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8 ORIGINAL

9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA  
11 SOUTHERN DIVISION

12 FEDERAL TRADE COMMISSION,  
13  
14 Plaintiff,

15 v.

16 NATIONAL CONSUMER COUNCIL,  
17 INC., et al.,

18 Defendants.

Case No. SA CV04-0474 CJC (JWJx)

**SETTLEMENT AGREEMENT  
AND [PROPOSED] FINAL ORDER  
FOR PERMANENT INJUNCTION  
WITH RECEIVERSHIP  
DEFENDANTS**

NO HEARING REQUESTED

21 ORIGINAL

1 Plaintiff Federal Trade Commission ("FTC" or "Commission"), pursuant to  
2 Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C.  
3 § 53(b) and § 57, filed a Complaint alleging violations of Section 5(a) of the FTC  
4 Act, 15 U.S.C. § 45(a), of the Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part  
5 310, of Subtitle A of Title V of the Gramm-Leach-Bliley Act ("GLB Act") 15  
6 U.S.C. §§ 6801 through 6809, and of the FTC's Consumer Financial Information  
7 Rule ("Privacy Rule"), 16 C.F.R. Part 313. The Complaint sought an injunction and  
8 other equitable relief. Concurrently, the Commission filed an *ex parte* application  
9 for a Temporary Restraining Order with Asset Freeze, Appointment of Temporary  
10 Receiver, and Order to Show Cause Why a Preliminary Injunction Should Not Issue  
11 And a Permanent Receiver Should Not Be Appointed ("TRO").

12 On May 3, 2004, the Court granted the *ex parte* Application, appointed Robb  
13 Evans and Associates LLC as Temporary Receiver over Defendants **NATIONAL**  
14 **CONSUMER COUNCIL, INC.**, an Arizona corporation ("NCC-AZ");  
15 **NATIONAL CONSUMER COUNCIL, INC.**, a California corporation ("NCC-  
16 CA"); **NATIONAL CONSUMER COUNCIL, INC.**, a Nevada corporation  
17 ("NCC-NV"); **LONDON FINANCIAL GROUP; NATIONAL CONSUMER**  
18 **DEBT COUNCIL, LLC; SOLIDIUM, LLC; J.P. LANDIS, LLC; FINANCIAL**  
19 **RESCUE SERVICES, INC.; SIGNATURE EQUITIES, LLC; M&L**  
20 **SPRINGFIELD TRUST; PC HAILEY TRUST and VIA LIDO TRUST** and  
21 instituted an asset freeze. On May 14, 2004, by stipulation of the parties, and order  
22 of the Court, Defendant **UNITED CONSUMERS LAW GROUP** was made part of  
23 the Receivership.

24 On May 21, 2004, the Court entered Stipulated Preliminary Injunctions and  
25 Orders ("PI") against all of the Defendants which continued the TRO's injunctive  
26 provisions and asset freeze and appointed Robb Evans and Associates LLC as the  
27 Permanent Receiver over **NCC-AZ; NCC-CA; NCC-NV; LONDON FINANCIAL**  
28 **GROUP; NATIONAL CONSUMER DEBT COUNCIL, LLC; SOLIDIUM,**

1 **LLC; J.P. LANDIS, LLC; FINANCIAL RESCUE SERVICES, INC.;**  
2 **SIGNATURE EQUITIES, LLC; UNITED CONSUMERS LAW GROUP;**  
3 **M&L SPRINGFIELD TRUST; PC HAILEY TRUST and VIA LIDO TRUST.**

4 On November 1, 2004, the Court entered a Stipulated Order appointing Robb  
5 Evans and Associates LLC as Permanent Receiver over **FINANCIAL RESCUE**  
6 **SERVICES CONSUMER SERVICES, INC.** ("FRC Services Inc."),  
7 **FINANCIAL RESCUE SUPPORT SERVICES, INC.** ("FR Support Inc."),  
8 **MAGICAL AGE ARTS & ENTERTAINMENT COMPANY, INC.** ("Magical  
9 Age Inc.") and **M&M ENTERPRISES, INC.** ("M&M Inc."), with all of the same  
10 rights, duties and powers as set forth in the PI appointing Robb Evans and  
11 Associates LLC as Permanent Receiver over **FINANCIAL RESCUE SERVICES**  
12 and all of the other entities under Receivership in this matter (collectively, the  
13 "Receivership Defendants").

