

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

FEDERAL TRADE COMMISSION,  <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> VOICE TOUCH, INC., a Florida corporation, dba Voice Touch, <i>et al.</i> ,  <p style="text-align: center;">Defendants.</p>	) ) ) ) Civ. No. 09-cv-2929 ) ) ) ) <b>STIPULATED FINAL JUDGMENT</b> ) <b>AND ORDER FOR PERMANENT</b> ) <b>INJUNCTION AGAINST</b> ) <b>DEFENDANTS JAMES A. DUNNE</b> ) <b>AND VOICE TOUCH, INC.</b> )
--	---

Plaintiff Federal Trade Commission ("FTC" or "Commission"), filed its Complaint for Injunctive and Other Equitable Relief pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. §§ 6101-6108, to secure temporary, preliminary, and permanent injunctive relief, restitution, disgorgement of ill-gotten gains, and other equitable relief for Defendants' acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and in violation of the FTC's Trade Regulation Rule entitled "Telemarketing Sales Rule" ("TSR"), 16 C.F.R. Part 310.

Plaintiff and Defendants James A. Dunne and Voice Touch, Inc. ("Stipulating Defendants"), by and through their attorneys, have agreed to entry of this Stipulated Final Judgment and Order for Permanent Injunction Against Defendants James A. Dunne and Voice Touch, Inc. ("Order") by this Court in order to resolve all claims against Stipulating Defendants in this action. Plaintiff and Stipulating Defendants have consented to entry of this Order without trial or adjudication of any issue of law or fact herein.

**NOW THEREFORE**, the Plaintiff and Stipulating Defendants, having requested the Court to enter this Order, and the Court having considered the Order reached between the parties, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

**FINDINGS**

1. This is an action by the Commission instituted under Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, the Telemarketing Act, 15 U.S.C. §§ 6101-6108, and the TSR, 16 C.F.R. Part 310. Pursuant to these Sections of the FTC Act and the Telemarketing Act, the Commission has the authority to seek the relief contained herein.

2. The Commission's complaint states a claim upon which relief may be granted under Sections 5(a), 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 53(b), and 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b).

3. This Court has jurisdiction over the subject matter of this case and personal jurisdiction over the parties.

4. Venue in the United States District Court for the Northern District of Illinois is proper pursuant to 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b) and (c).

5. The alleged activities of Stipulating Defendants are "in or affecting commerce" as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

6. Stipulating Defendants, without admitting the allegations set forth in the Commission's complaint and without any admission or finding of liability thereunder, agree to entry of this Order.

7. Stipulating Defendants waive: (a) all rights to seek judicial review or otherwise challenge or contest the validity of this Order; (b) any claim that they may have against the Commission, its employees, representatives, or agents; (c) all claims under the Equal Access to

Justice Act, 28 U.S.C. § 2412, *as amended by* Pub. L. 104-121, 110 Stat. 847, 863-64 (1996); and (d) any rights to attorney's fees that may arise under said provision of law. The Commission and Defendants James Dunne and Voice Touch, Inc. shall each bear their own costs and attorney's fees incurred in this action.

8. This Order is in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law.

9. Entry of this Order is in the public interest.

#### **DEFINITIONS**

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

1. **"Asset"** or **"Assets"** means any legal or equitable interest in, right to, or claim to, any real or personal property, including, but not limited to, "goods," "instruments," "equipment," "fixtures," "general intangibles," "inventory," "checks," or "notes," (as these terms are defined in the Uniform Commercial Code), lines of credit, chattels, leaseholds, contracts, mail or other deliveries, shares of stock, lists of consumer names, accounts, credits, premises, receivables, funds, and all cash, wherever located.

2. **"Assisting others"** includes, but is not limited to: (1) performing customer service functions, including, but not limited to, receiving or responding to consumer complaints; (2) formulating or providing, or arranging for the formulation or provision of, any sales script or other marketing material; (3) providing names of, or assisting in the generation of, potential customers; (4) performing or providing marketing or billing services of any kind; (5) acting as an officer or director of a business entity; or (6) providing telemarketing services.

