

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 06-20168 - CIV

U.S. District Judge Altonaga / U.S. Magistrate Judge Turnoff

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

**REMOTE RESPONSE CORPORATION,
et. al.,**

Defendants.

**AMENDED¹ STIPULATED FINAL ORDER FOR PERMANENT INJUNCTION AND
MONETARY JUDGMENT AS TO DEFENDANT GERMAN ESPITIA**

The Federal Trade Commission (the “Commission” or “FTC”) filed this action, pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, against Remote Response Corporation (also doing business as Amerikash, Global-Amerikash, Instant Way, and Amerikhealth) (“Remote Response”), Alberto M. Salama (“Alberto Salama”), Samuel M. Salama (“Samuel Salama”), Elias M. Salama (“Elias Salama”), Joseph Bensabat (“Bensabat”), Instant Way Corporation (“Instant Way”), and German Espitia (“Defendant Espitia” or “Defendant”). The First Amended Complaint alleges violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a); the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101 *et seq.*; the Telemarketing Sales

¹ The Order has been amended to reflect the parties’ signatures.

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Rule (“TSR”), 16 C.F.R. Part 310; the Electronic Fund Transfer Act (“EFTA”), 15 U.S.C. §§ 1693-1693r; and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b) (“Regulation E”).

The Commission filed the initial complaint, which named Espitia, Instant Way, Alberto Salama, and Remote Response, on January 23, 2006, along with a motion for a temporary restraining order, appointment of receivers, and asset freezes. On February 15, 2006, the Court entered the Stipulated Preliminary Injunction with Asset Freeze, Appointment of Permanent Receivers, and Other Equitable Relief (“First Preliminary Injunction”) as to Defendants Remote Response, Instant Way, Defendant Espitia, and Alberto Salama. Defendant Espitia and Instant Way filed a joint answer to the complaint on March 1, 2006. On May 11, 2006, the Court granted the motion of attorney Ceasar Mestre, Jr., Esq. (“Mestre”) to withdraw as counsel for Defendant Espitia. On June 5, 2006, the Commission filed its First Amended Complaint, which made no change to the substantive allegations of the complaint, but named Elias Salama, Samuel Salama, and Bensabat as defendants. On June 20, 2006, the Court entered the Stipulated Preliminary Injunction With Asset Freeze and Other Equitable Relief as to Defendants Elias Salama and Samuel Salama (“Second Preliminary Injunction”). Both Defendant Espitia and Instant Way failed to answer the First Amended Complaint, and having failed, as ordered by the Court, to secure counsel, on August 1, 2006, the Court entered the Default Judgment and Order for Permanent Injunction as to Instant Way. Defendant Espitia represents himself *pro se* in this action.

The Commission, through its undersigned attorneys, and Defendant Espitia, despite having been advised by counsel for the Commission to obtain counsel, on his own behalf *pro se*,

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stipulate to entry of this Stipulated Final Order for Permanent Injunction and Monetary Judgment (“Order”) to resolve all matters of dispute between them.

IT IS THEREFORE STIPULATED, AGREED, AND ORDERED AS FOLLOWS:

FINDINGS

1. This Court has jurisdiction of the subject matter of this case and over all parties hereto.
2. Venue in the Southern District of Florida is proper under 28 U.S.C. §§ 1391(b) and (c) and 15 U.S.C. § 53(b).
3. The alleged actions of Defendant Espitia are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
4. The allegations of the First Amended Complaint state a claim upon which relief can be granted against Defendant Espitia under Sections 5(a), 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 53(b), and 57b; the Telemarketing Act, 15 U.S.C. §§ 6101 *et seq.*; the TSR, 16 C.F.R. Part 310; Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a); and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b).
5. The First Amended Complaint alleges that Defendant Espitia was unjustly enriched, and that consumers throughout the United States have suffered injury as a result of Defendant’s unlawful acts or practices in the amount of total sales to consumers of \$4,163,558.35.
6. This order is remedial in nature and shall not be construed as the payment of a fine, penalty, punitive assessment, or forfeiture.
7. The entry of this Order, as set forth below, is in the public interest, and there being no just reason for delay, the Clerk of the Court is directed to enter final judgment immediately.

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8. This Order shall not be construed as an admission of liability by Defendant Espitia for the unfair or deceptive trade practices or other violations of law alleged in the First Amended Complaint.
9. Defendant Espitia has waived all rights to seek judicial review or otherwise challenge or contest the validity of this Order, and further waives and releases any claim he may have against the FTC, its employees, and agents, including any claims that may arise for attorneys' fees or other costs under the Equal Access to Justice Act, 28 U.S.C. § 2412, *as amended*.
10. The parties shall each bear their own costs and attorneys' fees incurred in this action.

