

1 DEBRA A. VALENTINE  
General Counsel

2 THOMAS SYTA (CA Bar # 116286)  
3 BARBARA Y.K. CHUN (CA Bar # 186907)  
Federal Trade Commission  
4 10877 Wilshire Blvd., Suite 700  
Los Angeles, CA 90024  
5 (310) 824-4343  
(310) 824-4380 (FAX)

6 ATTORNEYS FOR PLAINTIFF

7  
8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA

10 \_\_\_\_\_ )  
11 **FEDERAL TRADE COMMISSION,** )  
12 **Plaintiff,** )  
13 **v.** )  
14 **CONSUMER REPAIR SERVICES,** )  
**INC., a Georgia Corporation;** )  
15 **MARK STEINBERG, individually** )  
**and as an officer of** )  
**CONSUMER REPAIR SERVICES,** )  
17 **INC.;** )  
18 **JAMES DEHART, individually** )  
**and as an officer of** )  
19 **CONSUMER REPAIR SERVICES,** )  
**INC.; and** )  
20 **FRANK CIARAVINO,** )  
**individually and as an agent** )  
**of CONSUMER REPAIR SERVICES,** )  
22 **INC.,** )  
23 **Defendants.** )  
24 \_\_\_\_\_ )

CV-

[PROPOSED]  
TEMPORARY RESTRAINING ORDER  
WITH ASSET FREEZE, APPOINTMENT  
OF A TEMPORARY RECEIVER, ORDER  
PERMITTING EXPEDITED  
DISCOVERY, AND ORDER TO SHOW  
CAUSE WHY A PRELIMINARY  
INJUNCTION SHOULD NOT ISSUE

25 Plaintiff Federal Trade Commission ("Commission" or "FTC"),  
26 pursuant to Section 13(b) and 19 of the Federal Trade Commission  
27 Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the  
28 Telemarketing and Consumer Fraud and Abuse Prevention Act

1 ("Telemarketing Act"), 15 U.S.C. §§ 6101-6108, filed a complaint  
2 for permanent injunction and other relief and applied *ex parte*  
3 for a Temporary Restraining Order with Asset Freeze, Appointment  
4 of a Temporary Receiver, an Order Permitting Expedited Discovery,  
5 and an Order to Show Cause Why a Preliminary Injunction Should  
6 Not Issue pursuant to Federal Rule of Civil Procedure 65.

7 **FINDINGS OF FACT**

8 The Court has considered the pleadings, declarations,  
9 exhibits, and memoranda filed in support of the Commission's  
10 application and makes the following findings of fact:

11 1. This Court has jurisdiction of the subject matter of  
12 this case, and there is good cause to believe it will have  
13 jurisdiction over all parties.

14 2. Venue lies properly within this Court.

15 3. There is good cause to believe that Defendants Consumer  
16 Repair Services, Inc., Mark Steinberg, James DeHart, and Frank  
17 Ciaravino have engaged in and are likely to engage in acts and  
18 practices that violate Section 5(a) of the FTC Act, 15 U.S.C.  
19 § 45(a), and the Telemarketing Sales Rule, 16 C.F.R. Part 310,  
20 and that the Commission is likely to prevail on the merits of  
21 this action.

22 4. There is good cause to believe that immediate and  
23 irreparable harm will result from the Defendants' ongoing  
24 violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and  
25 the Telemarketing Sales Rule, 16 C.F.R. Part 310, absent entry of  
26 this Temporary Restraining Order ("Order").

27 5. There is good cause to believe that immediate and  
28 irreparable damage to the Court's ability to grant effective

1 final relief for consumers in the form of monetary redress or  
2 restitution will occur from the sale, transfer, assignment or  
3 other disposition or concealment by Defendants of their assets or  
4 records unless Defendants are immediately restrained and enjoined  
5 by Order of this Court.

6 6. There is good cause for issuing this Order without  
7 prior notice to the Defendants of the Commission's application,  
8 pursuant to Federal Rule of Civil Procedure 65(b) and Local Rule  
9 7.18.2.

10 7. Good cause exists for appointing a temporary receiver  
11 for Consumer Repair Services, Inc.

12 8. Weighing the equities and considering the Commission's  
13 likelihood of success in its causes of action, this Temporary  
14 Restraining Order is in the public interest.

15 **ORDER**

16 **Definitions**

17 A. "Defendants" means Defendants Consumer Repair Services,  
18 Inc., Mark Steinberg, James DeHart, and Frank Ciaravino, and each  
19 of them by whatever name each might be known, as well as their  
20 successors, assigns, officers, agents, independent contractors,  
21 salespersons, directors, servants, employees, attorneys,  
22 corporations, subsidiaries, affiliates, all other persons or  
23 entities directly or indirectly under the control of any of them,  
24 and all other persons or entities in active concert or  
25 participation with any of them who receive actual notice of this  
26 Order by personal service or otherwise, whether acting directly  
27 or through any corporation, subsidiary, division or other device.  
28 "Defendants" shall also include any formal or informal

1 predecessor association of any of the Named Defendants (as  
2 defined below).

