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12  
13 UNITED STATES DISTRICT COURT  
14 CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

15 FEDERAL TRADE COMMISSION,

16 Plaintiff,

CV-99-13003-HLH (Mcx)

17 v.

18 MODERN CONCEPT MARKETING, INC.,  
19 *et al.*,

20 Defendants.

**STIPULATED FINAL  
JUDGMENT AND ORDER FOR  
PERMANENT INJUNCTION  
AND MONETARY RELIEF**

No hearing required

21  
22 **STIPULATED FINAL JUDGMENT AND ORDER**

23 Plaintiff, the Federal Trade Commission ("FTC" or "Commission"),  
24 filed a complaint on December 10, 1999, for permanent injunction and  
25 other relief pursuant to Sections 13(b) and 19 of the Federal Trade  
26 Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and Section  
27 6(b) of the Telemarketing and Consumer Fraud and Abuse Prevention Act,  
28

1 15 U.S.C. § 6105(b), charging defendants Modern Concept Marketing,  
2 Inc. ("Modern"), and Joseph Moadeb ("Moadeb") with engaging in unfair  
3 or deceptive acts or practices in connection with the sale, offering  
4 for sale or distribution of nondurable office supplies, including  
5 laser and inkjet printer supplies, in violation of Section 5 of the  
6 FTC Act, 15 U.S.C. § 45, and the FTC's Telemarketing Sales Rule, 16  
7 C.F.R. Part 310. On September 25, 2000, plaintiff filed a first  
8 amended complaint naming Sam Jenkala ("Jenkala") as an additional  
9 defendant.

10 Now the Commission and defendants agree to settlement of this  
11 action, including violations alleged in the first amended complaint of  
12 the FTC Act and the FTC's Telemarketing Sales Rule, without trial or  
13 adjudication of any issue of law or fact herein. Defendants expressly  
14 deny all of the law violations alleged in the complaint. The  
15 Commission and defendants consent to entry of this Stipulated Final  
16 Judgment and Order for Permanent Injunction and Other Equitable Relief  
17 ("Order").

18 NOW, THEREFORE, the Commission and defendants, having requested  
19 the Court to enter this Order, it is **ORDERED, ADJUDGED, AND DECREED** as  
20 follows:  
21

#### 22 **FINDINGS**

23 1. This is an action by the Commission instituted under  
24 Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and  
25 Section 6(b) of the Telemarketing and Consumer Fraud and Abuse  
26 Prevention Act, 15 U.S.C. § 6105(b) .  
27  
28



1 of this Order by personal service or otherwise, whether acting  
2 directly or through any corporation, subsidiary, division or other  
3 device. The term "defendants" refers inclusively to Modern Concept  
4 Marketing, Inc., Joseph Moadeb, and Sam Jenkala, and any combination  
5 thereof.

6 2. "Consumer" means any person, including any individual, sole  
7 proprietorship, limited or general partnership, corporation or other  
8 business, nonprofit or government entity.

9 3. "Telemarketing" means any business activity (which includes,  
10 but is not limited to, initiating or receiving telephone calls,  
11 managing others who initiate or receive telephone calls, operating an  
12 enterprise that initiates or receives telephone calls, owning an  
13 enterprise that initiates or receives telephone calls, or otherwise  
14 participating as an officer, director, employee or independent  
15 contractor in an enterprise that initiates or receives telephone  
16 calls), that involves attempts to induce consumers to purchase any  
17 item, product, good, service, partnership interest, trust interest or  
18 other beneficial interest, or to enter a contest for a prize, by means  
19 of telephone sales presentations, either exclusively or in conjunction  
20 with the use of other forms of marketing.

21 4. "Assisting others" means knowingly providing any of the  
22 following goods or services to another entity: (1) performing customer  
23 service functions, including, but not limited to, receiving or  
24 responding to consumer complaints; (2) formulating or providing, or  
25 arranging for the formulation or provision of, any telephone sales  
26 script or any other marketing material; (3) providing names of, or  
27 assisting in the generation of, potential customers; or (4) performing  
28 marketing services of any kind.

1           5.    The terms "and" and "or" have both conjunctive and  
2 disjunctive meanings.

3           6.    "Employment" includes any affiliation with any business,  
4 including the performance of services as an officer, owner, manager,  
5 supervisor, employee, consultant, or independent contractor; and  
6 "employer" includes any and all individuals or entities for whom any  
7 defendant performs services as an employee, consultant, or independent  
8 contractor.

