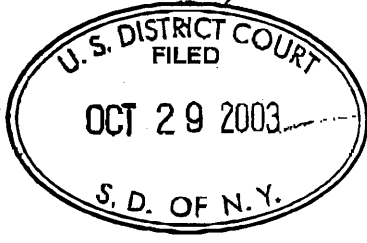


BATTIS



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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FEDERAL TRADE COMMISSION

Plaintiff,

-against-

EPIXTAR CORPORATION, LIBERTY ONLINE
SERVICES INC., NATIONAL ONLINE SERVICES,
INC., B2B ADVANTAGE INC., a/k/a SBA
ONLINE, INC.

-and-

WILLIAM DOUGLAS RHODES, individually and as
an officer and director of the corporate defendants,

Defendants.

03 Civ. No. P511 DAB

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OCT 29 2003

**(Proposed) TEMPORARY RESTRAINING ORDER WITH ASSET FREEZE,
ORDER PERMITTING EXPEDITED DISCOVERY, ORDER
APPOINTING A TEMPORARY RECEIVER, AND ORDER TO
SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT
ISSUE AND WHY A PERMANENT RECEIVER SHOULD NOT BE APPOINTED**

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), having filed its Complaint for a permanent injunction and other relief in this matter, pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b); and having moved *ex parte* for a Temporary Restraining Order pursuant to Rule 65 of the Federal Rules of Civil Procedure, and the Court having considered the pleadings, declarations, exhibits, and memorandum of law filed in support of Plaintiff's application, makes the following findings of fact:

1. This Court has jurisdiction of the subject matter of this case, and there is good cause to believe it will have jurisdiction over all parties.
2. There is good cause to believe that Defendants Epixtar Corporation, Liberty Online Services Inc., National Online Services, Inc., B2B Advantage Inc., f/k/a SBA Online, Inc. and William Douglas Rhodes have engaged and are likely to engage in acts and practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and that the Commission is therefore likely to prevail on the merits of this action.
3. There is good cause to believe that immediate and irreparable damage to the FTC's ability to secure effective final relief for consumers in the form of monetary redress will occur, from the sale, transfer, or other disposition or concealment by the Defendants of assets or records, before said Defendants can be heard in opposition. There is thus good cause for issuing this Order pursuant to Fed. R. Civ. P. 65(b) and for relieving the Plaintiff of the duty to provide the Defendants with prior notice of the Plaintiff's motion.
4. There is good cause to appoint a Temporary Receiver.
5. Savoncalling.com, LLC ("Savon") is a nondefendant subsidiary of Defendant Epixtar Corporation that, on August 27, 2002, filed a voluntary petition for relief under Chapter 11 of the

United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"), in the United States Bankruptcy Court for the Southern District of Florida, Case No 02-18931-BKC-AJC.

Savon filed schedules of assets and liabilities indicating that Savon leases office space that is also Defendants' business premises, and that Savon has no other interest in real property or tangible personal property.

6. The commencement and continuation of this action and the relief herein, including granting the Temporary Receiver immediate access to the Defendants' business premises in order to secure their assets and records, does not constitute any act to obtain possession of property of or from the Savoncalling.com Bankruptcy Estate, or any act to exercise control over property of said estate or property of Savoncalling.com, LLC.

7. Weighing the equities and considering the Plaintiff's likelihood of ultimate success in its cause of action, this temporary restraining order with asset freeze and other equitable relief is in the public interest.

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

ORDER

Definitions

1. "**Defendants**" means Epixtar Corporation, Liberty Online Services Inc., National Online Services, Inc., B2B Advantage Inc., f/k/a SBA Online, Inc. and William Douglas Rhodes, and each of them, by whatever names each might be known, as well as their successors, assigns, officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, corporations, subsidiaries, affiliates, divisions, sales entities, related entities, and all other

persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division or other device, including, but not limited to, fictitious business names.

Provided however, that the term "Defendants" shall not include Savoncalling.com, LLC., a debtor in bankruptcy and subsidiary of defendant Epixtar Corporation with a leasehold interest in 11900 Biscayne Boulevard, Miami, the address of the corporate defendants named in this action;

2. **"Receivership Defendants"** means Epixtar Corporation, Liberty Online Services Inc., National Online Services, Inc., B2B Advantage Inc., a/k/a SBA Online, Inc., and by whatever names they might otherwise be known, as well as their parents, subsidiaries, affiliates, successors and assigns.

Provided however, that the term "Receivership Defendants" shall not include Savoncalling.com, LLC, a debtor in bankruptcy and subsidiary of defendant Epixtar Corporation with a leasehold interest in 11900 Biscayne Boulevard, Suite 262, Miami, Florida, the address of the corporate defendants named in this action;

3. **"Assets"** means any legal or equitable interest in, right to, or claim to, any real and personal property, including, but not limited to, chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, premises, mail or other deliveries, shares of stock, lists of consumer names, inventory, checks, notes, accounts, credits, receivables, funds, and all cash, wherever located.

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

photographs, audio and video recordings, computer records, and any other data compilations from which information can be obtained and translated, if necessary, into reasonably usable form through detection devices. A draft or non-identical copy is a separate document within the meaning of the term.

5. "Line subscriber" means an individual or entity who has arranged with a local exchange carrier ("LEC") to obtain local telephone service provided through an assigned telephone number, and to be billed for such service on a monthly (or other periodic) basis.

6. "Savoncalling.com Bankruptcy Case" means the bankruptcy case styled as *In re Savoncalling.com, LLC* and pending in the United States Bankruptcy Court for the Southern District of Florida, Case No. 02-18931-BKC-AJC (Chapter 11).

