

02 FEB 11 PM 3:48
TEXAS-EASTERN

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

BY _____

Federal Trade Commission,

Plaintiff,

vs.

Certified Merchant Services, Ltd.,

Certified Merchant GP, Inc.,

Certified Merchant Services, Inc.,

Jonathan Frankel,

Craig Frankel, and

Randal A. Best,

Defendants.

Case No. 4:02cv44

TEMPORARY RESTRAINING
ORDER

Plaintiff, the Federal Trade Commission ("Commission" or "FTC"), having filed its Complaint for a permanent injunction and other relief in this matter, pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), and having applied *ex parte* for a temporary restraining order and for an order to show cause why a preliminary injunction should not be granted pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, and the Court having considered the complaint, declarations, exhibits, memoranda of law and any argument of counsel of the parties, finds that:

1. This Court has jurisdiction over the subject matter of this case, and there is good cause to believe it will have jurisdiction of all parties hereto, pursuant to 15 U.S.C. §§ 45(a) and 53(b), and 28 U.S.C. §§ 1331, 1337(a) and 1345. The Complaint states a claim upon which relief may be granted under Sections 5 and 13(b) of the FTC Act, 15 U.S.C. §§ 45 and 53(b).

2. There is good cause to believe that Defendants have engaged and are likely to engage in acts or practices constituting violations of Section 5(a) of the FTC Act, as amended, 15 U.S.C. § 45(a), and that the Commission is therefore likely to prevail on the merits of this action;

3. There is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief in the form of monetary restitution will occur from the sale, transfer, or other disposition or concealment by Defendants of their assets or corporate records, unless Defendants are immediately restrained and enjoined by Order of this Court. The evidence set forth in the Plaintiff's *Ex Parte* Application for Temporary Restraining Order, Preliminary Injunction and Other Equitable Relief, and in the accompanying declarations and exhibits, shows that the Defendants have engaged in a concerted course of illegal activity in connection with the advertising, promotion, offering, sale or servicing of Merchant Accounts to small businesses nationwide, in violation of Section 5 of the FTC Act, 15 U.S.C. § 45. Defendants' very business involves disguised unauthorized debiting from Merchants' bank accounts, and the alteration of Merchant Account documents apparently to justify those debits. Thus there is good cause to believe that the Defendants will attempt to conceal the scope of their deliberate illegal actions to avoid returning their ill-gotten gains to Merchants injured by their unlawful practices if not restrained from doing so by Order of this Court.

4. The Commission has not provided notice to the Defendants due to the likelihood that advanced notice of this action will lead to the very irreparable harm, including the dissipation of assets and destruction of evidence, that the Commission seeks to prevent through its application for an *ex parte* temporary restraining order. The Commission's request for this emergency *ex parte* relief is not the result of any lack of diligence on the part of the Commission, but is instead based on the nature of the Defendants' unlawful conduct. There is thus good cause for relieving the Commission of the duty to provide Defendants with prior notice of the Commission's application.

5. There is good cause for the Court to order an asset freeze and appoint a temporary receiver for the Corporate Defendants. The Corporate Defendants, while under the control of the Individual Defendants, have made misrepresentations and omissions, directly and through their agents, to those Merchants for whom they are supposed to be providing services. Further, the Defendants have engaged in a widespread effort to debit money from these Merchants without authorization. The Defendants use the ACH Network to debit the Merchants' accounts before they have notice of the offending debits, and alter their contract documents in an apparent effort to justify these debits. The Defendants have retained ill-gotten gains from these and other practices, and a receiver and asset freeze are reasonably necessary in order to preserve the possibility of complete and meaningful relief at the conclusion of this litigation.

6. Weighing the equities and considering the Commission's likelihood of ultimate success, a temporary restraining order with asset freeze and appointment of a temporary receiver are in the public interest; and

7. Fed. R. Civ. P. 65(c) does not require security of the United States or an officer or agency thereof.

Definitions

For the purpose of this temporary restraining order, the following definitions shall apply:

A. "ACH" means The Federal Reserve Bank's Automated Clearing House, a processing and delivery system for the distribution of electronic debits and credits among financial institutions.

B. "Acquiring Bank" means any bank which provides Merchant Accounts and has an agreement with Defendants relating to Merchant Accounts.

C. "Assets" means all real and personal property of Defendants, or held for the benefit of Defendants, including, but not limited to "goods," "instruments," "equipment," "fixtures," "general intangibles," "inventory," "checks," or "notes" (as these terms are defined in the Uniform Commercial Code), all cash, funds, real or personal property, accounts, contracts, shares of stock, lists of Merchant names, or other assets, or any interest therein, wherever located.

D. "Card processing" means goods and services relating to the acceptance, authorization, settlement, and payments for credit- or debit-card related sales.

E. "Check conversion processing" means any goods and services that may relate to truncated check debits, as that term is used in the ACH Rules and Operating Guidelines, published by the National Automated Clearing House Association.

F. "Clearly and conspicuously" means:

1. if presented in writing, the information shall be in a type size and location sufficient for an ordinary consumer to read and comprehend it, and shall

be disclosed in a manner that would be easily recognizable and understandable in language and syntax to an ordinary consumer. If the information is contained in a multi-page print document, the disclosure shall appear on the first page.

2. if presented orally, the information shall be disclosed in a volume, cadence and syntax sufficient for an ordinary consumer to hear and comprehend.
3. Nothing contrary to any information disclosed shall be imparted at or near the time of the disclosure. Further, a subsequent disclosure made orally or in writing only limits or qualifies a prior disclosure and cannot cure a false claim.

G. "Corporate Defendants" means Certified Merchant Services, Ltd., Certified Merchant GP, Inc., Certified Merchant Services, Certified Merchant Services, Inc., TMS, CMS, Inc., Transaction Merchant Services, Transaction Merchant Services.Com, and Electrocheck, and their subsidiaries, affiliates (including CJF Corporation, Inc.), divisions, successors, and assigns, whether acting directly or through any of their officers, directors, agents, servants, employees, joint ventures, or other devices, unless specified otherwise.

H. "Defendant" means any of the Individual Defendants and the Corporate Defendants. "Defendants" means all of the Individual Defendants and the Corporate Defendants, individually, collectively, or in any combination.

I. "Document" is equal in scope and synonymous in meaning to the usage of the term in Federal Rule Civil Procedure 34(a), and includes writings, drawings, charts, graphs,

photographs, audio and video recordings, computer records, and any other data compilations from which information can be obtained.

J. "In or affecting commerce" shall mean as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

K. "Individual Defendants" means Jonathan Frankel, Craig Frankel and Randal A. Best, individually, collectively, or in any combination, and whether acting directly or through any successor, assign, agent, entity, corporation, subsidiary, division, or other device, unless specified otherwise.

L. "Merchant" means a person, corporation or any other entity, who/which sells or leases goods or services, and acts as a consumer by purchasing, leasing or renting goods or services other than primarily for personal, family or household purposes. "Merchants" means any of the Merchants, individually, collectively, or in any combination.

M. "Merchant Account" means a bank account opened at an Acquiring Bank in the name of a Merchant for deposits of the proceeds of the Merchant's credit or debit card-related sales transactions. "Merchant Account" also includes, but is not limited to, goods, leases and services related to that account.

N. "Merchant Account Portfolio" means all Merchant Accounts from which Defendants derive any income.

O. "Relate to" means refer to, concern, regard, reflect, discuss, constitute, mention, pertain to, allude to or associate with. "Relating to" means referring to, concerning, regarding, reflecting, discussing, constituting, mentioning, pertaining to, alluding to or associated with.

P. "Temporary receiver" shall mean the temporary receiver appointed in Paragraph VIII of this Order. The term "temporary receiver" also includes any deputy receivers as may be named by the temporary receiver.

Conduct Prohibitions

I.

IT IS THEREFORE ORDERED that in connection with the advertising, promotion, offering or sale of goods or services in commerce, Defendants are hereby temporarily restrained and enjoined from altering or adding to, or assisting others in altering or adding to, without consent of Merchants, signed documents relating to Merchant Accounts, thereby producing changes to material terms, including but not limited to, increased rates and added fees and expenses.

II.

IT IS FURTHER ORDERED that, in connection with the provision of card processing or check conversion processing, Defendants are hereby temporarily restrained and enjoined from debiting, billing or receiving money, or assisting others in debiting, billing or receiving money:

- A. From Merchants before Defendants have provided such Merchants with promised card processing services or goods;
- B. From Merchants for check conversion processing before such Merchants have signed up for and activated such services; and
- C. From Merchants for services or goods provided after the Merchants have cancelled, orally or in writing.

III.

IT IS FURTHER ORDERED that in connection with the advertising, promotion, offering or sale of goods or services in commerce, Defendants are hereby temporarily restrained and enjoined from making or assisting others in making, directly or by implication, orally or in writing, any misrepresentation of material fact, including but not limited to:

- A. If Merchants purchase Defendants' services, such Merchants will save money each month on their card processing expenses;
- B. If Merchants are dissatisfied with any services or representations made by Defendants, Merchants can cancel or transfer to another card processor at any time with no further obligation;
- C. There is no monthly minimum fee or expense associated with Merchant Accounts or associated services offered by Defendants;
- D. There are no fees or expenses in addition to the discount rate and per-transaction fee agreed to by Merchants; and
- E. If Merchants are charged cancellation fees by prior card processors, Defendants will reimburse the Merchants.