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

11 C. "Named Defendants" means Consumer Repair Services,  
12 Inc., Mark Steinberg, James DeHart, and Frank Ciaravino, and each  
13 of them, by whatever names each might be known.

14 D. "Receivership Defendant" means Consumer Repair  
15 Services, Inc. and any formal or informal predecessor association  
16 of any of the Named Defendants.

17 **I. PROHIBITED BUSINESS ACTIVITIES**

18 **IT IS THEREFORE ORDERED** that Defendants are hereby  
19 temporarily restrained and enjoined from:

20 A. Falsely representing, expressly or by implication, that  
21 Defendants are calling from Visa, MasterCard, or the consumer's  
22 credit card issuer;

23 B. Falsely representing, expressly or by implication, that  
24 if consumers do not purchase Defendants' services, consumers will  
25 be held fully liable for any unauthorized charges made to their  
26 credit card accounts;

27 C. Falsely representing, expressly or by implication, that  
28 consumers have purchased or agreed to purchase goods or services

1 from Defendants, and therefore owe money to Defendants;

2 D. Failing to return, credit or otherwise refund the  
3 purchase price to any consumers who sought a refund and have  
4 satisfied the material terms of Defendant's refund policy.

5 **II. ASSET FREEZE**

6 **IT IS FURTHER ORDERED** that Defendants are hereby temporarily  
7 restrained and enjoined from:

8 A. Except as otherwise provided herein, transferring,  
9 converting, encumbering, selling, concealing, dissipating,  
10 disbursing, assigning, spending, withdrawing, or otherwise  
11 disposing of any funds, property, accounts, contracts, shares of  
12 stock, or other assets (collectively "assets"), wherever located,  
13 that are (1) owned or controlled by Defendants in whole or in  
14 part; or (2) in the actual or constructive possession of  
15 Defendants; or (3) owned, controlled by, or in the actual or  
16 constructive possession of any corporation, partnership, or other  
17 entity directly or indirectly owned, managed, or controlled by,  
18 or under common control with Named Defendants, including but not  
19 limited to, DeBerg Management, Inc., a Georgia corporation,  
20 Select Properties Group, LLC, a Georgia LLC, Cherry Blossom  
21 Promotions, Inc., a Georgia corporation, and Manhattan West  
22 Marketing, Inc., a Nevada corporation. This Section shall  
23 include, but not be limited to, any assets held for, on behalf  
24 of, for the benefit of, or by Named Defendants, or their  
25 affiliates or subsidiaries, at any bank or savings and loan  
26 institution, or with any broker, dealer, escrow agent, title  
27 company, commodity trading company, precious metal dealer, or  
28 other financial institution or depository of any kind, including

1 without limitation any assets at:

2 First Union National Bank (including account number  
3 2000006557979 in the name of Consumer Repair Services,  
4 Inc.);

5 First National Bank of Newton County (including account  
6 numbers 090492 in the name of DeBerg Management, Inc. and  
7 087432 in the name of Consumer Repair Services, Inc.);

8 Wells Fargo Bank (including account number 0488648270 in the  
9 name of Manhattan West Marketing, Inc.); or

10 First National Bank of Metropolis;

11 B. Opening or causing to be opened any safe deposit boxes  
12 or storage facilities titled in the name of any Named Defendants  
13 or subject to access by Named Defendants or under their control,  
14 without providing the Commission prior notice and an opportunity  
15 to inspect the contents in order to determine whether they  
16 contain assets covered by this Section.

17 Provided that this Section shall be construed to apply to assets  
18 that Defendants acquire following entry of this Order only if  
19 such assets are derived from the operation of any activity  
20 prohibited by this Order or any other illegal activity.

### 21 **III. FINANCIAL REPORTS**

22 **IT IS FURTHER ORDERED** that Named Defendants shall within  
23 three business days from service of this Order complete and  
24 deliver to the Commission the financial disclosure forms as  
25 follows:

26 A. Any corporate Defendant shall complete and deliver to  
27 counsel for the Commission either the "Financial Statement of  
28 Corporate Defendant" that is attached to this Order as Attachment

1 1, provided that any corporate Defendant need not separately  
2 complete this form if it is provided by an individual Defendant  
3 pursuant to Part B of this Section;

4 B. Any individual Defendants shall, for himself,

5 1. complete and deliver to counsel for the Commission  
6 the "Financial Statement of Individual Defendant" that  
7 is attached to this Order as Attachment 2, and

8 2. for each business entity he owns, controls,  
9 operates, or of which he is an officer, and for each  
10 trust of which he or she is a trustee, complete and  
11 deliver to counsel for the Commission the "Financial  
12 Statement of Corporate Defendant" that is attached to  
13 this Order as Attachment 1.