7. "Savoncalling.com Bankruptcy Estate" means the bankruptcy estate that was created pursuant to 11 U.S.C. § 541(a) upon the commencement of the Savoncalling.com Bankruptcy Case.

I. PROHIBITED MISREPRESENTATIONS

IT IS THEREFORE ORDERED that in connection with the advertising, promotion, offering, or sale of any goods or services by telephone, on or through the Internet, the World Wide Web, any web site, or otherwise in commerce, the Defendants are hereby temporarily restrained and enjoined from:

A. Making, directly or through an intermediary, expressly or by implication, orally or in writing, any misrepresentation of material fact, including, but not limited to, falsely representing that a consumer will receive a free trial membership without risk or obligation;

B. Failing to disclose or to disclose adequately to the consumer the negative option features of any good or service, including, but not limited to:

1. That a consumer who fails to contact the Defendants within a specified period of time and cancel is automatically enrolled as one of the Defendants' customers;
2. That the consumer's telephone bill would be charged a fee unless the consumer cancels during the specified period of time; and
3. The prescribed manner in which the consumer must cancel, and other specific steps the consumer must take to avoid the charges; the inception and expiration dates of the specified period of time; and the date the charges will be submitted for payment.

II. PROHIBITED BILLING PRACTICES

IT IS FURTHER ORDERED that the Defendants are temporarily restrained and enjoined from billing or receiving money, or assisting others in billing or receiving money, from consumers without their express informed consent, including, but not limited to, billing any line subscriber, or causing any line subscriber to be billed, or collecting or attempting to collect payment, directly or indirectly, from any line subscriber, for any good or service without the express informed consent from the line subscriber that he or she accepts or authorizes the purchase of such good or services.

III. CUSTOMER LISTS

IT IS FURTHER ORDERED that the Defendants are hereby temporarily restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address,

telephone number, credit card number, debit card number, bank account number, e-mail address, or other identifying information of any person who paid any money to any Defendant, at any time prior to entry of this Order, in connection with the telemarketing, advertising, promoting, offering for sale, and selling of Internet services including Internet access, website design and other services to small businesses. Provided, however, that the Defendants may disclose such identifying information to a law enforcement agency or as required by any law, regulation, or court order. The Defendants are also hereby temporarily restrained and enjoined from making any use of their own customer lists in any business, whether or not related to the present action.

IV. ASSET FREEZE

IT IS FURTHER ORDERED that the Defendants are hereby temporarily restrained and enjoined from:

A. Transferring, liquidating, converting, encumbering, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, pledging or otherwise disposing of any funds, credit instruments, real or personal property, accounts, contracts, lists of consumer names, shares of stock or other assets, not including property of the Savoncalling.com Bankruptcy Estate, wherever located, that are:

1. Owned or controlled by the Defendants, in whole or in part, including but not limited to any assets held by, for, or under the name of the Defendants at any bank or savings and loan institution, or with any broker-dealer, escrow agent, title company, commodity trading company, precious metal dealer, or other financial institution, depository of any kind, or business entity, including but not limited to the following:

- (a) any and all bank accounts maintained at Commercial Bank of Florida, including, but not limited to # 9041007018 (National Online);
 - (b) any and all bank accounts maintained at Wachovia Bank, N.A.;
 - (c) any and all bank accounts maintained at J.P. Morgan Chase Bank;
 - (d) any and all accounts maintained at Bank One; and
2. In the actual or constructive possession of Defendants; or
 3. Owned, controlled by, or in the actual or constructive possession of any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by or under common control with Defendants.

B. Opening or causing to be opened any safe deposit boxes, titled, singly or jointly, in the name of Defendants Epixtar Corporation, National Online Services, Inc., Liberty Online Services, Inc., B2B Advantage, Inc., and William Douglas Rhodes, or their affiliates or subsidiaries, not including Savoncalling.com, LLC, or subject to access by any of these Defendants.

C. Incurring charges on any credit card issued in the name, singly or jointly, of any Defendant, or their affiliates or subsidiaries, not including Savoncalling.com, LLC.

D. Collecting, opening, or causing to be collected or opened, any mail, received by or on behalf of the Defendants, at any address, including but not limited to the following: 11900 Biscayne Boulevard, Suite 262, Miami, Florida 33181, and 12555 Orange Drive, Suite 205, Davie, Florida 33330, and failing to turn over any such mail to the Temporary Receiver; *provided however*, this provision excludes mail addressed to Savoncalling.com, LLC or to the Savoncalling.com Bankruptcy Estate;

E. Obtaining a personal or secured loan; and

F. Incurring liens or other encumbrances on real property, personal property or other assets of the Defendants in the name of Defendants, singly or jointly, or their affiliates or subsidiaries, not including Savoncalling.com, LLC; and

IT IS FURTHER ORDERED that:

G. The assets affected by this Paragraph shall include both existing assets and assets acquired after the effective date of this Order.

H. Notwithstanding the provisions of this Paragraph, the Defendants may make transfers as directed by the Temporary Receiver appointed by this Court, or as otherwise ordered by this Court upon proper showing and after notice to counsel for the Commission.