IV.

IT IS FURTHER ORDERED that in connection with the advertising, promotion, offering or sale of goods or services in commerce, if Defendants represent directly or by implication that they charge any particular percentage or fee, then Defendants are hereby temporarily restrained and enjoined from failing to disclose clearly and conspicuously, directly or by implication, orally or in writing, any material fact relating to fees, including but not limited to:

- A. Whether, under what conditions, and in what amounts the Defendants charge or debit any monthly minimum fees;
- B. Whether, under what conditions, and in what amounts the Defendants charge or debit any semi-annual fees; and
- C. Whether, under what conditions, and in what amounts the Defendants charge or debit any cancellation fees.

Asset Freeze

V.

IT IS FURTHER ORDERED that Defendants are hereby temporarily restrained and enjoined from directly or indirectly:

- A. Transferring, liquidating, converting, encumbering, pledging, loaning, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, granting a lien or security interest in, or otherwise disposing of any assets, wherever located, including outside the United States, that are (1) owned or controlled, directly or indirectly, by any Defendant, in whole or in part, or held, in whole or in part for the benefit of any Defendant; (2) in the actual or constructive possession of any Defendant; or (3) owned, controlled by, or in the actual or constructive possession of any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by, or under common control with any Defendant, including but not limited to, any assets held by, for, or under the name of any Defendant at any bank, savings and loan institution, or correspondent bank, or

with any broker-dealer, escrow agent, title company, commodity trading company, precious metal dealer, or other financial institution or depository of any kind;

- B. Opening or causing to be opened any safe deposit boxes titled in the name of any Defendant, or subject to access by any Defendant;
- C. Incurring charges or cash advances on any credit card, debit card, or checking card issued in the name, singly or jointly, of any Defendant;
- D. Obtaining a personal or secured loan; and
- E. Incurring liens or encumbrances on real property, personal property or other assets in the name, singly or jointly of any Defendant.

Provided, however, that the temporary receiver may transfer funds from any account relating to the Corporate Defendants for the purposes of operating the Corporate Defendants' business or any portion thereof. The assets affected by this Paragraph V shall include: (1) all of the assets of the Defendants existing as of the date this Order was entered; and (2) for assets obtained after the date this Order was entered, only those assets that are derived from or otherwise related to the activities alleged in the Commission's complaint.

**Retention of Assets by Banks
and Other Third Parties**

VI.

IT IS FURTHER ORDERED, pending determination of the Commission's application for a preliminary injunction, that any financial or brokerage institution, escrow agent, title company, commodity trading company, business entity, trust, or person that holds, controls or maintains accounts or assets of, or on behalf of, any Defendant, or has held, controlled or

maintained any account or asset of, or on behalf of, any Defendant at any time since January 1, 1999, upon service with a copy of this Order, shall:

- A. Hold and retain within its control and prohibit the withdrawal, removal, assignment, transfer, pledge, hypothecation, encumbrance, disbursement, dissipation, conversion, sale, gift, or other disposal of any of the assets, funds, or other property held by or on behalf of any Defendant in any account maintained in the name of or for the benefit of any Defendant, in whole or in part, except:
1. as directed by further order of the Court;
 2. as directed in writing by the temporary receiver (regarding assets held in the name or for the benefit of the Corporate Defendants and determined by the temporary receiver to be necessary for the operation of the business or any portion thereof); or
 3. for specific transfers agreed to in writing by counsel for the Commission.
- B. Deny access to any safe deposit boxes that are either:
1. titled in the name, individually or jointly, of any Defendant; or
 2. otherwise subject to access by any Defendant.
- C. Provide counsel for the Commission, within five (5) business days of service of this Order, a statement setting forth:
1. the identification of each account or asset titled in the name, individually or jointly, of any Defendant, or held on behalf of, or for the benefit of, any Defendant;
 2. the balance of each such account, or a description and appraisal of the

value of such asset, as of (a) the close of business on the day on which this Order is served, and (b) the close of business on the day prior to which this Order is served;

3. the identification of any safe deposit box that is either titled in the name, individually or jointly, of any Defendant, or is otherwise subject to access by any Defendant; and
4. if an account, safe deposit box, or other asset has been closed or removed, the date closed or removed, the balance on such date, and the manner in which such account or asset was closed or removed.

D. The Commission and temporary receiver are granted leave, pursuant to Fed. R. Civ. P. 45, and notwithstanding Fed. R. Civ. P. 26, to subpoena documents immediately from any such financial institution, account custodian, or other aforementioned entity concerning the nature, location, status, and extent of Defendants' assets, and compliance with this Order. Subpoenas may be served by agents or attorneys of the Commission or temporary receiver and by agents of any process server retained by the Commission or temporary receiver.

Financial Statements

VII.

IT IS FURTHER ORDERED that each Defendant, within seventy-two (72) hours of service of this Order, prepare and deliver to the temporary receiver and counsel for Commission completed financial statements on the forms attached to this Order as Attachments A and B, for

themselves and for any entity or joint venture under which they conduct business, or of which they are an officer. The financial statements shall be accurate as of the date of service of this Order upon such Defendant.

Appointment of Temporary Receiver

VIII.

IT IS FURTHER ORDERED that Garrett Vogel, is appointed as temporary receiver, with the full power of an equity receiver, for the Corporate Defendants, and of all the funds, properties, premises (including 6101 West Plano Parkway, Plano, Texas 75093; P.O. Box 260077, Plano, Texas 75026; and P.O. Box 800697, Dallas, Texas 75380), accounts and other assets directly or indirectly owned, beneficially or otherwise, by the Corporate Defendants, with directions and authority to accomplish the following:

- A. Take full control of the Corporate Defendants, with the power to retain or remove, as the temporary receiver deems necessary or advisable, any officer, director, independent contractor, employee, or agent of these entities;
- B. Collect, marshal, and take custody, control and possession of all the funds, property, premises, accounts, mail and other assets of, or in the possession or under the control of the Corporate Defendants, wherever situated, the income and profits therefrom, and all sums of money now or hereafter due or owing to the Corporate Defendants, with full power to collect, receive and take possession of all goods, chattels, rights, credits, monies, effects, lands, leases, books and records, limited partnership records, work papers, and records of accounts, including computer-maintained information, contracts, financial records, monies

on hand in banks and other financial institutions, and other papers and documents of other individuals, partnerships or corporations whose interests are now held by or under the direction, possession, custody or control of the Corporate Defendants;

- C. Perform all acts necessary to conserve, hold, manage, and preserve the value of those assets, in order to prevent any irreparable loss, damage and injury to Merchants. Such acts may include, but not be limited to, continuing card processing and check conversion processing for Defendants' Merchant Account Portfolio, making payments to Merchants in Defendants' Merchant Account Portfolio, making payments to and receiving payments from Acquiring Banks, and providing customer service to Merchants;
- D. Enter into such agreements in connection with administration of the receivership, including, but not limited to: (1) the retention and employment of investigators, attorneys and accountants of the temporary receiver's choice, including, without limitation, members and employees of the temporary receiver's firm, to assist, advise, and represent the temporary receiver, and (2) the movement and storage of any equipment, furniture, documents, records, files or other physical property of the Corporate Defendants; provided, however, that nothing in this Order shall be deemed a "plan of reorganization" as that term is used in the Texas Revised Limited Partnership Act or any other statute;
- E. Institute, prosecute, compromise, adjust, intervene in or become party to such actions or proceedings in state, federal or foreign courts that the temporary receiver deems necessary and advisable to preserve the value of the properties of

the Corporate Defendants, or that the temporary receiver deems necessary and advisable to carry out the temporary receiver's mandate under this Order, and likewise to defend, compromise, or adjust or otherwise dispose of any or all actions or proceedings instituted against the Corporate Defendants, that the temporary receiver deems necessary and advisable to preserve the properties of the Corporate Defendants, or that the temporary receiver deems necessary and advisable to carry out the temporary receiver's mandate under this Order;

- F. Prepare and submit a Report to this Court and to the parties, not less than three (3) days prior to any scheduled Preliminary Injunction Hearing, describing the receivership defendants' business activities, including but not limited to, the scope of the Corporate Defendants' activities, assets (and the location of those assets), Merchant Account underwriting, relationships with sales persons, relationships with any companies that lease equipment; the role of any officers or directors of the Corporate Defendants; and the Corporate Defendants' revenues, including a breakdown of those revenues from: discount rates, authorization fees, monthly minimum fees, semi-annual fees, cancellation fees, batching fees and equipment leases.

For the purposes of this Order, delivery of documents or property to the temporary receiver shall be effected upon delivery to the temporary receiver at 6101 West Plano Parkway, Plano, Texas 75093.

