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11 Attorneys for Plaintiff

12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE DISTRICT OF ARIZONA
14

15 _____)
16 FEDERAL TRADE COMMISSION,)

17 Plaintiff,)

18 v.)

19 ROBERT J. MAYNARD, JR.,)
an individual,)

20 BRIAN W. CUTRIGHT,)
an individual,)

21 MARK F. GUIMOND,)
an individual,)

22 NCF CORP.,)
a corporation, and)

23)
24)
25 HAL Z. LEDERMAN,)
individually and as an)
26 officer of NCF Corp.,)

27 Defendants.)
28 _____)

CIV-96-2374-PHX-ROS

) STIPULATION TO FINAL JUDGMENT
) AND ORDER FOR PERMANENT
) INJUNCTION WITH RESPECT TO
) DEFENDANT ROBERT J. MAYNARD, JR.

1 Plaintiff Federal Trade Commission ("Commission") has filed herein a Complaint for a
2 permanent injunction and other equitable relief pursuant to Section 13(b) of the Federal Trade
3 Commission Act ("FTC Act"), 15 U.S.C. § 53(b), charging defendants Robert J. Maynard, Jr.
4 ("Maynard"), Brian W. Cutright, Mark F. Guimond, NCF Corp., and Hal Z. Lederman with
5 violations of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45. Plaintiff Commission and
6 defendant Maynard, having been represented by the attorneys whose names appear hereafter, have
7 agreed to entry of a Stipulated Final Judgment and Order for Permanent Injunction ("Final
8 Judgment" or "Order") by the Court to resolve all matters as to defendant Maynard in dispute in
9 this action. Plaintiff Commission and defendant Maynard have consented to entry of this Order
10 without trial or adjudication of any issue of law or fact herein.

11 NOW THEREFORE, defendant Maynard and plaintiff Commission hereby stipulate to a
12 Final Judgment and Order for Permanent Injunction with the terms set forth below:

13
14 FINDINGS

15 1. This is an action by the Commission instituted under Sections 5 and 13(b) of the
16 FTC Act. The Complaint seeks permanent injunctive relief against defendant Maynard for alleged
17 unfair or deceptive acts or practices by the defendants in connection with the sale of credit
18 improvement services advertised in an infomercial and the collection of fees by depositing drafts
19 drawn on consumers' checking accounts.

20 2. This Court has jurisdiction of the subject matter of this case and over defendant
21 Maynard. Venue in the District of Arizona is proper.

22 3. The Complaint states a claim upon which relief may be granted against defendant
23 Maynard under Sections 5 and 13(b) of the FTC Act.

24 4. The Commission has the authority under Section 13(b) of the Act to seek the relief
25 it has requested.

26 5. The alleged activities of defendant Maynard are in or affecting commerce, as
27 defined in 15 U.S.C. § 44.
28

1 consumers for the purpose of furnishing consumer reports to third parties, and which uses any
2 means or facility of interstate commerce for the purpose of preparing or furnishing consumer
3 reports.

4 4. "Obsolete," when used to describe credit history information, means any
5 information that a consumer reporting agency may not report under Section 605 of the Fair Credit
6 Reporting Act, 15 U.S.C. § 1681c, due to its age.

7 5. "Material" means likely to affect a person's choice of, or conduct regarding, goods
8 or services.

9 6. "Telemarketing" means the advertising, offering for sale, or sale of any good or
10 service to any person by means of telephone sales presentations, either exclusively or in
11 conjunction with the use of other advertising.

12 ORDER

13 **PROHIBITED BUSINESS ACTIVITIES**

14 I.

15 IT IS THEREFORE ORDERED that defendant Maynard, directly or through any
16 corporation, subsidiary, division, or other device, is hereby restrained and enjoined from
17 advertising, promoting, offering for sale, selling, performing or distributing any product or service
18 relating to credit improvement services.

19 II.

20 **IT IS FURTHER ORDERED** that defendant Maynard and his representatives, agents,
21 servants and employees, and all other persons or other entities in active concert or participation
22 with any one or more of them who receive actual notice of this Order by personal service or
23 otherwise, directly or through any corporation, subsidiary, division, or other device, in connection
24 with the advertising, promotion, offering for sale, sale, or distribution of any product or service, in
25 or affecting commerce, as commerce is defined in the FTC Act, are hereby restrained and enjoined
26 from:

27 A. Misrepresenting the purpose of requesting or obtaining information from any
28 consumer regarding any checking, charge or credit account of the consumer; and

1 B. Obtaining or submitting for payment a check, draft, or other form of negotiable
2 paper drawn on, or causing, assisting, or arranging for an electronic funds transfer to be made
3 from, a person's checking, savings, share, or similar account, without that person's express
4 verifiable authorization. Such authorization shall be deemed verifiable if any of the means set
5 forth in Section 310.3(a)(3) of the Commission's Telemarketing Sales Rule, 16 C.F.R.
6 § 310.3(a)(3), are employed. A copy of the Telemarketing Sales Rule is attached hereto as
7 Attachment 1 and incorporated herein as if fully set forth verbatim.

