

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

CASE NO. 0:15-CV-60423-WJZ

FEDERAL TRADE COMMISSION, *et al.*

Plaintiffs,

v.

CARIBBEAN CRUISE LINE, INC., *et al.*

Defendants.

**STIPULATED ORDER FOR
PERMANENT INJUNCTION AND CIVIL PENALTY JUDGMENT
AGAINST PACIFIC TELECOM DEFENDANTS**

The Federal Trade Commission (“Commission” or “FTC”), and the States of Colorado, Florida, Indiana, Kansas, Mississippi, Missouri, North Carolina, Ohio, and Washington through their Attorneys General, and the State of Tennessee through the Tennessee Regulatory Authority (collectively, “Plaintiffs”) filed their First Amended Complaint for civil penalties, permanent injunction, and other equitable relief in this matter, pursuant to Sections 5(a), 5(m)(1)(A), 13(b), and 16(a) of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), and 56(a), and Section 6 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (the “Telemarketing Act”), 15 U.S.C. § 6105. Pacific Telecom Communications Group (“Pacific Telecom”), International Telephone Corporation (“ITC”), Telephone Management Corporation (“TMC”), International Telephone, LLC (“IT, LLC”), T M Caller ID, LLC (“T M Caller ID”), and Fred Accuardi (“Accuardi”) (collectively, the “Pacific Telecom Defendants”) have waived service of the summons, the Complaint, and the First Amended Complaint. Plaintiff and Pacific Telecom Defendants stipulate to the entry of this Stipulated Order for Permanent Injunction and Civil Penalty 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 First Amended Complaint charges that Pacific Telecom Defendants engaged in deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC's Telemarketing Sales Rule (the "TSR"), as amended, 16 C.F.R. Part 310, by assisting and facilitating numerous telemarketers who made millions of prerecorded "robocalls" in violation of Section 310.4 of the TSR.
3. Pacific Telecom Defendants neither admit nor deny any of the allegations in the First Amended Complaint, except as specifically stated in this Order. Only for purposes of this action, Pacific Telecom Defendants admit the facts necessary to establish jurisdiction.
4. Pacific Telecom 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. Pacific Telecom Defendants waive and release any claims that they may have against Plaintiffs, the Commission, and their agents that relate to this action.
5. Pacific Telecom Defendants and Plaintiffs waive all rights to appeal or otherwise challenge or contest the validity of this Order.

DEFINITIONS

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

- A. "**Assisting Other Persons**" means providing any of the following goods or services to another person while knowing or consciously avoiding knowing that the person receiving assistance is engaged in an act or practice that is prohibited by this Order: (i) serving as an officer, director, or consultant; (ii) providing or arranging for access to services that remit to

telemarketers or sellers the fees generated by caller identification inquiries; (iii) providing or arranging for access to services that allow users to assign or change the name of the calling party displayed by caller identification services; or (iv) providing any other substantial help or assistance.

B. **“Caller Identification Service”** means a service that allows a telephone subscriber to have the telephone number, and, where available, name of the calling party transmitted contemporaneously with the telephone call, and displayed on a device in or connected to the subscriber’s telephone.

C. **“Corporate Defendants”** means Pacific Telecom Communications Group; International Telephone Corporation; International Telephone, LLC, T M Caller ID, LLC, Telephone Management Corporation, and their successors and assigns.

D. **“Established Business Relationship”** means a relationship between a Seller and a person based on: (a) the person’s purchase, rental, or lease of the Seller’s goods or services or a financial transaction between the Seller and person, within the eighteen months immediately preceding the date of the Telemarketing call; or (b) the person’s inquiry or application regarding a product or service offered by the Seller, within the three months immediately preceding the date of a Telemarketing call.

E. **“Individual Defendant”** means Fred Accuardi.

F. **“National Do Not Call Registry”** means the National Do Not Call Registry, which is the “do-not-call” registry maintained by the Commission pursuant to 16 C.F.R. § 310.4(b)(1)(iii)(B).

G. **“Outbound Telephone Call”** means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution.

H. **“Representatives”** means Corporate Defendant’s officers, agents, servants, employees,

attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise.

I. “**Seller**” means any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration, whether or not such person is under the jurisdiction of the Commission.

J. “**Telemarketer**” means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor.

K. “**Telemarketing**” means any plan, program, or campaign which is conducted to induce the purchase of goods or services by use of one or more telephones, and which involves a telephone call.

ORDER

I. PERMANENT BAN ON ROBOCALLS

IT IS ORDERED that Pacific Telecom Defendants, whether acting directly or through an intermediary, are permanently restrained and enjoined from initiating, causing others to initiate, or Assisting Others Persons initiating any Outbound Telephone Call that delivers a prerecorded message.

