

STATE OF NEW YORK  
DEPARTMENT OF STATE

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In the Matter of the Alleged Violations of the  
Do Not Call Registry

- by-

**SETTLEMENT**  
**AGREEMENT**

2017-DNC-0499

Process Driven Marketing LLC.

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1. The New York State Department of State (“Department”) is an executive agency of the State of New York charged with the regulation of the “Do Not Call” law and the enforcement of Article 26 of the General Business Law.
2. Process Driven Marketing, LLC (“PDM”) is a domestic limited liability company with an address of 4650 Dewey Avenue, Suite B, Rochester, NY 14612. The Department and PDM are sometimes referred to herein as the “Parties” and singularly as a “Party.”
3. The Department of State’s Division of Consumer Protection has alleged that it received numerous complaints stating that PDM violated the Do Not Call law.
4. The Department’s staff conducted an investigation, which investigation resulted in the issuance of the Department’s June 8, 2017 letter to PDM alleging that the Department received numerous Do Not Call complaints against PDM from complainants validly registered on the Do Not Call Registry at the time their complaints were filed.
5. PDM has been advised of its right to be represented by an attorney and is represented by Chad W. Flansburg, Esq., Phillips Lytle LLP, 28 East Main Street, Suite 1400, Rochester, NY 14614.
6. The Parties have concluded that it is in their respective best interest to avoid the time, expense, burden and uncertainty of any litigation involving the Department’s claims and all other matters by settling all their differences, disputes and disagreements on the terms set forth herein. The Parties have reached an agreement to that end which will result in a full and complete settlement of such claims and disputes in full satisfaction.
7. By executing this Settlement Agreement, PDM affirmatively waives the right to a hearing in the manner provided by law, consents to the issuance and entry of this Settlement Agreement and agrees to be bound by the terms, provisions and conditions contained herein.
8. PDM enters into this Settlement Agreement in order to resolve any and all claims and disputed matters, known or unknown, from the beginning of time to the effective date of

the Settlement Agreement. PDM affirms that all violations alleged in the Department's June 8, 2017 notification, regarding an alleged pattern of business practices by PDM which allegedly violated the relevant sections of the General Business Law have been, or will be resolved, in accordance with the terms set forth herein:

The Department alleged that PDM made no less forty-two (42) unsolicited telemarketing sales calls to thirty-six (36) consumers whose telephone numbers were validly registered on the National Do Not Call Registry, in violation of New York General Business Law (GBL) Section 399-z and 21 NYCRR Parts 4602 and 4603. A list of such calls with the phone number has been previously provided to PDM and its counsel.

To resolve the Department's claims and allegations against PDM regarding the forty-two (42) unsolicited telemarketing sales calls, together with any and all claims and disputed matters, known or unknown, from the beginning of time to the effective date of the Settlement Agreement, PDM agrees to a settlement payment in the amount of \$500 per alleged call, for a total payment due of **\$21,000.00**.

9. Nothing in this Settlement Agreement shall constitute or be construed as an admission of liability on behalf of PDM, its agents, affiliates, assigns, parents, successors, subsidiaries, and/or successors, or an admission as to the validity of the allegations or claims by the Department.

***NOW***, in consideration of the above premises, it is **ORDERED**:

1. That PDM shall execute and forward the within Settlement Agreement to the **NYS Department of State, Division of Consumer Protection, Attn: Aiesha L. Hudson, Esq., One Commerce Plaza, 99 Washington Avenue, Suite 640, Albany, NY 12231**, so that the original of same is received on or before **August 18, 2017**;
2. That PDM shall be ordered to pay a fine in the amount of twenty-one thousand dollars (**\$21,000.00**) made payable to: "**NYS Department of State**" by certified check, postal money order, or by check drawn on its attorney's trust account. PDM is ordered to return the same so that it is received by the Department on or before **August 18, 2017**.
3. That upon execution of this Settlement Agreement by the Secretary of State or her designee, the investigation relating to 2017-DNC-0499 will be terminated, withdrawn, and discontinued with prejudice with respect to PDM in accordance with the terms hereof;
4. That the Settlement Agreement herein expressly depends upon representations made by PDM, both oral or written, formal or informal which relate to the subject matter of the Settlement Agreement and that such representations have fully, accurately and truthfully disclosed all relevant facts to the Department of State. If any such representation is determined to be limited, inaccurate or untruthful, the Department of State shall not be bound by the terms herein and shall initiate any action it deems appropriate in the administrative, civil or criminal prosecution of PDM;

5. The effective date of this Settlement Agreement shall be the date on which the Secretary of State or her designee signs the same and shall expire when PDM has fully complied with the requirements of this Settlement Agreement. The Department will provide PDM or PDM's counsel with a fully executed copy of this Settlement Agreement as soon as practicable after the Secretary of State signs the same;
6. The failure of PDM to comply fully and in timely fashion with any provision of this Settlement Agreement shall constitute a default and a failure to perform an obligation under this Settlement Agreement. Such default shall result in an administrative hearing for the purpose of determining whether additional penalties should be imposed due to the PDM's default and failure to perform an obligation under this Settlement Agreement;
7. This Settlement Agreement constitutes the entire agreement of the parties and no provision of the agreement shall be deemed waived or otherwise modified except as is specifically set forth in a writing executed by the Secretary of State or her designee indicating an intent to modify this Settlement Agreement;
8. Nothing contained in this Settlement Agreement shall be construed as barring, diminishing, adjudicating or in any way affecting (1) any legal, administrative or equitable rights or claims, actions, suits, causes of action or demand whatsoever that the Department may have against anyone other than PDM; (2) any right of the Department to enforce administratively or at law or in equity, the terms, provisions and conditions of this Settlement Agreement; (3) any right of the Department to bring any future action, either administrative or judicial, for any other violations of the applicable laws, the implementing regulations or conditions contained in orders if any, issued by the Department to PDM.
9. The above recitations are incorporated herein by reference.

Dated: August 18, 2017  
Albany, New York

NEW YORK STATE  
DEPARTMENT OF STATE

By:   
Aiesha L. Hudson, Esq.  
Director, Division of Consumer Protection

