

LAWRENCE HODAPP (D.C. Bar # 221309)  
 ROBERT S. KAYE (Md. Bar # 160446929)  
 JONATHAN KRADEN (N.Y. Bar # 2840830)  
 Federal Trade Commission  
 600 Pennsylvania Ave., NW  
 Washington, DC 20580  
 (202) 326-3105, fax (202) 326-3395  
 Attorneys for Plaintiff

JAMES W. JENNINGS, JR.  
 Assistant United States Attorney  
 601 N.W. Loop 410, Suite 600  
 San Antonio, Texas 78216  
 Tel. (210) 384-7330  
 Fax (210) 384-7322  
 Texas Bar No. 10641400  
 Local Counsel

RECEIVED

FEB 04 2003

CLERK, U.S. DISTRICT COURT  
 WESTERN DISTRICT OF TEXAS  
 BY W  
 DEPUTY CLERK

FILED

FEB 04 2003

UNITED STATES DISTRICT COURT  
 WESTERN DISTRICT OF TEXAS, WACO DIVISION

CLERK, U.S. DISTRICT COURT  
 WESTERN DISTRICT OF TEXAS  
 BY [Signature]  
 DEPUTY CLERK

\_\_\_\_\_  
 FEDERAL TRADE COMMISSION,  
 )  
 )  
 )  
 Plaintiff,  
 )  
 vs.  
 )  
 )  
 ASSAIL, INC., ET AL.,  
 )  
 )  
 Defendants.  
 )  
 \_\_\_\_\_

Civ. No. W03CA007

PRELIMINARY INJUNCTION ORDER  
 AS TO ASSAIL, INC., KYLE KIMOTO,  
 CLIFF DUNN, MIKE HENRIKSEN,  
 SUMMIT COMMUNICATIONS  
 INTERNATIONAL, INC. D/B/A  
 ADVANTAGE CAPITAL, MATTHEW  
 HO, CAPITAL FIRST BENEFITS INC.,  
 BEN LEE, PREMIER ONE BENEFITS,  
 INC., AND JOHNSON SALANGA

On January 9, 2003, Plaintiff Federal Trade Commission ("Commission" or "FTC"), pursuant to Sections 13(b) and 19(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b(a), the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. §§ 6101 et seq., and Section 522(a) of the Gramm-Leach-Bliley Act ("GLB Act"), 15 U.S.C. § 6822(a), filed a Complaint for Injunctive and Other Equitable Relief, including consumer redress, and applied *ex parte* for a Temporary Restraining Order ("TRO") and Other Equitable Relief. That same day, this Court, having considered the Complaint, memorandum of law, declarations, and other exhibits filed in support of Plaintiff's motion, issued a TRO including an asset freeze and appointment of a temporary receiver.

The following Order is applicable to defendants Assail, Inc., Kyle Kimoto, Cliff Dunn, Mike Henriksen, Summit Communications International, Inc. d/b/a Advantage Capital, Matthew Ho, Capital First Benefits Inc., Ben Lee, Premier One Benefits, Inc., and Johnson Salanga.

### **FINDINGS OF FACT**

The Court has considered the pleadings, declarations, exhibits, and memoranda filed in support of the Commission's application and finds that:

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 have engaged in and are likely to engage in acts and practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), the Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310, and Section 521 of the GLB Act, 15 U.S.C. § 6821, and that the Commission has demonstrated a substantial likelihood of prevailing on the merits of this action.
3. There is good cause to believe that immediate and irreparable damage will result from Defendants' ongoing violations of Section 5(a) of the FTC Act, the TSR, 16 C.F.R. Part 310, and Section 521 of the GLB Act, 15 U.S.C. § 6821.
4. There is a substantial likelihood that, absent the continuation of the asset freeze and receivership, Defendants will conceal, dissipate, or otherwise divert their assets, thereby defeating the possibility of effective final relief in the form of equitable monetary relief. Defendants have made misrepresentations and omissions, directly and through their employees, to those consumers for whom they are supposed to be providing goods or services. Furthermore, the Defendants have engaged in a widespread effort to debit money from these consumers based on deceptive and unfair acts and practices. Defendants have retained ill-gotten gains from these

and other practices, and a receiver and asset freeze are reasonably necessary in order to preserve the possibility of complete and meaningful relief at the conclusion of this litigation.