DEFINITIONS

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

1. "Advance fee credit card" means a credit card offered for sale in exchange for a fee or similar payment by the purchaser prior to issuance of a credit card or account.
2. "Assets" means any legal or equitable interest in, right to, or claim to, any real and personal property, including, but not limited to, chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, premises, mail or other deliveries, shares of stock, lists of consumer names, inventory, checks, notes, accounts, credits, receivables, funds, and all cash, wherever located.
3. "ATM card" means a card used in an automated teller machine ("ATM") which may access a credit or a debit account to obtain funds, complete banking inquiries, and/or fund transfers between accounts.
4. "BOA Frozen Accounts" means all funds frozen by Bank of America pursuant to Paragraphs VI and VII of the First Preliminary Injunction held in the name of Defendant Espitia,

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jointly or singly, Instant Way Corporation, Instant Way dba Marketing Solutions, Art Trading Group, Inc., and Art Trading Group dba Marketing Solutions, in the amount as of the date the funds were frozen, plus any interest payable by the financial institution, without deducting any costs, fees, or interest payable to the financial institution, and any funds deposited into any frozen account pursuant to prior order of the Court.

5. “Consumer” means a purchaser, customer, subscriber, or natural person.

6. “Credit card” means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

7. “Debit card” means any card that allows the consumer to access a checking or savings account electronically for the purpose of obtaining money, property, labor, or services.

8. “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 the information can be obtained and translated, if necessary, into reasonably usable form through detection devices. A draft or non-identical copy is a separate document within the meaning of the term.

9. “Electronic fund transfer” means any transfer of funds that is initiated through an electronic terminal, telephone, computer, or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit a consumer’s account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions,

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direct deposits or withdrawals of funds, transfers initiated by telephone, and transfers resulting from debit card transactions, whether or not initiated through an electronic terminal.

10. “Free-to-pay conversion” means, in an offer or agreement to sell or provide any goods or services, a provision under which a customer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if he or she does not take affirmative action to cancel before the end of that period.

11. “Health discount plan” means any plan that, for payment of a membership fee, provides to consumers a list of health care providers or sellers of health-related products who offer discounts to members of the plan.

12. “Person” means any individual, group, unincorporated association, limited liability company, limited or general partnership, corporation, or other business entity.

13. “Preauthorized electronic fund transfer” means an electronic fund transfer authorized in advance to recur at substantially regular intervals.

14. “Properties” means the condominiums located at:

- A. the Sutton House Condominium, 1885 N.E. 121 Street, No. 11, N. Miami, Florida, 33181, recorded in Official Records Book 23548, Page 3644, of the Public Records of Miami-Dade County, Florida; and
- B. the Sutton House Condominium, 11855 N.E. 19th Drive, No. 16, N. Miami, Florida 33181, recorded in Official Records Book 23548, Page 3644, of the Public Records of Miami-Dade County, Florida;

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together with other structures, improvements, appurtenances, hereditaments, and other rights appertaining or belonging thereto.

15. “Property Net Proceeds” means the amount obtained upon sale of each of the Properties after payment of the mortgage(s) held, any taxes owed, any adjustments in favor of the buyer(s) required to sell the Properties, and customarily required brokers’ commissions and closing costs.

16. “Receivership Defendant” means Remote Response and its successors and assigns.

17. “Remote Response Receiver” means Gerald B. Wald, Esq. of Murai, Wald, Biondo, Moreno & Brochin, Two Alhambra Plaza, Penthouse 1B, Coral Gables, Florida 33134, appointed by this Court as Permanent Receiver for Remote Response.

18. “Stored value card” means any prepaid card that is funded by the consumer in advance of use and may be used up to the amount funded by the consumer, less any applicable fees, for the purpose of obtaining property, labor, or services.

19. “Telemarketing” means any plan, program, or campaign (whether or not covered by the TSR) that is conducted to induce the purchase of goods or services or charitable contribution by means of the use of one or more telephones.

20. “Upselling” means soliciting the purchase of goods or services following an initial transaction during a single telephone call. The upsell is a separate telemarketing transaction, not a continuation of the initial transaction.

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PERMANENT BAN

I.

