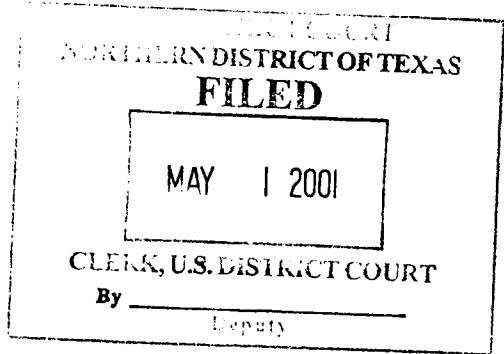


X010039

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

\_\_\_\_\_ )  
**FEDERAL TRADE COMMISSION,** )  
  
Plaintiff, )  
  
v. )  
  
**COLLEGE RESOURCE MANAGEMENT, INC.,** )  
**SCOTT G. TRAYNOR, and** )  
**STEVEN L. DAUGHENBAUGH,** )  
  
Defendants. )  
\_\_\_\_\_ )



Civil Action No.

3-01CV0828-G

**COMPLAINT FOR INJUNCTION AND OTHER EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission ("Commission"), for its Complaint alleges:

1. The Commission brings this action under Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b) and 57b, to secure preliminary and permanent injunctive relief, rescission of contracts, restitution, disgorgement, and other equitable relief for Defendants' deceptive acts or practices in connection with the selling of academic services in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the Commission's Rule Concerning Cooling-Off Period for Sales Made at Home or at Certain Other Locations ("Cooling Off Rule"), 16 C.F.R. Part 429.

## JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 15 U.S.C. §§ 45(a), 53(b), and 57b, and 28 U.S.C. §§ 1331, 1337(a), and 1345.

3. Venue in the Northern District of Texas is proper under 28 U.S.C. § 1391(b) and (c) and 15 U.S.C. § 53(b).

## THE PARTIES

4. Plaintiff **Federal Trade Commission** is an independent agency of the United States government created by the FTC Act, 15 U.S.C. §§ 41-58. The Commission enforces the FTC Act, which prohibits deceptive acts or practices in commerce. The Commission also enforces the Cooling Off Rule, 16 C.F.R. Part 429, which prohibits unfair or deceptive acts or practices in connection with door-to-door and certain other sales. The Commission may initiate federal district court proceedings to enjoin violations of the FTC Act and the Cooling Off Rule, and to secure such equitable relief as is appropriate in each case, including restitution and disgorgement. 15 U.S.C. §§ 53(b) and 57b.

5. Defendant **College Resource Management, Inc.** ("CRM") is a Delaware corporation with its office and principal place of business located at 801 W. Freeway Avenue, Suite 850, Grand Prairie, Texas 75051. CRM also does business under the name College Financial Aid Services of America and The College Partnership. CRM transacts or has transacted business in this district. CRM is a wholly-owned subsidiary of College Bound Student Alliance, Inc.

6. From February 1, 1996, through July 31, 1998, defendant **Scott G. Traynor** was the president and treasurer, and a director of CRM. From August 1, 1998, through May 21,

1999, he was the chairman of the board of directors of CRM. From May 21, 1999, through July 31, 2000, he was the president and chief executive officer of CRM. Individually or in concert with others, he directed, controlled, formulated, or participated in the acts and practices set forth herein. He resides, transacts, or has transacted business in this district.

7. From February 1, 1996, through July 31, 1998, defendant **Steven L.**

**Daughenbaugh** was the vice-president and secretary, and a director of CRM. From August 1, 1998, through May 21, 1999, he was the president and vice-chairman of the board of directors of CRM. Individually or in concert with others, he directed, controlled, formulated, or participated in the acts and practices set forth herein. He resides, transacts, or has transacted business in this district.

#### COMMERCE

8. Defendants' course of trade is in or affecting commerce within the meaning of Section 4 of the FTC Act, 15 U.S.C. § 44.

#### DEFENDANTS' BUSINESS PRACTICES

9. Since at least December 1996, Defendants have conducted a program to sell purported academic services to consumers residing throughout the United States. Each year, Defendants market their academic services through thousands of letters sent to high school students and their parents or legal guardians nationwide. Typical letters have stated that the student "has been identified by [Defendants'] research firm in New York as one of the local students that may be eligible to enroll in [Defendants'] nationally recognized college financial aid and placement assistance program," and invite the student to attend an interview.

## **Sales Presentation**

10. Students and their parents or legal guardians who attend the interview are subjected to a sales presentation for Defendants' services. The presentations, which consist of a group presentation followed by a one-on-one personal interview, take place at local hotels or banquet rooms.

11. During the group presentations, which consist of both live and videotaped presentations, Defendants emphasize the difficulty and complexity of the college financial aid and admissions process. Defendants assure consumers, however, that CRM will guide consumers through the admissions and financial aid process. Defendants inform consumers that because of the knowledge, expertise and experience of CRM's highly trained staff and the services CRM provides, Defendants can help consumers obtain more financial aid than consumers could get on their own. Defendants' representatives tell consumers that CRM's clients receive millions of dollars in financial aid. Defendants assure consumers that CRM's services will save consumers money and maximize consumers' financial aid opportunities.

