

LODGED

ORIGINAL

2004 SEP 27 AM 11:27

CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY _____

FILED
CLERK, U.S. DISTRICT COURT
SEP 28 2004
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY
BY _____

1 WILLIAM E. KOVACIC
General Counsel
2 GREGORY A. ASHE
AMY M. LLOYD
3 Federal Trade Commission
600 Pennsylvania Ave., N.W., NJ-2122
4 Washington, D.C. 20580
(202) 326-3719 (voice)
5 (202) 326-2558 (facsimile)

6 RAYMOND MCKOWN (Cal. Bar No. 150975)
7 Federal Trade Commission
Western Regional Office - Los Angeles
8 10877 Wilshire Blvd, Suite 700
Los Angeles, CA 90024
9 (310) 824-4325

10 Attorneys for Plaintiff

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA

13 _____)
14 FEDERAL TRADE COMMISSION,)

15 Plaintiff,)

16 v.)

17 FGH INTERNATIONAL CORPORATION,)
18 INTI CALIFORNIA, INC.,)
19 JAIME JHONNY ROJAS VILLANUEVA,)
WILSON EDGAR ROJAS VILLANUEVA,)
FRANCO QUINTERO MORALES,)

20 Defendants.)
21 _____)

No. CV

04-2013

22 [proposed] TEMPORARY
23 RESTRAINING ORDER WITH
24 AND ASSET FREEZE,
25 AN ACCOUNTING, LIMITED
26 EXPEDITED DISCOVERY, AND
27 OTHER EQUITABLE RELIEF
AND ORDER FOR DEFENDANTS
TO SHOW CAUSE WHY A
PRELIMINARY INJUNCTION
SHOULD NOT ISSUE

ANN
FILED
SEP 28 2004
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

21 Plaintiff Federal Trade Commission ("FTC"), has filed a
22 Complaint seeking a permanent injunction and other relief,
23 pursuant to Sections 13(b) and 19 of the Federal Trade Commission
24 Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the
25 Telemarketing and Consumer Fraud and Abuse Prevention Act
26 ("Telemarketing Act"), 15 U.S.C. § 6101 et seq., and an ex parte
27 motion for a temporary restraining order with an asset freeze, an
28

1 accounting, expedited discovery, and other equitable relief,
2 pursuant to Rule 65(b) of the Federal Rules of Civil Procedure,
3 and an order to show cause why a preliminary injunction should
4 not be issued. This Court has considered the pleadings and
5 exhibits filed in support of the FTC's motion, and now being
6 advised in the premises, finds that:

7 1. This Court has jurisdiction over the subject matter of
8 this case, there is good cause to believe it will have
9 jurisdiction over all the parties hereto, and venue in this
10 district is proper;

11 2. There is good cause to believe that Defendants have
12 engaged and are likely to continue to engage in acts or practices
13 that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and
14 the Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310, and
15 that the FTC is therefore likely to prevail on the merits of this
16 action;

17 3. There is good cause to believe that immediate and
18 irreparable harm will result from Defendants' ongoing violations
19 of Section 5(a) of the FTC Act and the TSR unless Defendants are
20 restrained and enjoined by order of this Court;

21 4. There is good cause to believe that immediate and
22 irreparable damage to the Court's ability to grant effective
23 final relief in the form of consumer redress and disgorgement
24 will occur from the transfer, dissipation or concealment by
25 Defendants of their assets or business records unless Defendants
26 are immediately restrained and enjoined by order of this Court,
27 and that in accordance with Fed. R. Civ. P. 65(b) and Local Rule
28 7-19.2, the interest of justice requires that the FTC's Motion be

1 heard ex parte without prior notice to Defendants. Therefore,
2 there is good cause for relieving the FTC of the duty to provide
3 Defendant with prior notice of the FTC's motion.

4 5. Good cause exists for ordering Defendants to provide an
5 accounting of their business as set forth herein and permitting
6 the FTC to take expedited discovery as to the existence and
7 location of assets and the location of documents reflecting
8 Defendants' business transactions.