IT IS THEREFORE ORDERED that:

A. Defendant Espitia, whether acting individually or directly or indirectly through any corporation, limited liability company, partnership, subsidiary, division, trust, or other device, is hereby permanently restrained and enjoined from engaging in, assisting others in, receiving any remuneration of any kind whatsoever from, holding any ownership interest in, or serving as an employee, independent contractor, officer, director, member, partner, trustee, or general manager of, any business entity engaged, in whole or in part, in telemarketing;

B. Defendant Espitia, whether acting individually or directly or indirectly through any corporation, limited liability company, partnership, subsidiary, division, trust, or other device, is hereby permanently restrained and enjoined from engaging in, assisting others in, receiving any remuneration of any kind whatsoever from, holding any ownership interest in, or serving as an employee, independent contractor, officer, director, member, partner, trustee, or general manager of, any business entity engaged, in whole or in part, and by any means whatsoever, in the marketing, advertising, promoting, offering for sale, sale, or purported sale of any advance fee credit card, credit card, debit card, stored value card, ATM card, phone card, travel or gas voucher, vacation package discount, or health discount plan, or assisting others in the same; and

C. Nothing in this Order shall be read as an exception to this Paragraph I.

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PROHIBITED BUSINESS PRACTICES

II.

IT IS FURTHER ORDERED that, in connection with the advertising, promotion, offering for sale, or sale of products or services, Defendant Espitia, and his assigns, agents, attorneys, servants, employees, salespersons, independent contractors, 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 individually or directly or indirectly through any corporation, limited liability company, partnership, subsidiary, division, trust, or other device, are hereby permanently restrained and enjoined from making, or assisting others in making, any false or misleading representation, expressly or by implication, of any material fact, including, but not limited to, that:

- A. Consumers will receive specified products or services;
- B. Consumers will receive any specified products or services at no charge;
- C. The products or services consumers purchase or receive can be used in a specified manner or will bear certain material characteristics; and
- D. Consumers offered products or services as part of a free-to-pay conversion will:
 - 1. Be provided a free-trial period during which they may use the products or services without charge;
 - 2. Receive the products or services, or information necessary to use the products or services, prior to the expiration of the offered free-trial period;
 - 3. Be able to cancel the free-to-pay conversion offer during the time period and in the manner prescribed;

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4. Not be charged for the products or services if they cancel the free-to-pay conversion offer during the time period and in the manner prescribed;
5. Not be charged for the products or services if they initially decline the free-to-pay conversion offer; and
6. Not be charged for the products or services other than in the amounts, manner, and frequency to which consumers agree, if they accept the free-to-pay conversion offer and do not cancel during the time period and in the manner prescribed.

III.

IT IS FURTHER ORDERED that, in connection with the advertising, promotion, offering for sale, or sale of products or services as part of a free-to-pay conversion, Defendant Espitia, and his assigns, agents, attorneys, servants, employees, salespersons, independent contractors, 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 individually or directly or indirectly through any corporation, limited liability company, partnership, subsidiary, division, trust, or other device, are hereby permanently restrained and enjoined from causing or assisting others in causing consumers' bank accounts to be electronically debited or credit or debit card accounts to be charged:

- A. After a consumer declines or rejects an offer or agreement to sell such product or service;
- B. Prior to receipt by a consumer of any product, service, or information about such product or service represented to be received by a consumer before billing;

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- C. Prior to expiration of any stated free-trial period;
- D. After a consumer has cancelled; and/or
- E. After a consumer has been, directly or indirectly, inhibited or thwarted in his or her ability to cancel.

PROHIBITION REGARDING PREAUTHORIZED ELECTRONIC FUND TRANSFERS

IV.

IT IS FURTHER ORDERED that, in connection with the sale of products or services to consumers, Defendant Espitia and his assigns, agents, attorneys, servants, employees, salespersons, independent contractors, 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 individually or directly or indirectly through any corporation, limited liability company, partnership, subsidiary, division, trust, or other device, are hereby permanently restrained and enjoined from making or assisting others in making preauthorized electronic fund transfers from a consumer's bank account without obtaining the consumer's written and signed or similarly authenticated authorization and providing a copy to the consumer.

CUSTOMER LISTS

V.

