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11  
12 IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

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15 FEDERAL TRADE COMMISSION AND  
16 STATE OF ILLINOIS,

17 Plaintiffs,

18 v.

19 MEMBERSHIP SERVICES, INC., a  
Delaware corporation, and

20 JAMES M. SCHWINDT, individually  
21 and as an officer of Membership  
Services, Inc.,

22 Defendants.

01 CV 1868 JM (POR)

SETTLEMENT AND STIPULATED  
FINAL ORDER AS TO DEFENDANT  
MEMBERSHIP SERVICES, INC.

23  
24 Plaintiffs Federal Trade Commission ("Commission" or "FTC")  
25 and the State of Illinois filed a Complaint for a permanent  
26 injunction and other equitable relief pursuant to Sections 13(b)  
27 and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C.  
28 §§ 53(b) and 57b, the Telemarketing and Consumer Fraud and Abuse

1 Prevention Act ("Telemarketing Act"), 15 U.S.C. §§ 6101 et seq.,  
2 and the Illinois Consumer Fraud and Deceptive Business Practices  
3 Act ("ICFA"), 815 ILCS 505. The Complaint charged Defendants with  
4 violations of Section 5(a) of the FTC Act, as amended, 15 U.S.C.  
5 § 45(a), and the Commission's Trade Regulation Rule entitled  
6 Telemarketing Sales Rule (the "Rule"), 16 C.F.R. Part 310, as well  
7 as Section 2 of the Illinois Consumer Fraud and Deceptive Business  
8 Practices Act, 815 ILCS 505/2.

9 Plaintiffs and Defendant MSI have agreed to settle the charges  
10 against Defendant MSI by stipulating to entry of a final order with  
11 the terms and conditions set forth below, without adjudication of  
12 any issue of fact or law and without Defendant MSI admitting  
13 liability for any of the matters alleged in the Complaint.

14 Plaintiffs and Defendant MSI having requested the Court to  
15 enter this Settlement and Stipulated Final Order ("Order"), the  
16 Court hereby finds and orders as follows:

17 **DEFINITIONS**

18 1. "**Consumer**" means an actual or potential purchaser,  
19 customer, subscriber, or natural person.

20 2. "**Credit card loss protection**" means the advertisement,  
21 promotion, offering for sale, or sale of any product or service  
22 represented to register credit or debit accounts, including credit  
23 card accounts, or protect, indemnify, or reimburse the holder of a  
24 credit or debit account against unauthorized use or charges.

25 3. "**Credit-related good or service**" means any good or  
26 service that is purported directly or indirectly to (1) provide to  
27 consumers, arrange for consumers to receive, or assist consumers in  
28 receiving grants, loans, financing, credit or debit cards, or other

1 extensions of credit; or (2) provide consumers, arrange for  
2 consumers to receive, or assist consumers in receiving, debt  
3 consolidation, debt relief, or other credit counseling.

4 4. The term "**Defendants**" refers to Defendants Membership  
5 Services, Inc. and James Schwindt, and the agents, servants,  
6 employees, and attorneys of either of them, and all persons or  
7 entities directly or indirectly under the control of either of  
8 them, and all other persons or entities in active concert or  
9 participation with either of them who receive actual notice of this  
10 Order by personal service or otherwise, and each such person.

11 5. The term "**document**" is synonymous in meaning and equal in  
12 scope to the usage of the term in Federal Rule of Civil Procedure  
13 34(a), and includes writings, drawings, graphs, charts,  
14 photographs, audio and video recordings, computer records, and  
15 other data compilations from which information can be obtained and  
16 translated, if necessary, through detection devices into reasonably  
17 usable form. A draft or non-identical copy is a separate document  
18 within the meaning of the term.

19 6. "**Material**" means likely to affect a person's choice of, or  
20 conduct regarding, goods or services.

21 7. "**Telemarketing**" means any business activity (whether or  
22 not covered by the Telemarketing Sales Rule, 16 C.F.R. Part 310,  
23 including, but not limited to, initiating or receiving telephone  
24 calls, managing others who initiate or receive telephone calls,  
25 operating an enterprise that initiates or receives telephone calls,  
26 owning an enterprise that initiates or receives telephone calls, or  
27 otherwise participating as an officer, director, employee or  
28 independent contractor in an enterprise that initiates or receives

1 telephone calls) that involves attempts to induce consumers to  
2 purchase any investment, item, good, service, partnership interest,  
3 trust interest or other beneficial interest, or to enter a contest  
4 for a prize, by means of telephone sales presentations, either  
5 exclusively or in conjunction with the use of other forms of  
6 marketing.