5. Weighing the equities and considering the Commission's substantial likelihood of success on the merits, issuance of a preliminary injunction with asset freeze and appointment of a permanent receiver are in the public interest.

6. 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**

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

A. "Assets" means all real and personal property of any defendant, or held for the benefit of any defendant, including but not limited to, "goods," "instruments," "equipment," "fixtures," "general intangibles," "inventory," "checks," or "notes," (as these terms are defined in the Uniform Commercial Code), lines of credit and all cash, wherever located.

B. "Defendants" means Assail, Inc., Kyle Kimoto, Cliff Dunn, Mike Henriksen, Summit Communications International, Inc. d/b/a Advantage Capital, Matthew Ho, Capital First Benefits Inc., Ben Lee, Premier One Benefits, Inc., and Johnson Salanga and each of them. Pursuant to the provisions of Fed. R. Civ. P. 65(d), the provisions of this Order shall be binding upon Defendants and upon their officers, agents, directors, employees, salespersons, independent contractors, attorneys, subsidiaries (including, but not limited, to Zentel Enterprises, Inc., Par 3, Inc., Valdine Management Co., and Green Investment Planning Corp.), affiliates, successors, assigns 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.

C. "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 but is not limited to audio and video recordings and computer records. A draft or non-identical copy is a separate document within the meaning of the term.

D. "Plaintiff" means Federal Trade Commission.

E. "Receiver" shall mean the receiver appointed in Paragraph X of this Order.

F. "Receivership Defendants" means Kyle Kimoto, Assail, Inc.; Summit Communications International, Inc. d/b/a Advantage Capital; Capital First Benefits Inc.; Premier One Benefits, Inc.; and any affiliates, fictitious names, subsidiaries, successors or assigns of the aforementioned entities, and all other entities in active concert or participation with them whether acting directly or through any trust, corporation, subsidiary, division or other device, including but not limited to Advantage Capital Benefits, Zentel Enterprises, Inc., Par 3, Inc., Valdine Management Co., and Green Investment Planning Corp..

G. "Telemarketing" shall mean any business activity (whether or not covered by the Telemarketing Sales Rule, 16 C.F.R. Part 310, including, but not limited to, initiating or receiving telephone calls, managing others who initiate or receive telephone calls, operating an enterprise that initiates or receives telephone calls, owning an enterprise that initiates or receives telephone calls, or otherwise participating as an officer, director, employee or independent contractor in an enterprise that initiates or receives telephone calls) that involves attempts to induce consumers to purchase any investment, item, good, service, partnership interest, trust

interest or other beneficial interest, or to enter a contest for a prize, by means of telephone sales presentations, either exclusively or in conjunction with the use of other forms of marketing.

H. "TRO" means the *Ex Parte* Temporary Restraining Order With Asset Freeze and Other Equitable Relief, issued by the Court in this matter on January 9, 2003.

I. "Credit," "credit card," "customer," "seller," "telemarketer," and "telemarketing" are defined as in Section 310.2 of the TSR, 16 C.F.R. § 310.2.

### PROHIBITED BUSINESS ACTIVITIES

#### I.

**IT IS THEREFORE ORDERED** that in connection with the advertising, promotion, offering or sale of goods or services by telephone or otherwise in commerce, Defendants are hereby restrained and enjoined from making any express or implied representation or omission of material fact that is false or misleading, in any manner, orally or in writing, to any consumer or entity, including, but not limited to, the following:

A. Falsely representing that Defendants are affiliated with, or calling from or on behalf of, a bank or other financial institution, Visa, MasterCard, or a consumer protection agency;

B. Falsely representing that after consumers pay Defendants a fee, consumers are highly likely or are guaranteed to receive a major credit card, such as a VISA or MasterCard credit card;

C. Falsely representing that after consumers pay Defendants a fee, consumers will receive, as a bonus, additional discounted products or services, or membership enrollment in a discount buyer's club that offers significant discounts on a variety of products and services;

D. Falsely representing that after consumers pay Defendants a fee, Defendants will report consumers payment history to a credit reporting agency;

E. Falsely representing that Defendants already possess, and are merely verifying, consumers' credit card numbers, or that Defendants require consumers to provide evidence of a valid personal bank account to establish the consumers' eligibility for a credit card;

