

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

_____	)	
FEDERAL TRADE COMMISSION,	)	
	)	CIVIL ACTION NO.
and	)	
	)	
STATE OF NEVADA <u>ex rel.</u>	)	STIPULATED FINAL
FRANKIE SUE DEL PAPA,	)	JUDGMENT AND ORDER
Attorney General,	)	FOR PERMANENT INJUNCTION
	)	AND CONSUMER REDRESS
Plaintiffs,	)	AS TO CONTINENTAL DIRECT
	)	SERVICES, INC., DATA TECH
v.	)	SOLUTIONS, INC., INTERSTATE
	)	CHECK SERVICES, INC.,
CONSUMER MONEY MARKETS, INC., et al.	)	WILLIAM S. KELLY, GARY
	)	ALLEN BALAZS, AND
Defendants.	)	RAYMOND ELIA
_____	)	

Plaintiffs, the Federal Trade Commission and the State of Nevada ("Plaintiffs"), have filed their complaint pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. § 6101 *et seq.*, the Truth in Lending Act ("TILA"), 15 U.S.C. §§ 1601-1666j, as amended, and the Nevada Deceptive Trade Practices Act, NRS § 598, charging Defendants Consumer Money Markets, Inc. ("CMM"), William S. Kelly ("Kelly"), Data Tech Solutions, Inc. ("DTS"), Gary Allen Balazs, Raymond Elia, Interstate Check Services, Inc. ("ICS"), Continental Direct Services, Inc. ("CDS"), and Ana S. Miller with violations of Section 5 of the FTC Act, 15 U.S.C. § 45, the FTC's Trade Regulation Rule entitled the Telemarketing Sales Rule, 16 C.F.R. Part 310, TILA and its implementing Regulation Z, 12 C.F.R. § 226, and the Nevada Deceptive Trade Practices Act, NRS § 598.

Plaintiffs and Defendants have agreed to the entry of this Stipulated Final Judgment and

Order for Permanent Injunction and Consumer Redress ("Order") by this Court in order to resolve all matters of dispute between them in this action.

NOW, THEREFORE, Plaintiff and Defendants having requested the Court to enter this Order, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

**FINDINGS**

1. This Court has jurisdiction of the subject matter of this case and of the parties consenting hereto.
2. Venue is proper as to all parties in the District of Nevada.
3. The activities of the defendants are in or affecting commerce, as defined in the FTC Act, 15 U.S.C. § 44.
4. This is an action by Plaintiffs instituted under Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, the Telemarketing Act, 15 U.S.C. § 6101 *et seq.*, TILA, 15 U.S.C. §§ 1601-1666j, as amended, and the Nevada Deceptive Trade Practices Act, NRS § 598. Pursuant to these sections of the FTC Act, the Telemarketing Act, TILA, and the Nevada Deceptive Trade Practices Act, Plaintiffs have the authority to seek the relief they have requested.
5. The Complaint states a claim upon which relief may be granted against Defendants under Sections 5 and 19 of the FTC Act, 15 U.S.C. §§ 45 and 57b, the Telemarketing Sales Rule, 16 C.F.R. Part 310, TILA and its implementing Regulation Z, 12 C.F.R. §226, and the Nevada Deceptive Trade Practices Act, NRS § 598.
6. Plaintiffs, by and through their counsel, and Defendants, by and through their counsel, have agreed to entry of this Order by this Court, without trial or adjudication of any issue of fact or law. Defendants declare that, prior to, and in connection with, the execution of this Order, they have been apprised of sufficient information, either through experts, legal counsel or

other sources of their own selection, so as to exercise their judgment intelligently in deciding whether to execute this Order. This Order does not and shall not be interpreted to constitute an admission by Defendants that they have violated the FTC Act, the Telemarketing Act, the Truth in Lending Act, or any regulations implemented thereunder.

7. The parties agree that this Order resolves all matters of dispute between them arising from the allegations in the Complaint in this matter, up to the date of entry of this Order. Plaintiffs, however, retain the right to enforce the terms of the Order. For purposes of N.R.S. § 598.0999, this Order shall be deemed an Order of the Court. This Court retains jurisdiction of this matter for purposes of construction, modification and enforcement of this Order. Defendants have waived all rights to seek appellate review of, or otherwise challenge or contest the validity of this Order.

8. Defendants have waived all claims under the Equal Access to Justice Act, 28 U.S.C. § 2412.

9. This order does not supersede, replace, or otherwise affect the application of any provision of this Federal court's order in *Federal Trade Commission v. American Exchange Group, Inc.*, CV-S-96-669-PMP (RLH), D. Nev. (William S. Kelly, defendant), entered on March 13, 1997.

10. Entry of this Order is in the public interest.

#### **DEFINITIONS**

A. "Assets" means any legal or equitable interest in, right to, or claim to, any real and personal property, including but not limited to chattels, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail or other deliveries, inventory, checks, notes, accounts, credits, receivables, and all cash, wherever located.

B. “Assisting others” for purposes of this Order means providing any of the following goods or services to any person or entity: (1) performing customer service functions, including but not limited to receiving or responding to consumer complaints; (2) formulating or providing, or arranging for the formulation or provision of, any telephone sales script or any other written marketing materials; (3) providing names of, or assisting in the generation of, potential customers; (4) performing marketing services of any kind; or (5) acting as an officer or director of a business entity.