9 6. Weighing the equities and considering the FTC's
10 likelihood of ultimate success, a temporary restraining order
11 with an asset freeze, accounting, expedited discovery as to the
12 existence and location of assets and documents, and other
13 equitable relief, is in the public interest;

14 7. No security is required of any agency of the United
15 States for issuance of a restraining order. Fed. R. Civ. P.
16 ^{65(c)}~~65(b)~~; and

17 8. This temporary restraining order is in the public
18 interest.

19 **IT IS THEREFORE ORDERED AS FOLLOWS:**

20 **DEFINITIONS**

21 For the purposes of this Order, the following definitions
22 shall apply:

23 A. "Defendants" means FGH International Corporation, Inti
24 California Inc., Jaime Jhonny Rojas Villanueva, Wilson Edgar
25 Rojas Villanueva, and Franco Quintero Morales, and their
26 successors, assigns, agents, servants or employees, and those
27 persons in active concert or participation with them who receive
28 actual notice of this Order by personal service or otherwise,

1 whether acting directly or through any entity, corporation,
2 subsidiary, division, affiliate or other device, unless specified
3 otherwise.

4 B. "Document(s)" or "record(s)" means

5 1. The original or a true copy of any written, typed,
6 printed, electronically stored, transcribed, taped, recorded,
7 filmed, punched, or graphic matter or other data compilations of
8 any kind, including, but not limited to, letters, e-mail or other
9 correspondence, messages, memoranda, interoffice communications,
10 notes, reports, summaries, manuals, magnetic tapes or discs,
11 tabulations, books, records, checks, invoices, work papers,
12 journals, ledgers, statements, returns, reports, schedules, or
13 files; and

14 2. Any information stored on any desktop personal
15 computer ("PC") and workstations, laptops, notebooks, and other
16 portable computers, whether assigned to individuals or in pools
17 of computers available for shared use; and home computers used
18 for work-related purposes; backup disks and tapes, archive disks
19 and tapes, and other forms of offline storage, whether stored
20 onsite with the computer used to generate them, stored offsite in
21 another company facility or stored offsite by a third-party, such
22 as in a disaster recovery center; and computers and related
23 offline storage used by Defendants' participating associates,
24 which may include persons who are not employees of the companies
25 or who do not work on companies' premises.

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

1 fixtures, general intangibles, effects, leaseholds, mail or other
2 deliveries, inventory, checks, notes, accounts, credits,
3 receivables, funds, monies, and all cash, wherever located, and
4 shall include both existing assets and assets acquired after the
5 date of entry of this Order.

6 D. "Financial institution" means any bank, savings and
7 loan institution, credit union, or any financial depository of
8 any kind, including but not limited to any brokerage house,
9 trustee, broker-dealer, escrow agent, title company, commodity
10 trading company, precious metal dealer, commercial check cashing
11 facility, or any entity or person that holds, controls, or
12 maintains custody of any account or asset of any Defendant.

13 E. "Instructional programs" means any program, plan,
14 product or service that teaches, educates, instructs, trains,
15 assists, enables or purports to teach, educate, instruct, train,
16 assist, or enable a consumer to learn or become proficient in any
17 subject or field.

18 F. "Telemarketing" means the advertising, offering for
19 sale, or sale of any good or service by use of one or more
20 telephones, either exclusively or in conjunction with the use of
21 other marketing techniques.

22 **ORDER PROHIBITING CERTAIN CONDUCT**

23 **I. IT IS HEREBY ORDERED** that:

24 A. Defendants and their officers, agents, servants,
25 employees, and attorneys, and those persons in active concert or
26 participation with Defendants who receive actual notice of this
27 Order by personal service or otherwise, and each of them, are
28 hereby restrained and enjoined from making, or assisting others

1 in making, directly or by implication, any false or misleading
2 oral or written statement or representation in connection with
3 the advertising, marketing, promotion, offering for sale,
4 distribution, or sale of instructional programs, including but
5 not limited to:

6 1. Misrepresenting, directly or by implication, that
7 any person or entity is an agency of or affiliated with the
8 Federal government or a state government;

9 2. Misrepresenting, directly or by implication, that
10 consumers have been selected by the government to receive
11 subsidized training or a subsidized instructional program;