14 **IV. FOREIGN ASSETS**

15 **IT IS FURTHER ORDERED** that, within three business days  
16 following service of this Order, Named Defendants shall:

17 A. Provide counsel for the Commission with a full  
18 accounting of all funds, documents and assets outside of the  
19 territory of the United States which are held either: (1) by  
20 them, (2) for their benefit, or (3) under their direct or  
21 indirect control, jointly or singly;

22 B. Take such steps as are necessary to repatriate to the  
23 territory of the United States of America all assets held: (1)  
24 by them, (2) for their benefit, or (3) under their direct or  
25 indirect control, jointly or singly;

26 C. The same business day as any repatriation under Section  
27 IV.B. above, (1) notify counsel for the Commission of the name  
28 and location of the financial institution or other entity that is

1 the recipient of such funds, documents, or assets; and (2) serve  
2 this Order on any such financial institution or other entity;

3 D. Thereafter hold and retain all repatriated funds,  
4 documents and assets within their control and otherwise prevent  
5 any transfer, disposition, or dissipation whatsoever of any such  
6 assets or funds; and

7 E. Provide the Commission access to Named Defendants'  
8 records and documents held by financial institutions outside the  
9 territory of the United States by signing the Consent to Release  
10 of Financial Records attached to this Order as Attachment 3.

11 **V. APPOINTMENT OF TEMPORARY RECEIVER**

12 **IT IS FURTHER ORDERED** that Susan I. Montgomery is appointed  
13 temporary receiver ("Receiver") for Consumer Repair Services,  
14 Inc. and any of its affiliates or subsidiaries that the  
15 Receivership Defendant controls, with the full power of an equity  
16 receiver. The Receiver shall be the agent of this Court and  
17 solely the agent of this Court in acting as Receiver under this  
18 Order. The Receiver shall be accountable directly to this Court.  
19 The Receiver shall comply with all Local Rules of this Court  
20 governing receivers, including Local Rule 25.

21 **VI. RECEIVERSHIP DUTIES**

22 **IT IS FURTHER ORDERED** that the Receiver is directed and  
23 authorized to accomplish the following:

24 A. Assume full control of the Receivership Defendant by  
25 removing, as the Receiver deems necessary or advisable, any  
26 director, officer, independent contractor, employee, or agent of  
27 the Receivership Defendant, including any Defendant, from control  
28 of, management of, or participation in, the affairs of the



1 Receivership Defendant;

2       B. Take exclusive custody, control and possession of all  
3 assets and documents of, or in the possession, custody or under  
4 the control of, the Receivership Defendant, wherever situated.  
5 The Receiver shall have full power to divert mail and to sue for,  
6 collect, receive, take in possession, hold, and manage all assets  
7 and documents of the Receivership Defendant and other persons or  
8 entities whose interests are now held by or under the direction,  
9 possession, custody, or control of the Receivership Defendant.  
10 Provided, however, that the Receiver shall not attempt to collect  
11 any amount from a consumer if the Receiver believes the consumer  
12 was a victim of the unfair or deceptive acts or practices alleged  
13 in the Complaint in this matter. Provided further that the  
14 Receiver shall immediately return to consumers without further  
15 court order any funds that are identifiable as received from  
16 specific consumers following the Receiver's appointment or that  
17 are received at the Receivership Defendant's premises or  
18 mailboxes or forwarded to the Receiver after entry of this Order  
19 and that were, based upon the Receiver's good faith  
20 determination, procured by use of the unfair or deceptive acts or  
21 practices alleged in the Complaint in this matter. Likewise,  
22 upon the Receiver's appointment, the Receiver shall take all  
23 reasonable steps to halt immediately the debit of consumer bank  
24 accounts or charges to consumer credit cards that in the  
25 Receiver's good faith determination were procured by use of the  
26 unfair or deceptive acts or practices alleged in the Complaint in  
27 this matter;

28       C. Take all steps necessary to secure the business

1 premises operating on behalf of or for the benefit of the  
2 Receivership Defendant, including but not limited to all such  
3 premises located at 1131 and 1133 West Avenue SW, Conyers,  
4 Georgia and 6244 Laurel Canyon Blvd., North Hollywood,  
5 California. Such steps may include, but are not limited to, the  
6 following as the Receiver deems necessary or advisable: (1)  
7 serving and filing this Order; (2) completing a written inventory  
8 of all receivership assets; (3) obtaining pertinent information  
9 from all employees and other agents of the Receivership  
10 Defendant, including but not limited to, the name, home address,  
11 social security number, job description, method of compensation,  
12 and all accrued and unpaid commissions and compensation of each  
13 employee or agent; (4) video taping or photographing all portions  
14 of the location; (5) securing the location by changing the locks  
15 and disconnecting any computer modems or other means of access to  
16 the computer or other records maintained at that location; (6)  
17 requiring any persons present on the premises at the time this  
18 Order is served to leave the premises, to provide the Receiver  
19 with proof of identification, or to demonstrate to the  
20 satisfaction of the Receiver that such persons are not removing  
21 from the premises documents or assets of the Receivership  
22 Defendant; and (7) regardless of any other provision of this  
23 Order, the Receiver shall determine what constitutes reasonable  
24 access by other persons or entities to the business premises of  
25 the Receivership Defendant; and