Access to Business Premises and Records

IX.

IT IS FURTHER ORDERED that the temporary receiver and his representatives and agents shall have immediate access to any business premises of the Corporate Defendants, and immediate access to any other location where the Corporate Defendants have conducted business and where property or business records are likely to be located. Such locations specifically include, but are not limited to, the offices and facilities of the Corporate Defendants: 6101 West Plano Parkway, Plano, Texas 75093; P.O. Box 260077, Plano, Texas 75026; and P.O. Box 800697, Dallas, Texas 75380. The temporary receiver is authorized to employ the assistance of law enforcement officers as the temporary receiver deems necessary, to effect service and to implement peacefully the provisions of this Order. The purpose of access shall be to implement and carry out the temporary receiver's duties set forth in Paragraph VIII, and to inspect and inventory all of the Corporate Defendants' property, assets and documents and inspect and copy any documents relevant to this action. The temporary receiver and those specifically designated by the temporary receiver shall have the right to remove the above-listed documents from those premises in order that they may be inspected, inventoried, and copied. The temporary receiver at his/her discretion shall allow representatives of the Commission into any location(s) described in this Paragraph IX and shall allow Commission representatives to inspect, inventory and copy documents of the Corporate Defendants.

If any property, business records, documents, or computer files relating to the Corporate Defendants are located in the personal residence of an Individual Defendant or any other person served with this Order, then such Individual Defendant or person shall, within twenty-four (24)

hours of service of this Order:

- A. Produce to the temporary receiver all contracts, accounting data, written or electronic correspondence, advertisements, computer tapes, disks, or other computerized records, books, written or printed records, handwritten notes, telephone logs, telephone scripts, marketing materials, membership records and lists, refund records, receipts, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, limited partnership documents, copies of federal, state or local business or personal income or property tax returns, and other documents or records of any kind that relate to the Corporate Defendants' property or assets, or are relevant to this action;
- B. Produce to the temporary receiver all computers, computer passwords, and data in whatever form, used by such Defendant or person or any of such Defendant's agents, employees, officers, servants or those persons in active concert with him or her, in activities relating to the Corporate Defendants; and
- C. Produce to the temporary receiver a list of all agents, employees, officers, servants or those persons in active concert and participation with him or her, who have been associated or done business with the Corporate Defendants.

Accounting of Expenditures

X.

IT IS FURTHER ORDERED that:

- A. The Individual Defendants shall make and keep accurate records reflecting any and all funds or assets received from any source after the effective date of this

Order, and any and all expenditures after the effective date of this Order totaling \$500 or more, including without limitation expenditures for living and business expenses.

B. No later than three (3) days prior to the commencement of the hearing set forth in Paragraph XXIII the Individual Defendants shall provide the Commission and the temporary receiver with a true and accurate statement reflecting:

1. All funds or assets received from any source after the effective date of this Order, including without limitation funds received by payment, loan or gift;
2. The name, address, and telephone number of the source of all funds or assets received from any source after the effective date of this Order, including without limitation funds received by payment, loan, or gift;
3. The amount of each expenditure totaling \$500 or more; and
4. The name, address, and telephone number of each recipient of any expenditure totaling \$500 or more.

C. The reports described in this Paragraph shall be supplied to the Commission as provided in Paragraph XXII.

Delivery of Receivership Property

XI.

IT IS FURTHER ORDERED that, immediately upon service of this Order upon them, the Defendants, and any other person or entity served with a copy of this Order, shall forthwith or within such time as permitted by the temporary receiver in writing, deliver over to the temporary

receiver:

- A. Possession and custody of all funds, assets, property owned beneficially or otherwise, and all other assets, wherever situated, of the Corporate Defendants;
- B. Possession and custody of all books and records of accounts, all financial and accounting records, balance sheets, income statements, bank records (including monthly statements, canceled checks, records of wire transfers, records of ACH transactions, and check registers), limited partnership documents, client lists, title document, and other papers of the Corporate Defendants;
- C. Possession and custody of all funds and other assets belonging to members of the public now held by the Corporate Defendants;
- D. All keys, computer passwords, entry codes, combinations to locks required to open or gain access to any of the property or effects, and all monies in any bank deposited to the credit of the Corporate Defendants, wherever situated; and
- E. Information identifying the accounts, employees, properties, or other assets or obligations of the Corporate Defendants.

Repatriation of Foreign Assets and Documents

XII.

IT IS FURTHER ORDERED THAT within forty-eight (48) hours following service of this Order, Defendants shall:

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

- B. Transfer to the territory of the United States all assets and documents in foreign countries held either: (1) by them; (2) for their benefit; or (3) under their direct control, jointly or singly. In the case of any liquid assets held in foreign countries, each Defendant shall transfer such assets to one domestic account in Texas, titled in that Defendant's name and designated prior to any transfer by written notice to the temporary receiver and the Commission, such written notice to state the amount of the transfer and identify the domestic account by financial institution, title holder and account number;
- C. Hold and retain all such repatriated assets and documents, and prevent any transfer, disposition or dissipation whatsoever of any such assets or funds; and
- D. Provide the Commission and temporary receiver access to Defendants' records and documents held by financial institutions outside the territorial United States, by signing the Consent to Release of Financial Records attached to this Order as Attachment C.

Compensation of Temporary Receiver

XIII.

IT IS FURTHER ORDERED THAT the temporary receiver and all personnel hired by the temporary receiver as herein authorized, including counsel to the temporary receiver and accountants, are entitled to reasonable compensation for the performance of duties pursuant to this Order and for the cost of actual out-of-pocket expenses incurred by them, from the assets now held by or in the possession or control of, or which may be received by, the Defendants. The temporary receiver shall file with the Court and serve on the parties periodic requests for the

payment of such reasonable compensation, with the first such request due prior to sixty (60) days after the date of this Order. The temporary receiver shall not increase his fee rate billed to the Defendants without prior approval of the Court.

Temporary Receiver's Bond

XIV.

IT IS FURTHER ORDERED that the temporary receiver shall file with the Clerk of this Court a bond in the sum of \$ 2,000,000.00 with sureties to be approved by the Court, conditioned that the temporary receiver will well and truly perform the duties of the office and abide by and perform all acts the Court directs.

Stay of Other Actions

XV.

IT IS FURTHER ORDERED that except by leave of this Court, during the pendency of the receivership ordered herein, the Defendants and all customers, Merchants, principals, investors, creditors, stockholders, lessors, and other persons seeking to establish or enforce any claim, right or interest against or on behalf of the Defendants, and all others acting for or on behalf of such persons, including attorneys, trustees, agents, sheriffs, constables, marshals, and other officers and their deputies, and their respective attorneys, servants, agents and employees be and are hereby stayed from:

- A. Commencing, prosecuting, continuing or enforcing any suit or proceeding against the Corporate Defendants, except that such actions may be filed to toll any applicable statute of limitations;
- B. Commencing, prosecuting, continuing or entering any suit or proceeding in the

name or on behalf of the Corporate Defendants;

- C. Accelerating the due date of any obligation or claimed obligation, enforcing any lien upon, or taking or attempting to take possession of, or retaining possession of, any property of the Corporate Defendants, or any property claimed by any of them or attempting to foreclose, forfeit, alter or terminate any of the Corporate Defendants' interests in property, including, without limitation, the establishment, granting, or perfection of any security interest, whether such acts are part of a judicial proceeding or otherwise;
- D. Using self-help or executing or issuing, or causing the execution or issuance of any court attachment, subpoena, replevin, execution or other process for the purpose of impounding or taking possession of or interfering with, or creating or enforcing a lien upon any property, wheresoever located, owned by or in the possession of the Corporate Defendants, or the temporary receiver appointed pursuant to this Order or any agent appointed by the temporary receiver; and
- E. Doing any act or thing whatsoever to interfere with the temporary receiver taking control, possession or management of the property subject to this receivership, or to in any way interfere with the temporary receiver, or to harass or interfere with the duties of the temporary receiver; or to interfere in any manner with the exclusive jurisdiction of this Court over the property and assets of the Corporate Defendants.

Provided, however, nothing in this Paragraph XV shall prohibit any federal or state law enforcement or regulatory authority from commencing or prosecuting an action against the

Corporate Defendants.

Record Keeping

XVI.

IT IS FURTHER ORDERED that Defendants, or any persons served with a copy of this Order, are hereby temporarily restrained and enjoined from:

- A. Failing to create and maintain books, records, accounts, and data which, in reasonable detail, accurately, fairly, and completely reflect their incomes, disbursements, transactions, and use of monies, in any way relating to the receivership estate or relevant to this action; and
- B. Destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any contracts, accounting data, correspondence, advertisements, computer tapes, discs, or other computerized records, books, written or printed records, handwritten notes, telephone logs, telephone scripts receipt books, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, copies of federal, state or local business or personal income or property tax returns, and other documents or records of any kind that relate in any way to the receivership estate or are relevant to this action.

Consumer Credit Reports

XVII.