12 3. Misrepresenting, directly or by implication, that
13 consumers have purchased or agreed to purchase any good or
14 service and therefore owe money to any person or entity;

15 4. Misrepresenting, directly or by implication, that
16 any person is an attorney or that such person's communication is
17 from an attorney;

18 5. Misrepresenting, directly or by implication, that
19 nonpayment of a debt or purported debt will result in a
20 consumer's arrest, imprisonment, or ^{deportation}~~deportment~~, or seizure,
21 garnishment, or attachment of a consumer's property or wages

22 6. Misrepresenting, directly or by implication, that
23 any person or entity, including a government agency, intends to
24 take legal action against a consumer;

25 B. Defendants and their officers, agents, servants,
26 employees, and attorneys, and those persons in active concert or
27 participation with Defendants who receive actual notice of this
28 Order by personal service or otherwise, and each of them, are

1 hereby restrained and enjoined from violating or assisting others
2 in violating any provision of the Telemarketing Sales Rule, 16
3 C.F.R. Part 310, in the course of offering for sale and selling
4 instructional programs through telemarketing.

5 C. Defendants and their officers, agents, servants,
6 employees, and attorneys, and those persons in active concert or
7 participation with Defendants who receive actual notice of this
8 Order by personal service or otherwise, and each of them, are
9 hereby restrained and enjoined from using threats or intimidation
10 to coerce consumers to pay for any good or service.

11 **ASSET FREEZE**

12 **II. IT IS FURTHER ORDERED** that Defendants and their officers,
13 agents, servants, employees, attorneys, and all persons or
14 entities directly or indirectly under the control of any of them,
15 and all other persons or entities acting in concert or
16 participation with any of them who are served with a copy of this
17 Order by personal service, facsimile, or otherwise, including any
18 financial institution, are hereby temporarily restrained and
19 enjoined from directly or indirectly:

20 A. Selling, liquidating, assigning, transferring,
21 converting, loaning, encumbering, pledging, concealing,
22 dissipating, spending, withdrawing, or otherwise disposing of any
23 funds, real or personal property, or other assets or any interest
24 therein, wherever located, including any assets outside the
25 territorial United States, which are:

- 26 1. in the actual or constructive possession of
27 Defendants; or

1 2. owned or controlled by, or held, in whole or in
2 part for the benefit of, or subject to access by, or belong to
3 Defendants; or

4 3. in the actual or constructive possession of, or
5 owned or controlled by, or subject to access by, or belong to,
6 any corporation, partnership, trust or other entity directly or
7 indirectly under the control of Defendants.

8 B. Opening or causing to be opened any safe deposit boxes
9 titled in the name of Defendants, or subject to access by
10 Defendants.

11 C. Incurring charges on any credit card issued in the
12 name, singly or jointly, of Defendants.

13 D. Transferring any funds or other assets subject to this
14 Order for attorneys' fees or living expenses, except ~~from~~ *as*
15 *provided below in subparagraph or upon written authorization of*
~~accounts or other assets identified by prior written notice to~~
16 *of*
~~the FTC and prior approval by the Court, provided that no~~
17 ~~attorneys' fees or living expenses, other than those set forth in~~
18 ~~Subsection E of this Section II, and only in accordance with the~~
19 ~~procedures set forth in Subsection E of this Section II, shall be~~ *attn*
20 ~~paid from funds or other assets subject to this Order until the~~
21 ~~financial statements required by Section IV are provided to~~
22 ~~counsel for the FTC.~~

23 E. Notwithstanding the above, Defendants may pay from
24 *respective* ~~their personal funds~~ *or accounts* reasonable, usual, ordinary, and necessary
25 *(including for housing)* living expenses and attorney's fees, not to exceed ~~\$1,000~~ *in the aggregate \$5,000 per*
~~This authorization shall remain in effect until the earlier of the following dates:~~ *Defendant*
26 ~~to the submission of the financial statements required by Section~~
(1) the expiration of this temporary restraining order or (2) October 31, 2004. *attn*
27 ~~IV. No such expenses, however, shall be paid from funds subject~~
28 ~~to this Order except from cash on the person of Defendants, or~~

1 ~~from an account designated by prior written notice to counsel for~~
2 ~~the FTC.~~

3 F. The funds, property and assets affected by this
4 Paragraph shall include both existing assets and assets acquired
5 after the effective date of this Order, including without
6 limitation, those acquired by loan or gift. Defendants shall
7 hold all assets, including without limitation, payments, loans,
8 and gifts, received after service of this Order.

