. Stern, CPA, of Clumeck, Stern, Phillips, & Schenkelberg,
10 17404 Ventura Boulevard, Second Floor, Encino, California 91316, as
11 receiver for receivership defendants Electronic Medical Billing,
12 Inc., d/b/a EMB Marketing and EMB Inc., and Esoft Caducei, Inc., is
13 vacated upon (i) the receivership defendants' payment of all Court-
14 approved fees and expenses of the receiver; and (ii) the receiver
15 having been discharged by this Court.

16 VII. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS

17 **IT IS FURTHER ORDERED** that, within five (5) business days after
18 receipt by defendants John C. Moore and David L. Miller of this Order
19 as entered by the Court, each defendant shall submit to the
20 Commission a truthful sworn statement, in the form shown on
21 Appendices A and B, that shall acknowledge receipt of this Order.

22 VIII. DISTRIBUTION OF ORDER BY DEFENDANTS

23 **IT IS FURTHER ORDERED** that, for a period of five (5) years from
24 the date of entry of this Order, defendants shall:

25 A. Provide a copy of this Order to, and obtain a signed and
26 dated acknowledgment of receipt of same from, each officer or
27 director, each individual serving in a management capacity, all
28 personnel involved in responding to consumer complaints or inquiries,

1 and all sales personnel, whether designated as employees,
 2 consultants, independent contractors or otherwise, immediately upon
 3 employing or retaining any such persons, for any business where: (1)
 4 any defendant is the majority owner of the business or directly or
 5 indirectly manages or controls the business; and (2) the business is
 6 engaged in, or assists others engaging in, telemarketing; and

7 B. Maintain for a period of three (3) years after creation
 8 and, upon reasonable notice, make available to representatives of the
 9 Commission, the original signed and dated acknowledgments of the
 10 receipt of copies of this Order, as required in Section XIII.A. of
 11 this Order.

12 **IX. MONITORING COMPLIANCE OF SALES PERSONNEL**

13 **IT IS FURTHER ORDERED** that defendants, in connection with any
 14 business where: (1) any defendant is the majority owner of the
 15 business or directly or indirectly manages or controls the business;
 16 and (2) the business is engaged in, or assists others engaging in,
 17 telemarketing, are hereby permanently restrained and enjoined from:

18 A. Failing to take reasonable steps sufficient to monitor and
 19 ensure that all employees and independent contractors engaged in
 20 sales or other customer service functions comply with Section II of
 21 this Order. Such steps shall include adequate monitoring of sales
 22 presentations or other calls with customers, and shall also include,
 23 at a minimum, the following: (1) listening to the oral
 24 representations made by persons engaged in sales or other customer
 25 service functions; (2) establishing a procedure for receiving and
 26 responding to consumer complaints; and (3) ascertaining the number
 27 and nature of consumer complaints regarding transactions in which
 28 each employee or independent contractor is involved;

1 B. Failing to investigate fully any consumer complaint
2 received by any business to which this Section applies; and

3 C. Failing to take corrective action with respect to any sales
4 person whom defendants determine is not complying with this Order,
5 which may include training, disciplining, and/or terminating such
6 sales person.

7 **X. RECORDKEEPING**

8 **IT IS FURTHER ORDERED** that, for a period of eight (8) years from
9 the date of entry of this Order, defendants, in connection with any
10 business where: (1) any defendant is the majority owner of the
11 business or directly or indirectly manages or controls the business;
12 and (2) the business is engaged in, or assists others engaging in,
13 telemarketing, are hereby restrained and enjoined from failing to
14 create and retain the following records:

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

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

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

28 D. Complaint and refund requests (whether received directly,

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

3 E. Copies of all sales scripts, training materials,
4 advertisements or other marketing materials.

5 **XI. COMPLIANCE REPORTING BY DEFENDANTS**

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

8 A. For a period of five (5) years from the date of entry of
9 this Order, defendants shall notify the Commission of the following:

10 1. Any changes in any defendant's residence, mailing
11 address or telephone numbers, within ten (10) days of the date
12 of such change;

13 2. Any changes in any defendant's employment status
14 (including self-employment) within ten (10) days of such change.
15 Such notice shall include the name and address of each business
16 that such defendant is affiliated with or employed by, a
17 statement of the nature of the business, and a statement of
18 defendant's duties and responsibilities in connection with the
19 business or employment; and

20 3. Any proposed change in the structure of any business
21 entity owned or controlled by any defendant, such as creation,
22 incorporation, dissolution, assignment, sale, merger, creation
23 or dissolution of subsidiaries, or any other change that could
24 affect compliance obligations arising out of this Order, thirty
25 (30) days prior to the effective date of any proposed change;

26 B. One hundred eighty (180) days after the date of entry of
27 this Order, each defendant shall provide a written report to the
28 Commission, sworn to under penalty of perjury, setting forth in

1 detail the manner and form in which that defendant has complied and
 2 is complying with this Order. This report shall include, but not be
 3 limited to:

4 1. Defendant's then-current residence address and
 5 telephone number;

6 2. Defendant's then-current employment, business
 7 addresses, and telephone numbers, a description of the business
 8 activities of each such employer, and defendant's titles and
 9 responsibilities for each employer;

10 3. A copy of each acknowledgment of receipt of this Order
 11 by defendant pursuant to Section VII of this Order; and

12 4. A statement describing the manner in which defendant
 13 has complied and is complying with this Order;

14 C. Upon written request by a representative of the Commission,
 15 defendants shall submit additional written reports (under oath, if
 16 requested) and produce documents on fifteen (15) days' notice with
 17 respect to any conduct subject to this Order;

18 D. For purposes of this Order, defendants shall, unless
 19 otherwise directed by the Commission's authorized representatives,
 20 mail all written notifications to the Commission to:

21 Federal Trade Commission
 22 Director, Northwest Region
 23 915 Second Avenue, Suite 2896
 24 Seattle, Washington 98174
 Re: FTC v. Electronic Medical Billing, Inc.