7 8. The terms "and" and "or" shall be construed conjunctively  
8 or disjunctively as necessary, and to make the applicable phrase or  
9 sentence inclusive rather than exclusive.

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#### FINDINGS

12 1. This Court has jurisdiction of the subject matter of this  
13 case and over Defendant MSI. Venue in the Southern District of  
14 California is proper.

15 2. The Complaint states a claim upon which relief may be  
16 granted under Sections 5(a), 13(b) and 19 of the FTC Act, 15 U.S.C.  
17 §§ 45(a), 53(b) and 57b; Sections 310.3(a)(2)(iii), 310.3(a)(4),  
18 and 310.4(a)(4) of the Commission's Telemarketing Sales Rule, 16  
19 C.F.R. §§ 310.3(a)(2)(iii), 310.3(a)(4), and 310.4(a)(4); and  
20 Section 2 of the Illinois Consumer Fraud and Deceptive Business  
21 Practices Act, 815 ILCS 505/2.

22 3. Plaintiffs have the authority under Sections 13(b) and 19  
23 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and Sections 7 and 10  
24 of the Illinois Consumer Fraud and Deceptive Business Practices  
25 Act, 815 ILCS 505/7 and 505/10, to seek the relief they have  
26 requested.

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1 4. The activities of Defendants as alleged in the Complaint  
2 are in or affecting commerce, as defined in Section 4 of the FTC  
3 Act, 15 U.S.C. § 44.

4 5. This Order is for settlement purposes only and does not  
5 constitute and shall not be interpreted to constitute an admission  
6 by Defendant MSI that (i) the defendant has engaged in violations  
7 of any law or regulations, including but not limited to the FTC  
8 Act, the Telemarketing Sales Rule, or the Illinois Consumer Fraud  
9 and Deceptive Business Practices Act, or (ii) the facts alleged in  
10 the Complaint, other than the jurisdictional facts, are true.

11 6. Defendant MSI has waived all rights to seek judicial  
12 review or otherwise challenge or contest the validity of this  
13 Settlement and Order. Defendant MSI has also waived all claims  
14 under the Equal Access to Justice Act, 28 U.S.C. § 2412, *as amended*  
15 *by PL 104-121, 110 Stat. 847, 863-64 (1996)*, concerning prosecution  
16 of this action to the date of this Order.

17 7. Entry of this Settlement and Order is in the public  
18 interest.

19  
20 **ORDER**

21 **I.**

22 **PROHIBITION ON SALE OF CREDIT CARD LOSS PROTECTION**

23 **AND CREDIT-RELATED GOODS OR SERVICES**

24 **IT IS THEREFORE ORDERED AND AGREED** that Defendant MSI, and its  
25 successors, assigns, officers, agents, servants, employees, and  
26 attorneys, and those persons or entities in active concert or  
27 participation with MSI who receive actual notice of this Order by  
28 personal service or otherwise, whether acting directly or through

1 any corporation, subsidiary, division, or other device, are hereby  
2 permanently enjoined from engaging or participating in the  
3 advertising, promoting, offering for sale, or sale of (1) **credit**  
4 **card loss protection**, or (2) any **credit-related good or service**.

5 II.

6 **PROHIBITION ON MISREPRESENTATIONS AND UNAUTHORIZED CHARGES**

7 **IT IS FURTHER ORDERED AND AGREED** that Defendant MSI, and its  
8 successors, assigns, officers, agents, servants, employees, and  
9 attorneys, and those persons or entities in active concert or  
10 participation with MSI who receive actual notice of this Order by  
11 personal service or otherwise, whether acting directly or through  
12 any corporation, subsidiary, division, or other device, in  
13 connection with the advertising, offering for sale, or sale of any  
14 good or service, are hereby permanently enjoined from the  
15 following:

16 A. falsely representing that any **consumer** will be charged  
17 small monthly payments to purchase such good or service;

18 B. falsely representing that any **consumer** has given  
19 authorization for his credit card account to be charged for such  
20 good or service;

21 C. making any express or implied representation of **material**  
22 fact that is false or misleading; or

23 D. causing any **consumer's** credit card account to be charged  
24 for such good or service without having previously obtained the  
25 **consumer's** authorization for such charge.

