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LODGED
MAR 29 2005
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION AT SANTA ANA
DEPUTY

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14 SOUTHERN DIVISION

15 FEDERAL TRADE COMMISSION,

16 Plaintiff,

17 v.

18 NATIONAL CONSUMER COUNCIL,
19 INC., et al.,

20 Defendants.

Case No. SA CV04-0474 CJC (JWJx)

21 SETTLEMENT AGREEMENT
22 AND [PROPOSED] FINAL ORDER
23 FOR PERMANENT INJUNCTION
24 WITH DEFENDANT WALTER
25 HAINES

26 NO HEARING REQUESTED
27
28

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"); **NATIONAL**
15 **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 Now plaintiff Commission and Defendant WALTER HAINES (“HAINES”),
5 negotiating through their respective counsel, have agreed to a settlement of this
6 action.

7 Accordingly, the Commission and Defendant HAINES consent to entry of this
8 Settlement Agreement and [Proposed] Final Order with Defendant WALTER
9 HAINES (“Order”) without adjudication of any issue of fact or law. The parties
10 further agree that entry of this Order in the docket by the Court will constitute notice
11 to them of the terms and conditions of the Order. Plaintiff and Defendant HAINES,
12 having requested the Court to enter this Order, the Court hereby finds and orders as
13 follows:

14
15 **FINDINGS OF FACT**

16 1. Defendant HAINES was properly served with the Complaint, Summons
17 and TRO in this matter.

18 2. Defendant HAINES consented to the entry of the PI against him and
19 against Defendants **NATIONAL CONSUMER DEBT COUNCIL, LLC,**
20 **SOLIDIDIUM, LLC, UNITED CONSUMERS LAW GROUP, J.P. LANDIS,**
21 **SIGNATURE EQUITIES, LLC** and **M&L SPRINGFIELD TRUST** and was
22 properly served with the PI in this matter.

23 3. This Court has jurisdiction over the subject matter of the case and
24 personal jurisdiction over Defendant HAINES. Venue in the Central District of
25 California is proper.

26 4. The alleged actions of Defendant HAINES are in or affecting
27 commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

28 5. The Complaint states a claim upon which relief can be granted against

1 Defendant HAINES under Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C.
2 §§ 45(a) and 53(b); under the TSR, 16 C.F.R. Part 310; under Subtitle A of Title V
3 of the GLB Act, 15 U.S.C. §§ 6801 through 6809, and under the Privacy Rule, 16
4 C.F.R. Part 313.

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

7 7. Defendant HAINES has not admitted to liability as to the charges in the
8 Complaint, and his consent to entry of this permanent injunction shall not be
9 interpreted to constitute an admission that he has engaged in any violations of any
10 law or regulations.

11 8. Defendant HAINES waives all rights to seek judicial review or
12 otherwise challenge or contest the validity of this Order.

13 9. Defendant HAINES waives any claim that he may hold against the
14 Commission, its employees, representatives or agents.

15 10. Defendant HAINES waives any claim that he may hold under the
16 Equal Access to Justice Act, 28 U.S.C. § 2412 (as amended), concerning the
17 prosecution of this action to the date of this Order, and any rights to attorneys' fees
18 that may arise under said provision of law.

19 11. All parties shall bear their own costs and attorneys' fees.

20 12. Defendant HAINES enters into this Order freely and acknowledges that
21 he understands the provisions of this Order and is prepared to abide by its terms.

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

24 14. Entry of this Order is in the public interest.

25 DEFINITIONS

26
27 1. "Assets" means any legal or equitable interest in, right to, or claim to,
28 any real and personal property, including but not limited to chattel, goods,

1 instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail or
2 other deliveries, inventory, checks, notes, accounts, credits, receivables, and all cash,
3 wherever located.

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

11 3. **“Defendant”** means **WALTER HAINES** by whatever names he might
12 be known.