V. RETENTION OF ASSETS AND RECORDS HELD BY THIRD PARTIES

IT IS FURTHER ORDERED that, pending determination of the Commission's request for a Preliminary Injunction, any financial or brokerage institution, business entity, or person served with a copy of this Order, including Savoncalling.com, LLC, that holds, controls or maintains custody of any account or asset of any Defendant, or their affiliates or subsidiaries, not including Savoncalling.com, LLC, or has held, controlled or maintained custody of any such account or asset at any time since January 1, 2001 shall:

A. Prohibit the Defendants from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling, or otherwise disposing of any such account or asset except as directed by further order of the Court;

B. Deny the Defendants access to any safety deposit box, that is:

1. Titled in the name of any of the Defendants, either individually or jointly;
or
2. Otherwise subject to access by any of the Defendants, either individually or jointly;

C. Provide counsel for the Commission and the Temporary Receiver, within five (5) business days of receiving a copy of this Order, a sworn statement setting forth:

1. The identification number and description of each such account or asset titled in the name, individually or jointly, of the Defendants, or held on behalf of, or for the benefit of, any Defendant;
2. The balance of each such account, or a description of the nature and value of such asset as of the close of business on the day on which this Order is served, and, if the account or other asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other asset was remitted; and
3. The identification of any safe deposit box that is either titled in the name, individually or jointly, of the Defendants, or otherwise subject to access by any Defendant; and

D. Upon the request of the Temporary Receiver or the Commission, promptly provide the Temporary Receiver and the Commission with copies of all records or other documentation pertaining to any account or asset of any Defendant, including but not limited to originals or copies of account applications, account statements, signature cards, checks, drafts,

deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs. Any such financial institution, account custodian, or other aforementioned entity shall arrange for Plaintiff and the Temporary Receiver to obtain copies of any such records which Plaintiff seeks, *provided* that such institution or custodian may charge a reasonable fee not to exceed ten cents (10¢) per page copied; and

E. Cooperate with all requests of the Temporary Receiver relating to implementation of this Order, including transferring funds or other assets, not including property of the Savoncalling.com Bankruptcy Estate, at the Temporary Receiver's direction and producing records related to the accounts or assets of any Defendant.

VI. REPATRIATION OF ASSETS AND DOCUMENTS LOCATED IN FOREIGN COUNTRIES

IT IS FURTHER ORDERED that the Defendants shall:

A. Within forty-eight (48) hours following the service of this Order, take such steps as are necessary to transfer to the territory of the United States of America all documents and assets, not including property of the Savoncalling.com Bankruptcy Estate, that are located outside of such territory and are held by or for the Defendants or are under their direct or indirect control, jointly, severally, or individually;

B. Within forty-eight (48) hours following the service of this Order, provide counsel for the Commission and the Temporary Receiver with a full accounting of all documents and assets that are located outside of such territory and are held by or for the benefit of the Defendants or are under their direct or indirect control, whether jointly, severally, or individually;

C. hold and retain all documents and assets transferred pursuant to Subparagraph A and prevent any transfer, disposition, or dissipation whatsoever of any such assets or funds; and

D. Provide counsel for the Commission with access to records and documents of the Defendants held by financial institutions outside the territorial United States of America, by signing and delivering to Plaintiff the Consent of Release of Financial Records attached hereto as Attachment A within forty-eight (48) hours of service of this Order.

VII. INTERFERENCE WITH REPATRIATION

IT IS FURTHER ORDERED that the Defendants are hereby temporarily restrained and enjoined from taking any action, directly or indirectly, which may result in the encumbrance or dissipation of Defendants' foreign assets, not including property of the Savoncalling.com Bankruptcy Estate, or in the hindrance of the repatriation required by the preceding Paragraph of this Order, including but not limited to:

A. Sending any statement, letter, fax, e-mail or wire transmission, telephoning or engaging in any other act, directly or indirectly, that results in a determination by a foreign trustee or other entity that a "duress" event has occurred under the terms of a foreign trust agreement until such time that all assets have been fully repatriated pursuant to Section VI of this Order;

B. Notifying any trustee, protector or other agent of any foreign trust or other related entities of either the existence of this Order, or of the fact that repatriation is required pursuant to a Court Order, until such time that all assets have been fully repatriated pursuant to Section VI of this Order.

VIII. IMMEDIATE ACCESS TO DEFENDANTS' BUSINESS PREMISES

IT IS FURTHER ORDERED that the Temporary Receiver and his or her representatives shall have immediate access to the Defendants' business premises, including but not limited to all such premises located at 11900 Biscayne Boulevard, Suite 262, Miami Florida 33181, 12555 Orange Drive, Suite 205, Davie, Florida 33330 and all sales offices, branch offices, storage facilities or other offices used by the Defendants' business. The purpose of this access shall be to inspect and copy documents of Defendants relevant to this action and to inventory the assets and documents of the Defendants including, but not limited to:

A. Documents evidencing, referring to, or relating to each Defendant's financial status, including but not limited to, the nature or location of any bank account, safe deposit box, or any other asset of any Defendant;

B. Documents evidencing, referring to, or relating to the telemarketing, advertising, promoting, offering for sale, and selling of Internet services including Internet access, website design and other services to small businesses and any correspondence, transaction, or other communication by or between any consumer or prospective consumer and any Defendant or any of their representatives, employees, agents, or officers; and

C. Documents evidencing, or referring to, any correspondence, action, or other communication by or between any law enforcement agency, consumer group, or Better Business Bureau and any Defendant or any of their representatives, employees, agents, or officers.

D. The Defendants shall provide the Temporary Receiver with all necessary means of access to their assets and documents, including without limitation, keys, lock combinations, and computer access codes, and shall segregate and identify any documents and assets of

Savoncalling.com, LLC which are present at Defendants' business premises or in Defendants' possession, custody or control.

E. The Temporary Receiver may remove Defendants' documents from any location(s) described in this Section so they may be inspected, inventoried, and copied. The Temporary Receiver at his or her discretion shall allow representatives of the Commission into any location(s) described in this Section and shall allow Commission representatives to inspect, inventory and copy Defendants' documents, so long as all such documents are returned in the same condition as when they were taken, and returned to the offices from which they were taken within five (5) business days of completing said inspection, inventory and copying.