IT IS FURTHER ORDERED that pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(1), any consumer reporting agency may furnish a consumer

report concerning any of the Individual Defendants to the Commission or the temporary receiver.

Service of Preliminary Injunction Pleadings

XVIII.

IT IS FURTHER ORDERED that the Defendants shall serve on the Commission all memoranda, affidavits and other evidence on which the Defendants intend to rely at the preliminary injunction hearing set in this matter not later than 4:00 p.m. (Central time) on the third day prior to the hearing date.

Expedited Discovery

XIX.

IT IS FURTHER ORDERED that, prior to the preliminary injunction hearing or the expiration of this Temporary Restraining Order, whichever occurs first, any party may depose or subpoena any third party, pursuant to Fed. R. Civ. P. 30 and 45, upon twenty-four (24) hours' notice. Any deposition taken pursuant to this provision is in addition to, and not subject to, the presumptive limits on depositions set forth in Fed. R. Civ. P. 30 and/or 31. Subpoenas may be served by agents or attorneys of the Commission and by agents of any process server retained by any of the parties. Nothing in this provision shall affect the Court's ability to further modify the discovery rules as they apply in this matter.

Distribution of Order by Defendants

XX.

IT IS FURTHER ORDERED that Defendants shall immediately provide a copy of this Order to each affiliate, subsidiary, division, sales person, sales entity, successor, assign, officer, director, employee, independent contractor, agent, attorney, and representative of any Defendant,

and shall, within ten (10) days from the date of entry of this Order, provide the Commission with a sworn statement that Defendants have complied with this provision of the Order, which statement shall include the names and addresses of each such person or entity who received a copy of the Order.

Service of This Order

XXI.

IT IS FURTHER ORDERED that copies of this Order may be served by any means, including facsimile transmission, upon any financial institution or other entity or person that may have possession, custody, or control of any documents or assets of the Defendants, or that may be subject to any provision of this Order. Service upon any branch or office of any financial institution shall effect service upon the entire financial institution. Pursuant to Fed. R. Civ. P. 4(c)(2), this Order and the initial papers filed in this matter may be served by agents or attorneys of the Commission or temporary receiver and by agents of any process server retained by the Commission or temporary receiver.

Service upon Plaintiff

XXII.

IT IS FURTHER ORDERED, with regard to any correspondence, statements, or pleadings related to this Order, service on the Commission shall be performed by overnight delivery to the attention of Douglas V. Wolfe at the Federal Trade Commission, 600 Pennsylvania Avenue, NW, Room H-238, Washington, DC 20580, (202) 326-3113, or by facsimile transmission to (202) 326-3395.

Preliminary Injunction Hearing

XXIII.

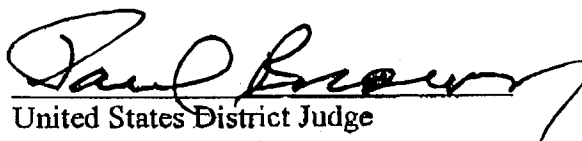
IT IS FURTHER ORDERED, pursuant to Fed. R. Civ. P. 65(b), that each of the Defendants shall appear before this Court on the 10th day of February, 2002 at 1:30 o'clock, p.m., at the United States Court House, 101 E. Pecan Street, Room _____, Sherman, Texas, to show cause, if there is any, why this Court should not enter a preliminary injunction, pending final ruling on the Complaint against Defendants, enjoining them from further violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), continuing the freeze of their assets, and imposing such additional relief as may be appropriate.

Retention of Jurisdiction

XXIV.

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

IT IS SO ORDERED, this 11 day of February 2002, at 3:45 P.M.


United States District Judge
Eastern District of Texas

ATTACHMENT A
Temporary Restraining Order
Federal Trade Commission vs. Certified Merchant Services, Ltd, et al

FEDERAL TRADE COMMISSION

FINANCIAL STATEMENT OF INDIVIDUAL DEFENDANT

Instructions:

1. Complete all items. Enter "None" or "N/A" ("Not Applicable") where appropriate. If you cannot fully answer a question, explain why.
2. "Dependents" include your live-in companion, dependent children, or any other person, whom you or your spouse (or your children's other parent) claimed or could have claimed as a dependent for tax purposes at any time during the past five years.
3. "Assets" and "Liabilities" include ALL assets and liabilities, located within the United States or elsewhere, whether held individually or jointly.
4. Attach continuation pages as needed. On the financial statement, state next to the Item number that the Item is being continued. On the continuation page(s), identify the Item number(s) being continued.
5. Type or print legibly.
6. Initial each page in the space provided in the lower right corner.
7. Sign and date the completed financial statement on the last page.

Penalty for False Information:

Federal law provides that any person may be imprisoned for not more than five years, fined, or both, if such person:

(1) "in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry" (18 U.S.C. § 1001);

(2) "in any . . . statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true" (18 U.S.C. § 1621);
or

(3) "in any (. . . statement under penalty of perjury as permitted under section 1746 of title 28, United States Code) in any proceeding before or ancillary to any court or grand jury of the United States knowingly makes any false material declaration or makes or uses any other information . . . knowing the same to contain any false material declaration" (18 U.S.C. § 1623).

For a felony conviction under the provisions cited above, federal law provides that the fine may be not more than the greater of (i) \$250,000 for an individual or \$500,000 for a corporation, or (ii) if the felony results in pecuniary gain to any person or pecuniary loss to any person other than the defendant, the greater of twice the gross gain or twice the gross loss. 18 U.S.C. § 3571.

BACKGROUND INFORMATION

Item 1. Information About You

Your Full Name _____ Social Security No. _____

Place of Birth _____ Date of Birth _____ Drivers License No. _____

Current Address _____ From (Date) _____

Rent or Own? _____ Telephone No. _____ Facsimile No. _____

E-Mail Address _____ Internet Home Page _____

Previous Addresses for past five years:

Address _____ Rent or Own? _____ From/Until _____

Address _____ Rent or Own? _____ From/Until _____

Identify any other name(s) and/or social security number(s) you have used, and the time period(s) during which they were used _____

Item 2. Information About Your Spouse or Live-In Companion

Spouse/Companion's Name _____ Social Security No. _____

Place of Birth _____ Date of Birth _____

Identify any other name(s) and/or social security number(s) your spouse/companion has used, and the time period(s) during which they were used _____

Address (if different from yours) _____

From (Date) _____ Rent or Own? _____ Telephone No. _____

Employer's Name and Address _____

Job Title _____ Years in Present Job _____ Annual Gross Salary/Wages \$ _____

Item 3. Information About Your Previous Spouse

Previous Spouse's Name & Address _____

_____ Social Security No. _____ Date of Birth _____

Item 4. Contact Information

Name & Address of Nearest Living Relative or Friend _____
_____ Telephone No. _____

Item 5. Information About Dependents Who Live With You

►Name _____ Date of Birth _____
Relationship _____ Social Security No. _____
►Name _____ Date of Birth _____
Relationship _____ Social Security No. _____
►Name _____ Date of Birth _____
Relationship _____ Social Security No. _____

Item 6. Information About Dependents Who Do Not Live With You

►Name & Address _____
Date of Birth _____ Relationship _____ Social Security No. _____
►Name Address _____
Date of Birth _____ Relationship _____ Social Security No. _____
►Name & Address _____
Date of Birth _____ Relationship _____ Social Security No. _____

Item 7. Employment Information

Provide the following information for this year-to-date and for each of the previous five full years, for each company of which you were a director, officer, employee, agent, contractor, participant or consultant at any time during that period. "Income" includes, but is not limited to, any salary, commissions, draws, consulting fees, loans, loan payments, dividends, royalties or other benefits for which you did not pay (e.g., health insurance premiums, automobile lease or loan payments) received by you or anyone else on your behalf.

►Company Name & Address _____
Dates Employed: From (Month/Year) _____ To (Month/Year) _____
Positions Held with Beginning and Ending Dates _____

Item 7. continued

Income Received: This year-to-date: \$ _____ : \$ _____
20____ : \$ _____ : \$ _____
_____ : \$ _____ : \$ _____

►Company Name & Address _____

Dates Employed: From (Month/Year) _____ To (Month/Year) _____

Positions Held with Beginning and Ending Dates _____

Income Received: This year-to-date: \$ _____ : \$ _____
20____ : \$ _____ : \$ _____
_____ : \$ _____ : \$ _____

►Company Name & Address _____

Dates Employed: From (Month/Year) _____ To (Month/Year) _____

Positions Held with Beginning and Ending Dates _____

Income Received: This year-to-date: \$ _____ : \$ _____
20____ : \$ _____ : \$ _____
_____ : \$ _____ : \$ _____

Item 8. Pending Lawsuits Filed by You or Your Spouse

List all pending lawsuits that have been filed by you or your spouse in court or before an administrative agency. (List lawsuits that resulted in final judgments or settlements in Items 16 and 25).

Opposing Party's Name & Address _____

Court's Name & Address _____

Docket No. _____ Relief Requested _____ Nature of Lawsuit _____

_____ Status _____

Item 9. Pending Lawsuits Filed Against You or Your Spouse

List all pending lawsuits that have been filed against you or your spouse in court or before an administrative agency. (List lawsuits that resulted in final judgments or settlements in Items 16 and 25).

