

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
CASE NO. 02-21760-CIV-JORDAN
THIS IS A CONSENT CASE - Magistrate Judge Brown

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

INSPIRED VENTURES, INC.,
a Florida corporation;

I.V.I. MANAGEMENT CORP.,
a Florida corporation;

SOURCE SYSTEMS, INC.,
a Florida corporation;

JESSE ALPER, individually and as an officer or
director; and

VICTOR ALPER, individually and as an officer or
director,

Defendants.

**STIPULATED FINAL JUDGMENT AND ORDER
FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF AS TO
DEFENDANT JESSE ALPER**

This matter comes before the Court on stipulation of Plaintiff Federal Trade Commission ("FTC" or "Commission") and Defendant Jesse Alper. The other Defendants in this case, Inspired Ventures, Inc. ("Inspired Ventures"), I.V.I. Management Corp. ("I.V.I. Management"), Source Systems, Inc. ("Source Systems"), and Victor Alper, have previously executed a Stipulated Final Judgment (the "Stipulated Judgment Against Non-Debtor Defendants").

On June 12, 2002, the Commission filed a Complaint for Injunctive and Other Equitable Relief, including redress to consumers, pursuant to Sections 5(a), 13(b), and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a), 53(b), and 57b, and the FTC's Trade Regulation Rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and

Business Opportunity Ventures" (the "Franchise Rule" or the "Rule"), 16 C.F.R. Part 436. The Commission also immediately moved *ex parte* for a Temporary Restraining Order ("TRO") pursuant to Federal Rule of Civil Procedure 65 and Local Rule 7.1.E. The next day, on June 13, 2002, this Court, having considered the Complaint as well as the memorandum of law, declarations, and other exhibits filed in support of Plaintiff's motion, issued a TRO. The TRO, *inter alia*, appointed a temporary receiver for Inspired Ventures, Inc., as the sole named corporate defendant at that time, and for I.V.I. Management and Source Systems, as affiliates of Inspired Ventures. The Court subsequently accepted a stipulation, which continued essentially all of the conditions of the TRO, on June 26, 2002, and issued a Stipulated Preliminary Injunction Order in final form on June 28, 2002. On December 17, 2002, the Commission filed an Amended Complaint adding I.V.I. Management and Source Systems as named defendants. Now, Plaintiff and Jesse Alper stipulate to the following Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief As To Defendant Jesse Alper (the "Final Order").

It is hereby **ORDERED, ADJUDGED, and DECREED** as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter of this case and the parties hereto.
2. Venue is proper as to all parties in the Southern District of Florida under 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b) and (c).
3. The activities of Jesse Alper are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
4. The Complaint alleges claims upon which relief may be granted against Jesse Alper under §§ 5(a)(1), 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45(a)(1), 53(b), and 57b, and under the Franchise Rule, 16 C.F.R. Part 436.
5. Plaintiff and Jesse Alper stipulate and agree to this Final Order to settle and resolve all matters in dispute between them arising from the Complaint to the date of entry of this

Final Order.

6. On April 9, 2003, Jesse Alper filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*, in the United States Bankruptcy Court for the Southern District of Florida, Case No. 03-13362-BKC-AJC (the "Bankruptcy Case"). Marcia T. Dunn was appointed the Chapter 7 trustee for Jesse Alper (the "Bankruptcy Trustee"). The Commission's action against Jesse Alper is not stayed by 11 U.S.C. § 362(a) because it is an exercise of the Commission's police or regulatory power as a governmental unit pursuant to 11 U.S.C. § 362(b)(4) and thus falls within an exemption to the automatic stay.

7. Jesse Alper has waived all rights that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412, *amended* by Pub. L. No.104-121, 110 Stat. 847, 863-64 (1996).

8. Jesse Alper acknowledges that he has read the provisions of this Final Order and has agreed to abide by them.

9. Jesse Alper waives all rights to seek appellate review or otherwise challenge or contest the validity of this Final Order.

10. Jesse Alper waives and releases any claim he may have against the FTC, the Receiver, the Receiver's counsel, and the employees, representatives or agents of any of the foregoing.

11. Entry of this Final Order is in the public interest.

12. This Final Order is for settlement purposes only and does not constitute an admission by Jesse Alper of a violation of any law or regulation.

DEFINITIONS

For the purpose of this Final Order, the following definitions shall apply:

1. "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, inventory, checks, notes, leaseholds, effects, contracts, mail or other deliveries, shares of stock, lists of consumer names, accounts, credits, premises, receivables,

funds, and cash, wherever located, whether in the United States or abroad;

2. "Business Venture" means any written or oral business arrangement, however denominated, whether or not covered by the Franchise Rule, which consists of the payment of any consideration for:
 - a. The right or means to offer, sell, or distribute goods or services (whether or not identified by a trademark, service mark, trade name, advertising, or other commercial symbol) in "commerce" as defined in Section 4 of the FTC Act, 15 U.S.C. § 44; and
 - b. More than nominal assistance to any person or entity in connection with or incident to the establishment, maintenance, or operation of a new business or the entry by an existing business into a new line or type of business;
3. "Corporate Defendants" means Inspired Ventures, I.V.I. Management, and Source Systems, collectively;
4. "Document" is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term;
5. "Person" means a natural person, an organization or other legal entity, including a corporation, partnership, sole proprietorship, limited liability company, association, cooperative, or any other group or combination acting as an entity;
6. "Receiver" means Chris McAliley, as previously appointed by this Court, or such other person as the Court directs. Receiver's counsel is David Mandel of Mandel & McAliley LLP or such other counsel as the Receiver designates; and
7. "Telemarketing" means any plan, program, or campaign (whether or not covered

by the Telemarketing Sales Rule, 16 C.F.R. Part 310) that is conducted to induce the purchase of goods, services, or a charitable contribution by use of one or more telephones.