13 4. **“Corporate Defendants”** or **“Receivership Defendants”** means
14 Defendants **NCC-AZ; NCC-CA; NCC-NV; LONDON FINANCIAL GROUP;**
15 **NATIONAL CONSUMER DEBT COUNCIL, LLC; SOLIDIUM, LLC;**
16 **UNITED CONSUMERS LAW GROUP, A PROFESSIONAL CORP.; J.P.**
17 **LANDIS, LLC; FINANCIAL RESCUE SERVICES, INC.; SIGNATURE**
18 **EQUITIES, LLC; M&L SPRINGFIELD TRUST; PC HAILEY TRUST;** and
19 **VIA LIDO TRUST,** their affiliates, subsidiaries, successors and assigns and any
20 other corporations or businesses under the control of any of them.

21 5. The terms **“and”** and **“or”** have both conjunctive and disjunctive
22 meanings to make the meaning more inclusive than exclusive.

23 6. **“Person”** means any individual, natural person, organization, or other
24 legal entity, including a corporation, partnership, proprietorship, association,
25 cooperative, government or governmental subdivision or agency, or any other group
26 or combination acting as an entity. For purposes of this Order, a “consumer” is a
27 person.

28 7. **“Debtor”** means any person indebted to a creditor or creditors.

1 8. **“Debt negotiation”** means:

2 a. the business or practice of receiving, in return for consideration,
3 or the scheduled receipt, of a debtor’s monies, or evidences thereof, for the
4 purpose of distribution among certain specified creditors in payment, or partial
5 payment, of the debtor’s obligations; or

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

10 9. **“Credit-related products, programs or services”** means any product,
11 program, or service which is advertised, offered for sale, or sold to consumers as a
12 method by which consumers may establish or obtain any extension of credit or credit
13 device, including, but not limited to, credit cards, loans, or financing, or as a method
14 to consolidate or liquidate debts.

15 10. **“Assisting others”** means knowingly providing any of the following
16 goods or services to another person or entity:

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

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

21 c. providing names of, or assisting in the generation of, potential
22 customers; or

23 d. performing marketing services of any kind.

24 11. The **“Telemarketing Sales Rule”** means the FTC Rule entitled
25 “Telemarketing Sales Rule,” 16 C.F.R. § 310.

26 12. **“Telemarketing”** means a plan, program, or campaign which is
27 conducted to induce the purchase of goods or services or a charitable contribution,
28 by use of one or more telephones and which involves more than one interstate

1 telephone call. The term does not include the solicitation of sales through the
2 mailing of a catalog which: contains a written description or illustration of the goods
3 or services offered for sale; includes the business address of the seller; includes
4 multiple pages of written material or illustrations; and has been issued not less
5 frequently than once a year, when the person making the solicitation does not solicit
6 customers by telephone but only receives calls initiated by customers in response to
7 the catalog and during those calls takes orders only without further solicitation. For
8 purposes of the previous sentence, the term "further solicitation" does not include
9 providing the customer with information about, or attempting to sell, any other item
10 included in the same catalog which prompted the customer's call or in a substantially
11 similar catalog.

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

15 14. "**Telemarketer**" means any person who, in connection with
16 telemarketing, initiates or receives telephone calls to or from a customer or donor.

17 15. In connection with telemarketing, a "**customer**" means any person who
18 is or may be required to pay for goods or services offered through telemarketing.

19 16. "**Representatives**" means successors, assigns, officers, agents, servants
20 and employees of Defendant and those persons in active concert or participation with
21 them who receive actual notice of this Order by personal service or otherwise.

22 17. "**Material**" means likely to affect a person's choice of, or conduct,
23 regarding, goods, services or a charitable contribution.