IX. EXPEDITED DISCOVERY

IT IS FURTHER ORDERED that the Commission and the Temporary Receiver are granted leave to conduct certain expedited discovery, and that, commencing with the time and date of this Order, in lieu of the time periods, notice provisions, and other requirements of Rules 26, 30, 34, and 45 of the Federal Rules of Civil Procedure, expedited discovery shall proceed as follows:

A. Pursuant to Fed. R. Civ. P. 30, the Commission may take depositions upon oral examination concerning the nature, location, status, and extent of the Defendants' assets; the status and location of documents reflecting the Defendants' business transactions; and compliance with this Order, on two (2) days notice of any such deposition. Depositions may be taken Monday through Saturday. Deposition transcripts that have not been signed by the witness may be used for purposes of the hearing on the Order to Show Cause Why a Preliminary Injunction Should Not Issue.

Provided, that this Subparagraph permitting expedited deposition discovery concerning the nature, location, status, and extent of the Defendants' assets, the status and location of documents reflecting the Defendants' business transactions, and compliance with this Order, shall not be construed in any manner to preclude Plaintiff's right to take subsequent depositions of the same witnesses on the merits of this action.

Provided, further, that any deposition taken pursuant to this Subparagraph is in addition to, and not subject to, the presumptive limits on depositions set forth in Fed. R. Civ. P. 30(a)(2)(A).

B. Pursuant to Fed. R. Civ. P. 34(b), the Defendants shall produce all documents requested by the Commission within two (2) days of service of such request, with production of documents made to the name and address listed in Paragraph XXIV, or to such other person or place as counsel for the Commission may direct in writing.

Provided, that, in the event any of the Defendants' documents have been removed from the Defendants' premises by, and are in the possession of another law enforcement or investigative agency, the Commission may have immediate access to such documents for purposes of inspection, indexing, and copying, subject to the agency consenting to access by the Commission.

Provided, further, that this Subparagraph shall extend to parties and non-parties.

X. FINANCIAL REPORTS

IT IS FURTHER ORDERED that the Defendants, within forty-eight (48) hours of service of this Order, shall prepare and deliver to the Temporary Receiver, and to counsel for the Commission:

A. Completed financial statements on the forms attached to this Order as Attachments B and C, for the individual Defendant, for each corporate Defendant and for each business entity (whether or not incorporated) under which they conduct any business, or of which any defendant is an owner or officer, and for each trust of which any defendant is a trustee. The financial statements shall be accurate as of the date of entry of this Order; and

B. All current accountants' reports; all federal tax returns filed since January 1, 2001; documents indicating title to real or personal property; and other indicia of ownership that are now in any of the Defendants' actual or constructive possession.

XI. IDENTIFYING INFORMATION RELATING TO ACCOUNTANTS, FINANCIAL PLANNERS, INVESTMENT ADVISORS, STOCK BROKERS AND OTHERS

IT IS FURTHER ORDERED that the Defendants, within forty-eight (48) hours after service of this Order, shall provide counsel for the Commission and the Temporary Receiver:

(1) the name, address and telephone number for each accountant, financial planner, investment advisor, stock broker or other individual, corporation or partnership whom they hire for personal advice or services, including but not limited to preparation of tax returns and investment advice, since January 1, 2001, and (2) the name, address and telephone number for each accountant, financial planner, investment advisor, stockbroker or other individual, corporation or partnership who was hired on behalf of the Defendants since January 1, 2001.

XII. RECORD KEEPING/BUSINESS OPERATIONS

IT IS FURTHER ORDERED that the Defendants are hereby temporarily restrained and enjoined from:

- A. Failing to create and maintain documents that, in reasonable detail, accurately, fairly, and completely reflect their incomes, disbursements, transactions, and use of money;
- B. Destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any contracts, accounting data, correspondence, advertisements, computer tapes, discs, or other computerized records, books, written or printed records, handwritten notes, telephone logs, telephone scripts, receipt books, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, copies of federal, state or local business or personal income or property tax returns, and other documents or records of any kind that relate to the business practices or business or personal finances of the Defendants; and
- C. Creating, operating, or exercising any control over any business entity, other than Savoncalling.com, LLC, including any partnership, limited partnership, joint venture, sole proprietorship or corporation, without first providing counsel for the Commission with a written statement disclosing: (1) the name of the business entity; (2) the address and telephone number of the business entity; (3) the names of the business entity's officers, directors, principals, managers and employees; and (4) a detailed description of the business entity's intended activities.

XIII. DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that the Defendants shall immediately provide a copy of this Order to each affiliate, subsidiary, division, sales entity, successor, assign, officer, director, employee, independent contractor, agent, attorney, and representative of the Defendants, including Savoncalling.com, LLC, and shall, within ten (10) days from the date of entry of this

Order, provide counsel for the Commission and the Temporary Receiver with a sworn statement that each Defendant has complied with this provision of the Order, which statement shall include the names and addresses of each such person or entity who received a copy of the Order. The Temporary Receiver has no obligation under this Paragraph.

XIV. APPOINTMENT OF TEMPORARY RECEIVER

IT IS FURTHER ORDERED that Angela Tess-Milner, Esq., whose address is Tess Milner, One Minetta Lane, NYC 10012, is appointed Temporary Receiver for the Receivership Defendants, with the full power of an equity receiver for the Receivership Defendants, and all of the funds, properties, premises, accounts, and other assets directly owned by the Receivership Defendants. The Temporary Receiver shall be solely the agent of this Court in acting as Temporary Receiver under this Order. The Temporary Receiver shall be accountable directly to this Court. The Temporary Receiver shall comply with all Local Rules of this Court governing receivers.