INJUNCTIVE RELIEF

I. BAN ON MARKETING BUSINESS VENTURES

IT IS THEREFORE ORDERED that Jesse Alper, whether acting directly or through any corporation, limited liability company, subsidiary, division, or other device, is hereby permanently restrained and enjoined from or assisting or facilitating in:

- A. Advertising, promoting, offering for sale, or selling any Business Venture; or
- B. Receiving any remuneration of any kind whatsoever from, holding any ownership interest, share, or stock in, or serving as an employee, officer, director, trustee, general manager of, or consultant or advisor to, any business entity engaged in or assisting in the advertising, promoting, offering for sale, or sale of any Business Venture.

II. BAN ON FUTURE TELEMARKETING ACTIVITIES

IT IS FURTHER ORDERED that Jesse Alper is permanently restrained and enjoined from engaging, participating, assisting or facilitating in any manner or capacity whatsoever, directly or indirectly, individually or through any corporation, limited liability company, subsidiary, division, or other device, in any telemarketing of any kind.

III. INJUNCTION AGAINST MISREPRESENTATIONS

IT IS FURTHER ORDERED that in connection with the advertising, promoting, offering for sale, or sale of any good or service by any means whatsoever, Jesse Alper, and his successors, assigns, officers, agents, servants, employees, and those persons in active concert or participation with Jesse Alper who receive actual notice of this Final Order by personal service, facsimile, or otherwise, whether acting directly or through any corporation, limited liability company, subsidiary, division, or other entity, are hereby permanently restrained and enjoined from making, or assisting and facilitating others in making, either expressly or by implication,

any false or misleading representation.

IV. DUTY TO COOPERATE WITH RECEIVER

IT IS FURTHER ORDERED that Jesse Alper shall cooperate with:

- A. The Receiver in all reasonable requests relating to implementation of the Stipulated Judgment Against Non-Debtor Defendants, including the transfer of funds of the Corporate Defendants. This cooperation and assistance shall include, but not be limited to, providing any information and executing any documents that the Receiver deems necessary to exercising the authority and discharging the responsibilities of the Receiver under Orders of this Court, including but not limited to the Stipulated Judgment Against Non-Debtor Defendants; and
- B. The FTC in any continuing litigation of this matter. This cooperation includes, but is not limited to, maintaining all documents relevant to this litigation and assisting in the preparation of testimony and testifying fully, truthfully and completely at any trial in this matter, if called upon to do so.

REDRESS AND OTHER EQUITABLE RELIEF

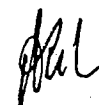
V. MONETARY JUDGMENT

IT IS FURTHER ORDERED that:

- A. Judgment is entered against Jesse Alper in the amount of \$2,653,968, which the Plaintiff and Jesse Alper stipulate is the amount of consumer injury caused by Defendants. The liability of Jesse Alper pursuant to this Final Order is joint and several with the liability of the remaining Defendants, Inspired Ventures, I.V.I. Management, Source Systems, and Victor Alper, pursuant to the Stipulated Judgment Against Non-Debtor Defendants entered separately in this case;
- B. The judgment shall be partially satisfied as follows:
 1. Pursuant to Section 502 of the Bankruptcy Code, 11 U.S.C. § 502, the FTC shall hold an allowed general unsecured claim in the Bankruptcy

Case in the amount of \$16,728.00. The FTC shall be entitled to participate in any distribution in the Bankruptcy Case paid on account of allowed general unsecured claims in such case, pursuant to Section 726 or 1129 of the Bankruptcy Code, 11 U.S.C. §§ 726 and 1129, and in accordance with the priorities of the Bankruptcy Code;

2. Jesse Alper hereby releases to the Commission all dominion, title, and control of all funds of the Corporate Defendants remaining in the receivership estate including monies of the Corporate Defendants frozen pursuant to the Preliminary Injunction entered by this Court on June 28, 2002, and hereby agrees that these monies are not property of Jesse Alper's bankruptcy estate;
- C. The Commission and Jesse Alper stipulate and agree to file, within ten (10) days of the date of entry of this Final Order, a Complaint and Agreed Judgment in the Bankruptcy Case, substantially in the form attached hereto as Appendix B, determining the Judgment, including the conditions set forth in Paragraph VI, to be nondischargeable, pursuant to Section 523 of the Bankruptcy Code, 11 U.S.C. § 523;
 - D. All funds paid pursuant to this Paragraph V shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including, but not limited to, consumer redress and any attendant expenses for the administration of any redress fund. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may pay any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendants' practices as alleged in the Complaint. Any funds not used for such equitable relief shall be deposited into the Treasury as disgorgement.



Jesse Alper shall have no right to challenge the Commission's choice of remedies under this Paragraph; and

- E. The execution of the remainder of this judgment is suspended, subject to the provisions of Paragraph VI, which is the Right to Reopen.

VI. RIGHT TO REOPEN

IT IS FURTHER ORDERED that:

- A. The Commission's agreement to this Final Order is expressly premised upon the financial condition of all Defendants as represented in the sworn financial statements provided to the Commission by Inspired Ventures (executed on June 22, 2002, with the addendum presented January 6, 2003), by Jesse Alper (executed on December 18, 2002), and by Victor Alper (executed on December 19, 2002), which include material information upon which the Commission relied in negotiating and consenting to this Final Order for Jesse Alper;
- B. If, upon motion by the Commission, this Court finds that Jesse Alper made a material misrepresentation or omitted material information concerning any Defendants' financial condition, then the Court shall enter a modified judgment holding Jesse Alper liable to the Commission in the amount of \$2,653,968, which the Plaintiff and Jesse Alper stipulate is the amount of consumer injury caused by Defendants. This amount, less the sum of payments previously made pursuant to this Final Order, shall become immediately due and payable by Jesse Alper, together with interest computed at the rate prescribed under 28 U.S.C. § 1961, as amended;
- C. Jesse Alper agrees that the facts as alleged in the Complaint filed in this action shall be taken as true in any subsequent litigation filed by the Commission to enforce its rights pursuant to this Final Order; and
- D. Any proceedings instituted under this Section are in addition to, and not in lieu of,

any other civil or criminal remedies as may be provided by law, including any other proceedings that the FTC may initiate to enforce this Final Order.