12. Defendants tell consumers that CRM will prepare a personalized career profile for their student and then find colleges that offer majors in their chosen fields with the best financial aid packages. Defendants state that CRM will professionally analyze consumers' financial situations, prepare a personalized financial aid report, and design customized strategies to reduce or eliminate the expected family contribution, which will maximize the amount of gift aid consumers will likely receive. Defendants offer to guide consumers in completing the Free Application for Federal Student Aid (FAFSA) and review resulting Student Aid Reports and college financial aid award letters for accuracy and appropriateness. Consumers are told that

CRM will provide a team of coaches to guide consumers through the entire financial aid and admissions process and market the students to recommended colleges.

13. Defendants emphasize that consumers need to act immediately. Consumers are told that many of CRM's financial aid strategies must be implemented right away because they can take two years to be effective. The general presentation closes with a reminder that Defendants can only accept 20,000 new families from the millions who want their services.

14. After the presentation, consumers (parent or legal guardian and student) proceed to a personal interview with one of Defendants' enrollment counselors. The personal interview typically begins with a few questions about the student's interests and current activities. The interview quickly turns, however, into a sales closing for Defendants' services. Defendants offer three payment options: a one-time payment of \$995; \$259 down and \$259 per month for 3 months (for a total of \$1,036); or \$89 down and \$89 per month for 11 months (for a total of \$1,068).

15. The enrollment counselors require consumers to make a purchasing decision on the spot and do not allow consumers to take materials home to think things over. The counselors typically inform consumers that Defendants cannot guarantee that they will return to the area and that the interview is the only opportunity to participate in the program.

16. Consumers who purchase Defendants' services execute a one-page Client Application and Fee for Services Agreement ("service agreement"). Pursuant to the service agreement, Defendants promise to perform specific services for consumers, including analyzing the family's current financial situation, preparing a customized need analysis or financial aid report, and recommending strategies to increase financial aid eligibility. Although the service

agreement contains a notice of cancellation at the bottom of the page (informing consumers of their right to cancel within three business days), Defendants' enrollment counselors do not inform consumers orally of the right to cancel at the time consumers sign the contract unless the consumer specifically asks. Defendants also do not provide consumers with cancellation forms that consumers can use to cancel, and that identify when the right to cancel expires and where to send the form.

17. The service agreement also provides, in small print towards the bottom of the page, that the agreement will be renewed automatically each year at a cost of \$300 per year, unless the company receives a written thirty (30) day notice of non-renewal from the family. Although consumers are told there is an annual renewal fee of \$300 if they continue to require CRM's services, Defendants' enrollment counselors do not inform consumers that the agreement will be renewed automatically.

18. Defendants typically send consumers a career profile report that contains only a broad, general discussion of the student's interests. Defendants also typically send consumers a needs analysis or financial aid report that presents the same financial information originally submitted by the consumer. Defendants' recommended strategies to maximize financial aid eligibility typically are broad, general strategies not tailored to the consumer's specific financial situation. Many of the recommended strategies are not feasible or practical for most consumers.

19. Although Defendants represent that they will guide consumers through the financial aid process, consumers often must contact Defendants repeatedly in order to get Defendants to perform any services.

## **Guarantee and Refunds**

20. Defendants' service agreements have contained several different refund policies.

Prior to approximately January 1999, Defendants guaranteed that their recommended strategies would

demonstrate (1) A minimum of \$2,500 in Financial Aid including grants, scholarships, and loan interest paid by the government; or (2) a reduction of at least \$2,500 in [consumers'] estimated Family Contribution; or (3) a combination of the above, totaling at least \$2,500.

The only conditions disclosed in all the service agreements were that consumers had to complete and submit to Defendants a financial information questionnaire and that consumers had to apply Defendants' recommended strategies.

21. Consumers dissatisfied with Defendants' services had great difficulty in obtaining refunds. Defendants typically refused to give a refund where the consumer did not follow all of Defendants' recommended strategies even where such strategies were either not feasible or not practical. Many consumers who obtained refunds from Defendants received them only after complaining to a Better Business Bureau or a state governmental agency.

22. Defendants often failed to return promptly consumers' telephone inquiries about cancellation or convinced consumers to delay any cancellation decision until after the expiration of the right to cancel, thereby preventing consumers from exercising any right to cancel contained in the service agreements.

### **THE FEDERAL TRADE COMMISSION ACT**

23. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), provides that "unfair or deceptive acts or practices in or affecting commerce are hereby declared unlawful."

## DEFENDANTS' VIOLATIONS OF THE FTC ACT

### COUNT I

24. Defendants represent, expressly or by implication, that students are selected based upon their qualifications to participate in Defendants' college financial aid and admissions program.

25. In truth and fact, students are not selected based upon their qualifications to participate in Defendants' college financial aid and admissions program.

26. Therefore, the representations set forth in paragraph 24 are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

### COUNT II

27. Defendants represent, expressly or by implication, that consumers who purchase Defendants' services are likely to receive substantially more financial aid than consumers could obtain without Defendants' services.

28. In truth and fact, in most instances, consumers who purchase Defendants' services are not likely to receive substantially more financial aid than consumers could obtain without Defendants' services.

29. Therefore, the representations set forth in paragraph 27 are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).



### COUNT III

30. In numerous instances, Defendants have failed to disclose, or disclose adequately, that their service agreements will be renewed automatically each year at a cost of \$300 per year unless the company receives a written notice of non-renewal from the family 30 days prior to the renewal date. This fact would be material to consumers in their decision to sign a service agreement with Defendants.