9           7.    A requirement that any defendant "notify the Commission"  
10 shall mean that the defendant shall send the specified information via  
11 first-class mail, costs prepaid, to Regional Director, Northwest  
12 Region, Federal Trade Commission, 915 Second Ave., Suite 2896,  
13 Seattle, Washington, 98174. Attn: FTC v. Modern Concept Marketing,  
14 Inc., et al., CV-99-13003-HLH (Mcx)(U.S. Dist. Ct., C.D. Cal.).

15  
16                   **I.    PROHIBITED BUSINESS ACTIVITIES PURSUANT TO FTC ACT**

17           A.    **IT IS HEREBY ORDERED** that, in connection with the  
18 advertising, marketing, promoting, offering for sale, or sale of laser  
19 and inkjet printer supplies or any other nondurable office supplies,  
20 defendants are hereby permanently restrained and enjoined from:

21                   1.    Making any express or implied representation:

22                           a.    That any remanufactured laser toner cartridge  
23 offered for sale provides double or triple the page  
24 output of Hewlett Packard ("HP"), IBM Lexmark or any  
25 other printer manufacturer's cartridges.

26                           b.    That any laser toner or inkjet cartridge offered  
27 for sale provides any increased page output or  
28 otherwise lasts longer when compared to HP, IBM

1 Lexmark, or any other printer manufacturer's  
2 cartridges, unless, at the time of making the  
3 representation, defendants possess and rely on  
4 competent and reliable evidence that substantiates the  
5 representation, including test results showing that  
6 the exact product offered to the consumer will give  
7 that increased page output or otherwise last longer.

8 c. That any laser toner or inkjet cartridge offered  
9 for sale provides any cost savings when compared to  
10 HP, IBM Lexmark, or any other printer manufacturer's  
11 cartridges, unless, at the time of making the  
12 representation, defendants possess and rely on  
13 competent and reliable evidence that substantiates the  
14 representation.

15 d. That defendants have a special relationship with  
16 HP, IBM Lexmark, or any other printer manufacturer,  
17 unless such is the case and that relationship is  
18 documented in writing.

19 e. That any laser toner or inkjet cartridge offered  
20 for sale is a new HP, IBM Lexmark, or other printer  
21 manufacturer's cartridge, unless new cartridges of the  
22 stated brand are actually provided to the consumer to  
23 whom the statement is made.

24 2. Making any express or implied misrepresentation:

25 a. Regarding the consumer's right to a refund or to  
26 return merchandise for credit.

27 b. Regarding the existence or length of any trial  
28 period.

1 c. That a product is being sent on a free trial  
2 basis or that billing will be delayed.

3 d. Regarding the per unit or total amount the  
4 consumer is obligated to pay.

5 e. That the consumer has a contract or pre-existing  
6 order or other obligation to make any additional  
7 purchases.

8 3. Failing to disclose during every telephone sales call  
9 (including opener, closer, reorder, verifier, or any other  
10 sales-related call) where laser toner cartridges are  
11 mentioned, on each invoice provided to consumers, and on any  
12 website, that any cartridges offered for sale are  
13 "remanufactured" or "recycled", unless the cartridges sold  
14 to the consumer are actually new cartridges. The word  
15 "remanufactured" or "recycled" shall be spelled out fully.

16 4. Failing to disclose, during every telephone sales  
17 presentation (including opener, closer, reorder, verifier,  
18 or any other sales-related call), other than a call in which  
19 no prices are discussed and no sale is made, the total  
20 amount that the consumer will be charged for any order,  
21 including any shipping, handling, or insurance.

22 5. Failing to disclose, at least once during each initial  
23 and reorder sales call, and again whenever a consumer  
24 inquires about returns or refunds, any limitation on  
25 obtaining refunds or credits or on returning merchandise,  
26 including any time limitation or any charge that may be  
27 assessed for returning merchandise.  
28





1           2.    The consumer had agreed to pay a certain price for  
2           supplies shipped by defendants.

3           B.    Violating or assisting others in violating Section  
4 310.3(a)(2)(i) of the Telemarketing Sales Rule, 16 C.F.R. §  
5 310.3(a)(2)(i), by misrepresenting, directly or by implication, the  
6 total costs to purchase, receive, or use the offered goods.

