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SOUTHERN DISTRICT OF CALIFORNIA
BY: *V. Shambaugh* DEPUTY

1 JOHN D. JACOBS (CA. Bar No. 134154)
Federal Trade Commission
2 10877 Wilshire Boulevard, Suite 700
Los Angeles, CA 90024
3 (310) 824-4343; Fax (310) 824-4380

4 JANICE L. CHARTER
JEROME M. STEINER, JR.
5 Federal Trade Commission
901 Market Street, Suite 570
6 San Francisco, CA 94131
(415) 848-5100; Fax (415) 848-5184

7 ELIZABETH A. BLACKSTON
8 Office of the Illinois Attorney General
500 South Second Street
9 Springfield, IL 62706
(217) 782-4436; Fax (217) 782-1097

10
11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

13
14 FEDERAL TRADE COMMISSION AND
STATE OF ILLINOIS,
15
16 Plaintiffs,
17
18 v.
MEMBERSHIP SERVICES, INC., a
19 Delaware corporation, and
20 JAMES M. SCHWINDT, individually
and as an officer of Membership
21 Services, Inc.,
Defendants.

01 CV 1868 (JM) (POR)

STIPULATED
PRELIMINARY INJUNCTION WITH
ASSET FREEZE; ORDER THEREON

22
23
24 WHEREAS Plaintiffs Federal Trade Commission and State of
25 Illinois, pursuant to Sections 13(b) and 19 of the Federal Trade
26 Commission Act ("FTC Act"), 15 U.S.C. § 53(b) and 57b, the
27 Telemarketing and Consumer Fraud and Abuse Prevention Act, 15
28 U.S.C. §§ 6101 et seq., and the Illinois Consumer Fraud and

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ORIGINAL

1 Deceptive Business Practices Act ("ICFA"), 815 ILCS 505, filed a
2 complaint for a permanent injunction and other relief in this
3 matter, and applied ex parte for a temporary restraining order with
4 asset freeze, order appointing temporary receiver, and order to
5 show cause why preliminary injunction should not issue and a
6 permanent receiver should not be appointed ("TRO");

7 WHEREAS, the Court granted the requested TRO on October 17,
8 2001, setting a preliminary injunction hearing date of October 30,
9 2001;

10 WHEREAS, Defendants received service of the Complaint,
11 Summons, and TRO on October 17, 2001;

12 NOW, THEREFORE, Plaintiffs Commission and State of Illinois
13 and Defendants Membership Services, Inc. ("MSI") and James Schwindt
14 hereby stipulate to entry of a preliminary injunction with the
15 following findings of fact and order:

16 FINDINGS

17 1. This Court has jurisdiction of the subject matter of this
18 case and jurisdiction of all parties hereto, and venue in this
19 district is proper.

20 2. Weighing the equities and considering plaintiffs'
21 likelihood of ultimate success, a Permanent Injunction with asset
22 freeze and other equitable relief is in the public interest.

23 3. Defendants MSI and Schwindt have not admitted liability
24 as to the charges in the Complaint, and their consent to entry of
25 this preliminary injunction shall not be interpreted to constitute
26 an admission by either of them that they have engaged in violations
27 of any law or regulations.

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

3 **ORDER**

4 **DEFINITIONS**

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

7 1. "Plaintiffs" means the Federal Trade Commission and the
8 State of Illinois.

9 2. "Defendants" means Membership Services, Inc. ("MSI"), and
10 James M. Schwindt ("Schwindt"), individually and as an officer of
11 Membership Services, Inc., and each of them, by whatever names each
12 might be known by, as well as their successors, assigns, officers,
13 agents, directors, servants, employees, salespersons, independent
14 contractors, attorneys, corporations, subsidiaries, all other
15 persons or entities directly or indirectly under their control or
16 under common control with them, and all other persons or entities
17 in active concert or participation with either of them who receive
18 actual notice of this Order by personal service or otherwise,
19 whether acting directly or through any corporation, subsidiary,
20 division, or other device, including, but not limited to,
21 fictitious business names;

22 3. "Receivership Defendant" means defendant Membership
23 Services, Inc.

24 4. "Material" means likely to affect a person's choice of,
25 or conduct regarding, goods or services.

26 5. "Assets" means any legal or equitable interest in, right
27 to, or claim to, any real or personal property, including, without
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1 limitation, chattels, goods, instruments, equipment, fixtures,
2 general intangibles, leaseholds, mail or other deliveries,
3 inventory, checks, notes, accounts, credits, contracts,
4 receivables, shares of stock, and all cash, wherever located.

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

11 7. "Consumer" means an actual or potential purchaser,
12 customer, subscriber, or natural person.