IT IS FURTHER ORDERED that Defendant Espitia and his assigns, agents, attorneys, servants, employees, salespersons, independent contractors, 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 individually or directly or indirectly through any corporation,

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limited liability company, partnership, subsidiary, division, trust, or other device, are hereby permanently restrained and enjoined from:

A. Selling, renting, leasing, transferring, or otherwise disclosing customer lists containing the name, address, social security number, date of birth, telephone number, credit card number, debit card number, bank account number, e-mail address, or other identifying information of any customer who purchased, or was solicited to purchase, the Amerikash Master Card, other incentive items, and/or the Amerikhealth discount health plan that are the subject of the First Amended Complaint, from any of the defendants in this action, at any time prior to entry of this Order, in connection with the telemarketing, advertising, promoting, offering for sale, or sale of any product or service, including, but not limited to, advance-fee credit cards, credit cards, debit cards, ATM cards, stored value cards, discount health cards, phone cards, travel or gas vouchers, or vacation package discounts; or

B. Making any use of customer lists referenced in this Paragraph V in any business, whether or not related to the present action;
provided, however, that Defendant Espitia may disclose such identifying information to a law enforcement agency or as required by any law, regulation, or court order.

MONETARY RELIEF

VI.

IT IS FURTHER ORDERED that judgment in the amount of \$4,163,558.35, which is the amount paid by approximately 30,674 consumers for the Amerikash Master Card, other incentive items, and the Amerikhealth discount health plan that are the subject of the First Amended Complaint, is hereby entered against Defendant Espitia, jointly and severally, as

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equitable monetary relief; *provided, however*, that the judgment shall be suspended subject to the terms set forth herein:

A. Defendant Espitia shall relinquish any and all right, title, and interest to the BOA Frozen Accounts and shall take all necessary steps to effectuate the transfer of the BOA Frozen Accounts to the Commission, and the institutions holding such BOA Frozen Accounts shall, within ten (10) business days of the date of service of this Order, transfer the BOA Frozen Accounts to the Commission or its designee or agent, by wire transfer in accordance with wiring instructions to be provided by the Commission;

B. The Properties shall be sold and the Property Net Proceeds shall be transferred to the Commission or its designee or agent, pursuant to the following provisions, which, unless stated otherwise herein, are in addition to the Court's Stipulation and Order Regarding Sale of Condominium Units of Defendant German Espitia, entered by the Court on March 20, 2007 (D.E. 250) ("March 20, 2007 Order"):

1. Defendant Espitia, individually and on behalf of his respective heirs and assigns, hereby grants to the Commission a lien on, and security interest in, each of the Properties. Defendant Espitia represents and acknowledges that the Commission is relying on the material representations that he is the sole owner of the Properties; that title to the Properties is marketable; that neither of the Properties is encumbered by any lien, mortgage, deed of trust, security interest, or other interest, except mortgages held by the following: 1885 N.E. 121 Street, No. 11, N. Miami, FL 33181 - U.S. Bank (serviced by Select Portfolio Services); and 11855 N.E. 19th Drive,

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No. 16, N. Miami, FL 33181 - Bank of New York (serviced by Countrywide); Defendant Espitia agrees that, as of the date on which he signs this Order, he shall refrain from transferring, converting, encumbering, selling, assigning, or otherwise disposing of the Properties, except with the express prior written permission of the Commission.

Defendant Espitia hereby releases and waives any statutory, common law, or other homestead exemption that may apply to the Properties, and shall not declare and claim any homestead exemption in the Properties;

2. Defendant Espitia shall cooperate fully with the Commission, and shall prepare, execute, and record the necessary documents, and do whatever else the Commission deems necessary or desirable to perfect, evidence, and effectuate the liens and security interests granted herein. If he has not already done so, Defendant Espitia shall prepare, execute, and deliver (at his expense) to the Commission mortgages or deeds of trust in form and substance satisfactory to the Commission (the "Security Documents") no later than five (5) days after the date of entry of this Order, and take such other steps as the Commission may require to perfect, evidence, and effectuate its liens, security interests, and assignments, and to carry out the purposes of this Order. Defendant Espitia shall be responsible for paying all fees and costs (including attorneys' fees and filing fees) required in connection with the liens and security interests granted herein, including all fees and costs related to the preparation, execution, delivery, filing,

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continuation, and termination of such liens and security interests and to carry out the purposes of this Order. If Defendant Espitia fails to take the actions required by this Paragraph VI. B., the Commission may retain counsel to prepare, execute, file, record, or terminate the mortgages, deeds of trust, liens, and security interests necessary to carry out the purposes of this Order, the costs of which shall be paid from the BOA Frozen Accounts, which amounts shall then be added to the amount of the judgment set forth in this Paragraph VI;