24 18. "**Clearly and Conspicuously**" or "**Clear and Conspicuous**" means
25 that:

26 a. in print communications, that the message shall be in a type size
27 and location sufficiently noticeable for an ordinary consumer to read and
28 comprehend it, in print that contrasts with the background against which it

1 appears;

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

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

9 d. in any communication presented solely through visual or audio
10 means, that the message may be made through the same means in which the
11 communication is presented:

12 i. Any audio message shall be delivered in a volume and cadence
13 sufficient for an ordinary consumer to hear and comprehend it,
14 and

15 ii. Any visual message shall be of a size and shade, with a degree of
16 contrast to the background against which it appears and shall
17 appear on the screen for a duration and in a location, sufficiently
18 noticeable for an ordinary consumer to read and comprehend it;

19 Regardless of the medium used to disseminate it, the message shall be in
20 understandable language and syntax. Nothing contrary to, inconsistent with, or in
21 mitigation of, the message shall be used in any communication.

22 19. **“Established business relationship”** means a relationship between the
23 seller and a person based on: (a) the person’s purchase, rental, or lease of the
24 seller’s goods or services or a financial transaction between the person and seller,
25 within the eighteen months immediately preceding the date of the telemarketing call;
26 or (b) the person’s inquiry or application regarding a product or service offered by
27 the seller, within the three months immediately preceding the date of a telemarketing
28 call.

1 failing to disclose, clearly and conspicuously, prior to the time when a consumer
2 purchases a service from Defendant all information material to a consumer's
3 decision to buy any debt negotiation services or credit-related products, programs or
4 services, including but not limited to the following information:

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

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

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

13 D. That to the extent that Defendant may be able to obtain a favorable
14 settlement with a consumer's creditor of the consumer's debt, the consumer is
15 required to treat that debt savings as income for purposes of federal and state income
16 taxes; and

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

19
20 **III.**

21 **PROHIBITION AGAINST**

22 **ABUSIVE TELEMARKETING PRACTICES**

23 **IT IS FURTHER ORDERED** that, in connection with telemarketing,
24 Defendant is hereby permanently restrained and enjoined from engaging in, or
25 causing other persons to engage in, violations of the Telemarketing Sales Rule,
26 including but not limited to:

27 A. Initiating any outbound telephone call to a person's telephone number
28 on the National Do Not Call Registry to induce the purchase of goods or services

1 unless the seller proves:

- 2 1. The seller has obtained the express agreement, in writing, of such
3 person to place calls to that person. Such written agreement shall
4 clearly evidence such consumer's authorization that calls made
5 by or on behalf of a specific party may be placed to that person,
6 and shall include the telephone number to which the calls may be
7 placed and the signature of that person; or
- 8 2. The seller has an established business relationship with such
9 person and that person has not stated that he does not wish to
10 receive outbound telephone calls from the seller; or

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

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

28 C. Initiating any outbound telephone call to a telephone number within a

1 given area code without first paying the required annual fee for access to the
2 telephone numbers, within that area code, that are on the National Do Not Call
3 Registry;

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

8
9 **IV.**

10 **MONITORING TELEMARKETING COMPLIANCE**

11 **IT IS FURTHER ORDERED** that, in connection with any business that
12 Defendant directly or indirectly manages, controls or has a majority ownership
13 interest in, that engages in telemarketing, or assists others engaged in telemarketing,
14 Defendant is hereby permanently restrained and enjoined from:

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

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

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

24 C. Failing to take corrective action with respect to any telemarketer whom
25 Defendant determines is not complying with this Order, which may include training,
26 disciplining, and/or terminating such sales person;

27 *Provided, however,* that this Paragraph does not authorize or require
28 Defendant to take any action that violates any federal, state, or local law.

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V.

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

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

VI.

