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2018 APR 16 PM 12:40
US DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

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

Federal Trade Commission,

Petitioner,

v.

Derek J. Bartoli,

Respondent.

Misc. No. **6:18-MC-027-ORL-40-GJK**

**PETITION OF THE FEDERAL TRADE COMMISSION FOR AN
ORDER ENFORCING CIVIL INVESTIGATIVE DEMAND
AND INCORPORATED MEMORANDUM OF LAW**

The Federal Trade Commission (FTC or Commission) petitions this Court under Section 20 of the Federal Trade Commission Act (FTC Act), 15 U.S.C. §§ 57b-1(e), (h), for an order requiring Respondent, Derek J. Bartoli, to comply with a civil investigative demand (CID), a form of administrative compulsory process. The CID was issued in the course of a nonpublic investigation concerning possible violations by Mr. Bartoli of Section 5 of the FTC Act, 15 U.S.C. § 45(a), and the Telemarketing Sales Rule (TSR), 16 C.F.R. § 310 *et seq.* Section 5 prohibits unfair or deceptive acts or practices; the TSR prohibits “abusive” telemarketing, including (1) initiating, causing the initiation, or assisting and facilitating the initiation of, telemarketing sales calls that deliver prerecorded messages; (2) placing calls to numbers listed on the National Do Not Call Registry, and (3) displaying

“spoofed” caller ID numbers. The CID directs Mr. Bartoli to respond to 10 document requests, 9 interrogatories, and to appear and provide testimony on 8 topics related to the current investigation.

Mr. Bartoli has not submitted anything in response to the CID or even responded to the attempts of FTC staff to confirm that he would appear and testify on the scheduled date. The Commission therefore asks this Court to enter an order requiring Mr. Bartoli to appear and show cause why he should not comply with the CID in its entirety.

This proceeding is properly instituted by a petition and order to show cause and is summary in nature. *See, e.g., United States v. Elmes*, 532 F.3d 1138, 1141-45 (11th Cir. 2008); *United States v. Markwood*, 48 F.3d 969, 981-82 (6th Cir. 1995); *Appeal of FTC Line of Bus. Report Litig.*, 595 F.2d 685, 704-05 (D.C. Cir. 1978). As such, discovery is “improper” except upon a showing of exceptional circumstances. *FTC v. Carter*, 636 F.2d 781, 789 (D.C. Cir. 1980); *see also FTC v. MacArthur*, 532 F.2d 1135, 1141-42 (7th Cir. 1976); *Genuine Parts Co. v. FTC*, 445 F.2d 1382, 1388 (5th Cir. 1971).

A declaration under penalty of perjury of FTC attorney Christopher E. Brown, which verifies the allegations of this Petition, is attached hereto as Petition

Exhibit (“Pet. Ex.”) 1. The Commission also submits the following additional exhibits:

- Pet. Ex. 2 Civil Investigative Demand to Derek J. Bartoli (Dec. 19, 2017);
- Pet. Ex. 3 FedEx Confirmation of Delivery of CID, Tracking # 771061751390 (Dec. 23, 2017);
- Pet. Ex. 4 Letter from Lois C. Greisman, Associate Director, FTC Division of Marketing Practices to Derek J. Bartoli (Feb. 2, 2018);
- Pet. Ex. 5 Letter from Christopher E. Brown to Derek J. Bartoli (Feb. 15, 2018); and
- Pet. Ex. 6 FedEx Confirmation of Delivery of Feb. 15, 2018, Letter, Tracking # 771493655768 (Feb. 16, 2018).

The Parties

1. The Commission is an administrative agency of the United States, organized and existing pursuant to the FTC Act, 15 U.S.C. § 41 *et seq.* The Commission is authorized and directed by Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), to prohibit, *inter alia*, “unfair or deceptive acts or practices in or affecting commerce.” Additionally, the TSR authorizes the Commission to enforce its prohibition on deceptive and abusive telemarketing practices. 16 C.F.R. pt. 310. Under the TSR, “abusive” telemarketing includes such conduct as failing to provide correct information to caller identification services or placing calls that

deliver a prerecorded messages (“robocalls”). 16 C.F.R. §§ 310.4(a)(8), 310.4(b)(1)(v).

2. Respondent, Derek J. Bartoli is an individual who is found, resides, or transacts business in Kissimmee, Florida. Pet. Ex. 1, ¶ 8.¹

Jurisdiction and Venue

3. Section 3 of the FTC Act, 15 U.S.C. § 43, authorizes the Commission to prosecute any inquiry necessary to its duties in any part of the United States. Section 6 of the FTC Act, 15 U.S.C. § 46, empowers the Commission to gather and compile information concerning, and to investigate from time to time, the business and practices of persons, partnerships, or corporations engaged in or whose business affects commerce, with certain exceptions not relevant here. Section 20 of the FTC Act, 15 U.S.C. § 57b-1, empowers the Commission to issue CIDs to require any person, *inter alia*, to produce documentary material, to file written reports or answers, and to give oral testimony relating to any Commission law enforcement investigation.

4. Section 20 of the FTC Act provides this Court with jurisdiction over Mr. Bartoli and authorizes it to enforce the CID. Section 20(e) states as follows:

¹ Citations to exhibits are to paragraph numbers where available or to page numbers appearing in exhibit footers.

Whenever any person fails to comply with any civil investigative demand duly served upon him under this section . . . the Commission, through such officers or attorneys as it may designate, may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person, a petition for an order of such court for the enforcement of this section.

15 U.S.C. § 57b-1(e). Section 20(h) authorizes the Court “to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this section.” 15 U.S.C. § 57b-1(h). This Court also has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345.

5. Mr. Bartoli is found, resides in, and engages in commerce in this district, as the term “commerce” is defined under Section 4 of the FTC Act. 15 U.S.C. § 44; Pet. Ex. 1, ¶ 8. As such, venue is proper in this district under Section 20 of the FTC Act. 15 U.S.C. § 57b-1(e) (venue proper in district where CID recipient “resides, is found, or transacts business”).

The Commission’s Investigation

6. The Commission is investigating a number of individuals and entities who may be involved in a telemarketing scheme that employed “robocalls” to advertise “free” vacations and cruises. Thousands of consumers have complained to the FTC about these robocalls because in many instances the calls: (1) provided false, or “spoofed,” caller ID information; (2) were made to telephone numbers on

the Do Not Call Registry; and (3) occurred during restricted time periods, typically in the middle of the night (*i.e.*, between 12 a.m. and 5 a.m.). FTC staff initiated an investigation into Mr. Bartoli's role in the scheme after tracing an unsolicited robocall (received at 12:43 a.m.) to a VoIP provider that confirmed that Mr. Bartoli's company placed those calls and others using its VoIP lines.² Consistent with the consumer complaints, these calls were placed between midnight and 5:00 AM using a spoofed caller ID and offered a "free vacation" aboard a cruise ship. *See* Pet. Ex. 1, ¶¶ 3-4.

7. On December 19, 2017, the Commission issued the instant CID to Mr. Bartoli under the authority of FTC Resolution No. 012 3145, which authorizes the use of any and all compulsory process

[t]o determine whether unnamed telemarketers, sellers, or others assisting them have engaged or are engaging in: (1) unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45 (as amended); and/or (2) deceptive or abusive telemarketing acts or practices in violation of the Commission's Telemarketing Sales Rule, 16 C.F.R. pt 310 (as amended), including but not limited to the provision of substantial assistance or support - such as mailing lists, scripts, merchant accounts, and other information, products, or services - to telemarketers engaged in unlawful practices. The investigation is also to determine whether Commission action to obtain monetary relief would be in the public interest.

Pet. Ex. 1 ¶ 5; Pet. Ex. 2 at 5.

² "VoIP" stands for Voice Over Internet Protocol. These companies offer calling services transmitted over the Internet as opposed to traditional wire-based telephony.

8. The assigned Commissioner (here, Acting Chairman Maureen K. Ohlhausen) approved the issuance of the CID. Pet. Ex. 2 at 3. The CID required Mr. Bartoli to respond to 10 document requests and 9 interrogatories on or before January 9, 2018, and to provide oral testimony on 8 topics relevant to the investigation on February 7, 2018 at 9:00 AM. *See* Pet. Ex. 2 at 7-10. The CID seeks information about Mr. Bartoli's company, its clients, and the means by which Mr. Bartoli's company placed calls on behalf of its clients for telemarketing services, the content of such calls, and consumer or other complaints. The CID also seeks information regarding Mr. Bartoli's and his company's compliance with the requirements of the TSR. This information will assist staff to determine whether these calls violate Section 5 or the TSR. This information will also enable staff to determine whether other individuals or entities may have assisted and facilitated unlawful telemarketing practices. Pet. Ex. 1, ¶ 7.