14 Now Plaintiff Commission and the Receivership Defendants, negotiating  
15 through their respective counsel, have agreed to a settlement of this action.

16 Accordingly, the Commission and the Receivership Defendants consent to  
17 entry of this settlement agreement and [Proposed] Final Order for Permanent  
18 Injunction ("Order") without adjudication of any issue of fact or law. The parties  
19 further agree that entry of this Order in the docket by the Court will constitute notice  
20 to them of the terms and conditions of the Order. Plaintiff and the Receivership  
21 Defendants, having requested the Court to enter this Order, the Court hereby finds  
22 and orders as follows:

23  
24 **FINDINGS OF FACT**

25 1. The Receivership Defendants were properly served with the Complaint,  
26 Summons and TRO in this matter.

27 2. The Receivership Defendants consented to the entry of the PI against  
28 them and were properly served with the PI in this matter.

1           3.       This Court has jurisdiction over the subject matter of the case and  
2 personal jurisdiction over the Receivership Defendants. Venue in the Central  
3 District of California is proper.

4           4.       The alleged actions of the Receivership Defendants are in or affecting  
5 commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

6           5.       The Complaint states a claim upon which relief can be granted against  
7 the Receivership Defendants under Sections 5(a) and 13(b) of the FTC Act,  
8 15 U.S.C. §§ 45(a) and 53(b); under the TSR, 16 C.F.R. Part 310; under Subtitle A  
9 of Title V of the GLB Act, 15 U.S.C. §§ 6801 through 6809, and under the Privacy  
10 Rule, 16 C.F.R. Part 313.

11           6.       Plaintiff has the authority under Sections 13(b) and 19 of the FTC Act,  
12 15 U.S.C. § 53(b) and § 57, to seek the relief it has requested.

13           7.       The Receivership Defendants have not admitted to liability as to the  
14 charges in the Complaint, and their consent to entry of this permanent injunction  
15 shall not be interpreted to constitute an admission that they have engaged in any  
16 violations of any law or regulations.

17           8.       In light of the facts that the Receiver is concluding all operations of the  
18 entities in the Permanent Receivership and the Receiver intends to completely wind-  
19 down the business of the Receivership Defendants pursuant to the PI, it is  
20 appropriate for the Receivership Defendants to consent to the entry of this permanent  
21 injunction to have a full and final settlement of the action against them.

22           9.       The Receivership Defendants waive all rights to seek judicial review or  
23 otherwise challenge or contest the validity of this Order.

24           10.      The Receivership Defendants waive any claim that they may hold  
25 against the Commission, its employees, representatives or agents.

26           11.      The Receivership Defendants waive any claim that they may hold under  
27 the Equal Access to Justice Act, 28 U.S.C. § 2412 (as amended), concerning the  
28 prosecution of this action to the date of this Order, and any rights to attorneys' fees

1 that may arise under said provision of law.

2 12. All parties shall bear their own costs and attorneys' fees.

3 13. The Receivership Defendants enter into this Order freely and  
4 acknowledge that they understand the provisions of this Order and are prepared to  
5 abide by its terms.

6 14. This Order is remedial in nature and shall not be construed as the  
7 payment of a fine, penalty, punitive assessment, or forfeiture.

8 15. Entry of this Order is in the public interest.

9  
10 **DEFINITIONS**

11 1. "**Assets**" means any legal or equitable interest in, right to, or claim to,  
12 any real and personal property, including but not limited to chattel, goods,  
13 instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail or  
14 other deliveries, inventory, checks, notes, accounts, credits, receivables, and all cash,  
15 wherever located.

16 2. "**Document**" is synonymous in meaning and equal in scope to the usage  
17 of the term in Federal Rule of Civil Procedure 34(a), and includes writings,  
18 drawings, graphs, charts, photographs, audio and video recordings, electronic mail  
19 ("email"), computer records, and other data compilations from which information  
20 can be obtained and translated, if necessary, through detection devices into  
21 reasonably usable form. A draft or non-identical copy is a separate "document"  
22 within the meaning of the term.