13 8. "Credit card loss protection" means the advertisement,
14 promotion, offering for sale, or sale of any product or service
15 represented to register credit or debit accounts, including credit
16 card accounts, or protect, indemnify, or reimburse the holder of a
17 credit or debit account against unauthorized use or charges.

18 9. "Cclp services" means credit card loss protection
19 services.

20 10. "Person" means a natural person, organization, or other
21 legal entity, including a corporation, partnership, proprietorship,
22 association, cooperative, government or governmental subdivision or
23 agency, or any other group or combination acting as an entity.

24 11. The terms "and" and "or" shall be construed conjunctively
25 or disjunctively as necessary, and to make the applicable phrase or
26 sentence inclusive rather than exclusive.

1 ORDER

2 I.

3 PROHIBITED CONDUCT

4 IT IS THEREFORE ORDERED that Defendant MSI and Defendant
5 Schwindt, and their successors, assigns, officers, agents,
6 servants, employees, and attorneys, and those persons or entities
7 in active concert or participation with either of them who receive
8 actual notice of this Order by personal service or otherwise,
9 whether acting directly or through any corporation, subsidiary,
10 division, or other device, in connection with the advertising,
11 offering for sale, or sale of credit card loss protection services,
12 low-interest credit cards or debt consolidation services, or
13 consumer benefits packages, are hereby restrained and enjoined from
14 the following:

- 15 A. representing that, unless they purchase defendants' cclp
16 services, consumers will be liable for any and all
17 unauthorized charges billed to their credit card
18 accounts;
- 19 B. falsely representing a consumer's liability for
20 unauthorized charges billed to the consumer's credit
21 card;
- 22 C. falsely representing that defendants represent or are
23 affiliated with any bank, credit card company, or other
24 third party;
- 25 D. falsely representing that consumers are or will be
26 required to purchase cclp services;
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- 1 E. falsely representing that consumers will receive a credit
2 card, loan, or other extension of credit;
- 3 F. falsely representing that consumers will be charged small
4 monthly payments to purchase any of defendants' products
5 or services;
- 6 G. falsely representing that consumers who have not
7 authorized any transactions involving defendants owe
8 defendants for goods or services; or
- 9 H. making any express or implied representation of material
10 fact that is false or misleading.

11 **II.**

12 **PROHIBITION ON VIOLATIONS OF THE TELEMARKETING SALES RULE**

13 **IT IS FURTHER ORDERED** that Defendant MSI and Defendant
14 Schwindt, and their successors, assigns, officers, agents,
15 servants, employees, and attorneys, and those persons or entities
16 in active concert or participation with either of them who receive
17 actual notice of this Order by personal service or otherwise,
18 whether acting directly or through any corporation, subsidiary,
19 division, or other device, are hereby restrained and enjoined from
20 violating any provision of the Telemarketing Sales Rule, 16 C.F.R.
21 Part 310, including, but not limited to, the following violations:

- 22 A. Making any material misrepresentation of any material
23 aspect of the performance, efficacy, nature, or central
24 characteristics of goods or services, including but not
25 limited to, that purchase of defendants' product or
26 service is necessary to prevent unlimited liability for
27 unauthorized use of a consumer's credit card number or
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1 that defendants will provide a low-interest credit card
2 or debt consolidation services, in violation of 16 C.F.R.
3 § 310.3(a)(2)(iii);

4 B. Requesting or receiving payment of any fee or
5 consideration in advance of obtaining a loan or other
6 extension of credit when the seller or telemarketer has
7 guaranteed or represented a high likelihood of success in
8 obtaining a credit card for such consumers, in violation
9 of 16 C.F.R. § 310.4(a)(4); and

10 C. Making a false or misleading statement to induce any
11 person to pay for goods or services, including any of the
12 following statements: (1) that defendants represent or
13 are affiliated with the consumer's bank or credit card
14 company; 2) that consumers are or will be required by
15 their bank, their credit card company, or by law to
16 purchase cclp services; 3) that consumers who have not
17 agreed to be charged by defendants owe defendants for
18 goods or services; and 4) that consumers will be charged
19 small monthly payments to purchase products or services,
20 in violation of 16 C.F.R. § 310.3(a)(4).