VII. COSTS

IT IS FURTHER ORDERED that each party shall bear its own costs and attorney's fees incurred in connection with this action.

VIII. LIFTING OF THE ASSET FREEZE

IT IS FURTHER ORDERED that the freeze of Jesse Alper's assets pursuant to Section III of the Preliminary Injunction entered by this Court on June 28, 2002, including property of Jesse Alper's bankruptcy estate, is lifted upon signing of this Final Order.

IX. PROHIBITIONS INVOLVING CUSTOMER LISTS

IT IS FURTHER ORDERED that Jesse Alper and his agents, employees, officers, corporations, successors, and assigns, and those persons in active concert or participation with him who receive actual notice of this Final Order by personal service, facsimile, or otherwise, are permanently restrained and enjoined from using, selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, credit card number, bank account number, e-mail address, or other identifying information of any person who paid any money to any of the Defendants at any time prior to the effective date of this Final Order in connection with the sale of business ventures; *provided* that Jesse Alper may disclose such identifying information to a law enforcement agency or as required by any law, regulation, or court order. Jesse Alper hereby agrees that any identifying information described in this paragraph is not property of Jesse Alper's bankruptcy estate.

COMPLIANCE

X. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring and investigating compliance with any provision of this Final Order:

- A. Within ten days of receipt of written notice from a representative of the

Commission, Jesse Alper shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in Jesse Alper's possession or direct or indirect control to inspect the business operation;

- B. In addition, the Commission is authorized to monitor compliance with this Final Order by all other lawful means, including but not limited to the following:
1. obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;
 2. posing as consumers and suppliers to: Jesse Alper, Jesse Alper's employees, or any other entity managed or controlled in whole or in part by Jesse Alper, without the necessity of identification or prior notice;

Provided that nothing in this Final Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)); and

- C. Jesse Alper shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Final Order. The person interviewed may have counsel present.

XI. COMPLIANCE REPORTING BY JESSE ALPER

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Final Order may be monitored:

- A. For a period of five (5) years from the date of entry of this Final Order, Jesse Alper shall notify the Commission of the following:

1. Any changes in Jesse Alper's residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;
 2. Any changes in Jesse Alper's employment status (including self-employment) within ten (10) days of the date of such change. Such notice shall include the name and address of each business that he is affiliated with, employed by, or performs services for; a statement of the nature of the business; and a statement of his duties and responsibilities in connection with the business; and
 3. Any changes in Jesse Alper's name or use of any aliases or fictitious names;
- B. One hundred eighty (180) days after the date of entry of this Final Order, Jesse Alper shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which he has complied and is complying with this Final Order. This report shall include, but not be limited to:
1. Any changes required to be reported pursuant to subparagraph (A) above;
 2. A copy of each acknowledgment of receipt of this Final Order obtained by Jesse Alper pursuant to Paragraph XIII of this Final Order entitled "Distribution of Order By Jesse Alper";
- C. For the purposes of this Final Order, Jesse Alper shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Associate Director for Marketing Practices
Federal Trade Commission
Room 238
600 Pennsylvania Ave., N.W.
Washington, DC 20580
Re: *FTC v. Inspired Ventures, Inc., et al.*, Civil Action No. 02-CV-21760

- D. For purposes of the compliance reporting required by this Paragraph, the Commission is authorized to communicate with Jesse Alper through counsel at:

Andrew Cove
Cove & Associates, PA
225 South 21st Avenue
Hollywood, FL 33020
954-921-1121.

XII. RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this Final Order, for any business in which Jesse Alper owns the majority of the business or directly or indirectly manages or controls the business, Jesse Alper and his agents, employees, officers, corporations, successors, and assigns, and those persons in active concert or participation with him who receive actual notice of this Final Order by personal service or otherwise, are hereby restrained and enjoined from failing to create and retain the following records:

- A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
- B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;
- C. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;
- D. Complaints and refund requests (whether received directly, indirectly or through any third party) and any responses to those complaints or requests; and

- E. Copies of all sales scripts, training materials, advertisements, or other marketing materials.

XIII. DISTRIBUTION OF ORDER BY JESSE ALPER

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Final Order, Jesse Alper shall deliver a copy of this Final Order to the principals, officers, directors, managers and employees under his control for any business that (a) employs or contracts for personal services from Jesse Alper and (b) has responsibilities with respect to the subject matter of this Order. Jesse Alper shall secure from each such person a signed and dated statement acknowledging receipt of the Final Order within thirty (30) days after the date of service of the Final Order or the commencement of the employment relationship.

XIV. ACKNOWLEDGMENT OF RECEIPT OF ORDER

IT IS FURTHER ORDERED that Jesse Alper, within five (5) business days of receipt of this Final Order as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Final Order. *See Appendix A to this Final Order.*

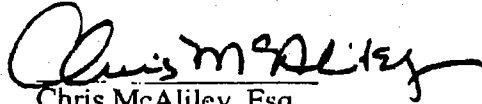
XV. RETENTION OF JURISDICTION

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

DONE AND ORDERED, this _____ day of _____, 2003, in Miami,
Florida.

