
THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

FEDERAL TRADE COMMISSION; and
UTAH DIVISION OF CONSUMER
PROTECTION,

Plaintiffs,

v.

NUDGE, LLC; RESPONSE MARKETING
GROUP, LLC; BUYPD, LLC; BRANDON B.
LEWIS; RYAN C. POELMAN; PHILLIP W.
SMITH; SHAWN L. FINNEGAN; CLINT L.
SANDERSON; DEAN R. GRAZIOSI; and
SCOTT YANCEY,

Defendants.

**STIPULATED ORDER FOR
PERMANENT INJUNCTION,
MONETARY JUDGMENT, AND
OTHER RELIEF AS TO DEFENDANT
SCOTT YANCEY**

Case No. 2:19-cv-00867-DBB-DAO

District Judge David Barlow

Plaintiffs, the Federal Trade Commission (“Commission” or “FTC”) and the Utah Division of Consumer Protection, filed their Complaint for Permanent Injunction and Other Equitable Relief, subsequently amended as the First Amended Complaint for Permanent Injunction and Other Equitable Relief, as amended (“Complaint”), for a permanent injunction, monetary relief, and other relief in this matter, pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b. The Commission and Defendant Scott Yancey (the “Settling Defendant”) stipulate to the entry of this Stipulated Order for Permanent Injunction, Monetary Judgment, and Other Relief as to Defendant Scott Yancey (“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 the Settling Defendant provided substantial assistance and support to the Nudge Defendants in the marketing and sale of real estate training services in violation of Section 310.3(b) of the Telemarketing Sales Rule, 16 C.F.R. Part 310 (“TSR”).
3. The Settling Defendant neither admits nor denies any of the allegations in the Complaint, except as specifically stated in this Order. Only for purposes of this action, the Settling Defendant admits the facts necessary to establish jurisdiction.
4. The Settling Defendant waives any claim that he 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 agrees to bear his own costs and attorney fees.
5. The Settling Defendant and the Commission 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. “**Material Connection**” means any relationship that might materially affect the weight or credibility of any representation or endorsement and that would not be reasonably expected by consumers.
- B. “**Nudge Defendants**” means Nudge, LLC, Response Marketing Group, LLC, BuyPD, LLC, Brandon Lewis, Ryan Poelman, Phillip Smith, Shawn Finnegan, and Clint Sanderson.

C. “Settling Defendant” means Scott Yancey.

ORDER

I. PROHIBITION AGAINST MISREPRESENTATIONS

IT IS ORDERED that the Settling Defendant, the Settling Defendant’s 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 advertising, marketing, promoting, or offering for sale any good or service, are permanently restrained and enjoined from making or assisting others in making any misrepresentations, expressly or by implication:

- A. That consumers are likely to earn substantial income, or a specific level or range of actual or potential income;
- B. That any training or coaching program is only available for a select group of consumers who have to qualify to join the program;
- C. Regarding the need or purpose for obtaining consumers’ financial information;
- D. Regarding any Material Connection between the Settling Defendant and any individual or entity offering or affiliated with a product or service;
- E. That any consumer review or endorsement is truthful or is made by an actual user of such product or service or entity;
- F. Through the use of any endorsement of a product, service, or entity; or
- G. Regarding 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.

II. PROHIBITION AGAINST ASSISTING AND FACILITATING

IT IS FURTHER ORDERED that the Settling Defendant, the Settling Defendant's 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, are permanently restrained and enjoined from providing substantial assistance or support to any individual or entity that they know, or should know, is engaged in:

- A. Misrepresenting, expressly or by implication, any material aspect of the performance, efficacy, nature, or central characteristics of any goods and services; or
- B. Any deceptive, unfair, or abusive act or practice prohibited by Section 5 of the FTC Act or by the Telemarketing Sales Rule, a copy of which is attached.

III. MONETARY JUDGMENT

IT IS FURTHER ORDERED that:

A. Judgment in the amount of Four Million Five Hundred and Seventy Seven Thousand and Four Hundred and Nine Dollars (\$4,577,409) is entered in favor of the Commission against the Settling Defendant as monetary relief.

B. The Settling Defendant is ordered to pay to the Commission Four Hundred and Fifty Thousand Dollars (\$450,000), which, as the Settling Defendant stipulates, his 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. The Commission's agreement to the suspension of part of the judgment is expressly premised upon the truthfulness, accuracy, and completeness of the Settling Defendant's financial representations submitted to the Commission, namely:

1. the information and documentation submitted by email from Settling Defendant's counsel Greg Christiansen to Commission counsel Darren Lubetzky dated April 3, 2023, attaching tax returns for the Settling Defendant and additional financial records; and

2. the information submitted by email from Settling Defendant's counsel Greg Christiansen to Commission counsel Darren Lubetzky dated April 5, 2023.