II. PROHIBITION AGAINST ILLEGAL TELEMARKETING PRACTICES

IT IS FURTHER ORDERED that Pacific Telecom Defendants and their Representatives, whether acting directly or indirectly, in connection with Telemarketing, are permanently restrained and enjoined from engaging in, causing others to engage in, or Assisting Other Persons engaging in, the following practices:

- A. Initiating an Outbound Telephone Call to any person whose telephone number is on the National Do Not Call Registry, unless Pacific Telecom Defendants prove that:

1. the Seller has obtained the express agreement, in writing, of such person to place calls to that person. Such written agreement shall clearly evidence such person's authorization that calls made by or on behalf of the Seller may be placed to that person, and shall include the telephone number to which the calls may be placed and the signature of that person; or
 2. the Seller has an Established Business Relationship with such person, and that person has not previously stated that he or she does not wish to receive Outbound Telephone Calls made by or on behalf of the Seller;
- B. Initiating any Outbound Telephone Call to a person when that person has previously stated that he or she does not wish to receive an Outbound Telephone Call made by or on behalf of Pacific Telecom Defendants or the Seller.
- C. Initiating any Outbound Telephone Call where Pacific Telecom Defendants, their Representatives or their clients fail to transmit or cause to be transmitted to any Caller Identification Service in use by a recipient of a Telemarketing call either:
(i) the telephone number and name of the Telemarketer making the call; or (ii) the Seller's name and customer service telephone number;
- D. Initiating any outbound telephone call that delivers a prerecorded message to induce the purchase of any good or service unless, prior to making any such call, the Seller has obtained from the recipient of the call an express agreement, in writing, that:
1. the Seller obtained only after a clear and conspicuous disclosure that the purpose of the agreement is to authorize the seller to place prerecorded calls to such person;

2. the Seller obtained without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service;
 3. evidences the willingness of the recipient of the call to receive calls that deliver prerecorded messages by or on behalf of the Seller; and
 4. includes such person's telephone number and signature; and
- E. Violating the Telemarketing Sales Rule, 16 C.F.R. Part 310, attached as Appendix A.

III. TERMINATION OF NONCOMPLIANT CLIENTS

IT IS FURTHER ORDERED that:

- A. Pacific Telecom Defendants shall, within thirty (30) days of the date of entry of this Order:
1. Provide, electronically or otherwise, all existing clients (if any) with: (i) a copy of this Order; and (ii) a written notice stating that the use of Pacific Telecom Defendants' services in connection with telephone calls that do not comply with this Order will result in immediate termination of services; and
 2. Obtain from each such client an electronic acknowledgment or other signed and dated statement acknowledging receipt of this Order and the written notice concerning immediate termination of services.
- B. Prior to commencing services for any prospective clients, Pacific Telecom Defendants shall:
1. Provide, electronically or otherwise, each such prospective client with: (i) a copy of this Order; and (ii) a written notice stating that the use of Pacific Telecom Defendants' services to cause the initiation of telephone calls that

do not comply with this Order will result in immediate termination of services; and

2. Obtain from each such prospective client an electronic acknowledgment or other signed and dated statement acknowledging receipt of this Order and the written notice concerning immediate termination of services.

C. Pacific Telecom Defendants shall:

1. Terminate services to any subscriber immediately upon discovering that a subscriber has used the services of Pacific Telecom Defendants or their Representatives to initiate or cause the initiation of telephone calls that do not comply with this Order; and
2. Refuse to provide services to any prospective subscriber if such services would assist or support the initiation of telephone calls that do not comply with this Order.

IV. MONETARY JUDGMENT FOR CIVIL PENALTY AND PARTIAL SUSPENSION

IT IS FURTHER ORDERED that:

- A. Judgment in the amount of One Million Three Hundred Fifty-Four Thousand Dollars (\$1,354,000.00) is entered in favor of Plaintiffs against Pacific Telecom Defendants, jointly and severally, as a civil penalty.
- B. Pacific Telecom Defendants are ordered to pay to Plaintiffs, by making payment to the Treasurer of the United States, Two Thousand Five Hundred Dollars (\$2,500.00). Such payment must be made within ten (10) days of entry of this Order by electronic fund transfer in accordance with instructions previously provided by a representative of Plaintiffs. Upon such payment, the remainder of

the judgment is suspended, subject to the Subsections below.