XV. RECEIVERSHIP DUTIES AND AUTHORITY

IT IS FURTHER ORDERED that the Temporary Receiver is directed and authorized to accomplish the following:

A. Assume full control of the Receivership Defendants by removing, as the Temporary Receiver deems necessary or advisable, any director, officer, independent contractor, employee, or agent of any of the Receivership Defendants, including any Defendant, from control of, management of, or participation in, the affairs of the business of the Receivership Defendants and manage and administer the business of the Receivership Defendants until such further Order of this Court by performing all incidental acts that the Temporary Receiver deems to be advisable

or necessary, which includes retaining or hiring any employees, independent contractors or agents;

B. Collect, marshal, and take exclusive custody, control and possession of all funds, property, books and records, accounts, mail, and other assets and documents of, or in the possession, custody, or under the control of, the Receivership Defendants, not including property of the Savoncalling.com Bankruptcy Estate, wherever situated, including but not limited to, 11900 Biscayne Boulevard, Suite 262, Miami, Florida 33181 and 12555 Orange Drive, Suite 205, Davie, Florida 33330. The Temporary Receiver's authority to collect any and all mail relating to the affairs of the Receivership Defendants in the possession, custody, or under the control of, the Defendants, shall extend to mail in the possession of any third parties, but shall not include mail addressed to Savoncalling.com, LLC or to the Savoncalling.com Bankruptcy Estate. The Temporary Receiver shall have full power to change the mailing addresses of the Receivership Defendants. The Temporary Receiver shall have full power to change any locks on any real or personal property of the Receivership Defendants, not including any real or personal property or property interest of the Savoncalling.com Bankruptcy Estate. The Temporary Receiver shall have full power to sue for, collect, receive and take possession of all goods, chattels, rights, credits, moneys, effects, land, leases, books, records, work papers, and records of accounts, including computer-maintained information, and other papers and documents of the Receivership Defendants, including documents related to customers or clients whose interest are now held by or under the direction, possession, custody or control of the Defendants or under the control of any third party for the benefit of the Defendants, not including Savoncalling.com, LLC. The Temporary Receiver shall assume control over the income and profits therefrom and

all sums of money now or hereafter due or owing to the Receivership Defendants. *Provided, however,* the Temporary Receiver shall not attempt to collect any amount from a consumer if the Temporary Receiver believes the consumer was a victim of the deceptive acts or practices alleged in the Complaint in this matter, without prior Court approval;

C. Take all steps necessary to secure the business premises of the Receivership Defendants, including but not limited to all such premises located at 11900 Biscayne Boulevard, Suite 262, Miami, Florida 33181 and 12555 Orange Drive, Suite 205, Davie, Florida 33330. Such steps may include, but are not limited to, the following, as the Temporary Receiver deems necessary or advisable: (1) serving and filing this Order, (2) completing a written inventory of all Receivership assets, (3) obtaining pertinent information from all employees and other agents of the Receivership Defendants, including, but not limited to, the name, home address, social security number, job description, method of compensation, and all accrued and unpaid commissions and compensation of each such employee or agent, (4) photographing or videotaping all portions of the Receivership Defendants' business premises, (5) securing the Receivership Defendants' business premises by changing the locks on any real or personal property of the Receivership Defendants, not including any real or personal property or property interest of the Savoncalling.com Bankruptcy Estate; (6) disconnecting any computer modems or other means of access to the computer or other records maintained at the Receivership Defendants' business premises, not including disconnecting any computer modems or other means of access to the computer or other records of the Savoncalling.com Bankruptcy Estate; (7) requiring any persons present, excluding persons who are conducting any business of Savoncalling.com, LLC, on the Receivership Defendants' business premises at the time this

Order is served, to vacate the premises or to provide the Temporary Receiver with proof of identification, and (8) requiring any persons present on the Receivership Defendants' business premises at the time this Order is served to demonstrate to the satisfaction of the Temporary Receiver that such persons are not removing from the premises documents or assets of the Defendants. Law enforcement personnel, including but not limited to local police or sheriffs, may assist the Temporary Receiver in implementing these provisions in order to keep the peace and maintain security;

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

E. Enter into contracts and purchase insurance as advisable or necessary, including, but not limited to, (1) the retention and employment of investigators, attorneys or accountants of the Temporary Receiver's choice, including, without limitation, members and employees of the Temporary Receiver's firm, to assist, advise and represent the Temporary Receiver, and (2) the movement and storage of any equipment, furniture, records, files, or other physical property of the Defendants, not including property of the Savoncalling.com Bankruptcy Estate; _____

F. Prevent the inequitable distribution of the Receivership assets, and determine, adjust, and protect the interests of consumers and creditors who have transacted business with the Defendants;

G. Have the *sole* legal authority to hire legal counsel on behalf of the Receivership Defendants;

H. Make payments and disbursements from the Receivership estate that are necessary or advisable for carrying out the directions of, or exercising the authority granted by, this Order. The Temporary Receiver shall apply to the Court for prior approval of any payment of any debt or obligation incurred by any Receivership Defendant prior to the date of entry of this Order, except payments that the Temporary Receiver deems necessary or advisable to secure assets of the Receivership Defendants, such as rental payments;

I. Institute, prosecute, compromise, adjust, appear in, intervene in, or become party to such actions or proceedings in state, federal or foreign courts that the Temporary Receiver deems necessary and advisable to preserve or recover the assets of the Receivership Defendants or that the Temporary Receiver deems necessary and advisable to carry out the Temporary Receiver's mandate under this Order;