1 III.

2 PROHIBITION ON VIOLATIONS OF THE TELEMARKETING SALES RULE

3 IT IS FURTHER ORDERED AND AGREED that Defendant MSI, and its  
4 successors, assigns, officers, agents, servants, employees, and  
5 attorneys, and those persons or entities in active concert or  
6 participation with MSI who receive actual notice of this Order by  
7 personal service or otherwise, whether acting directly or through  
8 any corporation, subsidiary, division, or other device, are hereby  
9 permanently restrained and enjoined from the following:

10 A. Violating Section 310.3(a)(2)(iii) of the Telemarketing  
11 Sales Rule, 16 C.F.R. § 310.3(a)(2)(iii), by making any **material**  
12 misrepresentation of any material aspect of the performance,  
13 efficacy, nature, or central characteristics of goods or services;

14 B. Violating Section 310.3(a)(4) of the Telemarketing Sales  
15 Rule, 16 C.F.R. § 310.3(a)(4), by making a false or misleading  
16 statement to induce any person to pay for goods or services,  
17 including but not limited to either of the following statements:  
18 (1) that **consumers** who have not agreed to be charged by Defendants  
19 owe Defendants for goods or services; or 2) that **consumers** will be  
20 charged small monthly payments to purchase products or services; or

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

23 A copy of the Rule is appended to this Order as Attachment A  
24 and is incorporated herein as if fully rewritten. In the event  
25 that the Rule is amended by the Commission in a manner which would  
26 create a new or different standard applicable to the defendant's  
27 obligations under this Order, compliance with the Rule as so  
28 amended shall not be deemed a violation of this Order.

1 IV.

2 PROHIBITION ON VIOLATIONS OF THE ILLINOIS CONSUMER FRAUD AND  
3 DECEPTIVE BUSINESS PRACTICES

4 IT IS FURTHER ORDERED AND AGREED that Defendant MSI, and its  
5 successors, assigns, officers, agents, servants, employees, and  
6 attorneys, and those persons or entities in active concert or  
7 participation with MSI who receive actual notice of this Order by  
8 personal service or otherwise, whether acting directly or through  
9 any corporation, subsidiary, division, or other device, in  
10 connection with the advertising, offering for sale, or sale of any  
11 good or service, are hereby permanently enjoined from violating  
12 Section 2 of the Illinois Consumer Fraud and Deceptive Business  
13 Practices Act, 815 ILCS 505/2 by engaging in the following  
14 practices:

15 A. falsely representing any good or service other than those  
16 goods or services prohibited for sale by defendants in Paragraph I  
17 of this Order;

18 B. falsely representing to consumers, expressly or by  
19 implication, that defendants are affiliated with, or are calling  
20 from or on behalf of Mastercard, Visa, or the consumers' credit  
21 card issuers;

22 C. falsely representing, expressly or by implication, that  
23 consumers have given defendants their credit card accounts to be  
24 billed for defendants' goods or services;

25 D. falsely representing, expressly or by implication, that  
26 consumers will be billed in installment payments for defendants'  
27 goods or services, instead of being billed for the full amount in a  
28 lump sum;



1 E. billing or causing any consumer's credit card accounts to  
2 be billed for defendants' goods or services, without first  
3 obtaining the consumers' express authorization to bill their  
4 accounts; or

5 F. billing or causing any consumer's credit card account to  
6 be billed for defendants' goods or services, when the consumer has  
7 agreed only to receive information about defendants' offer.

8 V.

9 PROHIBITION ON SALE OF CUSTOMER LISTS

10 IT IS FURTHER ORDERED AND AGREED that Defendant MSI, and its  
11 successors, assigns, officers, agents, servants, employees, and  
12 attorneys, and those persons or entities in active concert or  
13 participation with MSI who receive actual notice of this Order by  
14 personal service or otherwise, and each such person, whether acting  
15 directly or through any corporation, limited liability company,  
16 subsidiary, division or other device, are hereby restrained and  
17 enjoined from selling, renting, leasing, transferring or otherwise  
18 disclosing the name, address, telephone number, credit card number,  
19 bank account number or other identifying information of any  
20 consumer or purchaser identified in Defendants' customer database  
21 or files pertaining to Defendants' Low Interest Credit Card Protect  
22 Program ("LICCP")--i.e., the telemarketing program encompassing the  
23 two types of products or services that are the subject of the  
24 Complaint in this matter--to any third party; *provided, however,*  
25 that Defendant MSI may disclose such identifying information to the  
26 Receiver or a law enforcement agency, or as required by any law,  
27 regulation or court order.