F. Falsely representing that consumers purchased or agreed to purchase goods or services from Defendants, and therefore owe money to defendants;

G. Falsely representing any information material to a consumer's decision to purchase Defendants' goods or services.

## II.

**IT IS THEREFORE ORDERED** that in connection with the advertising, promotion, offering or sale of goods or services by telephone or otherwise in commerce, Defendants are hereby restrained and enjoined from causing consumers' credit card accounts to be charged or consumers' bank accounts to be electronically debited without having previously obtained both unequivocal and verifiable authorization from the consumer for such charges or debits.

## III.

**IT IS THEREFORE ORDERED** that in connection with the advertising, promotion, offering or sale of goods or services by telephone or otherwise in commerce, Defendants are hereby restrained and enjoined from violating any provision of Section 521 of the Gramm-Leach-Bliley Act, 15 U.S.C. § 6821, or as that Act may be amended in the future.

## IV.

**IT IS THEREFORE ORDERED** that in connection with the advertising, promotion, offering or sale of goods or services by telephone or otherwise in commerce, Defendants are hereby restrained and enjoined from violating any provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310, or as that Rule may be amended in the future.

## ASSET FREEZE

### V.

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

- A. Transferring, liquidating, converting, encumbering, pledging, loaning, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, granting a lien or security interest or other interest in, or otherwise disposing of any funds, real or personal property, accounts, contracts, consumer lists, shares of stock, or other assets, or any interest therein, wherever located, that are: (1) owned or controlled by the Defendants, in whole or in part, for the benefit of Defendants; (2) in the actual or constructive possession of Defendants; or (3) owned, controlled by, or in the actual constructive possession of any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by any Defendant, including, but not limited to any assets held by or for, or subject to access by, any of the Defendants, at any bank or savings and loan institution, or with any broker-dealer, escrow agent, title company, commodity trading company, precious metals dealer, or other financial institution or depository of any kind;
- B. Opening or causing to be opened any safe deposit boxes titled in the name of any Defendant, or subject to access by any of them;
- C. Incurring charges or cash advances on any credit card issued in the name, singly or jointly, of any Defendant;
- D. Obtaining a personal or secured loan; and
- E. Incurring liens or other encumbrances on real property, personal property or other assets in the name, singly or jointly, of any Defendant.

*Provided further*, that the assets affected by this Section shall include: (1) all assets of the Defendants as of the time the TRO was entered; and (2) for assets obtained after the time the

TRO was entered, only those assets of Defendants that are derived from the actions alleged in Plaintiff's Complaint.

## **FINANCIAL REPORTS**

### **VI.**

**IT IS FURTHER ORDERED** that, to the extent that Defendants have not complied with Section VI of the TRO, each Defendant shall:

A. Prepare and deliver to the Court and counsel for Plaintiff Commission completed financial statements on the forms attached to the TRO as Attachments A and B, for themselves individually and for each business entity under which they conduct business, or of which they are an officer, and for each trust of which they are a trustee. The financial statements shall be accurate as of the date of entry of the TRO;

B. Provide Plaintiff Commission with a full accounting of all assets and documents that are located inside or outside of the territory of the United States of America and are held by or for Defendants or are under their direct or indirect control, jointly, severally, or individually.

## **IDENTIFYING INFORMATION RELATING TO ACCOUNTANTS, FINANCIAL PLANNERS, INVESTMENT ADVISORS, STOCK BROKERS AND OTHERS**

### **VII.**

**IT IS FURTHER ORDERED** that, to the extent that Defendants have not complied with Section VII of the TRO, each Defendant shall provide counsel for the Commission: (1) the name, address and telephone number for each accountant, financial planner, investment advisor, stock broker or other individual, corporation or partnership whom they hired for financial, business or tax advice or services, since January 1, 2000; and (2) the name, address and telephone number for each accountant, financial planner, investment advisor, stock broker or



other individual, corporation or partnership who was hired on behalf of any of the Defendants since January 1, 2000.

## **PRESERVATION OF RECORDS**

### **VIII.**

**IT IS FURTHER ORDERED** that Defendants are hereby restrained and enjoined from destroying, erasing, mutilating, concealing, altering, transferring or otherwise disposing of, in any manner, directly or indirectly, any documents that relate to the business practices or business or personal finances of any Defendant.

