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

6 Attorneys for Plaintiff
7 Federal Trade Commission

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

13 FEDERAL TRADE COMMISSION,
14 Plaintiff,

Case No. SA CV04-0474 CJC (JWJx)

15 v.

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

SETTLEMENT AGREEMENT
AND [PROPOSED] FINAL ORDER
WITH DEFENDANT HARVEY
WARREN

18 Defendants.

NO HEARING REQUESTED

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”),
6 15 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 that applied to both corporate and individual assets. On
22 May 14, 2004, by stipulation of the parties, and order of the Court, Defendant
23 **UNITED CONSUMERS LAW GROUP** was made part of the Receivership and
24 made subject to the asset freeze.

25 On May 21, 2004, by agreement of all of the parties, the Court entered
26 Stipulated Preliminary Injunctions and Orders (“PI”) against all of the Defendants
27 which continued the TRO’s injunctive provisions and asset freeze and appointed
28 Robb Evans and Associates as the Permanent Receiver over **NCC-AZ; NCC-CA;**

1 NCC-NV; LONDON FINANCIAL GROUP; NATIONAL CONSUMER DEBT
2 COUNCIL, LLC; SOLIDIUM, LLC; J.P. LANDIS, LLC; FINANCIAL
3 RESCUE SERVICES, INC.; SIGNATURE EQUITIES, LLC; UNITED
4 CONSUMERS LAW GROUP; M&L SPRINGFIELD TRUST; PC HAILEY
5 TRUST and VIA LIDO TRUST.

6 Now plaintiff Commission and Defendant HARVEY WARREN
7 (“WARREN”), negotiating through their respective counsel, have agreed to a
8 settlement of this action.

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

16 17 **STIPULATED FINDINGS OF FACT**

18 1. Defendant WARREN was properly served with the Complaint,
19 Summons and TRO in this matter.

20 2. Defendant WARREN, based on his perception of the economic
21 circumstances created by this litigation, consented to the entry of the PI against him
22 and against Defendants NATIONAL CONSUMER COUNCIL, INC., an Arizona
23 corporation (“NCC-AZ”); NATIONAL CONSUMER COUNCIL, INC., a California
24 corporation (“NCC-CA”) and NATIONAL CONSUMER COUNCIL, INC., a
25 Nevada corporation (“NCC-NV”) and was properly served with the PI in this matter.

26 3. This Court has jurisdiction over the subject matter of the case and
27 personal jurisdiction over Defendant WARREN. Venue in the Central District of
28 California is proper.

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

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

8 6. Plaintiff has the authority under Sections 13(b) and 19 of the FTC Act,
9 15 U.S.C. § 53(b) and § 57, to seek the relief it has requested.

10 7. Defendant WARREN has not admitted, and specifically denies, liability
11 as to the charges in the Complaint, and his consent to settle and finally resolve this
12 action is based on his perception of economic conditions and realities and shall not
13 be interpreted to constitute an admission that he has engaged in any violations of any
14 law or regulations.

15 8. Defendant WARREN waives all rights to seek judicial review or
16 otherwise challenge or contest the validity of this Order.

17 9. Defendant WARREN waives any claim that he may hold against the
18 Commission, its employees, representatives or agents.

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

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

24 12. Defendant WARREN enters into this Order freely and acknowledges
25 that he understands the provisions of this Order and is prepared to abide by its terms.
26 This Order is remedial in nature and shall not be construed as the payment of a fine,
27 penalty, punitive assessment, or forfeiture.

28 13. Entry of this Order is in the public interest.

1 **Definitions**

2 1. **“Assets”** means any legal or equitable interest in, right to, or claim to,
3 any real and personal property, including but not limited to chattel, goods,
4 instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail or
5 other deliveries, inventory, checks, notes, accounts, credits, receivables, and all cash,
6 wherever located.

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

14 3. **“Defendant”** means **HARVEY WARREN** by whatever names he
15 might be known.