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**VI.**

**MONETARY RELIEF**

A. **IT IS FURTHER ORDERED AND AGREED** that judgment is hereby entered against Defendant MSI in the amount of \$1,500,000 (ONE MILLION FIVE HUNDRED THOUSAND DOLLARS).

B. **IT IS FURTHER ORDERED AND AGREED** that all funds paid pursuant to this Section shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including but not limited to consumer redress and any attendant expenses for the administration of any redress fund. In the event 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 Defendants' practices alleged in the complaint. Any funds not used for such equitable relief shall be deposited to the Treasury as disgorgement. Defendants shall have no right to challenge the Commission's choice of remedies under this Paragraph.

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**VII.**

**ACKNOWLEDGMENT OF RECEIPT**

**IT IS FURTHER ORDERED AND AGREED** that, within five (5) business days after entry of this Order, Defendant MSI shall submit to the Commission a truthful sworn and notarized statement that shall acknowledge receipt of this Order as approved by the Court.

VIII.

RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED AND AGREED that, for a period of seven (7) years from the date of entry of this Order, Defendant MSI, to the extent it owns or operates any business, in whole or in part, that is engaged in **telemarketing**, is hereby restrained and enjoined from:

A. Failing to create the following records:

1. Accounting records that, in reasonable detail, accurately and fairly reflect the cost to the business entity of goods or services sold, revenues generated, and the disbursement of such revenues;

2. 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 (but not an entity so engaged); 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; provided, however, that nothing in this provision shall be construed to require the violation of any state or federal law or regulation;

3. Consumer records 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; and

1           4.     Consumer complaint and refund requests (whether  
2 received directly, indirectly or through any third party) and any  
3 responses to those complaints or requests;

4           B.     Failing to retain, for a period of three (3) years, all  
5 records required to be created pursuant to part A of this  
6 Paragraph; and

7           C.     Failing to retain, for a period of two (2) years after  
8 the last date of dissemination, copies of all sales scripts,  
9 training materials, advertisements, or other marketing materials  
10 that are actually utilized.

11                                 **IX.**

12                             **MONITORING COMPLIANCE OF SALES PERSONNEL**

13           **IT IS FURTHER ORDERED AND AGREED** that Defendant MSI, to the  
14 extent it owns or operates any business, in whole or in part, that  
15 is engaged in **telemarketing**, is hereby permanently restrained and  
16 enjoined from:

17           1.     Failing to take reasonable steps sufficient to monitor  
18 and ensure that all employees and independent contractors engaged  
19 in sales or other customer service functions comply with Paragraphs  
20 I through III of this Order. Such steps shall include adequate  
21 monitoring of sales presentations or other calls with customers,  
22 and shall also include, at a minimum, the following:

23 (1) periodically listening to, or engaging an independent firm to  
24 listen to and provide Defendant MSI with a report on, a  
25 representative sample of the oral representations made by persons  
26 engaged in sales or other customer service functions for or on  
27 behalf of Defendant MSI; (2) establishing a procedure for receiving  
28 and responding to consumer complaints; and (3) ascertaining the

1 number and nature of consumer complaints regarding transactions in  
2 which each employee or independent contractor is involved;

3 2. Failing to promptly and fully investigate any consumer  
4 complaint received by any business to which this Paragraph applies;  
5 and

6 3. Failing to take corrective action with respect to any  
7 sales person whom Defendant MSI determines is not complying with  
8 this Order, which may include training, disciplining, and/or  
9 terminating such sales person.

10 X.

11 **COMPLIANCE REPORTING**

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

14 A. Defendant MSI shall, for a period of five (5) years from  
15 the date of entry of this Order, notify the Commission of any  
16 proposed change in the structure of Defendant MSI or any business  
17 entity that is owned or controlled by Defendant MSI, such as  
18 creation, incorporation, dissolution, assignment, sale, merger,  
19 creation or dissolution of subsidiaries, proposed filing of a  
20 bankruptcy petition, or change in the company name or address, or  
21 any other change that may affect compliance obligations arising out  
22 of this Order, thirty (30) days prior to the effective date of any  
23 proposed change;

24 B. One hundred eighty (180) days after the date of entry of  
25 this Order, Defendant MSI shall provide a written report to the  
26 Commission, sworn to under penalty of perjury, setting forth in  
27 detail the manner and form in which it has complied and is  
28

1 complying with this Order. This report shall include but not be  
2 limited to:

- 3 1. Defendant MSI's then current office address (if  
4 any), mailing address, and telephone number(s);
- 5 2. A description of all business activities of  
6 Defendant MSI;
- 7 3. A copy of each acknowledgment of receipt of this  
8 Order obtained pursuant to Paragraph VII of this  
9 Order;
- 10 4. A statement describing the manner in which Defendant  
11 MSI has complied and is complying with Paragraphs I  
12 through III of this Order; and

13 D. Upon reasonable written request by a representative of  
14 the Commission, Defendant MSI shall submit additional written  
15 reports (under oath, if requested) and produce **documents** on thirty  
16 (30) days' notice with respect to any conduct subject to this  
17 Order, unless additional time is mutually agreed to.

18 **XI.**

19 **ACCESS TO BUSINESS PREMISES**

20 **IT IS FURTHER ORDERED AND AGREED** that, for a period of five  
21 (5) years from the date of entry of this Order, for the purpose of  
22 further determining compliance with this Order, Defendant MSI shall  
23 permit representatives of the Commission, within three (3) business  
24 days of receipt of written notice from the Commission:

25 A. Access during normal business hours to any office, or  
26 facility storing **documents**, of any business that engages in  
27 **telemarketing** where Defendant MSI owns a majority interest in the  
28 business or directly or indirectly manages or controls the

1 business. In providing such access, Defendant MSI shall permit  
2 representatives of the Commission to inspect and copy all **documents**  
3 relevant to any matter contained in this Order; and shall permit  
4 Commission representatives to remove **documents** relevant to any  
5 matter contained in this Order for a period not to exceed five (5)  
6 calendar days so that the **documents** may be inspected, inventoried,  
7 and copied. Provided, however, that the Commission, will not, in  
8 the absence of appropriate consent, review, seize, copy, remove,  
9 possess or exercise dominion over any materials which the  
10 Commission knows or has reason to know constitute or contain  
11 attorney-client communications or work product, and will not  
12 otherwise order, direct, instruct, permit or condone same.  
13 Provided further, that in the event the Commission, without prior  
14 consent, obtains materials which it knows or has reason to know  
15 constitute or contain attorney-client communications or work  
16 product, the Commission will return all originals and copies of  
17 such material within five business days; and

18 B. To interview the officers, directors, and employees,  
19 including all personnel involved in responding to **consumer**  
20 complaints or inquiries, and all sales personnel, whether  
21 designated as employees, consultants, independent contractors or  
22 otherwise, of any business to which Part A of this Paragraph  
23 applies, concerning matters relating to compliance with the terms  
24 of this Order. The person interviewed may have counsel present and  
25 will promptly be so informed by the Commission.

26 *Provided* that, upon application of the Commission and for good  
27 cause shown, the Court may enter an *ex parte* order granting  
28 immediate access to Defendant MSI's business premises for the

1 purposes of inspecting and copying all **documents** relevant to any  
2 matter contained in this Order. In such event, Commission  
3 representatives shall be permitted to remove documents as  
4 identified in the ex parte order for a period not to exceed five  
5 (5) calendar days so that the documents may be inspected,  
6 inventoried and copied. Provided further, that the Commission will  
7 not, in the absence of appropriate consent, review, seize, copy,  
8 remove, possess or exercise dominion over any materials which the  
9 Commission knows or has reason to know constitute or contain  
10 attorney-client communications or work product, and will not  
11 otherwise order, direct, instruct, permit or condone same.  
12 Provided further, that in the event the Commission, without prior  
13 consent, obtains materials which it knows or has reason to know  
14 constitute or contain attorney-client communications or work  
15 product, the Commission will return all originals and copies of  
16 such material within five (5) business days.

17 **XII.**

18 **RECEIVERSHIP**

19 **IT IS FURTHER ORDERED** that the temporary receivership imposed  
20 in the Preliminary Injunction entered in this action shall be  
21 continued until such time as the Temporary Receiver has taken the  
22 necessary steps to wind down the business of Defendant MSI.

23 A. Such steps shall include conducting a claims process for  
24 creditors of MSI. After all claims have been submitted, and the  
25 Temporary Receiver has completed all other steps necessary to  
26 winding down the business of Defendant MSI, the Temporary Receiver  
27 shall promptly provide a report to the Court which details the  
28 steps taken to discharge her duties under this Paragraph and a



1 tentative resolution of the claims received from creditors. The  
2 report shall include an inventory of the receivership estate and an  
3 accounting of the receivership estate's finances. The report shall  
4 be served on Plaintiff Commission, Defendant Schwindt, and all  
5 creditors of Defendant MSI.

