

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

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

**FEDERAL TRADE COMMISSION,
STATES OF COLORADO, FLORIDA,
INDIANA, KANSAS, MISSISSIPPI,
MISSOURI, NORTH CAROLINA,
OHIO, TENNESSEE, and WASHINGTON,**

Plaintiffs,

v.

CARIBBEAN CRUISE LINE, INC., et al.

Defendants.

**STIPULATED ORDER FOR
PERMANENT INJUNCTION AND CIVIL PENALTY JUDGMENT
AGAINST ECONOMIC STRATEGY AND JACOB DEJONGH**

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 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. Both Economic Strategy LLC (“Economic Strategy”) and Jacob deJongh (“deJongh”) (individually or collectively, the “Economic Strategy Defendants”) have waived service of the summons and the Complaint. Plaintiffs and Economic Strategy 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 Complaint charges that Economic Strategy 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, in the Telemarketing of their products and services.
3. Economic Strategy Defendants neither admit nor deny any of the allegations in the Complaint, except as specifically stated in this Order. Only for purposes of this action, Economic Strategy Defendants admit the facts necessary to establish jurisdiction.
4. Economic Strategy 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. Economic Strategy Defendants waive and release any claims that they may have against Plaintiffs, the Commission, and their agents that relate to this action.
5. Economic Strategy 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. “**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.

B. **“Economic Strategy Defendants”** means Economic Strategy and deJongh, individually or collectively or in any combination.

C. **“Corporate Defendant”** means Economic Strategy LLC, and its successors and assigns.

D. **“Do Not Call request”** means a statement by a person that indicates that he or she does not wish to receive telephone calls initiated to induce the purchase of goods or services or to solicit charitable contributions.

E. **“Entity-Specific Do Not Call List”** means a list of telephone numbers maintained by a Seller or Telemarketer of persons who have previously stated that they do not wish to receive Outbound Telephone Calls made by or on behalf of the Seller or Telemarketer.

F. **“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.

G. **“Individual Defendant”** means Jacob deJongh.

H. **“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).

I. **“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.

J. **“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.

K. “**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.

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

M. “**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. PROHIBITION AGAINST ABUSIVE TELEMARKETING PRACTICES

IT IS ORDERED that Economic Strategy Defendants and their Representatives, whether acting directly or indirectly, in connection with Telemarketing, are permanently restrained and enjoined from engaging in, or causing others to engage 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 Economic Strategy 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 Economic Strategy Defendants or the Seller;
- C. Initiating any Outbound Telephone Call where Economic Strategy Defendants or their Representatives 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.

**II. MONETARY JUDGMENT FOR CIVIL PENALTY AND PARTIAL
SUSPENSION**

IT IS FURTHER ORDERED that:

- A. Judgment in the amount of Two Hundred Ninety-Five Thousand Nine Hundred Dollars (\$295,900.00) is entered in favor of Plaintiffs against Economic Strategy Defendants, jointly and severally, as a civil penalty.
- B. Economic Strategy Defendants are ordered to pay to Plaintiffs, by making payment to the Treasurer of the United States, Two Thousand Dollars (\$2,000.00), which, as Economic Strategy Defendants stipulate, their undersigned counsel holds in escrow for no purpose other than payment to Plaintiffs. Such payment must be made within seven (7) 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 Economic Strategy Defendants' sworn financial statements and related documents (collectively, "financial representations") submitted to the Commission, namely:
 - 1. the Financial Statement of Individual Defendant Jacob deJongh signed on March 31, 2014, including revisions sent April 24, 2014, as well as attachments and supplementary responses dated May 26, 2014; and

2. the Financial Statement of Corporate Defendant Economic Strategy LLC signed by Jacob deJongh on March 31, 2014, including the attachments.
- D. The suspension of the judgment will be lifted as to any Economic Strategy Defendant if, upon motion by the Commission or Plaintiffs, the Court finds that the Economic Strategy 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 Economic Strategy 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 Complaint), less any payment previously made pursuant to this Section, plus interest computed from the date of entry of this Order.

III. ADDITIONAL MONETARY PROVISIONS

IT IS FURTHER ORDERED that:

- A. Economic Strategy 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 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. Economic Strategy 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. Economic Strategy Defendants acknowledge that their Taxpayer Identification Numbers (Social Security Numbers or Employer Identification Numbers), which Economic Strategy 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.

IV. CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Economic Strategy Defendants, and their Representatives are permanently restrained and enjoined from directly or indirectly:

- A. Disclosing, using, or benefitting from customer information, including the name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account), that any Economic Strategy Defendants obtained prior to entry of this Order in connection with the telemarketing practices described in the Complaint; or
- B. Failing to destroy such customer information in all forms in their possession, custody, or control within thirty (30) days after entry of this Order.
- C. *Provided, however,* that customer information need not be disposed of, and may be disclosed, to the extent requested by a government agency or required by law, regulation, or court order.