9 **RETENTION OF ASSETS AND DOCUMENTS BY THIRD PARTIES**

10 **III. IT IS FURTHER ORDERED** that, pending determination of the
11 FTC's request for a preliminary injunction, any financial
12 institution, or any person or other entity served with a copy of
13 this Order shall:

14 A. Hold and retain within such entity's or person's
15 control, and prohibit the withdrawal, removal, assignment,
16 transfer, pledge, hypothecation, encumbrance, disbursement,
17 dissipation, conversion, sale, liquidation, or other disposal of
18 any funds, documents, property, or other assets held by or under
19 such entity's or person's control:

20 1. on behalf of, or for the benefit of, Defendants or
21 other party subject to Section II above;

22 2. in any account maintained in the name of, or
23 subject to withdrawal by, Defendants or other party subject to
24 Section II above;

25 3. that are subject to access or use by, or under the
26 signatory power of, Defendants or other party subject to Section
27 II above;

28 B. Deny access to any safe deposit boxes that are either:

1 1. titled in the name, individually or jointly, of
2 Defendants or other party subject to Section II above; or

3 2. subject to access by Defendants or other party
4 subject to Section II above.

5 C. Provide to counsel for the FTC, within ~~three (3) days~~,
6 a statement setting forth:

Seventy-two (72) hours of
service of
this order,
ATTN

7 1. the identification of each account or asset titled
8 in the name, individually or jointly, or held on behalf of, or
9 for the benefit of, Defendants or other party subject to Section
10 II above, whether in whole or in part;

11 2. the balance of each such account, or a description
12 of the nature and value of such asset;

13 3. the identification of any safe deposit box that is
14 either titled in the name of, individually or jointly, or is
15 otherwise subject to access or control by, Defendants or other
16 party subject to Section II above, whether in whole or in part;
17 and

18 4. if the account, safe deposit box, or other asset
19 has been closed or removed, the date closed or removed and the
20 balance on said date.

21 D. The accounts subject to this provision include existing
22 assets and assets deposited after the effective date of this
23 Order. This Section shall not prohibit transfers in accordance
24 with any provision of this Order, or any further order of the
25 Court.

26 E. The FTC is granted leave, pursuant to Fed. R. Civ. P.
27 45, to subpoena documents immediately from any such financial
28 institution, account custodian, or other entity concerning the

1 nature, location, status, and extent of Defendants' assets, and
2 compliance with this Order, and such financial institution,
3 account custodian or other entity shall respond to such subpoena
4 within five business days after service. For purposes of this
5 subsection, the FTC may serve any such subpoena by facsimile or
6 overnight courier.

7 **FINANCIAL STATEMENTS AND ACCOUNTING**

8 **IV. IT IS FURTHER ORDERED** that, ^{by 5:00 p.m. on the fifth} ~~within five (5)~~ business days ^{each} ~~following~~ the service of this Order, Defendants shall provide
9 counsel for the FTC:
10

11 A. A completed financial statement accurate as of the date
12 of service of this Order upon Defendants (unless
13 otherwise agreed upon with FTC counsel, Defendants
14 shall include all financial information as requested in
15 the Department of Treasury - Internal Revenue Service
16 Collection Information Statement for Individuals (Form
17 433-A) located on the Internet at
18 <http://www.irs.gov/pub/irs-pdf/f433a.pdf>; all
19 information as requested in the corresponding
20 Collection Information Statement for Businesses (Form
21 433 - B) located on the Internet at
22 <http://www.irs.gov/pub/irs-pdf/f433b.pdf>); and

23 B. A completed statement, verified under oath, of ~~all~~ ^{each separate} payment~~s~~, transfer~~s~~, or assignment of funds, assets, or property
24 ^{in the amount of \$500} ~~worth \$1,000~~ or more since September 1, 2001. Such statement
25 shall include (a) the amount transferred or assigned; (b) the
26 name of each transferee or assignee; (c) the date of the
27 assignment or transfer; (d) the type and amount of consideration
28

1 paid each Defendant. Each statement shall specify the name and
2 address of each financial institution and brokerage firm at which
3 Defendants have accounts or safe deposit boxes. Said statements
4 shall include assets held in foreign as well as domestic
5 accounts.