C. “Cash advance” shall mean the ability of consumers to receive payday loans, check cashing, cash, credits, or any other money or credit that can be used in unrestricted fashion for general purchases.

D. “Clearly and prominently,” unless otherwise specifically defined in this Order, means:

a. In an advertisement communicated through an electronic medium (such as television, video, radio, and interactive media such as the telephone, Internet and online services), the message shall be presented simultaneously in both the audio and video portions of the advertisement. The audio message shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The video message shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it. In addition to the foregoing, in interactive media the message shall also be unavoidable and shall be presented prior to the consumer incurring any financial obligation.

*Provided that*, in any advertisement presented solely through video or audio means, the message may be conveyed through the same means in which the ad is presented.

b. In a print advertisement, the message shall be in a type size, location, and in print

that contrasts with the background against which it appears, sufficient for an ordinary consumer to notice, read, and comprehend it. In a multi-page document, the message shall appear on the first page.

c. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement.

E. "Credit" means the right to defer payment of debt or to incur debt and defer its payment.

F. "Defendants," unless otherwise indicated, refers to Defendants William S. Kelly, Data Tech Solutions, Inc., Continental Direct Services, Inc., Gary Allen Balazs, Raymond Elia, and Interstate Check Services, Inc.

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

H. "Payday loan," for purposes of this Order, means a transaction (1) in which a cash advance is made to a consumer in exchange for the consumer's personal check, in the amount of the advance plus a fee, or in exchange for the consumer's authorization to debit the consumer's checking account, for the amount of the advance plus a fee, and (2) in which the parties agree that the check will not be cashed, or that the consumer's checking account will not be debited, until a designated future date no later than 60 days after the cash is advanced. A payday loan may remain as such even if other means of paying fees for deferred payment are employed (*e.g.*, deduction of

fees from the cash advance up front).

I. “Person” means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

J. “Prepaid membership” and “prepaid credit offer” refer to offers where the consumer must pay a lifetime membership, annual fee, or other fee before the consumer, whether by contract or as a practical matter, is able to access all the goods and services that the membership or credit offer provides.

K. “Telemarketing,” except for purposes of Section I.H. of this Order (prohibiting violation of the Telemarketing Sales Rule), shall mean any business activity (including, but not limited to, initiating or receiving telephone calls, managing others who initiate or receive telephone calls, operating an enterprise that initiates or receives telephone calls, owning an enterprise that initiates or receives telephone calls, or otherwise participating as an officer, director, employee or independent contractor in an enterprise that initiates or receives telephone calls) that involves attempts to induce consumers to purchase any item, good, service, partnership interest, trust interest or other beneficial interest, or to enter a contest for a prize, by means of telephone sales presentations, either exclusively or in conjunction with the use of other forms of marketing. *Provided, however*, that the term “telemarketing” shall not include transactions that are not completed until after a face-to-face contact between the seller or solicitor and the consumers solicited.

### **PROHIBITED BUSINESS ACTIVITIES**

This Order having been reviewed by the Court and having been found to have been entered into in good faith and to be in all respects just, reasonable, equitable, and adequate to protect the public from the occurrence in the future of the conduct alleged in the Complaint,

**I.**

**CONDUCT PROHIBITIONS**

**IT IS THEREFORE ORDERED** that Defendants and their officers, agents, servants, employees, salespersons, attorneys, corporations, subsidiaries, affiliates, successors, assigns, and other entities or persons directly or indirectly under their control or under common control with them, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby permanently restrained and enjoined from:

A. Falsely representing, in any manner, expressly or by implication, that Consumer Money Markets, Inc. ("CMM"), Continental Direct Services, Inc. ("CDS"), or any other entity provides a general purpose credit card or other form of credit that can be used without restriction for general purchasing.

B. Falsely representing, in any manner, expressly or by implication, that consumers can obtain cash advances with respect to any credit card, charge card, revolving credit line, or other credit offering;

C. Falsely representing, in any manner, expressly or by implication, that cash advances can be taken in the same or similar manner as cash advances on a general purpose credit card or other revolving credit line.

D. Falsely representing, in any manner, expressly or by implication, any aspect of any cash advance offer, including but not limited to, (1) misrepresenting the amount of money consumers typically may receive per cash advance, (2) misrepresenting the number of cash advances that may be taken at any one time in a given month or other relevant time period, (3)

misrepresenting the number or percentage of customers who actually receive or are permitted to receive cash advances of various amounts, whether through the misleading use of such phrases as “up to X dollars,” “maximum X dollars,” or other means, (4) misrepresenting the amount of interest, finance charges, or other fees per cash advance, and (5) misrepresenting when cash advances must be repaid.

E. Failing to comply with the requirements of the Truth in Lending Act, 15 U.S.C. §§ 1601-1666j, as amended, and its implementing Regulation Z, 12 C.F.R. §226, as amended, including but not limited to, advertising, promoting, or extending payday loans or other consumer credit and failing to disclose the applicable annual percentage rate (“APR”), finance charges, amounts financed, and total payments, as required thereunder. *Provided further*, that Defendants, when advertising, promoting, or extending payday loans in connection with prepaid memberships or prepaid credit offerings, shall disclose the APR and finance charges clearly and prominently and immediately adjacent to the most prominent reference to the payday loans, however described (*e.g.*, “cash on demand,” “cash advance”).