3. **"Individual Defendant"** or **"Individual Defendants"** means James A. Dunne and Damian Kohlfeld.

4. **“Corporate Defendants”** means Voice Touch, Inc., Network Foundations, LLC, Voice Foundations, LLC, and their successors and assigns, as well as any subsidiaries and any fictitious business entities or business names created or used by these entities, or any of them.

5. **“Defendants”** means all of the Individual Defendants and the Corporate Defendants, individually, collectively, or in any combination.

6. **“Document”** or **“documents”** is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

7. **“Material”** means likely to affect a person’s choice of, or conduct regarding, goods or services.

8. **“Person”** or **“persons”** means a natural person, an organization or other legal entity, including a corporation, partnership, sole proprietorship, limited liability company, association, cooperative, or any other group or combination acting as an entity.

9. **“Plaintiff”** means the Federal Trade Commission (“FTC” or “Commission”).

10. **“Stipulating Defendants”** means Defendants James A. Dunne and Voice Touch, Inc., and each of them, by whatever names each may be known, and any subsidiaries, successors, assigns, and any fictitious business entities or business names created or used by Voice Touch, Inc.

11. **“Telemarketing”** means a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more

telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog which: contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term "further solicitation" does not include providing the customer with information about, or attempting to sell, any other item included in the same catalog which prompted the customer's call or in a substantially similar catalog.

**I.**

**PERMANENT BAN ON TELEMARKETING**

**IT IS THEREFORE ORDERED** that Stipulating Defendants, whether acting directly or through any person, business entity, trust, corporation, partnership, limited liability company, subsidiary, division, or other device, or any of them, are hereby permanently restrained and enjoined from telemarketing, or assisting others engaged in telemarketing.

**II.**

**PROHIBITED BUSINESS ACTIVITIES**

**IT IS FURTHER ORDERED** that Stipulating Defendants, their officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any person, business entity, trust, corporation, partnership, limited liability company, subsidiary, division, or other device, or any of them, in connection with the

advertising, marketing, promotion, offering for sale, sale, or provision of any good or service, are hereby permanently restrained and enjoined from:

A. Misrepresenting, or assisting others in misrepresenting, expressly or by implication, any material fact, including, but not limited to:

1. that they are calling from, on behalf of, or are otherwise affiliated with the manufacturer or dealer of a consumer's automobile;
2. that the expiration of the consumer's original automobile warranty is imminent;
3. that they are authorized to, and are, selling warranties that continue or extend the consumer's original warranty from the manufacturer;
4. that they are selling warranties;
5. the total cost to purchase, receive, or use the goods or services;
6. any material restrictions, limitations, or conditions to purchase, receive, or use the goods or services;
7. any material aspect of the nature or terms of a refund, cancellation, exchange, or repurchase policy for the goods or services; and
8. any material aspect of the performance, efficacy, nature, or central characteristics of the goods or services.

*Provided, however,* that nothing in this Section or in any other Section of this Order shall void the ban provision set forth in Section I of this Order.

### III.

#### MONETARY JUDGMENT

**IT IS FURTHER ORDERED** that Judgment is hereby entered in favor of the

Commission and against Stipulating Defendants, jointly and severally, for equitable monetary relief, including, but not limited to, consumer redress and/or disgorgement, in the amount of Forty Eight Million Dollars (\$48,000,000.00), the total amount of consumer injury caused by the activities alleged in the Commission's complaint; *provided, however*, that the Judgment for equitable monetary relief shall be suspended upon the satisfaction of the obligations imposed by Subsections A through C of this Section, and subject to the conditions set forth in Section IV of this Order.

A. Stipulating Defendants, jointly and severally, shall pay to the Commission the sum of \$655,497.85 in equitable monetary relief, including, but not limited to, consumer redress and/or disgorgement, within five (5) days of the date of entry of this Order. Payment shall be made to the Commission by wire transfer in accordance with directions provided by the Commission, or by certified check or other guaranteed funds payable to and delivered to the Commission.