6 C. For all instructional programs advertised, marketed,
7 promoted, offered for sale, distributed, or sold by Defendants, a
8 detailed accounting, verified under oath, of:

9 1. all gross revenues obtained from the sale of each
10 such product or service (broken down by month) from inception of
11 sales through the date of the issuance of this Order;

12 2. all net profits obtained from the sale of each
13 such product or service (broken down by month) from inception of
14 sales through the date of the issuance of this Order;

15 3. the total amount of each such product or service
16 sold; and

17 4. the full names, addresses, ^{e-mail addresses} and telephone numbers
18 of all purchasers of each such product or service.

19 **REPATRIATION OF FOREIGN ASSETS**

20 **V. IT IS FURTHER ORDERED** that, ^{by 5:00 p.m. on the fifth} ~~within five (5)~~ ^{and fax} business days ^{ATM}

21 following the service of this Order, Defendants shall ~~x~~ ^{each and separately:}

22 A. Provide the FTC with a full accounting of all assets,
23 accounts or documents outside of the territory of the United
24 States which are held either: (1) by Defendants; (2) for their
25 benefit; (3) in trust by or for Defendants, individually or
26 jointly; or (4) under their direct or indirect control,
27 individually or jointly;
28

1 B. transfer to the territory of the United States all
2 assets, accounts or documents in foreign countries held either:
3 (1) by Defendants; (2) for their benefit; (3) in trust by or for
4 them, individually or jointly; or (4) under their direct or
5 indirect control, individually or jointly;

6 C. hold and retain all repatriated assets, accounts or
7 documents and prevent any transfer, disposition, or dissipation
8 whatsoever of any such assets or documents except as allowed by
9 Section II of this Order; and

10 D. provide the FTC access to Defendants' records and
11 documents held by financial institutions outside the territorial
12 United States, by signing ^athe Consent to Release of Financial
13 Records, which shall be provided by FTC counsel.

14 **NONINTERFERENCE WITH REPATRIATION**

15 **VI. IT IS FURTHER ORDERED** that Defendants and their ^{respective} successors,
16 assigns, agents, servants or employees, and those persons in
17 active concert or participation with them who receive actual
18 notice of the Order by personal service or otherwise, whether
19 acting directly or through any entity, corporation, subsidiary,
20 division, affiliate or other device, are hereby temporarily
21 restrained and enjoined from taking any action, directly or
22 indirectly, which may result in the encumbrance or dissipation of
23 foreign assets, or in the hindrance of the repatriation required
24 by the preceding Section of this Order, including, but not
25 limited to:

26 A. Sending any statement, letter, fax, email or wire
27 transmission, or telephoning or engaging in any other act,
28 directly or indirectly, that results in a determination by a

1 foreign trustee or other entity that a "duress" event has
2 occurred under the terms of a foreign trust agreement until such
3 time that all assets have been fully repatriated pursuant to
4 Section V of this Order;

This provision shall not be effective until and unless Plaintiff files a written definition or explanation of what is and serves a copy of that filed explanation on each Defendant.

5 B. Notifying any trustee, protector or other agent of any "duress event"
6 foreign trust or other related entities of either the existence
7 of this Order, or of the fact that repatriation is required
8 pursuant to a court order, until such time that all assets have
9 been fully repatriated pursuant to Section V of this Order.