Mr. Bartoli's Failure to Respond to the CID

9. The Commission served the CID on Mr. Bartoli on December 23, 2017. Pet. Ex. 1, ¶ 8; Pet. Ex. 3. A day earlier, FTC staff emailed a courtesy copy of the CID to Mr. Bartoli and asked him to call to schedule an initial meet-and-confer session, as required by the Commission's Rules of Practice. *See* 16 C.F.R. § 2.7(k). Mr. Bartoli agreed to meet by telephone on December 26, 2017, but that

call was rescheduled to January 2, 2018 by agreement of the parties. Pet. Ex. 1, ¶ 9.

10. On January 2, 2018, FTC staff spoke with Mr. Bartoli by telephone. Mr. Bartoli confirmed that he had received the CID, but stated that he was not prepared to discuss it. Staff reminded Mr. Bartoli of the CID's deadlines and the parties agreed to speak again on January 4. Pet. Ex. 1, ¶ 10.

11. FTC staff made multiple attempts to reach Mr. Bartoli on the agreed date. He did not respond to any of the calls or staff's follow-up email. Most importantly, he did not produce any documents or submit written responses to the CID's interrogatories by the January 9 deadline. Pet. Ex. 1, ¶ 11.

12. The FTC's Rules of Practice permit a CID recipient to raise legal or other objections to a CID by filing a petition to limit or quash. 16 C.F.R. § 2.10. Under the Rules, the deadline for such a petition in this case was January 9—the date of compliance. *Id.* Mr. Bartoli has not filed a petition to limit or quash the CID. Pet. Ex. 1, ¶ 15.

13. On February 2, 2018, Associate Director Lois Greisman notified Mr. Bartoli that he was in default. Ms. Greisman nonetheless modified the CID to extend the deadlines, thus curing Mr. Bartoli's default *and* providing additional time for him to comply. Ms. Greisman's letter granted Mr. Bartoli an extension of

the deadline to produce documents and interrogatory responses to February 9 and also extended the date for Mr. Bartoli to appear at an FTC investigational hearing to February 20. Importantly, Ms. Greisman's letter informed Mr. Bartoli that a failure to meet either of these deadlines would be grounds for a referral of this matter to the FTC's Office of General Counsel for judicial enforcement. Pet. Ex. 1, ¶ 12; Pet. Ex. 4.

14. Mr. Bartoli did not respond to the letter or produce any information on or before February 9. Ultimately, on February 15, FTC staff notified Mr. Bartoli that he was in default and asked him to indicate by close of business on February 16 whether he would appear and testify on the extended date for the investigational hearing. Pet. Ex. 1, ¶¶ 14-15; Pet. Ex. 5.

15. Mr. Bartoli did not respond to that inquiry and, to date, has not contacted the FTC or produced any responsive materials. His failure to comply with the Commission's process has impeded and continues to impede the Commission's investigation. Pet. Ex. 1, ¶¶ 14-16.

Memorandum of Law

The court's role in a proceeding to enforce an administrative subpoena or CID is "sharply limited." *United States v. Florida Azalea Specialists*, 19 F.3d 620, 623 (11th Cir. 1994) (quoting *EEOC v. Kloster Cruise Ltd.*, 939 F.2d 920, 922 (11th Cir.

1991)). While “the court’s function is neither minor nor ministerial, the scope of issues which may be litigated in a [compulsory process] enforcement proceeding must be narrow, because of the important governmental interest in the expeditious investigation of possible unlawful activity.” *FTC v. Texaco, Inc.*, 555 F.2d 862, 872 (D.C. Cir. 1977) (*en banc*) (internal citation omitted). A district court must enforce agency process so long as (1) the inquiry is within the authority of the agency; (2) the demand is not too indefinite; and (3) the information sought is reasonably relevant. *EEOC v. Tire Kingdom, Inc.*, 80 F.3d 449, 450 (11th Cir. 1996) (*per curiam*) (citing *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950)); *Florida Azalea Specialists*, 19 F.3d at 623; *see also United States v. Lockheed Martin Corp.*, 995 F. Supp. 1460, 1462 (M.D. Fla. 1998).

As documented in the accompanying declaration, the Commission has satisfied each of the requirements for judicial enforcement of its CID. *See* Pet. Ex. 1. The CID was duly issued in an investigation the Commission is authorized to conduct, is not too indefinite, and seeks documents and information reasonably relevant to the investigation. Moreover, having failed to raise any objections to the CID in an administrative petition to limit or quash, Mr. Bartoli has waived any defenses to enforcement. *See supra* ¶ 12; 16 C.F.R. § 2.10(a).

I. The Commission Is Authorized To Conduct The Investigation.

The FTC is authorized to issue CIDs (*see supra* ¶ 3), and to conduct the investigation at issue. Section 5 of the FTC Act prohibits unfair or deceptive acts or practices in or affecting commerce. *See* 15 U.S.C. § 45. Further, in the Telemarketing and Consumer Fraud and Abuse Prevention Act, Congress empowered the Commission to prescribe rules prohibiting deceptive or abusive telemarketing practices, here, the TSR, and to enforce these rules using all the investigative powers authorized by the FTC Act. *See* 15 U.S.C. §§ 6102(a), 6105(b). The instant CID requests records and information regarding Mr. Bartoli's company and its possible role in disseminating robocalls marketing purportedly "free" cruises or cruise tickets to consumers. The purpose of the CID is to determine whether these calls violate Section 5 or constitute "abusive" telemarketing in violation of the TSR. Accordingly, the investigation to which the CID pertains falls well within the FTC's statutory authority.

II. The CID Was Duly Issued.

The instant CID was issued in accordance with all the requirements of the FTC Act and its implementing rules. *See* Pet. Ex. 2; 15 U.S.C. § 57b-1; 16 C.F.R. § 2.7.

The CID satisfies the Act's requirements of "definiteness and certainty" because it specifies the kinds of documents and information to be produced. The CID contains 10 document requests and 9 interrogatories, and seeks testimony on 8 topics, all of which are described with detail sufficient to enable Mr. Bartoli to "fairly identif[y]" responsive information. 15 U.S.C. §§ 57b-1(c)(3)(A), (c)(5)(A); *see also* Pet. Ex. 2 at 7-10. The CID also complies with the Act by prescribing a return date of more than two weeks after issuance, thus allowing Mr. Bartoli a "reasonable period of time" to assemble the specified documents and prepare its responses to interrogatories. Mr. Bartoli did not ask for additional time. 15 U.S.C. § 57b-1(c)(3)(B), (c)(5)(B); *see also* Pet. Ex. 2 at 3. The CID "identif[ied] the custodian[s]" to whom Mr. Bartoli was obliged to produce the responsive materials. *See* 15 U.S.C. § 57b-1(c)(3)(C), (c)(5)(C); *see also* Pet. Ex. 2 at 3. Moreover, the CID was "signed by a Commissioner," in this instance, Acting Chairman Maureen K. Ohlhausen, "acting pursuant to a Commission resolution." 15 U.S.C. § 57b-1(i); *see also* Pet. Ex. 2 at 3. Finally, the CID included a copy of the Commission's compulsory process resolution, as provided by the Commission's Rules of Practice. *See supra* ¶ 7; 16 C.F.R. § 2.6; Pet. Ex. 2 at 5. Together with the accompanying cover letter and the "Subject of Investigation" statement in the CID itself, these materials gave Mr. Bartoli ample notice of "the nature of the conduct

constituting the alleged violation which is under investigation and the provision of law applicable to such violation.” 15 U.S.C. § 57b-1(c)(2); 16 C.F.R. § 2.6; Pet. Ex. 2 at 1, 5, 7; *see FTC v. O’Connell Assocs., Inc.*, 828 F. Supp. 165, 170-71 (E.D.N.Y. 1993) (notice requirement is met by “cit[ing] a resolution giving the FTC authority to use compulsory process”).

III. The Information Sought is Relevant and Material to the Investigation.

In an investigation, the Commission is not limited to seeking information that is necessary to prove specific charges. Rather, the purpose of an investigation is to learn whether there is reason to believe that the law has been, or is being, violated and, if so, whether the issuance of a complaint would be in the public interest. *See Texaco*, 555 F.2d at 872; *see also Florida Azalea Specialists*, 19 F.3d at 622-23 (an agency “can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not”) (quoting *Morton Salt*, 338 U.S. at 642-43). The required documents and information, therefore, need only be relevant to the investigation—the boundary of which may be defined by the agency quite generally. *See Carter*, 636 F.2d at 787-88; *Texaco*, 555 F.2d at 874 & n.26; *see also FTC v. Invention Submission Corp.*, 965 F.2d 1086, 1088 (D.C. Cir. 1992) (stating that the FTC’s compulsory process resolution defined the purpose of the investigation).