26 D. Conserve, hold, and manage all receivership assets, and  
27 perform all acts necessary or advisable to preserve the value of  
28 those assets, in order to prevent any irreparable loss, damage,

1 or injury to consumers or to creditors of the Receivership  
2 Defendant, including, but not limited to, obtaining an accounting  
3 of the assets and preventing transfer, withdrawal, or  
4 misapplication of assets;

5 E. Enter into contracts and purchase insurance as  
6 advisable or necessary;

7 F. Prevent the inequitable distribution of assets to  
8 determine, adjust, and protect the interests of consumers and  
9 creditors who have transacted business with the Receivership  
10 Defendant;

11 G. Manage and administer the business of the Receivership  
12 Defendant until further order of this Court by performing all  
13 incidental acts that the Receiver deems to be advisable or  
14 necessary, which includes retaining, hiring, or dismissing any  
15 employees, independent contractors, or agents;

16 H. Choose, engage, and employ attorneys, accountants,  
17 appraisers, and other independent contractors and technical  
18 specialists, as the Receiver deems advisable or necessary in the  
19 performance of duties and responsibilities under the authority  
20 granted by this Order;

21 I. Make payments and disbursements from the receivership  
22 estate that are necessary or advisable for carrying out the  
23 directions of, or exercising the authority granted by, this  
24 Order. The Receiver shall apply to the Court for prior approval  
25 of any payment of any debt or obligation incurred by the  
26 Receivership Defendant prior to the date of entry of this Order,  
27 except payments that the Receiver deems necessary or advisable to  
28 secure assets of the Receivership Defendant, such as rental

1 payments;

2 J. Determine and implement the manner in which the  
3 Receivership Defendant will comply with, and prevent violations  
4 of, this Order and all other applicable laws, including but not  
5 limited to, revising sales materials and implementing monitoring  
6 procedures;

7 K. Institute, compromise, adjust, appear in, intervene in,  
8 or become party to such actions or proceedings in state, federal  
9 or foreign courts that the Receiver deems necessary and advisable  
10 to preserve or recover the assets of the Receivership Defendant  
11 or that the Receiver deems necessary and advisable to carry out  
12 the Receiver's mandate under this Order;

13 L. Defend, compromise, adjust, or otherwise dispose of any  
14 or all actions or proceedings instituted in the past or in the  
15 future against the Receiver in his or her role as Receiver, or  
16 against the Receivership Defendant that the Receiver deems  
17 necessary and advisable to preserve the assets of the  
18 Receivership Defendant or that the Receiver deems necessary and  
19 advisable to carry out the Receiver's mandate under this Order;

20 M. Continue and conduct the business of the Receivership  
21 Defendant in such a manner, to such extent, and for such duration  
22 as the Receiver may in good faith deem to be necessary or  
23 appropriate to operate the business profitably and lawfully, if  
24 at all; provided, however, that the continuation and conduct of  
25 the business shall be conditioned upon the Receiver's good faith  
26 determination that the business can be lawfully operated at a  
27 profit using the assets of the receivership estate;

28 N. Issue subpoenas to obtain documents and records

1 pertaining to the receivership, and conduct discovery in this  
2 action on behalf of the receivership estate;

3 O. Open one or more bank accounts in the Central District  
4 of California as designated depositories for funds of the  
5 Receivership Defendant. The Receiver shall deposit all funds of  
6 the Receivership Defendant in such a designated account and shall  
7 make all payments and disbursements from the receivership estate  
8 from such an account;

9 P. Maintain accurate records of all receipts and  
10 expenditures that he or she makes as Receiver; and

11 Q. Cooperate with reasonable requests for information or  
12 assistance from any state or federal law enforcement agency.

13 **VII. COOPERATION WITH THE RECEIVER**

14 **IT IS FURTHER ORDERED** that Defendants shall fully cooperate  
15 with and assist the Receiver. Defendants' cooperation and  
16 assistance shall include, but not be limited to, providing any  
17 information to the Receiver that the Receiver deems necessary to  
18 exercising the authority and discharging the responsibilities of  
19 the Receiver under this Order; providing any password required to  
20 access any computer, electronic file, or telephonic data in any  
21 medium; or advising all persons who owe money to the Receivership  
22 Defendant that all debts should be paid directly to the Receiver.  
23 Defendants are hereby restrained and enjoined from directly or  
24 indirectly:

25 A. Transacting any of the business of the Receivership  
26 Defendant;

27 B. Destroying, secreting, defacing, transferring, or  
28 otherwise altering or disposing of any documents of the

1 Receivership Defendant, including but not limited to, books,  
2 records, accounts, writings, drawings, graphs, charts,  
3 photographs, audio and video recordings, computer records, and  
4 other data compilations, electronically-stored records, or any  
5 other papers of any kind or nature;

6 C. Transferring, receiving, altering, selling,  
7 encumbering, pledging, assigning, liquidating, or otherwise  
8 disposing of any assets owned, controlled, or in the possession  
9 or custody of, or in which an interest is held or claimed by, the  
10 Receivership Defendant, or the Receiver;

11 D. Excusing debts owed to the Receivership Defendant;

12 E. Failing to notify the Receiver of any asset, including  
13 accounts, of the Receivership Defendant held in any name other  
14 than the name of the Receivership Defendant, or by any person or  
15 entity other than the Receivership Defendant, or failing to  
16 provide any assistance or information requested by the Receiver  
17 in connection with obtaining possession, custody, or control of  
18 such assets;

19 F. Doing any act or refraining from any act whatsoever to  
20 interfere with the Receiver's taking custody, control,  
21 possession, or managing of the assets or documents subject to  
22 this receivership; or to harass or interfere with the Receiver in  
23 any way; or to interfere in any manner with the exclusive  
24 jurisdiction of this Court over the assets or documents of the  
25 Receivership Defendant; or to refuse to cooperate with the  
26 Receiver or the Receiver's duly authorized agents in the exercise  
27 of their duties or authority under any Order of this Court; and

28 G. Filing, or causing to be filed, any petition on behalf

1 of the Receivership Defendant for relief under the United States  
2 Bankruptcy Code, 11 U.S.C. et seq., without prior permission from  
3 this Court.

4 **VIII. DELIVERY OF RECEIVERSHIP PROPERTY**

5 **IT IS FURTHER ORDERED** that:

6 A. Immediately upon service of this Order upon them, or  
7 within such period as may be permitted by the Receiver,  
8 Defendants or any other person or entity shall transfer or  
9 deliver possession, custody, and control of the following to the  
10 Receiver:

- 11 1. All assets of the Receivership Defendant;
- 12 2. All documents of the Receivership Defendant,  
13 including but not limited to, books and records of  
14 accounts, all financial and accounting records  
15 including work papers, balance sheets, income  
16 statements, bank records (including monthly statements,  
17 canceled checks, records of wire transfers, and check  
18 registers), client lists, independent sales room lists,  
19 title documents, and other papers;
- 20 3. All assets belonging to members of the public now  
21 held by the Receivership Defendant; and
- 22 4. All keys and codes necessary to gain or to secure  
23 access to any assets or documents of the Receivership  
24 Defendant, including but not limited to, access to  
25 business premises operating on behalf of or for the  
26 benefit of the Receivership Defendant, means of  
27 communication, accounts, computer systems, or other  
28 property.





1 assets, documents, or the Receiver or the Receiver's duly  
2 authorized agents acting in their capacities as such, including  
3 but not limited to, the following actions:

4 1. Commencing, prosecuting, continuing, entering, or  
5 enforcing any suit or proceeding, except that such  
6 actions may be filed to toll any applicable statute of  
7 limitations;

8 2. Accelerating the due date of any obligation or  
9 claimed obligation; filing, creating, perfecting, or  
10 enforcing any lien; enforcing any right of setoff;  
11 taking or attempting to take possession, custody or  
12 control of any asset; attempting to foreclose, forfeit,  
13 alter, or terminate any interest in any asset, whether  
14 such acts are part of a judicial proceeding, are acts  
15 of self-help, or otherwise;

16 3. Executing, issuing, serving, or causing the  
17 execution, issuance or service of, any legal process,  
18 including but not limited to attachments, garnishments,  
19 subpoenas, writs of replevin, writs of execution, or  
20 any other form of process whether specified in this  
21 Order or not; and

22 4. Doing any act or thing whatsoever to interfere  
23 with the Receiver taking custody, control, possession,  
24 or management of the assets or documents subject to  
25 this receivership, or to harass or interfere with the  
26 Receiver in any way, or to interfere in any manner with  
27 the exclusive jurisdiction of this Court over the  
28 assets or documents of the Receivership Defendant.

1 B. This Section does not stay:

2 1. The commencement or continuation of a criminal  
3 action or proceeding;

4 2. The commencement or continuation of an action or  
5 proceeding by a governmental unit to enforce such  
6 governmental unit's police or regulatory power;

7 3. The enforcement of a judgment, other than a money  
8 judgment, obtained in an action or proceeding by a  
9 governmental unit to enforce such governmental unit's  
10 police or regulatory power;

11 4. The commencement of any action by the Secretary of  
12 the United States Department of Housing and Urban  
13 Development to foreclose a mortgage or deed of trust in  
14 any case in which the mortgage or deed of trust held by  
15 the Secretary is insured or was formerly insured under  
16 the National Housing Act and covers property, or  
17 combinations of property, consisting of five or more  
18 living units; and

19 5. The issuance to the Receivership Defendant of a  
20 notice of tax deficiency.