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

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

26 6. **“Person”** means any individual, natural person, organization, or other
27 legal entity, including a corporation, partnership, proprietorship, association,
28 cooperative, government or governmental subdivision or agency, or any other group

1 or combination acting as an entity. For purposes of this Order, a “consumer” is a
2 person.

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

4 8. “**Debt negotiation**” means:

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

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

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

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

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

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

24 c. providing names of, or assisting in the generation of, potential
25 customers; or

26 d. performing marketing services of any kind.

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

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

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

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

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

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

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

27 18. "**Clearly and Conspicuously**" or "**Clear and Conspicuous**" means
28 that:

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

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

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

12 d. in any communication presented solely through visual or audio
13 means, that the message may be made through the same means in which the
14 communication is presented:

15 i. Any audio message shall be delivered in a volume and cadence
16 sufficient for an ordinary consumer to hear and comprehend it,
17 and

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

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

25 19. "Established business relationship" means a relationship between the
26 seller and a person based on: (a) the person's purchase, rental, or lease of the
27 seller's goods or services or a financial transaction between the person and seller,
28 within the eighteen months immediately preceding the date of the telemarketing call;

1 or (b) the person's inquiry or application regarding a product or service offered by
2 the seller, within the three months immediately preceding the date of a telemarketing
3 call.

4 20. "National Do Not Call Registry" means the National Do Not Call
5 Registry maintained by the Federal Trade Commission pursuant to 16 C.F.R.
6 § 310.4(b)(1)(iii)(B).

8 ORDER

9 I.

10 PROHIBITION AGAINST MATERIAL MISREPRESENTATIONS

11 IT IS THEREFORE ORDERED that Defendant, his successors, assigns,
12 officers, agents, servants, employees, and attorneys, and those persons or entities in
13 active concert or participation with any of them who receive actual notice of this
14 Order by personal service or otherwise, whether acting directly or through any
15 corporation, subsidiary, division, or other device, in connection with the advertising,
16 marketing, promoting, offering for sale, or sale of any good or service including but
17 not limited to any credit-related products, programs or services, are hereby
18 permanently restrained and enjoined from misrepresenting, or assisting others in
19 misrepresenting, expressly or by implication, orally or in writing, any fact material to
20 a consumer's decision to buy or accept the good or service, including but not limited
21 to Defendant's ability to reduce the amount owed by a debtor to a creditor or
22 Defendant's ability to have a positive effect on the debtor's credit report or credit
23 history.

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II.

PROHIBITION AGAINST MATERIAL OMISSIONS

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

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

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

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

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

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

III.
PROHIBITION AGAINST
ABUSIVE TELEMARKETING PRACTICES

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

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

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

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

1. Defendant employs 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, Defendant allows the telephone to ring for at least fifteen (15) seconds or four (4) rings

1 before disconnecting an unanswered call;

2 3. Whenever a representative is not available to speak with the
3 person answering the call within two (2) seconds after the
4 person's completed greeting, the seller or telemarketer promptly
5 plays a recorded message that states the name and telephone
6 number of the seller on whose behalf the call was placed; and

7 4. Defendant retains records, in accordance with 16 C.F.R. § 310.5
8 (b)-(d), establishing compliance with the preceding three
9 conditions; and

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

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

18
19 **IV.**

20 **MONITORING TELEMARKETING COMPLIANCE**

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

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

28 1. Establishing a procedure for receiving and responding to

1 consumer complaints of violations of the TSR or this Order; and
2 2. Ascertaining the number and nature of consumer complaints in
3 which each employee or independent contractor is involved;

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

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

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

11
12 **V.**

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

15 **IT IS FURTHER ORDERED** that, when acting as or on behalf of a financial
16 institution, Defendant is hereby restrained and enjoined from violating any provision
17 of Subtitle A of Title V of the Gramm-Leach-Bliley Act, 15 U.S.C. § § 6801-6809,
18 and implementing regulations promulgated by the Commission at 16 C.F.R. Parts
19 313 and 314.