31. Defendants' failure to disclose, or disclose adequately, this material fact is a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

### COUNT IV

32. From December 1996 until January 1999, Defendants represented, expressly or by implication, that Defendants would refund their fee to consumers who purchased Defendants' services and did not obtain (A) a minimum of \$2,500 in grants, scholarships, and loan interest paid by the government, (B) a reduction of at least \$2,500 in expected family contribution, or (C) a combination of the above totaling at least \$2,500.

33. In truth and in fact, Defendants did not refund their fee to consumers who purchased Defendants' services and did not obtain (A) a minimum of \$2,500 in grants, scholarships, and loan interest paid by the government, (B) a reduction of at least \$2,500 in expected family contribution, or (C) a combination of the above totaling at least \$2,500.

34. Therefore, the representations set forth in paragraph 32 are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

## THE COOLING OFF RULE

35. Defendants are “sellers” engaged in “door-to-door sales” of “consumer goods or services,” as those terms are defined in the Cooling Off Rule, 16 C.F.R. § 429.0(a), (b), (c).

36. The Cooling Off Rule provides that it is an unfair and deceptive act or practice for any seller to fail to furnish a buyer, at the time the buyer signs a door-to-door sales contract or agrees to buy consumers goods or services from the seller, a completed form in duplicate, captioned either “NOTICE OF RIGHT TO CANCEL” or “NOTICE OF CANCELLATION” containing language to the effect that the buyer can cancel the transaction within three business days, when the three day period expires, and where to send the notice of cancellation. 16 C.F.R. § 429.1(b).

37. The Cooling Off Rule further provides that it is an unfair and deceptive act or practice for any seller to fail inform each buyer orally, at the time the buyer signs the contract or purchases the goods or services, of the buyer’s right to cancel. 16 C.F.R. § 429.1(e).

38. Pursuant to Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), violations of the Cooling Off Rule constitute unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

## DEFENDANTS’ VIOLATIONS OF THE COOLING OFF RULE

### COUNT V

39. In numerous instances, Defendants, in connection with the door-to-door sales of academic services, have (A) failed to furnish consumers, at the time consumers sign the contract, a completed form in duplicate, captioned either “NOTICE OF RIGHT TO CANCEL” or “NOTICE OF CANCELLATION” containing language informing the buyer of the right to cancel

the transaction within three business days; and (B) failed to inform consumers orally, at the time consumers sign the contract, of consumers' right to cancel.

40. Therefore, Defendants' acts and practices as set forth in paragraph 39 violate Sections 429.1(b) and 429.1(e) of the Cooling Off Rule, 16 C.F.R. § 429.1(b), (e).

#### **CONSUMER INJURY**

41. Consumers throughout the United States have suffered and continue to suffer substantial monetary loss as a result of Defendants' unlawful acts or practices. In addition, Defendants have been unjustly enriched as a result of their unlawful acts or practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

#### **THIS COURT'S POWER TO GRANT RELIEF**

42. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other ancillary relief, including consumer redress, disgorgement, and restitution, to prevent and remedy any violations of any provision of law enforced by the Commission.

43. Section 19 of the FTC Act, 15 U.S.C. § 57b, authorizes this Court to grant such relief as the Court finds necessary to redress injury to consumers or other persons resulting from Defendants' violations of the Cooling Off Rule, including the rescission or reformation of contracts, and the refund of monies.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests that this Court, as authorized by Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and pursuant to its own equitable powers :

(1) Enjoin Defendants permanently from violating Section 5(a) of the FTC Act and the Cooling Off Rule, including committing such violations in connection with the advertising, offering for sale, or other promotion of academic services;

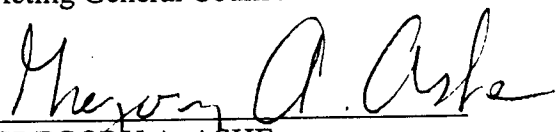
(2) Award such equitable relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of Section 5(a) of the FTC Act and the Cooling Off Rule, including, but not limited to, restitution or consumer redress, the rescission of contracts or refund of money, and the disgorgement of unlawfully obtained monies; and

(3) Award plaintiff the costs of bringing this action as well as such additional equitable relief as the Court may determine to be just and proper.

Dated: May 1, 2001

Respectfully submitted,

JOHN D. GRAUBERT  
Acting General Counsel

  
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Attorneys for Plaintiff

ORIGINAL

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

U.S. DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
**FILED**  
MAY - 2 2001  
CLERK, U.S. DISTRICT COURT  
By \_\_\_\_\_  
Deputy

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

COLLEGE RESOURCE MANAGEMENT, INC.,  
SCOTT G. TRAYNOR, and  
STEVEN L. DAUGHENBAUGH,

Defendants.

Civil Action No.