21 C. Except as otherwise provided in this Order, all persons  
22 and entities in need of documentation from the Receiver shall in  
23 all instances first attempt to secure such information by  
24 submitting a formal written request to the Receiver, and, if such  
25 request has not been responded to within 30 days of receipt by  
26 the Receiver, any such person or entity may thereafter seek an  
27 Order of this Court with regard to the relief requested.

28 **XI. COMPENSATION OF TEMPORARY RECEIVER**

1           **IT IS FURTHER ORDERED** that the Receiver and all personnel  
2 hired by the Receiver as herein authorized, including counsel to  
3 the Receiver and accountants, are entitled to reasonable  
4 compensation for the performance of duties pursuant to this Order  
5 and for the cost of actual out-of-pocket expenses incurred by  
6 them, from the assets now held by or in the possession or control  
7 of or which may be received by the Receivership Defendant. The  
8 Receiver shall file with the Court and serve on the parties  
9 periodic requests for the payment of such reasonable  
10 compensation, with the first such request filed no more than 60  
11 days after the date of this Order. The Receiver shall not  
12 increase the hourly rates used as the bases for such fee  
13 applications without prior approval of the Court.

14   **XII. RECEIVER'S BOND**

15           **IT IS FURTHER ORDERED** that the Receiver shall file with the  
16 Clerk of this Court a bond in the sum of \$10,000.00 with sureties  
17 to be approved by the Court, conditioned that the Receiver will  
18 well and truly perform the duties of the office and abide by and  
19 perform all acts the Court directs.

20   **XIII. PRESERVATION OF RECORDS**

21           **IT IS FURTHER ORDERED** that Defendants are hereby temporarily  
22 restrained and enjoined from destroying, erasing, mutilating,  
23 concealing, altering, transferring or otherwise disposing of, in  
24 any manner, directly or indirectly, any documents that relate to  
25 the business practices or business or personal finances of Named  
26 Defendants or of DeBerg Management, Inc., Cherry Blossom  
27 Promotions, Inc., Select Properties Group, LLC, Manhattan West  
28 Marketing, Inc., and any business or entity owned or controlled,

1 in whole or in part, directly or indirectly, by Named Defendants.

2 **XIV. RECORD KEEPING/BUSINESS OPERATIONS**

3 **IT IS FURTHER ORDERED** that Named Defendants are each hereby  
4 temporarily restrained and enjoined from:

5 A. Failing to make, keep, and provide to the Commission  
6 upon request by counsel for the Commission, an accurate  
7 accounting for themselves and for DeBerg Management, Inc., Cherry  
8 Blossom Promotions, Inc., Select Properties Group, LLC, Manhattan  
9 West Marketing, Inc., and any business or entity owned or  
10 controlled, in whole or in part, directly or indirectly, by them,  
11 which accounting shall include the creation and retention of  
12 documents that, in reasonable detail, accurately, fairly, and  
13 completely reflect all assets (including, but not limited to,  
14 loans, gifts and revenue) received, disbursements, transactions,  
15 and expenditures of money, beginning immediately upon service or  
16 actual notice of this Order; and

17 B. Creating, operating, or exercising any control over any  
18 business entity, including any partnership, limited partnership,  
19 joint venture, sole proprietorship or corporation, without first  
20 serving on counsel for the Commission a written statement  
21 disclosing: (1) the name of the business entity; (2) the address  
22 and telephone number of the business entity; (3) the names of the  
23 business entity's officers, directors, principals, managers and  
24 employees; and (4) a detailed description of the business  
25 entity's intended activities.

26 **XV. REQUIRED DISTRIBUTION OF ORDER BY DEFENDANTS**

27 **IT IS FURTHER ORDERED** that Named Defendants shall  
28 immediately provide a copy of this Order to each affiliate,

1 partner, division, sales entity, successor, assign, employee,  
2 independent contractor, agent, attorney, and representative, of  
3 Named Defendants, including every independent telemarketing sales  
4 room and every billing agent in the sale of or billing for  
5 Defendants' services, and shall, within ten days from the date of  
6 entry of this Order, serve upon counsel for the Commission a  
7 sworn statement that they have complied with this provision of  
8 the Order, which statement shall include the names and street  
9 addresses of each such person or entity who received a copy of  
10 the Order.