F. Falsely representing, in any manner, expressly or by implication, the price, quality, quantity, or other material attributes of catalog products or of other goods and services that may be purchased by consumers upon buying a prepaid membership or prepaid credit offering.

G. Failing to disclose, clearly and prominently, in connection with the advertising, promotion, or extension of any prepaid membership or prepaid credit offer, the following information: (1) the membership fee, annual fee, or other fee that must be paid to use the membership privileges or credit offer, (2) any material purchasing restrictions, including but not limited to, requirements that credit be used only for purchasing catalog goods, (3) any down payment requirements to purchase goods or services with any offered credit, and (4) material

differences between any cash advance offered and cash advances typically available on general credit cards or charge cards, including but not limited to, the numbers of loans available per month or other relevant period, the duration of each loan, the proportion of the loan that must be repaid before taking out new loans, and associated fees.

H. Violating the Telemarketing Sales Rule, 16 C.F.R. Part 310, including but not limited to (1) misrepresenting, directly or by implication, any material aspect of the nature or central characteristics of services that are the subject of the sales offer, 16 C.F.R.

§ 310.3(a)(2)(iii); (2) failing to disclose in a clear and conspicuous manner, before payment is received, all material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer, 16 C.F.R. § 310.3(a)(1)(ii); (3) if the seller has a policy of not making refunds, cancellations, exchanges, or repurchases, failing to disclose in a clear and conspicuous manner, before payment is received, a statement informing the consumer that this is the seller's policy, 16 C.F.R. § 310.3(a)(1)(iii); (4) obtaining or submitting for payment a check, draft, or other form of negotiable paper drawn on a person's checking, savings, share, or similar account, without that person's "express verifiable authorization" as that term is defined in section 310.3(a)(3) of the TSR, 16 C.F.R. § 310.3(a)(3); and (5) providing substantial assistance or support to any seller or telemarketer when the Defendant knows or consciously avoids knowing that the seller or telemarketer is engaged in acts or practices that violate §§ 310.3(a) or (c), or § 310.4 of the TSR.

I. Operating as a telemarketer without duly registering and posting a bond or other security with the Nevada Consumer Affairs Division, to the extent required by the Nevada Deceptive Trade Practices Act, NRS Chapters 598 and 599.

J. Misrepresenting any material fact in connection with the offer or sale of any goods,

services, or investments.

## II.

### BOND PROVISION

**IT IS FURTHER ORDERED** that Defendants William S. Kelly and Data Tech Solutions, Inc., and their successors and assigns, are hereby permanently restrained and enjoined from engaging, participating, or assisting others (whether directly or through any partnership, corporation, subsidiary, division, or other device, including franchisees, licensees or distributors) in the telemarketing of any goods, services, or investments, or in the marketing through any medium of credit or catalog goods (“Bond Covered Activity”), unless such parties first obtain surety bonds in the total principal amount of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) in the form and manner stated below.

A. The surety bonds shall be purchased on or before the following dates and in the following amounts:

1. A bond in the principal amount of ONE HUNDRED THOUSAND DOLLARS (\$100,000) shall be purchased by May 1, 2000 or within five days of notice of entry of this Order, whichever comes later;
2. A second additional bond in the principal amount of TWO HUNDRED THOUSAND (\$200,000) shall be purchased by or before December 1, 2000; and
3. A third additional bond in the principal amount of TWO HUNDRED THOUSAND (\$200,000) shall be purchased by or before May 1, 2001.

B. These bonds shall be conditioned upon the compliance of Defendants William S. Kelly and DTS with Section 5(a) of the FTC Act, 15 U.S.C. § 45(a); the Telemarketing Sales Rule,

16 C.F.R. Part 310; the Truth in Lending Act, 15 U.S.C. §§ 1601-1666j, as amended, and its implementing Regulation Z, 12 C.F.R. § 226, as amended; the Nevada Deceptive Trade Practices Act, NRS § 598; and with the provisions of this Order. The bond also shall be conditioned upon compliance of Defendant Continental Direct Services, Inc. and its successors and assigns with the foregoing provisions, with respect to any period in which Defendants Kelly or DTS have engaged, participated, or assisted in those companies' business. The bonds shall be continuous and remain in full force and effect as long as Defendants Kelly and DTS defendants continue to engage in the Bond Covered Activity, and for at least two (2) years after defendants have ceased to engage in Bond Covered Activities. The bonds shall cite this Order as the basis of the bond, and shall provide surety thereunder to consumers against financial loss resulting from any violation by Defendants Kelly or DTS of this Order, Section 5 of the FTC Act, 15 U.S.C. § 45, the Telemarketing Sales Rule, 16 C.F.R. Part 310, the Truth in Lending Act and its implementing Regulation Z, 12 C.F.R. § 226, or the Nevada Deceptive Trade Practices Act, NRS § 598. The bonds also shall provide surety to consumers against financial loss resulting from any such violations by Defendant Continental Direct Services, Inc. or its successors or assigns during any period in which Defendants Kelly or DTS have participated, engaged, or assisted in those companies' business.

C. The bonds shall be issued by a surety company that:

(a) is admitted to do business in each of the states in which defendants conduct business; and

(b) holds a Federal Certificate of Authority As Acceptable Surety on Federal Bond and Reinsuring.

D. The bonds shall be in favor of both the Commission and the State of Nevada for the

benefit of any consumer injured as a result of any of the aforementioned violations of law committed by defendants, their agents, or any other persons acting in concert with them or under their authority or supervision, while engaging in the Bond Covered Activity, and for the benefit of any consumer so injured.