23 3. The "**Receivership Defendants**" means **NCC-AZ; NCC-CA; NCC-**  
24 **NV; LONDON FINANCIAL GROUP; NATIONAL CONSUMER DEBT**  
25 **COUNCIL, LLC; SOLIDIUM, LLC; UNITED CONSUMERS LAW GROUP,**  
26 **A PROFESSIONAL CORP.; J.P. LANDIS, LLC; FINANCIAL RESCUE**  
27 **SERVICES, INC.; SIGNATURE EQUITIES, LLC; M&L SPRINGFIELD**  
28 **TRUST; PC HAILEY TRUST; VIA LIDO TRUST; FRC SERVICES INC.; FR**

1 **SUPPORT INC.; MAGICAL AGE INC.; and M&M INC.;** and each of them, by  
2 whatever names they might be known, and their affiliates, subsidiaries, successors  
3 and assigns and any other corporations or businesses under the control of any of  
4 them.

5 4. The terms "**and**" and "**or**" have both conjunctive and disjunctive  
6 meanings to make the meaning more inclusive than exclusive.

7 5. "**Person**" means any individual, natural person, organization, or other  
8 legal entity, including a corporation, partnership, proprietorship, association,  
9 cooperative, government or governmental subdivision or agency, or any other group  
10 or combination acting as an entity. For purposes of this Order, a "consumer" is a  
11 person.

12 6. "**Debtor**" means any person indebted to a creditor or creditors.

13 7. "**Debt negotiation**" means:

14 a. the business or practice of receiving, in return for consideration,  
15 or the scheduled receipt, of a debtor's monies, or evidences thereof, for the  
16 purpose of distribution among certain specified creditors in payment, or partial  
17 payment, of the debtor's obligations; or

18 b. the business or practice of acting or offering or attempting to act  
19 as an intermediary between a debtor and his creditors for the purpose of  
20 settling, negotiating, or in any way altering the terms of payment of any debt  
21 of a debtor.

22 8. "**Credit-related products, programs or services**" means any product,  
23 program or service which is advertised, offered for sale, or sold to consumers as a  
24 method by which consumers may establish or obtain any extension of credit or credit  
25 device, including, but not limited to, credit cards, loans, or financing, or as a method  
26 to consolidate or liquidate debts.

27 9. "**Assisting others**" means knowingly providing any of the following  
28 goods or services to another person or entity:

1 a. performing customer service functions, including, but not limited  
2 to, receiving or responding to consumer complaints; or

3 b. formulating or providing, or arranging for the formulation or  
4 provision of, any telephone sales script or any other marketing material; or

5 c. providing names of, or assisting in the generation of, potential  
6 customers; or

7 d. performing marketing services of any kind.

8 10. The "**Telemarketing Sales Rule**" means the FTC Rule entitled  
9 "Telemarketing Sales Rule," 16 C.F.R. § 310.

10 11. "**Telemarketing**" means a plan, program, or campaign which is  
11 conducted to induce the purchase of goods or services or a charitable contribution,  
12 by use of one or more telephones and which involves more than one interstate  
13 telephone call. The term does not include the solicitation of sales through the  
14 mailing of a catalog which: contains a written description or illustration of the goods  
15 or services offered for sale; includes the business address of the seller; includes  
16 multiple pages of written material or illustrations; and has been issued not less  
17 frequently than once a year, when the person making the solicitation does not solicit  
18 customers by telephone but only receives calls initiated by customers in response to  
19 the catalog and during those calls takes orders only without further solicitation. For  
20 purposes of the previous sentence, the term "further solicitation" does not include  
21 providing the customer with information about, or attempting to sell, any other item  
22 included in the same catalog which prompted the customer's call or in a substantially  
23 similar catalog.

24 12. "**Outbound telephone call**" means a telephone call initiated by a  
25 telemarketer to induce the purchase of goods or services or to solicit a charitable  
26 contribution.

27 13. "**Telemarketer**" means any person who, in connection with  
28 telemarketing, initiates or receives telephone calls to or from a customer or donor.