## **RECORD KEEPING/BUSINESS OPERATIONS**

### **IX.**

**IT IS FURTHER ORDERED** that Defendants are hereby 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; and
- B. Creating, operating, or exercising any control over any business entity, including any partnership, limited partnership, joint venture, sole proprietorship or corporation, without first providing Plaintiff 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, including but not limited to any telemarketing scripts to be used.

## APPOINTMENT OF PERMANENT RECEIVER

### X.

**IT IS FURTHER ORDERED** that Robb Evans and Associates, LLC, is appointed as Permanent Receiver for the Receivership Defendants. In addition, Larry Bates is appointed as a Deputy to the Permanent Receiver. The Permanent Receiver shall be the agent of this Court, and solely the agent of this Court, in acting as Permanent Receiver under this Order. The Permanent Receiver shall be accountable directly to this Court. The Permanent Receiver shall comply with all Local Rules governing receivers.

### PERMANENT RECEIVER'S DUTIES

### XI.

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

A. Assume full control of the Receivership Defendants (except as to Receivership Defendant Kyle Kimoto) by removing, as the Permanent 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 Receivership Defendants;

B. Take exclusive custody, control, and possession of all assets and documents of, or in the possession, custody, or under the control of, the Receivership Defendants, wherever situated, including an inventory of all property of Receivership Defendant Kyle Kimoto, wherever situated. The Permanent Receiver shall have full power to divert mail and to sue for, collect, receive, take in possession, hold, and manage all assets and documents of the Receivership Defendants and other persons or entities whose interests are now held by, or are

under the direction, possession, custody, or control of, the Receivership Defendants. The Permanent 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,* that the Receiver shall not attempt to collect any amount from a consumer if the Receiver believes the consumer was a victim of the unfair or deceptive acts or practices alleged in the Complaint in this matter, without prior Court approval. *Notwithstanding the authority of this paragraph,* the Permanent Receiver shall not, without further order of this Court: (1) take possession of or sell Receivership Defendant Kyle Kimoto's residence located at 3361 East 2000 South, St. George, Utah, personal property located at such residence, or vehicles registered in Kimoto's name; (2) divert mail addressed to Kimoto at such residence; or (3) take control of any bank account opened after the entry of this order into which Kimoto has deposited monies earned after the date of this Order pursuant to Paragraph V;

C. Take all steps necessary to secure each location from which the Receivership Defendants operate their business. Such steps may include, but are not limited to, any of the following, as the Permanent Receiver deems necessary or advisable: (1) serving 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, passwords or access codes, method of compensation, and all accrued and unpaid commissions and compensation of each such employee or agent; (4) photographing and video taping any or all portions of the location; (5) securing the location by changing the locks and disconnecting any computer modems or other means of access to the computer or other records maintained at that location; and (6) requiring any persons present on the premises at the time this Order is served to leave the premises, to

provide the Permanent Receiver with proof of identification, or to demonstrate to the satisfaction of the Permanent Receiver that such persons are not removing from the premises documents or assets of the Receivership Defendants. Law enforcement personnel, including, but not limited to, police or sheriffs, may assist the Permanent Receiver in implementing these provisions in order to keep the peace and maintain security;

D. Conserve, hold, and manage all assets of the Receivership Defendants, 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 creditors of the Receivership Defendants, including, but not limited to, obtaining an accounting of the assets and preventing unauthorized transfer, withdrawal, or misapplication of assets;

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

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

G. Manage and administer the business of the Receivership Defendants, except any business that Receivership Defendant Kyle Kimoto enters into after entry of this Order, until further order of this Court by performing all incidental acts that the Permanent Receiver deems to be advisable or necessary, which includes retaining, hiring, or dismissing any employees, independent contractors, or agents;

H. Choose, engage, and employ attorneys, accountants, appraisers, and other independent contractors and technical specialists, as the Permanent Receiver deems advisable or necessary in the performance of duties and responsibilities under the authority granted by this Order, and with approval of the Court;

I. Have the authority to hire legal counsel on behalf of any of the Receivership Defendants (except as to Receivership Defendant Kyle Kimoto);