E. The bonds required pursuant to this Section are in addition to, and not in lieu of, any other bonds required by federal, state, or local law. This bond requirement shall not be construed to limit or preempt the regulatory powers of any other federal, state, regional, county, local or other government agency or authority.

F. Within (10) days of commencing the Bond Covered Activity, Defendants shall provide a copy of the bond required by this Section to Plaintiffs Commission and the State of Nevada.

G. Defendants, directly or through their officers, agents, servants, employees, attorneys, or any other persons acting in concert or participation with them or under their authority, supervision or control shall not disclose the existence of the surety bond to any consumer or prospective customer in any promotional, instructional, or other marketing materials.

### **III. REDRESS AND PAYMENT OF COSTS**

**IT IS FURTHER ORDERED** that:

A. Judgment is hereby entered against defendants William S. Kelly and Data Tech Solutions, Inc., jointly and severally, in the amount of ONE HUNDRED AND FIFTY THOUSAND DOLLARS (\$150,000). Defendants Kelly and DTS shall pay this judgment to the Commission or its designee by May 1, 2000 or within five days of notice of entry of this Order, whichever comes later.

B. Judgment is hereby entered against defendant Continental Direct Services, Inc. in the amount of ONE HUNDRED THOUSAND DOLLARS (\$100,000). Defendant CDS shall satisfy this judgment as follows:

1. Defendant Continental Direct Services, Inc., within 180 days of notice of entry of this Order, shall repay to all members of Consumer Money Markets, Inc. and Continental Direct Services, Inc. any charges or fees (other than repayment of loan principal) that those members paid in calendar year 1999 to CMM, CDS, or Interstate Check Services, Inc. in connection with obtaining cash advances. *Provided that*, Defendants' obligation is limited to a total of \$100,000 (which may include actual administrative costs not to exceed \$2.00 per individual) and that Defendants will be deemed to have fully satisfied this obligation by twice having attempted to credit consumers' bank or credit card accounts by electronic means, using account information in Defendants' possession as of December 31, 1999.

2. Defendant Continental Direct Services shall pay the remainder of the \$100,000 (which amount shall consist of the judgment amount of \$100,000 minus the amount paid pursuant to Part III.B.1 herein, including permitted processing fees) to Plaintiffs or their designee by April 1, 2001.

3. Defendant Continental Direct Services, Inc. shall further cancel consumer debts of ONE MILLION SIX HUNDRED SEVENTEEN THOUSAND AND ONE HUNDRED EIGHTY NINE DOLLARS (\$1,617,189.00) that, according to the records of CDS and Consumer Money Markets, Inc. ("CMM"), remained owing and due to CMM as of July 19, 1999. Defendant Continental Direct Services, Inc. shall forever cancel all such consumer debts, avoid any collection thereof, and correct any report to any credit reporting agencies indicating that such consumer debts exist and are unpaid. Defendant CDS shall undertake this action within 10 days of

notice of entry of this Order.

4. CDS shall further assist the Plaintiffs in administering redress, disgorgement, or consumer education by providing, at Plaintiffs' written request, all available mailing addresses, telephone, numbers or other identifying information of consumers who have purchased any memberships or other goods or services from CMM or CDS.

C. In the event of any default on any obligation to make payment under this Part, interest, computed pursuant to 28 U.S.C. § 1961(a), shall accrue from the date of default to the date of payment. The funds paid by Defendants to Plaintiffs pursuant to this Part shall be deposited into a redress fund, administered by Plaintiffs, to be used for equitable relief, including but not limited to, consumer redress and any attendant expenses for the administration of any redress fund. Plaintiffs in their sole discretion may use a designated agent to administer consumer redress. If Plaintiffs determine, in their sole discretion, that redress to purchasers is wholly or partially impracticable, any funds not so used shall be paid to the United States Treasury or to the Office of the Attorney General of Nevada in lieu of redress, or shall be used to educate consumers affected by the practices in the Commission's Complaint in this matter. Plaintiffs and Defendants acknowledge and agree that this judgment for equitable monetary relief is solely remedial in nature and is not a fine, penalty, punitive assessment, or forfeiture. Defendants are hereby required, in accordance with 31 U.S.C. § 7701, to furnish to the Federal Trade Commission their taxpayer identifying numbers (social security number or employer identification number), which shall be used for purposes of collecting and reporting on any delinquent amount arising out of such persons' relationship with the government.

#### **IV. RIGHT TO REOPEN**

**IT IS FURTHER ORDERED** that Plaintiffs' agreement to this Order is expressly premised upon the truthfulness, accuracy and completeness of the following financial statements:

A. With respect to William S. Kelly and Data Tech Solutions, Inc., these statements include (1) Shane Kelly Cash Flow Analysis, July 17, 1999 through December 31, 1999 (one page), prepared by Stewart, Archibald & Barney, Certified Public Accountants and transmitted by cover of January 7, 2000; and (2) additional statements prepared by Stewart, Archibald & Barney and transmitted by cover of January 12, 2000 -- Fax from Gary W. Stewart to Charles Schofield, January 13, 2000 re: Shane Kelly expenditures (one page); William Shane Kelly, Statement of Financial Condition, December 31, 1999 (one page statement of Assets and Liabilities and Net Worth); Data Tech Solutions, Inc. Profit and Loss, July 17, 1999 through December 31, 1999 (one page); and Data Tech Solutions, Inc. Balance Sheet As of December 31, 1999.