7           C.    Violating or assisting others in violating Section  
8 310.3(a)(2)(iii) of the Telemarketing Sales Rule, 16 C.F.R. §  
9 310.3(a)(2)(iii), by misrepresenting, directly or by implication,  
10 material aspects of the performance, efficacy, nature, or central  
11 characteristics of the offered goods, including, but not limited to,  
12 misrepresenting that any laser toner cartridge or inkjet refill lasts  
13 longer or is of higher quality than those usually used by the  
14 consumer, or are OEM (original equipment manufacturer) products.

15           D.    Violating or assisting others in violating Section  
16 310.3(a)(2)(iv) of the Telemarketing Sales Rule, 16 C.F.R. §  
17 310.3(a)(2)(iv), by misrepresenting, directly or by implication,  
18 material aspects of the nature or terms of defendants' refund,  
19 cancellation, exchange, or repurchase policy, including, but not  
20 limited to, misrepresenting that consumers can return supplies with no  
21 further obligation if they are not satisfied.

22           E.    Violating or assisting others in violating Section 310.3(b)  
23 of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(b), by providing  
24 substantial assistance or support to any seller or telemarketer when  
25 defendants know or consciously avoid knowing that the seller or  
26 telemarketer is engaged in any act or practice that violates Section  
27 310.3(a) or Section 310.4 of the Telemarketing Sales Rule, 16 C.F.R.  
28 §§ 310.3(a) or 310.4.

1 F. Violating or assisting others in violating any other  
2 provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310.

3  
4 **III. MONITORING COMPLIANCE OF SALES PERSONNEL**

5 **IT IS FURTHER ORDERED** that defendants, in connection with (a) any  
6 business owned or operated by defendant Modern or any business where  
7 either individual defendant is the majority owner of the business, or  
8 directly or indirectly manages or controls the business, and (b) the  
9 business is engaged in (i) telemarketing; (ii) the advertising,  
10 offering for sale, sale, or distribution of any nondurable office  
11 supplies; or (iii) assisting others in telemarketing, advertising,  
12 offering for sale, sale, or distribution of nondurable office  
13 supplies, are hereby permanently restrained and enjoined from:

14 A. Failing to take reasonable steps sufficient to monitor and  
15 ensure that all employees and independent contractors engaged in sales  
16 or other customer service functions comply with Paragraphs I and II of  
17 this Order. These steps shall include adequate monitoring of sales  
18 presentations or other calls with customers, and shall also include,  
19 at a minimum, the following: (1) listening to a representative sample  
20 of the oral representations made by persons engaged in sales or other  
21 customer service functions; (2) establishing a procedure for receiving  
22 and responding to consumer complaints; and (3) ascertaining the number  
23 and nature of consumer complaints regarding transactions in which each  
24 employee or independent contractor is involved; provided that this  
25 Paragraph does not authorize or require the defendant to take any  
26 steps that violate any federal, state, or local laws;

27 B. Failing promptly to investigate fully any consumer complaint  
28 received by any business to which this Paragraph applies; and

1 C. Failing to take corrective action with respect to any sales  
2 person whom defendants determine is not complying with this Order,  
3 which may include training, disciplining, and/or terminating the sales  
4 person.

#### 6 IV. PERFORMANCE BOND

7 **IT IS FURTHER ORDERED** that defendants, whether acting directly or  
8 indirectly through any persons or entities under their control, are  
9 hereby permanently restrained and enjoined from engaging in  
10 telemarketing, advertising, marketing, promoting, offering for sale,  
11 or sale of laser and inkjet printer supplies or any other nondurable  
12 office supplies unless, prior to engaging in these activities,  
13 defendants first obtain a performance bond ("the bond") in the  
14 principal sum of \$1,000,000. The terms and conditions of the bond  
15 requirement are as follows:

16 A. The bond shall be conditioned upon compliance with Section  
17 5(a) of the FTC Act, 15 U.S.C. § 45(a), the Telemarketing Sales Rule,  
18 16 C.F.R. Part 310, and the provisions of this Order. The bond shall  
19 be deemed continuous and remain in full force and effect as long as  
20 defendants are engaging in telemarketing, advertising, marketing,  
21 promoting, offering for sale, or sale of laser and inkjet printer  
22 supplies or any other nondurable office supplies. Defendants shall  
23 maintain the bond for a period of one year after they provide notice  
24 to the Commission that they have ceased engaging in telemarketing,  
25 advertising, promotion, offering for sale, or sale of laser and inkjet  
26 printer supplies or any other nondurable office supplies. The bond  
27 shall cite this Order as the subject matter of the bond, and shall  
28 provide surety thereunder against financial loss resulting from whole

1 or partial failure of performance due, in whole or in part, to any  
2 violation of Section 5(a) of the FTC Act, the Telemarketing Sales  
3 Rule, or the provisions Sections I-II of this Order.