10 **EXPEDITED DISCOVERY**

11 **VII. IT IS FURTHER ORDERED** that the FTC is granted leave to
12 conduct certain expedited discovery, and that, commencing with
13 the time and date of this Order, in lieu of the time periods,
14 notice provisions, and other requirements of Rules 26, 30, 34,
15 and 45 of the Federal Rules of Civil Procedure, the FTC is
16 granted leave to:

business

17 A. Take the deposition, on three (3) day's notice, of any
18 person or entity, whether or not a party, for the purpose of
19 discovering (1) the nature, location, status and extent of assets
20 of Defendants or their affiliates or subsidiaries; (2) the nature
21 and location of documents reflecting the business transactions of
22 Defendants or their affiliates or subsidiaries; and (3)

23 compliance with this Order. The limitations and conditions set
24 forth in Fed. R. Civ. P. 30(a)(2)(B) and 31(a)(2)(B) regarding
25 subsequent depositions shall not apply to depositions taken

The FTC shall have the right to seek an order that

26 pursuant to this Section. Any such depositions taken pursuant to
27 this Section shall not be counted toward the ten deposition limit
28 set forth in Fed. R. Civ. P. 30(a)(2)(A) and 31(a)(2)(A).

1 Service of discovery upon a party, taken pursuant to this
2 Section, shall be sufficient if made by facsimile or by overnight
3 delivery. Any deposition taken pursuant to this sub-section that
4 has not been reviewed and signed by the deponent may be used by
5 any party for purposes of the preliminary injunction hearing; and

6 B. Demand the production of documents, on five (5) days'
7 notice, from any person or entity, whether or not a party,
8 relating to (1) the nature, status, extent, or location of assets
9 of Defendants or their affiliates or subsidiaries; (2) the nature
10 and location of documents reflecting the business transactions of
11 Defendants or their affiliates or subsidiaries; and (3)
12 compliance with this Order. Provided that twenty-four (24)
13 hours' notice shall be deemed sufficient for the production of
14 any such documents that are maintained or stored only as
15 electronic data. Provided, further, that the authority to
16 request documents pursuant to this sub-section is in addition to
17 the requirement to produce documents pursuant to Section VIII of
18 this Order.

19 **IMMEDIATE PRODUCTION OF DOCUMENTS**

20 **VIII. IT IS FURTHER ORDERED** that

21 A. Defendants shall, immediately upon request by the FTC,
22 *with respect to* ~~produce at the curb~~ of the residences located at 6524 Fulton
23 Avenue, Van Nuys, California, 10044 Kester Avene, Mission Hills,
24 California, and 15013 San Jose Street, Mission Hills, California, *identify*
25 *in writing and under penalty of perjury* all documents and records contained ~~therein~~ *in those residences* that refer or relate
26 to (1) any instructional program advertised, marketed, promoted,
27 offered for sale, distributed or sold by Defendants; (2) any
28 business relationship between Defendants and any other business

1 entity; (3) Defendants' financial status, including but not
2 limited to, the nature or location of any bank account, safe
3 deposit box, or other asset of Defendants; (4) any transaction,
4 correspondence or other communication by or between any consumer
5 and Defendants or any of their representatives, employees,
6 agents, officers, servants, or assistants; and (5) any action,
7 correspondence or other communication by or between any law
8 enforcement agency, consumer group, or Better Business Bureau and
9 Defendants or their representatives, employees, agents, officers,
10 servants, or assistants. ^{Absent good cause,} Defendants shall be precluded from
11 using in any further proceeding in this case, directly or
12 indirectly, any document within Defendants' possession, custody,
13 or control at the time of service of this Order that is not
14 ~~produced~~ ^{identified} pursuant to this Section VIII.

15 B. Defendants and any other person served with a copy of
16 this Order shall permit the FTC's employees, agents, and
17 assistants immediate access to Defendants' business premises and
18 storage facilities (other than those located in a residence),
19 whether owned, controlled or used by any Defendant in whole or in
20 part. The purpose of this access shall be to inspect, copy and
21 inventory documents referring or relating to (1) any
22 instructional program advertised, marketed, promoted, offered for
23 sale, distributed or sold by Defendants; (2) any business
24 relationship between Defendants and any other business entity;
25 (3) Defendants' financial status, including but not limited to,
26 the nature or location of any bank account, safe deposit box, or
27 other asset of Defendants; (4) any transaction, correspondence or
28 other communication by or between any consumer and Defendants or

1 any of their representatives, employees, agents, officers,
2 servants, or assistants; and (5) any action, correspondence or
3 other communication by or between any law enforcement agency,
4 consumer group, or Better Business Bureau and Defendants or their
5 representatives, employees, agents, officers, servants, or
6 assistants. Defendants shall provide FTC employees, agents and
7 assistants with any necessary means of access to these documents,
8 including but not limited to keys and lock combinations, computer
9 access codes, and storage access information. Defendants are
10 hereby enjoined and restrained from interfering with the FTC's
11 right of access described herein.