United States Magistrate Judge

SO STIPULATED:


Chris McAiley, Esq.
Receiver for Inspired Ventures, Inc.
Dated: 10-17-03

FOR PLAINTIFF:

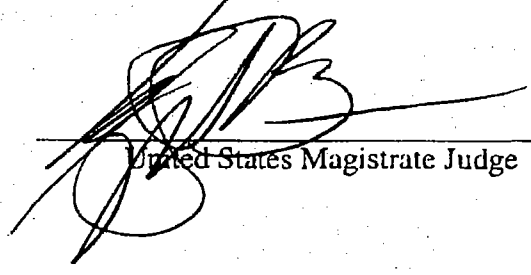
Brad Winter, Esq. (A5500668)
K. Michelle Roden, Esq. (A5500669)
Attorneys for Plaintiff
Federal Trade Commission
Dated: _____

FOR DEFENDANTS:

Andrew N. Cove, Esq.
Hector E. Lora, Esq.
Attorneys for Defendants
Dated: _____

Jesse Alper individually
Dated: _____

DONE AND ORDERED, this 19th day of February, 2003, in Miami,
Florida.


United States Magistrate Judge

SO STIPULATED:

Chris McAiley, Esq.
Receiver for Inspired Ventures, Inc.
Dated: _____

FOR PLAINTIFF:

K. Michelle Roden
Brad Winter, Esq. (A5500668)
K. Michelle Roden, Esq. (A5500669)
Attorneys for Plaintiff
Federal Trade Commission
Dated: 11-24-03

FOR DEFENDANTS:

Andrew N. Cove
Andrew N. Cove, Esq.
Hector E. Lora, Esq.
Attorneys for Defendants
Dated: 11/18/03

Jesse Alper
Jesse Alper individually
Dated: 11-18-03

(Appendix A to Final Order)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 02-21760-CIV-JORDAN
THIS IS A CONSENT CASE - Magistrate Judge Brown

FEDERAL TRADE COMMISSION,)
Plaintiff,)
v.)
INSPIRED VENTURES, INC.,)
I.V.I. MANAGEMENT CORP.,)
SOURCE SYSTEMS, INC.,)
JESSE ALPER,)
VICTOR ALPER,)
Defendants.)

AFFIDAVIT OF JESSE ALPER

Jesse Alper, being duly sworn, hereby states and affirms as follows:

1. My name is Jesse Alper. My current residential address is _____

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

2. I am a defendant in *FTC v. Inspired Ventures, Inc., et al.* (United States District Court for the District of Florida).

3. On this _____ day of _____, 2004, I received a copy of the Stipulated Final Judgment And Order For Permanent Injunction And Other Equitable Relief As To Defendant Jesse Alper which was signed and entered by the Honorable Magistrate Judge Brown and entered by the Court on the date of _____, 2004. A true and correct copy of the Order I received is appended to this Affidavit.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on this _____ day of _____, 2004, in the city of _____ in the State of _____, within the United States.

Jesse Alper

State of _____, City of _____

Subscribed and sworn to before me this _____ day of _____, 2004.

Notary Public

My Commission Expires: _____

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

In re:)
)
)

JESSE ALPER,)
)

Debtor.)
)

Case No. 03-13362-AJC
Chapter 7

FEDERAL TRADE COMMISSION,)
)

Plaintiff,)
)

v.)
)

JESSE ALPER,)
)

Defendant.)
)

Adv. Proc. No. _____

**COMPLAINT TO DETERMINE NONDISCHARGEABILITY OF DEBT OWED TO
THE FEDERAL TRADE COMMISSION**

Plaintiff, the Federal Trade Commission (the "FTC" or "Commission"), through its undersigned attorneys, files this Complaint under Section 523 of the Bankruptcy Code (the "Code"), 11 U.S.C. § 523, objecting to the dischargeability of a pre-petition debt owed by Defendant Jesse Alper, the Debtor herein ("Debtor"), to the FTC, and in support hereof alleges as follows:

Jurisdiction and Venue

1. Subject matter jurisdiction is conferred upon this Court by 28 U.S.C. §§ 157 and 1334, and 11 U.S.C. § 523. This Adversary Proceeding is a core proceeding pursuant to 28

U.S.C. § 157(b)(2)(D). Venue in the Southern District of Florida is proper under 28 U.S.C. § 1391(b) and (c).

2. This Adversary Proceeding relates to *In re Jesse Alper*, Case No.

03-13362-BKC-AJC (Bankr. S.D. Fla.) (Chapter 7), now pending in this Court (the "Bankruptcy Case"). The FTC is an unsecured creditor with a claim against the Debtor in the amount of \$2,653,968, pursuant to the Stipulated Final Judgment and Order for Permanent Injunction and Equitable Relief as to Defendant Jesse Alper (the "Stipulated Judgment") entered by the United States District Court for the Southern District of Florida, in the case styled *FTC v. Inspired Ventures, Inc., et al.*, Case No. 02-21760-CIV-JORDAN/BROWN (S.D. Fla.) (the "Enforcement Action").

3. Pursuant to this Court's Order dated August 6, 2003, the FTC filed a motion requesting the extension of the deadline to file a complaint objecting to the dischargeability of the debt owed by the Debtor pursuant to the Stipulated Judgment. The Court subsequently extended this deadline until thirty days after the District Court enters a final order and judgment.

The Parties

4. Plaintiff, the FTC, is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41 *et seq.* The Commission is charged, *inter alia*, with enforcement of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce, as well as enforcement of the Franchise Rule, 16 C.F.R. § 436. The Commission is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act in order to secure such

equitable relief as may be appropriate in each case, including redress for injured consumers, restitution and disgorgement. 15 U.S.C. §§ 53(b) and 57b.