J. 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 Permanent 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 payments that the Permanent Receiver deems necessary or advisable to secure assets of the Receivership Defendants, such as rental payments;

K. Determine and implement the manner in which the Receivership Defendants will comply with, and prevent violations of, this Order and all other applicable laws, including, but not limited to, revising sales materials and implementing monitoring procedures;

L. Institute, compromise, adjust, appear in, intervene in, or become party to such actions or proceedings in state, federal or foreign courts or arbitration proceedings as the Permanent Receiver deems necessary and advisable to preserve or recover the assets of the Receivership Defendants, or that the Permanent Receiver deems necessary and advisable to carry out the Permanent Receiver's mandate under this Order, including but not limited to, actions challenging fraudulent or voidable transfers;

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

N. Continue to conduct the business, or cease operation of the business, of the Receivership Defendants in such manner, to such extent, and for such duration as the Permanent Receiver may in good faith deem to be necessary or appropriate to operate the businesses profitably and lawfully, if at all; provided that, the continuation and conduct of the business shall be conditioned upon the Permanent Receiver's good faith determination that the businesses can be lawfully operated at a profit using the assets of the receivership estate;

O. Take all steps necessary or advisable to locate and liquidate all assets subject to this Order;

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

Q. Open one or more bank accounts as designated depositories for funds of the Receivership Defendants. The Permanent 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. The Permanent Receiver shall serve copies of monthly account statements on all parties;

R. Maintain accurate records of all receipts and expenditures that he makes as Permanent Receiver;

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

T. Intercept, divert and open any mail addressed to any of the Defendants at the corporate offices that comes into the Permanent Receiver's possession, custody or control;

U. Prepare and submit periodic reports to this Court and to the parties, as directed by the Court;

V. The Permanent Receiver shall allow the Defendants' representatives, and the Defendants themselves, reasonable access to the premises of the Receivership Defendants or to all premises where the Receivership Defendants' business records may be located, subject to consultation with any other law enforcement officials having custody of the business records. The purpose of this access shall be to inspect and copy any and all books, records, accounts, and other property owned by or in the possession of the Receivership Defendants. The Permanent Receiver shall have the discretion to determine the time, manner, and reasonable conditions of such access. This provision shall not restrict the access of Receivership Defendant Kyle Kimoto to his personal residence.

## **FOREIGN ASSET REPATRIATION**

### **XII.**

**IT IS FURTHER ORDERED** that to, the extent that Defendants have not complied with Section XII of the TRO, each Defendant shall:

A. Provide the Commission and the Permanent Receiver with a full accounting of all funds, documents, and assets outside of the United States which are (1) titled in the name, individually or jointly, of the Defendants; or (2) held by any person or entity for the benefit of the Defendants; or (3) under the direct or indirect control, whether jointly or singly, of the Defendants;

B. Transfer to the territory of the United States and deliver to the Permanent Receiver all funds, documents, and assets located in foreign countries which are (1) titled in the name, individually or jointly, of any Defendant; or (2) held by any person or entity, for the benefit of any Defendant; or (3) under any defendant's direct or indirect control, whether jointly or singly;

C. Provide the Commission access to all records of accounts or assets of the Defendants held by financial institutions located outside the territorial United States by signing the Consent to Release of Financial Records attached to this Order. (Attachment C).

### **INTERFERENCE WITH REPATRIATION**

#### **XIII.**

**IT IS FURTHER ORDERED** that Defendants are hereby restrained and enjoined from taking any action, directly or indirectly, which may result in the encumbrance or dissipation of foreign assets, 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 the preceding Paragraph 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 the preceding Paragraph of this Order.

