

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No: 8:23-cv-1575-MSS-JSS

**YODEL TECHNOLOGIES, LLC
and ROBERT PULSIPHER,**

Defendants.

**ORDER FOR PERMANENT INJUNCTION, CIVIL PENALTY JUDGMENT,
AND OTHER RELIEF**

THIS CAUSE comes before the Court for consideration of the Parties' Joint Motion for Entry of Proposed Stipulated Order. (Dkt. 3) Upon consideration and review, the Court determines that the Parties' Joint Motion is due to be **GRANTED**. This Order is entered on the **STIPULATION** of the Parties, not based on any independent review or findings by the Court other than as to venue and jurisdiction. Therefore, pursuant to the Parties' stipulation, this Order is entered to fully resolve the issues raised in the Complaint.

On July 14, 2023, Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission ("Commission" or "FTC"), filed its Complaint for Permanent Injunction, Civil Penalties, and Other Equitable Relief ("Complaint"), pursuant to Sections 5(a), 5(m)(1)(A), 13(b), 16(a)(1) and 19 of the Federal Trade Commission Act

(“FTC Act”), 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), 56(a)(1) and 57b; and Section 6 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (the “Telemarketing Act”), 15 U.S.C. § 6105; and the FTC’s Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310. (Dkt. 1) The Parties advise that Defendants have waived service of the summons and the Complaint. Now, Plaintiff and Defendants stipulate to the entry of this Stipulated Order for Permanent Injunction, Civil Penalty Judgment, and Other Relief (“Order”) to resolve all matters in dispute in this action between them.

THEREFORE, IT IS ORDERED as follows:

STIPULATED FACTS

1. This Court has jurisdiction over this matter.
2. The Complaint charges that Defendants participated in acts or practices in violation of the FTC’s Telemarketing Sales Rule (the “TSR” or “Rule”), as amended, 16 C.F.R. Part 310, by (a) placing telemarketing calls to consumers that delivered prerecorded messages; and (b) placing telemarketing calls to consumers whose telephone numbers were on the National Do Not Call (“DNC”) Registry.
3. 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, Defendants admit the facts necessary to establish jurisdiction.
4. 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.

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

1. “Corporate Defendant” means Yodel Technologies LLC and its successors and assigns.

2. “Individual Defendant” means Robert Pulsipher. B. “Telemarketing” means any 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, whether or not covered by the Telemarketing Sales Rule. This definition includes outbound calls and inbound calls.

ORDER

I. BAN ON TELEMARKETING

IT IS ORDERED that Defendants are permanently restrained and enjoined from participating in Telemarketing, whether directly or through an intermediary.

II. MONETARY JUDGMENT FOR CIVIL PENALTY AND PARTIAL SUSPENSION

IT IS FURTHER ORDERED that:

- A. Judgment in the amount of One Million Dollars (\$1,000,000) is entered in favor of Plaintiff against Defendants, jointly and severally, as a civil penalty.
- B. Defendants are ordered to pay to Plaintiff, by making payment to the Treasurer of the United States, Four Hundred Thousand Dollars (\$400,000), which, as Defendants stipulate, their undersigned counsel holds in escrow for no purpose other than payment to Plaintiff. 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 Plaintiff. Upon such payment, the remainder of the judgment is suspended, subject to the Subsections below.
- C. The Commission's and Plaintiff's agreement to the suspension of [part of] the judgment is expressly premised upon the truthfulness, accuracy, and completeness of Defendants' sworn financial statements and related documents (collectively, "Financial Representations") submitted to the Commission, namely:
 1. The Financial Statement of Individual Defendant Robert William Pulsipher signed on November 28, 2022, including the attachments;
 2. The Financial Statement of Corporate Defendant Yodel Technologies, LLC signed by Robert William Pulsipher, Chief Operating Officer, on November 18, 2022, including the attachments; and

3. The Declaration of Robert William Pulsipher Pursuant to 28 U.S.C. § 1746, signed by Robert William Pulsipher on March 16, 2023, including the exhibits.

D. The suspension of the judgment will be lifted as to any Defendant if, upon motion by the Commission or Plaintiff, the Court finds that 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 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. 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. Individual Defendant agrees 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 Individual Defendant, it is not subject to discharge under the Bankruptcy Code pursuant to 11 U.S.C. § 523(a)(7).

D. Defendants acknowledge that their Taxpayer Identification Numbers (Social Security Numbers or Employer Identification Numbers) 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 Defendants are permanently restrained and enjoined from directly or indirectly:

A. Disclosing, using, or receiving any benefit from customer or prospective 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 or prospective customer's account (including a credit card, bank account, or other financial account), that any Defendant obtained prior to entry of this Order in connection with telemarketing; and

B. Failing to destroy such customer information in all forms in their possession, custody, or control within 30 days after entry of this Order.

V. COOPERATION

IT IS FURTHER ORDERED that Defendants must fully cooperate with representatives of Plaintiff 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. Defendants must provide truthful and complete information, evidence, and testimony. Individual Defendant must appear, and Corporate Defendant must cause Corporate Defendant's 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 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 Defendants obtain acknowledgments of receipt of this Order:

- A. Each 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, Individual Defendant for any business that such Defendant, individually or collectively with any other Defendants, 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 having managerial

responsibilities for Telemarketing and all agents and representatives who participate in Telemarketing; 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 Defendant delivered a copy of this Order, that Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

VII. COMPLIANCE REPORTING

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

- A. One year after entry of this Order, each Defendant must submit a compliance report, sworn under penalty of perjury:
1. Each Defendant must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission or Plaintiff may use to communicate with Defendant; (b) identify all of that 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 Defendant (which Individual Defendant must describe if they know or should know due to their own involvement);

(d) describe in detail whether and how that 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 such Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest; and (c) describe in detail such Defendant's involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership.

B. For 15 years after entry of this Order, each Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

1. Each Defendant must report any change in: (a) any designated point of contact; or (b) the structure of Corporate Defendant or any entity that 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 such Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest, and identify the name, physical address, and any Internet address of the business or entity.

C. Each Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such 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. Yodel Technologies LLC, et al, Matter No. 2123074.

VIII. RECORDKEEPING

IT IS FURTHER ORDERED that Defendants must create certain records for 15 years after entry of the Order, and retain each such record for 5 years. Specifically, Corporate Defendant and each Individual Defendant for any business that such Defendant, individually or collectively with any other Defendants, 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;
- D. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission; and
- E. A copy of each unique advertisement or other marketing material.

IX. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Defendants' compliance with this Order and 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 or Plaintiff, each 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 Plaintiff 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 Plaintiff are authorized to communicate directly with each Defendant. Defendant must permit representatives of the Commission and Plaintiff to interview any employee or other person affiliated with any Defendant who has agreed to such an interview. The person interviewed may have counsel present.
- C. The Commission and Plaintiff may use all other lawful means, including posing, through its representatives as consumers, suppliers, or other individuals or entities, to Defendants or any individual or entity affiliated with 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.
- D. Upon written request from a representative of the Commission or Plaintiff, any consumer reporting agency must furnish consumer reports concerning Individual Defendant, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(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.

The Clerk is directed to **CLOSE** this case.

DONE and **ORDERED** in Tampa, Florida, this 4th day of August 2023.



MARY S. SCRIVEN
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel of Record
Any pro se party