

HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FEDERAL TRADE COMMISSION, and
STATE OF WASHINGTON,

Plaintiffs,

v.

WESTCAL EQUIPMENT, INC., dba
PIONEER FIRST, PF MEMBER SERVICES,
INC., ROBERT BARR, CANDACE
RODRIGUEZ, CHARLES SCHMIDT, and
WAYNE WRATH,

Defendants.

Case No. C02-1783-L

**STIPULATED PERMANENT
INJUNCTION AND FINAL ORDER AS
TO ROBERT BARR AND CANDACE
RODRIGUEZ**

Note on Motion Calendar: March 25, 2003

Plaintiffs, the Federal Trade Commission ("Commission") and the State of Washington, filed a complaint for a permanent injunction and other relief, including restitution to consumers, pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. § 6101 *et seq.*, the Washington Telephone Solicitation Act, RCW 19.158, and the Washington Consumer Protection Act, RCW 19.86. Robert Barr, Candace Rodriguez, the Commission, and the Washington Attorney General have agreed to entry of this Stipulated Permanent Injunction by this Court in order to resolve all matters in dispute between them in this action. Robert Barr and Candace Rodriguez have consented to the entry of this Order without trial or adjudication of any issue of law or fact herein, and this Order shall not constitute an admission of liability by them nor constitute evidence of liability

1 against them in any matter relating to the facts alleged in the Complaint. Robert Barr and Candace
2 Rodriguez enter into this Order freely and without coercion, and acknowledge that they understand the
3 provisions of this Order and are prepared to abide by its terms. **NOW, THEREFORE**, these
4 defendants, the Commission and the Washington Attorney General having requested the Court to enter
5 this Order, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

6 **FINDINGS**

7 1. This Court has jurisdiction of the subject matter of this action and the parties consenting
8 hereto.

9 2. Venue is proper as to all parties consenting hereto in the Western District of
10 Washington.

11 3. The activities of these defendants are in or affecting commerce, as defined in Section 4 of
12 the FTC Act, 15 U.S.C. § 44.

13 4. The complaint states a claim upon which relief may be granted against these defendants
14 under Sections 5(a), 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 53(b) and 57b, The
15 Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. § 6101 *et seq.*, and the
16 Telemarketing Sales Rule ("TSR") 16 C.F.R. Part 310, and the Washington Commercial Telephone
17 Solicitation Act, RCW 19.158, and the Washington Consumer Protection Act, RCW 19.86. .

18 5. Entry of this Order is in the public interest.

19 6. These defendants have waived all rights to seek judicial review or otherwise challenge or
20 contest the validity of this Order, and further waive and release any claim defendants may have against
21 the Commission, its employees and agents.

22 **DEFINITIONS**

23 For purposes of this Order, unless otherwise indicated, the following definitions shall apply:

24 A. "Defendants" means Robert Barr and Candace Rodriguez, their officers, agents,
25 servants, employees, attorneys, and those persons in active concert or participation with them who
26 receive actual notice of this order by personal service or otherwise.

27 B. "Clearly and prominently" means as follows:

28 1. In an advertisement communicated through an electronic medium (such as

1 television, video, radio, and interactive media such as the Internet and online
2 services), the disclosure shall be presented simultaneously in both the audio and
3 video portions of the advertisement. Provided, however, that in any
4 advertisement presented solely through video or audio means, the disclosure may
5 be made through the same means in which the ad is presented. The audio
6 disclosure shall be delivered in a volume and cadence sufficient for an ordinary
7 consumer to hear and comprehend it. The video disclosure shall be of a size and
8 shade, and shall appear on the screen a sufficient length of time for an ordinary
9 consumer to read and comprehend it. In interactive media the disclosure shall
10 also be unavoidable and shall be presented before the consumer incurs any
11 financial obligation.

12 2. In a print advertisement, promotional material, or instructional manual,
13 the disclosure shall be in a type size and location sufficiently noticeable for an
14 ordinary consumer to read and comprehend it, in print that contrasts with the
15 background against which it appears. In multi-page documents, the disclosure
16 shall appear on the cover or first page.

17 C. "Express verifiable authorization" means as that term is defined in Section 310.3(a)(3) of
18 the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(3).