B. Stipulating Defendant James A. Dunne ("Defendant Dunne") shall immediately take specific steps, as set forth below, to sell all interests in the 2005 Porsche 911 VIN WP0CB29925S675302 ("Porsche") and in the 2007 Lexus LS460 VIN JTHBL46F375011718 ("Lexus") listed on the May 22, 2009 financial statement that Defendant Dunne provided to the FTC:

1. Defendant Dunne shall immediately place the Porsche and Lexus for sale through an appropriate broker or automobile listing service at the direction of the Commission;
2. Defendant Dunne shall notify counsel for the Commission of the amount of any offer to purchase the Porsche or Lexus immediately upon receiving each such offer. Acceptance of any such offer shall be in the Commission's sole discretion;

3. Within three (3) business days of receipt of net proceeds from the sale of all interests in the Porsche, Defendant Dunne shall cause to be wired to the Commission the net proceeds from the sale in accordance with instructions provided by the Commission, and Defendant Dunne shall identify the name(s) and address(es) of the purchaser(s) of the Porsche;

4. Within three (3) business days of receipt of net proceeds from the sale of all interests in the Lexus, Defendant Dunne shall cause to be wired to the Commission the net proceeds from the sale in accordance with instructions provided by the Commission, and Defendant Dunne shall identify the name(s) and address(es) of the purchaser(s) of the Lexus;

5. Defendant Dunne agrees that, prior to the sale required by this Subsection, he will maintain insurance on the Porsche and Lexus in an amount of not less than the full replacement value of the vehicles. In the event that the Porsche or Lexus suffer any loss or damage covered by such insurance policy, Defendant Dunne shall make such claims as are permitted by the insurance policy and shall assign or remit any insurance payment he receives as a result of such loss or damage to the Commission; and

6. To secure his performance under this Subsection B, Defendant James A. Dunne hereby grants to the Commission a lien on, and security interest in, the Porsche and Lexus, which terminates upon sale of the vehicles.

C. Within one hundred eighty (180) days of entry of this Order, Defendant Dunne shall sell the property at 437 Sundown Trail, Casselberry, Florida 32707; Parcel ID 09-21-30-520-0000-1660; with a legal description of LEG LOT 166 Wyndham Woods Phase 2 PB 26 PGS 41 & 42 ("Casselberry Property"), upon terms and conditions acceptable to the FTC. Defendant Dunne shall promptly comply with all reasonable requests from the FTC related to that sale, including, but not limited to, signing listing contracts with real estate agents, keeping the



property in good repair, keeping the property in a condition suitable for showing to prospective purchasers, signing contracts for the sale of the property, and signing all documents necessary or appropriate for the transfer of the property to a new buyer. Upon the sale of the property, all net proceeds shall be paid to the FTC within ten (10) days of the sale. Any sheriff, title company, or other person involved in such a sale may rely on this Order as authority to deliver the net proceeds to the FTC. If the Casselberry Property has not sold within one hundred eighty days of entry of this Order, Defendant Dunne shall comply promptly with written instructions from the Assistant Director of the Midwest Region of the FTC concerning disposition of the property, which may include transferring the property to one or more mortgagors or lienholders or allowing the FTC to place a judgment lien on the property. Defendant Dunne expressly agrees that the Casselberry Property is not homestead property.

D. Time is of the essence for the payments specified above. In the event of any default by Stipulating Defendants on any obligation imposed under this Section, including, but not limited to, the failure to timely and completely fulfill their payment obligations:

1. The judgment imposed herein will not be suspended, and the full amount of that Judgment (\$48,000,000.00) shall immediately become due and payable, plus interest from the date of entry of this Order pursuant to 28 U.S.C. § 1961, as amended, less any amounts already paid; and

2. The Commission shall be entitled to immediately exercise any and all rights and remedies against Stipulating Defendants and their assets to collect the full amount of the judgment and interest thereon, less any amounts already paid;