4 B. The bond shall be an insurance agreement providing surety  
5 for financial loss issued by a surety company that is admitted to do  
6 business in each state in which defendants, or any entity directly or  
7 indirectly under their control, are doing business and that holds a  
8 Federal Certificate of Authority As Acceptable Surety On Federal Bond  
9 and Reinsuring. The bond shall be in favor the Federal Trade  
10 Commission for the benefit of any consumer injured as a result of any  
11 activities that required obtaining the bond.

12 C. The bond required pursuant to this Paragraph is in addition  
13 to, and not in lieu of, any other bonds required by federal, state or  
14 local law.

15 D. At least 10 days before commencing any activity that  
16 requires obtaining the bond, defendants shall provide notice to the  
17 Commission describing in reasonable detail the activities and include  
18 in the notice a copy of the bond obtained.

19 E. Defendants shall not disclose the existence of the bond to  
20 any consumer without simultaneously making the following disclosure:  
21 "THE BOND IS REQUIRED BY ORDER OF THE U.S. DISTRICT COURT AS PART OF A  
22 FINAL ORDER AGAINST MODERN CONCEPT MARKETING, INC., in *FTC v. Modern*  
23 *Concept Marketing, Inc., et al.*, CV-99-13003-HLH (Mcx), U.S. District  
24 Court for the Central District of California." The disclosure shall be  
25 stated or set forth in a clear and conspicuous manner. If in print,  
26 the disclosure shall be separated from all other text, in 100 percent  
27 black ink against a light background, in print at least as large as  
28

1 the main text of the sales material or document, and enclosed in a box  
2 containing only the required disclosure.

3  
4 **V. MONETARY JUDGMENT**

5 **IT IS FURTHER ORDERED** that:

6 A. Defendants are jointly and severally liable for payment of  
7 equitable monetary relief, including, but not limited to, consumer  
8 redress and the cost of any attendant expenses of administration of  
9 any redress fund, in the amount of \$2,000,000. Defendants shall pay  
10 this monetary judgment in two payments, with the first payment of  
11 \$1,000,000 payable within five days of the date of entry of this Order  
12 and the second payment of \$1,000,000 payable on the 180th day after  
13 the date of entry of this Order. Defendants shall pay the Commission  
14 by wire transfer or certified or cashier's check.

15 B. The second payment required by Paragraph V.A shall be  
16 secured as specified in Paragraph VI.

17 C. Any assets collected by the Commission pursuant to the  
18 judgment set forth in this Paragraph shall be deposited into an  
19 account to be maintained by the Commission or its agent. Upon the  
20 final disposition of this action, these funds shall be either:  
21 (1) used to provide consumer redress and any administrative costs  
22 associated with providing such redress; or (2) paid to the U.S.  
23 Treasury as equitable disgorgement, if the Commission in its sole  
24 discretion deems that consumer redress is impractical. Defendants  
25 shall have no right to contest the manner of distribution chosen by  
26 the Commission. No portion of any payments under the judgment herein  
27 shall be deemed a payment of any fine, penalty, or punitive  
28 assessment.

1 D. Defendants further stipulate for purposes of the settlement  
2 only that the facts as alleged in the Commission's complaint in this  
3 action shall be taken as true in the event of any subsequent  
4 litigation to collect amounts due pursuant to this Order through a  
5 nondischargeability action in any bankruptcy proceeding.

6  
7 **VI. SECURITY FOR MONETARY JUDGMENT**

8 **IT IS FURTHER ORDERED** that:

9 A. Upon entry of this Order, defendants shall immediately  
10 execute and deliver to the FTC a promissory note and deed of trust, in  
11 forms approved prior to the filing of this Order by the FTC,  
12 securing the second payment of the monetary judgment ordered in  
13 Paragraph V.A in the amount of \$1,000,000 to the FTC. The FTC's  
14 interest will be a second deed of trust on the property listed in  
15 Appendix A, which appendix shall state all interests in the real  
16 property described, along with the name(s) of titled owner(s) and  
17 their respective interests. Defendants represent and acknowledge that  
18 the FTC is relying on defendants' material representations that the  
19 value of the listed assets, less encumbrances, liens, and estimated  
20 selling costs, exceeds \$1,000,000. Defendants agree that, as of the  
21 date they sign this Stipulated Final Judgment, they shall not further  
22 encumber the assets pledged as security except with the express prior  
23 written permission of the staff of the FTC.