### **COOPERATION WITH THE PERMANENT RECEIVER**

#### **XIV.**

**IT IS FURTHER ORDERED** that Defendants and all other persons or entities served with a copy of this Order shall fully cooperate with and assist the Permanent Receiver. This cooperation and assistance shall include, but not be limited to, providing information to the



Permanent Receiver that the Permanent Receiver deems necessary in order to exercise the authority and discharge the responsibilities of the Receiver under this Order; providing any password required to access any computer, electronic file, or telephonic data in any medium; discharging the responsibilities of the Permanent Receiver under this Order; and advising all persons who owe money to the Receivership Defendants that all debts should be paid directly to the Permanent Receiver. 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 Receivership Defendants, including, but not limited to, books, records, accounts, writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations, electronically-stored records, 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 Receivership Defendants, or the Receiver;

D. Excusing debts owed to the Receivership Defendants;

E. Failing to notify the 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 Receiver in connection with obtaining possession, custody, or control of such assets; and

F. Doing any act or refraining from any act whatsoever to interfere with the Receiver managing, or taking custody, control, or possession of, the assets or documents subject to this receivership; or to harass or interfere with the 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 Receiver or the Receiver's duly authorized agents in the exercise of their duties or authority under any order of this Court.

### **ACCESS TO BUSINESS OFFICES AND RECORDS**

#### **XV.**

**IT IS FURTHER ORDERED** that:

A. Plaintiff and Receiver, and their representatives, agents, and assistants, shall have immediate access to the business premises of the Receivership Defendants. Such locations include, but are not limited to 1071 East 100 South, St. George, Utah. Plaintiff and Receiver are authorized to employ the assistance of law enforcement officers as they deem necessary, to effect service and to implement peacefully the provisions of this Order. The Plaintiff and Receiver, and their representatives, agents, and assistants, shall have the right to remove documents from the above-listed premises in order that they may be inspected, inventoried, and copied; and

B. The Receiver, and his or her representatives, agents, and assistants, shall have immediate access to any other business location where business-related property, records, and equipment are located. The Receiver, and his or her representatives, agents, and assistants, shall have the right to remove documents from any other business locations connected with the Defendants' businesses in order that they may be inspected, inventoried, and copied. The Receiver shall allow the parties access to these other business locations. The Receiver shall have the discretion to determine the time, manner, and reasonable conditions of such access;

C. If any property, business records, documents, or computer files relating to the Receivership are located at a location other than those listed herein and a request to enter said location is denied, then such defendant shall, within twenty four (24) hours of service of this Order:

1. Produce to the Receiver all contracts, accounting data, written or electronic correspondence, advertisements, computer tapes, disks, or other computerized records, books, written or printed records, handwritten notes, telephone logs, telephone scripts, membership records and lists, refund records, receipts, 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 Defendant's business practices;
2. Produce to the Receiver all computers and data in whatever form used by such defendant or any of such defendant's agents, employees, officers, servants or those persons in active concert with him or her, in activities relating to Receivership Defendants; and
3. Produce to the Receiver a list of all agents, employees, officers, servants or those persons in active concert and participation with him or her, who have been associated or done business with Receivership Defendants.

## DELIVERY OF RECEIVERSHIP PROPERTY

### XVI.

#### IT IS FURTHER ORDERED that:

A. Immediately upon service of this Order upon them, or within such period as may be permitted by the Permanent Receiver, Defendants and any other person or entity served with a copy of this Order shall transfer or deliver possession, custody, and control of the following to the Permanent Receiver:

1. All assets of the Receivership Defendants;
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; and
4. All keys, codes, and passwords necessary to gain or to secure access to any assets or documents of the Receivership Defendants, including, but not limited to, access to their business premises, means of communication, accounts, computer systems, or other property.

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 Permanent Receiver may file *ex parte* an Affidavit of Non-Compliance regarding the 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 Permanent Receiver. The writs shall authorize and direct the United States Marshal or any sheriff or deputy sheriff of any county, or any other federal or state law enforcement officer, to seize the asset, document, or other thing and to deliver it to the Permanent Receiver.

### **TRANSFER OF FUNDS TO THE RECEIVER**

#### **XVII.**

**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, precious metals dealers and other financial institutions and depositories of any kind, and all third-party billing agents, LEC's, common carriers, and other telecommunications companies shall cooperate with all reasonable requests of the FTC and the Receiver relating to implementation of this Order, including transferring funds at his direction and producing records related to the assets and sales of the Receivership Defendants.