B. With respect to Continental Direct Services, Inc., these statements include the following -- (1) Shane Kelly Cash Flow Analysis, July 17, 1999 through December 31st, 1999 (one page), prepared by Stewart, Archibald & Barney, Certified Public Accountants and transmitted by cover of January 7, 2000; and (2) additional statements prepared by Stewart, Archibald & Barney and transmitted by cover of January 12, 2000 -- Continental Direct Services, Inc. Profit and Loss, July 17, 1999 through December 31, 1999 (three pages) and Continental Direct Services, Inc. Balance Sheet As of December 31, 1999 (two pages).

The foregoing statements contain material information upon which Plaintiffs relied in negotiating and agreeing to this Order. If, upon motion by Plaintiffs, this Court finds that these financial statements failed to disclose any material asset, or materially misrepresented the value of any asset, or contained any other material misrepresentation or omission, Plaintiffs may request that the Order herein be reopened for the purpose of providing for the payment by Defendants of

redress and/or disgorgement of \$12,000, 000 in the case of Defendants William S. Kelly and Data Tech Solutions, Inc., and \$282,800 in the case of Continental Direct Services, Inc. *Provided, however,* that in all other respects this Order shall remain in full force and effect unless otherwise ordered by the Court; and provided further, that proceedings instituted under this Part are in addition to and not in lieu of any other civil or criminal remedies as may be provided by law, including any other proceedings Plaintiff may initiate to enforce this Order. Solely for the purposes of reopening and enforcing this Order under this Part, Defendants waive any right to contest any of the allegations in the complaint filed in this matter.

#### **V. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS**

**IT IS FURTHER ORDERED** that, within five (5) business days after receipt by Defendants of this Order as entered by the Court, Defendants shall submit to Plaintiffs truthful sworn statements, in the form shown in Appendices A - D, that shall acknowledge receipt of this Order.

#### **VI. DISTRIBUTION OF ORDER BY DEFENDANTS**

**IT IS FURTHER ORDERED** that, for a period of four (4) years from the date of entry of this Order, each Defendant shall:

A. Provide a copy of this Order to, and obtain a signed and dated acknowledgment of receipt of same from, each officer or director, each individual serving in a management capacity, all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, immediately upon employing or retaining any such persons, for any business where

(1) That Defendant is at least 50% owner of the business or directly or

indirectly manages or controls the business, and where

- (2) The business is engaged in the sale to consumers of any product, service, charity, or investment.

Defendants, at their option, may redact from such copies of the Order the specific dollar amounts of bonds required (Part II), of the redress owed (Part III), and of the potential judgments if the judgment is reopened due to material misrepresentations regarding Defendants' finances (Part IV).

B. Maintain for a period of three (3) years after creation, and upon reasonable notice, make available to representatives of Plaintiffs, the original signed and dated acknowledgments of the receipt of copies of this Order, as required in Subsection (A) of this Part.

## **VII. MONITORING COMPLIANCE OF SALES PERSONNEL**

**IT IS FURTHER ORDERED** that each Defendant, in connection with any business where

- (1) That Defendant is at least 50% owner of the business or directly or indirectly manages or controls the business, and where
- (2) the business is engaged in telemarketing or assisting others engaged in telemarketing,

is hereby permanently restrained and enjoined from:

A. Failing to take reasonable steps sufficient to monitor and ensure that all employees and independent contractors engaged in sales or other customer service functions comply with Part I of this Order. Such steps shall include adequate monitoring of sales presentations or other calls with customers, and shall also include, at a minimum, the following:

- (1) listening to representative samples of the oral representations made by persons engaged in sales or other customer service functions; and

- (2) establishing a procedure for receiving and responding to consumer complaints.

*Provided that* this Part does not authorize or require Defendants to take any steps that violate any federal, state, or local laws;

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

C. Failing to take corrective action with respect to any sales person whom defendant determines is not complying with the requirements of Part I of this Stipulated Order, which may include training, disciplining, and/or terminating such sales person.

#### **VIII. RECORD KEEPING PROVISIONS**

**IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry of this Order, each Defendant and their agents, employees, officers, and servants, corporations, successors, and assigns, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, in connection with any business where

- (1) That Defendant is at least 50% owner of the business or directly or indirectly manages or controls the business, and where
- (2) the business is engaged in telemarketing or assisting others engaged in telemarketing,

is hereby restrained and enjoined from failing to create, and from failing to retain for a period of three (3) years following the date of such creation, unless otherwise specified:

A. Books, records and accounts that, in reasonable detail, accurately and fairly reflect

the cost of goods or services sold, revenues generated, and the disbursement of such revenues;

B. Records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable. The businesses subject to this Part shall retain such records for any terminated employee for a period of two (2) years following the date of termination;

C. Records containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, for all consumers to whom such business has sold, invoiced or shipped any goods or services;

D. Records that reflect, for every consumer complaint or refund request, whether received directly or indirectly or through any third party, (1) the consumer's name, address, telephone number and the dollar amount paid by the consumer; (2) the written complaint or refund request, if any, and the date of the complaint or refund request; (3) in at least summary form, the basis of the complaint and the nature and result of any investigation conducted concerning any complaint; and (4) the company's response.