24 B. In the event that defendants fail to make the second payment  
25 of the monetary judgment on or before the scheduled date, the full  
26 unpaid amount of the monetary judgment, plus interest computed  
27 pursuant to 28 U.S.C. § 1961 from the date of default to the date of  
28 payment, shall immediately be due and payable.

1 C. Within 10 days of the payment of the full amount required by  
2 Paragraph V.A, the FTC shall provide to defendants whatever documents  
3 are necessary to cancel any liens or other encumbrances in favor of  
4 the FTC.

5  
6 **VII. RIGHT TO REOPEN**

7 **IT IS FURTHER ORDERED** that within five business days after the  
8 date this Stipulated Order is signed by the Court, defendants Moadeb  
9 and Jenkala shall each submit to the Commission a truthful sworn  
10 statement, in the form attached hereto as Appendix B, that shall  
11 reaffirm and attest to the truthfulness, accuracy, and completeness of  
12 their respective financial statements, namely those of Moadeb and  
13 Jenkala, provided to the Commission on March 6, 2001. The Commission's  
14 agreement to this Order is expressly premised upon the financial  
15 condition of these defendants, as represented in their financial  
16 statements, which contain material information upon which the  
17 Commission relied in negotiating and agreeing upon this Order.

18 If, upon motion of the Commission, the Court finds that Moadeb or  
19 Jenkala failed to file the sworn statement required by this Paragraph,  
20 or that either of them failed to disclose any material asset, or  
21 materially misrepresented the value of any asset, or made any other  
22 material misrepresentation in or omission from the financial  
23 statement, the Commission may either (1) request that the judgment  
24 herein be reopened against that defendant for the purpose of requiring  
25 additional monetary consumer redress or obtaining other equitable  
26 relief up to the total amount of consumer injury in this matter, or  
27 (2) seek to obtain other equitable relief.





1 either voluntarily, or as required by any law, regulation, or court  
2 order.

3  
4 **XI. ACKNOWLEDGMENT OF RECEIPT OF ORDER**

5 **IT IS FURTHER ORDERED** that, within five business days after  
6 receipt by defendants of this Order as entered by the Court,  
7 defendants shall submit to the Commission truthful sworn and notarized  
8 statements, in the form shown on Appendix C, that shall acknowledge  
9 receipt of this Order.

10  
11 **XII. RECORD KEEPING**

12 **IT IS FURTHER ORDERED** that, for a period of five years from the  
13 date of entry of this Order, defendant Modern, and individual  
14 defendants Moadeb and Jenkala, in connection with (a) any business  
15 owned or operated by defendant Modern or any business where either  
16 individual defendant is the majority owner of the business, or  
17 directly or indirectly manages or controls the business, and (b) the  
18 business is engaged in any of the following: (i) telemarketing; (ii)  
19 the advertising, offering for sale, sale or distribution of any  
20 nondurable office supplies; or (iii) assisting others either in  
21 telemarketing, or in the advertising, offering for sale, sale or  
22 distribution of nondurable office supplies, are hereby restrained and  
23 enjoined from failing to create, and from failing to retain for a  
24 period of three years following the date of such creation, unless  
25 otherwise specified:

- 26 1. Books, records, and accounts that, in reasonable  
27 detail, accurately and fairly reflect the cost of goods or  
28

1 services sold, revenues generated, and the disbursement of  
2 such revenues.

3 2. Records accurately reflecting: the name, address, and  
4 telephone number of each person employed in any capacity,  
5 including as an independent contractor; that person's job  
6 title or position; the date upon which the person commenced  
7 work; and the date and reason for the person's termination,  
8 if applicable. These records shall be retained for any  
9 terminated employee for a period of two years following the  
10 date of termination.

11 3. Records containing the names, addresses, phone  
12 numbers, dollar amounts paid, quantity of items or services  
13 purchased, and description of items or services purchased,  
14 for all consumers who were sold, invoiced or shipped any  
15 goods or services, or from whom the business accepted money  
16 or other items of value.

17 4. Records that reflect, for every consumer complaint and  
18 dispute, and every request for a return, refund, credit, or  
19 order cancellation, whether received directly or indirectly:

20 a. The consumer's name, address, telephone number,  
21 and the dollar amount paid by the consumer.

22 b. The written complaint, dispute, or request, if  
23 any, and the date of the complaint or refund request.