D. The suspension of the judgment will be lifted as to the Settling Defendant if, upon motion by the Commission, the Court finds that the Settling 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 the Settling Defendant in the amount specified in Subsection A above (which the Commission and the Settling Defendant stipulate only for purposes of this Section represents the consumer injury alleged in the Complaint resulting from the Settling Defendant's alleged substantial assistance of the Nudge Defendants' violations of the Telemarketing Sales Rule), less any payment previously made pursuant to this Section, plus interest computed from the date of entry of this Order.

IV. ADDITIONAL MONETARY PROVISIONS

IT IS FURTHER ORDERED that:

A. The Settling Defendant relinquishes 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, such as a nondischargeability complaint in any bankruptcy case.

C. 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.

D. The Settling Defendant acknowledges that his Taxpayer Identification Numbers (Social Security Numbers or Employer Identification Numbers), which the Settling Defendant must submit 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.

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

determines to be reasonably related to the Settling Defendant's practices alleged in the Complaint. Any money not used for relief is to be deposited to the U.S. Treasury. The Settling Defendant has no right to challenge any actions the Commission or its representatives may take pursuant to this Subsection.

V. CUSTOMER INFORMATION

IT IS FURTHER ORDERED that the Settling Defendant, the Settling Defendant's 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, are permanently restrained and enjoined from directly or indirectly:

A. Failing to provide sufficient customer information to enable the Commission to efficiently administer consumer redress. If a representative of the Commission requests in writing any information related to redress, the Settling Defendant must provide it, in the form prescribed by the Commission, within 14 days.

B. 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 the Settling Defendant obtained prior to entry of this Order in connection with the Nudge Defendants' marketing or sale of real estate investment training and coaching programs; and

C. Failing to destroy such customer information in all forms in their possession, custody, or control within 30 days after receipt of written direction to do so from a representative of the Commission.

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.

VI. COOPERATION

IT IS FURTHER ORDERED that the Settling Defendant must fully cooperate with representatives of 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. The Settling Defendant must provide truthful and complete information, evidence, and testimony. The Settling Defendant must appear for interviews, discovery, hearings, trials, and any other proceedings that a Commission representative may reasonably request upon 5 days written notice, or other reasonable notice, at such places and times as a Commission representative may designate, without the service of a subpoena.

VII. ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that the Settling Defendant obtain acknowledgments of receipt of this Order:

A. The Settling Defendant, within 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 5 years after entry of this Order, the Settling Defendant for any business that he, individually or collectively with any other Defendant, is the majority owner or controls directly or indirectly, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees having managerial responsibilities for conduct related to the subject matter of the Order and all 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 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 Settling Defendant delivered a copy of this Order, that Settling Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

VIII. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that the Settling Defendant make timely submissions to the Commission:

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

1. Identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with the Settling Defendant;
2. Identify all telephone numbers and all physical, postal, email and Internet addresses, including all residences;
3. Identify all business activities, including any business for which the Settling Defendant performs services whether as an employee or otherwise and any entity in which the Settling Defendant has any ownership interest;

4. Describe in detail the Settling Defendant's involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership;
5. Identify all of his businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses;
6. 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 Defendant (which the Settling Defendant must describe if he knows or should know due to his own involvement);
7. Describe in detail whether and how the Settling Defendant is in compliance with each Section of this Order; and
8. Provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.

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

1. Any designated point of contact;
2. The structure of any entity that the Settling 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.

3. Name, including aliases or fictitious name, or residence address; and
4. Title or role in any business activity, including any business for which the Settling Defendant performs services whether as an employee or otherwise and any entity in which the Settling Defendant has any ownership interest, and identify the name, physical address, and any Internet address of the business or entity.

C. The Settling Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against the Settling Defendant within 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. Scott Yancey (X200004).

IX. RECORDKEEPING

IT IS FURTHER ORDERED that the Settling Defendant must create certain records for 10 years after entry of the Order, and retain each such record for 5 years. Specifically, the

Settling Defendant for any business that he, individually or collectively with any other 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 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.

X. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring the Settling Defendant's compliance with this Order, including any failure to transfer any assets as required by this Order:

- A. Within 14 days of receipt of a written request from a representative of the Commission, the Settling 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 is 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 is authorized to communicate directly with the Settling Defendant. The Settling Defendant must permit representatives of the Commission to interview any employee or other person affiliated with the Settling Defendant who has agreed to such an interview. The person interviewed may have counsel present.

C. The Commission may use all other lawful means, including posing, through its representatives as consumers, suppliers, or other individuals or entities, to the Settling Defendant or any individual or entity affiliated with the Settling Defendant, 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.

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

XI. 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.

Signed April 24, 2023.

BY THE COURT



David Barlow
United States District Judge

SO STIPULATED AND AGREED:

FOR PLAINTIFF:

FEDERAL TRADE COMMISSION



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Federal Trade Commission
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DEFENDANT SCOTT YANCEY



Scott Yancey

Date: 4-6-23