1 14. In connection with telemarketing, a “customer” means any person who  
2 is or may be required to pay for goods or services offered through telemarketing.

3 15. “Representatives” means successors, assigns, officers, agents, servants  
4 and employees of the Receivership Defendants and those persons in active concert  
5 or participation with them who receive actual notice of this Order by personal  
6 service or otherwise.

7 16. “Material” means likely to affect a person’s choice of, or conduct,  
8 regarding, goods, services or a charitable contribution.

9 17. “Clearly and Conspicuously” or “Clear and Conspicuous” means  
10 that:

11 a. in print communications, that the message shall be in a type size  
12 and location sufficiently noticeable for an ordinary consumer to read and  
13 comprehend it, in print that contrasts with the background against which it  
14 appears;

15 b. in communications disseminated orally, that the message shall be  
16 delivered in a volume and cadence sufficient for an ordinary consumer to hear  
17 and comprehend it;

18 c. in communications made through an electronic medium (such as  
19 television, video, radio, and interactive media such as the Internet, online  
20 services and software), that the message shall be presented simultaneously in  
21 both the audio and visual portions of the communication;

22 d. in any communication presented solely through visual or audio  
23 means, that the message may be made through the same means in which the  
24 communication is presented:

25 i. Any audio message shall be delivered in a volume and cadence  
26 sufficient for an ordinary consumer to hear and comprehend it,  
27 and

28 ii. Any visual message shall be of a size and shade, with a degree of



1 contrast to the background against which it appears and shall  
2 appear on the screen for a duration and in a location, sufficiently  
3 noticeable for an ordinary consumer to read and comprehend it;  
4 Regardless of the medium used to disseminate it, the message shall be in  
5 understandable language and syntax. Nothing contrary to, inconsistent with, or in  
6 mitigation of, the message shall be used in any communication.

7 18. **“Established business relationship”** means a relationship between the  
8 seller and a person based on: (a) the person’s purchase, rental, or lease of the  
9 seller’s goods or services or a financial transaction between the person and seller,  
10 within the eighteen months immediately preceding the date of the telemarketing call;  
11 or (b) the person’s inquiry or application regarding a product or service offered by  
12 the seller, within the three months immediately preceding the date of a telemarketing  
13 call.

14 19. **“National Do Not Call Registry”** means the National Do Not Call  
15 Registry maintained by the Federal Trade Commission pursuant to 16 C.F.R.  
16 § 310.4(b)(1)(iii)(B).

## 18 **ORDER**

### 19 **I.**

#### 20 **PROHIBITION AGAINST MATERIAL MISREPRESENTATIONS**

21 **IT IS THEREFORE ORDERED** that the Receivership Defendants, their  
22 successors, assigns, officers, agents, servants, employees, and attorneys, and those  
23 persons or entities in active concert or participation with any of them who receive  
24 actual notice of this Order by personal service or otherwise, whether acting directly  
25 or through any corporation, subsidiary, division, or other device, in connection with  
26 the advertising, marketing, promoting, offering for sale, or sale of any good or  
27 service, are hereby permanently restrained and enjoined from misrepresenting, or  
28 assisting others in misrepresenting, expressly or by implication, orally or in writing,

1 any fact material to a consumer's decision to buy or accept the good or service,  
2 including but not limited to the ability to reduce the amount owed by a debtor to a  
3 creditor or the Receivership Defendants' ability to have a positive effect on the  
4 debtor's credit report or credit history.

5  
6 **II.**

7 **PROHIBITION AGAINST MATERIAL OMISSIONS**

8 **IT IS FURTHER ORDERED** that the Receivership Defendants, their  
9 successors, assigns, officers, agents, servants, employees, and attorneys, and those  
10 persons or entities in active concert or participation with any of them who receive  
11 actual notice of this Order by personal service or otherwise, whether acting directly  
12 or through any corporation, subsidiary, division, or other device, in connection with  
13 the advertising, promotion, offering for sale or sale of debt negotiation services or  
14 credit-related products, programs or services, are hereby permanently restrained and  
15 enjoined from failing to disclose, clearly and conspicuously, prior to the time when a  
16 consumer purchases a service from the Receivership Defendants all information  
17 material to a consumer's decision to buy any debt negotiation services or credit-  
18 related products, programs, or services, including but not limited to the following  
19 information, where appropriate:

20 A. That while the consumer is using the product, program or services, late  
21 fees, penalties, and interest will continue to accrue on the consumer's debt until the  
22 consumer's creditors accept a settlement offer and the settlement is paid;

23 B. That while the consumer is using the product, program or services, the  
24 consumer's creditors may still sue to collect on his debts, and further, once a  
25 judgment has been obtained, the creditors may garnish the consumer's wages;

26 C. That while the consumer is using the product, program or services, the  
27 consumer's creditors may raise the interest rates applicable to his debt;

28 D. That to the extent that the Receivership Defendants may be able to

1 obtain a favorable settlement with a consumer's creditor of the consumer's debt, the  
2 consumer is required to treat that debt savings as income for purposes of federal and  
3 state income taxes; and

4 E. That a debt settled for less than the full amount of the amount owed  
5 may result in a negative notation on the consumer's credit report.

6  
7 **III.**  
8 **PROHIBITION AGAINST**  
9 **ABUSIVE TELEMARKETING PRACTICES**

10 **IT IS FURTHER ORDERED** that, in connection with telemarketing, the  
11 Receivership Defendants are hereby permanently restrained and enjoined from  
12 engaging in, or causing other persons to engage in, violations of the Telemarketing  
13 Sales Rule, including but not limited to:

14 A. Initiating any outbound telephone call to a person's telephone number  
15 on the National Do Not Call Registry to induce the purchase of goods or services  
16 unless the seller proves:

- 17 1. The seller has obtained the express agreement, in writing, of such  
18 person to place calls to that person. Such written agreement shall  
19 clearly evidence such consumer's authorization that calls made  
20 by or on behalf of a specific party may be placed to that person,  
21 and shall include the telephone number to which the calls may be  
22 placed and the signature of that person; or
- 23 2. The seller has an established business relationship with such  
24 person and that person has not stated that he does not wish to  
25 receive outbound telephone calls from the seller; or

26 B. Abandoning any outbound telephone call to a person by failing to  
27 connect the call to a representative within two (2) seconds of the person's completed  
28 greeting, unless the following four (4) conditions are met:

1. The Receivership Defendants employ technology that ensures abandonment of no more than three (3) percent of all calls answered by a person, measured per day per calling campaign;
2. For each telemarketing call placed, the Receivership Defendants allow the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call;
3. Whenever a representative is not available to speak with the person answering the call within two (2) seconds after the person's completed greeting, the seller or telemarketer promptly plays a recorded message that states the name and telephone number of the seller on whose behalf the call was placed; and
4. The Receivership Defendants retain records, in accordance with 16 C.F.R. § 310.5 (b)-(d), establishing compliance with the preceding three conditions; and

C. Initiating any outbound telephone call to a telephone number within a given area code without first paying the required annual fee for access to the telephone numbers, within that area code, that are on the National Do Not Call Registry;

*Provided, however,* that if the Commission promulgates rules that modify or supersede the Telemarketing Sales Rule, in whole or part, the Receivership Defendants shall comply fully and completely with all applicable requirements thereof, on and after the effective date of any such rules.

**IV.**

**MONITORING TELEMARKETING COMPLIANCE**

**IT IS FURTHER ORDERED** that, in connection with any business that engages in telemarketing, or assists others engaged in telemarketing, the Receivership Defendants are hereby permanently restrained and enjoined from:

1 A. Failing to take reasonable steps to ensure that all employees and  
2 independent contractors engaged in telemarketing comply with Paragraph III of this  
3 Order. Such steps shall include:

- 4 1. Establishing a procedure for receiving and responding to  
5 consumer complaints of violations of the TSR or this Order; and
- 6 2. Ascertaining the number and nature of consumer complaints in  
7 which each employee or independent contractor is involved;

8 B. Failing promptly to investigate fully any consumer complaint received  
9 by any business to which this Paragraph applies; and

10 C. Failing to take corrective action with respect to any telemarketer whom  
11 the Receivership Defendants determine is not complying with this Order, which may  
12 include training, disciplining, and/or terminating such sales person;

13 *Provided, however,* that this Paragraph does not authorize or require the  
14 Receivership Defendants to take any action that violates any federal, state, or local  
15 law.