6 B. Any creditor of Defendant MSI may object to the Temporary  
7 Receiver's tentative resolution of claims. Such objections must be  
8 filed with the Court and served on all persons and entities listed  
9 in the Temporary Receiver's service list within two weeks of the  
10 date of service of the Temporary Receiver's tentative resolution of  
11 claims. Plaintiffs, Defendant Schwindt, and the Temporary Receiver  
12 may file a reply to any objections, which must be filed and served  
13 within one month from the date of service of the Temporary  
14 Receiver's tentative resolution of claims. Unless the Court  
15 instructs otherwise, any objections shall be taken under submission  
16 and decided by the Court without a hearing. If no objections are  
17 filed and served within the time required by this Paragraph, the  
18 Temporary Receiver may pay claims as proposed in her tentative  
19 resolution.

20 C. Upon payment of claims and completion of the requirements  
21 of this Paragraph, the Temporary Receiver shall move that this  
22 Court order termination of this receivership. At such time, the  
23 Receiver shall make a final request for payment of compensation for  
24 the performance of duties pursuant to the Preliminary Injunction  
25 entered in this proceeding and pursuant to this Paragraph and for  
26 the cost of actual out-of-pocket expenses incurred. The Receiver  
27 shall promptly tender all other records and items of Defendant MSI  
28 in her possession or control to Defendant Schwindt. Should

1 Defendant Schwindt decline such offer, the Temporary Receiver may  
2 dispose of remaining records and documents as she sees fit.

3 **XIII.**

4 **FTC'S AUTHORITY TO MONITOR COMPLIANCE**

5 **IT IS FURTHER ORDERED AND AGREED** that the Commission is  
6 authorized to monitor Defendant MSI's compliance with this Order by  
7 all lawful means, including, but not limited to, the following:

8 A. The Commission is authorized, without further leave of  
9 this Court, to obtain discovery from any person in the manner  
10 provided by Chapter V of the Federal Rules of Civil Procedure,  
11 Fed. R. Civ. P. 26-37, including the use of compulsory process  
12 pursuant to Federal R. Civ. P. 45, for the purpose of investigating  
13 Defendant MSI's compliance with any provision of this Order;

14 B. The Commission is authorized, without the necessity of  
15 identification or prior notice, to use representatives posing as  
16 customers or prospective customers of (i) Defendant MSI, (ii) the  
17 employees of Defendant MSI, or (iii) any other entity managed or  
18 controlled in whole or in part by Defendant MSI; and

19 C. Nothing in this Order shall limit the Commission's lawful  
20 use of compulsory process, pursuant to Sections 9 and 20 of the FTC  
21 Act, 15 U.S.C. §§ 49, 57b-1, for the purpose of investigating  
22 compliance with this Order, Section 5 of the FTC Act, 15 U.S.C.  
23 § 45, or the Rule, 16 C.F.R. Part 435.

24 **XIV.**

25 **ORDER DISTRIBUTION**

26 **IT IS FURTHER ORDERED AND AGREED** that, for a period of five  
27 (5) years from the date of entry of this Order, Defendant MSI  
28 shall:



XVII.

COSTS AND ATTORNEYS FEES

IT IS FURTHER ORDERED AND AGREED that each party to this Order bear its own costs and attorneys fees incurred in connection with this action.

XVIII.

CONTINUED JURISDICTION

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

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XIX.

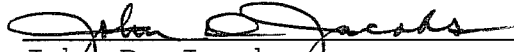
ENTRY BY CLERK

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

SO STIPULATED:


FEDERAL TRADE COMMISSION

Dated: December 10, 2003

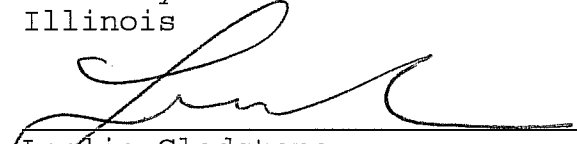
  
John D. Jacobs  
Jerome M. Steiner, Jr.  
Attorneys for Plaintiff FTC

STATE OF ILLINOIS

Dated: December 11, 2003

  
Elizabeth A. Blackston  
Attorney for Plaintiff State of Illinois

Dated: 10/21, 2003

  
Leslie Gladstone  
Receiver over Defendant  
Membership Services, Inc.

IT IS SO ORDERED.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of the District Court