MONETARY RELIEF

IT IS FURTHER ORDERED that:

A. Within five (5) days after entry of this Order, but in any event no sooner than February 1, 2005, Defendant shall pay six hundred five thousand dollars (\$605,000) by certified or cashier's check made payable to the Federal Trade Commission or through wire transfer to an account designated by the Commission or its agent. Payment by certified or cashier's check shall be remitted to the Federal Trade Commission, Western Region, 10877 Wilshire Boulevard, Suite 700, Los Angeles, California 90024;

B. If Defendant fails to make the payments under Paragraph VI A of this Order within the prescribed time periods, the Commission may apply to the Court for entry of a judgment against Defendant in the amount of **\$84,333,293 (eighty-four million, three hundred thirty-three thousand, two hundred ninety-three dollars)** which amount shall be immediately due and payable, less any amounts already paid. For purposes of this Paragraph, Defendant waives any right to contest any of the allegations set forth in the Complaint filed in this matter or the amount of the judgment and agrees that the Court shall enter the monetary judgment in the amount of \$84,333,293 (eighty-four

1 million, three hundred thirty-three thousand, two hundred ninety-three dollars)
2 upon a showing by the Commission that Defendant failed to make the
3 payments as set forth under Paragraph VI A;

4 *provided*, that Defendant may cure a late payment by delivering such payment to the
5 Commission within five (5) days of the original payment date;

6 C. Defendant hereby assigns and transfers to the Commission all claims
7 and causes of action that he may now have, whether known or unknown, or
8 which he may acquire at a future date, relating to coverage and liability arising
9 out of this specific litigation only, *FTC v. National Consumer Council, et al.*,
10 SACV04-0474 CJC (JWJx), against any corporate insurance policy;

11 *provided*, that nothing in this Paragraph shall be interpreted as precluding Defendant
12 from making a claim against any policy for reimbursement of reasonable defense
13 fees and costs as may be permitted by the policy;

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

- 25 1. Determine the criteria for participation by individual claimants in
26 any consumer restitution program implemented pursuant to this Order;
- 27 2. Determine the manner and timing of any notices to be given to
28 consumers regarding the existence and terms of such programs; and

1 and will become immediately due and payable, less any payments already
2 made.

3 B. Notwithstanding any other provision of this Order, Defendant agrees
4 that in any subsequent proceedings to enforce payment, including but not
5 limited to a non-dischargeability complaint filed in a bankruptcy proceeding,
6 Defendant waives any right to contest any of the allegations set forth in the
7 Complaint filed in this matter or the \$84,333,293 (eighty-four million, three
8 hundred thirty-three thousand, two hundred ninety-three dollars) judgment
9 referenced above.

10
11 **VIII.**

12 **CUSTOMER LISTS**

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

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1 IX.

2 COMPLIANCE MONITORING

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

5 A. Within ten (10) days of receipt of written notice from a representative of
6 the Commission, Defendant shall submit additional written reports, sworn to under
7 penalty of perjury; produce documents for inspection and copying; appear for
8 deposition; and/or provide entry during normal business hours to any business
9 location in Defendant's possession or direct or indirect control for the purpose of
10 inspecting the business operation;

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

- 13 1. Obtaining discovery from any person, without further leave of
14 court, using the procedures prescribed by Fed. R. Civ. P. 30, 31,
15 33, 34, 36, and 45;
- 16 2. Posing as consumers and suppliers to Defendant's employees, or
17 any other entity managed or controlled in whole or in part by
18 Defendant, without the necessity of identification or prior notice;
19 and

20 C. Defendant shall permit representatives of the Commission to interview
21 any employer, consultant, independent contractor, representative, agent, or employee
22 who has agreed to such an interview, relating in any way to any conduct subject to
23 this Order. The person interviewed may have counsel present.

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

X.

COMPLIANCE REPORTING BY DEFENDANT

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,

1. Defendant shall notify the Commission of the following:

a. Any changes in his residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such changes;

b. Any changes in his employment status (including self-employment), and any changes in the ownership of, or interest in, any business entity, within ten (10) days of the date of such change. Such notice shall include the name and address of each business that he is affiliated with, employed by, creates or forms, or performs services for; a statement of the nature of the business; and a statement of his duties and responsibilities in connection with the business or employment; and

c. Any changes in Defendant's name or use of any aliases or fictitious names; and

2. Defendant shall notify the Commission of any changes in corporate structure of any business entity that he directly or indirectly controls, or has an ownership interest in, 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

1 thirty (30) days prior to such change, *provided* that, with respect to any
2 proposed change in the corporation about which Defendant learns less than
3 thirty (30) days prior to the date such action is to take place, he shall notify the
4 Commission as soon as is practicable after obtaining such knowledge.