3-01CV0828-G  
ENTERED ON DOCKET  
U.S. DISTRICT CLERK'S OFFICE

**STIPULATED FINAL ORDER FOR PERMANENT INJUNCTION AND SETTLEMENT  
OF CLAIMS FOR MONETARY RELIEF**

Plaintiff, the Federal Trade Commission ("Commission"), commenced this action on May 1, 2001, by filing its Complaint for Injunction and Other Equitable Relief ("Complaint") against defendants College Resource Management, Inc. ("CRM"), Scott G. Traynor, and Steven L. Daughenbaugh. The Commission alleges that the Defendants engaged in deceptive acts or practices in violation of Section 5(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45(a), and the Commission's Rule Concerning Cooling-Off Period for Sales Made at Home or at Certain Other Locations ("Cooling Off Rule"), 16 C.F.R. Part 429 (a copy of which is attached hereto as Appendix B), and seeks a permanent injunction and monetary relief pursuant to Sections 13(b) and 19 of the FTC Act. The Commission and the Defendants hereby stipulate to this Final Order for Permanent Injunction and Settlement of Claims for Monetary Relief ("Order").

## FINDINGS

By stipulation of the parties, the Court finds as follows:

1. The Commission brings this action pursuant to Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b. The Commission seeks permanent injunctive relief for alleged deceptive acts or practices in connection with the sale and offering for sale of academic goods and services in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a) and the Cooling Off Rule, 16 C.F.R. Part 429.

2. The Commission has the authority under Sections 13(b) and 19 of the FTC Act to seek the relief it has requested.

3. This Court has jurisdiction over the subject matter of this action and has jurisdiction over the Defendants. Venue in the Northern District of Texas is proper, and the Complaint states a claim upon which relief may be granted against the Defendants.

4. The activities of the Defendants, as alleged in the Complaint, are or were in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

5. The Commission and the Defendants stipulate and agree to this Order, without trial or final adjudication of any issue of fact or law, to settle and resolve all matters in dispute arising from the Complaint to the date of entry of this Order. The Defendants do not admit any of the allegations set forth in the Complaint other than jurisdictional facts. The Commission and the Defendants stipulate and agree that this Order constitutes a settlement agreement pursuant to Federal Rule of Evidence 408.

6. The parties waive all rights to seek judicial review or otherwise challenge or contest the validity of this Order. The defendants also waive any claim that they may have held

under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the date of this Order. Each settling party shall bear its own costs and attorneys' fees.

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

8. Pursuant to Federal Rule of Civil Procedure 65(d) the provisions of this Order are binding upon the Defendants and their officers, agents, servants, and employees, and upon those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise.

### **DEFINITIONS**

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

1. "Defendants" means College Resource Management, Inc. and its subsidiaries, affiliates, successors and assigns, Scott G. Traynor, and Steven L. Daughenbaugh.

2. "Academic good or service" means any item, product, good or service represented to assist consumers in admissions, planning, or obtaining financial aid or other financial assistance for college, university, community college, trade or vocational school, high school, middle school, or other secondary school, elementary school or other primary school, or any other educational institution, or for any other educational purpose.

3. "Assisting others" means providing any of the following goods or services to any person or entity: (a) performing customer service functions, including but not limited to receiving or responding to consumer complaints; (b) formulating or providing, or arranging for the formulation or provision of, any sales script or any other written marketing material; (c) providing names of, or assisting in the generation of, potential customers; (d) performing marketing services of any kind; or (e) acting as an officer or director of a business entity.

4. "Clearly and conspicuously," unless otherwise specifically defined in this Order, means:

(a) In communications disseminated through an electronic medium (such as television, video, radio, and interactive media such as the Internet and online services), the message shall be presented simultaneously in both the audio and video portions of the communication. 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 communications presented solely through video or audio means, the message may be conveyed through the same means in which the communication is presented.

(b) In print communications, 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 message shall be used in any communication.

## **ORDER**

### **I. PROHIBITED BUSINESS ACTIVITIES**

IT IS THEREFORE STIPULATED AND ORDERED that, in connection with the advertising, promotion, offer for sale, or sale of any academic good or service, the Defendants



and any entity through which they do business, and their successors, assigns, officers, agents, servants, employees, and all 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, expressly or by implication, that students are selected, eligible, accepted, qualified, or any other similar term that implies or states that students are invited to participate in a seminar or workshop or are able to enroll in, purchase or receive any academic good or service based on any specific criteria;

B. Falsely representing, expressly or by implication, that consumers who purchase any academic good or service are likely to receive substantially more financial aid than consumers could obtain without such good or service;

C. Failing to disclose to consumers, orally and in writing, clearly and conspicuously, prior to the sale of any academic good or service, if true, that any agreement for such goods or services will be renewed automatically each year and the cost of the renewal; *provided* that if such plan or practice exists, Defendants also must (1) disclose clearly and conspicuously any obligation of the consumer to cancel or take other affirmative action to avoid further charges; and (2) thirty (30) days prior to the automatic renewal, Defendants must send consumers, by first-class mail, a reminder notifying the consumer that he or she will be charged for an automatic renewal, which reminder shall include the cost of the renewal and provide at least one reasonable means by which the consumer may effectively cancel his or her agreement by a date certain and thereby avoid further charges;

D. Falsely representing, expressly or by implication, that consumers who purchase any academic good or service will receive a refund if they do not obtain any financial aid as a result of such good or service;

E. Falsely representing, expressly or by implication, the terms and conditions of any refund or guarantee policy;

F. To the extent any refund or guarantee policy contains any material terms, conditions, or limitations, failing to disclose in a clear and conspicuous manner, prior to charging a consumer for any good or service, all such material terms, conditions, or limitations or any policy of non-refundability;