12 C. The FTC shall be allowed to remove all such documents
13 produced pursuant to ^{Paragraph B of} this Section for a period not to exceed
14 twenty-four (24) hours for the purposes of copying such
15 documents.

*The FTC shall return the originals of the documents within twenty four
(24) hours of their removal, along with an inventory of what had been
removed.*

RECORD KEEPING PROVISIONS

17 **IX. IT IS FURTHER ORDERED** that Defendants and their officers,
18 agents, servants, employees, and attorneys, and those persons in
19 active concert or participation with Defendants who receive
20 actual notice of this Order by personal service or otherwise, are
21 hereby enjoined from:

22 A. Destroying, erasing, mutilating, concealing, altering,
23 transferring or otherwise disposing of, in any manner, directly
24 or indirectly, contracts, agreements, customer files, customer
25 lists, customer addresses and telephone numbers, correspondence,
26 advertisements, brochures, sales material, training material,
27 sales presentations, documents evidencing or referring to
28 Defendants' products, data, computer tapes, disks, or other

1 computerized records, books, written or printed records,
2 handwritten notes, telephone logs, "verification" or "compliance"
3 tapes or other audio or video tape recordings, receipt books,
4 invoices, postal receipts, ledgers, personal and business
5 canceled checks and check registers, bank statements, appointment
6 books, copies of federal, state or local business or personal
7 income or property tax returns, and other documents or records of
8 any kind, including electronically-stored materials, that relate
9 to the business practices or business or personal finances of
10 Defendants or other entity directly or indirectly under the
11 control of Defendants; and

12 B. Failing to create and maintain books, records, and
13 accounts which, in reasonable detail, accurately, fairly, and
14 completely reflect the incomes, assets, disbursements,
15 transactions and use of monies by Defendants or other entity
16 directly or indirectly under the control of Defendants.

17 **COMPLIANCE MONITORING**

18 **X. IT IS FURTHER ORDERED** that, for purposes of monitoring
19 compliance with any provision of this Order, the FTC is
20 authorized to pose as customers or potential customers of
21 Defendants, their employees, or any other entity managed or
22 controlled in whole or in part by any of them without the
23 necessity of identification or prior notice.

24 **NOTICE TO EMPLOYEES**

25 **XI. IT IS FURTHER ORDERED** that Defendants shall immediately
26 provide a copy of this Order to each of their corporations,
27 subsidiaries, affiliates, and participating associates. Within
28 ten (10) calendar days following service of this Order by the

1 FTC, Defendants shall ^{each} provide the FTC with an affidavit
2 identifying the names, titles, addresses, and telephone numbers
3 of the persons and entities that Defendants have served with a
4 copy of this Order in compliance with this provision. ATM

5 **CONSUMER REPORTS**

6 **XII. IT IS FURTHER ORDERED** that pursuant to Section 604(1) of the
7 Fair Credit Reporting Act, 15 U.S.C. § 1681b(1), the FTC is
8 authorized to request a consumer report and any consumer
9 reporting agency receiving such request shall furnish a consumer
10 report concerning Defendants to the FTC.

11 **ORDER TO SHOW CAUSE**

12 **XIII. IT IS FURTHER ORDERED**, pursuant to Fed. R. Civ. P.
13 65(b), that Defendants shall appear on the 8th day of
14 October, 2004, at 10:00 a.m. at the United States
15 Courthouse, Courtroom 14, Los Angeles, California, to show ATM
16 cause, if any there be, why this Court should not enter a
17 preliminary injunction, pending final ruling on the complaint,
18 against Defendants enjoining them from further violations of the
19 FTC Act and the TSR, continuing the freeze of their assets, and
20 imposing such additional relief as may be appropriate.