5. The Debtor is a Defendant, along with four other Defendants (the "Non-Debtor Defendants"), in the above mentioned Enforcement Action, *FTC v. Inspired Ventures, et al.* The Non-Debtor Defendants in the Enforcement Action are Jesse Alper's brother, Victor Alper, and three corporations: Inspired Ventures, Inc. ("Inspired Ventures"), I.V.I. Management Corp. ("I.V.I."), and Source Systems, Inc. ("Source Systems").

6. The Debtor was the sole director and executive officer of two of the Non-Debtor Defendants, Inspired Ventures, and I.V.I. At all times material to this Complaint, acting alone or in concert with others, the Debtor Jesse Alper has formulated, directed, controlled, or participated in the acts and practices of the corporate Non-Debtor Defendants, including the acts and practices described below. He resides or has transacted business in the Southern District of Florida.

Course of Proceedings

7. On or about April 9, 2003, the Debtor filed a voluntary petition for relief under Chapter 7 of the Code, thereby commencing this Bankruptcy Case.

8. Prior to the petition date, on June 12, 2002, the FTC filed its complaint commencing the above-mentioned Enforcement Action, alleging that the business practices of the Debtor and Non-Debtor Defendants violate Section 5 of the FTC Act, 15 U.S.C. § 45, and the Franchise Rule. The FTC sought a permanent injunction and ancillary equitable relief against the Defendants, including monetary relief in the form of consumer redress, restitution and the disgorgement of ill-gotten monies, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b).

9. On June 13, 2002, the District Court in the FTC's Enforcement Action entered an

ex parte temporary restraining order ("TRO") against the Debtor and other Defendants¹ temporarily prohibiting certain further conduct in connection with the sale of vending machine business ventures, appointing a receiver over the Corporate Defendant, and freezing the assets of all of the Defendants.

10. The Debtor has signed, and the District Court has entered, the Stipulated Judgment permanently enjoining the various practices that the FTC alleged were deceptive to consumers and entering a monetary judgment in the amount of \$2,653,968. This monetary judgment is joint and several with the Non-Debtor Defendants and shall be suspended as long as the District Court in the Enforcement Action makes no finding, as provided in Paragraph VI (B) of the Stipulated Judgment, that the Debtor materially misrepresented or omitted the nature, existence or value of any asset to the FTC. A copy of the Stipulated Judgment as to the Debtor is attached hereto and incorporated herein as Exhibit A.²

11. The FTC's action against the Debtor, other than the collection of the monetary judgment provisions of the Stipulated Judgment, is not stayed by Section 362(a) of the Code because it is an exercise of the FTC's police or regulatory power as a governmental unit pursuant to Section 362(b)(4) of the Code and thus falls within an exemption to the automatic stay.

¹In addition to the Debtor, the other named Defendants initially were Inspired Ventures, Inc. and Victor Alper. On December 13, 2002, the FTC amended the complaint to add Defendants I.V.I. Management Corp. and Source Systems, Inc.

²All Defendants to the Enforcement Action have signed a Proposed Stipulated Final Order. Because they have not sought bankruptcy relief, the Non-Debtor Defendants signed a separate Final Order from the Debtor.

The Debtor's Course of Conduct

12. From at least January 2002 until June 13, 2002, when the District Court's TRO halted their unlawful business practices, the Debtor and the Non-Debtor Defendants offered for sale business ventures involving candy vending machines, which were called "Sweet Tooth Sam, the Money Making Man."

13. The Debtor and the Non-Debtor Defendants promoted Inspired Ventures and their Sweet Tooth Sam vending machines through a variety of advertising, including unsolicited commercial email ("spam"), web pages on the Internet, and classified advertisements in newspapers.

14. In their advertising, the Debtor and the Non-Debtor Defendants represented, expressly or by implication, that purchasers were likely to earn substantial income through a continuing commercial relationship with the Defendants.

For instance, the Defendants' spam stated, in part:

With our Sweet Tooth Sam Vending Program you will have an incredible all cash vending business with:

- * No Selling
- * 500% Profits
- * No Overhead
- * Minimum Start-up Cost
- * Prime Retail Locations - Risk Free
- * \$71/hour Potential
- * Repeat Sales
- * Professional Ongoing Support
- * Factory Direct Prices on Machines and Candy
- * One-stop shopping for All Your Vending Needs

Moreover the Debtor and the Non Debtor Defendants' classified advertisements, which appeared in newspapers throughout the country, made claims such as:

Business Opportunities (Franchises/Distributorship)
- AMAZING 500% RETURN! Local vending route.
\$4000/mo. potential. Minimum investment required.
FREE INFO. 1-800-483-8717.

15. Prospective purchasers who contacted Inspired Ventures reached the Debtor and the Non-Debtor Defendants, who delivered sales pitches over the course of what were often a series of telephone calls and written communications. The Debtor and Non-Debtor Defendants sold Sweet Tooth Sam "Plans" which required a minimum payment of thousands of dollars. The Beginner Plan of thirty Sweet Tooth Sam machines cost \$11,900. Larger plans, such as the Master Plan of one hundred machines, cost up to \$30,000. With these Plans, Inspired Ventures supplied the initial servings of the gum balls, nuts, raisins, or other candy that purchasers were to vend to the public, as well as offered the candy in bulk for re-order. The quoted prices for the plans did not include the cost of shipping the machines to the purchaser or the fees for placing the machines in retail locations. The Beginner Plan, complete with machines, candy, shipping, and locating fees, cost a total upfront fee of approximately \$14,000.

16. During the initial sales pitch or subsequent telephone conversations, the Debtor and Non-Debtor Defendants made oral representations about prospective purchasers' income earning potential in the business ventures as well as the actual earnings of prior purchasers. For example, Defendants claimed that investing \$14,000 nets a return of \$28,000 a year and represented that such returns were "the average our vendors are hitting." Non-Debtor Defendant Victor Alper also claimed "it's not a get-rich quick scheme, but it is breaking even right around six months and doubling your money in about a year." These claims were false and misleading.