21 **III.**

22 **ASSET FREEZE**

23 **IT IS FURTHER ORDERED** that defendants are hereby restrained
24 and enjoined, until further order of this Court, from:

25 A. Transferring, encumbering, selling, concealing, pledging,
26 hypothecating, assigning, spending, withdrawing,
27 disbursing, conveying, gifting, dissipating, or otherwise
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1 disposing of any funds, property, coins, lists of
2 consumer names, shares of stock, or other assets,
3 wherever located, that are (1) owned or controlled by
4 Defendant MSI or Defendant Schwindt, in whole or in part;
5 (2) in the actual or constructive possession of either
6 defendant; (3) held by an agent of Defendant MSI or
7 Defendant Schwindt as a retainer for the agent's
8 provision of services to Defendant MSI or Defendant
9 Schwindt; or (4) owned, controlled by, or in the actual
10 or constructive possession of, or otherwise held for the
11 benefit of, any corporation, partnership, or other entity
12 directly or indirectly owned or controlled by Defendant
13 MSI or Defendant Schwindt;

14 B. Opening or causing to be opened any safe deposit boxes
15 titled in the name of Defendant MSI or Defendant
16 Schwindt, or subject to access by either defendant; and

17 C. Incurring charges or cash advances on any credit or debit
18 card issued in the name, singly or jointly, of Defendant
19 MSI or Defendant Schwindt or any corporation,
20 partnership, or other entity directly or indirectly owned
21 or controlled by either defendant.

22 D. Provided, that the freeze imposed in this Section shall
23 not be construed to apply to assets that plaintiffs
24 agreed to release pursuant to the Stipulation Between
25 Plaintiffs and Defendant Schwindt as to Release of
26 Assets, signed by counsel for Defendant Schwindt on
27 October 24, 2001;

1 E. Provided further, that the freeze imposed in this Section
2 shall not be construed to apply to income or other assets
3 acquired after service of the TRO on defendants on
4 October 17, 2001 unless such assets were acquired as a
5 direct result of conduct that violated Section I or II of
6 the TRO or are acquired as a direct result of conduct
7 that violates Section I or Section II of this Order,
8 above.

9 IV.

10 PRESERVATION OF RECORDS

11 IT IS FURTHER ORDERED that Defendants Schwindt and MSI, and
12 their agents, servants, employees, and attorneys, and all persons
13 or entities directly or indirectly under the control of either of
14 them, and all other persons or entities in active concert or
15 participation with either of them who receive actual notice of this
16 Order by personal service or otherwise, and each such person, are
17 hereby restrained and enjoined from destroying, erasing,
18 mutilating, concealing, altering, transferring or otherwise
19 disposing of, in any manner, directly or indirectly, any documents
20 that relate to the business practices or business or personal
21 finances of Defendant Schwindt or the business practices or
22 business finances of Defendant MSI, including, but not limited to,
23 such documents as any contracts, accounting data, correspondence,
24 advertisements, computer tapes, discs or other computerized
25 records, books, written or printed records, handwritten notes,
26 telephone logs, telephone scripts, receipt books, ledgers, personal
27 and business canceled checks and check registers, bank statements,

1 appointment books, copies of federal, state, or local business or
2 personal income or property tax returns.

3 V.

4 **PROHIBITION ON SALE OF CUSTOMER LISTS**

5 **IT IS FURTHER ORDERED** that Defendant Schwindt, and his agents,
6 servants, employees, attorneys, and all persons or entities
7 directly or indirectly under his control, and all other persons or
8 entities in active concert or participation with him who receive
9 actual notice of this Order by personal service or otherwise, and
10 each such person, whether acting directly or through any
11 corporation, limited liability company, subsidiary, division or
12 other device, are hereby restrained and enjoined from selling,
13 renting, leasing, transferring or otherwise disclosing the name,
14 address, telephone number, credit card number, bank account number
15 or other identifying information of any consumer or purchaser
16 identified in defendants' customer database pertaining to
17 defendants' Low Interest Credit Card Protect Program ("LICCP")--
18 i.e., the telemarketing program encompassing the two types of
19 products or services that are the subject of this immediate
20 litigation--to any third party; *provided, however,* that Defendant
21 Schwindt may disclose such identifying information (i) to the
22 Receiver or a law enforcement agency, or as required by any law,
23 regulation or court order, or (ii) to any other third party after
24 providing prior notice to and receiving written permission from
25 counsel for Plaintiff FTC, with the decision to grant such
26 permission resting solely with Plaintiff FTC and its counsel.

1 VI.

2 RECORD KEEPING

3 IT IS FURTHER ORDERED that Defendant Schwindt is hereby
4 restrained and enjoined from failing to make and keep, and to
5 provide to Plaintiffs' counsel promptly upon request, an accurate
6 accounting that, in reasonable detail, accurately, fairly, and
7 completely reflects his incomes, disbursements, transactions, and
8 use of money, beginning immediately upon issuance of this Order.

9 VII.

10 NOTIFICATION OF BUSINESS ACTIVITIES

11 IT IS FURTHER ORDERED that Defendant Schwindt is hereby
12 restrained and enjoined from creating, operating, or exercising any
13 control over any business entity, including any partnership,
14 limited partnership, joint venture, sole proprietorship or
15 corporation, without first serving on counsel for the Commission a
16 written statement disclosing the following: (1) the name of the
17 business entity; (2) the address and telephone number of the
18 business entity; (3) the names of the business entity's officers,
19 directors, principals, managers and employees; and (4) a detailed
20 description of the business entity's intended activities.