3. Defendant Espitia shall make all good faith efforts necessary to sell promptly each of the Properties for fair market value, shall relinquish any and all right, title, and interest he has in the Property Net Proceeds, and shall take all necessary steps to effectuate the transfer of such Property Net Proceeds to the Commission;
4. With respect to any proposed sale, Defendant Espitia and the mortgage holders of the Properties shall provide to the Commission, in the person of Associate Director, Federal Trade Commission, Division of Enforcement, 600 Pennsylvania Ave., NW, Mail Drop NJ-2122, Washington, D.C. 20580, and delivered by overnight delivery or facsimile at 202-326-2558, as soon as possible and in any event no later than two (2) weeks prior to the closing, notwithstanding any contrary notice requirements in the Court's March 20, 2007 Order: (a) a copy of the executed contract; (b) written notice of the closing date; (c) the name, address, and telephone

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number of the individual closing agent; and (d) a copy of the proposed settlement statement to be used at closing and reflecting the payment at closing to the Commission of the gross proceeds received from the purchaser less any reasonable and customary closing costs incurred in connection with such sale, including brokerage fees and closing costs, provided that all such reasonable and customary closing costs must be first approved by the Commission, which approval shall not be unreasonably withheld;

5. In connection with any attempt to sell the Properties, Defendant Espitia:
 - a. shall notify the Commission of the amount of any offer to purchase the Properties immediately upon receiving each such offer and the name(s) and address(es) of any person(s) or entity(ies) making such offer; and
 - b. may make any reasonable and necessary repairs, upon written approval by the Commission, to prepare the Properties for sale;
6. Whether sold by Defendant Espitia or the mortgage holders of the Properties, the Property Net Proceeds shall be paid to the Commission, as follows:
 - a. If one or more of the Properties are sold prior to the date of entry of this Order and pursuant to the March 20, 2007 Order, the Property Net Proceeds shall be deposited, if they have not already been so deposited, in the BOA Frozen Accounts, or into an interest-bearing account at a financial institution agreed upon by the parties hereto, or into the Court

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Registry, and the financial institution or entity holding such frozen Property Net Proceeds shall, within ten (10) business days of the date of service of this fully executed Order, transfer the frozen Property Net Proceeds to the Commission or its designee or agent, in accordance with, and in addition to the amounts set forth in, Paragraph VI. A., if applicable, by wire transfer in accordance with wiring instructions to be provided by the Commission;

- b. If one or more of the Properties are sold on or after the date of entry of this Order, the Property Net Proceeds shall be paid directly to the Commission or its designee or agent within ten (10) business days of the closing, by wire transfer in accordance with wiring instructions to be provided by the Commission;
- c. Defendant Espitia shall transfer any Property Net Proceeds he receives to the Commission or its designee or agent, by wire transfer in accordance with wiring instructions to be provided by the Commission;
and
- d. The Commission shall not be responsible for any losses, taxes, and/or other liabilities resulting from the sale of the Properties;

C. Defendant Espitia relinquishes all dominion, control, and title to, and shall make no claim to, or demand for the return of, any funds paid to the Commission pursuant to this Paragraph VI, which shall be irrevocably paid to the Commission;

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D. Defendant Espitia shall take no deduction, capital loss, write-off, or any other tax benefit on any federal or state tax return, amended tax return, IRS Form 1045, or any other tax filing, for all or any part of any payment (whether cash or non-cash) to the Commission toward satisfaction of the judgment. Defendant Espitia shall remain responsible for any tax liability associated with or attributable to any income from the sale of the Properties. Defendant Espitia's federal or state tax returns, amended returns, IRS Form 1045's, and other tax filings for tax years 2005 through 2008 not already submitted to federal or state tax authorities shall be prepared and signed by an independent CPA, and a copy of any such document, complete with all attachments, shall be submitted to the Commission at the same time it is submitted to the federal or state tax authority, by delivering it to: Associate Director, Federal Trade Commission, Division of Enforcement, 600 Pennsylvania Ave., NW, Mail Drop NJ-2122, Washington, D.C. 20580, by overnight delivery or facsimile at 202-326-2558;

E. The Commission's agreement to this Order is expressly premised upon the truthfulness, accuracy, and completeness of financial information provided by Defendant Espitia to the Commission, including, but not limited to, the sworn "Financial Statement of Individual Defendant" of Defendant Espitia, dated March 9, 2006; the sworn "Financial Statement of Corporate Defendant" of Instant Way, dated March 15, 2006; the sworn "Financial Statement of Corporate Defendant" of Art Trading Group, dated March 22, 2006; the sworn "Financial Statement of Corporate Defendant" of Bison International, Inc., dated June 22, 2006; correspondence and other communications from Defendant regarding Defendant's financial information; memoranda filed with Court related to financial disclosures; Defendant Espitia's sworn deposition testimony in this case; and any addenda to any of the foregoing documents or