E. All funds paid pursuant to this Order shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including, but not limited to,

consumer redress, and any attendant expenses for the administration of such equitable relief. Stipulating Defendants shall cooperate fully to assist the Commission in identifying consumers who may be entitled to redress pursuant to this Order. If the Commission determines, in its sole discretion, that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendants' practices alleged in the complaint. Any funds not used for such equitable relief shall be deposited to the United States Treasury as disgorgement. Stipulating Defendants shall have no right to challenge the Commission's choice of remedies under this Section. Stipulating Defendants shall have no right to contest the manner of distribution chosen by the Commission. This judgment for equitable monetary relief is solely remedial in nature and is not a fine, penalty, punitive assessment or forfeiture;

F. Stipulating Defendants relinquish all dominion, control, and title to the funds paid to the fullest extent permitted by law. Stipulating Defendants shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise.

G. In accordance with 31 U.S.C. § 7701, as amended, Stipulating Defendants are hereby required, unless they already have done so, to furnish to the Commission their respective taxpayer identifying numbers (social security numbers or employer identification numbers), which shall be used for purposes of collecting and reporting on any delinquent amount arising out of Stipulating Defendants' relationship with the government. Stipulating Defendant James A. Dunne is further required, unless he already has done so, to provide the Commission with clear, legible and full-size photocopies of all valid driver's licenses that he possesses, which will be used for reporting and compliance purposes;

H. Stipulating Defendants agree that the facts as alleged in the complaint filed in this action shall be taken as true without further proof in any bankruptcy case or subsequent civil litigation pursued by the Commission to enforce its rights to any payment or money judgment pursuant to this Order, including, but not limited to, a nondischargeability complaint in any bankruptcy case. Stipulating Defendants further stipulate and agree that the facts alleged in the complaint establish all elements necessary to sustain an action pursuant to, and that this Order shall have collateral estoppel effect for purposes of, Section 532(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 532(a)(2)(A);

I. Stipulating Defendants shall not, whether acting directly or through any corporation, partnership, subsidiary, division, trade name, device, or other entity, submit to any federal or state tax authority any return, amended return, or other official document that takes a deduction for, or seeks a tax refund or other favorable tax treatment for, any payments made by one or more of the Stipulating Defendants pursuant to this Section of the Order; *provided*, however, that Stipulating Defendants shall be permitted to take a deduction or deductions for payments made under this Order of no more than the amount necessary to offset their 2009 tax liability on their federal and state tax returns and to offset any additional tax liability for 2006, 2007, or 2008 that may result from the ongoing audit of Defendant James A. Dunne's federal tax returns for those years by the Internal Revenue Service; *provided further* that nothing in this Subparagraph shall be construed as a position of the Commission on the merits or validity of any such deduction for federal or state tax purposes.

In connection with the foregoing tax provision, Stipulating Defendants shall: (a) allow their accountant to discuss their tax returns with the FTC; (b) deliver a copy of any audit report issued by the Internal Revenue Service in connection with the ongoing audit of Stipulating

Defendants to Regional Director, Federal Trade Commission, Midwest Region, 55 West Monroe Street, Suite 1825, Chicago, Illinois 60603, by overnight delivery or facsimile at 312-960-5600; and (c) deliver copies of all returns (including any subsequently filed amended returns) filed for the 2006, 2007, 2008, and 2009 tax years to the Commission at the same time they are submitted to the federal or state tax authority to the Regional Director in the manner noted above.

Stipulating Defendants also agree that within ten (10) days of being directed by the Commission to do so, that Stipulating Defendant will complete, date, sign, and submit to the Internal Revenue Service, along with the IRS fee, an IRS Form 4506 directing that a copy of Stipulating Defendant's federal tax return and any amended returns for tax years 2006, 2007, 2008 and 2009 be sent to the Commission at the above address. The Commission may make such request(s) within sixty (60) days after the last date for filing an amended federal tax return for tax years 2006, 2007, 2008 and 2009; and

J. Proceedings instituted under this Section are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings the Commission may initiate to enforce this Order.