J. Defend, compromise, adjust, or otherwise dispose of any or all actions or proceedings instituted in the past or in the future against the Temporary Receiver in his role as Temporary Receiver, or against the Defendants that the Receiver deems necessary and advisable to preserve the assets of the Receivership Defendants or that the Temporary Receiver deems necessary and advisable to carry out the Temporary Receiver's mandate under this Order;

K. Issue subpoenas to obtain documents and records pertaining to the Receivership, and conduct discovery in this action on behalf of the Receivership estate;

L. Open one or more bank accounts as designated depositories for funds of the Receivership Defendants. The Temporary Receiver shall deposit all funds of the Receivership

Defendants in such a designated account and shall make all payments and disbursements from the Receivership estate from such an account;

M. Maintain accurate records of all receipts and expenditures that he makes as Temporary Receiver;

N. Cooperate with reasonable requests for information or assistance from any state or federal law enforcement agency;

O. Make payments and disbursements from the Receivership estate that are necessary or advisable for carrying out the directions of, or exercising the authority granted by, this Order. The Temporary Receiver shall apply to the Court for prior approval of any payment of any debt or obligation incurred by the Receivership Defendants prior to the date of entry of this Order, except for payments that the Temporary Receiver deems necessary or advisable to secure assets of the Receivership Defendants; and

P. Have the *sole* legal authority to file, or cause to be filed, any petition on behalf of the Receivership Defendants for relief under the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, and only with prior written permission from this Court after notice to counsel for the Commission.

XVI. COOPERATION WITH THE TEMPORARY RECEIVER

IT IS FURTHER ORDERED that the Defendants shall fully cooperate with and assist the Temporary Receiver. The Defendants' cooperation and assistance shall include, but not be limited to: segregating and identifying any documents and assets of Savoncalling.com, LLC which are present at Defendants' business premises or in Defendants' possession, custody or control; providing any information to the Temporary Receiver that the Temporary Receiver

deems necessary to exercising the authority and discharging the responsibilities of the Temporary Receiver under this Order; providing any password or entry code required to access any computer or electronic files of the Defendants in any medium; and advising all persons who owe money to the Receivership Defendants that all debts, not including property of the Savoncalling.com Bankruptcy Estate, should be paid directly to the Temporary Receiver. The Defendants are hereby restrained and enjoined from directly or indirectly:

- A. Transacting any of the business of the Receivership Defendants;
- B. Destroying, secreting, defacing, transferring, or otherwise altering or disposing of any documents of the Defendants, including, but not limited to, books, records, accounts, or any other papers of any kind or nature;
- C. Transferring, receiving, altering, selling, encumbering, pledging, assigning, liquidating, or otherwise disposing of any assets owned, controlled, or in the possession or custody of, or in which an interest is held or claimed by, the Defendants or the Temporary Receiver;
- D. Excusing debts owed to the Defendants;
- E. Failing to notify the Temporary Receiver of any asset, including accounts, of a Receivership Defendant held in any name other than the name of the Receivership Defendant, or by any person or entity other than the Receivership Defendant, or failing to provide any assistance or information requested by the Temporary Receiver in connection with obtaining possession, custody, or control of such assets, not including property of the Savoncalling.com Bankruptcy Estate; or

F. Doing any act or refraining from any act whatsoever to interfere with the Temporary Receiver taking custody, control, possession, or managing of Receivership Defendants' assets or documents; or to harass or interfere with the Temporary Receiver in any way; or to interfere in any manner with the exclusive jurisdiction of this Court over the assets or documents of the Receivership Defendants; or to refuse to cooperate with the Temporary Receiver or the Temporary Receiver's duly authorized agents in the exercise of their duties or authority under this Order, including but not limited to the preparation of the lists, schedules and statements required by Fed. R. Bankr. P. 1007 in any bankruptcy case commenced by the Temporary Receiver on behalf of the Receivership Defendants, without first obtaining leave of this Court.

XVII. DELIVERY OF RECEIVERSHIP PROPERTY

IT IS FURTHER ORDERED that:

A. Immediately upon service of this Order upon them, or within a period permitted by the Temporary Receiver, the Defendants and any other person or entity served with a copy of this Order, including Savoncalling.com, LLC, shall forthwith or within such time as permitted by the Temporary Receiver in writing, transfer or deliver possession, custody, and control of the following to the Temporary Receiver:

1. All funds, property, and all other assets, owned beneficially or otherwise, wherever situated, of the Receivership Defendants, not including property of the Savoncalling.com Bankruptcy Estate;
2. All documents of the Receivership Defendants, including, but not limited to, books and records of accounts, all financial and accounting records, balance sheets, income statements, bank records (including monthly statements, canceled

checks, records of wire transfers, and check registers), client lists, title documents and other papers;

3. All assets belonging to members of the public now held by the Receivership Defendants;

4. All keys, computer passwords, entry codes and combination locks necessary to gain or to secure access to any assets or documents of the Receivership Defendants;

5. Information identifying the accounts, employees, properties or other assets or obligations of the Receivership Defendants.

B. In the event any person or entity fails to deliver or transfer any asset or otherwise fails to comply with any provision of this Paragraph, the Temporary Receiver may file an Affidavit of Non-Compliance regarding such failure. Upon filing of the affidavit, the Court may authorize, without additional process or demand, Writs of Possession or Sequestration or other equitable writs requested by the Temporary Receiver. The writs shall authorize and direct the United States Marshal or any sheriff or deputy sheriff of any county (pursuant to Federal Rule of Civil Procedure 4(c)(2)) to seize the asset, document, or other thing and to deliver it to the Temporary Receiver.