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

1. the Financial Statements of Individual Defendant Fred Accuardi signed on March 14, 2014, and September 20, 2015, including the attachments;
2. the Financial Statements of Corporate Defendant Pacific Telecom Communications Group signed by Fred Accuardi on March 14, 2014, and September 21, 2015, including the attachments;
3. the Financial Statement of Corporate Defendant International Telephone Corporation signed by Fred Accuardi on March 14, 2014, including the attachments;
4. the Financial Statement of Corporate Defendant International Telephone, LLC signed by Fred Accuardi on March 14, 2014, including the attachments;
5. the Financial Statements of Corporate Defendant Telephone Management Corporation signed by Fred Accuardi on March 22, 2014, and September 22, 2015, including the attachments;
6. all documents attached to correspondence to Commission staff from Jamie Heim dated March 4, 2014, March 7, 2014, March 10, 2014, March 14, 2014, March 24, 2014, and September 28, 2015;
7. all documents attached to correspondence to Commission staff from Fred

Accuardi dated September 28, 2015;

8. correspondence to Commission staff from Individual Defendant Accuardi dated April 11, 2014; and
 9. e-mail correspondence to Commission staff from the Pacific Telecom Defendants' counsel dated June 6, 2014, and November 6, 2015.
- D. The suspension of the judgment will be lifted as to any Pacific Telecom Defendant if, upon motion by the Commission or Plaintiffs, the Court finds that the Pacific Telecom 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 Pacific Telecom Defendant in the amount specified in Subsection A above (which the parties stipulate only for purposes of this Section represents the amount of the civil penalty for the violations alleged in the First Amended Complaint), less any payment previously made pursuant to this Section, plus interest computed from the date of entry of this Order.

V. ADDITIONAL MONETARY PROVISIONS

IT IS FURTHER ORDERED that:

- A. Pacific Telecom 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.
- B. The facts alleged in the First Amended Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of the

Commission, including in a proceeding to enforce its rights to any payment or monetary judgment pursuant to this Order.

- C. Pacific Telecom Defendants agree that the judgment represents a civil penalty owed to the government of the United States, is not compensation for actual pecuniary loss, and, therefore, as to the Individual Defendant, it is not subject to discharge under the Bankruptcy Code pursuant to 11 U.S.C. § 523(a)(7).
- D. Pacific Telecom Defendants acknowledge that their Taxpayer Identification Numbers (Social Security Numbers or Employer Identification Numbers), which Pacific Telecom Defendants previously submitted to the Commission, may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. § 7701.

VI. COOPERATION

IT IS FURTHER ORDERED that Pacific Telecom Defendants must fully cooperate with representatives of Plaintiffs and the Commission in this case and in any investigation related to or associated with the transactions or the occurrences that are the subject of the First Amended Complaint. Pacific Telecom Defendants must provide truthful and complete information, evidence, and testimony. Individual Defendant 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 a Plaintiff or Commission representative may reasonably request upon five (5) days written notice, or other reasonable notice, at such places and times as a Plaintiff or Commission representative may designate, without the service of a subpoena.

VII. ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Pacific Telecom Defendants obtain acknowledgments of receipt of this Order:

- A. Each Pacific Telecom Defendant, within seven (7) days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.
- B. For five (5) years after entry of this Order, Individual Defendant for any business engaged in Telemarketing or Assisting Other Persons that he, individually or collectively with any other Pacific Telecom Defendant, 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 who participate in 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 Pacific Telecom Defendant delivered a copy of this Order, that Pacific Telecom Defendant must obtain, within thirty (30) days, a signed and dated acknowledgment of receipt of this Order.

VIII. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Pacific Telecom Defendants make timely submissions to the Commission:

- A. One year after entry of this Order, each Pacific Telecom Defendant must submit a compliance report, sworn under penalty of perjury:
1. Each Pacific Telecom Defendant must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission and Plaintiffs may use to communicate with that Pacific Telecom Defendant; (b) identify all of that Pacific Telecom Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other Pacific Telecom Defendant (which Individual Defendant must describe if he knows or should know due to his own involvement); (d) describe in detail whether and how that Pacific Telecom Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.
 2. Additionally, Individual Defendant must: (a) identify all telephone numbers and all physical, postal, email and Internet addresses, including all 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 five (5) years after entry of this Order in the case of the Individual Defendant, and for five (5) years after entry of this Order in the case of the Corporate Defendants, the Pacific Telecom Defendants must submit a compliance notice, sworn under penalty of perjury, within fourteen (14) days of any change in the following:
1. Each Pacific Telecom Defendant must report any change in: (a) any designated point of contact; or (b) the structure of any Corporate Defendant or any entity that such Pacific Telecom Defendant has any ownership interest in or 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, Individual Defendant must report any change in: (a) name, including aliases or fictitious name, or residence address; or (b) title or role in any business that engages in Telemarketing or Assisting Other Persons, 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 identify the name, physical address, and any Internet address of the business or entity.
- C. Each Pacific Telecom Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Pacific Telecom Defendant within fourteen (14) days of its filing.
- D. Any submission to the Commission 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 Commission representative 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: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: United States v. Caribbean Cruise Line, Inc., et al.