The CID at issue seeks information that goes to the heart of the current investigation. As described above (see ¶ 8, *supra*), the CID requires Mr. Bartoli to produce documents, respond to interrogatories, and to testify about his company, the company's clients for placing telemarketing calls, the means of making those calls, the content of those calls, and his efforts to comply with the TSR. This information is relevant to and directly serves the purpose of the FTC's investigation by enabling staff to determine whether the calls were placed in violation of Section 5 or the TSR. This information also enables FTC staff to identify other individuals or entities involved in this telemarketing enterprise. Pet. Ex. 1, ¶ 7; *see also Florida Azalea*, 19 F.3d at 624.

IV. Mr. Bartoli's Failure To Exhaust His Administrative Remedies Precludes Him From Challenging Judicial Enforcement.

A CID recipient's "failure to exhaust administrative remedies" by filing a petition to limit or quash with the Commission "precludes [it] from raising objections to the judicial enforcement of the CID." *See FTC v. Tracers Info. Specialists, Inc.*, No. 8:16-MC-18TGW, 2016 WL 3896840, at *3 (M.D. Fla. Jun. 10, 2016). Mr. Bartoli did not file a petition to limit or quash (*supra* ¶ 12) and thus is precluded from raising any issues in defense of the Commission's petition that he could have raised before the Commission in the first instance.

Section 20(f) of the FTC Act provides that a CID recipient may file with the Commission a petition to “modify[] or set[] aside the demand” within 20 days, but otherwise “*shall comply* with any portions of the demand not sought to be modified or set aside.” 15 U.S.C. § 57b-1(f)(2) (emphasis added). The Commission’s Rules of Practice implement this provision by requiring a CID recipient to file a “petition to limit or quash any compulsory process” setting forth “all assertions of protected status or other factual and legal objections to the Commission compulsory process, including all appropriate arguments, affidavits, and other supporting documentation.” 16 C.F.R. § 2.10(a)(1).

Because Mr. Bartoli failed to exhaust this administrative remedy, he may not now contest enforcement of the CID “for any reason short of objections based on constitutional grounds.” *EEOC v. Cuzzens of Georgia, Inc.*, 608 F.2d 1062, 1064 (5th Cir. 1979) (per curiam).³ *See also Morton Salt*, 338 U.S. at 653 (recipient of FTC process may not challenge the demands as “arbitrarily excessive” without first making “reasonable efforts before the Commission itself to obtain reasonable conditions”); *O’Connell Assocs.*, 828 F. Supp. at 168 (exhaustion requirement applies even if a process recipient “waits for the FTC to bring an action [rather] than if he

³ Cases decided by the former Fifth Circuit prior to the close of business on September 30, 1981, are binding precedent. *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981).

himself institutes it. In either case, there was an administrative mechanism for him to utilize and he failed to do so.”). Any objections to enforcement Mr. Bartoli may now offer are not proper defenses to enforcement.

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Prayer for Relief

WHEREFORE, the Commission invokes the aid of this Court and prays:

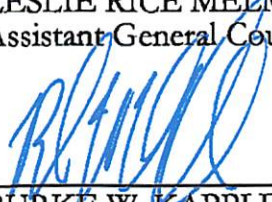
- a. For the immediate issuance of an order directing Derek J. Bartoli to appear and show cause why he should not comply in full with the CID;
- b. For a prompt determination of this matter and an order requiring Mr. Bartoli to fully comply with the CID within ten (10) days of such order, or at such later date as may be established by the Commission;
- c. For such other relief as this Court deems just and proper.

Respectfully submitted,

ALDEN F. ABBOTT
Acting General Counsel

DAVID C. SHONKA
Principal Deputy General Counsel

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Dated: April 13, 2018

Petition Exhibit 1

Declaration of Christopher E. Brown
(April 12, 2018)

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

Federal Trade Commission,

Petitioner,

v.

Derek J. Bartoli,

Respondent.

Misc No.

DECLARATION OF CHRISTOPHER E. BROWN

Pursuant to 28 U.S.C. § 1746, I declare as follows:

1. I am an attorney employed by the U.S. Federal Trade Commission (FTC or Commission), in Washington, DC, in the Division of Marketing Practices. I am assigned to the FTC's investigation of companies engaging in telemarketing to offer consumers "free cruise" vacations. (FTC File No. P1623005). The purpose of the investigation is to determine whether various individuals or entities have engaged in practices that violate Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45 or the Telemarketing Sales Rule, 16 C.F.R. § 310 *et seq.* Section 5 prohibits unfair or deceptive acts and practices and the TSR prohibits, among others, "abusive" telemarketing which includes (1) initiating, causing the initiation, or assisting and facilitating the initiation of, telemarketing sales calls that deliver prerecorded messages; (2) placing calls to numbers listed on the National Do Not Call Registry; and (3) displaying "spoofed," or false, caller ID numbers.

2. I am authorized to execute a declaration verifying the facts that are set forth in the Petition of the Federal Trade Commission for an Order Enforcing Civil Investigative Demand. I have read the petition and exhibits thereto

(hereinafter referred to as Pet. Ex.), and verify that Pet. Ex. 2 through Pet. Ex. 6 are true and correct copies of the original documents. The facts set forth herein are based on my personal knowledge or information made known to me in the course of my official duties.

3. FTC staff opened this investigation after receiving thousands of consumer complaints about unwanted robocalls that offered two “free cruise” tickets for participating in a short survey and paying \$59 per ticket in “port fees.” These complaints stated that these robocalls (1) provided false, or “spoofed,” caller ID information; (2) were made to telephone numbers on the Do Not Call Registry; and (3) occurred during restricted time periods, typically in the middle of the night (*i.e.*, between 12 a.m. and 5 a.m.).

4. FTC staff traced one of these unsolicited robocalls to a VoIP provider that confirmed the robocalls originated from its network.¹ The VoIP provider identified Derek J. Bartoli and his company (Marketing Consultation Solutions LLC) as responsible for originating these robocalls. Like many of the robocalls that were the subject of consumer complaints, the robocalls placed by Mr. Bartoli’s company, which were delivered to consumers between midnight and 5:00 AM using a spoofed caller ID, offered a “free vacation” aboard a cruise ship.

5. In December 2017, FTC staff sought issuance of a Civil Investigative Demand (“CID”) to Derek J. Bartoli under the authority of omnibus FTC investigatory resolution number 012 3145, which authorizes the use of compulsory process:

¹ “VoIP” stands for Voice Over Internet Protocol. These companies offer calling services transmitted over the Internet as opposed to traditional wire-based telephony.

[t]o determine whether unnamed telemarketers, sellers, or others assisting them have engaged or are engaging in: (1) unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45 (as amended); and/or (2) deceptive or abusive telemarketing acts or practices in violation of the Commission's Telemarketing Sales Rule, 16 C.F.R. pt 310 (as amended), including but not limited to the provision of substantial assistance or support - such as mailing lists, scripts, merchant accounts, and other information, products, or services - to telemarketers engaged in unlawful practices.

Pet. Ex. 2 at 5.

6. The assigned Commissioner (here, Acting Chairman Maureen K. Ohlhausen) approved the issuance of the CID to Mr. Bartoli on December 19, 2017. Pet. Ex. 2 at 3. The CID required Mr. Bartoli to respond to 10 document requests and 9 interrogatories on or before January 9, 2018, and to provide oral testimony on 8 specified topics relevant to the investigation on February 7, 2018 at 9:00 AM. *Id.*

7. The CID seeks information relating to, *inter alia*, Mr. Bartoli's company, its clients, the means for and content of calls placed on behalf of these clients for telemarketing services, and consumer or other complaints. The CID also seeks information regarding Mr. Bartoli's and his company's compliance with the requirements of the TSR. This information will assist staff to determine whether these calls violate Section 5 or the TSR because they are deceptive, unfair, or fail to comply with the TSR's requirements. This information will also enable staff to identify other individuals and/or entities that have assisted and facilitated these potentially-unlawful telemarketing practices.

8. The CID was delivered via FedEx addressed to Derek J. Bartoli at the address in Kissimmee he provided to the Florida Secretary of State for service as

the registered agent for his company Marketing Consultation Services LLC. It was signed for by "J. Bartoli" on December 23, 2017. Pet. Ex. 3.

9. One day earlier, on Friday, December 22, 2017, FTC staff emailed a copy of the CID to Mr. Bartoli and informed him of his obligation to schedule an initial meeting to discuss any questions regarding the CID. On that same date, Mr. Bartoli sent a reply email stating that he was out of office and with family for the holidays, and requested to schedule a call with staff on the following Tuesday, December 26, 2017. On December 26, 2017, staff corresponded by email with Mr. Bartoli and agreed to speak with him by telephone on January 2, 2018.