11 **XVI. SERVICE OF ORDER**

12 **IT IS FURTHER ORDERED** that:

13 A. Plaintiff's agents or employees and the Receiver may  
14 serve this Order upon any financial institution, or other entity  
15 or person that may have possession, custody, control, or  
16 knowledge of any documents or assets of any Named Defendant, or  
17 any other entity or person that may be otherwise subject to any  
18 provision of this Order, by delivering a copy of the Order by any  
19 means, including facsimile transmission, to any office, branch or  
20 location; and

21 B. For purposes of service on anyone in possession of  
22 records, assets, property, or property rights, actual notice of  
23 this Order shall be deemed complete upon notification by any  
24 means, including but not limited to, notice from service by  
25 facsimile transmission of pages 1-28 of this Order, without  
26 Attachments 1-3.

27 **XVII. IMMEDIATE ACCESS TO DEFENDANTS' BUSINESS RECORDS**

28 **IT IS FURTHER ORDERED** that the Commission's representatives,

1 agents, and assistants, as well as Named Defendants and their  
2 representatives shall have reasonable access to any premises  
3 operating on behalf of or for the benefit of the Receivership  
4 Defendant, including without limitation, 1133 West Ave. SW,  
5 Conyers, Georgia, 1131 West Ave. SW, Conyers, Georgia, and 6244  
6 Laurel Canyon Blvd., North Hollywood, California. The purpose of  
7 this access shall be to inspect and copy any and all material  
8 that may be relevant to this action, including without limitation  
9 documents, books, records, accounts, computer data, tapes, and  
10 any materials relating to any of the Defendants' assets.

11 **XVIII. CONSUMER CREDIT REPORTS**

12 **IT IS FURTHER ORDERED** that pursuant to Section 604(a)(1) of  
13 the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(1), any  
14 consumer reporting agency served with this Order shall promptly  
15 furnish consumer reports as requested concerning Defendants Mark  
16 Steinberg, James DeHart, and Frank Ciaravino to counsel for the  
17 Commission.

18 **XIX. RETENTION OF ASSETS AND RECORDS**

19 **IT IS FURTHER ORDERED** that, effective immediately upon  
20 notification of this Order, and pending determination of  
21 Plaintiff's request for a preliminary injunction, any bank,  
22 savings and loan institution, credit union, financial  
23 institution, brokerage house, escrow agent, money market or  
24 mutual fund, title company, commodity trading company, common  
25 carrier, storage company, trustee, commercial mail receiving  
26 agency, mail holding or forwarding company, or any other  
27 partnership, corporation, or legal entity, business entity, or  
28 person, including but not limited to, First Union National Bank,

1 First National Bank of Newton County, Wells Fargo Bank, and First  
2 National Bank of Metropolis, that holds, controls or maintains  
3 custody of any account or asset belonging to or titled in the  
4 name of any Named Defendant or belonging to or titled in the name  
5 of any corporation, partnership, or other entity directly or  
6 indirectly owned, managed, or controlled by, in whole or in part,  
7 any Named Defendant, or to which they are a signatory, or which  
8 is held on behalf of, or for the benefit of, any Named Defendant,  
9 individually or jointly, or that has held, controlled or  
10 maintained custody of any such account or asset at any time since  
11 January 1, 1999, shall:

12       A. Prohibit Named Defendants and their agents, servants,  
13 employees, attorneys, and all persons or entities directly or  
14 indirectly under their control, or in common control with them,  
15 from withdrawing, removing, assigning, transferring, pledging,  
16 encumbering, disbursing, dissipating, converting, selling, or  
17 otherwise disposing of any such account or asset except:

- 18             1. As directed by further order of the Court; or
- 19             2. By written agreement of the Commission and the
- 20             parties claiming an interest in such account or asset;

21       B. Maintain the status quo of any such account or asset  
22 and shall not withdraw, remove, assign, transfer, pledge,  
23 encumber, disburse, dissipate, convert, sell, or otherwise  
24 dispose of any such account or asset except:

- 25             1. As directed by further Order of the Court; or
- 26             2. By written agreement of the Commission and the
- 27             parties claiming an interest in such account or asset;

28       C. Deny Named Defendants and their agents, servants,

1 employees, attorneys, and all persons or entities directly or  
2 indirectly under their control or in common control with them,  
3 unless accompanied by counsel for the Federal Trade Commission,  
4 access to any safe deposit box that is:

5 1. Titled in the name of any Named Defendant or their  
6 affiliates or subsidiaries, either individually or  
7 jointly; or

8 2. Otherwise subject to access by any Named Defendant  
9 or their affiliates;

10 D. Provide counsel for the Commission within three  
11 business days of receiving a copy of this Order, a sworn  
12 statement setting forth:

13 1. The identification number of each such account or  
14 asset belonging to or titled in the name of any Named  
15 Defendant or to which any Named Defendant is a  
16 signatory, or which is held on behalf of, or for the  
17 benefit of, any Named Defendant;

18 2. The balance of each such account, or a description  
19 of the nature and value of such asset as of the time  
20 this Order is served, and if any asset valued at over  
21 \$1,000 has been removed or transferred within the last  
22 90 days, the date removed or transferred, the total  
23 funds removed or transferred, and the name of the  
24 person or entity to whom such account or other asset  
25 was remitted;