E. Copies of all substantially different sales scripts, training materials, advertisements, or other marketing materials utilized, as well as any consumer credit agreements and disclosures given to consumers; *provided that* copies of all the foregoing materials shall be retained for (3) years after the last date of dissemination of any such materials.

#### **IX. COMPLIANCE REPORTING BY DEFENDANTS**

**IT IS FURTHER ORDERED** that, in order that compliance with the provisions of this

Order may be monitored:

A. For a period of five (5) years from the date of entry of this Order, each Defendant shall notify Plaintiffs of the following:

(1) Any changes in Defendant's residences, mailing addresses, and telephone numbers, within thirty (30) days of the date of such change;

(2) Any changes in that Defendant's employment status (including self-employment) within thirty (30) days of such change. Such notice shall include the name and address of each business that Defendant is affiliated with or employed by, a statement of the nature of the business, and a statement of that Defendant's duties and responsibilities in connection with the business or employment.

B. For a period of five (5) years from the date of entry of this Order,

(1) Defendants shall notify Plaintiffs of any proposed change in the structure of Defendants Continental Direct Services, Inc., Data Tech Solutions, Inc., Interstate Check Services, Inc., or any other business entity owned or controlled by Defendants, such as the creation, incorporation, dissolution, assignment, sale, merger, creation, dissolution of subsidiaries, proposed filing of a bankruptcy petition, or change in the corporate names or addresses, or any other change that may affect compliance obligations arising out of this Order, ten (10) days prior to the effective date of any proposed change; *provided*, however, that, with respect to any proposed change in the corporation about which Defendants learn less than thirty (30) days prior to the date such action is to take place, Defendants shall notify Plaintiff as soon as is practicable after learning of such proposed change;

C. One hundred eighty (180) days after the date of entry of this Order, Defendants

shall provide a written report to Plaintiffs, sworn to under penalty of perjury, setting forth in detail the manner and form in which Defendants have complied and are complying with this Order. This report shall include but not be limited to:

- (1) Defendants' then current residence addresses and telephone numbers;
- (2) Defendants' then current employment, business addresses and telephone numbers, a description of the business activities of each such employer, and each Defendant's title and responsibilities for each employer;
- (3) A copy of each acknowledgment of receipt of this Order obtained by Defendants pursuant to Part VI of this Order; and
- (4) A statement describing the manner in which Defendants have complied and are complying with Parts I and II (prohibited business activities and bonds, Part VII (monitoring compliance of sales personnel), and Part VIII (record keeping provisions) of this Order; and
- (5) For the period commencing on the date of entry of the Order to the filing of the Compliance Report, (1) a copy of each different advertisement, promotional material, and other document transmitted to consumers, (2) a copy of each different telephone script, telephone sales Q & A or other training document, fee schedule and formula used or claimed to be used to determine initial and subsequent cash advance amounts given to consumers and fees, (3) each different catalog sent to consumers, and (4) a statement of the number of persons who purchased memberships and total amount of membership fees paid; the number of those persons who

subsequently purchased catalog products and the total dollar amounts; and the number of those persons who used the cash advance service and the total dollar amount.

D. Upon written request by a representative of either Plaintiff, Defendants shall submit additional written reports (under oath, if requested) and produce documents on thirty (30) days' written notice with respect to any conduct subject to this Order;

E. For the purposes of this Order, Defendants shall, unless otherwise directed by Plaintiff's authorized representatives, mail all written notifications to Plaintiff to:

Tracey J. Brierly, Esq.  
The Office of the Attorney General  
555 E. Washington Ave., Suite 3900  
Las Vegas, NV 89101  
re: FTC and State of Nev. v. Consumer Money Markets, Inc. et al.

Regional Director  
Federal Trade Commission  
Western Region Office  
901 Market Street, Suite 570  
San Francisco, California 94103  
re: FTC and State of Nev. v. Consumer Money Markets, Inc. et al.

F. For the purposes of this Part, "employment" includes the performance of services as an employee, consultant, or independent contractor; and "employers" include any individual or entity for whom Defendants perform services as an employee, consultant, or independent contractor; and

G. For purposes of the compliance reporting required by this Part, Plaintiff is authorized to communicate directly with Defendants.

#### **X. PLAINTIFF'S AUTHORITY TO MONITOR COMPLIANCE**

**IT IS FURTHER ORDERED** that Plaintiffs are authorized to monitor Defendants'

compliance with this Order by all lawful means, including but not limited to the following means:

A. Plaintiffs are authorized, without further leave of court, to obtain discovery from any person in the manner provided by Chapter V of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 26-37, including the use of compulsory process pursuant to Fed. R. Civ. P. 45, for the purpose of monitoring and investigating Defendants' compliance with any provision of this Order;

B. Plaintiffs are authorized to use representatives posing as consumers and suppliers to Defendant Data Tech Solutions, Inc. or Defendant William S. Kelly, or any other entity managed or controlled in whole or in part by such Defendants, without the necessity of identification or prior notice; and

C. Nothing in this Order shall limit the Federal Trade Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to investigate whether Defendants have violated any provision of this Order, Section 5 of the FTC Act, 15 U.S.C. § 45, the Telemarketing Sales Rule, 16 C.F.R. Part 310, or the Truth in Lending Act, 15 U.S.C. §§ 1601-1666j or its implementing Regulation Z, 12 C.F.R. § 226.