16  
17 **V.**

18 **PROHIBITION ON VIOLATING**  
19 **THE GRAMM-LEACH-BLILEY ACT**

20 **IT IS FURTHER ORDERED** that, when acting as or on behalf of a financial  
21 institution, the Receivership Defendants are hereby restrained and enjoined from  
22 violating any provision of Subtitle A of Title V of the Gramm-Leach-Bliley Act, 15  
23 U.S.C. § 6801-6809, and implementing regulations promulgated by the Commission  
24 at 16 C.F.R. Parts 313 and 314.

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VI.

MONETARY RELIEF

IT IS FURTHER ORDERED that:

A. Monetary judgment is entered in favor of the Commission and against the Receivership Defendants, jointly and severally, in the amount of **\$84,333,293 (eighty-four million, three hundred thirty-three thousand, two hundred ninety-three dollars);**

B. All funds paid pursuant to this Paragraph shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including but not limited to restitution and any attendant expenses for the administration of any restitution fund. In the event that direct restitution to consumers is wholly or partially impracticable or funds remain after restitution is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to the practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the Department of the Treasury as disgorgement and not as a fine or penalty. The Commission shall have full and sole discretion to:

1. Determine the criteria for participation by individual claimants in any consumer restitution program implemented pursuant to this Order;
2. Determine the manner and timing of any notices to be given to consumers regarding the existence and terms of such programs, and
3. Delegate any and all tasks connected with such restitution program to any individual, partnerships, or corporations; and pay reasonable fees, salaries, and expenses incurred thereby from the payments made pursuant to this Order;

C. The Receivership Defendants expressly waive any rights they may

1 possess to litigate the issue of monetary relief. The Receivership Defendants  
2 acknowledge and agree that all money paid pursuant to this Order is irrevocably paid  
3 to the Commission for purposes of settlement between Plaintiff and the Receivership  
4 Defendants; and

5 D. The Receivership Defendants shall have no right to challenge the  
6 Commission's choice of remedies under this Paragraph VI.

7  
8 **VII.**

9 **CUSTOMER LISTS**

10 **IT IS FURTHER ORDERED** that the Receivership Defendants, their  
11 officers, agents, servants, employees, and attorneys, and all other persons or entities  
12 in active concert or participation with them who receive actual notice of this Order  
13 by personal service or otherwise, are permanently restrained and enjoined from  
14 selling, renting, leasing, transferring, or otherwise disclosing the name, address,  
15 telephone number, credit card number, bank account number, e-mail address, or  
16 other identifying information of any person who paid any money to any of the  
17 Defendants in this litigation, *FTC v. National Consumer Council, Inc. et al*,  
18 SACV04-0474 CJC (JWJx), or paid money to any of the Receivership Defendants,  
19 at any time prior to entry of this order, in connection with telemarketing or with the  
20 advertising, promotion, offering for sale or sale of debt negotiation services.  
21 *Provided, however*, that such identifying information may be disclosed to a law  
22 enforcement agency or as required by any law, regulation, or court order.

23  
24 **VIII.**

25 **COMPLIANCE MONITORING**

26 **IT IS FURTHER ORDERED** that, for the purpose of monitoring and  
27 investigating compliance with any provision of this Order:

28 A. Within ten (10) days of receipt of written notice from a representative of

1 the Commission, the Receivership Defendants shall submit additional written  
2 reports, sworn to under penalty of perjury; produce documents for inspection and  
3 copying; appear for deposition; and/or provide entry during normal business hours to  
4 any business location in the Receivership Defendants' possession or direct or  
5 indirect control for the purpose of inspecting the business operation;

6 B. In addition, the Commission is authorized to monitor compliance with  
7 this Order by all other lawful means, including but not limited to the following:

8 1. Obtaining discovery from any person, without further leave of  
9 court, using the procedures prescribed by Fed. R. Civ. P. 30, 31,  
10 33, 34, 36, and 45;

11 2. Posing as consumers and suppliers to the Receivership  
12 Defendants' employees, or any other entity managed or  
13 controlled in whole or in part by the Receivership Defendants,

14 ~~without the necessity of identification or prior notice; and~~

15 C. The Receivership Defendants shall permit representatives of the  
16 Commission to interview any employer, consultant, independent contractor,  
17 representative, agent, or employee who has agreed to such an interview, relating in  
18 any way to any conduct subject to this Order. The person interviewed may have  
19 counsel present.