20
21 **VI.**

22 **RELIANCE ON REPRESENTATIONS**

23 **IT IS FURTHER ORDERED** that:

24 A. The Commission's agreement to, and the Court's approval of, this
25 Order is expressly premised upon the truthfulness, accuracy, and
26 completeness of Defendant's financial condition, as represented in the
27 financial statement dated May 15, 2004, including attachments and in any
28 other documents submitted by Defendant, including all supplements to that

1 financial statement, all of which the Commission relied upon in negotiating
2 and agreeing to the terms of this Order. If, upon motion by the Commission to
3 the Court, the Court finds that Defendant, in any of the above-referenced
4 materials, failed to disclose any asset with a value in excess of \$1,000,
5 materially misrepresented the value of any asset, or made any other material
6 misrepresentation or omission, monetary judgment will be entered against
7 Defendant in the amount of **\$84,333,293 (eighty-four million, three hundred**
8 **thirty-three thousand, two hundred ninety-three dollars)**, which represents
9 the approximate amount of payments made by consumers to all of the
10 Defendants and will become immediately due and payable, less any payments
11 already made.

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

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

1 have full and sole discretion to:

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

10 D. Defendant hereby assigns and transfers to the Commission all claims
11 and causes of action that he may now have, whether known or unknown, or
12 which he may acquire at a future date, relating to coverage and liability arising
13 out of this specific litigation only, *FTC v. National Consumer Council, et al.*,
14 SACV04-0474 CJC (JWJx), against any corporate insurance policy;
15 *provided*, that nothing in this section shall be interpreted as precluding Defendant
16 from making a claim against any policy for reimbursement of reasonable defense
17 fees and costs as may be permitted by the policy;

18 E. Defendant expressly waives any rights he may possess to litigate the
19 issue of monetary relief. Defendant acknowledges and agrees that all money
20 paid pursuant to this Order is irrevocably paid to the Commission for purposes
21 of settlement between Plaintiff and Defendant; and

22 F. Defendant shall have no right to challenge the Commission's choice of
23 remedies under this Paragraph.

24 VII.

25 CUSTOMER LISTS

26
27 **IT IS FURTHER ORDERED** that Defendant, his officers, agents, servants,
28 employees, and attorneys, and all other persons or entities in active concert or

1 participation with them who receive actual notice of this Order by personal service
2 or otherwise, are permanently restrained and enjoined from selling, renting, leasing,
3 transferring, or otherwise disclosing the name, address, telephone number, credit
4 card number, bank account number, e-mail address, or other identifying information
5 of any person who paid any money to any of the Defendants in this litigation, *FTC v.*
6 *National Consumer Council, Inc. et al*, SACV04-0474 CJC (JWJx), or paid money
7 to any of the Corporate Defendants, at any time prior to entry of this order, in
8 connection with telemarketing or with the advertising, promotion, offering for sale or
9 sale of debt negotiation services. *Provided, however*, that such identifying
10 information may be disclosed to a law enforcement agency or as required by any
11 law, regulation, or court order.

12 13 VIII.

14 COMPLIANCE MONITORING

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

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

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

- 26 1. Obtaining discovery from any person, without further leave of
27 court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34,
28 36, and 45;

1 or performs services for; a statement of the nature of the
2 business; and a statement of his duties and responsibilities in
3 connection with the business or employment; and

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

6 2. Defendant shall notify the Commission of any changes in
7 corporate structure of any business entity that he directly or indirectly
8 controls, or has an ownership interest in, that may affect compliance
9 obligations arising under this Order, including but not limited to a
10 dissolution, assignment, sale, merger, or other action that would result
11 in the emergence of a successor entity; the creation or dissolution of a
12 subsidiary, parent, or affiliate that engages in any acts or practices
13 subject to this Order; the filing of a bankruptcy petition; or a change in
14 the corporate name or address, at least thirty (30) days prior to such
15 change, *provided* that, with respect to any proposed change in the
16 corporation about which Defendant learns less than thirty (30) days
17 prior to the date such action is to take place, he shall notify the
18 Commission as soon as is practicable after obtaining such knowledge.