5 B. One hundred eighty (180) days after the date of entry of this Order,
6 Defendant shall provide a written report to the Commission, sworn to under penalty
7 of perjury, setting forth in detail the manner and form in which he has complied and
8 is complying with this Order. This report shall include, but not be limited to:

- 9 1. his then-current residence address, mailing addresses, and
10 telephone numbers;
- 11 2. his then-current employment and business addresses and
12 telephone numbers, a description of the business activities of
13 each such employer or business, and his title and responsibilities
14 for each such employer or business;
- 15 3. A copy of each acknowledgment of receipt of this Order,
16 obtained pursuant to Paragraph XII, below; and
- 17 4. Any other changes required to be reported under Subparagraph A
18 of this Paragraph X, above.

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

22 Assistant Regional Director
23 Western Region, Los Angeles
24 Federal Trade Commission
25 10877 Wilshire Blvd, Suite 700
26 Los Angeles, CA 90024
27 Re: **FTC v. National Consumer Council, et al.**
28 Case No. CV-04-0474 CJC (JWJx)

D. For purposes of the compliance reporting and monitoring required by
this Order, the Commission is authorized to communicate directly with Defendant.

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XI.

RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this Order, Defendant and his 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, in connection with any business where Defendant is the majority owner of the business or directly or indirectly manages or controls the business, 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;
- D. Complaints and refund requests (whether received directly, indirectly or through any third party) and any responses to those complaints or requests;
- E. Copies of all sales scripts, training materials, advertisements, website printouts, or other marketing materials; and
- F. All records and documents necessary to demonstrate full compliance with each provision of this Order, including but not limited to copies of

1 acknowledgments of receipt of this Order required by Paragraph XII,
2 below, and all reports submitted to the FTC pursuant to Paragraph X,
3 above.
4

5 **XII.**

6 **DISTRIBUTION OF ORDER BY DEFENDANT**

7 **IT IS FURTHER ORDERED** that, for a period of five (5) years from the
8 date of entry of this Order, Defendant shall deliver copies of this Order as directed
9 below:

10 A. For any business that he controls, directly or indirectly, or in which he
11 has a majority ownership interest, he must deliver a copy of this Order
12 to all principals, officers, directors, and managers of that business.

13 Defendant must also deliver copies of this Order to all employees,
14 agents, and representatives of that business who engage in conduct
15 related to the subject matter of the Order. For current personnel,
16 delivery shall be within (5) days of service of this Order upon each of
17 the Defendants. For new personnel, delivery shall occur prior to them
18 assuming their responsibilities.

19 B. For any business where Defendant is not a controlling person of a
20 business but he otherwise engages in conduct related to the subject
21 matter of this Order, he must deliver a copy of this Order to his
22 immediate supervisor or manager of such business before engaging in
23 such conduct.

24 C. Defendant must secure a signed and dated statement acknowledging
25 receipt of the Order, within thirty days of delivery, from all persons
26 receiving a copy of the Order pursuant to this Paragraph.
27
28

XIII.

ACKNOWLEDGMENT OF RECEIPT OF ORDER

BY DEFENDANT

IT IS FURTHER ORDERED that, within five (5) business days of receipt of this Order as entered by the Court, Defendant must submit to the Commission a truthful sworn and notarized statement, or a sworn declaration pursuant to 28 U.S.C. § 1746, acknowledging receipt of this Order.

XIV.

SEVERABILITY

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

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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: December 28, 2004


WALTER HAINES, defendant

APPROVED AS TO FORM:

Dated: December 28, 2004


Michael Mallow, Esq.
Attorney for Defendant

IT IS SO ORDERED, this _____ day of _____, 2005, at _____m.

Cormac J. Casey
United States District Court Judge

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