XVIII. TRANSFER OF FUNDS TO THE TEMPORARY RECEIVER

IT IS FURTHER ORDERED that, upon service of a copy of this Order, all banks, broker-dealers, savings and loans, escrow agents, title companies, commodity trading companies, or other financial institutions shall cooperate with all reasonable requests of the Temporary

Receiver relating to implementation of this Order, including transferring funds at his direction and producing records related to the assets of the Receivership Defendants.

XIX. STAY OF ACTIONS

IT IS FURTHER ORDERED that:

A. Except by leave of this Court, during the pendency of the Receivership ordered herein, the Receivership Defendants and all vendors, principals, investors, creditors, stockholders, lessors, and all other persons and entities seeking to establish or enforce any claim, right, or interest for, against, on behalf of, in, or in the name of, any of the Receivership Defendants, and all others acting for or on behalf of such persons, including attorneys, trustees, agents, sheriffs, constables, marshals, and other officers and their deputies, and their respective attorneys, servants, agents and employees, be and are hereby stayed from:

1. Commencing, prosecuting, continuing, entering, or enforcing any suit or proceeding against any of the Receivership Defendants, except that such actions may be filed to toll any applicable statute of limitations;
2. Commencing, prosecuting, continuing, or entering any suit or proceeding in the name of or on behalf of any of the Receivership Defendants;
3. Accelerating the due date of any obligation or claimed obligation; filing or enforcing any lien; taking or attempting to take possession, custody, or control of any asset of the Receivership Defendants; attempting to foreclose, forfeit, alter, or terminate any of the Receivership Defendants' interest in any asset, including without limitation, the establishment, granting, or perfection of any security

interest, whether such acts are part of a judicial proceeding, are acts of self-help, or otherwise;

4. Using self-help, executing, issuing, serving, or causing the execution, issuance or service of, any legal process, including, but not limited to, attachments, garnishments, subpoenas, writs of replevin, writs of execution, or any other form of process whether specified in this Order or not for the purpose of impounding or taking possession of or interfering with, or creating or enforcing a lien upon, any assets of any of the Receivership Defendants or the Temporary Receiver appointed by this Order or any agent appointed by said Temporary Receiver; or

5. Doing any act or thing whatsoever to interfere with the Temporary Receiver taking custody, control, possession, or management of the Receivership Defendants' assets or documents, or to interfere in any way with the Temporary Receiver, or to harass or interfere with the duties of the Temporary Receiver, or to interfere in any manner with the exclusive jurisdiction of this Court over the assets or documents of the Receivership Defendants, or their subsidiaries or affiliates, other than Savoncalling.com, LLC.

B. This Paragraph does not stay:

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

- 3. The enforcement of a judgment, other than a money judgment, obtained in an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power;
- 4. The commencement of any action by the Secretary of the United States Department of Housing and Urban Development to foreclose a mortgage or deed of trust in any case in which the mortgage or deed of trust held by the Secretary is insured or was formerly insured under the National Housing Act and covers property, or combinations of property, consisting of five or more living units; or
- 5. The issuance to a Defendant of a notice of tax deficiency.

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

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XX. COMPENSATION OF TEMPORARY RECEIVER

IT IS FURTHER ORDERED that the Temporary Receiver and all personnel hired by the Temporary Receiver as herein authorized, including counsel to the Temporary Receiver and accountants, are entitled to reasonable compensation for the performance of duties pursuant to this Order and for the cost of actual out-of-pocket expenses incurred by them, from the Receivership Defendants' assets now held by, or in the possession or control of, or which may be received by the Receivership Defendants, not including property of the Savoncalling.com

Bankruptcy Estate. Said fees and out-of-pocket expenses shall be paid prior to any monetary relief that may be rewarded by this Court to purchasers of the Defendants' Internet services, including Internet access, website design and other services. The Temporary Receiver shall file with the Court and serve on the parties periodic requests for the payment of such reasonable compensation, which shall exclude the costs of filing and service, with the first such request filed no more than sixty (60) days after the date of this Order. The Temporary Receiver shall not increase the hourly rates used as the bases for such fee applications without prior approval of the Court and without prior notice to counsel for the Commission.

XXI. WITHDRAWAL OF TEMPORARY RECEIVER

IT IS FURTHER ORDERED that the Temporary Receiver and any professional retained by the Temporary Receiver, including but not limited to his or her attorneys and accountants, be and are hereby authorized to withdraw from their respective appointments or representations at any time after the date of this Order, for any reason in their sole and absolute discretion, by sending written notice seven (7) days prior to the date the Temporary Receiver intends to withdraw to the Court and to the parties; and such Temporary Receiver and professionals shall be relieved of all liabilities and responsibilities seven (7) days from the date of such notice or withdrawal. The written notice shall include an interim report indicating the Temporary Receiver's actions and reflect its knowledge gained. The report shall also contain the Temporary Receiver's recommendations, if any.

XXII. TEMPORARY RECEIVER'S BOND

IT IS FURTHER ORDERED that the Temporary Receiver shall file with the Clerk of this Court within seven (7) days of entry of this Order, a bond in the sum of \$50,000 with

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sureties ~~to be approved by the Court~~, conditioned that the Temporary Receiver will well and truly perform the duties of the office and abide by and perform all acts the Court directs.

XXIII. CONSUMER CREDIT REPORTS

IT IS FURTHER ORDERED that the Commission may obtain credit reports concerning any Defendant pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(1), and that upon written request, any credit reporting agency from which such reports are requested shall provide them to the Commission.