#### IV.

#### RIGHT TO REOPEN

**IT IS FURTHER ORDERED** that:

A. By agreeing to this Order, Stipulating Defendants reaffirm and attest to the truthfulness, accuracy, and completeness of the financial statements signed by or on behalf of Defendants Voice Touch, Inc. (dated May 22, 2009) and James A. Dunne (dated May 22, 2009) and provided to the Commission, including all attachments and subsequent amendments and corrections thereto. Plaintiff's agreement to this Order is expressly premised upon the

truthfulness, accuracy, and completeness of Stipulating Defendants' financial condition, as represented in the financial statements referenced above, which contain material information upon which Plaintiff relied in negotiating and agreeing to the terms of this Order;

B. If, upon motion of the FTC, the Court finds that any of the Stipulating Defendants failed to disclose any material asset, materially misrepresented the value of any asset, or made any other material misrepresentation in or omission from his or its financial statement or supporting documents, the suspended Judgment entered in Section III shall become immediately due and payable as to that Stipulating Defendant (less any amounts already paid). *Provided, however,* that, in all other respects, this Order shall remain in full force and effect, unless otherwise ordered by the Court; and

C. Any proceedings instituted under this Section shall be in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including, but not limited to, contempt proceedings, or any other proceedings that the Commission or the United States might initiate to enforce this Order. For purposes of this Section, Stipulating Defendants waive any right to contest any of the allegations in the Commission's complaint.

V.

**PROHIBITIONS REGARDING CONSUMER INFORMATION**

**IT IS FURTHER ORDERED** that Stipulating Defendants, and their officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, are hereby permanently restrained and enjoined from:

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 credit card, bank account, or other financial account), of any person which any Defendant obtained prior to entry of this Order in connection with providing telemarketing services to initiate outbound telephone calls that deliver pre-recorded messages; and

B. Failing to dispose of such customer information in all forms in their possession, custody, or control within thirty (30) days after entry of this Order. Disposal shall be by means that protect against unauthorized access to the customer information, such as by burning, pulverizing, or shredding any papers, and by erasing or destroying any electronic media, to ensure that the customer information cannot practicably be read or reconstructed.

*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 a law, regulation, or court order.

## VI.

### COOPERATION WITH FTC COUNSEL

**IT IS FURTHER ORDERED** that:

A. Stipulating Defendants shall, in connection with this action or any subsequent investigations related to, or associated with, the transactions or the occurrences that are the subject of the FTC's complaint, cooperate in good faith with the FTC and appear, or cause their officers, employees, representatives, or agents to appear, at such places and times as the FTC shall reasonably request, after written notice, for interviews, conferences, pretrial discovery, review of documents, and for such other matters as may be reasonably requested by the FTC. If requested in writing by the FTC, Stipulating Defendants shall appear, or cause their officers, employees, representatives, or agents to appear, and provide truthful testimony in any trial,

deposition, or other proceeding related to or associated with the transactions or the occurrences that are the subject of the complaint, without the service of a subpoena.

B. Plaintiff's agreement to this Order is expressly premised upon the truthfulness, accuracy, and completeness of Stipulating Defendants' good faith cooperation required by Subsection A of this Section. If, upon motion of the FTC, the Court finds that any of the Stipulating Defendants failed to cooperate in good faith as required by Subsection A of this Section, the suspended Judgment entered in Section III shall become immediately due and payable as to that Stipulating Defendant (less any amounts already paid). *Provided, however,* that, in all other respects, this Order shall remain in full force and effect, unless otherwise ordered by the Court; and

C. Any proceedings instituted under this Section shall be in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including, but not limited to, contempt proceedings, or any other proceedings that the Commission or the United States might initiate to enforce this Order. For purposes of this Section, Stipulating Defendants waive any right to contest any of the allegations in the Commission's complaint.