Opposing Party's Name & Address _____

Court's Name & Address _____

Docket No. _____ Relief Requested _____ Nature of Lawsuit _____

_____ Status _____

Item 10. Safe Deposit Boxes

List all safe deposit boxes, located within the United States or elsewhere, held by you, your spouse, or any of your dependents, or held by others for the benefit of you, your spouse, or any of your dependents. *On a separate page, describe the contents of each box.*

<u>Owner's Name</u>	<u>Name & Address of Depository Institution</u>	<u>Box No.</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

Item 11. Business Interests

List all businesses for which you, your spouse, or your dependents are an officer or director.

►Business' Name & Address _____

Business Format (e.g., corporation) _____ Description of Business _____

_____ Position(s) Held, and By Whom _____

►Business' Name & Address _____

Business Format (e.g., corporation) _____ Description of Business _____

_____ Position(s) Held, and By Whom _____

►Business' Name & Address _____

Business Format (e.g., corporation) _____ Description of Business _____

_____ Position(s) Held, and By Whom _____

FINANCIAL INFORMATION: ASSETS AND LIABILITIES

REMINDER: "Assets" and "Liabilities" include ALL assets and liabilities, located within the United States or elsewhere, whether held individually or jointly.

Item 12. Cash, Bank, and Money Market Accounts

List cash and all bank and money market accounts, including but not limited to, checking accounts, savings accounts, and certificates of deposit, held by you, your spouse, or your dependents, or held by others for the benefit of you, your spouse, or your dependents. The term "cash" includes currency and uncashed checks.

Cash on Hand \$ _____ Cash Held For Your Benefit \$ _____

<u>Name on Account</u>	<u>Name & Address of Financial Institution</u>	<u>Account No.</u>	<u>Current Balance</u>
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____

Item 13. U.S. Government Securities

List all U.S. Government securities, including but not limited to, savings bonds, treasury bills, and treasury notes, held by you, your spouse, or your dependents, or held by others for the benefit of you, your spouse, or your dependents.

<u>Name on Account</u>	<u>Type of Obligation</u>	<u>Security Amount</u>	<u>Maturity Date</u>
_____	_____	\$ _____	_____
_____	_____	\$ _____	_____
_____	_____	\$ _____	_____

Item 14. Publicly Traded Securities and Loans Secured by Them

List all publicly traded securities, including but not limited to, stocks, stock options, registered and bearer bonds, state and municipal bonds, and mutual funds, held by you, your spouse, or your dependents, or held by others for the benefit of you, your spouse, or your dependents.

► Issuer _____ Type of Security _____ No. of Units Owned _____

Name on Security _____ Current Fair Market Value \$ _____ Loan(s) Against Security \$ _____

Broker House, Address _____ Broker Account No. _____

► Issuer _____ Type of Security _____ No. of Units Owned _____

Name on Security _____ Current Fair Market Value \$ _____ Loan(s) Against Security \$ _____

Broker House, Address _____ Broker Account No. _____

Item 15. Other Business Interests

List all other business interests, including but not limited to, non-public corporations, subchapter-S corporations, limited liability corporations ("LLCs"), general or limited partnership interests, joint ventures, sole proprietorships, and oil and mineral leases, held by you, your spouse, or your dependents, or held by others for the benefit of you, your spouse, or your dependents.

► Business Format _____ Business' Name & Address _____

_____ Ownership % _____

Owner (e.g., self, spouse) _____ Current Fair Market Value \$ _____

► Business Format _____ Business' Name & Address _____

_____ Ownership % _____

Owner (e.g., self, spouse) _____ Current Fair Market Value \$ _____

Item 16. Monetary Judgments or Settlements Owed to You, Your Spouse, or Your Dependents

List all monetary judgments or settlements owed to you, your spouse, or your dependents.

► Opposing Party's Name & Address _____

Court's Name & Address _____ Docket No. _____

Nature of Lawsuit _____ Date of Judgment _____ Amount \$ _____

► Opposing Party's Name & Address _____

Court's Name & Address _____ Docket No. _____

Nature of Lawsuit _____ Date of Judgment _____ Amount \$ _____

Item 17. Other Amounts Owed to You, Your Spouse, or Your Dependents

List all other amounts owed to you, your spouse, or your dependents.

Debtor's Name, Address, & Telephone No. _____

Original Amount Owed \$ _____ Current Amount Owed \$ _____ Monthly Payment \$ _____

Item 18. Life Insurance Policies

List all life insurance policies held by you, your spouse, or your dependents.

►Insurance Company's Name, Address, & Telephone No. _____

Insured _____ Beneficiary _____ Face Value \$ _____

Policy No. _____ Loans Against Policy \$ _____ Surrender Value \$ _____

►Insurance Company's Name, Address, & Telephone No. _____

Insured _____ Beneficiary _____ Face Value \$ _____

Policy No. _____ Loans Against Policy \$ _____ Surrender Value \$ _____

Item 19. Deferred Income Arrangements

List all deferred income arrangements, including but not limited to, deferred annuities, pensions plans, profit-sharing plans, 401(k) plans, IRAs, Keoghs, and other retirement accounts, held by you, your spouse, or your dependents, or held by others for the benefit of you, your spouse, or your dependents.

►Name on Account _____ Type of Plan _____ Date Established _____

Trustee or Administrator's Name, Address & Telephone No. _____

Account No. _____ Surrender Value \$ _____

►Name on Account _____ Type of Plan _____ Date Established _____

Trustee or Administrator's Name, Address & Telephone No. _____

Account No. _____ Surrender Value \$ _____

Item 20. Personal Property

List all personal property, by category, whether held for personal use or for investment, including but not limited to, furniture and household goods of value, computer equipment, electronics, coins, stamps, artwork, gemstones, jewelry, bullion, other collectibles, copyrights, patents, and other intellectual property, held by you, your spouse, or your dependents, or held by others for the benefit of you, your spouse, or your dependents.

<u>Property Category</u> (e.g., artwork, jewelry)	<u>Name of Owner</u>	<u>Property Location</u>	<u>Acquisition Cost</u>	<u>Current Value</u>
_____	_____	_____	\$ _____	\$ _____
_____	_____	_____	\$ _____	\$ _____
_____	_____	_____	\$ _____	\$ _____
_____	_____	_____	\$ _____	\$ _____
_____	_____	_____	\$ _____	\$ _____
_____	_____	_____	\$ _____	\$ _____

Item 21. Cars, Trucks, Motorcycles, Boats, Airplanes, and Other Vehicles

List all cars, trucks, motorcycles, boats, airplanes, and other vehicles owned or operated by you, your spouse, or your dependents, or held by others for the benefit of you, your spouse, or your dependents.

► Vehicle Type _____ Make _____ Model _____ Year _____

Registered Owner's Name _____ Registration State & No. _____

Address of Vehicle's Location _____

Purchase Price \$ _____ Current Value \$ _____ Account/Loan No. _____

Lender's Name and Address _____

Original Loan Amount \$ _____ Current Loan Balance \$ _____ Monthly Payment \$ _____

► Vehicle Type _____ Make _____ Model _____ Year _____

Registered Owner's Name _____ Registration State & No. _____

Address of Vehicle's Location _____

Purchase Price \$ _____ Current Value \$ _____ Account/Loan No. _____

Lender's Name and Address _____

Original Loan Amount \$ _____ Current Loan Balance \$ _____ Monthly Payment \$ _____

Item 21. Continued

▶ Vehicle Type _____ Make _____ Model _____ Year _____

Registered Owner's Name _____ Registration State & No. _____

Address of Vehicle's Location _____

Purchase Price \$ _____ Current Value \$ _____ Account/Loan No. _____

Lender's Name and Address _____

Original Loan Amount \$ _____ Current Loan Balance \$ _____ Monthly Payment \$ _____

Item 22. Real Property

List all real estate held by you, your spouse, or your dependents, or held by others for the benefit of you, your spouse, or your dependents.

▶ Type of Property _____ Property's Location _____

Name(s) on Title and Ownership Percentages _____

Acquisition Date _____ Purchase Price \$ _____ Current Value \$ _____

Basis of Valuation _____ Loan or Account No. _____

Lender's Name and Address _____

Current Balance On First Mortgage \$ _____ Monthly Payment \$ _____

Other Loan(s) (describe) _____ Current Balance \$ _____

Monthly Payment \$ _____ Rental Unit? _____ Monthly Rent Received \$ _____

▶ Type of Property _____ Property's Location _____

Name(s) on Title and Ownership Percentages _____

Acquisition Date _____ Purchase Price \$ _____ Current Value \$ _____

Basis of Valuation _____ Loan or Account No. _____

Lender's Name and Address _____

Current Balance On First Mortgage \$ _____ Monthly Payment \$ _____

Other Loan(s) (describe) _____ Current Balance \$ _____

Monthly Payment \$ _____ Rental Unit? _____ Monthly Rent Received \$ _____

Item 23. Credit Cards

List each credit card held by you, your spouse, or your dependents. Also list any other credit cards that you, your spouse, or your dependents use.