XXIV. SERVICE OF PLEADINGS

IT IS FURTHER ORDERED that:

A. The Defendants shall file with the Court and serve counsel for the Commission and the Temporary Receiver their response to the Order to Show Cause Why a Preliminary Injunction Should Not Issue, including all declarations, exhibits, memoranda, and other evidence, ~~not less than seventy-two (72) hours prior to the hearing on such application.~~ The Defendants shall serve copies of all such materials on the Commission, by hand, by facsimile transmission, or by overnight delivery service to the attention of counsel for the Commission Carole A. Paynter at Federal Trade Commission, Northeast Regional Office, 1 Bowling Green, Suite 318, New York, NY 10004 (facsimile transmission to (212) 607-2822). *Provided*, however, that if the Defendants choose to serve the Commission via overnight delivery, the documents shall be delivered so that they shall be received by the Commission at least seventy-two (72) hours prior to the hearing.

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*on 11/7/03
at 4:00P
2 sets
of court
copies are
to be
hand-
delivered
to Chamber
Ra. 2510
on 11/7/03
by 4:00P
as well.*

B. Service on the Temporary Receiver shall be performed by delivery to the attention of Angela Tese-Milner, Esq.

C. The Commission shall file with the Court and serve on the Defendants and the Temporary Receiver ^{and the Court} any supplemental memoranda, declarations, materials, or other evidence not less than twenty-four (24) hours prior to the hearing on the Order to Show Cause ~~Why a Preliminary Injunction Should Not Issue.~~ The Commission shall serve copies of all such materials on counsel for each Defendant by hand, by facsimile transmission, or by overnight delivery service. *Provided*, however, that if the Commission chooses to serve any Defendant via overnight delivery, the documents shall be delivered so that they shall be received by such Defendant at least twenty-four (24) hours prior to the hearing. Consumer declarations previously filed as exhibits in support of this Order comply with the disclosure requirements of this Paragraph.

2 courtesy copies by hand to Chambers by 11:01 AM 11/12/03 DAB 10/21/03

D. Pursuant to Federal Rule of Civil Procedure 4(c)(2), the copies of this Order and the initial pleadings and papers filed in this matter, including the Complaint and summonses, may be served by employees and agents of the Commission, by employees of any state or other federal law enforcement agency, including but not limited to the United States Marshal's Office and the Federal Bureau of Investigation, and by agents of any process servers retained by the Commission, upon any office of the Defendants, any individual Defendant, Savoncalling.com, LLC, any financial or brokerage institution, or any person or entity that may be in possession of any assets, property, or property rights of the Defendants.

E. The issuance of a preliminary injunction shall be determined on the pleadings, declarations, memoranda, and other exhibits filed by the parties and on oral argument, without live testimony. Any party who desires to present live testimony at the hearing ^{can.} ~~shall file a motion~~ requesting leave to present live testimony, and serve such motion on all opposing parties, not less than seventy-two (72) hours prior to the hearing on the Order to Show Cause Why a Preliminary Injunction Should Not Issue. ~~The request shall set forth in detail the reasons why an evidentiary hearing is desired and how such hearing would be helpful to the Court.~~ ^{party} In addition, the request shall set forth a witness list that shall include the name, address, and telephone number of any such witness, and either a summary of the witness' expected testimony, or the witness' declaration revealing the substance of such witness' expected testimony. *Provided*, that if service is via overnight delivery, the documents shall be delivered so that they shall be received by all parties at least seventy-two (72) hours prior to the hearing.

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Any party opposing a request to present live testimony shall file its written opposition, and serve such motion on all parties, not less than twenty-four (24) hours prior to the hearing on the Order to Show Cause Why a Preliminary Injunction Should Not Issue. Any party opposing ~~request to present live testimony~~ also shall file its witness list, and serve such witness list on all parties, not less than twenty-four (24) hours prior to the hearing on the Order to Show Cause Why a Preliminary Injunction Should Not Issue. For purposes of this Subparagraph, service shall be by hand, by facsimile transmission, or by overnight delivery service. *Provided*, that if service is via overnight delivery, the documents shall be delivered so that they shall be received by all parties at least twenty-four (24) hours prior to the hearing.

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XXV. DURATION OF TEMPORARY RESTRAINING ORDER

IT IS FURTHER ORDERED that the Temporary Restraining Order granted herein

shall expire on Nov. 13, 2003, at 11 o'clock a.m., unless within such time, the Order, for good cause shown, is extended for an additional period ~~not to exceed ten (10) days~~ ^{DAB} or unless it is further extended pursuant to Federal Rule of Civil Procedure 65. _{10/29/03}

XXVI. ORDER TO SHOW CAUSE RE: PERMANENT RECEIVER AND PRELIMINARY INJUNCTION

IT IS FURTHER ORDERED, pursuant to Federal Rule of Civil Procedure 65(b), that each of the Defendants shall appear before this Court on the 13th day of November, 2003, at 11:00 o'clock a.m., to show cause, if there is any, why this Court should not appoint a Permanent Receiver for the Receivership Defendants and enter a preliminary injunction, pending final ruling on the Complaint against the Defendants, enjoining the Defendants from further violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), continuing the freeze of their assets, and imposing such additional relief as may be appropriate. _{Courtroom 24 B, 500 Pearl Street N.Y. N. 10007}

XXVII. RETENTION OF JURISDICTION

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

SO ORDERED, this 29th day of October, 2003, at 11:54 a.m.

Deborah A. Battis
UNITED STATES DISTRICT COURT JUDGE

CERTIFIED AS A TRUE COPY ON

THIS DATE 10-29-03

BY Edward J. Dimarco
() Clerk
(x) Deputy