8 III.

9 **IT IS FURTHER ORDERED** that defendant Maynard and his representatives, agents,
10 servants and employees, and all other persons or other entities in active concert or participation
11 with any one or more of them, who receive actual notice of this Order by personal service or
12 otherwise, directly or through any corporation, subsidiary, division, or other device, in connection
13 with the advertising, promotion, offering for sale, sale, or distribution of any product or service, in
14 or affecting commerce, as commerce is defined in the FTC Act, are hereby restrained and enjoined
15 from creating, producing, selling, or disseminating:

16 A. Any commercial or other advertisement for any such product or service that
17 misrepresents, directly or by implication, that it is an independent program and not a paid
18 advertisement; and

19 B. Any commercial or other advertisement for any such product or service longer
20 than fifteen (15) minutes in length that does not display visually, in a clear and prominent manner
21 and for a length of time sufficient for an ordinary consumer to read, within the first thirty (30)
22 seconds of the commercial and immediately before each presentation of ordering instructions for
23 the product or service, the following disclosure:

24 "THE PROGRAM YOU ARE WATCHING IS A PAID
25 ADVERTISEMENT FOR [THE PRODUCT OR SERVICE]."

26 PROVIDED THAT, for the purposes of this provision, the oral or visual presentation of a
27 telephone number or address for viewers to contact to place an order for the product or service
28

1 shall be deemed a presentation of ordering instructions so as to require the display of the
2 disclosure provided herein.

3 **REDRESS**

4 IV.

5 **IT IS FURTHER ORDERED** that, subject to compliance with Section V of this Order,
6 defendant Maynard shall not be required to pay consumer redress or disgorgement.

7 V.

8 **IT IS FURTHER ORDERED** that within three (3) business days after entry of this
9 Order, defendant Maynard shall submit to the Commission a truthful sworn statement, in the form
10 shown on Exhibit 1 to this Order, that shall reaffirm and attest to the truth, accuracy and
11 completeness of the sworn Financial Statement of Individual Defendant executed by defendant
12 Maynard on November 14, 1996, and previously submitted to the Commission.

13 VI.

14 **IT IS FURTHER ORDERED** that the Court's approval of this Order is expressly
15 premised upon the financial condition of defendant Maynard, as represented by him in the sworn
16 Financial Statement of Individual Defendant, as referenced in Paragraph V, which contains
17 material information relied upon by the Commission in negotiating and agreeing to the terms of
18 this Order. If, upon motion by the Commission, this Court finds that defendant Maynard failed to
19 file the sworn statement required by Paragraph V or filed a Financial Statement of Individual
20 Defendant that materially failed to disclose any asset, materially misrepresented the value of any
21 asset, or made any other material misrepresentation in or omission from his Financial Statement of
22 Individual Defendant, the Commission may request that this Order be reopened to allow the
23 Commission to modify the monetary liability of defendant Maynard; provided, however, that in all
24 other respects this Order shall remain in full force and effect unless otherwise ordered by the
25 Court, and, provided further, that proceedings instituted under this Paragraph are in addition to
26 and not in lieu of any other civil or criminal remedies as may be provided by law, including any
27 other proceedings the Commission may initiate to enforce this Order.

1 Solely for purposes of this Paragraph, defendant Maynard waives any right to contest any
2 of the allegations in the Commission's complaint.

3 **RECORDKEEPING**

4 **VII.**

5 IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of
6 this Order, defendant Maynard, in connection with any and every business entity of which he is a
7 majority owner, or which he otherwise manages or controls, and which engages in telemarketing,
8 is hereby restrained and enjoined from failing to create, and from failing to retain for a period of
9 five (5) years following the date of such creation, unless otherwise specified:

10 A. Books, records and accounts which, in reasonable detail, accurately and fairly
11 reflect the cost of goods or services sold, and the income, disbursements, transactions and use of
12 funds;

13 B. Records accurately reflecting: the name, address and phone number of each person
14 that such business entity employs in any capacity, including as an independent contractor; that
15 person's job title or position; the date upon which the person commenced work; and the date and
16 reason for the person's termination, if applicable. Defendant Maynard shall retain such records for
17 any terminated employee for a period of two (2) years following the date of termination;