24 c. If the complaint, dispute, or request, was made  
25 verbally, any tape recording of the verbal complaint,  
26 dispute, or request, and a written summary of its  
27 nature, date, and a way of locating any tape  
28 recording.

1 d. The basis of the complaint, dispute, or request,  
2 including the name of any salesperson complained  
3 against, and the nature and result of any  
4 investigation conducted concerning any complaint.

5 e. Each response and the date of the response.

6 f. Any final resolution and the date of the  
7 resolution.

8 g. In the event of a denial of a refund request, the  
9 reason for the denial.

10 5. Copies of all materially different sales scripts,  
11 training materials, advertisements or other marketing  
12 materials utilized; *provided* that copies of all sales  
13 scripts, training materials, advertisements or other  
14 marketing materials utilized shall be retained for three  
15 years after the last date of dissemination of any such  
16 materials.

### 17 18 **XIII. COMPLIANCE REPORTING**

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

21 A. For a period of five years from the date of entry of this  
22 Order, each defendant shall notify the Commission of the following:

23 1. Any changes in defendant's residence, mailing  
24 addresses, and telephone numbers within 10 days of the date  
25 of such change.

26 2. Any change in defendant's employment status (including  
27 self-employment) within 10 days of the change. The notice  
28 shall include the name and address of each business that

1 defendant is affiliated with or employed by, a statement of  
2 the nature of the business, and a statement of defendant'  
3 duties and responsibilities in connection with the business  
4 or employment.

5 3. Any proposed change in the structure of defendant  
6 Modern, or any proposed change in any business entity owned  
7 or controlled by defendant Moadeb and/or Jenkala, such as  
8 creation, incorporation, dissolution, assignment, sale,  
9 merger, creation or dissolution of subsidiaries, proposed  
10 filing of a bankruptcy petition, change in the corporate  
11 name or address, or any other changes that may affect  
12 compliance obligations arising out of this Order, 30 days  
13 prior to the effective date of any proposed change;  
14 *provided, however,* that, with respect to any proposed change  
15 in the corporation about which either defendant learns less  
16 than 30 days prior to the date the action is to take place,  
17 defendant shall notify the Commission as soon as is  
18 practicable after learning of the proposed change.

19 B. One hundred eighty days after the date of entry of this  
20 Order, each defendant shall provide a written report to the FTC, sworn  
21 to under penalty of perjury, setting forth in detail the manner and  
22 form in which the defendant has complied and is complying with this  
23 Order. This report shall include, but not be limited to:

24 1. Defendant's then current residence address and  
25 telephone number.

26 2. Defendant's then current employment, business  
27 addresses, and telephone numbers, a description of the  
28

1 business activities of each such employer, and defendant's  
2 title and responsibilities for each employer.

3 3. A copy of each acknowledgment of receipt of this Order  
4 obtained by defendant pursuant to Paragraph XVI.

5 4. A statement describing the manner in which defendant  
6 has complied and is complying with each Paragraph of this  
7 Order, including a statement indicating whether any  
8 performance bond has been obtained by any defendant pursuant  
9 to Paragraph IV of this Order and attaching a copy of the  
10 bond obtained.

#### 11 12 **XIV. ACCESS TO BUSINESS PREMISES**

13 **IT IS FURTHER ORDERED** that, for a period of five years from the  
14 date of entry of this Order, for the purpose of further determining  
15 compliance with this Order, defendants shall permit representatives of  
16 the Commission, within three business days of receipt of written  
17 notice from the Commission:

18 A. Access during normal business hours to any office, or  
19 facility storing documents, in connection with (a) any business owned  
20 or operated by defendant Modern or any business where either  
21 individual defendant is the majority owner of the business, or  
22 directly or indirectly manages or controls the business, and (b) the  
23 business is engaged in any of the following: (i) telemarketing; (ii)  
24 the advertising, offering for sale, sale or distribution of any  
25 nondurable office supplies; or (iii) assisting others either in  
26 telemarketing, or in the advertising, offering for sale, sale or  
27 distribution of nondurable office supplies. In providing this access,  
28 defendants shall permit representatives of the Commission to inspect

1 and copy all documents relevant to any matter contained in this Order;  
2 and shall permit Commission representatives to remove documents  
3 relevant to any matter contained in this Order for a period not to  
4 exceed five business days so that the documents may be inspected,  
5 inventoried, and copied at the Commission's expense.