25 E. For purposes of this Section, "employment" includes the
 26 performance of services as an employee, consultant or independent
 27 contractor; and "employers" include any individual or entity for whom
 28 defendants perform services as an employee, consultant or independent
 contractor; and

1 F. For purposes of the compliance reporting required by this
2 Section, the Commission is authorized to communicate directly with
3 defendants.

4 **XII. COMMISSION'S AUTHORITY TO MONITOR COMPLIANCE**

5 IT IS FURTHER ORDERED that the Commission is authorized to
6 monitor defendants' compliance with this Order by all lawful means
7 including, but not limited to, the following:

8 A. The Commission is authorized, without further leave of
9 Court, to obtain discovery from any person in the manner provided by
10 Chapter V of the Federal Rules of Civil Procedure, Fed. R. Civ. P.
11 26-37, including the use of compulsory process pursuant to Fed. R.
12 Civ. P. 45, for the purpose of monitoring and investigating
13 defendants' compliance with any provision of this Order;

14 B. The Commission is authorized to use representatives posing
15 as consumers and suppliers to any defendant, any defendant's
16 employees, or any other entity managed or controlled in whole or in
17 part by any defendant, without the necessity of identification or
18 prior notice; and

19 C. Nothing in this Order shall limit the Commission's lawful
20 use of compulsory process, pursuant to Sections 9 and 20 of the FTC
21 Act, 15 U.S.C. §§ 49 and 57b-1, to investigate whether defendants
22 have violated any provision of this Order or Section 5 of the FTC
23 Act, 15 U.S.C. § 45.

24 **XIII. ACCESS TO BUSINESS PREMISES**

25 IT IS FURTHER ORDERED that, for a period of five (5) years from
26 the date of entry of this Order, for the purpose of further
27 determining compliance with this Order, defendants shall permit
28

XV. RETENTION OF JURISDICTION

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

The Commission and defendants hereby stipulate and agree to entry of the foregoing Order, which shall constitute a final judgment in this action.

SO ORDERED.

APR 18 2003

Dated

Alicemarie H. Stotler
HONORABLE ALICEMARIE H. STOTLER
United States District Court Judge

SIGNED AND STIPULATED BY:

Dated: 4/16, 200³

Kathryn C. Decker
KATHRYN C/ DECKER
JULIE K. BROF
Federal Trade Commission
915 Second Avenue, Suite 2896
Seattle, Washington 98174
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Federal Trade Commission
10877 Wilshire Boulevard, Suite 700
Los Angeles, CA 90024
(310) 824-4325 (phone)
(310) 824-4380 (fax)

ATTORNEYS FOR PLAINTIFF

Dated: 12/13, 2002

John C. Moore
JOHN C. MOORE
Individually and on behalf of
Electronic Medical Billing, Inc.,

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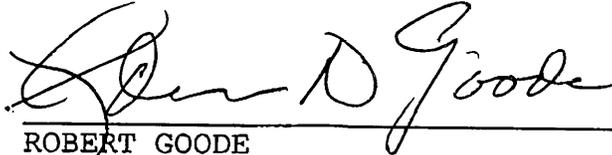
and Esoft Caducei, Inc.

Dated: 12/16/2002, 2002



DAVID L. MILLER
Individually and on behalf of
Electronic Medical Billing, Inc., and
Esoft Caducei, Inc.

DATE: 12.20.02



ROBERT GOODE
P.O. Box 447
Santa Ana, CA 92702
(714) 835-8100 (phone)
(714) 835-8193 (fax)

ATTORNEY FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing Stipulated Final Judgment and Order for Permanent Injunction to be served on Electronic Medical Billing, Inc., d/b/a EMB Marketing and EMB Inc., Esoft Caducei, Inc., John C. Moore, and David L. Miller, on the date set forth below by the following indicated methods:

by personal service at _____

by mailing a full, true, and correct copy thereof in a sealed, first-class postage-prepaid envelope, addressed to Robert Goode at P.O. Box 337, Santa Ana, California 92702, and deposited with the United States Postal Service at Seattle, Washington, on the date set forth below.

by sending a full, true, and correct copy thereof via overnight courier in a sealed, prepaid envelope, addressed to _____ at: _____

on the date set forth below.

by faxing a full, true, and correct copy thereof to counsel for defendants at the fax number _____. The receiving fax machine was operating at the time of service and the transmission was properly completed, according to the confirmation report.

Dated: 4/16, 2003.

Kathryn C. Decker
Kathryn C. Decker
Attorney
Federal Trade Commission