20 *Provided, however,* that nothing in this Order shall limit the Commission's  
21 lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15  
22 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony,  
23 or information relevant to unfair or deceptive acts or practices in or affecting  
24 commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

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IX.

COMPLIANCE REPORTING BY RECEIVERSHIP DEFENDANTS

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Order may be monitored:

A. For a period of five (5) years from the date of entry of this Order, the Receivership Defendants shall notify the Commission of any changes in corporate structure of the Receivership Defendants that may affect compliance obligations arising under this Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any proposed change in the corporation about which the Receivership Defendants learn less than thirty (30) days prior to the date such action is to take place, they shall notify the Commission as soon as is practicable after obtaining such knowledge.

B. One hundred eighty (180) days after the date of entry of this Order, the Receivership Defendants shall provide a written report to the Commission, sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this Order. This report shall include, but not be limited to:

1. A copy of each acknowledgment of receipt of this Order, obtained pursuant to Paragraph XI, below; and
2. Any other changes required to be reported under Subparagraph A of this Paragraph IX, above.

C. For the purposes of this Order, the Receivership Defendants shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

1 Assistant Regional Director  
2 Western Region, Los Angeles  
3 Federal Trade Commission  
4 10877 Wilshire Blvd, Suite 700  
5 Los Angeles, CA 90024  
6 Re: FTC v. National Consumer Council, et al.,  
7 Case No. CV-04-0474 CJC (JWJx)

8  
9  
10 D. For purposes of the compliance reporting and monitoring required by  
11 this Order, the Commission is authorized to communicate directly with the  
12 Receivership Defendants.  
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**X.**

**RECORD KEEPING PROVISIONS**

**IT IS FURTHER ORDERED** that, for a period of eight (8) years from the  
date of entry of this Order, the Receivership Defendants and their agents, employees,  
officers, corporations, successors, and assigns, and those persons in active concert or  
participation with any of them who receive actual notice of this Order by personal  
service or otherwise, while engaging in conduct related to the subject matter of this  
Order, are hereby restrained and enjoined from failing to create and retain the  
following records:

A. Accounting records that reflect the cost of goods or services sold,  
revenues generated, and the disbursement of such revenues;

B. Personnel records accurately reflecting: the name, address, email (if  
any) and telephone number of each person employed in any capacity by such  
business, including as an independent contractor; that person's job title or position;  
the date upon which the person commenced work; and the date and reason for the  
person's termination, if applicable;

C. Customer files containing the names, addresses, phone numbers, dollar  
amounts paid, quantity of items or services purchased, and description of items or  
services purchased, to the extent such information is obtained in the ordinary course  
of business;

1 D. Complaints and refund requests (whether received directly, indirectly or  
2 through any third party) and any responses to those complaints or requests;

3 E. Copies of all sales scripts, training materials, advertisements, website  
4 printouts, or other marketing materials; and

5 F. All records and documents necessary to demonstrate full compliance  
6 with each provision of this Order, including but not limited to, copies of  
7 acknowledgments of receipt of this Order, required by Paragraph XI, below, and all  
8 reports submitted to the FTC pursuant to Paragraph IX, above.