G. Falsely representing, expressly or by implication, that consumers who purchase any academic good or service have received, or are likely to receive, a specified amount of financial aid as a result of such good or service;

H. Falsely representing, expressly or by implication, that consumers who purchase any academic good or service will receive customized advice tailored to their specific academic planning or financial needs;

I. Falsely representing, expressly or by implication, the nature or quality of training, knowledge or experience of any person or entity providing any academic good or service;

J. Falsely representing, expressly or by implication, that a particular academic good or service will be provided, or the nature or quality of any such good or service provided, including, but not limited to, that such good or service will be provided within a particular time period or before a particular deadline;

K. Falsely representing, expressly or by implication, the extent to which consumers will be required to incur any expense or partake in any activities in order to implement or use any such good or service, including, but not limited to, completing a questionnaire and being required to request in writing any particular good or service;

L. Falsely representing, expressly or by implication, any material fact regarding any academic good or service; and

M. Assisting others who violate any provision of sub-paragraphs A-L of this Paragraph I.

## **II. PROHIBITED BUSINESS ACTIVITIES RELATING TO THE COOLING OFF RULE**

IT IS FURTHER STIPULATED AND ORDERED that, in connection with the “door to door sale” of any “consumer good or service” (as those terms are defined in the Cooling Off Rule, 16 C.F.R. § 429.0(a) and (b)), the Defendants and any entity through which they do business, and their successors, assigns, officers, agents, servants, employees, and all 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. Failing to furnish consumers, at the time consumers sign a contract for or purchase a good or service, a completed form in duplicate, captioned either “NOTICE OF RIGHT TO CANCEL” or “NOTICE OF CANCELLATION” containing language to the effect that the consumer can cancel the transaction within three business days;

B. Failing to inform consumers orally, at the time consumers sign a contract for or purchase a good or service, of the consumers' right to cancel the transaction within three business days;

C. Violating any provision of the Cooling Off Rule, 16 C.F.R. Part 429, including any amendments thereto; and

D. Assisting others who violate any provision of sub-paragraphs A-C of this Paragraph II.

### III. AFFIRMATIVE DISCLOSURES

IT IS FURTHER ORDERED that, in connection with the advertising, promotion, offer for sale, or sale of any academic good or service, the Defendants and any entity through which they do business, and their successors, assigns, officers, agents, servants, employees, and all persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, shall:

A. In the course of making any oral sales presentation, disclose, clearly and conspicuously, that:

1. Purchasing CRM's services does not guarantee that a consumer will get financial aid or get more financial aid than the consumer could have otherwise obtained without purchasing CRM's services;

2. Purchasing CRM's services does not guarantee that a consumer's child will get accepted by any college or university;

3. CRM provides no services until it receives a completed questionnaire, that certain services must be specifically requested, and that failure to utilize any services does not entitle consumers to a refund;

4. Consumers may not realize the full benefit of CRM's services if their children are within 6 months of graduating high school, have not made reasonable efforts to complete the necessary paperwork for admissions and financial aid, or are only considering attending community college;

5. Consumers who are not U.S. citizens may not be eligible for federal or state financial aid, and thus may not realize the full benefit of CRM's services.

B. In the text of any print or Internet communication, including, but not limited to, any solicitation letter sent to consumers or any sales contract executed by consumers, disclose, clearly and conspicuously, that

1. To the extent a representation is made, whether explicitly or by implication, relating to the efficacy of any academic good or service, including, but not limited to, testimonials or general statements describing past or current customer experiences with such good or service, that consumers purchasing such good or service should not expect to experience the same or similar results;

2. To the extent a representation is made, whether explicitly or by implication, that consumers purchasing any academic good or service will receive strategies that (if consumers choose to apply them) may help increase their financial aid eligibility, there is no guarantee that applying any or all of such strategies will result in an increase in financial aid eligibility.

C. The disclosures required by this Paragraph III are in addition to, and not in lieu of, any other disclosures that the Defendants may be required to make, including but not limited to any disclosure required by state or federal law or by a self-regulatory organization. The disclosure requirements of this Paragraph III are not intended to, and shall not be interpreted to, exempt the Defendants from making any other disclosure.

#### IV. MONETARY RELIEF

IT IS FURTHER ORDERED that:

A. Judgment is hereby entered against defendant CRM in the amount of FORTY THOUSAND DOLLARS (\$40,000.00) for equitable monetary relief, payable as follows:

1. Defendant CRM shall pay to the Commission or its designated agent the amount of \$5,000 within ten days of entry of this Order;
2. Defendant CRM shall pay to the Commission or its designated agent the amount of \$10,000 on or before the first day of the sixth month following entry of this Order;
3. Defendant CRM shall pay the balance of the judgment in five (5) equal monthly installments of \$5,000 each, due and owing as of the first day of the seventh month following entry of this Order, the first installment of which shall be payable no later than the first day of the seventh month following entry of this Order and subsequent installments shall be due on the first day of every month thereafter;
4. In the event of default on any of the payments required by this subparagraph A, the entire unpaid balance of the judgment shall immediately become due and payable;

5. To secure the payment of the entire judgment entered pursuant to this Paragraph IV, defendant CRM shall cause College Bound Student Alliance, Inc. to execute and deliver to the Commission, a corporate guarantee, in a form acceptable to counsel for the Commission, in favor of the Commission, to be effective as of the date of entry of this Order, in an amount equal to \$40,000. Such guarantee shall provide that, upon the default by CRM of any payment required by this sub-paragraph A, the entire unpaid balance of the judgment shall immediately become due and payable, and the Commission shall be entitled to execute on the guarantee against College Bound Student Alliance, Inc. in an amount equal to such unpaid balance. Within ten days of the payment of the full amount of the judgment entered by this Order, the Commission shall cancel and return to College Bound Student Alliance, Inc. the corporate guarantee.