## VII.

### COMPLIANCE MONITORING

**IT IS FURTHER ORDERED** that, for the purpose of (i) monitoring and investigating compliance with any provision of this Order, and (ii) investigating the accuracy of any Stipulating Defendant's financial statements upon which the Commission's agreement to this Order is expressly premised:

A. Within ten (10) days of receipt of written notice from a representative of the Commission, Stipulating Defendants each shall submit additional written reports, which are true

and accurate and sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and provide entry during normal business hours to any business location in each Stipulating Defendant's possession or direct or indirect control to inspect the business operation;

B. In addition, the Commission is authorized to use all other lawful means, including, but not limited to:

1. obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, 45, and 69;
2. having its representatives pose as consumers and suppliers to Stipulating Defendants, their employees, or any other entity managed or controlled in whole or in part by any Stipulating Defendant, without the necessity of identification or prior notice; and

C. Stipulating Defendants each shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present.

*Provided, however,* that nothing in this Order shall limit 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, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

## VIII.

### COMPLIANCE REPORTING



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

A. For a period of five (5) years from the date of entry of this Order,

1. Stipulating Defendant James A. Dunne shall notify the Commission of the following:

a. Any changes in such Stipulating Defendant's residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;

b. Any changes in such Stipulating Defendant's employment status (including self-employment), and any change in such Stipulating Defendant's ownership in any business entity, within ten (10) days of the date of such change. Such notice shall include the name and address of each business that such Stipulating Defendant is affiliated with, employed by, creates or forms, or performs services for; a detailed description of the nature of the business; and a detailed description of such Stipulating Defendant's duties and responsibilities in connection with the business or employment; and

c. Any changes in such Stipulating Defendant's name or use of any aliases or fictitious names within ten (10) days of the date of such change;

2. Stipulating Defendants shall notify the Commission of any changes in structure of Corporate Defendant Voice Touch, Inc., or any business entity that any Stipulating Defendant directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Order,

including, but not limited to: incorporation or other organization; a dissolution, assignment, sale, merger, or other action; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; or a change in the business name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any such change in the business entity about which a Stipulating Defendant learns less than thirty (30) days prior to the date such action is to take place, such Stipulating Defendant shall notify the Commission as soon as is practicable after obtaining such knowledge.

B. One hundred eighty (180) days after the date of entry of this Order and annually thereafter for a period of five (5) years, Stipulating Defendants each shall provide a written report to the FTC, which is true and accurate and sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this Order. This report shall include, but not be limited to:

1. For Stipulating Defendant James A. Dunne:
  - a. such Defendant's then-current residence address, mailing addresses, and telephone numbers;
  - b. such Defendant's then-current employment status (including self-employment), including the name, addresses, and telephone numbers of each business that such Defendant is affiliated with, employed by, or performs services for; a detailed description of the nature of the business; and a detailed description of such Defendant's duties and responsibilities in connection with the business or employment; and
  - c. Any other changes required to be reported under Subsection A of

this Section;

2. For all Stipulating Defendants:

a. A copy of each acknowledgment of receipt of this Order, obtained pursuant to the Section titled "Distribution of Order;" and

b. Any other changes required to be reported under Subsection A of this Section;

C. Each Stipulating Defendant shall notify the Commission of the filing of a bankruptcy petition by such Stipulating Defendant within fifteen (15) days of filing;

D. For the purposes of this Order, Stipulating Defendants shall, unless otherwise directed by the Commission's authorized representatives, send by overnight courier all reports and notifications required by this Order to the Commission, to the following address:

Associate Director for Enforcement  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W., Room NJ-2122  
Washington, DC 20580  
RE: *FTC v. Voice Touch, Inc., et al*  
Civil Action 09-cv-2929 (N.D. Ill.)

*Provided* that, in lieu of overnight courier, Stipulating Defendants may send such reports or notifications by first-class mail, but only if Stipulating Defendants contemporaneously send an electronic version of such report or notification to the Commission at: [DEBrief@ftc.gov](mailto:DEBrief@ftc.gov); and

E. For purposes of the compliance reporting and monitoring required by this Order, the Commission is authorized to communicate directly with each Stipulating Defendant.