17. The Debtor and the Non-Debtor Defendants provided prospective purchasers with the names and telephone numbers of purported "references." The Defendants represented that these references did not work for Inspired Ventures or would provide reports which accurately described the business practices of Inspired Ventures. However, Defendants' representations about the company-selected references were false and misleading.

18. The Debtor and the Non-Debtor Defendants provided the services of a "locator," a person who the Defendants represented was able to secure the retail outlets, accounts, sites, or locations for the vending machines. For example, the Defendants' written materials refer to "a team of professional placement specialists" who would secure locations where the Sweet Tooth Sam machines would sell candy to members of the general public. Similarly, Victor Alper provided to prospective purchasers the names and telephone numbers of locators.

19. The Debtor and the Non-Debtor Defendants provided to prospective purchasers a sales package with written representations that purchasers were likely to earn substantial income. For example, their sales brochure begins with "A Message from The President," which bore the Debtor's stylized signature and his purported photograph. In his Message, the Debtor represented to prospective purchasers that "I am convinced that whether you are manufacturing, distributing or servicing your own home-based route, vending will provide a substantial and consistent cash income."

20. A page of the Defendants' sales brochure is captioned "Distributorship Programs...Where Should I Start, How Much Can I Make?" and presented an income multiplication table. The table purported to project a prospective purchaser's earnings based on the number of vending machines purchased multiplied by the "Industry average" number of vends

per day. The Debtor and the Non-Debtor Defendants represented, falsely, that the information associated with their table was taken from the Census of the Industry by *Vending Times*.

21. The sales package that the Defendants provided to prospective purchasers also included form agreements, such as a purchase order for the vending machines and a form to re-order candy in bulk. The form agreements were between Inspired Ventures and the prospective purchaser and were pre-printed with the Debtor's signature as President of Inspired Ventures. The Defendants' sales package also included wire payment instructions.

22. When prospective purchasers called Inspired Ventures to discuss the sales package, the Debtor and the Non-Debtor Defendants, without making further disclosures required by law, encouraged prospective purchasers to complete and send in the form agreements and to wire funds.

23. The sales package that the Debtor and the Non-Debtor Defendants sent to prospective purchasers included a document entitled "Franchise Offering Circular." Item 19 of the Defendants' Franchise Offering Circular stated:

Inspired Ventures, Inc. does not furnish or authorize its salespersons to furnish any oral or written information concerning the actual or potential sales, costs, income or profits of an Inspired Ventures, Inc. business opportunity. Actual results vary from unit to unit and Inspired Ventures, Inc. cannot estimate the results of any particular business opportunity.

In reality, the Debtor and the Non-Debtor Defendants and their agents did furnish information concerning the purported actual or potential sales, costs, income, or profits of an Inspired Ventures business opportunity to prospective purchasers.

24. For each earnings claim the Debtor and the Non-Debtor Defendants made, they did not have a reasonable basis and did not disclose that material which constitutes a reasonable basis for that earnings claim was available to prospective purchasers.

25. The Debtor and the Non-Debtor Defendants' newspaper, web, and spam advertising did not disclose the number and percentage of prior purchasers known by the Defendants to have achieved the same or better results as the earnings claims made in the advertisements. The Debtor and the Non-Debtor Defendants' advertising also lacked language indicating that the earnings figures were only estimates and that a purchaser risked not doing as well.

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

27. In numerous instances in the course of offering for sale and selling their business ventures, the Debtor and Non-Debtor Defendants, directly or indirectly, represented, expressly or by implication, that consumers who purchased Defendants' business ventures were likely to earn substantial income. In truth and in fact, consumers who purchased the Defendants' business ventures were not likely to earn substantial income. Therefore, these representations were false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

28. In numerous instances in the course of offering for sale and selling their vending business ventures, the Debtor and Non-Debtor Defendants, directly or indirectly, represented, expressly or by implication, that certain company-selected references had purchased the Defendants' business ventures or would provide reliable descriptions of experiences with the

Defendants' business ventures. In truth and in fact, in numerous instances, Defendants' references had not purchased Defendants' business ventures or did not provide reliable descriptions of experiences with the Defendants' business ventures. Therefore, these representations were false and misleading and constitute a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

29. The business ventures sold by the Debtor and the Non-Debtor Defendants were franchises, as "franchise" is defined in Sections 436.2(a)(1)(i) and (ii), (a)(2), and (a)(5) of the Franchise Rule, 16 C.F.R. §§ 436.2(a)(1)(i) & (ii), (a)(2), and (a)(5).

30. The Franchise Rule requires a franchisor to provide prospective franchisees with a complete and accurate basic disclosure document containing twenty categories of information, including the name of any holding company, the recent business experience of the franchisor's current officers, a balance sheet examined by a qualified accountant, a description of any initial training offered, the terms and conditions under which the franchise operates, and information identifying existing franchisees. 16 C.F.R. § 436.1(a)(1) - (a)(20). The pre-sale disclosure of this information required by the Rule enables a prospective franchisee to contact prior purchasers and take other steps to assess the potential risks involved in the purchase of the franchise.

31. As a matter of policy, the FTC has authorized franchisors to comply with the Rule by furnishing prospective franchisees with disclosures in a format known as the Uniform Franchise Offering Circular ("UFOC"). Authorization to use the UFOC format to comply with the Rule's disclosure requirements was first granted by the Commission in the Final Interpretive Guides to the Rule, 44 Fed. Reg. 49966, 49970-71, and expressly requires adherence to the UFOC disclosure requirements in their "entirety." This conditional authorization has been ratified by the

Commission following subsequent amendments to the UFOC requirements by the North American Securities Administrators Association, most recently on December 30, 1993. 58 Fed. Reg. 69224. Inspired Ventures has elected to use the UFOC disclosure format.