10. On January 2, 2018, FTC staff contacted Mr. Bartoli by telephone to discuss the CID issued to him. Mr. Bartoli confirmed that he received the CIDs sent via FedEx but stated that he had not yet read the CIDs and was unprepared to discuss them. Staff reminded Mr. Bartoli of his deadlines to respond to document requests and interrogatories on or before January 9, 2018, and appear for oral testimony on February 7, 2018 at 9:00 AM. Mr. Bartoli agreed to speak with staff again on Thursday, January 4, 2018 at 4:30 PM, at which time he agreed to have the CID materials available to discuss.

11. On Thursday, January 4, 2018, FTC staff called the telephone number previously used to contact Mr. Bartoli, but only reached his voice mail. Staff made several more calls to Mr. Bartoli, which were all unanswered. Staff then sent an email on January 8, 2018, reminding Mr. Bartoli of his deadlines to produce responsive information to the CID and appear for oral testimony. Mr. Bartoli did not respond to the January 8 email. Nor did he provide any response to the CID.

12. On February 2, 2018, Associate Director Lois C. Greisman wrote Mr. Bartoli, notifying him of his default for failing to meet the January 9 deadline, but informing him that she had modified the CID, extending the deadline for producing documents and answers to interrogatories to February 9, 2018 and changing the date and time for the investigational hearing to February 20, 2018, at 10:00 AM. Pet. Ex. 4 at 1. The February 2 letter emphasized that Mr. Bartoli's failure to meet either deadline would be a default that "**shall be considered grounds for a referral of this matter to the Commission's Office of General Counsel for judicial enforcement of the CID.**" *Id.* (emphasis in original). After emailing this letter to Mr. Bartoli, FTC staff received neither a reply to the email nor responsive information to the CID.

13. Mr. Bartoli did not produce any documents on or before the extended deadline of February 9, 2018.

14. On February 15, 2018, FTC staff wrote Mr. Bartoli, notifying him that his failure to timely produce documents and answers to interrogatories constitutes a default and grounds for referral of this matter to OGC for judicial enforcement of the CID in federal court. Pet. Ex. 5. Staff also requested that Mr. Bartoli affirmatively indicate if he intended to appear for the investigational hearing scheduled for February 20, 2018 at 10:00 AM. *Id.* Staff sent the February 15 letter via FedEx (and email) and it was signed for by "D. Bartoli" on February 16, 2018. Pet. Ex. 6. Mr. Bartoli did not respond to the February 15 letter from staff.

15. Mr. Bartoli has not expressed any specific objections to the CID and did not file a petition to limit or quash the CID with the Commission. See C.F.R. § 2.10(a).

16. Mr. Bartoli has produced no information in response to the CID. Mr. Bartoli's non-compliance with the CID has burdened, delayed, and impeded the Commission's investigation.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 12, 2018

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

Christopher E. Brown, Staff Attorney
Division of Marketing Practices
Bureau of Consumer Protection
Federal Trade Commission

Petition Exhibit 2

Civil Investigative Demand to Derek J. Bartoli
(December 19, 2017)



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

DEC 20 2017

CONFIDENTIAL

Via Federal Express

Derek J. Bartoli
1809 Lisa Lane
Kissimmee, FL 34744

FTC Matter No. P0344412

Dear Mr. Bartoli:

The Federal Trade Commission ("FTC") has issued the attached Civil Investigative Demand ("CID") asking for information as part of a non-public investigation. Our purpose is to determine whether you, the Subject Customers, as defined in the CID, and/or other affiliated individuals and entities, have engaged in practices that violate Section 5 of the Federal Trade Commission Act, 15 U.S.C. §45 and the Telemarketing Sales Rule, 16 C.F.R. § 310 *et seq.*, including initiating, causing the initiation, or assisting and facilitating the initiation of telemarketing sales calls that deliver prerecorded messages and/or use spoofed caller ID numbers, and whether Commission action to obtain monetary and injunctive relief would be in the public interest. Please read the attached documents carefully. Here are a few important points we would like to highlight:

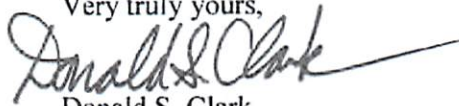
1. **Contact FTC counsel, Ian L. Barlow (ibarlow@ftc.gov; 202-326-3120) as soon as possible to schedule an initial meeting to be held within 2 days.** You can meet in person or by phone to discuss any questions you have, including whether there are changes to how you comply with the CID that would reduce your cost or burden while still giving the FTC the information it needs. Please read the attached documents for more information about that meeting.
2. **You must immediately stop any routine procedures for electronic or paper document destruction, and you must preserve all paper or electronic documents** that are in any way relevant to this investigation, even if you believe the documents are protected from discovery by privilege or some other reason.
3. **The FTC will use information you provide in response to the CID for the purpose of investigating violations of the laws the FTC enforces.** We will not disclose the information under the Freedom of Information Act, 5 U.S.C. § 552. We may disclose the information in response to a valid request from Congress, or other civil or criminal federal, state, local, or foreign law enforcement agencies for their official law enforcement purposes. The FTC or other agencies may use and disclose

your response in any federal, state, or foreign civil or criminal proceeding, or if required to do so by law. However, we will not publicly disclose your information without giving you prior notice.

4. **Please read the attached documents closely.** They contain important information about how you should provide your response.

Please contact FTC counsel as soon as possible to set up an initial meeting. We appreciate your cooperation.

Very truly yours,

A handwritten signature in cursive script that reads "Donald S. Clark". The signature is written in black ink and has a long, sweeping horizontal line extending to the right.

Donald S. Clark
Secretary of the Commission



United States of America
Federal Trade Commission

CIVIL INVESTIGATIVE DEMAND

1. TO	1a. MATTER NUMBER
Derek J. Bartoli 1809 Lisa Lane Kissimmee, FL 34744	P1623005

This demand is issued pursuant to Section 20 of the Federal Trade Commission Act, 15 U.S.C. § 57b-1, in the course of an investigation to determine whether there is, has been, or may be a violation of any laws administered by the Federal Trade Commission by conduct, activities or proposed action as described in Item 3.

2. ACTION REQUIRED	
<input checked="" type="checkbox"/> You are required to appear and testify.	
LOCATION OF HEARING	YOUR APPEARANCE WILL BE BEFORE
United States Attorney's Office 400 W Washington St #3100 Orlando, FL 32801	Ian Barlow or other duly designated person
DATE AND TIME OF HEARING OR DEPOSITION	
FEB - 7 2013 9:00 AM	

- You are required to produce all documents described in the attached schedule that are in your possession, custody, or control, and to make them available at your address indicated above for inspection and copying or reproduction at the date and time specified below.
- You are required to answer the interrogatories or provide the written report described on the attached schedule. Answer each interrogatory or report separately and fully in writing. Submit your answers or report to the Records Custodian named in Item 4 on or before the date specified below.
- You are required to produce the tangible things described on the attached schedule. Produce such things to the Records Custodian named in Item 4 on or before the date specified below.

DATE AND TIME THE DOCUMENTS, ANSWERS TO INTERROGATORIES, REPORTS, AND/OR TANGIBLE THINGS MUST BE AVAILABLE

FEB - 8 2013

3. SUBJECT OF INVESTIGATION
See attached Schedule and attached resolution.

4. RECORDS CUSTODIAN/DEPUTY RECORDS CUSTODIAN	5. COMMISSION COUNSEL
Lois Graisman/Carol Jones Federal Trade Commission 600 Pennsylvania Avenue, NW CC-8528 Washington, DC 20580	Ian L. Barlow (202) 320-3126 ibarlow@ftc.gov Federal Trade Commission 600 Pennsylvania Avenue, NW CC-8528 Washington, DC 20580

DATE ISSUED	COMMISSIONER'S SIGNATURE
12/19/17	

INSTRUCTIONS AND NOTICES
The delivery of this demand to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply. The production of documents or the submission of answers and report in response to this demand must be made under a sworn certificate, in the form printed on the second page of this demand, by the person to whom this demand is directed or, if not a natural person, by a person or persons having knowledge of the facts and circumstances of such production or responsible for answering each interrogatory or report question. This demand does not require approval by OMB under the Paperwork Reduction Act of 1980.

PETITION TO LIMIT OR QUASH
The Commission's Rules of Practice require that any petition to limit or quash this demand be filed within 20 days after service, or, if the return date is less than 20 days after service, prior to the return date. The original and twelve copies of the petition must be filed with the Secretary of the Federal Trade Commission, and one copy should be sent to the Commission Counsel named in Item 5.

YOUR RIGHTS TO REGULATORY ENFORCEMENT FAIRNESS
The FTC has a longstanding commitment to a fair regulatory enforcement environment. If you are a small business (under Small Business Administration standards), you have a right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR (1-888-734-3247) or www.sba.gov/ombudsman regarding the fairness of the compliance and enforcement activities of the agency. You should understand, however, that the National Ombudsman cannot change, stop, or delay a federal agency enforcement action.