21 **EXPIRATION OF THIS ORDER**

22 **XIV. IT IS FURTHER ORDERED** that the Temporary Restraining Order ATM
23 granted herein shall expire on October 8, 2004, at 11:59
24 PM, unless within such time the Order, for good cause shown, is
25 extended, or unless the Defendants consent that it should be
26 extended for a longer period of time.

1 **SERVICE OF PLEADINGS; EVIDENCE, WITNESS LISTS**

2 **XV. IT IS FURTHER ORDERED** that

3 A. Defendants shall file any answering affidavits,
4 pleadings, or legal memoranda with the Court and serve the same
5 on counsel for the FTC no later than three business days prior to
6 the preliminary injunction hearing in this matter. The FTC may
7 file responsive or supplemental pleadings, materials, affidavits,
8 or memoranda with the Court and serve the same on counsel for
9 Defendants no later than one business day prior to the
10 preliminary injunction hearing in this matter. Provided that
11 service shall be performed by personal or overnight delivery or
12 by facsimile, and documents shall be delivered so that they shall
13 be received by the other parties no later than 4 p.m. (EDT) on
14 the appropriate dates listed in this sub-paragraph.

15 B. The question of whether this Court should enter a
16 preliminary injunction pursuant to Rule 65 of the Federal Rules
17 of Civil Procedure enjoining Defendant during the pendency of
18 this action shall be resolved, pursuant to Local Rule 7-6, on the
19 pleadings, declarations, exhibits, and memoranda filed by and
20 oral argument of the parties. Live testimony shall be heard only
21 on further order of this Court on motion filed with the Court and
22 served on counsel for the parties at least 72 hours prior to the
23 preliminary injunction hearing in this matter. Such motion shall
24 set forth the name, address, and telephone number of each
25 proposed witness, a detailed summary or affidavit revealing the
26 substance of each proposed witness' expected testimony, and an
27 explanation of why the taking of live testimony would be helpful
28 to this Court. Any papers opposing a timely motion to present

1 live testimony or to present live testimony in response to live
2 testimony to be presented by another party shall be filed with
3 this Court and served on the other parties at least two business
4 days prior to the preliminary injunction hearing in this matter.
5 Provided that service shall be performed by personal or overnight
6 delivery or by facsimile, and documents shall be delivered so
7 that they shall be received by the other parties no later than 4
8 p.m. (EDT) on the appropriate dates listed in this subsection.

9 **CORRESPONDENCE WITH PLAINTIFF**

10 **XVI. IT IS FURTHER ORDERED** that, for the purposes of this Order,
11 all service on and correspondence to the FTC shall be addressed
12 to: Gregory A. Ashe, Federal Trade Commission, 600 Pennsylvania
13 Avenue, NW, Room NJ-2122, Washington, DC 20580. Telephone: (202)
14 326-3719; Facsimile: (202) 326-2558, or *Raymond McKown*

15 **SERVICE OF THIS ORDER** *Western Regional Office - Los Angeles*
10877 Wilshire Blvd., Suite 700
Los Angeles, CA 90024

16 **XVII. IT IS FURTHER ORDERED** that copies of this Order may be *Telephone*
17 served by facsimile transmission, ~~email transmission~~, personal or *(310) 824-432*
18 overnight delivery, or U.S. Mail, by agents and employees of the
19 FTC or any state or federal law enforcement agency or by private
20 process server, on (1) Defendants, (2) any financial institution,
21 entity or person that holds, controls, or maintains custody of
22 any account or asset of Defendants, or has held, controlled or
23 maintained custody of any account or asset of Defendants, or (3)
24 any other person or entity that may be subject to any provision
25 of this Order.

RETENTION OF JURISDICTION

XVIII. IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes.

SO ORDERED, this 28th day of September, 2004 at 9:30 a.m.

A. P. ...

UNITED STATES DISTRICT JUDGE

I hereby attest and certify on SEP 28 2004
that the foregoing document is a full, true
and correct copy of the original on file in
my office, and in my legal custody.

CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
...
DEPUTY CLERK