18 C. Records containing the names, addresses, phone numbers and dollar amounts paid,
19 for all consumers to whom such business entity has sold, invoiced or shipped any goods or
20 services, or from whom any of the business entities accepted money or other items of value;

21 D. Records that reflect, for every consumer complaint or refund request, whether
22 received directly or indirectly through any third party:

23 1. The consumer's name, address, telephone number and the dollar amount
24 paid by the consumer;

25 2. The written complaint, if any , and the date of the complaint or refund
26 request;

1 and managers and all other persons or other entities in active concert or participation with them
2 having sales, advertising, or policy responsibilities with respect to the subject matter of this Order,
3 and that defendant Maynard secure from each such person a signed statement acknowledging
4 receipt of said Order.

5 **MONITORING**

6 IX.

7 **IT IS FURTHER ORDERED** that defendant Maynard promptly notify the Regional
8 Director of the Los Angeles Regional Office of the Commission in writing of the discontinuance
9 of his present business or employment. In addition, for a period of five (5) years from the date of
10 entry of this Order, he shall promptly notify the Commission of each affiliation with a new
11 business or employment. Each such notice shall include the defendant's new business address and
12 a statement of the nature of the business or employment in which the defendant is newly engaged
13 as well as a description of the defendant's duties and responsibilities in connection with the
14 business or employment.

15 X.

16 **IT IS FURTHER ORDERED** that defendant Maynard shall, within sixty (60) days
17 following the date of entry of this Order, file with the Regional Director of the Los Angeles
18 Regional Office of the Commission a report, in writing, setting forth in detail the manner and form
19 in which he has complied with this Order.

20 **INDEPENDENCE OF OBLIGATIONS**

21 XI.

22 **IT IS FURTHER ORDERED** that the expiration of any requirements imposed by this
23 Order shall not affect any other obligation arising under this Order.

24 **ATTORNEYS FEES**

25 XII.

26 **IT IS FURTHER ORDERED** that each party to this Consent Judgment and Order bear
27 its own costs and attorney fees incurred in connection with this action; *provided, however*, in the
28 event plaintiff or the United States initiates proceedings to enforce the provisions of this Consent

1 Judgment and Order and *provided further* the Court determines that the defendant has violated
2 any term or provision of this Consent Judgment and Order, the defendant shall pay the costs and
3 attorney fees incurred by plaintiff or the United States in connection with proceedings to enforce
4 this Consent Judgment and Order.

5 **CONTINUING JURISDICTION**

6 XIII.

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

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1 **ENTRY BY CLERK**

2 XIV.

3 There being no just reason for delay, the Clerk of the Court is hereby directed to enter this
4 Order.

5
6 The undersigned parties hereby stipulate and agree to entry of a Final Judgment and Order
7 for Permanent Injunction with the foregoing terms, which shall constitute a final order in this
8 action.

9
10 SIGNED AND STIPULATED BY:

11
12 Dated: _____, 1997

John D. Jacobs
Attorney for Plaintiff
Federal Trade Commission

13
14
15 _____, 1997

Linda M. Stock
Attorney for Plaintiff
Federal Trade Commission

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17
18 _____, 1997

Robert J. Maynard, Jr.
Defendant

19
20 APPROVED AS TO FORM AND CONTENT:

21
22 _____, 1997

Lee A. Rau
REED SMITH SHAW & McCLAY
8251 Greensboro Drive, Suite 1100
McLean, VA 22102
(703) 734-4609
Attorney for Defendant Maynard

1 **EXHIBIT 1**

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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE DISTRICT OF ARIZONA

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11 _____)
12 FEDERAL TRADE COMMISSION,) CIV-96-2374-PHX-ROS
13 Plaintiff,)
14 v.) DECLARATION OF
15 JR.) DEFENDANT ROBERT J. MAYNARD,
16 ROBERT J. MAYNARD, JR.,)
17 an individual, et al.)
18 Defendants.)
19 _____)

18 I, Robert J. Maynard, Jr., hereby state that the information contained in the financial
19 statement I signed on November 14, 1996 and provided shortly thereafter to the Federal Trade
20 Commission was true, accurate and complete at such time. A true and correct copy of the
21 aforementioned financial statement is attached hereto as Appendix A.

22 I declare under penalty of perjury that the foregoing is true and correct.

23 Executed on this ____ day of _____, 199__.

24
25 _____
26 (Signature)
27
28