The FTC strictly forbids retaliatory acts by its employees, and you will not be penalized for expressing a concern about these activities.

TRAVEL EXPENSES
Use the enclosed travel voucher to claim compensation to which you are entitled as a witness for the Commission. The completed travel voucher and this demand should be presented to Commission Counsel for payment. If you are permanently or temporarily living somewhere other than the address on this demand and it would require excessive travel for you to appear, you must get prior approval from Commission Counsel.

A copy of the Commission's Rules of Practice is available online at <http://ftc.gov/FTCSRulesofPractice>. Paper copies are available upon request.

Form of Certificate of Compliance*

I/We do certify that all of the documents, information and tangible things required by the attached Civil Investigative Demand which are in the possession, custody, control, or knowledge of the person to whom the demand is directed have been submitted to a custodian named herein.

If a document or tangible thing responsive to this Civil Investigative Demand has not been submitted, the objections to its submission and the reasons for the objection have been stated.

If an interrogatory or a portion of the request has not been fully answered or a portion of the report has not been completed, the objections to its submission and the reasons for the objections have been stated.

Signature _____

Title _____

Sworn to before me this day

Notary Public

*In the event that more than one person is responsible for complying with this demand, the certificate shall identify the documents for which each certifying individual was responsible. In place of a sworn statement, the above certificate of compliance may be supported by an unsworn declaration as provided for by 28 U.S.C. § 1746.

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
 Maureen K. Ohlhausen
 Terrell McSweeney

**RESOLUTION DIRECTING USE OF COMPULSORY PROCESS IN A NONPUBLIC
INVESTIGATION OF TELEMARKETERS, SELLERS, SUPPLIERS, OR OTHERS**

File No. 012 3145

Nature and Scope of Investigation:

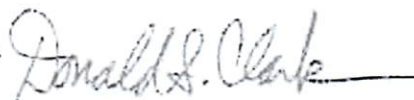
To determine whether unnamed telemarketers, sellers, or others assisting them have engaged or are engaging in: (1) unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45 (as amended); and/or (2) deceptive or abusive telemarketing acts or practices in violation of the Commission's Telemarketing Sales Rule, 16 C.F.R. pt 310 (as amended), including but not limited to the provision of substantial assistance or support — such as mailing lists, scripts, merchant accounts, and other information, products, or services — to telemarketers engaged in unlawful practices. The investigation is also to determine whether Commission action to obtain monetary relief would be in the public interest.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation for a period not to exceed five years from the date of issuance of this resolution. The expiration of this five-year period shall not limit or terminate the investigation or the legal effect of any compulsory process issued during the five-year period. The Federal Trade Commission specifically authorizes the filing or continuation of actions to enforce any such compulsory process after the expiration of the five-year period.

Authority to Conduct Investigation:

Sections 6, 9, 10, and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50, 57b-1 (as amended); and FTC Procedures and Rules of Practice, 16 C.F.R. §§ 1.1 *et seq.* and supplements thereto.

By direction of the Commission.



Donald S. Clark
Secretary

Issued: April 1, 2016

**FEDERAL TRADE COMMISSION (“FTC”)
CIVIL INVESTIGATIVE DEMAND (“CID”) SCHEDULE
FTC File No. 1623005**

Meet and Confer: You must contact **FTC counsel, Ian Barlow (202-326-3120; ibarlow@ftc.gov)**, as soon as possible to schedule a meeting (telephonic or in person) to be held within fourteen (14) days after you receive this CID. At the meeting, you must discuss with FTC counsel any questions you have regarding this CID or any possible CID modifications that could reduce your cost, burden, or response time yet still provide the FTC with the information it needs to pursue its investigation. The meeting also will address how to assert any claims of protected status (e.g., privilege, work-product, etc.) and the production of electronically stored information. You must make available at the meeting personnel knowledgeable about your information or records management systems, your systems for electronically stored information, custodians likely to have information responsive to this CID, and any other issues relevant to compliance with this CID.

Document Retention: You must retain all documentary materials used in preparing responses to this CID. The FTC may require the submission of additional documents later during this investigation. **Accordingly, you must suspend any routine procedures for document destruction and take other measures to prevent the destruction of documents** that are in any way relevant to this investigation, even if you believe those documents are protected from discovery. *See* 15 U.S.C. § 50; *see also* 18 U.S.C. §§ 1505, 1519.

Sharing of Information: The FTC will use information you provide in response to the CID for the purpose of investigating violations of the laws the FTC enforces. We will not disclose such information under the Freedom of Information Act, 5 U.S.C. § 552. We also will not disclose such information, except as allowed under the FTC Act (15 U.S.C. § 57b-2), the Commission’s Rules of Practice (16 C.F.R. §§ 4.10 & 4.11), or if required by a legal obligation. Under the FTC Act, we may provide your information in response to a request from Congress or a proper request from another law enforcement agency. However, we will not publicly disclose such information without giving you prior notice.

Manner of Production: You may produce documentary material or tangible things by making them available for inspection and copying at your principal place of business. Alternatively, you may send all responsive documents and tangible things to **Carol Jones, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Mail Stop CC-8528, Washington, DC 20580**. If you are sending the materials, use a courier service such as Federal Express or UPS because heightened security measures delay postal delivery to the FTC. You must inform FTC counsel by email or telephone of how you intend to produce materials responsive to this CID at least five days before the return date.

Certification of Compliance: You or any person with knowledge of the facts and circumstances relating to the responses to this CID must certify that such responses are complete by completing the “Form of Certificate of Compliance” set forth on the back of the CID form or by signing a declaration under penalty of perjury pursuant to 28 U.S.C. § 1746.

Certification of Records of Regularly Conducted Activity: Attached is a Certification of Records of Regularly Conducted Activity. Please execute and return this Certification with your response. Completing this certification may reduce the need to subpoena you to testify at future proceedings to establish the admissibility of documents produced in response to this CID.

Definitions and Instructions: Please review carefully the Definitions and Instructions that appear after the Specifications and provide important information regarding compliance with this CID.

SUBJECT OF INVESTIGATION

Whether the recipient of this CID, the Subject Customers, as defined below, and/or other affiliated individuals and entities, have engaged in practices that violate Section 5 of the Federal Trade Commission Act, 15 U.S.C. §45 and the Telemarketing Sales Rule, 16 C.F.R. § 310 *et seq.*, including initiating, causing the initiation, or assisting and facilitating the initiation of telemarketing sales calls that deliver prerecorded messages and/or use spoofed caller ID numbers, and whether Commission action to obtain monetary and injunctive relief would be in the public interest. See also attached resolution.

SPECIFICATIONS

Applicable Time Period: Unless otherwise directed, the applicable time period for the requests set forth below is from **January 1, 2015 until the date of full and complete compliance with this CID.**

In the requests below, the “**Subject Customers**” are any individuals, businesses, or entities on whose behalf you initiated, caused the initiation of, or assisted the initiation of Telemarketing calls for the purpose of promoting, advertising, marketing, or selling cruise tickets or vacation travel packages, including identifying individuals potentially interested in cruise tickets.

A. Requests for Production of Documents

1. Audio files containing all Prerecorded Messages included in, delivered with or through, or played as part of any Outbound Telephone Calls dialed for, by, on behalf of the Subject Customers.
2. All scripts and drafts of scripts for Prerecorded Messages included in, delivered with or through, or played as part of any Outbound Telephone Calls dialed for, by, on behalf of the Subject Customers.
3. All sales scripts and drafts of sales scripts used by you in Telemarketing (including both inbound and outbound telemarketing) related to the Subject Customers.
4. All of your contracts, terms of service, written agreements with, and all invoices to or from any of the Subject Customers.

5. All of your contracts, terms of service, written agreements with, and all invoices to or from any business or individual providing you or any of the Subject Customers with the following services: Voice Broadcasting, Lead Generation, Caller Identification Service, automated dialing, direct inbound dialing, or data brokerage services.
6. All Communications with any business or individual relating to Telemarketing, Voice Broadcasting, Lead Generation, Caller Identification Service, automated dialing, direct inbound dialing, or data brokerage services provided by you or any other business or individual to the Subject Customers.
7. All Communications between you and any of the Subject Customers related to:
 - a. Telemarketing, Voice Broadcasting, Lead Generation, Caller Identification Service, automated dialing, direct inbound dialing, or data brokerage services;
 - b. The sale, promotion, advertisement, or marketing of tickets for a cruise or vacation travel packages, including efforts to identify individuals potentially interested in purchasing tickets on a cruise; or
 - c. Consumer complaints, inquiries from any Better Business Bureau, cease and desist letters, actual, or threatened litigation.
 - d. Inquiries, subpoenas, or other investigative demands by state or federal law enforcement agencies about unwanted sales calls or unlawful Telemarketing.
8. All documents related to complaints (and responses thereto) about any unwanted sales or Telemarketing calls, deceptive business practices (such as impersonating another company), overbilling, refusals to provide refunds, refusals to honor cruise tickets or vacation travel packages, or any complaints about the Subject Customers, including:
 - a. Complaints from consumers;
 - b. Complaints from the Better Business Bureau;
 - c. Cease and desist letters, threats of lawsuits, or actual law suits;
 - d. Inquiries, subpoenas, or other investigative demands from state or federal law enforcement agencies.
9. Your written policies and procedures for compliance with the Telemarketing Sales Rule, 16 C.F.R. § 310 *et seq.*

10. All other documents related to your compliance with or violation of the Telemarketing Sales Rule, 16 C.F.R. § 310 *et seq.* in connection with services rendered to the Subject Customers.