<u>Name of Credit Card (e.g., Visa, MasterCard, Department Store)</u>	<u>Account No.</u>	<u>Name(s) on Account</u>	<u>Current Balance</u>	<u>Minimum Monthly Payment</u>
			\$ _____	\$ _____
			\$ _____	\$ _____
			\$ _____	\$ _____
			\$ _____	\$ _____
			\$ _____	\$ _____
			\$ _____	\$ _____

Item 24. Taxes Payable

List all taxes, such as income taxes or real estate taxes, owed by you, your spouse, or your dependents.

<u>Type of Tax</u>	<u>Amount Owed</u>	<u>Year Incurred</u>
	\$ _____	_____
	\$ _____	_____
	\$ _____	_____
	\$ _____	_____

Item 25. Judgments or Settlements Owed

List all judgments or settlements owed by you, your spouse, or your dependents.

Opposing Party's Name & Address _____

Court's Name & Address _____ Docket No. _____

Nature of Lawsuit _____ Date _____ Amount \$ _____

Item 26. Other Loans and Liabilities

List all other loans or liabilities in your, your spouse's, or your dependents' names.

▶Name & Address of Lender/Creditor _____

Nature of Liability _____ Name(s) on Liability _____

Date of Liability _____ Amount Borrowed \$ _____ Current Balance \$ _____

Payment Amount \$ _____ Frequency of Payment _____

▶Name & Address of Lender/Creditor _____

Nature of Liability _____ Name(s) on Liability _____

Date of Liability _____ Amount Borrowed \$ _____ Current Balance \$ _____

Payment Amount \$ _____ Frequency of Payment _____

OTHER FINANCIAL INFORMATION

Item 27. Tax Returns

List all federal tax returns that were filed during the last three years by or on behalf of you, your spouse, or your dependents. *Provide a copy of each signed tax return that was filed during the last three years.*

<u>Tax Year</u>	<u>Name(s) on Return</u>	<u>Refund Expected</u>
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____

Item 28. Applications for Credit

List all applications for bank loans or other extensions of credit that you, your spouse, or your dependents have submitted within the last two years. *Provide a copy of each application, including all attachments.*

<u>Name(s) on Application</u>	<u>Name & Address of Lender</u>
_____	_____
_____	_____
_____	_____

Item 29. Trusts and Escrows

List all funds or other assets that are being held in trust or escrow by any person or entity for you, your spouse, or your dependents. Also list all funds or other assets that are being held in trust or escrow by you, your spouse, or your dependents, for any person or entity. *Provide copies of all executed trust documents.*

<u>Trustee or Escrow Agent's Name & Address</u>	<u>Date Established</u>	<u>Grantor</u>	<u>Beneficiaries</u>	<u>Present Market Value of Assets</u>
_____	_____	_____	_____	\$ _____
_____	_____	_____	_____	\$ _____
_____	_____	_____	_____	\$ _____
_____	_____	_____	_____	\$ _____
_____	_____	_____	_____	\$ _____

Item 30. Transfers of Assets

List each person to whom you have transferred, in the aggregate, more than \$2,500 in funds or other assets during the previous three years by loan, gift, sale, or other transfer. For each such person, state the total amount transferred during that period.

<u>Transferee's Name, Address, & Relationship</u>	<u>Property Transferred</u>	<u>Aggregate Value</u>	<u>Transfer Date</u>	<u>Type of Transfer (e.g., Loan, Gift)</u>
_____	_____	\$ _____	_____	_____
_____	_____	\$ _____	_____	_____
_____	_____	\$ _____	_____	_____
_____	_____	\$ _____	_____	_____
_____	_____	\$ _____	_____	_____
_____	_____	\$ _____	_____	_____
_____	_____	\$ _____	_____	_____

SUMMARY FINANCIAL SCHEDULES

Item 31. Combined Balance Sheet for You, Your Spouse, and Your Dependents

<u>ASSETS</u>		<u>LIABILITIES</u>	
Cash on Hand (Item 12)	\$ _____	Credit Cards (Item 23)	\$ _____
Cash in Financial Institutions (Item 12)	\$ _____	Motor Vehicles - Liens (Item 21)	\$ _____
U.S. Government Securities (Item 13)	\$ _____	Real Property - Encumbrances (Item 22)	\$ _____
Publicly Traded Securities (Item 14)	\$ _____	Loans Against Publicly Traded Securities (Item 14)	\$ _____
Other Business Interests (Item 15)	\$ _____	Taxes Payable (Item 24)	\$ _____
Judgments or Settlements Owed to You (Item 16)	\$ _____	Judgments or Settlements Owed (Item 25)	\$ _____
Other Amounts Owed to You (Item 17)	\$ _____	Other Loans and Liabilities (Item 26)	\$ _____
Surrender Value of Life Insurance (Item 18)	\$ _____	<u>Other Liabilities (Itemize)</u>	
Deferred Income Arrangements (Item 19)	\$ _____	_____	\$ _____
Personal Property (Item 20)	\$ _____	_____	\$ _____
Motor Vehicles (Item 21)	\$ _____	_____	\$ _____
Real Property (Item 22)	\$ _____	_____	\$ _____
<u>Other Assets (Itemize)</u>		_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
Total Assets	\$ _____	Total Liabilities	\$ _____

Item 32. Combined Average Monthly Income and Expenses for You, Your Spouse, and Your Dependents for the Last 6 Months

Provide the average monthly income and expenses for you, your spouse, and your dependents for the last 6 months. Do not include credit card payments separately; rather, include credit card expenditures in the appropriate categories.

<u>INCOME</u>		<u>EXPENSES</u>	
Salary - After Taxes	\$ _____	Mortgage Payments for Residence(s)	\$ _____
Fees, Commissions, and Royalties	\$ _____	Property Taxes for Residence(s)	\$ _____
Interest	\$ _____	Rental Property Expenses, Including Mortgage Payments, Taxes, and Insurance	\$ _____
Dividends and Capital Gains	\$ _____	Car or Other Vehicle Lease or Loan Payments	\$ _____
Gross Rental Income	\$ _____	Food Expenses	\$ _____
Profits from Sole Proprietorships	\$ _____	Clothing Expenses	\$ _____
Distributions from Partnerships, S-Corporations, and LLCs	\$ _____	Utilities	\$ _____
Distributions from Trusts and Estates	\$ _____	Medical Expenses, Including Insurance	\$ _____
Distributions from Deferred Income Arrangements	\$ _____	Other Insurance Premiums	\$ _____
Social Security Payments	\$ _____	Other Transportation Expenses	\$ _____
Alimony/Child Support Received	\$ _____	Other Household Expenses	\$ _____
Gambling Income	\$ _____	<u>Other Expenses (Itemize)</u>	
<u>Other Income (Itemize)</u>		_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
Total Income	\$ _____	Total Expenses	\$ _____

ATTACHMENTS

Item 33. Documents Attached to this Financial Statement

List all documents that are being submitted with this financial statement.

<u>Item No. Document Relates To</u>	<u>Description of Document</u>

I am submitting this financial statement with the understanding that it may affect action by the Federal Trade Commission or a federal court. I have used my best efforts to obtain the information requested in this statement. The responses I have provided to the items above are true and contain all the requested facts and information of which I have notice or knowledge. I have provided all requested documents in my custody, possession, or control. I know of the penalties for false statements under 18 U.S.C. § 1001, 18 U.S.C. § 1621, and 18 U.S.C. § 1623 (five years imprisonment and/or fines). I certify under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on:

(Date)

Signature

ATTACHMENT B
Temporary Restraining Order
Federal Trade Commission vs. Certified Merchant Services, Ltd, et al

FEDERAL TRADE COMMISSION

FINANCIAL STATEMENT OF CORPORATE DEFENDANT

Instructions:

1. Complete all items. Enter "None" or "N/A" ("Not Applicable") where appropriate. If you cannot fully answer a question, explain why.
2. In completing this financial statement, "the corporation" refers not only to this corporation but also to each of its predecessors that are not named defendants in this action.
3. When an Item asks for information about assets or liabilities "held by the corporation," include ALL such assets and liabilities, located within the United States or elsewhere, held by the corporation or held by others for the benefit of the corporation.
4. Attach continuation pages as needed. On the financial statement, state next to the Item number that the Item is being continued. On the continuation page(s), identify the Item number being continued.
5. Type or print legibly.
6. An officer of the corporation must sign and date the completed financial statement on the last page and initial each page in the space provided in the lower right corner.