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testimony through the date of this Order (together, the “financial disclosures”), all of which Defendant Espitia stipulates are truthful, accurate, and complete. Defendant Espitia and the Commission stipulate that the Commission has relied upon the truthfulness, accuracy, and completeness of the financial disclosures in agreeing to this Order and that the Commission would not have consented to the suspension of the monetary judgment, but for the truthfulness, accuracy, and completeness of the financial disclosures;

F. If Defendant Espitia fully complies with the provisions set forth in this Paragraph VI, the monetary judgment established by this Order shall be suspended; *provided, however*, that, if, upon motion by the Commission, the Court finds:

1. that Defendant Espitia has not fulfilled, or has only partially fulfilled, the conditions set forth in Paragraphs VI. A. through VI. D.; or
2. that Defendant Espitia has failed to disclose any material asset, misrepresented the value of any material asset, or made any material misrepresentation or omission in the financial disclosures upon which the Commission’s agreement to this Order is expressly premised, as set forth in Paragraph VI. E.,

then the Court shall lift the suspension and reinstate the judgment against Defendant Espitia in the amount of \$4,163,558.35, plus any amounts due to be added pursuant to Paragraph VI. B. and less any payments or transfers already made to the Commission. Upon such reinstatement of the monetary judgment, the Court shall make an express determination that the monetary judgment shall be immediately due and payable. The Commission shall be entitled to interest on the judgment, computed from the date of entry of this Order at the rate prescribed under 28 U.S.C.

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§ 1961, as amended. The Commission shall be permitted to execute upon the judgment immediately after the suspension is lifted and to engage in discovery in aid of execution;

G. Lifting the suspension and reinstating the judgment pursuant to Paragraph VI. F. shall not affect any other provisions of this Order, which shall remain in full force and effect, unless otherwise ordered by the Court;

H. This judgment shall not be abstracted or otherwise filed as a lien against Defendant Espitia's property unless and until this Court lifts the suspension of the monetary judgment pursuant to Paragraph VI. F.; *provided, however*, that the Commission may immediately record its lien and security interest, created by Paragraph VI. B., against the Properties;

I. The Commission and Defendant Espitia acknowledge and agree that: (1) the judgment herein for equitable monetary relief is solely remedial in nature and no portion of any payments under such judgment shall be deemed a payment of any fine, penalty, punitive assessment, or forfeiture, and (2) any proceedings instituted under Paragraph VI are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings the Commission may initiate to enforce this Order;

J. Defendant Espitia agrees that the facts as alleged in the First Amended Complaint filed in this action shall be taken as true, without further proof, in any subsequent litigation filed by the Commission to collect any unpaid amount or otherwise enforce its rights pursuant to this Order, including a nondischargeability action filed by, or on behalf of, the Commission in any bankruptcy case;

K. Upon service of a copy of this Order upon them, any person or entity holding assets of Defendant Espitia described in this Paragraph VI shall, upon written request of the

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Commission, promptly turn such assets over to the Commission in order to partially satisfy the monetary judgment;

L. All funds paid pursuant to this Paragraph VI shall be deposited into a fund administered by the Commission or its agent, in its sole discretion, to be used for equitable relief, including, but not limited to, consumer redress and any attendant expenses for the administration of such equitable relief. If the Commission determines, in its sole discretion, that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to the practices alleged in the First Amended Complaint. Any funds not used for such equitable relief shall be deposited to the United States Treasury as disgorgement. Defendant Espitia shall have no right to challenge the Commission's choice of remedies under this Paragraph VI. L., and shall have no right to contest the manner of distribution chosen by the Commission;

M. Defendant Espitia shall also furnish to the Commission, in accordance with 31 U.S.C. § 7701, his taxpayer identification numbers, which shall be used for purposes of collecting and reporting on any delinquent amount arising out of Defendant Espitia's relationship with the Government; and

N. Defendant Espitia is further required, within ten (10) days after the entry of this Order, to provide the Commission with his social security number, and clear, legible, and full-size photocopies of all valid driver's licenses he possesses, which will be used for collection, reporting, and compliance purposes.

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LIFTING OF THE ASSET FREEZE

VII.

IT IS FURTHER ORDERED that, to the extent not already lifted by prior Court order, the freeze of the assets of Defendant Espitia, pursuant to Paragraphs VI and VII of the First Preliminary Injunction, shall be lifted to effectuate the transfer of assets in partial satisfaction of the monetary judgment as provided in Paragraph VI of this Order, and shall be of no further force or effect.