B. Requests for Answers to Interrogatories

1. Identify all businesses and individuals to whom you have provided any services or assistance concerning any Subject Customer.
2. For any businesses or individual that has paid you for providing services or assistance to any Subject Customer, provide the means and source of payment (such as the name of the payor, the name of the financial institution, and bank account and routing number information or credit card number).
3. For each Subject Customer, provide:
 - a. That Subject Customer's name, address, telephone number, and website;
 - b. The names, telephone numbers, and email addresses of all individuals, businesses, or entities that have communicated with you on behalf of that Subject Customer;
 - c. A description of all services you provided to that Subject Customer;
 - d. The means and source of payment used to pay you for services rendered to that Subject Company (such as the name of the payor, the name of the financial institution, and bank account and routing number information or credit card number);
 - e. That Subject Customer's employee(s) or agent(s) responsible for compliance with the Telemarketing Sales Rule.
4. For all Outbound Telephone Calls dialed for, by, or on behalf of any Subject Customer, Identify:
 - a. All vendors or third-parties that provided any technical assistance, software, servers, caller ID numbers, or other support in using the automated dialing technology;
 - b. The URL at which the Company logs in to update, adjust settings, load caller ID lists, load lists of numbers to call, loads prerecorded messages, or start automated dialing calls;
 - c. The IP address of the server that hosts the automated dialing software;
 - d. The business or individual that owns the server that hosts the automated dialing software; and
 - e. The business or individual that provides VoIP lines to place the Outbound Telephone Calls.

5. Identify all lawsuits against you and government investigations of you, related to: (a) Telemarketing; (b) automated dialing; or (c) the Subject Customers.
6. Identify your role or relationship with "Medical Alarms," including whether you are an officer, owner, employee, contractor, or agent of the company.
7. For the business called "Medical Alarms," identify all of its principals, owners, members or stockholders with five percent or more ownership of the company, officers, directors, managers, and any other individual with actual, implied, or *de facto*, authority to control the company's business practices.
8. Identify the name of all banks and financial institutions with which "Medical Alarms" has maintained any depository or credit accounts during the applicable time period, and provide all bank account and credit card numbers.
9. Identify all businesses that engage in Telemarketing or automated dialing in which you are a principal, owner, member or stockholder with five percent or more ownership of the company, officer, director, manager, or have actual, implied, or *de facto*, authority to control the company's business practices.

C. Topics for Testimony at Investigational Hearing

1. Your background, which includes without limitation your age, education, training, residence, employment history, prior and current work in Telemarketing and automated dialing, prior and current work in the cruise or travel industry, prior and current work for "Medical Alarms," and current and prior relationship to each Subject Customer(s).
2. The above Requests for the Production of Documents and your responses thereto.
3. The above Interrogatories and your responses thereto.
4. Your clients, customers, and vendors involved in the sale, marketing, advertising, and promotion of cruise tickets or travel vacation packages.
5. Without regard to time period, your compliance with the Telemarketing Sales Rule.
6. Without regard to time period, your prior responses to state or federal law enforcement investigations or inquiries.
7. Without regard to time period, the identity, location, ownership, formation, and management of the company known as "Medical Alarms," and the individuals.
8. Without regard to time period, your relationship and contacts with the Subject Customers, the Port of Palm Beach, and/or the MV Celebration Cruise Ship or its owners.

DEFINITIONS

The following definitions apply to this CID:

- D-1. **“You,”** or **“Your”** means Derek Bartoli.
- D-2. **“Document”** means the complete original, all drafts, and any non-identical copy, whether different from the original because of notations on the copy, different metadata, or otherwise, of any item covered by 15 U.S.C. § 57b-1(a)(5), 16 C.F.R. § 2.7(a)(2), or Federal Rule of Civil Procedure 34(a)(1)(A).
- D-3. **“Identify”** or **“the identity of”** requires identification of (a) natural persons by name, title, present business affiliation, present business address, telephone number, and email address or, if a present business affiliation or present business address is not known, the last known business and home addresses; and (b) businesses or other organizations by name, address, and the identities of your contact persons at the business or organization.
- D-4. **“Advertisement”** or **“Advertising”** or **“Ad”** means any written or verbal statement, illustration, or depiction that promotes the sale of a good or service or is designed to increase consumer interest in a brand, good, or service. Advertising media includes, but is not limited to: packaging and labeling; promotional materials; print; television; radio; and Internet, social media, and other digital content.
- D-5. **“Communication”** means any written or verbal statement, including without limitation emails (including emails on which the Company was copied or blind copied), text messages, skype instant messages, online chat messages, and messages delivered through any smart phone application.
- D-6. **“Lead Generation”** means providing, in exchange for consideration, consumer information, such as telephone numbers, to a third-party for use in the marketing or sale of goods or services.
- D-7. **“Voice Broadcasting”** means initiating telephone calls to send, or providing software or support to others to allow the others to send, prerecorded messages to answering machines, voice mail systems, or persons, but does not include: (1) delivering messages designed to induce voting or the donation or gift of money or other thing of value to promote the success of a political party, committee or campaign; or (2) delivering emergency or alert messages from a government authority.
- D-8. **“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.
- D-9. **“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, including a telephone call initiated to deliver a recorded message describing sales events, encourage visits to retail stores, or promote online sales.

D-10. “**Telemarketer**” shall mean any person who, in connection with telemarketing, initiates or receives telephone calls to or from consumers.

D-11. “**Telemarketing**” shall mean 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.

D-12. “**National Do Not Call Registry**” shall mean the registry of telephone numbers maintained by the Commission as set forth in 16 C.F.R. § 310.4(b)(1)(iii)(B).

D-13. “**Entity-Specific Do Not Call List**” shall mean a list of telephone numbers or persons maintained by the Company or any entity acting on behalf of the Company from which the Company or any entity acting on behalf of the Company has received a Do Not Call Request.

INSTRUCTIONS

I-1. **Petitions to Limit or Quash:** You must file any petition to limit or quash this CID with the Secretary of the FTC no later than twenty (20) days after service of the CID, or, if the return date is less than twenty (20) days after service, prior to the return date. Such petition must set forth all assertions of protected status or other factual and legal objections to the CID and comply with the requirements set forth in 16 C.F.R. § 2.10(a)(1) – (2). **The FTC will not consider petitions to quash or limit if you have not previously met and conferred with FTC staff and, absent extraordinary circumstances, will consider only issues raised during the meet and confer process.** 16 C.F.R. § 2.7(k); *see also* § 2.11(b). **If you file a petition to limit or quash, you must still timely respond to all requests that you do not seek to modify or set aside in your petition.** 15 U.S.C. § 57b-1(f); 16 C.F.R. § 2.10(b).

I-2. **Withholding Requested Material / Privilege Claims:** If you withhold from production any material responsive to this CID based on a claim of privilege, work product protection, statutory exemption, or any similar claim, you must assert the claim no later than the return date of this CID, and you must submit a detailed log, in a searchable electronic format, of the items withheld that identifies the basis for withholding the material and meets all the requirements set forth in 16 C.F.R. § 2.11(a) – (c). The information in the log must be of sufficient detail to enable FTC staff to assess the validity of the claim for each document, including attachments, without disclosing the protected information. If only some portion of any responsive material is privileged, you must submit all non-privileged portions of the material. Otherwise, produce all responsive information and material without redaction. 16 C.F.R. § 2.11(c). The failure to provide information sufficient to support a claim of protected status may result in denial of the claim. 16 C.F.R. § 2.11(a)(1).

I-3. **Modification of Specifications:** The Bureau Director, a Deputy Bureau Director, Associate Director, Regional Director, or Assistant Regional Director must agree in writing to any modifications of this CID. 16 C.F.R. § 2.7(l).

I-4. **Scope of Search:** This CID covers documents and information in your possession or under your actual or constructive custody or control, including documents and information in the possession, custody, or control of your attorneys, accountants, directors, officers, employees,

service providers, and other agents and consultants, whether or not such documents or information were received from or disseminated to any person or entity.