Penalty for False Information:

Federal law provides that any person may be imprisoned for not more than five years, fined, or both, if such person:

(1) "in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry" (18 U.S.C. § 1001);

(2) "in any . . . statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true" (18 U.S.C. § 1621); or

(3) "in any (. . . statement under penalty of perjury as permitted under section 1746 of title 28, United States Code) in any proceeding before or ancillary to any court or grand jury of the United States knowingly makes any false material declaration or makes or uses any other information . . . knowing the same to contain any false material declaration." (18 U.S.C. § 1623)

For a felony conviction under the provisions cited above, federal law provides that the fine may be not more than the greater of (i) \$250,000 for an individual or \$500,000 for a corporation, or (ii) if the felony results in pecuniary gain to any person or pecuniary loss to any person other than the defendant, the greater of twice the gross gain or twice the gross loss. 18 U.S.C. § 3571.

BACKGROUND INFORMATION

Item 1. General Information

Corporation's Full Name _____

Primary Business Address _____ From (Date) _____

Telephone No. _____ Fax No. _____

E-Mail Address _____ Internet Home Page _____

All other current addresses & previous addresses for past five years, including post office boxes and mail drops:

Address _____ From/Until _____

Address _____ From/Until _____

Address _____ From/Until _____

All predecessor companies for past five years:

Name & Address _____ From/Until _____

Name & Address _____ From/Until _____

Name & Address _____ From/Until _____

Item 2. Legal Information

Federal Taxpayer ID No. _____ State & Date of Incorporation _____

State Tax ID No. _____ State _____ Profit or Not For Profit _____

Corporation's Present Status: Active _____ Inactive _____ Dissolved _____

If Dissolved: Date dissolved _____ By Whom _____

Reasons _____

Fiscal Year-End (Mo./Day) _____ Corporation's Business Activities _____

Item 3. Registered Agent

Name of Registered Agent _____

Address _____ Telephone No. _____

Item 4. Principal Stockholders

List all persons and entities that own at least 5% of the corporation's stock.

<u>Name & Address</u>	<u>% Owned</u>
_____	_____
_____	_____
_____	_____
_____	_____

Item 5. Board Members

List all members of the corporation's Board of Directors.

<u>Name & Address</u>	<u>% Owned</u>	<u>Term (From/Until)</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Item 6. Officers

List all of the corporation's officers, including *de facto* officers (individuals with significant management responsibility whose titles do not reflect the nature of their positions).

<u>Name & Address</u>	<u>% Owned</u>
_____	_____
_____	_____
_____	_____
_____	_____

Item 7. Businesses Related to the Corporation

List all corporations, partnerships, and other business entities in which this corporation has an ownership interest.

<u>Name & Address</u>	<u>Business Activities</u>	<u>% Owned</u>

State which of these businesses, if any, has ever transacted business with the corporation _____

Item 8. Businesses Related to Individuals

List all corporations, partnerships, and other business entities in which the corporation's principal stockholders, board members, or officers (i.e., the individuals listed in Items 4 - 6 above) have an ownership interest.

<u>Individual's Name</u>	<u>Business Name & Address</u>	<u>Business Activities</u>	<u>% Owned</u>

State which of these businesses, if any, have ever transacted business with the corporation _____

Item 9. Related Individuals

List all related individuals with whom the corporation has had any business transactions during the three previous fiscal years and current fiscal year-to-date. A "related individual" is a spouse, sibling, parent, or child of the principal stockholders, board members, and officers (i.e., the individuals listed in Items 4 - 6 above).

<u>Name and Address</u>	<u>Relationship</u>	<u>Business Activities</u>

Item 10. Outside Accountants

List all outside accountants retained by the corporation during the last three years.

<u>Name</u>	<u>Firm Name</u>	<u>Address</u>	<u>CPA/PA?</u>

Item 11. Corporation's Recordkeeping

List all individuals within the corporation with responsibility for keeping the corporation's financial books and records for the last three years.

<u>Name, Address, & Telephone Number</u>	<u>Position(s) Held</u>

Item 12. Attorneys

List all attorneys retained by the corporation during the last three years.

<u>Name</u>	<u>Firm Name</u>	<u>Address</u>

Item 13. Pending Lawsuits Filed by the Corporation

List all pending lawsuits that have been filed by the corporation in court or before an administrative agency. (List lawsuits that resulted in final judgments or settlements in favor of the corporation in Item 25).

Opposing Party's Name & Address _____

Court's Name & Address _____

Docket No. _____ Relief Requested _____ Nature of Lawsuit _____

_____ Status _____

Opposing Party's Name & Address _____

Court's Name & Address _____

Docket No. _____ Relief Requested _____ Nature of Lawsuit _____

_____ Status _____

Opposing Party's Name & Address _____

Court's Name & Address _____

Docket No. _____ Relief Requested _____ Nature of Lawsuit _____

_____ Status _____

Opposing Party's Name & Address _____

Court's Name & Address _____

Docket No. _____ Relief Requested _____ Nature of Lawsuit _____

_____ Status _____

Opposing Party's Name & Address _____

Court's Name & Address _____

Docket No. _____ Relief Requested _____ Nature of Lawsuit _____

_____ Status _____

Opposing Party's Name & Address _____

Court's Name & Address _____

Docket No. _____ Relief Requested _____ Nature of Lawsuit _____

_____ Status _____

Item 14. Current Lawsuits Filed Against the Corporation

List all pending lawsuits that have been filed against the corporation in court or before an administrative agency. (List lawsuits that resulted in final judgments, settlements, or orders in Items 26 - 27).

Opposing Party's Name & Address _____

Court's Name & Address _____

Docket No. _____ Relief Requested _____ Nature of Lawsuit _____

_____ Status _____

Opposing Party's Name & Address _____

Court's Name & Address _____

Docket No. _____ Relief Requested _____ Nature of Lawsuit _____

_____ Status _____

Opposing Party's Name & Address _____

Court's Name & Address _____

Docket No. _____ Relief Requested _____ Nature of Lawsuit _____

_____ Status _____

Opposing Party's Name & Address _____

Court's Name & Address _____

Docket No. _____ Relief Requested _____ Nature of Lawsuit _____

_____ Status _____

Opposing Party's Name & Address _____

Court's Name & Address _____

Docket No. _____ Relief Requested _____ Nature of Lawsuit _____

_____ Status _____

Opposing Party's Name & Address _____

Court's Name & Address _____

Docket No. _____ Relief Requested _____ Nature of Lawsuit _____

_____ Status _____

Item 15. Bankruptcy Information

List all state insolvency and federal bankruptcy proceedings involving the corporation.

Commencement Date _____ Termination Date _____ Docket No. _____

If State Court: Court & County _____ If Federal Court: District _____

Disposition _____

Item 16. Safe Deposit Boxes

List all safe deposit boxes, located within the United States or elsewhere, held by the corporation, or held by others for the benefit of the corporation. *On a separate page, describe the contents of each box.*

<u>Owner's Name</u>	<u>Name & Address of Depository Institution</u>	<u>Box No.</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

FINANCIAL INFORMATION

REMINDER: When an Item asks for information about assets or liabilities "held by the corporation," include **ALL** such assets and liabilities, located within the United States or elsewhere, held by the corporation or held by others for the benefit of the corporation.

Item 17. Tax Returns

List all federal and state corporate tax returns filed for the last three complete fiscal years. *Attach copies of all returns.*

<u>Federal/ State/Both</u>	<u>Tax Year</u>	<u>Tax Due Federal</u>	<u>Tax Paid Federal</u>	<u>Tax Due State</u>	<u>Tax Paid State</u>	<u>Preparer's Name</u>
_____	_____	\$ _____	\$ _____	\$ _____	\$ _____	_____
_____	_____	\$ _____	\$ _____	\$ _____	\$ _____	_____
_____	_____	\$ _____	\$ _____	\$ _____	\$ _____	_____

Item 18. Financial Statements

List all financial statements that were prepared for the corporation's last three complete fiscal years and for the current fiscal year-to-date. *Attach copies of all statements, providing audited statements if available.*

<u>Year</u>	<u>Balance Sheet</u>	<u>Profit & Loss Statement</u>	<u>Cash Flow Statement</u>	<u>Changes in Owner's Equity</u>	<u>Audited?</u>

Item 19. Financial Summary

For each of the last three complete fiscal years and for the current fiscal year-to-date for which the corporation has not provided a profit and loss statement in accordance with Item 17 above, provide the following summary financial information.

	<u>Current Year-to-Date</u>	<u>1 Year Ago</u>	<u>2 Years Ago</u>	<u>3 Years Ago</u>
<u>Gross Revenue</u>	\$ _____	\$ _____	\$ _____	\$ _____
<u>Expenses</u>	\$ _____	\$ _____	\$ _____	\$ _____
<u>Net Profit After Taxes</u>	\$ _____	\$ _____	\$ _____	\$ _____
<u>Payables</u>	\$ _____	[REDACTED]		
<u>Receivables</u>	\$ _____			

Item 20. Cash, Bank, and Money Market Accounts

List cash and all bank and money market accounts, including but not limited to, checking accounts, savings accounts, and certificates of deposit, held by the corporation. The term "cash" includes currency and uncashed checks.