B. The funds received by the Commission pursuant to this Paragraph IV shall be deposited into an account to be maintained by the Commission or its agent. Upon the final disposition of this action, such funds shall be paid to the U.S. Treasury as equitable disgorgement;

C. Defendant CRM is hereby required, in accordance with 31 U.S.C. § 7701, to furnish to the Commission its taxpayer identification number, which shall be used for purposes of collecting and reporting on any delinquent amount arising out of CRM's relationship with the government;

D. Defendants further agree that the facts as alleged in the Complaint shall be taken as true in the event of any subsequent litigation to collect amounts due pursuant to this Order, including but not limited to a nondischargeability complaint in any bankruptcy proceeding.

E. The judgment entered pursuant to this Paragraph IV is equitable monetary relief, solely remedial in nature, and not a fine, penalty, punitive assessment or forfeiture.

**V. RIGHT TO REOPEN**

IT IS FURTHER ORDERED that, within fifteen days after entry of this Order, Defendants shall submit to the Commission a truthful sworn statement, in the form shown on Appendix A, that shall acknowledge receipt of this Order and defendant CRM shall reaffirm and attest to the truth, accuracy and completeness of the financial statements previously submitted to the Commission on October 11, 2000. The Commission's agreement to this Order is expressly premised on the truthfulness, accuracy and completeness of defendant CRM's financial condition as represented in its financial statement previously submitted to the Commission. If, upon motion by the Commission, the Court finds that defendant CRM's financial statement failed to disclose any material asset, materially misrepresented the value of any asset, or made any other material misrepresentation or omission, the Court shall enter judgment against defendant CRM, in favor of the Commission, in the amount of three hundred thousand dollars (\$300,000.00), less any amounts already paid pursuant to Paragraph IV of this Order; *provided, however*, that in all other respect this Order shall remain in full force and effect unless otherwise ordered by the Court; and, *provided further*, that proceedings instituted under this provision would be in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any other proceedings that the Commission may initiate to enforce this Order. For purposes of this Paragraph V, Defendants waive any right to contest any of the allegations in the Complaint.



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

IF IS FURTHER ORDERED that each Defendant, in connection with (i) any business where such defendant is an officer, director, manager or majority owner, and (ii) such business promotes, offers for sale, or sells, or assists others in promoting, offering for sale, or selling, academic goods or services, 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 Paragraphs I, II and III of this Order. Such steps shall include adequate monitoring of sales presentations or other communications with customers, and shall also include, at a minimum, the following: (1) listening to the oral representations made by persons engaged in sales or other customer service functions; (2) establishing a procedure for receiving and responding to consumer complaints; and (3) ascertaining the number and nature of consumer complaints regarding transactions in which each employee or independent contractor is involved; *provided* that this Paragraph VI does not authorize or require the defendant 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 Paragraph VI applies.

## **VII. RECORD KEEPING PROVISIONS**

IT IS FURTHER ORDERED that for a period of ten years from the date of entry of this Order, each Defendant, in connection with any business where (1) such defendant is the majority owner of the business or directly or indirectly controls the business, and (2) the business engages in, or assists others engaged in, the advertisement, promotion, offer for sale, or sale of any

academic good or service, is hereby restrained and enjoined from failing to have such business create, and from failing to have such business retain for a period of three 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; *provided* that the business subject to this subparagraph B shall retain such records for a period of two years following the date of each such person's termination;

C. Records containing the names, addresses, phone numbers, dollar amounts paid, quantity of goods or services purchased, and description of goods 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) the basis of the complaint, including the name of any salesperson complained against, and the nature and result of any investigation conducted concerning any complaint; (4) each response and the date of the response; (5) any final resolution and the date of the resolution; and (6) in the event of a denial of a refund request, the reason for the denial; and

E. Copies of all sales scripts, training materials, advertisements, or other marketing materials utilized; *provided* that copies of all sales scripts, training materials, advertisements, or other marketing materials utilized shall be retained for three years after the last date of dissemination of any such materials.

#### **VIII. ACCESS TO BUSINESS PREMISES**

IT IS FURTHER ORDERED that, for a period of ten years from the date of entry of this Order, for the purpose of further determining compliance with this Order, each Defendant shall permit representatives of the Commission, within five business days of receipt of written notice from the Commission:

A. Access during normal business hours to any office, or facility storing documents, of any business where (1) such defendant is the majority owner of the business or directly or indirectly controls the business, and (2) the business engages in, or assists others engaged in, the advertisement, promotion, offer for sale, or sale of any academic good or service. In providing such access, each Defendant shall permit representatives of the Commission to inspect and copy all documents relevant to any matter contained in this Order; and shall permit Commission representatives to remove documents relevant to any matter contained in this Order for a period not to exceed five business days so that the documents may be inspected, inventoried, and copied; and

B. 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 sub-paragraph A of this Paragraph VIII applies, concerning matters relating to compliance with the terms of this Order. The person interviewed may have counsel present.