### **STAY OF ACTIONS**

#### **XVIII.**

**IT IS FURTHER ORDERED that:**

A. Except by leave of this Court, during pendency of the receivership ordered herein, Defendants, and all customers, principals, investors, creditors, stockholders, lessors, and other persons seeking to establish or enforce any claim, right, or interest against or on behalf of the 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, except that such actions may be filed to toll any applicable statute of limitations;
2. 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; attempting to foreclose, forfeit, alter, or terminate any interest in any asset, whether such acts are part of a judicial proceeding, are acts of self-help, or otherwise;
3. 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; or
4. Causing any Receivership Defendant to be placed in involuntary bankruptcy; or
5. Doing any act or thing whatsoever to interfere with the Permanent Receiver managing, or taking custody, control, or possession of, the assets or documents subject to this receivership, or to harass or interfere with the Permanent 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.

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;

or

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.

## **RETENTION OF ASSETS AND RECORDS BY FINANCIAL INSTITUTIONS**

### **XIX.**

**IT IS FURTHER ORDERED** that any financial or brokerage institution, business entity, or person served with a copy of this Order that holds, controls or maintains custody of any account or asset of the Defendant, or has held, controlled or maintained custody of any such account or asset at any time since the date of entry of this Order shall:

A. Hold and retain within its control and prohibit the withdrawal, removal, assignment, transfer, pledge, encumbrance, disbursement, dissipation, conversion, sale, or other disposal of any such asset except by further order of the Court. *Provided, however,* that each defendant shall be permitted to open accounts or make withdrawals from and deposits to new or existing accounts with the agreement of counsel for plaintiff, as necessary to effectuate the exceptions to the asset freeze provided in Paragraph V *supra*, or by further order of the Court;

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

1. titled in his name, individually or jointly; or
2. otherwise subject to access by the Defendant;

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

1. the identification number of each such account or asset titled in the name, individually or jointly, of the Defendant, or held on behalf of, or for the benefit of the 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 titled in the name, individually or jointly, of the Defendant, or is otherwise subject to access by the Defendant; and

D. Upon the request by the Commission, promptly provide the Commission with copies of all records or other documentation pertaining to each such account or asset, 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 may arrange for the Commission to obtain copies of any such records which the Commission seeks.

#### **COMPENSATION OF PERMANENT RECEIVER**

#### **XX.**

**IT IS FURTHER ORDERED** that the Permanent Receiver and all personnel hired by the Permanent Receiver as herein authorized, including counsel to the Permanent 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 assets now held by, in the possession or control of, or which may be received by, the Receivership Defendants. The Permanent Receiver shall file with the Court and serve on the parties periodic requests for the payment of such reasonable compensation, with the first such request filed no more than sixty (60) days after the date of this Order. The Permanent Receiver shall not increase the hourly rates used as the bases for such fee applications without prior approval of the Court.

### **DISTRIBUTION OF ORDER BY DEFENDANTS**

#### **XXI.**

**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, client company, agent, attorney, spouse and representative of the Defendants, and shall, within ten (10) days from the date of entry of this Order, provide the Commission with a sworn statement that the Defendants have 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.

### **SERVICE OF ORDER**

#### **XXII.**

**IT IS FURTHER ORDERED** that copies of this Order may be served by any means, including facsimile transmission, upon any financial institution or other entity or person that may have possession, custody, or control of any documents or assets of any Defendant, or that may otherwise be subject to any provision of this Order. Service upon any branch or office of any financial institution shall effect service upon the entire financial institution.

**CONSUMER CREDIT REPORTS**

**XXIII.**

**IT IS FURTHER ORDERED** that pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(1), any consumer reporting agency may furnish a consumer report concerning any Defendant to Plaintiff Commission.

**SERVICE UPON PLAINTIFF AND NOTIFICATION**

**XXIV.**

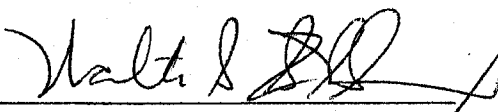
**IT IS FURTHER ORDERED** that with regard to any correspondence, pleadings, notifications or reporting related to this case or under this Order, service on the Commission shall be performed by delivery (either by mail, facsimile or other means, as mutually agreed upon by the parties) to the Associate Director of the Division of Marketing Practices (Att: Lawrence Hodapp), Federal Trade Commission, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW, Room H-238, Washington, DC 20580.

**RETENTION OF JURISDICTION**

**XXV.**

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

**SO ORDERED** this 4<sup>th</sup> day of February, 2003.

  
WALTER S. SMITH JR.  
United States District Judge