32. Item 19 of the UFOC Guidelines requires the franchisor to disclose whether or not an earnings claim is made. Item 19 further requires that "[a]n earnings claim made in connection with an offer of a franchise must be included in full in the offering circular and must have a reasonable basis at the time it was made" and that "[a]n earnings claim shall include a description of its factual basis and the material assumptions underlying its preparation and presentation." Item 19 recognizes an income multiplication table to be an earnings claim.

33. The Franchise Rule specifically prohibits franchisors from making any claim or representation that contradicts a required disclosure. 16 C.F.R. § 436.1(f).

34. The Franchise Rule additionally requires that a franchisor:

- (a) have a reasonable basis for any oral, written, or visual earnings claim it makes, 16 C.F.R. § 436.1(b)(2), (c)(2) and (e)(1);
- (b) disclose, in immediate conjunction with any earnings claim it makes, and in a clear and conspicuous manner, that material which constitutes a reasonable basis for the earnings claim is available to prospective franchisees, 16 C.F.R. § 436.1(b)(2) and (c)(2);
- (c) provide, as prescribed by the Rule, an earnings claim document containing information that constitutes a reasonable basis for any earnings claim it makes, 16 C.F.R. § 436.1(b) and (c); and
- (d) clearly and conspicuously disclose, in immediate conjunction with any generally disseminated earnings claim, additional information including the number and percentage of prior purchasers known by the franchisor to have achieved the same or better results, 16 C.F.R. § 436.1(e)(3)-(4).

35. Pursuant to Section 18(d)(3) of the FTC Act, 15 U.S.C. 57a(d)(3), and 16 C.F.R. § 436.1, violations of the Franchise Rule constitute unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

36. In connection with the offering of franchises, as "franchise" is defined in Section 436.2(a) of the Rule, the Debtor and the Non-Debtor Defendants violated Section 436.1(f) of the Rule and Section 5(a) of the FTC Act by making claims or representations to prospective franchisees which are contradictory to the information required to be disclosed by Section 436.1 of the Rule.

37. In connection with the offering of franchises, as "franchise" is defined in Section 436.2(a) of the Franchise Rule, the Debtor and the Non-Debtor Defendants violated Sections 436.1(b)-(c) of the Rule and Section 5(a) of the FTC Act by making earnings claims to prospective franchisees while, *inter alia*: (1) lacking a reasonable basis for each claim at the times it is made; (2) failing to disclose, in immediate conjunction with each earnings claim, and in a clear and conspicuous manner, that material which constitutes a reasonable basis for the claim is available to prospective franchisees; and/or (3) failing to provide prospective franchisees with an earnings claim document, as prescribed by the Rule, and/or earnings disclosures, as prescribed by Item 19 of the UFOC Guidelines.

38. In connection with the offering of franchises, as "franchise" is defined in Section 436.2(a) of the Franchise Rule, the Debtor and the Non-Debtor Defendants violated Section 436.1(e) of the Rule and Section 5(a) of the FTC Act by making generally disseminated earnings claims without, *inter alia*, disclosing, in immediate conjunction with the claims, information

required by the Franchise Rule including the number and percentage of prior purchasers known by the Defendants to have achieved the same or better results.

39. By engaging in the business practices detailed in Paragraphs 12 through 38 above, consumers throughout the United States have suffered substantial monetary loss as a result of the Debtor and Non-Debtor Defendants' unlawful acts or practices.

Nondischargeability of the Stipulated Judgment

40. Debts for money, property, or services obtained by false pretenses, a false representation, or actual fraud are not dischargeable. 11 U.S.C. § 523(a)(2)(A).

41. The Debtor violated Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the Franchise Rule, 16 C.F.R. § 436, by his participation in a scheme to defraud consumers in connection with the advertising, marketing, and sale of their candy vending business ventures.

42. The Debtor's activities described in Paragraphs 12 through 38 above were conducted with knowledge that he was engaged in a fraudulent scheme and with knowledge of the falsity of the representations, or with reckless disregard of the truth or falsity of the representations.

43. The Debtor injured consumers by knowingly engaging in a fraudulent scheme and knowingly making false representations to consumers. These representations were material to consumers in deciding to purchase business ventures from the Debtor and Non-Debtor Defendants.

44. Consumers who purchased candy vending business ventures from the Debtor and Non-Debtor Defendants suffered losses totaling at least \$2,653,968.

45. The Debtor's activities described in Paragraphs 12 through 38 above constitute false representations or actual fraud. Consequently, the Debtor's debt to the FTC pursuant to the Stipulated Judgment is one for money, property, or services obtained by false representations or actual fraud, and is not dischargeable. 11 U.S.C. § 523(a)(2)(A).

46. As reflected in the agreed judgment submitted herewith, the Debtor has consented to the non-dischargeability of the Stipulated Judgment owed by the Debtor to the FTC.

WHEREFORE, plaintiff FTC requests that the Court:

(a) Enter the agreed judgment submitted herewith determining the Stipulated Final Judgment and Order for Permanent Injunction and Equitable Relief as to Defendant Jesse Alper entered by the United States District Court for the Southern District of Florida, in the case styled *FTC v. Inspired Ventures, Inc., et al.*, Case No. 02-21760-CIV-JORDAN/BROWN (S.D. Fla.) is nondischargeable; and

(b) Granting such other and further relief as this case may require and the Court deems just and proper.

Dated: 2/10, 2004

Respectfully Submitted,



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COUNSEL FOR PLAINTIFF FTC

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

In re:

JESSE ALPER,

Debtor.

Case No. 03-13362-BKC-AJC
Chapter 7

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

Adv. Proc. No. _____

JESSE ALPER,

Defendant.