I-5. Identification of Responsive Documents: For specifications requesting production of documents, you must identify in writing the documents that are responsive to the specification. Documents that may be responsive to more than one specification of this CID need not be produced more than once. If any documents responsive to this CID have been previously supplied to the FTC, you may identify the documents previously provided and the date of submission.

I-6. Maintain Document Order: You must produce documents in the order in which they appear in your files or as electronically stored. If documents are removed from their original folders, binders, covers, containers, or electronic source, you must specify the folder, binder, cover, container, or electronic media or file paths from which such documents came.

I-7. Numbering of Documents: You must number all documents in your submission with a unique identifier such as a Bates number or a document ID.

I-8. Production of Copies: Unless otherwise stated, you may submit copies in lieu of original documents if they are true, correct, and complete copies of the originals and you preserve and retain the originals in their same state as of the time you received this CID. Submission of copies constitutes a waiver of any claim as to the authenticity of the copies should the FTC introduce such copies as evidence in any legal proceeding.

I-9. Production in Color: You must produce copies of advertisements in color, and you must produce copies of other materials in color if necessary to interpret them or render them intelligible.

I-10. Electronically Stored Information: See the attached FTC Bureau of Consumer Protection Production Requirements (“Production Requirements”), which detail all requirements for the production of electronically stored information to the FTC. You must discuss issues relating to the production of electronically stored information with FTC staff **prior to** production.

I-11. Sensitive Personally Identifiable Information (“Sensitive PII”) or Sensitive Health Information (“SHI”): If any materials responsive to this CID contain Sensitive PII or SHI, please contact FTC counsel before producing those materials to discuss whether there are steps you can take to minimize the amount of Sensitive PII or SHI you produce, and how to securely transmit such information to the FTC.

Sensitive PII includes an individual’s Social Security number; an individual’s biometric data (such as fingerprints or retina scans, but not photographs); and an individual’s name, address, or phone number in combination with one or more of the following: date of birth, Social Security number, driver’s license or state identification number (or foreign country equivalent), passport number, financial account number, credit card number, or debit card number. SHI includes medical records and other individually identifiable health information relating to the past, present, or future physical or mental health or conditions of an individual, the

provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

I-12. Interrogatory Responses: For specifications requesting answers to written interrogatories, answer each interrogatory and each interrogatory subpart separately and fully, in writing, and under oath.

I-13. Submission of Documents in Lieu of Interrogatory Answers: You may answer any written interrogatory by submitting previously existing documents that contain the information requested in the interrogatory so long as you clearly indicate in each written interrogatory response which documents contain the responsive information. For any interrogatory that asks you to identify documents, you may, at your option, produce the documents responsive to the interrogatory so long as you clearly indicate the specific interrogatory to which such documents are responsive.

CERTIFICATION OF RECORDS OF REGULARLY CONDUCTED ACTIVITY
Pursuant to 28 U.S.C. § 1746

1. I, Derek Bartoli, have personal knowledge of the facts set forth below and am competent to testify as follows:
2. I have authority to certify the authenticity of the records produced by Derek Bartoli and attached hereto.
3. The documents produced and attached hereto by Derek Bartoli are originals or true copies of records of regularly conducted activity that:
 - a) Were made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;
 - b) Were kept in the course of the regularly conducted business activity; and
 - c) Were made by the regularly conducted activity as a regular business practice.

I certify under penalty of perjury that the foregoing is true and correct.

Date: _____

Signature

Petition Exhibit 3

FedEx Confirmation of Delivery of CID,
Tracking # 771061751390
(December 23, 2017)

From: [Barlow, Ian](#)
To: [Brown, Christopher](#)
Subject: FW: FedEx Shipment 771061751390 Delivered
Date: Thursday, March 15, 2018 5:01:26 PM

From: TrackingUpdates@fedex.com [mailto:TrackingUpdates@fedex.com]
Sent: Saturday, December 23, 2017 2:07 PM
To: Barlow, Ian
Subject: FedEx Shipment 771061751390 Delivered

FedEx®

Your package has been delivered

Tracking # [771061751390](#)

Ship date:
Thu, 12/21/2017

Delivery date:
Sat, 12/23/2017
2:03 pm

Sherri Harris
Federal
Washington, DC
20024
US

 Delivered

Derek J. Bartoli
1809 Lisa Lane
KISSIMMEE, FL
34744
US

Shipment Facts

Our records indicate that the following package has been delivered.

Tracking number: [771061751390](#)
Status: Delivered: 12/23/2017
2:03 PM Signed for
By: J.BARTOLI
Purchase order number: 0612
Reference: 1623005/589026
Signed for by: J.BARTOLI
Delivery location: KISSIMMEE, FL
Delivered to: Residence
Service type: FedEx 2Day
Packaging type: FedEx Envelope
Number of pieces: 1
Weight: 0.50 lb.
Special handling/Services: Direct Signature
Required
Deliver Weekday

Residential Delivery

Standard transit: 12/26/2017 by 8:00
pm

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Thank you for your business.

Petition Exhibit 4

Letter from Lois C. Greisman, Associate Director, FTC Division
of Marketing Practices to Derek J. Bartoli
(February 2, 2018)



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Consumer Protection
Division of Marketing Practices

February 2, 2018

VIA PDF E-MAIL ATTACHMENT
(derekbartoli81@gmail.com)

Derek J. Bartoli
1809 Lisa Lane
Kissimmee, FL 34744

Re: Civil Investigative Demand issued December 20, 2017 regarding a Nonpublic Investigation of Telemarketers, Sellers, Suppliers, Or Others; FTC Matter Number P1623005

Mr. Bartoli:

The above referenced Civil Investigative Demand ("CID") required you to: (1) produce documents and written answers to interrogatories by January 9, 2018; and (2) testify at an investigational hearing scheduled for February 7, 2018. You have failed to meet the January 9 deadline to produce documents and written answers to interrogatories. You are therefore in default, and the Commission may seek to enforce the CID in federal court in order to obtain the documents and information specified.

However, in an effort to obtain this information as expeditiously as possible, we are willing to modify the CID and grant you the following extensions of time:

- The return deadline for answers to interrogatories and the production of documents is extended to Friday, February 9, 2018;
- The date and time of the investigational hearing is changed to Tuesday, February 20, 2018, at 10:00 AM

This constitutes the full extent of any modifications to the CID pursuant to 16 C.F.R. § 2.7 (l). No other modifications have been made. **Your failure to meet either of the aforementioned deadlines shall be considered grounds for a referral of this matter to the Commission's Office of General Counsel for judicial enforcement of the CID.**

If you have any questions concerning the CID or this letter, please contact Ian Barlow at (202) 326-3126 or ibarlow@ftc.gov or Christopher E. Brown at (202) 326-2825 or cbrown3@ftc.gov. Thank you for your ongoing cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lois C. Greisman', with a long horizontal flourish extending to the right.

LOIS C. GREISMAN
Associate Director

cc: Ian Barlow
Christopher E. Brown
Burke Kappler, Attorney, Office of General Counsel

Petition Exhibit 5

Letter from Christopher E. Brown to Derek J. Bartoli
(February 15, 2018)



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Consumer Protection
Division of Marketing Practices

February 15, 2018

VIA FEDEX AND PDF E-MAIL ATTACHMENT
(derekbartoli81@gmail.com)

Derek J. Bartoli
1809 Lisa Lane
Kissimmee, FL 34744

Derek J. Bartoli
c/o Kimberly Rainwater
1105 N. Bay Street
Kissimme, FL 34744

Re: Civil Investigative Demand issued December 20, 2017 regarding a Nonpublic Investigation of Telemarketers, Sellers, Suppliers, Or Others; FTC Matter Number P1623005

Mr. Bartoli:

In our letter dated February 2, 2018, we extended the original deadlines for your production of documents, written answers to interrogatories, and testimony related to the above referenced Civil Investigative Demand ("CID"). Your subsequent failure to produce documents and answers to interrogatories constitutes a default and grounds for a referral of this matter to the Commission's Office of General Counsel for judicial enforcement of the CID in federal court.

Based upon your default, we therefore assume that you will not be appearing for investigational hearing testimony as required on February 20, 2018, **unless we hear affirmatively from you before close of business this Friday, February 16, 2018.**

If you have any questions concerning the CID or this letter, please contact Christopher E. Brown at (202) 326-2825 or cbrown3@ftc.gov or Ian Barlow at (202) 326-3126 or ibarlow@ftc.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Chris Brown".