## IX.

### RECORD KEEPING PROVISIONS

**IT IS FURTHER ORDERED** that, for a period of eight (8) years from the date of entry

of this Order, Defendant Voice Touch and Defendant Dunne for any business in which they, individually or collectively, are the majority owner or directly or indirectly control, are hereby restrained and enjoined from failing to create and retain the following records:

- A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
- B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;
- C. Customer files containing the names, addresses, telephone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;
- D. Complaints and refund requests (whether received directly or indirectly, such as through a third party) and any responses to those complaints or requests;
- E. Copies of all sales scripts, training materials, advertisements, or other marketing materials; and
- F. All records and documents necessary to demonstrate full compliance with each provision of this Order, including, but not limited to, copies of acknowledgments of receipt of this Order required by the Sections titled "Distribution of Order" and "Acknowledgment of Receipt of Order" and all reports submitted to the FTC pursuant to the Section titled "Compliance Reporting."

X.

**DISTRIBUTION OF ORDER**

**IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry of this Order, Stipulating Defendants shall deliver copies of the Order as directed below:

A. Stipulating Defendant Voice Touch, Inc. must deliver a copy of this Order to: (1) all of its principals, officers, directors, and managers; (2) all of its employees, agents, and representatives who engage in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting." For current personnel, delivery shall be within five (5) days of service of this Order upon such Stipulating Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities. For any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting," delivery shall be at least ten (10) days prior to the change in structure;

B. Stipulating Defendant James A. Dunne as control person: For any business that such Stipulating Defendant controls, directly or indirectly, or in which such Stipulating Defendant has a majority ownership interest, such Stipulating Defendant must deliver a copy of this Order to: (1) all principals, officers, directors, and managers of that business; (2) all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting." For current personnel, delivery shall be within five (5) days of service of this Order upon such Stipulating Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities. For any business entity resulting from any change in structure set forth in Subsection A.2 of the Section

titled "Compliance Reporting," delivery shall be at least ten (10) days prior to the change in structure;

C. Stipulating Defendant James A. Dunne as employee or non-control person: For any business where such Stipulating Defendant is not a controlling person of a business but otherwise engages in conduct related to the subject matter of this Order, such Stipulating Defendant must deliver a copy of this Order to all principals and managers of such business before engaging in such conduct; and

D. Stipulating Defendants must secure a signed and dated statement acknowledging receipt of the Order, within thirty (30) days of delivery, from all persons receiving a copy of the Order pursuant to this Section.

#### XI.

##### **ACKNOWLEDGMENT OF RECEIPT OF ORDER**

**IT IS FURTHER ORDERED** that each Stipulating Defendant, within five (5) business days of receipt of this Order as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Order. An example of such a statement is attached hereto as Attachment A.

#### XII.

##### **DISSOLUTION OF ASSET FREEZE**

**IT IS FURTHER ORDERED** that the freeze on the assets of Stipulating Defendants shall remain in effect until they have taken all of the actions required by Section III above, *provided, however*, that Stipulating Defendants, with the express written consent of counsel for the Commission, may transfer funds to the extent necessary to make all payments required by Section III. Once Stipulating Defendants have fully complied with the requirements of Section

III, the freeze against the assets of Stipulating Defendants shall be lifted permanently. A financial institution shall be entitled to rely upon a letter from Plaintiff stating that the freeze on the assets of Stipulating Defendants has been lifted.

With respect to all Defendants other than Stipulating Defendants, the asset freeze shall remain in full force and effect.

**XIII.**

**SEVERABILITY**

**IT IS FURTHER ORDERED** that the provisions of this Order are separate and severable from one another. If any provision is stayed or determined to be invalid, the remaining provisions shall remain in full force and effect.