**STIPULATED JUDGMENT FOR NONDISCHARGEABILITY
OF DEBT OWED TO THE FEDERAL TRADE COMMISSION**

Plaintiff, the Federal Trade Commission ("FTC"), through its undersigned attorneys, filed a Complaint to Determine Nondischargeability of Debt under Section 523 of the Bankruptcy Code, 11 U.S.C. § 523. Defendant Jesse Alper, the debtor herein ("Debtor"), denies the allegations in the Complaint, except jurisdictional facts, but is willing to agree to the entry of the following Stipulated Judgment for Nondischargeability, as follows:

Findings

1. This Court has subject matter jurisdiction over this Stipulated Judgment for Nondischargeability pursuant to 28 U.S.C. §§ 157 and 1334, and 11 U.S.C. § 523.
2. Venue in the Southern District of Florida is proper under 28 U.S.C. § 1391(b) and (c).

3. This Adversary Proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I).

4. This Adversary Proceeding relates to *In re Jesse Alper*, Case No. 03-13362-BKC-AJC (Bankr. S.D. Fla.) (Chapter 7), now pending in this Court (the "Bankruptcy Case"). The FTC is an unsecured creditor with a claim against the Debtor in the amount of \$2,653,968, pursuant to the Stipulated Final Judgment and Order for Permanent Injunction and Equitable Relief as to Defendant Jesse Alper (the "Stipulated Final Judgment") entered by the United States District Court for the Southern District of Florida, in the case styled *FTC v. Inspired Ventures, Inc., et al.*, Case No. 02-21760-CIV-JORDAN/BROWN (S.D. Fla.) (the "Enforcement Action"). A copy of the Stipulated Final Judgment as to the Debtor is attached hereto and incorporated herein as Exhibit A.

5. The FTC and the Debtor agree to resolve this Adversary Proceeding without litigation, pursuant to the terms of this Stipulated Judgment for Nondischargeability.

6. The Debtor waives service of summons.

Order

1. Judgment is hereby entered in favor of the FTC and against the Debtor/defendant, Jesse Alper, determining the Stipulated Final Judgment entered in the Enforcement Action to be nondischargeable in the amount of \$2,653,968.

2. The judgment identified in paragraph 1 shall be partially satisfied as follows:

(a) Pursuant to Section 502 of the Bankruptcy Code, 11 U.S.C. § 502, the FTC shall hold an allowed general unsecured claim in the Bankruptcy Case in the amount of \$16,728.00, which amount is a portion of consumer injury caused by the Debtor. The FTC shall be entitled to participate in any distribution in this case paid on account of allowed general


unsecured claims, pursuant to Section 726 of the Bankruptcy Code and in accordance with the priorities of the Bankruptcy Code.

(b) Jesse Alper shall release to the Commission all dominion, title and control of all funds of Inspired Ventures, I.V.I. Management, and Source Systems (collectively, the "Corporate Defendants") remaining in the receivership estate established by the District Court to liquidate the assets and wind-up the business of the Corporate Defendants, including the monies of the Corporate Defendants frozen pursuant to the Stipulated Preliminary Injunction Order entered by the District Court on June 28, 2002, which funds are not property of Jesse Alper's bankruptcy estate.

3. The remainder of the judgment identified in paragraph 1 of this Stipulated Judgment for Nondischargeability shall be suspended, subject to the Commission's right to file a motion in the District Court for the entry of judgment against the Debtor in the amount of \$ 2,653,968 in accordance with the terms of Part VI (B) of the Stipulated Final Order in the Enforcement Action and any applicable law.

4. All other provisions of the Stipulated Final Judgment in the Enforcement Action, including the injunctive provisions, remain in full force and effect.

SO STIPULATED:



JESSE ALPER
Defendant/Debtor

Dated: 09-06-03

Jay. M. Gamberg, Esq.
Jay M. Gamberg, P.A.
4000 Hollywood Blvd., Suite 350 North
Hollywood, FL 33021

Dated: _____


unsecured claims, pursuant to Section 726 of the Bankruptcy Code and in accordance with the priorities of the Bankruptcy Code.

(b) Jesse Alper shall release to the Commission all dominion, title and control of all funds of Inspired Ventures, I.V.I. Management, and Source Systems (collectively, the "Corporate Defendants") remaining in the receivership estate established by the District Court to liquidate the assets and wind-up the business of the Corporate Defendants, including the monies of the Corporate Defendants frozen pursuant to the Stipulated Preliminary Injunction Order entered by the District Court on June 28, 2002, which funds are not property of Jesse Alper's bankruptcy estate.

3. The remainder of the judgment identified in paragraph 1 of this Stipulated Judgment for Nondischargeability shall be suspended, subject to the Commission's right to file a motion in the District Court for the entry of judgment against the Debtor in the amount of \$ 2,653,968 in accordance with the terms of Part VI (B) of the Stipulated Final Order in the Enforcement Action and any applicable law.

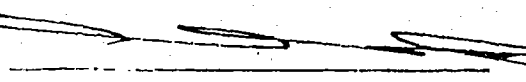
4. All other provisions of the Stipulated Final Judgment in the Enforcement Action, including the injunctive provisions, remain in full force and effect.

SO STIPULATED:



JESSE ALPER
Defendant/Debtor

Dated: 09-05-03



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Dated: 9/16/03

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K. Michelle Roden

Dated: 11/24/03

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Attorneys for the FTC

ORDER

Based on the foregoing,

IT IS SO ORDERED this _____ day of _____ 2003, by the United States

Bankruptcy Court for the Southern District of Florida.

A. JAY CRISTOL
United States Bankruptcy Judge

cc: Brad Winter, Esq.
K. Michelle Roden, Esq.
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