19 I. PROHIBITED PRACTICES

20 **IT IS THEREFORE ORDERED** that defendants, whether acting directly or through any
21 entity, corporation, subsidiary, division or other device, are hereby preliminarily restrained and enjoined
22 from:

23 A. Misrepresenting that, after paying a fee, consumers will, or are highly likely to, receive
24 an unsecured major credit card, such as a Visa or MasterCard credit card;

25 B. Failing to clearly and prominently disclose on the Pioneer First website, in all
26 promotional materials and advertisements, and in all sales presentations and solicitations, that the
27 Pioneer First Platinum credit card, is not a major credit card and that it can only be used to purchase
28 merchandise from the Pioneer First mail order catalog or from Pioneer First's website;

1 C. Failing to clearly and prominently disclose on the Pioneer First website, in all
2 promotional materials and advertisements, and in all sales presentations and solicitations, that a down
3 payment is required in order to purchase merchandise from Pioneer First using the Pioneer First
4 Platinum card, if that is the case;

5 D. Requesting or receiving payment or a fee or consideration in advance of obtaining or
6 arranging a loan or other extension of credit when defendants have guaranteed or represented a high
7 likelihood of success in obtaining or arranging a loan or other extension of credit;

8 E. Failing to obtain express verifiable authorization to debit a consumer's bank account for
9 any fee or other charge;

10 F. Engaging in any commercial telephone solicitation in the State of Washington until
11 defendants register with the State of Washington Department of Licensing as required by the
12 Washington Commercial Telephone Solicitation Act, RCW 19.158.050.

13 II.

14 DISCLOSURE OF CUSTOMER INFORMATION

15 **IT IS FURTHER ORDERED** that defendants are permanently restrained and enjoined from
16 selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number,
17 credit card number, bank account number, e-mail address, or other identifying information of any person
18 who paid any money to any defendant, at any time prior to entry of this order, in connection with
19 telemarketing or selling advance fee credit cards or other extensions of credit. Provided, however, that
20 defendants may disclose such identifying information to a law enforcement agency or as required by any
21 law, regulation, or court order.

22 III.

23 RIGHT TO REOPEN

24 **IT IS FURTHER ORDERED** that, by agreeing to this Order, defendants reaffirm and attest to
25 the truthfulness, accuracy, and completeness, to the best of defendants' knowledge, of the Financial
26 Disclosure Forms transmitted to the FTC on September 9, 2002, and other financial disclosure
27 documents provided to the FTC on September 26, 2002. Plaintiffs' agreement to this Order is expressly
28 premised upon the truthfulness, accuracy, and completeness of defendants' financial condition as

1 represented in the Financial Disclosure Forms and documents referenced above, which contain material
2 information upon which plaintiffs relied in negotiating and agreeing to the terms of this Order. If, upon
3 motion by a plaintiff, this Court finds that defendants failed to disclose any material asset or source of
4 income, or materially misrepresented the value of any asset or source of income, or made any other
5 material misrepresentation in or omission from the Financial Disclosure Forms, the Court shall enter
6 judgment against defendants, in favor of the plaintiffs, in the amount of \$1,083,521.00 and the entire
7 amount of the judgment shall become immediately due and payable. *Provided, however,* that in all other
8 respects, this Order shall remain in full force and effect unless otherwise ordered by this Court; and
9 provided further that proceedings instituted under this Paragraph are in addition to, and not in lieu of,
10 any other civil or criminal remedies as may be provided by law, including any other proceedings plaintiff
11 may initiate to enforce this Order. For the purposes of this Paragraph, defendants waive any right to
12 contest any of the allegations in the complaint filed in this matter in any subsequent litigation filed by the
13 Commission to enforce its rights pursuant to this Order, including but not limited to a non-
14 dischargeability complaint in any bankruptcy proceeding.

15 **IV.**

16 **DISSOLUTION OF ASSET FREEZE**

17 **IT IS FURTHER ORDERED** that upon entry of this Stipulated Permanent Injunction, the
18 freeze against the remaining balance of funds in account number 153191029954 at US Bank shall be
19 lifted.

20 **V.**

21 **MONITORING COMPLIANCE OF SALES PERSONNEL**

22 **IF IS FURTHER ORDERED** that defendants, in connection with any business where (1)
23 either defendant is the majority owner of the business or directly or indirectly controls the business and
24 where (2) the business is engaged in marketing by any means, including telemarketing, any credit related
25 or financial product or service; contracts with others to market by any means, including telemarketing,
26 any credit related or financial product or service; or assists others who market by any means, including
27 telemarketing, any credit related or financial product or service, is hereby permanently restrained and
28 enjoined from:

1 for the person's termination, if applicable;

2 C. Customer files containing the names, addresses, phone numbers, dollar amounts paid,
3 quantity of items or services purchased, and description of items or services purchased, to the extent
4 such information is obtained in the ordinary course of business;

5 D. Complaint and refund requests, whether received directly, indirectly, or through any third
6 party and any responses to those complaints or requests; and