**XIV.**

**RETENTION OF JURISDICTION**

**IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

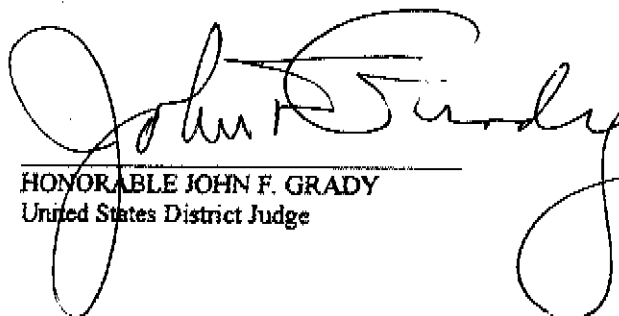
//  
//  
//  
//  
//  
//  
//  
//  
//  
//

**JUDGMENT IS THEREFORE ENTERED** in favor of the Plaintiff and against


Stipulating Defendants, pursuant to all the terms and conditions recited above.

**IT IS SO ORDERED.**

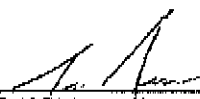
Dated: 3/24/2010

  
HONORABLE JOHN F. GRADY  
United States District Judge

**SO STIPULATED AND AGREED:**

  
ROZINA C. BHIMANI  
DAVID A. O'TOOLE  
Attorneys for Plaintiff  
Federal Trade Commission

Date: March 1, 2010


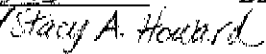
  
DEFENDANT JAMES A. DUNNE  
individually, and on behalf of DEFENDANT  
VOICE TOUCH, INC.

Date: 12-18-09

  
MAUREEN E. DUNNE  
on behalf of DEFENDANT VOICE TOUCH, INC.

Date: 12/18/09

**APPROVED AS TO FORM:**

  
ROBERT M. ANDALMAN /   
Loeb & Loeb, LLP  
Attorney for Defendants JAMES A. DUNNE  
and VOICE TOUCH, INC..

Date: 3/18/10



A

ATTACHMENT A

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

_____	)	
FEDERAL TRADE COMMISSION,	)	
	)	Case No. 09 C 2929
Plaintiff,	)	
v.	)	Judge Grady
	)	
VOICE TOUCH, INC. <i>et al.</i> ,	)	
	)	
Defendants.	)	
_____	)	

**AFFIDAVIT OF \_\_\_\_\_**

I, \_\_\_\_\_, being duly sworn, hereby state and affirm as follows:

1. My name is \_\_\_\_\_. I am a citizen of the United States and am over the age of eighteen. I have personal knowledge of the facts set forth in this Affidavit.

2. I am a defendant in *FTC v. Voice Touch, Inc., et al.*, 09-cv-2929 (United States District Court for the Northern District of Illinois). I am an owner of Voice Touch, Inc., a defendant in *FTC v. Voice Touch, Inc., et al.*, 09-cv-2929 (United States District Court for the Northern District of Illinois).

3. My current employer is \_\_\_\_\_. My current business address is \_\_\_\_\_. My current business telephone number is \_\_\_\_\_. My current residential address is \_\_\_\_\_. My current residential telephone number is \_\_\_\_\_.

4. The current business address of Voice Touch, Inc. is \_\_\_\_\_. The current business telephone number of Voice Touch, Inc. is \_\_\_\_\_.

5. On [date], I received a copy of the Stipulated Final Judgment Against Defendants James A. Dunne and Voice Touch, Inc., which was signed by the Honorable John F. Grady and entered by the Court on [date of entry of the Order]. A true and correct copy of the Order I received is appended to this Affidavit.

6. On *[date]*, Voice Touch, Inc., received a copy of the Stipulated Final Judgment Against Defendants James A. Dunne and Voice Touch, Inc., which was signed by the Honorable John F. Grady and entered by the Court on *[date of entry of the Order]*. A true and correct copy of the Order it received is appended to this Affidavit.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on *[date]*, at *[city and state]*.

\_\_\_\_\_  
*[Full name of the defendant][if the defendant is acknowledging his or her receipt of order and a corporate defendant's receipt of order], individually and as an officer of [corporate defendant]*

State of \_\_\_\_\_, City of \_\_\_\_\_

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public  
My Commission Expires:  
\_\_\_\_\_