#### **XI. ACCESS TO BUSINESS PREMISES**

**IT IS FURTHER ORDERED** that, for a period of three (3) years from the date of entry of this Order, for the purpose of further determining compliance with this Order, each Defendant, as applicable, shall permit representatives of Plaintiffs, within five (5) business days of receipt of written notice from either Plaintiff:

(1) Access during normal business hours to any office, or facility storing documents, of Continental Direct Services, Inc., Interstate Check Services, Inc., Data Tech Solutions, Inc., or their successors or assigns, or any other business where

(a) Any Defendant owns at least 50% of the business or directly or indirectly manages or controls the business, and where

(b) the business is engaged in telemarketing or assisting others engaged in the sale of credit-related goods or services or engaged in telemarketing generally. In providing such access, Defendants shall permit representatives of Plaintiffs to inspect and copy all documents relevant to any matter contained in this Order; and shall permit Plaintiffs' representatives to remove documents relevant to any matter contained in this Order for a period not to exceed five (5) business days so that the documents may be inspected, inventoried, and copied; and

(2) To interview the officers, directors, and employees, including all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, of any business to which Subsection (A) of this Part applies, concerning matters relating to compliance with the terms of this Order. The person interviewed may have counsel present.

*Provided that*, upon application of either Plaintiff and for good cause shown, the Court may enter an *ex parte* order granting immediate access to Defendants' business premises for the purposes of inspecting and copying ~~all~~ **XII. SALE OF CUSTOMER LISTS** matter contained in this Order.

**IT IS FURTHER ORDERED** that Defendants, and their officers, agents, servants, employees, and attorneys, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are permanently restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, credit card number, bank account number, e-mail address, or

other identifying information of any person who paid any money to any Defendant, at any time prior to entry of this Order. *Provided, however,* that (1) Defendants may disclose such identifying information to a law enforcement agency or as required by any law, regulation, or court order, and (2) Defendants will not be deemed to be in violation of this provision if, subsequent to the entry of this Order, they purchase from independent sources, and later resell, information on specific individuals who also were previous customers of Defendants.

### **XIII. MISCELLANEOUS PROVISIONS**

Each party to this Order hereby agrees to bear its own costs and attorney fees incurred in connection with this action, with the exception of any costs agreed to be paid by Defendants to the State of Nevada for the cost of bringing this action.

### **XIV.**

**IT IS FURTHER ORDERED** that this Court retains jurisdiction of this matter for all purposes.

### **XV.**

The parties agree and stipulate to entry of the foregoing Order as a Final Judgment in this action.

FEDERAL TRADE COMMISSION

STATE OF NEVADA

By: \_\_\_\_\_  
Dean C. Graybill  
Jerome M. Steiner  
Attorneys for Plaintiff  
Federal Trade Commission

By: \_\_\_\_\_  
Tracey J. Brierly  
Attorney for Plaintiff  
State of Nevada

Dated:

Dated:

By: \_\_\_\_\_  
Charles T. Schofield, Esq.  
Charles T. Schofield & Associates  
Attorney for Defendants William S. Kelly,  
Data Tech Solutions, Inc. and Continental  
Direct Services, Inc.

Dated:

By: \_\_\_\_\_  
D. Reed Freeman, Esq.  
Arent Fox Kintner Plotkin & Kahn, PLLC  
Attorney for Defendants

Dated:

\_\_\_\_\_  
William S. Kelly, individually  
and as President of Data Tech  
Solutions, Inc.

Dated:

\_\_\_\_\_  
Jack Lund Schofield  
as President of Continental Direct  
Services, Inc.

Dated:

\_\_\_\_\_

Dated:

Gary Allen Balazs

\_\_\_\_\_  
Raymond Elia, individually and as  
as President of Interstate  
Check Services, Inc.

Dated:

**IT IS SO ORDERED**, this \_\_\_\_ day of \_\_\_\_\_, 1999.

\_\_\_\_\_  
United States District Judge

**APPENDIX A**

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

_____	)	
FEDERAL TRADE COMMISSION,	)	
	)	
and	)	
	)	
STATE OF NEVADA <u>ex rel.</u>	)	
FRANKIE SUE DEL PAPA,	)	CIVIL ACTION NO.
Attorney General,	)	
	)	
Plaintiffs,	)	AFFIDAVIT OF
	)	DEFENDANT
v.	)	WILLIAM S. KELLY
	)	
CONSUMER MONEY MARKETS, INC., et al.	)	
	)	
Defendants.	)	
_____	)	

William S. Kelly, individually and as president of Data Tech Solutions, Inc., being duly sworn, hereby states and affirms as follows:

1. My name is William S. Kelly. I am the president of Data Tech Solutions, Inc., whose current business address is \_\_\_\_\_. My current residence address is \_\_\_\_\_. I am a citizen of the United States and am over the age of eighteen. I have personal knowledge of the facts set forth in this Affidavit.

2. I am an individual defendant, and I am the president of the corporate defendant, Data Tech Solutions, Inc., in FTC v. Consumer Money Markets, Inc., et al. (United States District Court for the District of Nevada).

3. On [date], I received, individually and as president of Data Tech Solutions, Inc., a Stip. Perm. Injunction and Order

copy of the Stipulated Final Order for Permanent Injunction and Consumer Redress, which was signed by the Honorable [*name of U.S. District Judge*] and entered by the Court on [*date of entry of Order*]. A true and correct copy of the Order I received is appended to this Affidavit.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on [*date*], at [*city and state*].