21 IT IS FURTHER ORDERED that Defendant Schwindt shall notify the
22 Commission at least seven (7) days prior to any affiliation with
23 any new or previously inactive business or employment. Each notice
24 shall include Defendant Schwindt's new business address and a
25 statement of the nature of the new business or employment and of
26 his duties and responsibilities in connection with that business or
27 employment.

VIII.

FINANCIAL INSTITUTIONS

IT IS FURTHER ORDERED that any financial or brokerage institution, business entity, or person having possession, custody, or control of any records of Defendant Schwindt or Defendant MSI, or of any account, safe deposit box, or other asset titled in the name of either defendant, either individually or jointly or held for the benefit of either defendant, or that has maintained any such account, safe deposit box, or other asset at any time since January 1, 1999, shall:

- A. Hold and retain within its control and prohibit the transfer, encumbrance, pledge, assignment, removal, withdrawal, dissipation, sale, or other disposal of any such account or other asset, except for transfers or withdrawals authorized in writing by counsel for either plaintiff, by the Receiver (with respect to assets of Defendant MSI), or by further order of this Court;
- B. Deny access to any safe deposit box titled individually or jointly in the name of either defendant or otherwise subject to access by either defendant;
- C. Provide to plaintiffs and to the Receiver, within three (3) business days of notice of this Order, if they have not already done so pursuant to the TRO, a sworn statement setting forth:
 1. The identification of each account or asset;
 2. The balance of each account or a description of the nature and value of each asset as of the close of

1 business on the day notification of this Order is
2 received, and, if the account or asset has been
3 closed or moved, the balance or value removed and
4 the person or entity to whom it was transferred; and
5 3. the identification of any safe deposit box titled in
6 the name of or subject to access by either
7 defendant.

8 D. Upon request by counsel for either of the plaintiffs or
9 the Receiver (with respect to assets held for Defendant
10 MSI), promptly provide plaintiffs or the Receiver with
11 copies of all records or other documentation pertaining
12 to such account or asset, including but not limited to
13 originals or copies of account applications, account
14 statements, signature cards, checks, drafts, deposit
15 tickets, transfers to and from the accounts, all other
16 debit and credit instruments or slips, currency
17 transaction reports, 1099 forms, and safe deposit box
18 logs; and

19 E. At the direction of plaintiffs (or, with respect to
20 receivership assets, at the direction of the temporary or
21 permanent Receiver appointed herein), and without further
22 order of this Court, convert any stocks, bonds, options,
23 mutual funds, or other securities to their cash
24 equivalents.

25 F. Provided that nothing in this Section shall be construed
26 to apply to Defendant Schwindt's two accounts in
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1 California Federal Bank that were the subject of the
2 Stipulation Between Plaintiffs and Defendant Schwindt as
3 to Release of Funds, and which end in the digits xxxx7345
4 and xxxx2785.

5 IX.

6 REPATRIATION OF ASSETS

7 IT IS FURTHER ORDERED that within five business days following
8 service of this Order, Defendant MSI and Defendant Schwindt shall,

- 9 A. Repatriate to the United States all funds, documents, or
10 assets in foreign countries held either: (1) by them;
11 (2) for their benefit; or (3) under their direct or
12 indirect control, jointly or singly;
- 13 B. The same business day as any repatriation under paragraph
14 A above,
- 15 1. notify plaintiffs and the Receiver of the name and
16 location of the financial institution or other
17 entity that is the recipient of such funds,
18 documents, or assets; and
- 19 2. serve this Order on any such financial institution
20 or other entity;
- 21 C. Provide plaintiffs and the Receiver with a full
22 accounting of all funds, documents, and assets outside of
23 the territory of the United States held either: (1) by
24 them; (2) for their benefit; or (3) under their direct or
25 indirect control, jointly or singly, unless they have
26 done so already pursuant to the TRO; and
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1 D. Hold and retain all repatriated funds, documents, and
2 assets and prevent any transfer, disposition, or
3 dissipation whatsoever of any such assets or funds.

4 X.

5 ACCESS TO DEFENDANTS' RECORDS

6 IT IS FURTHER ORDERED that, until further order of the Court,
7 the Receiver shall allow the Commission's representatives, the
8 representatives of Defendant Schwindt or Defendant MSI, and
9 Defendant Schwindt himself reasonable access to the business
10 premises of the Receivership Defendant. The purpose of this access
11 shall be to inspect and copy any and all books, records, accounts,
12 and other property owned by or in the possession of the
13 Receivership Defendant. The Receiver shall have the discretion to
14 determine the time and manner of this access.