*Provided, however,* that, upon application of the Commission for good cause shown, the Court may enter an *ex parte* order granting immediate access to each Defendant's business premises for the purposes of inspecting and copying all documents relevant to any matter contained in this Order.

#### **IX. AUTHORITY TO MONITOR COMPLIANCE**

IT IS FURTHER ORDERED that the Commission is authorized to monitor Defendants' compliance with this Order by all lawful means, including but not limited to the following means:

A. The Commission is 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 Defendants' compliance with any provision of this Order;

B. The Commission is authorized to use representatives posing as consumers and suppliers to Defendants, their employees, or any other entity managed or controlled in whole or in part by any Defendant, without the necessity of identification or prior notice; and

C. Nothing in this Order shall limit the 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 any Defendant has violated any provision of this Order or Section 5 of the FTC Act, 15 U.S.C. § 45.

**X. SERVICE OF ORDER BY DEFENDANTS**

IT IS FURTHER ORDERED that, for a period of ten years from the date of entry of this Order:

A. Defendant CRM and its successors and assigns shall 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 employees, consultants, independent contractors or otherwise, immediately upon employing or retaining any such persons;

B. Defendants Scott Traynor and Steven Daughenbaugh, in connection with any business where (1) such defendant is the majority owner of the business or directly or indirectly controls the business, and (2) the business engages in, or assists others engaged in, the advertisement, promotion, offer for sale, or sale of any academic good or service, shall each 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;

C. Each Defendant shall maintain for a period of three years after creation, and upon reasonable notice, make available to representatives of the Commission, the original signed and dated acknowledgments of the receipt of copies of this Order, as required in sub-paragraphs A and B above.

## XI. REPORTS 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 ten years from the date of entry of this Order:

1. Defendant CRM and its successors and assigns shall notify the Commission in writing of (a) any changes in its mailing addresses, and telephone numbers within 30 days of such change; and (b) any proposed change in the structure of CRM or its successors or assigns, such as creation, incorporation, dissolution, assignment, sale, merger, creation, dissolution of subsidiaries, proposed filing of bankruptcy petition, or change in the corporate name or address, or any change that may affect compliance obligations arising out of this Order, thirty (30) days prior to the effective date of any proposed change;

2. Defendants Scott Traynor and Steven Daughenbaugh shall each notify the Commission in writing of (a) any changes in his business address, residential address or residential telephone number, within fifteen days of the date of such change; and (b) any changes in his employment status (including self-employment) within fifteen days of such change. Such notice shall include the name, address, and telephone and facsimile number of each business by which he is employed, a statement of the nature of the business, and a statement of his duties and responsibilities in connection with the business.

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

1. The Defendant's current mailing address, telephone number, and facsimile number (if any);

2. With respect to the individual defendants, his current employment, business address, telephone and facsimile numbers, a description of the business activities of each such employer, and the defendant's title and responsibilities for each employer. With respect to the corporate defendant, a description of its current business activities;

3. A copy of each acknowledgment of receipt of this Order obtained by the Defendant pursuant to Paragraph X of this Order; and

4. A statement describing the manner in which the Defendant has complied and is complying with each Paragraph of this Order;

C. Upon written request by a representative of the Commission, each Defendant shall submit additional written reports (under oath, if requested) and produce documents on fifteen (15) days' notice with respect to any conduct subject to this Order;

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

Associate Director for Enforcement  
Federal Trade Commission  
600 Pennsylvania Avenue, NW, Room S-4302  
Washington, D.C. 20580

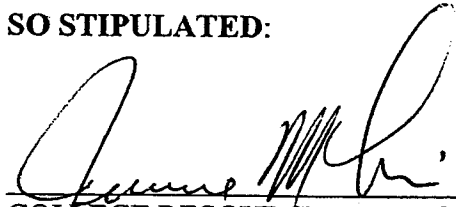
Re: FTC v. College Resource Management, Inc.

E. For purposes of the compliance reporting required by this Paragraph XI, the Commission is authorized to communicate directly with Defendants, provided that the Commission provide simultaneously notice of any such communication to the Defendant's counsel of record.

**XII. RETENTION OF JURISDICTION**

IT IS FURTHER ORDERED that this Court shall retain jurisdiction over this matter for purposes of the construction, modification and enforcement of this Order.

**SO STIPULATED:**

  
COLLEGE RESOURCE MANAGEMENT, INC., Defendant  
By: *Jerome M. L. R. P. N.*  
*C.E.O./PRES*

Dated: 12-11-00

\_\_\_\_\_  
SCOTT G. TRAYNOR, Defendant

Dated: \_\_\_\_\_

\_\_\_\_\_  
STEVEN L. DAUGHENBAUGH, Defendant

Dated: \_\_\_\_\_

\_\_\_\_\_  
R.H. WALLACE, JR.  
Shannon, Gracey, Ratliff & Miller, L.L.P.  
777 Main Street, Suite 1500  
Fort Worth, TX 76102

Dated: \_\_\_\_\_

PAUL LESTER  
Fieldstone, Lester, Shear & Denberg  
201 Alhambra Circle  
Coral Gables, FL 33134