6 B. To interview the officers, directors, and employees,  
7 including all personnel involved in responding to consumer complaints  
8 or inquiries, and all sales personnel, whether designated as  
9 employees, consultants, independent contractors or otherwise, of any  
10 business to which Paragraph XIV.A applies, concerning matters relating  
11 to compliance with the terms of this Order. The person interviewed may  
12 have counsel present.

13 *Provided* that, upon application of the Commission and for good  
14 cause shown, the Court may enter an *ex parte* order granting immediate  
15 access to defendants' business premises for the purposes of inspecting  
16 and copying all documents relevant to any matter contained in this  
17 Order.

#### 18 19 **XV. FTC'S AUTHORITY TO MONITOR COMPLIANCE**

20 **IT IS FURTHER ORDERED** that the Commission is authorized to  
21 monitor defendants' compliance with this Order by all lawful means,  
22 including, but not limited to, the following means:

23 A. The Commission is authorized, without further leave of this  
24 Court, to obtain discovery from any person in the manner provided by  
25 Chapter V of the Federal Rules of Civil Procedure, Fed. R. Civ. P.  
26 26-37, including the use of compulsory process pursuant to Fed. R.  
27 Civ. P. 45, for the purpose of monitoring and investigating  
28 defendants' compliance with any provision of this Order.

1 B. The Commission is authorized to use representatives posing  
2 as consumers and suppliers to defendants, defendants' employees, or  
3 any other entity managed or controlled in whole or in part by any  
4 defendant, without the necessity of prior notice.

5 C. Nothing in this Order shall limit the Commission's lawful  
6 use of compulsory process, pursuant to Sections 9 and 20 of the FTC  
7 Act, 15 U.S.C. §§ 49, 57b-1, to investigate whether defendants have  
8 violated any provision of this Order, Section 5 of the FTC Act, 15  
9 U.S.C. § 45, or the Telemarketing Sales Rule, 16 C.F.R. Part 310.

10  
11 **XVI. ORDER DISTRIBUTION**

12 **IT IS FURTHER ORDERED** that, for a period of five years from the  
13 date of entry of this Order, defendants shall:

14 A. Provide a copy of pages 1-11 and 25 of this Order to, and  
15 obtain a signed and dated acknowledgment of receipt of the same from,  
16 each officer or director, each individual serving in a management  
17 capacity, all personnel involved in responding to consumer complaints  
18 or inquiries, and all sales personnel, whether designated as  
19 employees, consultants, independent contractors or otherwise,  
20 immediately upon employing or retaining any such persons, in  
21 connection with (a) any business owned or operated by defendant Modern  
22 or any business where either individual defendant is the majority  
23 owner of the business, or directly or indirectly manages or controls  
24 the business, and (b) the business is engaged in any of the following:  
25 (i) telemarketing; (ii) the advertising, offering for sale, sale or  
26 distribution of any nondurable office supplies; or (iii) assisting  
27 others either in telemarketing, or in the advertising, offering for  
28 sale, sale or distribution of nondurable office supplies.

1 B. Maintain for a period of three years after creation, and  
2 upon reasonable notice, make available to representatives of the  
3 Commission, the original signed and dated acknowledgments of the  
4 receipt of copies of this Order obtained pursuant to Paragraph XVI.A  
5 of this Order.

6  
7 **XVII. INDEPENDENCE OF OBLIGATIONS**

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

11  
12 **XVIII. RETENTION OF JURISDICTION**

13 **IT IS FURTHER ORDERED** that this Court shall retain jurisdiction  
14 of this matter for all purposes, including the construction,  
15 modification, and enforcement of this Order.

16  
17 **SO STIPULATED:**

18 Dated: March \_\_\_\_, 2001

\_\_\_\_\_  
RANDALL H. BROOK  
KATHRYN C. DECKER  
JENNIFER LARABEE (CA Bar #163989)  
Attorneys For Plaintiff

21 Dated: March \_\_\_\_, 2001

\_\_\_\_\_  
MODERN CONCEPT MARKETING, INC.  
By: JOSEPH MOADEB, President

24 Dated: March \_\_\_\_, 2001

\_\_\_\_\_  
JOSEPH MOADEB  
Individually and as an officer of  
Modern Concept Marketing, Inc.

27 Dated: March \_\_\_\_, 2001

\_\_\_\_\_  
SAM JENKALA



Individually and as an officer of  
Modern Concept Marketing, Inc.