15 XI.

16 CONTINUATION OF TEMPORARY RECEIVERSHIP

17 IT IS FURTHER ORDERED that, until further order of the Court,
18 **Leslie Gladstone** shall continue as Temporary Receiver ("Receiver")
19 for Receivership Defendant MSI, with the full power of an equity
20 receiver. The Receiver shall be the agent of this Court and solely
21 the agent of this Court in acting as Receiver under this Order.
22 The Receiver shall be accountable directly to this Court. The
23 Receiver shall comply with all Local Rules of this Court governing
24 receivers.

XII.

DURATION OF TEMPORARY RECEIVERSHIP

IT IS FURTHER ORDERED that the temporary receivership shall be extended for no less than two weeks from the date of entry of this Order to allow the parties additional time to stipulate as to whether the receivership shall be made permanent or dissolved. If no stipulation can be reached and plaintiffs desire to have the receivership made permanent, plaintiffs shall file and serve a notice that they are renewing their motion for the appointment of a permanent receiver over Defendant MSI, at which time the October 17, 2001 Order to Show Cause as to why a permanent receiver should not be appointed over MSI shall be renewed. The Court's determination of whether a permanent receiver should be appointed over Defendant MSI will be considered on the basis of previously submitted moving papers and evidence as well as evidence submitted in accordance with the following briefing schedule: Plaintiffs may submit supplemental evidence with their notice of renewal of their motion for the appointment of a permanent receiver; defendants shall file and serve any evidence and brief in opposition by no later than 4:00 p.m. of the tenth calendar day following the date of service of plaintiffs' notice; plaintiffs may file and serve any reply by no later than 4:00 p.m. of the fifth court day following the date of service of defendants' opposition. A hearing shall be held on the OSC on the twentieth court day following the filing of plaintiffs' notice of renewal, or as may otherwise be scheduled by the Court. The temporary receivership shall remain in place until

1 the Court makes its determination as to whether the temporary
2 receivership should be made permanent.

3 **XIII.**

4 **RECEIVERSHIP DUTIES**

5 **IT IS FURTHER ORDERED** that the Receiver is directed and
6 authorized to perform and accomplish the following:

7 A. Assume full control of the Receivership Defendant by
8 removing, as the Receiver deems necessary or advisable, any
9 manager, independent contractor, employee, or agent of the
10 Receivership Defendant, including Defendant Schwindt, from control
11 of, management of, or participation in, the affairs of the
12 Receivership Defendant;

13 B. Take or retain exclusive custody, control and possession
14 of all assets and documents of, or in the possession, custody, or
15 under the control of, the Receivership Defendant, wherever
16 situated. The Receiver shall have full power to divert mail and to
17 sue for, collect, receive, take in possession, hold, and manage all
18 assets and documents of the Receivership Defendant and other
19 persons or entities whose interests are now held by or under the
20 direction, possession, custody, or control of the Receivership
21 Defendant. Provided, however, the Receiver shall not attempt to
22 collect any amount from any client of the Receivership Defendant.

23 C. Take all steps necessary to secure all premises owned,
24 rented, leased, or otherwise controlled by the Receivership
25 Defendant, including but not limited to all such premises located
26 at 7841 Balboa Avenue, San Diego, California. Such steps may
27 include, but are not limited to, the following as the Receiver
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1 deems necessary or advisable: (1) serving and filing this Order;
2 (2) completing a written inventory of all receivership assets; (3)
3 obtaining pertinent information from all employees and other agents
4 of the Receivership Defendant, including, but not limited to, the
5 name, home address, social security number, job description, method
6 of compensation, and all accrued and unpaid commissions and
7 compensation of each such employee or agent; (4) video taping all
8 portions of the location; or (5) securing the location by changing
9 the locks and disconnecting any computer modems or other means of
10 access to the computer or other records maintained at that
11 location;

12 D. Conserve, hold, and manage all receivership assets, and
13 perform all acts necessary or advisable to preserve the value of
14 those assets, in order to prevent any irreparable loss, damage, or
15 injury to consumers or to creditors of the Receivership Defendant,
16 including, but not limited to, obtaining an accounting of the
17 assets and preventing transfer, withdrawal, or misapplication of
18 assets;

19 E. Enter into contracts and purchase insurance as advisable
20 or necessary;

21 F. Prevent the inequitable distribution of assets and to
22 determine, adjust, and protect the interests of consumers and
23 creditors who have transacted business with the Receivership
24 Defendant;

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

3 H. Choose, engage, and employ attorneys, accountants,
4 appraisers, and other independent contractors and technical
5 specialists, as the Receiver deems advisable or necessary in the
6 performance of duties and responsibilities under the authority
7 granted by this Order;

