

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

NICHOLAS PALUMBO, NATASHA
PALUMBO, ECOMMERCE NATIONAL,
LLC d/b/a Tollfreedeals.com, and SIP
RETAIL d/b/a sipretail.com,

Defendants.

**CONSENT DECREE AND FINAL
JUDGMENT**

Civil Action No.
20-cv-473 (EK)(RLM)

ERIC R. KOMITEE, United States District Judge:

WHEREAS, the UNITED STATES OF AMERICA commenced this action against defendants Nicholas Palumbo, Natasha Palumbo, Ecommerce National, LLC d/b/a Tollfreedeals.com, and SIP Retail d/b/a sipretail.com (collectively, “Defendants”) by filing a Complaint in this Court on January 28, 2020 (Dkt. No. 1, “Complaint”);

WHEREAS, the Complaint alleges claims for relief under the Fraud Injunction Statute, 18 U.S.C. § 1345;

WHEREAS, on February 4, 2020, the Court issued, on the consent of Defendants, a Temporary Restraining Order and Order to Show Cause (the “TRO”), which, among other things, temporarily restrained Defendants from providing, or causing others to provide, call termination services for calls terminating in the United States on behalf of a group of enumerated companies (Dkt. No. 18, Temporary Restraining Order);

WHEREAS, while the TRO was in effect, if Defendants received any notification identifying fraudulent voice-over-internet protocol (“VoIP”) calls transmitted by Defendants,

Defendants were required to terminate any existing contracts with the companies or individuals identified as the source of those calls;

WHEREAS, on February 19, 2020, Defendants informed the United States that they received a notification identifying “Yodel” as a source of fraudulent calls transmitted by Defendants;

WHEREAS, on February 20, 2020, Defendants made an application to the Court to exempt Yodel from the provision of the TRO requiring Defendants to terminate its contract with Yodel, and the Court issued an Order granting Defendants’ application (Dkt. No. 33, Order Amending the Temporary Restraining Order);

WHEREAS on February 26, 2020 Defendants filed an Answer denying the allegations in the Complaint (Dkt. No. 35, Answer);

WHEREAS, on March 3, 2020, the Court conducted a hearing at which Defendants were required to show cause why a preliminary injunction, pursuant to Fed R. Civ. P. 65 and as requested by the United States, should not be granted;

WHEREAS, on March 24, 2020, after considering briefing from the parties, as well as 17 declarations submitted by the parties, including declarations submitted on behalf of the United States from law enforcement officers involved in the investigation of this matter, and declarations of Nicholas Palumbo, Natasha Palumbo, John Darymple and Dean Hansen, submitted on Defendants’ behalf, the Court entered a Memorandum and Order granting the United States’ application for a preliminary injunction against Defendants (Dkt. No. 66, Preliminary Injunction);

WHEREAS, the Preliminary Injunction banned Defendants’ “continued provision of any call termination services for calls terminating in the United States and from providing call-back services” to any entity, including Yodel, (Id.);

WHEREAS, the Defendants consent to entry of this Consent Decree and Final Judgment without any admission of liability or wrongdoing;

WHEREAS, this Consent Decree and Final Judgment is not intended, and shall not be construed, as a waiver of any rights and defenses Defendants may assert in any other proceeding, including but not limited to Defendants' rights and defenses under the United States Constitution and all such rights are hereby reserved with respect to such proceedings;

WHEREAS, this Consent Decree and Final Judgment is also not intended, and shall not be construed, by Plaintiff, the United States of America, and the Defendants hereto as a waiver of any claims Defendants have asserted or may assert in any other proceeding relating to assets seized from Defendants, including, but not limited to *United States v. Any and All Funds up to \$389,800.00, et al.*, No. 1:20-cv-02796 (N.D. Ga.), relating to assets seized from Defendants, including, but not limited to the following asset IDs: 20-USP-000874, 20-USP-000875, and 20-USP-000878;

WHEREAS, the United States and the Defendants wish to settle this action upon the following terms without further litigation, and the Defendants agree that this Court may enter and enforce this Consent Decree and Final Judgment against them; THEREFORE, pursuant to 18 U.S.C. § 1345 and the inherent power of this Court, IT IS HEREBY ORDERED, ADJUDGED and DECREED that:

- A. The Defendants, their agents, officers, employees, successors, affiliates, and all other persons and entities in active concert or participation with them, are permanently enjoined from:
 - i. committing or conspiring to commit wire fraud, as defined by 18 U.S.C. §§ 1343 and 1349;

- ii. using the U.S. telephone system, or causing others to use the U.S. telephone system, to convey automated telephone calls conveying recorded messages;
- iii. providing, or causing others to provide, call termination services for calls terminating in the United States or carrying any voice-over-internet-protocol calls terminating in the United States;
- iv. providing direct-inward-dial or toll-free telephone services for calls originating in the United States, including providing direct-inward-dial or toll-free phone numbers to other individuals or entities;
- v. receiving or sending payment or causing others to receive or send payment in connection with any fraudulent telephone calls, including but not limited to any payment from any victim or other individual targeted by a fraudulent telephone call;
- vi. acting as an employee, agent, or consultant for any person or entity Defendants know is engaged in the conduct described in paragraphs A(i)-(v) above;
- vii. destroying, deleting, removing, or transferring any and all business, financial, accounting, and other records concerning Defendants' operations and the operations of any other corporate entity owned or controlled, in whole or in part, by Defendants.