V. COOPERATION

IT IS FURTHER ORDERED that Economic Strategy 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 Complaint. Economic Strategy Defendants must provide truthful and complete information, evidence, and testimony. Individual Defendant must appear and Corporate Defendant must cause its 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.

VI. ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Economic Strategy Defendants obtain acknowledgments of receipt of this Order:

- A. Each Economic Strategy 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 that he, individually or collectively with any other Economic Strategy Defendant is the majority owner or controls directly or indirectly, and 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 an Economic Strategy Defendant delivered a copy of this Order, that Economic Strategy 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 Economic Strategy Defendants make timely submissions to the Commission:

- A. One year after entry of this Order, each Economic Strategy Defendant must submit a compliance report, sworn under penalty of perjury:
1. Each Economic Strategy 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 Economic Strategy Defendant; (b) identify all of that Economic Strategy 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 Economic Strategy 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 Economic Strategy 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 fifteen (15) years after entry of this Order, each Economic Strategy Defendant must submit a compliance notice, sworn under penalty of perjury, within fourteen (14) days of any change in the following:
1. Each Economic Strategy 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 Economic Strategy 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 activity, 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 Economic Strategy Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Economic Strategy 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: FTC v. Caribbean Cruise Line, Inc., et al.

VIII. RECORDKEEPING

IT IS FURTHER ORDERED that Economic Strategy Defendants must create certain records for fifteen (15) years after entry of the Order, and retain each such record for five (5) years. Specifically, Corporate Defendant in connection with Telemarketing and Individual Defendant for any business that he, individually or collectively with any other Economic

Strategy 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.

IX. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Economic Strategy 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 Economic Strategy 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 Economic Strategy Defendant. Economic Strategy Defendants must permit representatives of the Commission and Plaintiffs to interview any employee or other person affiliated with any Economic Strategy 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 Economic Strategy Defendants or any individual or entity affiliated with Economic Strategy 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.

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.

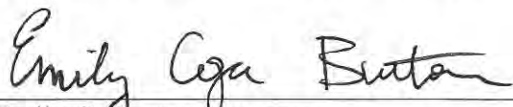
SO ORDERED this ___ day of _____, 2015.

UNITED STATES DISTRICT JUDGE

SO STIPULATED AND AGREED:

FOR PLAINTIFFS:

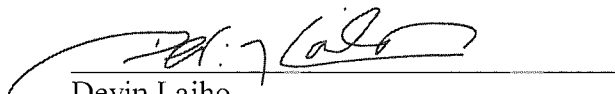
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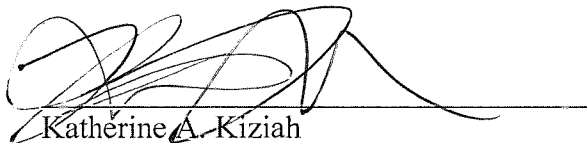
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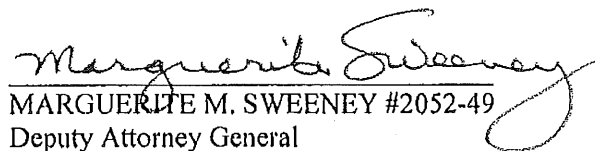
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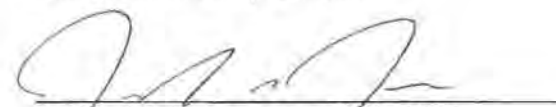
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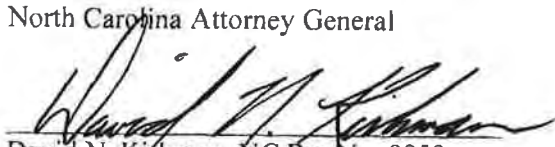
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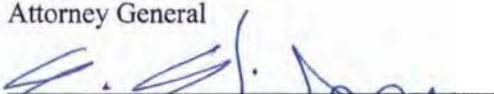
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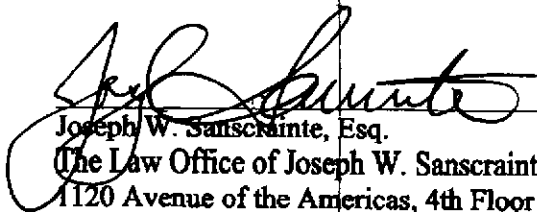
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Jacob deJongh

Date: 6/4/2014

INDIVIDUALLY AND AS AN OFFICER OF ECONOMIC STRATEGY LLC