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

24 1. His then-current residence address, mailing addresses, and
25 telephone numbers;

26 2. His then-current employment and business addresses and
27 telephone numbers, a description of the business activities of each such
28 employer or business, and his title and responsibilities for each such

1 employer or business;

2 3. A copy of each acknowledgment of receipt of this Order,
3 obtained pursuant to Paragraph XI, below; and

4 4. Any other changes required to be reported under Subparagraph A
5 of this Paragraph IX, above.

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

9 Assistant Regional Director
10 Western Region, Los Angeles
11 Federal Trade Commission
12 10877 Wilshire Blvd, Suite 700
13 Los Angeles, CA 90024
14 Re: FTC v. National Consumer Council et al.
15 Case No. CV-04-0474 CJC (JWJx)

16 D. For purposes of the compliance reporting and monitoring required by
17 this Order, the Commission is authorized to communicate directly with
18 Defendant. The Defendant may have counsel present if desired.

19 **X.**

20 **RECORD KEEPING PROVISIONS**

21 **IT IS FURTHER ORDERED** that, for a period of eight (8) years from the
22 date of entry of this Order, Defendant and his agents, employees, officers,
23 corporations, successors, and assigns, and those persons in active concert or
24 participation with any of them who receive actual notice of this Order by personal
25 service or otherwise, in connection with any business engaged in telemarketing or
26 the advertising, marketing, promoting, offering for sale, or sale of credit related
27 products, goods or services and where Defendant is the majority owner of the
28 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,

1 revenues generated, and the disbursement of such revenues;

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

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

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

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

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

19
20 **XI.**

21 **DISTRIBUTION OF ORDER BY DEFENDANT**

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

25 A. For any business that he controls, directly or indirectly, or in which he
26 has a majority ownership interest, he must deliver a copy of this Order to all
27 principals, officers, directors, and managers of that business. Defendant must
28 also deliver copies of this Order to all employees, agents, and representatives

1 of that business who engage in conduct related to the subject matter of this
2 Order. For current personnel, delivery shall be within (5) days of service of
3 this Order upon each of the Defendants. For new personnel, delivery shall
4 occur prior to them assuming their responsibilities.

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

9 C. Defendant must secure a signed and dated statement acknowledging
10 receipt of the Order, within thirty days of delivery, from all persons receiving
11 a copy of the Order pursuant to this Paragraph.

12
13 **XII.**

14 **ACKNOWLEDGMENT OF RECEIPT OF ORDER**
15 **BY DEFENDANT**

16 **IT IS FURTHER ORDERED** that, within five (5) business days of receipt
17 of this Order as entered by the Court, Defendant must submit to the Commission a
18 truthful sworn and notarized statement, or a sworn declaration pursuant to 28 U.S.C.
19 § 1746, acknowledging receipt of this Order.

20
21 **XIII.**

22 **SEVERABILITY**

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

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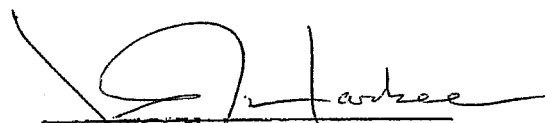
XIV.

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: Dec 22, 2004


HARVEY WARREN, defendant

APPROVED AS TO FORM:

Dated: 12/23, 2004


Michael Mahow, Esq.
Attorney for Defendant HARVEY WARREN

IT IS SO ORDERED, this _____ day of _____, 200__, at _____m.

Cormac J. Carney
United States District Court Judge