COOPERATION WITH THE RECEIVER

VIII.

IT IS FURTHER ORDERED that:

A. Defendant Espitia and all other persons or entities served with a copy of this Order shall fully cooperate with and assist the Remote Response Receiver in taking possession, custody, or control of the assets of the Receivership Defendant. This cooperation and assistance shall include, but not be limited to: providing information to the Remote Response Receiver that he deems necessary in order to exercise his authority and to discharge his responsibilities as the Remote Response Receiver under the First and Second Preliminary Injunctions and this Order; providing any password required to access any computer, electronic file, or telephonic data in any medium; and advising all persons who owe money to the Receivership Defendant that all debts must be paid directly to the Remote Response Receiver;

B. Upon service of a copy of this Order, or other notice, all entities that hold assets of, or records related to, the Receivership Defendant, shall cooperate with all reasonable requests of the Remote Response Receiver relating to implementation of the First and Second Preliminary

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Injunctions and this Order, including transferring funds at the Remote Response Receiver's direction and producing records related to the assets and sales of the Receivership Defendant. The entities obligated to cooperate with the Remote Response Receiver under this provision include, but are not limited to, 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, local exchange carriers, common carriers, and other telecommunications companies, that have transacted business with the Receivership Defendant; and

C. Unless directed by the Remote Response Receiver, Defendant Espitia is hereby restrained and enjoined from directly or indirectly:

1. Interfering with the Remote Response Receiver's ability to manage, or take custody, control, or possession of, the assets or documents subject to the Receivership;
2. Transacting any of the business of the Receivership Defendant;
3. 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 Defendant or the Remote Response Receiver; and
4. Failing to cooperate with the Remote Response Receiver or his duly authorized agents in the exercise of their duties or authority under any order of this Court.

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COOPERATION WITH COUNSEL FOR THE COMMISSION

IX.

IT IS FURTHER ORDERED that Defendant Espitia shall, in connection with this action or any subsequent investigations related to or associated with the transactions or the occurrences that are the subject of the Commission's First Amended Complaint, or related to or associated with compliance with any provision of this Order, cooperate in good faith with the Commission and appear at such places and times as the Commission shall reasonably request, after written notice, for interviews, conferences, pretrial discovery, review of documents, and for such other matters as may be reasonably requested by the Commission. If requested in writing by the Commission, Defendant Espitia shall promptly execute requested documents and shall appear and provide truthful testimony in any trial, deposition, or other proceeding related to or associated with the transactions or the occurrences that are the subject of the First Amended Complaint or related to or associated with compliance with any provision of this Order, without the service of a subpoena. Defendant Espitia shall promptly execute documents and take any other actions requested by the Commission in connection with the sale of the Properties; the transfer to the Commission of the BOA Frozen Accounts and Property Net Proceeds; or as may otherwise be required to effectuate this Order.

ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANT

X.

IT IS FURTHER ORDERED that, Defendant Espitia, within five (5) business days of receipt of this Order as entered by the Court, must submit to the Commission a truthful, sworn statement, acknowledging receipt of this Order.

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DISTRIBUTION OF ORDER BY DEFENDANT

XI.

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, Defendant Espitia shall deliver copies of the Order as directed below:

A. Defendant Espitia as Control Person: For any business that Defendant Espitia controls, directly or indirectly, or in which he has a majority ownership interest, Defendant Espitia must deliver a copy of this Order to all principals, officers, directors, and managers of that business. Defendant Espitia must also deliver copies of this Order to all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the Order. For current personnel, delivery shall be within five (5) days of service of this Order upon Defendant Espitia. For new personnel, delivery shall occur prior to them assuming their responsibilities;

B. Defendant Espitia as employee or non-control person: For any business where Defendant Espitia is not a controlling person of a business, but otherwise engages in conduct related to the subject matter of this Order, Defendant Espitia must deliver a copy of this Order to all principals and managers of such business before engaging in such conduct; and

C. Defendant Espitia must secure a signed and dated statement acknowledging receipt of the Order, within thirty (30) days of delivery, from all persons receiving a copy of the Order pursuant to this Paragraph XI.

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COMPLIANCE REPORTING BY DEFENDANT

XII.