1  
2 APPROVED AS TO FORM AND CONTENT

3 Dated: March \_\_\_\_\_, 2001

4 \_\_\_\_\_  
Lewis Rose  
5 Collier Shannon Scott, PLLC  
3050 K Street, NW, Suite 400  
6 Washington, DC 20007  
Attorney for Defendants

7  
8 **IT IS SO ORDERED.**

9 Dated: \_\_\_\_\_, 2001

10 \_\_\_\_\_  
HARRY L. HUPP  
11 United States District Judge

1 **APPENDIX A**

2 Federal Trade Commission v. Modern Concept Marketing, Inc., et al.,  
3 STIPULATED FINAL JUDGMENT AND ORDER FOR PERMANENT INJUNCTION AND OTHER  
4 EQUITABLE RELIEF

5 LIST OF PLEDGED ASSETS, LIENS, AND OWNERSHIP INTERESTS

6 Pledged Asset: Apartment building located at 4424 Woodman Ave., Van  
7 Nuys, CA 91423. Legal description: South 60 feet of Lots 1 and 2,  
8 Tract 6027, Map Book 67, p. 56.

9 Owner: Joseph Moadab, a married individual owning the property as his  
10 separate property, with spouse disclaiming any community property  
11 interest in the property.

12 Liens: Outstanding aggregate balance of less than \$1.5 million on  
13 loans.  
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1 I declare under penalty of perjury under the laws of the United  
2 States that the foregoing is true and correct. Executed on [date], at  
3 [city and state].

4  
5 \_\_\_\_\_  
6 [Full name of defendant]

7  
8 State of California  
9 County of \_\_\_\_\_

10  
11 Subscribed and sworn to before me  
12 this \_\_\_\_ day of \_\_\_\_\_, 2001.

13  
14  
15 \_\_\_\_\_  
16 Notary Public

17 My Commission Expires:  
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19 \_\_\_\_\_

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1 **APPENDIX C**

2 Federal Trade Commission v. Modern Concept Marketing, Inc., et al.,  
3 STIPULATED FINAL JUDGMENT AND ORDER FOR PERMANENT INJUNCTION AND OTHER  
4 EQUITABLE RELIEF

5 **UNITED STATES DISTRICT COURT**  
6 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
7 **WESTERN DIVISION**

8 \_\_\_\_\_ )  
9 FEDERAL TRADE COMMISSION, )  
10 )  
11 Plaintiff, )  
12 v. ) CV-99-13003-HLH (Mcx)  
13 )  
14 MODERN CONCEPT MARKETING, INC., )  
15 *et al.* )  
16 )  
17 Defendants. )  
18 \_\_\_\_\_ )

19 [Name of defendant], being duly sworn, hereby states and affirms  
20 as follows:

21 1. My name is \_\_\_\_\_. My current residence  
22 address is \_\_\_\_\_. I am a citizen  
23 of the United States and am over the age of eighteen. I have personal  
24 knowledge of the facts set forth in this Affidavit.

25 2. I am a defendant in Federal Trade Commission v. Modern  
26 Concept Marketing, Inc., et al., (United States District Court for the  
27 Central District of California).

28 3. On \_\_\_\_\_, I received a copy of the  
Stipulated Final Judgment and Order for Permanent Injunction and Other  
Equitable Relief, which was signed by the Honorable Harry L. Hupp, and  
entered by the Court on \_\_\_\_\_. A true and correct  
copy of the Order I received is appended to this Affidavit.

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I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on [date], at [city and state].

\_\_\_\_\_  
[Full name of defendant]

State of California  
County of \_\_\_\_\_

Subscribed and sworn to before me  
this \_\_\_\_ day of \_\_\_\_\_, 2001.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

\_\_\_\_\_

**CERTIFICATE RE SERVICE**

1  
2 \_\_\_\_\_ I am an attorney representing plaintiff Federal Trade  
3 Commission in this matter. My business address is 915 2nd  
4 Ave. Ste 2896, Seattle, WA 98174.

5 \_\_\_\_\_ I am employed by the plaintiff Federal Trade Commission. My  
6 business address is 915 2nd Ave. Ste 2896, Seattle, WA 98174. I  
7 am acting under the direction of one of the attorneys assigned to  
8 this matter.

9 On April \_\_\_\_, 2001 I served a true and correct copy of the attached  
10 document on each of the defendants in this matter by sending it via  
11 overnight courier to the following addresses:

12 Lewis Rose  
13 Collier Shannon Scott, PLLC  
14 3050 K Street NW, Suite 400  
15 Washington, DC 20007

16 I certify that the foregoing is true and correct.

17 Executed on April \_\_\_\_, 2001 at Seattle, Washington.  
18  
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