8 I. Make payments and disbursements from the receivership
9 estate that are necessary or advisable for carrying out the
10 directions of, or exercising the authority granted by, this Order.
11 The Receiver shall apply to the Court for prior approval of any
12 payment of any debt or obligation incurred by the Receivership
13 Defendant prior to the date of entry of this Order, except payments
14 that the Receiver deems necessary or advisable to secure assets of
15 the Receivership Defendant, such as rental payments;

16 J. Determine and implement the manner in which the
17 Receivership Defendant will comply with, and prevent violations of,
18 this Order and all other applicable laws;

19 K. Institute, compromise, adjust, appear in, intervene in,
20 or become party to such actions or proceedings in state, federal or
21 foreign courts that the Receiver deems necessary and advisable to
22 preserve or recover the assets of the Receivership Defendant or
23 that the Receiver deems necessary and advisable to carry out the
24 Receiver's mandate under this Order;

25 L. Defend, compromise, adjust, or otherwise dispose of any
26 or all actions or proceedings instituted in the past or in the
27 future against the Receiver in his role as Receiver, or against the
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1 Receivership Defendant that the Receiver deems necessary and
2 advisable to preserve the assets of the Receivership Defendant or
3 that the Receiver deems necessary and advisable to carry out the
4 Receiver's mandate under this Order;

5 M. Issue subpoenas to obtain documents and records
6 pertaining to the receivership, and conduct discovery in this
7 action on behalf of the receivership estate;

8 N. Open one or more bank accounts in San Diego County as
9 designated depositories for funds of the Receivership Defendant.
10 The Receiver shall deposit all funds of the Receivership Defendant
11 in such a designated account and shall make all payments and
12 disbursements from the receivership estate from such an account;
13 and

14 O. Maintain accurate records of all receipts and
15 expenditures that s/he makes as Receiver.

16 **XIV.**

17 **COOPERATION WITH THE RECEIVER**

18 **IT IS FURTHER ORDERED** that Defendants Schwindt and MSI, and
19 their agents, servants, employees, and attorneys, and all persons
20 or entities directly or indirectly under the control of either of
21 them, and all other persons or entities in active concert or
22 participation with either of them who receive actual notice of this
23 Order by personal service or otherwise, and each such person, shall
24 fully cooperate with and assist the Receiver. Such cooperation and
25 assistance shall include, but not be limited to, providing any
26 information to the Receiver that the Receiver deems necessary to
27 exercising the authority and discharging the responsibilities of
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1 the Receiver under this Order; providing any password required to
2 access any computer or electronic files in any medium; or advising
3 all persons who owe money to the Receivership Defendant (other than
4 customers) that all debts should be paid directly to the Receiver.
5 Defendants are hereby restrained and enjoined from directly or
6 indirectly:

7 A. Transacting any of the business of the Receivership
8 Defendant, or transacting business under the name Membership
9 Services, Inc., or any substantially similar name;

10 B. Destroying, secreting, defacing, transferring, or
11 otherwise altering or disposing of any documents of the
12 Receivership Defendant, including, but not limited to, books,
13 records, accounts, or any other papers of any kind or nature;

14 C. Transferring, receiving, altering, selling, encumbering,
15 pledging, assigning, liquidating, or otherwise disposing of any
16 assets owned, controlled, or in the possession or custody of, or in
17 which an interest is held or claimed by, the Receivership
18 Defendant, or the Receiver;

19 D. Excusing debts owed to the Receivership Defendant;

20 E. Failing to notify the Receiver of any asset, including
21 accounts, of a Receivership Defendant held in any name other than
22 the name of the Receivership Defendant, or by any person or entity
23 other than the Receivership Defendant, or failing to provide any
24 assistance or information requested by the Receiver in connection
25 with obtaining possession, custody, or control of such assets; or

26 F. Doing any act or refraining from any act whatsoever to
27 interfere with the Receiver's taking custody, control, possession,
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1 or managing of the assets or documents subject to this
2 receivership; or to harass or interfere with the Receiver in any
3 way; or to interfere in any manner with the exclusive jurisdiction
4 of this Court over the assets or documents of the Receivership
5 Defendant; or to refuse to cooperate with the Receiver or the
6 Receiver's duly authorized agents in the exercise of their duties
7 or authority under any Order of this Court.