Cash on Hand \$ _____ Cash Held for the Corporation's Benefit \$ _____

<u>Name & Address of Financial Institution</u>	<u>Signator(s) on Account</u>	<u>Account No.</u>	<u>Current Balance</u>
			\$ _____
			\$ _____
			\$ _____
			\$ _____

Item 21. Government Obligations and Publicly Traded Securities

List all U.S. Government obligations, including but not limited to, savings bonds, treasury bills, or treasury notes, held by the corporation. Also list all publicly traded securities, including but not limited to, stocks, stock options, registered and bearer bonds, state and municipal bonds, and mutual funds, held by the corporation.

Issuer _____ Type of Security/Obligation _____

No. of Units Owned _____ Current Fair Market Value \$ _____ Maturity Date _____

Issuer _____ Type of Security/Obligation _____

No. of Units Owned _____ Current Fair Market Value \$ _____ Maturity Date _____

Item 22. Real Estate

List all real estate, including leaseholds in excess of five years, held by the corporation.

Type of Property _____ Property's Location _____

Name(s) on Title and Ownership Percentages _____

Current Value \$ _____ Loan or Account No. _____

Lender's Name and Address _____

Current Balance On First Mortgage \$ _____ Monthly Payment \$ _____

Other Loan(s) (describe) _____ Current Balance \$ _____

Monthly Payment \$ _____ Rental Unit? _____ Monthly Rent Received \$ _____

Type of Property _____ Property's Location _____

Name(s) on Title and Ownership Percentages _____

Current Value \$ _____ Loan or Account No. _____

Lender's Name and Address _____

Current Balance On First Mortgage \$ _____ Monthly Payment \$ _____

Other Loan(s) (describe) _____ Current Balance \$ _____

Monthly Payment \$ _____ Rental Unit? _____ Monthly Rent Received \$ _____

Item 23. Other Assets

List all other property, by category, with an estimated value of \$2,500 or more, held by the corporation, including but not limited to, inventory, machinery, equipment, furniture, vehicles, customer lists, computer software, patents, and other intellectual property.

<u>Property Category</u>	<u>Property Location</u>	<u>Acquisition Cost</u>	<u>Current Value</u>
		\$ _____	\$ _____
		\$ _____	\$ _____
		\$ _____	\$ _____
		\$ _____	\$ _____
		\$ _____	\$ _____
		\$ _____	\$ _____
		\$ _____	\$ _____
		\$ _____	\$ _____
		\$ _____	\$ _____
		\$ _____	\$ _____

Item 24. Trusts and Escrows

List all persons and other entities holding funds or other assets that are in escrow or in trust for the corporation.

<u>Trustee or Escrow Agent's Name & Address</u>	<u>Description and Location of Assets</u>	<u>Present Market Value of Assets</u>
		\$ _____
		\$ _____
		\$ _____
		\$ _____
		\$ _____
		\$ _____
		\$ _____
		\$ _____

Item 25. Monetary Judgments and Settlements Owed To the Corporation

List all monetary judgments and settlements, recorded and unrecorded, owed to the corporation.

Opposing Party's Name & Address _____

Court's Name & Address _____ Docket No. _____

Nature of Lawsuit _____ Date of Judgment _____ Amount \$ _____

Opposing Party's Name & Address _____

Court's Name & Address _____ Docket No. _____

Nature of Lawsuit _____ Date of Judgment _____ Amount \$ _____

Item 26. Monetary Judgments and Settlements Owed By the Corporation

List all monetary judgments and settlements, recorded and unrecorded, owed by the corporation.

Opposing Party's Name & Address _____

Court's Name & Address _____ Docket No. _____

Nature of Lawsuit _____ Date _____ Amount \$ _____

Opposing Party's Name & Address _____

Court's Name & Address _____ Docket No. _____

Nature of Lawsuit _____ Date of Judgment _____ Amount \$ _____

Opposing Party's Name & Address _____

Court's Name & Address _____ Docket No. _____

Nature of Lawsuit _____ Date of Judgment _____ Amount \$ _____

Opposing Party's Name & Address _____

Court's Name & Address _____ Docket No. _____

Nature of Lawsuit _____ Date of Judgment _____ Amount \$ _____

Opposing Party's Name & Address _____

Court's Name & Address _____ Docket No. _____

Nature of Lawsuit _____ Date of Judgment _____ Amount \$ _____

Item 27. Government Orders and Settlements

List all existing orders and settlements between the corporation and any federal or state government entities.

Name of Agency _____ Contact Person _____

Address _____ Telephone No. _____

Agreement Date _____ Nature of Agreement _____

Item 28. Credit Cards

List all of the corporation's credit cards and store charge accounts and the individuals authorized to use them.

Name of Credit Card or Store

Names of Authorized Users and Positions Held

<u>Name of Credit Card or Store</u>	<u>Names of Authorized Users and Positions Held</u>

Item 29. Compensation of Employees

List all compensation and other benefits received from the corporation by the five most highly compensated employees, independent contractors, and consultants (other than those individuals listed in Items 5 and 6 above), for the two previous fiscal years and current fiscal year-to-date. "Compensation" includes, but is not limited to, salaries, commissions, consulting fees, bonuses, dividends, distributions, royalties, pensions, and profit sharing plans. "Other benefits" include, but are not limited to, loans, loan payments, rent, car payments, and insurance premiums, whether paid directly to the individuals, or paid to others on their behalf.

<u>Name/Position</u>	<u>Current Fiscal Year-to-Date</u>	<u>1 Year Ago</u>	<u>2 Years Ago</u>	<u>Compensation or Type of Benefits</u>
	\$ _____	\$ _____	\$ _____	
	\$ _____	\$ _____	\$ _____	
	\$ _____	\$ _____	\$ _____	
	\$ _____	\$ _____	\$ _____	
	\$ _____	\$ _____	\$ _____	

Item 30. Compensation of Board Members and Officers

List all compensation and other benefits received from the corporation by each person listed in Items 5 and 6, for the current fiscal year-to-date and the two previous fiscal years. "Compensation" includes, but is not limited to, salaries, commissions, consulting fees, dividends, distributions, royalties, pensions, and profit sharing plans. "Other benefits" include, but are not limited to, loans, loan payments, rent, car payments, and insurance premiums, whether paid directly to the individuals, or paid to others on their behalf.

<u>Name/Position</u>	<u>Current Fiscal Year-to-Date</u>	<u>1 Year Ago</u>	<u>2 Years Ago</u>	<u>Compensation or Type of Benefits</u>
	\$ _____	\$ _____	\$ _____	
	\$ _____	\$ _____	\$ _____	
	\$ _____	\$ _____	\$ _____	
	\$ _____	\$ _____	\$ _____	
	\$ _____	\$ _____	\$ _____	
	\$ _____	\$ _____	\$ _____	
	\$ _____	\$ _____	\$ _____	
	\$ _____	\$ _____	\$ _____	

Item 31. Transfers of Assets Including Cash and Property

List all transfers of assets over \$2,500 made by the corporation, other than in the ordinary course of business, during the previous three years, by loan, gift, sale, or other transfer.

<u>Transferee's Name, Address, & Relationship</u>	<u>Property Transferred</u>	<u>Aggregate Value</u>	<u>Transfer Date</u>	<u>Type of Transfer (e.g., Loan, Gift)</u>
		\$ _____		
		\$ _____		
		\$ _____		
		\$ _____		
		\$ _____		

Item 32. Documents Attached to the Financial Statement

List all documents that are being submitted with the financial statement.

<u>Item No.</u>	<u>Document</u> <u>Relates To</u>	<u>Description of Document</u>

I am submitting this financial statement with the understanding that it may affect action by the Federal Trade Commission or a federal court. I have used my best efforts to obtain the information requested in this statement. The responses I have provided to the items above are true and contain all the requested facts and information of which I have notice or knowledge. I have provided all requested documents in my custody, possession, or control. I know of the penalties for false statements under 18 U.S.C. § 1001, 18 U.S.C. § 1621, and 18 U.S.C. § 1623 (five years imprisonment and/or fines). I certify under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on:

(Date)

Signature

Corporate Position

ATTACHMENT C
Temporary Restraining Order
Federal Trade Commission vs. Certified Merchant Services, Ltd, et al

CONSENT TO RELEASE OF FINANCIAL RECORDS

I, _____, of the State of _____ in the United States of America, do hereby direct any bank or trust company at which I have an account of any kind or at which a corporation has an account of any kind upon which I am authorized to draw, and its officers, employees and agents, to disclose all information and deliver copies of all documents of every nature in your possession or control, which relate to said accounts, to any attorney of the Federal Trade Commission, and to give evidence relevant thereto, in the matter of Federal Trade Commission v. Certified Merchant Services, Ltd., et al., now pending in the United States District Court for the Eastern District of Texas, and this shall be irrevocable authority for so doing. This direction has been executed pursuant to a certain order of the United States District Court for the Eastern District of Texas in connection with that aforementioned matter. This direction is intended to apply to the laws of countries other than the United States which restrict or prohibit the disclosure of bank information without the consent of the holder or beneficial owner of the account, and shall be construed as consent with respect thereto, and the same shall apply to any of the bank accounts for which I may be a relevant principal.

Dated: _____, 2002.