Attorneys for Defendants



**SO STIPULATED:**

\_\_\_\_\_  
COLLEGE RESOURCE MANAGEMENT, INC., Defendant  
By:

Dated: \_\_\_\_\_

  
\_\_\_\_\_  
SCOTT G. TRAYNOR, Defendant

Dated: 12/16/2000

\_\_\_\_\_  
STEVEN L. DAUGHENBAUGH, Defendant

Dated: \_\_\_\_\_

\_\_\_\_\_  
R.H. WALLACE, JR.  
Shannon, Gracey, Ratliff & Miller, L.L.P.  
777 Main Street, Suite 1500  
Fort Worth, TX 76102

Dated: \_\_\_\_\_

PAUL LESTER  
Fieldstone, Lester, Shear & Denberg  
201 Alhambra Circle  
Coral Gables, FL 33134

Attorneys for Defendants

DEC-08-00 FRI 11:33 AM

FAX NO.

P. 02/05

8-22-00; 2:33PM:SHANNON GRACEY

3363735

**SO STIPULATED:**

\_\_\_\_\_  
COLLEGE RESOURCE MANAGEMENT, INC., Defendant  
By:

Dated: \_\_\_\_\_

\_\_\_\_\_  
SCOTT G. TRAYNOR, Defendant

Dated: \_\_\_\_\_

  
STEVEN L. DAUGHENBAUGH, Defendant

Dated: 12-14-00

\_\_\_\_\_  
R.H. WALLACE, JR.  
Shannon, Gracey, Ratliff & Miller, L.L.P.  
777 Main Street, Suite 1500  
Fort Worth, TX 76102

Dated: \_\_\_\_\_

PAUL LESTER  
Fieldstone, Lester, Shear & Denberg  
201 Alhambra Circle  
Coral Gables, FL 33134

Attorneys for Defendants

**SO STIPULATED:**

\_\_\_\_\_  
COLLEGE RESOURCE MANAGEMENT, INC., Defendant  
By:

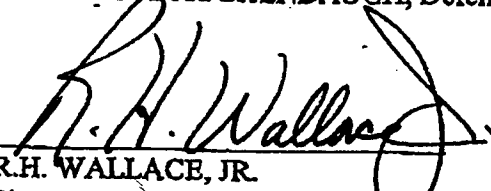
Dated: \_\_\_\_\_

\_\_\_\_\_  
SCOTT G. TRAYNOR, Defendant

Dated: \_\_\_\_\_

\_\_\_\_\_  
STEVEN L. DAUGHENBAUGH, Defendant

Dated: \_\_\_\_\_

  
\_\_\_\_\_  
R.H. WALLACE, JR.  
Shannon, Gracey, Ratliff & Miller, L.L.P.  
777 Main Street, Suite 1500  
Fort Worth, TX 76102

Dated: 12/13/00

**PAUL LESTER**  
Fieldstone, Lester, Shear & Denberg  
201 Alhambra Circle  
Coral Gables, FL 33134

Attorneys for Defendants

*Gregory A. Ashe*

GREGORY A. ASHE  
ROBIN R. SPECTOR  
Federal Trade Commission  
600 Pennsylvania Ave., N.W., Room S-4302  
Washington, D.C. 20580

Dated: 5/1/01

Attorneys for Plaintiff

**IT IS SO ORDERED.**

This 2 day of May, 2001.

*A. J. Fish*

UNITED STATES DISTRICT JUDGE

APPENDIX A  
 IN THE UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF TEXAS  
 DALLAS DIVISION

FEDERAL TRADE COMMISSION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
COLLEGE RESOURCE MANAGEMENT, INC.,	)	Civil Action No.
SCOTT G. TRAYNOR, and	)	
STEVEN L. DAUGHENBAUGH,	)	
	)	
Defendants.	)	

**AFFIDAVIT OF [DEFENDANT]**

[Insert name], being duly sworn, hereby states and affirms as follows:

1. My name 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.

*[for defendant CRM]*

2. I am the \_\_\_\_\_ of College Resource Management, Inc. ("CRM"), which is a defendant in FTC v. College Resource Management, Inc., et al. (N.D. Tex.). My current business address is \_\_\_\_\_. My current business telephone number is \_\_\_\_\_ and facsimile number is \_\_\_\_\_.

3. The current business address of CRM is \_\_\_\_\_. The current business telephone of CRM is \_\_\_\_\_ and facsimile number is \_\_\_\_\_.

*[for individual defendants]*

2. I am a defendant in the above-captioned civil action. My current business address is \_\_\_\_\_ . My current business telephone number is \_\_\_\_\_ and facsimile number is \_\_\_\_\_ . My current residential address is \_\_\_\_\_ . My current residential telephone number is \_\_\_\_\_ .

*[for all defendants]*

4. On [date], [CRM][I] received a copy of the Stipulated Final Order for Permanent Injunction, which was signed by the Honorable [judge] and entered by the Court on [date of entry of Order]. A true and correct copy of the Order that [CRM][I] received is appended to this Affidavit.

*[for defendant CRM]*

5. I reaffirm and attest to the truthfulness, accuracy, and completeness of the financial statement that CRM submitted to the Federal Trade Commission on or about October 11, 2000.

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].

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

Subscribed and sworn to before me  
this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

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