8 **XV.**

9 **DELIVERY OF RECEIVERSHIP PROPERTY**

10 **IT IS FURTHER ORDERED** that:

11 A. Immediately upon service of this Order upon them, or
12 within a period permitted by the Receiver, Defendant Schwindt or
13 any other person or entity shall, to the extent not previously
14 accomplished pursuant to the TRO, transfer or deliver possession,
15 custody, and control of the following to the Receiver:

16 1. All assets of the Receivership Defendant;

17 2. All documents of the Receivership Defendant,
18 including, but not limited to, books and records of accounts, all
19 financial and accounting records, balance sheets, income
20 statements, bank records (including monthly statements, canceled
21 checks, records of wire transfers, and check registers), client
22 lists, title documents and other papers;

23 3. All assets belonging to members of the public now
24 held by the Receivership Defendant; and

25 4. All keys and codes necessary to gain or to secure
26 access to any assets or documents of the Receivership Defendant,
27 including, but not limited to, access to their business premises,
28

1 means of communication, accounts, computer systems, or other
2 property.

3 B. In the event any person or entity fails to deliver or
4 transfer any asset or otherwise fails to comply with any provision
5 of this Paragraph, the Receiver may file, on an ex parte basis, an
6 Affidavit of Non-Compliance regarding the failure. Upon filing of
7 the affidavit, the Court may authorize, without additional process
8 or demand, Writs of Possession or Sequestration or other equitable
9 writs requested by the Receiver. The writs shall authorize and
10 direct the United States Marshal or any sheriff or deputy sheriff
11 of any county (pursuant to Fed. R. Civ. P. 4(c)(1)) to seize the
12 asset, document, or other thing and to deliver it to the Receiver.

13 **XVI.**

14 **BANKRUPTCY PETITIONS**

15 **IT IS FURTHER ORDERED** that, in light of the asset freeze and
16 appointment of the Receiver, Defendant Schwindt is hereby
17 prohibited from filing, or causing to be filed, on behalf of either
18 himself or of Defendant MSI, a petition for relief under the United
19 States Bankruptcy Code, 11 U.S.C. § 101 et seq., without prior
20 permission from this Court.

21 **XVII.**

22 **TRANSFER OF FUNDS TO THE RECEIVER**

23 **IT IS FURTHER ORDERED** that, upon service of a copy of this
24 Order, all banks, broker-dealers, savings and loans, escrow agents,
25 title companies, commodity trading companies, or other financial
26 institutions shall cooperate with all reasonable requests of the
27 Receiver relating to implementation of this Order, including
28

1 transferring funds at his direction and producing records related
2 to the assets of the Receivership Defendant.

3 **XVIII.**

4 **STAY OF ACTIONS**

5 **IT IS FURTHER ORDERED** that:

6 A. Except by leave of this Court, during pendency of the
7 receivership ordered herein, defendants and all other persons and
8 entities (except for plaintiffs) be and hereby are stayed from
9 taking any action to establish or enforce any claim, right, or
10 interest for, against, on behalf of, in, or in the name of,
11 Defendant MSI, or any of its assets, or the Receiver or the
12 Receiver's duly authorized agents acting in their capacities as
13 such, including, but not limited to, the following actions:

14 1. Commencing, prosecuting, continuing, entering, or
15 enforcing any suit or proceeding, except that such actions may
16 be filed to toll any applicable statute of limitations;

17 2. Accelerating the due date of any obligation or
18 claimed obligation; filing or enforcing any lien; taking or
19 attempting to take possession, custody, or control of any
20 asset; attempting to foreclose, forfeit, alter, or terminate
21 any interest in any asset, whether such acts are part of a
22 judicial proceeding, are acts of self-help, or otherwise;

23 3. Executing, issuing, serving, or causing the
24 execution, issuance or service of, any legal process,
25 including, but not limited to, attachments, garnishments,
26 subpoenas, writs of replevin, writs of execution, or any other
27 form of process whether specified in this Order or not; or
28

1 4. Doing any act or thing whatsoever to interfere with
2 the Receiver taking custody, control, possession, or
3 management of the assets or documents subject to this
4 receivership, or to harass or interfere with the Receiver in
5 any way, or to interfere in any manner with the exclusive
6 jurisdiction of this Court over the assets or documents of the
7 Receivership Defendant.

8 B. This paragraph does not stay:

9 1. The commencement or continuation of a criminal
10 action or proceeding;

11 2. The commencement or continuation of an action or
12 proceeding by a governmental unit to enforce such governmental
13 unit's police or regulatory power;

14 3. The enforcement of a judgment, other than a money
15 judgment, obtained in an action or proceeding by a
16 governmental unit to enforce such governmental unit's police
17 or regulatory power;

18 4. The commencement of any action by the Secretary of
19 the United States Department of Housing and Urban Development
20 to foreclose a mortgage or deed of trust in any case in which
21 the mortgage or deed of trust held by the Secretary is insured
22 or was formerly insured under the National Housing Act and
23 covers property, or combinations of property, consisting of
24 five or more living units; or

25 5. The issuance to a Receivership Defendant of a notice
26 of tax deficiency.