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

9 VII.

10 COMPLIANCE REPORTING BY DEFENDANTS

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

13 A. For a period of five (5) years from the date of entry of this Order, defendants shall notify
14 the Commission of the following:

- 15 1. Any changes in either individual defendant's residence, mailing addresses, or
16 telephone numbers, within ten (10) days of the date of such change;
- 17 2. Any change in either individual defendant's employment status, including self-
18 employment, within ten (10) days of such change. Such notice shall include the name
19 and address of each business that defendant is affiliated with or employed by, a statement
20 of the nature of the products sold by the business, and a statement of defendant's duties
21 and responsibilities in connection with the business or employment; and
- 22 3. Any proposed change in the corporate structure of any business entity that is
23 owned or controlled by either defendant, and that is engaged in marketing by any means,
24 including telemarketing, any credit related or financial product or service, such as
25 creation, incorporation, dissolution, assignment, sale, creation or dissolution of
26 subsidiaries, or any other change that may affect compliance obligations arising out of
27 this Order, thirty (30) days prior to the effective date of any proposed change;

28 B. One hundred eighty (180) days after the date of entry of this Order, defendants shall

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

- 4 1. Each defendant's then current residence address and telephone number;
- 5 2. Each defendant's then current employment, including self-employment, business
6 addresses and telephone numbers, a description of the business activities of each
7 such employer, and defendant's title and responsibilities for each employer;
- 8 3. A copy of each acknowledgment of receipt of this Order obtained by defendants
9 pursuant to Paragraph X;
- 10 4. A statement describing the manner in which defendants have complied and are
11 complying with the provisions of Paragraphs I, II, V, and X.

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

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

17 Regional Director
18 Federal Trade Commission
19 915 2nd Avenue, Room 2896
20 Seattle, WA 98174

21 E. For the purposes of this Paragraph, "employment" includes the performance of services
22 as an employee, consultant, or independent contractor; and "employers" include any individual or entity
23 for whom defendants perform services as an employee, consultant, or independent contractor.

24 F. For purposes of the compliance reporting required by this Paragraph, the Commission is
25 authorized to communicate directly with defendants.

26 VIII.

27 ACCESS TO BUSINESS PREMISES

28 **IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry of this
Order, for the purpose of further determining compliance with this Order, defendants shall permit

1 defendants, without the necessity of identification or prior notice;

2 C. Nothing in this Order shall limit the Commission's lawful use of compulsory process,
3 pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to investigate whether
4 defendants have violated any provision of this Order or Section 5 of the FTC Act, 15 U.S.C. § 45.

5 **X.**

6 **DISTRIBUTION OF ORDER BY DEFENDANTS**

7 **IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry of this
8 Order, defendants shall:

9 A. Provide a copy of this Order to, and obtain a signed and dated acknowledgment of
10 receipt of same from, each officer or director, each individual serving in a management capacity, all
11 personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether
12 designated as employees, consultants, independent contractors or otherwise, immediately upon
13 employing or retaining any such persons, for any business where (1) any defendant is the majority
14 owner of the business or directly or indirectly manages or controls the business, and where (2) the
15 business is engaged in marketing by any means, including telemarketing, any credit related or financial
16 product or service; contracts with others to market by any means, including telemarketing, any credit
17 related or financial product or service; or assists others who market by any means, including
18 telemarketing, any credit related or financial product or service;

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

22 **XI.**

23 **ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS**

24 **IT IS FURTHER ORDERED** that, within five (5) business days after receipt by defendants of
25 this Order as entered by the Court, each defendant shall submit to the Commission a truthful sworn and
26 notarized statement, in the form shown on Attachment A, that shall acknowledge receipt of this Final
27 Order.

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XII.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court will retain jurisdiction of this matter for the purpose of enabling any of the parties to this Order to apply to the Court at any time for such further orders or directives as may be necessary or appropriate for the interpretation or modification of this Order, for the enforcement of compliance therewith or the punishment of violations thereof.

SO ORDERED, this _____ day of _____, 2002, at _____.

The parties, by their respective counsel, hereby consent to the terms and conditions of the Stipulated Permanent Injunction as set forth above and consent to entry thereof. Defendants waive any rights that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412, amended by Pub. L. 104-121, 110 Stat. 847, 863-64 (1996).

DATED: _____, 2002
_____ ROBERT BARR

DATED: _____, 2002
_____ CANDACE RODRIGUEZ

DATED: _____, 2002

ELEANOR DURHAM
PATRICIA A. HENSLEY
KATHRYN C. DECKER
Attorneys for Plaintiff
Federal Trade Commission

DATED: _____, 2002

DAVID W. HUEY WSBA # 31380
Attorney for Plaintiff State of Washington