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

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

1. Any changes in residence, mailing addresses, and telephone numbers of Defendant, within ten (10) days of the date of such change;
2. Any changes in employment status (including self-employment) of Defendant, and any change in the ownership of Defendant in any business entity, within ten (10) days of the date of such change. Such notice shall include the name and address of each business that Defendant is affiliated with, employed by, creates or forms, or performs services for; a statement of the nature of the business; and a statement of Defendant's duties and responsibilities in connection with the business or employment;
3. Any changes in Defendant's name or use of any aliases or fictitious names; and
4. Any changes in the corporate structure of Instant Way or any business entity that Defendant Espitia directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Order, including, but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor

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entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any proposed change in the corporation about which Defendant learns less than thirty (30) days prior to the date such action is to take place, Defendant shall notify the Commission as soon as is practicable after obtaining such knowledge;

B. One hundred eighty (180) days after the date of entry of this Order, Defendant Espitia 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 Order. This report shall include, but not be limited to:

1. The then-current residence address, mailing addresses, and telephone numbers of Defendant Espitia;
2. The then-current employment and business addresses and telephone numbers of Defendant Espitia, a description of all business activities of each such employer or business, and the title and responsibilities of Defendant Espitia, for each such employer or business;
3. A copy of each acknowledgment of receipt of this Order, obtained pursuant to Paragraph XI. C.; and
4. Any other changes required to be reported under Paragraph XII. A.;

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

Associate Director
Bureau of Consumer Protection
Division of Enforcement
Federal Trade Commission
600 Pennsylvania Avenue, N.W. Mail
Drop NJ-2122
Washington, D.C. 20580
Re: *FTC v. Remote Response Corp.*, Civil Action No.
06cv20168 (S.D. Fla. 2006)

D. For purposes of the compliance reporting and monitoring required by this Order, the Commission is authorized to communicate directly with Defendant Espitia.

RECORD KEEPING PROVISIONS

XIII.

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this Order, Defendant Espitia, in connection with any business that he directly or indirectly manages, controls, or has a majority ownership interest in, and his agents, employees, and assigns, and those persons in active concert or participation with them who receive actual notice of this 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;

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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;

E. Copies of all sales scripts, training materials, advertisements, or other marketing materials, including e-mail and Internet websites or web pages, regarding any good, service, company, or website disseminated by Defendant to any person; and

F. All records and documents necessary to demonstrate full compliance with each provision of this Order, including, but not limited to, copies of acknowledgments of receipt of this Order, required by Paragraphs X and XI of this Order, and all reports submitted to the Commission pursuant to Paragraphs XII and XIV of this Order.

COMPLIANCE MONITORING

XIV.

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

A. Within ten (10) days of receipt of written notice from a representative of the Commission, Defendant Espitia shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide

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entry during normal business hours to any business location in such Defendant's possession or direct or indirect control to inspect the business operation;

B. In addition, the Commission is authorized to monitor compliance with this 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; and
2. posing as consumers and suppliers to: Defendant Espitia, Defendant's employees, or any entity managed or controlled in whole or in part by Defendant, without the necessity of identification or prior notice; and

C. Defendant Espitia 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 Order. The person interviewed may have counsel present.

Provided, however, that nothing in this 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)).

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COMPLETE SETTLEMENT

XV.

IT IS FURTHER ORDERED that entry of the foregoing Order shall constitute a final judgment and order in this matter. The entry of the foregoing Order shall constitute a full, complete, and final settlement of this action.

SEVERABILITY

XVI.

IT IS FURTHER ORDERED that the provisions of this Order are separate and severable from one another. If any provision is stayed or determined to be invalid, the remaining provisions shall remain in full force and effect.

RETENTION OF JURISDICTION

XVII.

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

SO STIPULATED:

FOR THE FEDERAL TRADE COMMISSION: FOR THE DEFENDANT:

JAMES A. KOHM
Associate Director for Enforcement

ROBERT KAYE
Assistant Director for Enforcement

s/ Patricia F. Bak
PATRICIA F. BAK A5500988
EDWIN RODRIGUEZ A5500818

s/ German Espitia
GERMAN ESPITIA (*Pro Se*)
and as principal of Instant Way Corporation,
Instant Way dba Marketing Solutions, Art
Trading Group, Inc., and Art Trading
Group dba Marketing Solutions
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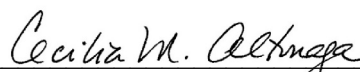
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Counsel for Plaintiff

botulex100@hotmail.com (e-mail)
espitiagerman@hotmail.com (e-mail)

JUDGMENT IS THEREFORE ENTERED pursuant to all the terms and conditions recited above.

DONE AND ORDERED in Chambers at Miami, Florida this 22nd day of August, 2007.



CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE

cc: Magistrate Judge William C. Turnoff
counsel of record