DATA TECH SOLUTIONS, INC.

By: \_\_\_\_\_  
WILLIAM S. KELLY  
President

\_\_\_\_\_  
WILLIAM S. KELLY, individually and as  
an officer of the corporation

State of \_\_\_\_\_, City of \_\_\_\_\_

Subscribed and sworn to before me  
this \_\_\_\_ day of \_\_\_\_\_, 2000

\_\_\_\_\_  
Notary Public  
My Commission Expires:

**APPENDIX B**

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

FEDERAL TRADE COMMISSION,	)	
	)	
and	)	
	)	
STATE OF NEVADA <u>ex rel.</u>	)	
FRANKIE SUE DEL PAPA,	)	CIVIL ACTION NO.
Attorney General,	)	
	)	
Plaintiffs,	)	AFFIDAVIT ON BEHALF OF
	)	CONTINENTAL DIRECT
v.	)	SERVICES, INC.
	)	
CONSUMER MONEY MARKETS, INC., et al.	)	
	)	
Defendants.	)	
	)	

Jack Lund Schofield, being duly sworn, hereby states and affirms as follows:

1. My name is Jack Lund Schofield. My current address is \_\_\_\_\_ . I am a citizen of the United States and am over the age of eighteen. I have personal knowledge of the facts set forth in this Affidavit.

2. I am the president of the corporate defendant, Continental Direct Services, Inc., in FTC v. Consumer Money Markets, Inc., et al. (United States District Court for the District of Nevada).

3. On [date], I received, as president of Continental Direct Services, Inc., a copy of the Stipulated Final Order for Permanent Injunction and Consumer Redress, which was signed by the Honorable [name of U.S. District Judge] and entered by the Court on [date of entry of Order].

A true and correct copy of the Order I received is appended to this Affidavit.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on [date], at [city and state].

CONTINENTAL DIRECT SERVICES, INC..

By: \_\_\_\_\_  
JACK LUND SCHOFIELD, as President  
of the corporation

State of \_\_\_\_\_, City of \_\_\_\_\_

Subscribed and sworn to before me  
this \_\_\_\_ day of \_\_\_\_\_, 2000

\_\_\_\_\_  
Notary Public  
My Commission Expires:

**APPENDIX C**

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

FEDERAL TRADE COMMISSION,	)	
	)	
and	)	
	)	
STATE OF NEVADA <u>ex rel.</u>	)	
FRANKIE SUE DEL PAPA,	)	CIVIL ACTION NO.
Attorney General,	)	
	)	
Plaintiffs,	)	AFFIDAVIT OF
	)	RAYMOND ELIA
v.	)	
	)	
CONSUMER MONEY MARKETS, INC., et al.	)	
	)	
Defendants.	)	
	)	

Raymond Elia, being duly sworn, hereby states and affirms as follows:

1. My name is Raymond Elia. My current address is

\_\_\_\_\_. I am a citizen of the United States and am over the age of eighteen. I have personal knowledge of the facts set forth in this Affidavit.

2. I am an individual defendant and I am the president of the corporate defendant, Interstate Check Services, Inc., in FTC v. Consumer Money Markets, Inc., et al. (United States District Court for the District of Nevada).

3. On [date], I received, individually and as president of Interstate Check Services, Inc., a copy of the Stipulated Final Order for Permanent Injunction and Consumer Redress, which was signed by the Honorable [name of U.S. District Judge] and entered by the Court on [date of

*entry of Order*]. A true and correct copy of the Order I received is appended to this Affidavit.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on [date], at [city and state].

INTERSTATE CHECK SERVICES, INC..

By: \_\_\_\_\_  
RAYMOND ELIA, individually and  
as President of the corporation

State of \_\_\_\_\_, City of \_\_\_\_\_

Subscribed and sworn to before me  
this \_\_\_\_ day of \_\_\_\_\_, 2000

\_\_\_\_\_  
Notary Public  
My Commission Expires:

**APPENDIX D**

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

FEDERAL TRADE COMMISSION,	)	
	)	
and	)	
	)	
STATE OF NEVADA <u>ex rel.</u>	)	
FRANKIE SUE DEL PAPA,	)	CIVIL ACTION NO.
Attorney General,	)	
	)	
Plaintiffs,	)	AFFIDAVIT OF
	)	GARY ALLEN BALAZS
v.	)	
	)	
CONSUMER MONEY MARKETS, INC., et al.	)	
	)	
Defendants.	)	
	)	

Gary Allen Balazs, being duly sworn, hereby states and affirms as follows:

1. My name is Gary Allen Balazs. My current address is

\_\_\_\_\_. I am a citizen of the United States and am over the age of eighteen.

I have personal knowledge of the facts set forth in this Affidavit.

2. I am an individual defendant in FTC v. Consumer Money Markets, Inc., et al.

(United States District Court for the District of Nevada).

3. On [date], I received a copy of the Stipulated Final Order for Permanent Injunction and Consumer Redress, which was signed by the Honorable [name of U.S. District Judge] and entered by the Court on [date of entry of Order]. A true and correct copy of the Order I received is appended to this Affidavit.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on [date], at [city and state].

\_\_\_\_\_  
Gary Allen Balazs

State of \_\_\_\_\_, City of \_\_\_\_\_

Subscribed and sworn to before me  
this \_\_\_\_ day of \_\_\_\_\_, 2000

\_\_\_\_\_  
Notary Public  
My Commission Expires: