



**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**IN RE:**

**TODAY=S DESTINY, INC.**

**DEBTOR**

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**JOSEPH M. HILL, TRUSTEE,**

**Plaintiff**

**v.**

**MICHAEL DAY ET AL.,**

**Defendants**

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**CASE NO. 05-90080-H1-7  
(Chapter 7)**

**Adversary No. 06-3285**

**DECLARATION OF ERIC SCOTT FLEENOR**

1. "My name is Eric Scott Fleenor. I am over the age of eighteen (18) years, and am in all respects qualified to execute this declaration. I have personal knowledge of the facts stated in this declaration, which are true and correct.

2. I started working for TNG Systems in May 1997. My understanding at the time was that Today's Destiny was a parent company of TNG, and are used interchangeably. Initially I did phone support, and then I started doing installs. I would fly out to the customers, install the equipment, get the documents signed by the customers, and fly back. Jared Day and I did the installs at this time. When we weren't installing equipment, we would be doing customer support by phone. In 2002, I became the head of the support department, dealing mostly with technical support on the operational systems. Then, I was the IT manager from 2003 to 2006. I left in April 2006.

3. About a year or two after I started at TNG, TNG moved to 955 Dairy Ashford, Houston, TX. In approximately 2004, Max K. Day (“Max Day”) and Michael Day (“Mike Day”) started Medicus Marketing, which performed the same type of scheme that TNG performed. Also around this time, IBD was also started. Max Day and Mike Day put Josh Smith in charge of IBD/Medicus, so that it would appear to be a different company. In reality, however, Max Day and Mike Day were still in charge. In April 2005 IBD/Medicus moved to the Technip building, which was near Dairy Ashford. The sales staff and tech support stayed at the old building, but the TNG server and most of the equipment went with IBD/Medicus. After TNG moved to the Technip building, we put a Virtual Private Network so that TNG and Medicus/IBD could communicate and share customer information, as well as other information. Eventually Max Day and Mike Day shut down TNG systems and just continued with IBD/Medicus, and moved all of the equipment over there.

4. In an effort to appear separate from TNG, all of the sales people changed their names for their work with IBD/Medicus. For example, Max O. Day (or “Max Day, Jr.”) changed his name to Moe O’Neil. Chaz Robertson also changed his name for his work with IBD/Medicus.

5. When I was performing the installations for TNG, I would take a packet that would include a TNG software licensing agreement, a financing agreement (or lease agreement) and the equipment sales agreement. We would not give this information to the customer beforehand, so the customer would not have time to read it beforehand. If customers wanted more time to read the documents, Max Day, Jr. would talk to them over the phone and “strongarm” them into signing the documents by threatening to charge the customer for the

installer's plane tickets, equipment and other items. This was done to pressure the customer to sign the documents on the day of the installation.

6. Today's Destiny sold its products and services through a series of representations and guarantees made in written advertisements and oral communications. I recall some of these representations including the following:

- a. TNG will purchase a "Comprehensive Database" of the customer's marketing territory (including phone numbers, addresses, ages, income and homeowner's status) and "then begin a series of text marketing to insure a successful, targeted marketing campaign rollout that focuses on specialties that may differentiate you from your competitors"
- b. TNG will provide "Marketing & Tracking Software" that "tracks all current prospects and marketing sources" and "manages current patient database, weekly revenue reports, marketing values, and the amount of patients obtained per marketing campaign"
- c. "TNG will assign you your own Personal Practice Trainer from our Coaching Division to train your office on converting the highest number of patients from all of your marketing campaigns." Coaching sessions "will be weekly for the first 90 days, then throughout the remainder of the year they will convert to monthly training sessions . . . [to] ensure that you and your staff will be successful in learning the skills necessary to convert patient prospects to new patients.
- d. "All marketing & training that we do for your practice is backed by our guarantee of . . . **'10 Patients Every Month Or You Don't Pay'**"
- e. TNG will implement a Direct Mail Campaign in which TNG handles "all creation, printing, postage, and delivery" of direct mail – promised to be 200,000 pieces of "Customized Direct Mail to be delivered to your selected zip codes"
- f. TNG "will custom design your brochures, business cards, newsletters, post cards, and other material for your referral program"
- g. TNG has "test marketed what works best in every media market across the nation"
- h. "TNG will also introduce you to our Practice Management Programs as needed, including "Case Presentation Training, Front Desk Training, and Billing, Coding & Collections modules to ensure that every aspect of your practice is well managed"

- i. "OUR PRIMARY OBJECTIVE IS TO HELP YOU MAXIMIZE YOUR ABILITY TO GET PATIENTS. TNG CUSTOM TAILORS EACH INDIVIDUAL PROGRAM TO SUIT YOUR PRACTICE NEEDS"
  - j. "Over the last two decades, the owners of TNG Systems have been the International Leaders in providing Advanced Marketing Training, Consulting, Coaching, and Practice Management Solutions for practices of every description"
7. The representations and guarantees continued into the written documents prepared by Today's Destiny and presented to the Customers. Today's Destiny gave the customer a "Marketing Program and Equipment Agreement," with its exhibit, "Marketing/Training Program (Exhibit B)," and a "Software License." The representations made throughout these documents (explicit or implied) include:
- a. As a result of the customer's purchase and use of the TNG products, the customer would receive a guaranteed number of new customers each month (the number of guaranteed leads varied from 5 to 100 per month)
  - b. In the event that the guaranteed number of new customers was not attained as a result of TNG's program within 60 days of working with TNG's Marketing and Training program, TNG would rebate its customer part of the monthly "lease" payments or, under other contracts, a rebate of up to \$1,000 per month pro-rated. This rebate was good for 60 months (the length of the alleged warranty)
  - c. If TNG were required to pay the customer rebates totaling \$1,000 (or different amounts under other contracts) because of a failure to attain the guaranteed new customer results, TNG would buy the customer out of the marketing and coaching program
  - d. If the customer were not satisfied after a period of time (sometimes 90 days, sometimes six months, sometimes no limitation), the customer could receive a full refund of the purchase price from TNG
  - e. If a customer were dissatisfied with the product and wanted to return it, TNG would either buy the Program back or assist the customer in selling it to a new TNG customer
  - f. TNG's "coaches will train you and your staff on our 14 Step Referral Plan," providing "live campaign follow-up and handouts" for this plan
  - g. TNG would provide "ongoing service" by updating its media concepts designed for the customer, "including yellow page ads, newspaper ads, direct mail ads, TV & Radio spots"

- h. TNG will provide “ongoing marketing/consulting, coaching, technical support, practice management, continued education and updates on an as needed basis”
- i. The Today’s Destiny supplied equipment was warranted against defects in workmanship and materials for 12 months

8. TNG made these representations without intending to fulfill the promises, and they did not fulfill the promises. The representations, guarantees, and warranties were all part of a fraudulent scheme to induce a targeted audience to pay exorbitant sums of money to Today’s Destiny for worthless computer hardware, software and services that were never delivered. For instance, each Marketing Contract contained a clause setting forth “minimum operating requirements” which required each Customer continuously to provide Today’s Destiny with data identifying the customers generated by the Today’s Destiny marketing program. Complete adherence to the terms of the minimum operating requirements clause was impossible, however, due to the actions of Today’s Destiny, Medicus and IBD. This “requirements” clause was expressly incorporated into the Marketing Contracts as a means for Today’s Destiny and Medicus and IBD to avoid their contractual obligations. TNG knew that the guarantees would never be honored because Today’s Destiny had created so many loopholes in the contracts.

9. TNG/Medicus/IBD also knowingly sold these systems and services in jurisdictions in which it was illegal, such as California. Additionally, to continue luring customers, IBD/Medicus paid certain customers kickbacks for referrals.

10. When the Days were preparing to file bankruptcy in approximately April 2005, Max Day, Jr. told me to put together several computers for the express purpose to turn over to the bankruptcy court. The server went to the new building with IBD/Medicus, so it was not turned over to the bankruptcy court. Practically nothing useful got turned over to the bankruptcy court, because it all moved to IBD/Medicus.

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

Executed on May 12, 2008.”



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ERIC SCOTT FLEENOR