26 3. The identification of any safe deposit box that is  
27 titled in the name, individually or jointly, of any  
28 Named Defendant or is otherwise subject to access by





1 to this Section, shall be sufficient if made by facsimile or by  
2 overnight delivery; and

3 B. To demand the production of documents, on 72 hours'  
4 notice, from any person, whether or not a party, relating to the  
5 nature, status, or extent of Named Defendants' assets, or of  
6 their affiliates or subsidiaries; the location of documents  
7 reflecting the business transactions of Named Defendants; the  
8 whereabouts of Named Defendants; and the applicability of any  
9 evidentiary privileges to this action, provided that 24 hours'  
10 notice shall be deemed sufficient for the production of any such  
11 documents that are maintained or stored as electronic data.

12 **XXI. DEFENSE COUNSEL'S ATTORNEYS' FEES**

13 **IT IS FURTHER ORDERED** that if Defendants retain counsel, the  
14 Court will consider awarding attorneys' fees to Defendants'  
15 counsel only upon a showing of good cause upon written motion.  
16 In no event will the Court award more than a reasonable amount  
17 for attorneys' fees. The term "reasonable," however, shall not  
18 be solely determined in light of prevailing rates in the  
19 community for the work performed. Rather, the Court will also  
20 consider what is "reasonable" in light of the totality of the  
21 circumstances, including the likelihood of success, the amount of  
22 gross receipts from consumers, and the amount of frozen assets.  
23 Defendants' attorneys' fees shall not be paid until after gross  
24 receipts from consumers are ascertained.

25 **XXII. DURATION OF TEMPORARY RESTRAINING ORDER**

26 **IT IS FURTHER ORDERED** that the Temporary Restraining Order  
27 granted herein shall expire on \_\_\_\_\_, 2000, unless  
28 within such time, the Order is extended for an additional period

1 not to exceed ten days for good cause shown, or unless it is  
2 further extended with the consent of the parties.

3 **XXIII. ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION**

4 **IT IS FURTHER ORDERED**, pursuant to Federal Rule of Civil  
5 Procedure 65(b) and Local Rule 7.17, Defendants shall appear  
6 before this Court in Courtroom \_\_\_\_ of the \_\_\_\_\_ Federal  
7 Courthouse, located at \_\_\_\_\_ on the \_\_\_\_ day of  
8 \_\_\_\_\_, 2000, at \_\_\_\_\_ o'clock \_\_\_\_m., to show  
9 cause, if any, why this Court should not enter a preliminary  
10 injunction, pending final ruling on the Complaint against Named  
11 Defendants enjoining them from further violations of Section 5(a)  
12 of the FTC Act, 15 U.S.C. § 45(a), and the Telemarketing Sales  
13 Rule, 16 C.F.R. Part 310, and imposing such additional relief as  
14 may be appropriate.

15 **XXIV. SERVICE OF DOCUMENTS AND EVIDENCE**

16 **IT IS FURTHER ORDERED** that Named Defendants, in responding  
17 to this Court's Order to Show Cause, shall serve all memoranda,  
18 declarations and other evidence on which they intend to rely no  
19 later than 4:00 p.m. (PT) of the fourth business day prior to the  
20 preliminary injunction hearing set in this matter. Service on  
21 the Commission shall be performed by personal delivery to counsel  
22 for the Commission or their designated agent at: Federal Trade  
23 Commission, 10877 Wilshire Blvd., Suite 700, Los Angeles,  
24 California 90024. The Commission may serve and file a  
25 supplemental memorandum of points and authorities based on  
26 evidence discovered subsequent to the filing of its Complaint by  
27 no later than 4:00 p.m. (PT) of the fourth business day prior to  
28 the preliminary injunction hearing, and may serve and file a

1 reply to the Named Defendants's opposition by no later than 4:00  
2 p.m. on the day prior to the preliminary injunction hearing.  
3 Service shall be made by delivering a copy to the Named  
4 Defendants' business address identified on their opposition.

5 **XXV. NO EXAMINATION OF WITNESSES**

6 **IT IS FURTHER ORDERED** that there will be no direct  
7 examination of witnesses at the preliminary injunction hearing in  
8 this matter.

9 **XXVI. RETENTION OF JURISDICTION**

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

12  
13 No security is required of any agency of the United States  
14 for the issuance of a restraining order. Fed. R. Civ. P. 65(c).

15  
16 **SO ORDERED**, this \_\_\_\_\_ day of \_\_\_\_\_, 2000, at  
17 \_\_\_\_\_ .m.

18 \_\_\_\_\_  
19 United States District Judge

20 Presented By:

21 \_\_\_\_\_  
22 THOMAS SYTA  
23 BARBARA Y.K. CHUN  
24 Attorneys for Plaintiff  
25 FEDERAL TRADE COMMISSION  
26  
27  
28

1 **Attachments 1-3**

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