1 C. Except as otherwise provided in this Order, all persons
2 and entities in need of documentation from the Receiver shall in
3 all instances first attempt to secure such information by
4 submitting a formal written request to the Receiver, and, if such
5 request has not been responded to within thirty (30) days of
6 receipt by the Receiver, any such person or entity may thereafter
7 seek an Order of this Court with regard to the relief requested.

8 **XIX.**

9 **COMPENSATION OF RECEIVER**

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

23 **XX.**

24 **RECEIVER'S BOND**

25 **IT IS FURTHER ORDERED** that the Receiver shall file with the
26 Clerk of this Court a bond in the sum of \$25,000, with sureties to
27 be approved by the Court, conditioned that the Receiver will well
28

1 and truly perform the duties of the office and abide by and perform
2 all acts the Court directs.

3 **XXI.**

4 **DISTRIBUTION OF ORDER**

5 **IT IS FURTHER ORDERED** that Defendants Schwindt and MSI shall
6 immediately provide a copy of this Order to each of the corporate
7 defendant's affiliates, franchises, subsidiaries, divisions,
8 successors, assigns, directors, officers, managing agents,
9 employees, representatives, and independent contractors and shall,
10 within three (3) business days from the date of service of this
11 Order, serve on plaintiff affidavits identifying the names, titles,
12 addresses, and telephone numbers of the persons and entities whom
13 they have served pursuant to this provision. The Receiver has no
14 obligation under this provision.

15 **XXII.**

16 **CREDIT REPORTS**

17 **IT IS FURTHER ORDERED** that plaintiffs may obtain credit
18 reports concerning Defendant MSI or Defendant Schwindt pursuant to
19 Section 604(a)(1) of the Fair Credit Reporting Act, 15 U.S.C. §
20 1681b(a)(1), and that, upon written request, any credit reporting
21 agency from which such reports are requested shall provide them to
22 plaintiffs.

23 **XXIII.**

24 **CORRESPONDENCE**

25 **IT IS FURTHER ORDERED** that, for the purposes of this Order,
26 all correspondence and service of pleadings on plaintiffs shall be
27 addressed to:

1 John D. Jacobs
Federal Trade Commission
2 10877 Wilshire Blvd., #700
Los Angeles, CA 90024
3 Fax: (310) 824-4380

Elizabeth A. Blackston
Office of the Illinois AG
500 S. Second St.
Springfield, IL 62706
Fax (217) 782-1097

4
5 **XXIV.**

6 **SERVICE OF THIS ORDER**

7 **IT IS FURTHER ORDERED** that copies of this Order may be served
8 by any means, including facsimile transmission, upon any financial
9 institution or other entity or person that may have possession,

10 / / /

1 custody, or control of any documents or assets of either defendant,
2 or that may be subject to any provision of this Order.

3 IT IS SO ORDERED.

4 10/31/01
5 Date

Jeffrey T. Sniela
6 Judge of the District Court

7 SO STIPULATED:

8 Dated: October 29, 2001

FEDERAL TRADE COMMISSION

9 John D. Jacobs
10 John D. Jacobs
11 Attorney for Plaintiff FTC

STATE OF ILLINOIS

12 Elizabeth A. Blackston by JJ
13 Elizabeth A. Blackston
14 Attorney for
15 Plaintiff State of Illinois

16 Dated: _____, 2001

17 James M. Schwindt
18 James M. Schwindt
19 Defendant
20 Individually and on behalf of
21 Defendant Membership Services,
22 Inc.

23 APPROVED AS TO FORM AND CONTENT

24 Dated: _____, 2001

25 Robert F. Hinton
26 LAW OFFICES OF ROBERT F. HINTON
27 Attorney for Defendants

1 custody, or control of any documents or assets of either defendant,
2 or that may be subject to any provision of this Order.

3 IF IT IS SO ORDERED.

4 _____
5 Date

See prior page

6 Judge of the District Court

7 BY NEGOTIATED:

8 Dated: _____, 2001

FEDERAL TRADE COMMISSION

9 _____
10 John D. Jacobs
11 Attorney for Plaintiff FTC
12 STATE OF ILLINOIS

13 _____
14 Elizabeth A. Blackston
15 Attorney for
16 Plaintiff State of Illinois

17 Dated: 10/29/, 2001

18 _____
19 James M. Schwindt
20 Defendant
21 Individually and on behalf of
22 Defendant Membership Services,
23 Inc.

24 APPROVED AS TO FORM AND CONTENT

25 Dated: October 29, 2001

26 _____
27 Robert F. Hinton
28 LAW OFFICES OF ROBERT F. HINTON
29 Attorney for Defendants