IX. RECORDKEEPING

IT IS FURTHER ORDERED that for five (5) years after entry of this Order in the case of the Individual Defendant, and for five (5) years after entry of this Order in the case of the Corporate Defendants, the Pacific Telecom Defendants must create certain records, and retain each such record for five (5) years. Specifically, Corporate Defendants, in connection with Telemarketing or Assisting Other Persons, and Individual Defendant, for any business engaged in Telemarketing or Assisting Other Persons that he, individually or collectively with any other Pacific Telecom Defendant, 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, 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.

X. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Pacific Telecom 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 fourteen (14) days of receipt of a written request from a representative of the Commission or Plaintiffs, each Pacific Telecom Defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents for inspection and copying. The Commission and Plaintiffs are 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.
- B. For matters concerning this Order, the Commission and Plaintiffs are authorized to communicate directly with each Pacific Telecom Defendant. Pacific Telecom Defendants must permit representatives of the Commission and Plaintiffs to interview any employee or other person affiliated with any Pacific Telecom Defendant who has agreed to such an interview. The person interviewed may have counsel present.

C. The Commission and Plaintiffs may use all other lawful means, including posing, through their representatives as consumers, suppliers, or other individuals or entities, to Pacific Telecom Defendants or any individual or entity affiliated with Pacific Telecom Defendants, without the necessity of identification or prior notice. Nothing in this Order limits 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.

XI. COUNTERCLAIMS

IT IS FURTHER ORDERED that the Pacific Telecom Defendants' counterclaims against the Commission and any Commission employees are hereby dismissed with prejudice.

XII. 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.

SO ORDERED this ___ day of _____, 2017.

UNITED STATES DISTRICT JUDGE

SO STIPULATED AND AGREED:

FOR PLAINTIFFS:

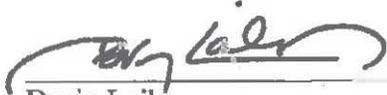
FEDERAL TRADE COMMISSION

A handwritten signature in black ink, appearing to read 'C.E. Brown', written over a horizontal line.

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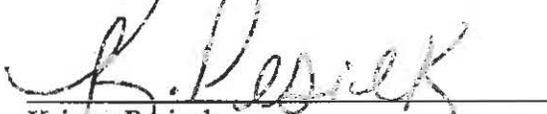
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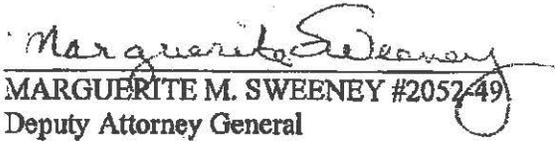
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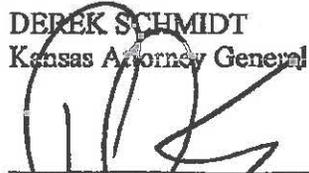
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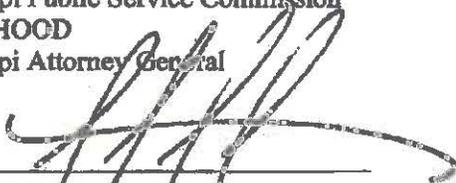
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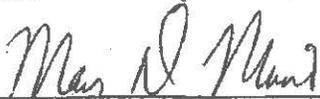
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BY JIM HOOD
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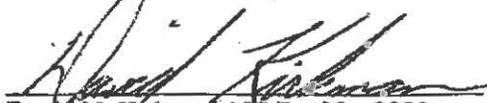
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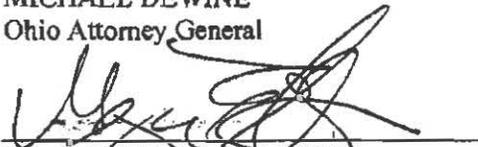
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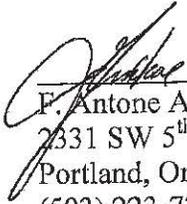
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Date: 10/14/16

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COUNSEL FOR DEFENDANTS

DEFENDANTS

Date: _____

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INDIVIDUALLY AND AS AN OFFICER OF PACIFIC TELECOM COMMUNICATIONS
GROUP, TELEPHONE MANAGEMENT CORPORATION, T M CALLER ID, LLC,
INTERNATIONAL TELEPHONE CORPORATION, and INTERNATIONAL TELEPHONE,
LLC

FOR DEFENDANTS:

Date: _____

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COUNSEL FOR DEFENDANTS

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Date: 10/21/2015

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