B. Somos, Inc., in its capacity as the entity designated by the Federal Communications Commission to administer the U.S. toll-free calling system and its database, is hereby authorized to reassign in the ordinary course of its business all toll-free numbers registered by or on behalf of any Defendant in this action.

- C. Within five (5) business days after the entry of this Consent Decree and Final Judgment, Defendants shall provide copies of this Consent Decree and Final Judgment to all of their customers for whom they provided at any time since 2016 (1) United States call termination services, (2) United States direct-inward-dial services, or (3) United States toll-free call origination services; and to all entities (a) with whom Defendants have or have had a contractual relationship for automated or least-cost call routing at any time since 2016, and (b) from whom Defendants acquired direct-inward-dial numbers or toll-free numbers at any time since 2016. Within seven (7) business days after entry of the Consent Decree and Final Judgment, Defendants shall provide proof of such notice to the Court and the United States, including the name and addresses of the entities and/or individuals to whom the notice was sent, how the notice was sent, and when the notice was sent.
- D. Within five (5) business days after the entry of this Consent Decree and Final Judgment, Defendants are ordered to submit to the United States' counsel of record in this action a written acknowledgment of receipt of this Consent Decree and Final Judgment sworn under penalty of perjury.
- E. The Consent Decree and Final Judgment shall not be modified except in writing by Plaintiff and Defendants and approved by the Court.
- F. Plaintiff and Defendants agree to bear their own costs and attorney's fees in this action.
- G. The Preliminary Injunction entered on March 24, 2020, is superseded by this Consent Decree and Final Judgment.
- H. The undersigned parties and counsel each represent that he, she, or it is fully authorized to enter into the terms and conditions of this Consent Decree and Final Judgment and to execute and legally bind to this document the Party which he, she, or it represents.

- I. Each Defendant understands and acknowledges that he, she, or it may be subject to civil and/or criminal liability (including for contempt) upon a finding by a Court that he, she, or it violated either (1) this Consent Decree and Final Judgment, or (2) the Preliminary Injunction entered by the Court against Defendants, dated March 24, 2020 (Dkt. No. 66), or (3) the Temporary Restraining Order, dated February 4, 2020 (Dkt. No. 18).
- J. Defendants hereby agree to waive, release, and remit any and all claims, either directly or indirectly against the United States and its agencies, employees, representatives, and agents, including but not limited to the Department of Justice, the Social Security Administration's Office of Inspector General, the United States Postal Inspection Service, and the employees or staff of any of the foregoing agencies, with respect to this action.
- K. This Consent Decree and Final Judgment may be signed by the parties in counterparts, each of which constitutes an original and all of which constitute one of the same Consent Decree and Final Judgment. Signatures delivered by facsimile transmission, or as .pdf attachments to emails, shall constitute acceptable, binding signatures for purposes of this Consent Decree and Final Judgment.
- L. This Consent Decree and Final Judgment shall constitute a final judgment and order in this action.

M. This Court retains jurisdiction of this action for the purpose of enforcing or modifying this Consent Decree and Final Judgment and for the purpose of granting such additional relief as may be necessary and appropriate.

SO ORDERED this 25 day of August, 2020.

s/Eric Komitee


HONORABLE ERIC R. KOMITEE
UNITED STATES DISTRICT JUDGE

IT IS HEREBY AGREED:

THE UNITED STATES OF AMERICA

August 24, 2020

SETH D. DuCHARME
Acting United States Attorney
Eastern District of New York


DARA A. OLDS
BONNI J. PERLIN
Assistant United States Attorneys
271 Cadman Plaza East
Brooklyn, New York 11201
Telephone: (718) 254-7000
Fax: (718) 254-7489

ETHAN DAVIS
Acting Assistant Attorney General

GUSTAV W. EYLER
Director
Consumer Protection Branch

JILL P. FURMAN
Deputy Director

August 24, 2020

ANN F. ENTWISTLE
CHARLES B. DUNN
Trial Attorneys
U.S. Department of Justice
P.O. Box 386
Washington, D.C. 20044
Tel. (202) 307-0066
Tel. (202) 305-7227
Fax: (202) 514-88742

DEFENDANTS

8/23/2020

NICHOLAS PALUMBO

By: NICHOLAS PALUMBO
In his individual capacity

8/23/2020

NATASHA PALUMBO

By: NATASHA PALUMBO
In her individual capacity

8/23, 2020

ECOMMERCE NATIONAL LLP D/B/A
TOLL FREE DEALS

By: 
NICHOLAS PALUMBO
Owner and Chief Executive Officer


8/23, 2020

SIP RETAIL D/B/A SIPRETAIL.COM

By: 
NATASHA PALUMBO
Owner and Chief Executive Officer

8/24, 2020

HECHT PARTNERS, LLP
*Attorneys for Defendants Nicholas Palumbo,
Natasha Palumbo, Ecommerce National,
LLP, and SIP Retail*

By: 
Theodor Bruening, Esq.
125 Park Avenue, 25th Floor
New York, NY 10017
Telephone: (212) 851-6821