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10 **XI.**

11 **DISTRIBUTION OF ORDER BY RECEIVERSHIP DEFENDANTS**

12 **IT IS FURTHER ORDERED** that, for a period of five (5) years from the  
13 date of entry of this Order, the Receivership Defendants shall deliver copies of this  
14 Order as directed below:

15 A. The Receivership Defendants must deliver a copy of this Order to all of  
16 their principals, officers, directors, and managers. The Receivership Defendants  
17 must also deliver copies of this Order to all of their employees, agents, and  
18 representatives who engage in conduct related to the subject matter of the Order.  
19 For current personnel, delivery shall be within (5) days of service of this Order upon  
20 the Receivership Defendants. For new personnel, delivery shall occur prior to them  
21 assuming their responsibilities.

22 B. The Receivership Defendants must secure a signed and dated statement  
23 acknowledging receipt of the Order, within thirty days of delivery, from all persons  
24 receiving a copy of the Order pursuant to this Paragraph XI.

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1 **XII.**

2 **ACKNOWLEDGMENT OF RECEIPT OF ORDER**  
3 **BY RECEIVERSHIP DEFENDANTS**

4 **IT IS FURTHER ORDERED** that, within five (5) business days of receipt  
5 of this Order as entered by the Court, the Receivership Defendants must submit to  
6 the Commission a truthful sworn statement acknowledging receipt of this Order.  
7

8 **XIII.**

9 **SEVERABILITY**

10 **IT IS FURTHER ORDERED** that the provisions of this Order are separate  
11 and severable from one another. If any provision is stayed or determined to be  
12 invalid, all of the remaining provisions shall remain in full force and effect.  
13

14 **XIV.**

15 **RECEIVERSHIP**

16 **IT IS FURTHER ORDERED** that nothing in this Order shall affect the  
17 powers or duties of the Permanent Receiver over the Receivership Defendants  
18 established by the PI during the pendency of this action and the powers and duties of  
19 the Permanent Receiver as set forth in the PI are hereby incorporated into this Order  
20 by this reference as though fully set forth herein. Notwithstanding the provisions of  
21 Paragraph VI herein, the Permanent Receiver may retain such funds in the  
22 receivership estate as it deems necessary and appropriate to pay ongoing  
23 administrative expenses, subject to Court approval when required, to carry out its  
24 duties under the PI as incorporated herein.

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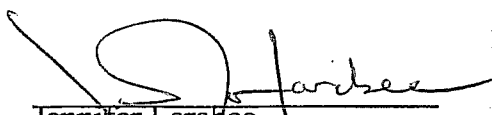
XV.

RETENTION OF JURISDICTION


IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification and enforcement of this Order.

SO STIPULATED:

Dated: March 29, 2005

  
\_\_\_\_\_  
Jennifer Larabee  
Faye Chen Barnouw  
Ray McKown  
Kenneth Abbe  
Attorneys for Plaintiff  
Federal Trade Commission

Dated: January 13, 2005

Robb Evans and Associates LLC  
  
\_\_\_\_\_  
By: Kent Johnson  
Permanent Receiver

APPROVED AS TO FORM:

Dated: \_\_\_\_\_, 2005

\_\_\_\_\_  
Gary O. Caris, Esq.  
Attorney for Permanent Receiver

IT IS SO ORDERED, this \_\_\_\_ day of \_\_\_\_\_, 2005, at \_\_\_\_ .m.

\_\_\_\_\_  
Cormac J. Carney  
United States District Court Judge

XV.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification and enforcement of this Order.

SO STIPULATED:

Dated: \_\_\_\_\_, 2005

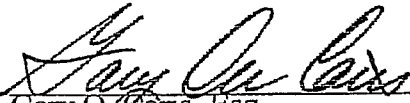
\_\_\_\_\_  
Jennifer Larabee  
Faye Chen Barnouw  
Ray McKown  
Kenneth Abbe  
Attorneys for Plaintiff  
Federal Trade Commission

Dated: \_\_\_\_\_, 2005

Robb Evans and Associates LLC  
  
\_\_\_\_\_  
By: Kent Johnson  
Permanent Receiver

APPROVED AS TO FORM:

Dated: January 13, 2005

  
\_\_\_\_\_  
Gary O. Caris, Esq.  
Attorney for Permanent Receiver

IT IS SO ORDERED, this \_\_\_\_ day of \_\_\_\_\_, 2005, at \_\_\_\_m.

\_\_\_\_\_  
Cormac J. Carney  
United States District Court Judge