Christopher E. Brown
Staff Attorney

cc: Ian Barlow, Staff Attorney
Burke Kappler, Attorney, Office of General Counsel

Petition Exhibit 6

FedEx Confirmation of Delivery of Feb. 15, 2018, Letter,
Tracking # 771493655768
(February 16, 2018)

From: [Brown, Christopher](#)
To: [Kappler, Burke](#)
Cc: [Barlow, Ian](#)
Subject: FW: FedEx Shipment 771493655768 Delivered
Date: Wednesday, March 21, 2018 2:48:36 PM

-----Original Message-----

From: TrackingUpdates@fedex.com [<mailto:TrackingUpdates@fedex.com>]
Sent: Friday, February 16, 2018 9:20 AM
To: Brown, Christopher
Subject: FedEx Shipment 771493655768 Delivered

This tracking update has been requested by:

Company Name: Federal Trade Commission
Name: Christopher Brown
E-mail: cbrown3@ftc.gov

Our records indicate that the following shipment has been delivered:

Purchase order number: 1144
Reference: 1623005
Ship date: Feb 15, 2018
Signed for by: D.BARTOLI
Delivery location: Kissimmee, FL
Delivered to: Residence
Delivery date: Fri, 2/16/2018 9:13 am
Service type: FedEx Priority Overnight
Packaging type: FedEx Envelope
Number of pieces: 1
Weight: 0.50 lb.
Special handling/Services: Deliver Weekday
Residential Delivery
Standard transit: 2/16/2018 by 10:30 am
Tracking number: 771493655768

Shipper Information	Recipient Information
Christopher Brown	c/o Kimberly Rainwater
Federal Trade Commission	Derek J. Bartoli
600 Pennsylvania Avenue NW	1105 N. Bay Street
Mail Drop CC-8528	Kissimmee
Washington	FL
DC	US
US	34744
20580	

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To track the status of this shipment online, please use the following: <https://www.fedex.com/apps/fedextrack/?action=track&tracknumbers=771493655768&language=en&opco=FX&clientype=ivother>

Standard transit is the date and time the package is scheduled to be delivered by, based on the selected service, destination and ship date. Limitations and exceptions may apply. Please see the FedEx Service Guide for terms and conditions of service, including the FedEx Money-Back Guarantee, or contact your FedEx Customer Support representative.

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Thank you for your business.

JS 44 (Rev. 11/15)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS Federal Trade Commission</p> <p>(b) County of Residence of First Listed Plaintiff _____ <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys <i>(Firm Name, Address, and Telephone Number)</i> Burke W. Kappler, Office of General Counsel, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Tel: 202-326-2043.</p>	<p>DEFENDANTS Derek J. Bartoli</p> <p>County of Residence of First Listed Defendant <u>Osceola</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys <i>(If Known)</i></p>
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<p>II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i></p> <p><input checked="" type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <p><i>(For Diversity Cases Only)</i></p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%;"></td> <td style="width: 10%; text-align: center;">PTF</td> <td style="width: 10%; text-align: center;">DEF</td> <td style="width: 55%;"></td> <td style="width: 10%; text-align: center;">PTF</td> <td style="width: 10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	PTF	DEF		PTF	DEF																				
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4																				
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5																				
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

<p>CONTRACT</p> <p><input type="checkbox"/> 110 Insurance</p> <p><input type="checkbox"/> 120 Marine</p> <p><input type="checkbox"/> 130 Miller Act</p> <p><input type="checkbox"/> 140 Negotiable Instrument</p> <p><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><input type="checkbox"/> 152 Recovery of Defaulted Student Loans <i>(Excludes Veterans)</i></p> <p><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits</p> <p><input type="checkbox"/> 160 Stockholders' Suits</p> <p><input type="checkbox"/> 190 Other Contract</p> <p><input type="checkbox"/> 195 Contract Product Liability</p> <p><input type="checkbox"/> 196 Franchise</p>	<p>TORTS</p> <p>PERSONAL INJURY</p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel & Slander</p> <p><input type="checkbox"/> 330 Federal Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p><input type="checkbox"/> 362 Personal Injury - Medical Malpractice</p> <p>PERSONAL INJURY</p> <p><input type="checkbox"/> 365 Personal Injury - Product Liability</p> <p><input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p> <p>PERSONAL PROPERTY</p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p>	<p>FORFEITURE-PENALTY</p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 690 Other</p> <p>LABOR</p> <p><input type="checkbox"/> 710 Fair Labor Standards Act</p> <p><input type="checkbox"/> 720 Labor/Management Relations</p> <p><input type="checkbox"/> 740 Railway Labor Act</p> <p><input type="checkbox"/> 751 Family and Medical Leave Act</p> <p><input type="checkbox"/> 790 Other Labor Litigation</p> <p><input type="checkbox"/> 791 Employee Retirement Income Security Act</p> <p>IMMIGRATION</p> <p><input type="checkbox"/> 462 Naturalization Application</p> <p><input type="checkbox"/> 465 Other Immigration Actions</p>	<p>BANKRUPTCY</p> <p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p>PROPERTY RIGHTS</p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 840 Trademark</p> <p>SOCIAL SECURITY</p> <p><input type="checkbox"/> 861 HIA (1395f)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWW (405(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g))</p> <p>FEDERAL TAX SUITS</p> <p><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)</p> <p><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609</p>	<p>OTHER STATUTES</p> <p><input type="checkbox"/> 375 False Claims Act</p> <p><input type="checkbox"/> 376 Qui Tam (31 USC 3729(e))</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 410 Antitrust</p> <p><input type="checkbox"/> 430 Banks and Banking</p> <p><input checked="" type="checkbox"/> 450 Commerce</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Sat TV</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input type="checkbox"/> 890 Other Statutory Actions</p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 895 Freedom of Information Act</p> <p><input type="checkbox"/> 896 Arbitration</p> <p><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p>
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V. ORIGIN *(Place an "X" in One Box Only)*

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District *(specify)* 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
15 U.S.C. sec. 57b-1(e).

Brief description of cause:
Judicial enforcement of administrative compulsory process (civil investigative demand).

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY *(See instructions):* JUDGE _____ DOCKET NUMBER _____

DATE: 04/12/2018 SIGNATURE OF ATTORNEY OF RECORD:

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

Federal Trade Commission,

Petitioner,

v.

Derek J. Bartoli,

Respondent.

Misc. No.

[PROPOSED]
ORDER TO SHOW CAUSE

Petitioner, the Federal Trade Commission (FTC or Commission), under the authority conferred by Section 20 of the Federal Trade Commission Act, 15 U.S.C. § 57b-1 and Fed. R. Civ. P. 81(a)(5), has invoked the aid of this Court for an order requiring Respondent, Derek J. Bartoli, to comply with a civil investigative demand (CID), issued to him on December 19, 2017, in aid of an FTC law enforcement investigation.

The Court has considered the Federal Trade Commission's Petition to Enforce Civil Investigative Demands and the papers filed in support thereof; and, appearing to the Court that Petitioner has shown good cause for the entry of such order, it is hereby

ORDERED that Respondent Derek J. Bartoli appear at _____
a.m./p.m. on the _____ day of _____, 2018, in Courtroom No. _____
of the George C. Young U.S. Courthouse & Federal Building, at 401 West Central
Boulevard, Orlando, Florida, and show cause, if any there be, why this Court
should not grant said Petition and enter an Order enforcing the CID. Unless the
Court determines otherwise, notwithstanding the filing or pendency of any
procedural or other motions, all issues raised by the Petition and supporting
papers, and any opposition to the Petition, will be considered at the hearing on the
Petition, and the allegations of the Petition shall be deemed admitted unless
controverted by a specific factual showing; and

IT IS FURTHER ORDERED that, if Respondent believes it to be
necessary for the Court to hear live testimony, he must file an affidavit reflecting
such testimony (or if a proposed witness is not available to provide such an
affidavit, a specific description of the witness's proposed testimony) and explain
why Respondent believes that live testimony is required; and

IT IS FURTHER ORDERED that, if Respondent intends to file pleadings,
affidavits, exhibits, motions or other papers in opposition to said Petition or to the
entry of the Order requested therein, such papers must be filed with the Court and
received by Petitioner's counsel on the _____ day of _____, 2018. Such

submission shall include, in the case of any affidavits or exhibits not previously submitted, or objections not previously made to the Federal Trade Commission, an explanation as to why such objections were not made or such papers or information not submitted to the Commission. Any reply by Petitioner shall be filed with the Court and received by Respondent on the _____ day of _____, 2018; and

IT IS FURTHER ORDERED that, pursuant to Fed. R. Civ. P. 81(a)(5) and 26(a)(1)(B)(v), this is a summary proceeding and no party shall be entitled to discovery without further order of the Court upon a specific showing of need; and that the dates for a hearing and the filing of papers established by this Order shall not be altered without prior order of the Court upon good cause shown; and

IT IS FURTHER ORDERED that, pursuant to Fed. R. Civ. P. 81(a)(5) and its 1946 Advisory Committee note, a copy of this Order and copies of said Petition and exhibits filed therewith, shall be served forthwith by Petitioner upon Respondent and/or his counsel, using as expeditious means as practicable.

IT IS SO ORDERED:

DATED: _____

UNITED STATES DISTRICT JUDGE