

1 DEBRA A. VALENTINE
General Counsel

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CLERK, U.S. DISTRICT COURT
NOV 29 2000
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

2 THOMAS J. SYTA (CA BAR #116286)
3 RAYMOND E. MCKOWN (CA BAR #150975)
4 KENNETH H. ABBE (CA BAR #172416)
Federal Trade Commission
10877 Wilshire Blvd., Ste. 700
Los Angeles, CA 90024
5 (310) 824-4325; Fax (310) 824-4380

6 Attorneys for Plaintiff
FEDERAL TRADE COMMISSION

ENTERED
CLERK, U.S. DISTRICT COURT
NOV 30 2000
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

9-08-07
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U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES

10 FEDERAL TRADE COMMISSION,
11 Plaintiff,
12 v.
13 THE KOHL GROUP, LLC, a
California limited liability
14 company doing business as
Federal Information Services;
15 GREGORY STEWART HALL,
individually and as a member
16 of The Kohl Group, LLC;
17 BENJAMIN H. KIM, individually
and as a member of The Kohl
Group, LLC;
18 DOUGLAS LEE, individually and
as a member of The Kohl
19 Group, LLC; and
20 MARK AARON OSBORNE,
individually and as a member
21 of The Kohl Group, LLC,
22 Defendants.

CIVIL NO. ^{CV-}00-06507 RSWL (Manx)

STIPULATED FINAL JUDGMENT AND
ORDER FOR PERMANENT INJUNCTION
AS TO ALL DEFENDANTS

Docketed
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 JS-5/JS-6
JS-2/JS-3
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23
24 The Summons and Complaint having been served on
25 defendants, plaintiff Federal Trade Commission
26 ("Commission") and defendants The Kohl Group, LLC, d/b/a
27 Federal Information Services, Gregory Stewart Hall,
28 Benjamin H. Kim, Douglas Lee, Mark Aaron Osborne hereby

30

1 agree to the entry of this Stipulated Final Judgment and
2 Order for Permanent Injunction ("Order") by the Court to
3 resolve all matters raised by the Commission's June 19,
4 2000, Complaint, without admission of liability, and
5 without trial or adjudication of any issue of law or fact.

6 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

7 **FINDINGS**

8 1. This is an action by plaintiff instituted under
9 Section 13(b) of the FTC Act, 15 U.S.C. § 53(b). Plaintiff
10 has the authority to seek the relief contained herein, and
11 the Complaint states claims upon which relief may be
12 granted against defendants under Section 5 of the FTC Act,
13 15 U.S.C. § 45.

14 2. This Court has jurisdiction over the subject
15 matter of this case and all parties hereto. Venue in the
16 Central District of California is proper.

17 3. The activities of defendants are in or affecting
18 commerce, as defined in Section 4 of the FTC Act, 15 U.S.C.
19 § 44.

20 4. The defendants enter into this Order freely,
21 without admitting liability for any allegation or charge
22 made in the Commission's Complaint, without coercion, and
23 acknowledge that they understand the provisions of this
24 Order and are prepared to abide by them.

25 5. The parties shall each bear their own costs and
26 attorney's fees incurred in this action and have waived all
27 claims under the Equal Access to Justice Act, 28 U.S.C.
28 § 2412, and all rights to seek judicial review, or

1 otherwise to challenge the validity of this Order.

2 6. Entry of this Order is in the public interest.

3 Definition

4 1. "Assets" means any legal or equitable interest in,
5 right to, or claim to, any real and personal property,
6 including but not limited to chattel, goods, instruments,
7 stocks, bonds, securities, equipment, fixtures, general
8 intangibles, effects, leaseholds, mail or other deliveries,
9 inventory, checks, notes, accounts, credits, receivables
10 (as those terms are defined in the Uniform Commercial
11 Code), and all cash, wherever located.

12 2. "Telemarketing" means a plan, program, or campaign
13 which is conducted to induce the purchase of goods or
14 services by use of one or more telephones, and which
15 involves more than one interstate telephone call by the
16 telemarketing entity, its agents, or consumers.

17 **I. PROHIBITED BUSINESS ACTIVITIES**

18 **IT IS HEREBY ORDERED** that defendants and their
19 officers, agents, directors, servants, employees, sales-
20 persons, independent contractors, attorneys, corporations,
21 subsidiaries, successors, assigns, and all other persons or
22 entities in active concert or participation with them, who
23 receive actual notice of this Order by personal service or
24 otherwise, whether acting directly or through any trust,
25 corporation, company, subsidiary, division, or other
26 device, or any of them, are hereby permanently enjoined
27 from:

28 A. Misrepresenting, expressly or by implication:

1 1. that defendants can provide consumers with
 2 documents or information that will enable them to locate
 3 and purchase foreclosed or repossessed homes at prices
 4 substantially below their fair market values;

5 2. that defendants can provide consumers with
 6 documents or information that will enable them to find
 7 local auctions where they can purchase merchandise,
 8 including vehicles, at prices substantially below their
 9 fair wholesale market values;

10 3. that defendants will provide consumers with
 11 documents or information that will enable them to locate
 12 and purchase foreclosed or repossessed homes in their local
 13 area, which can be purchased for a small, or no down
 14 payment, or that defendants will assist with financing the
 15 purchase;

16 4. that defendants will debit or charge
 17 consumers' bank or credit accounts only after obtaining
 18 consumers' authorization; and

19 5. that defendants will debit or charge
 20 consumers' bank or credit accounts only for the products or
 21 services consumers have agreed to purchase; and

22 C. Failing to disclose the following, clearly and
 23 conspicuously, in any sales presentation for foreclosed or
 24 repossessed homes:

25 "Typically, foreclosed and repossessed homes sell
 26 slightly below or at their fair market values.";

27 D. Failing to disclose prior to the receipt of
 28 payment all material terms of defendants' refund or

1 cancellation policies, or the fact that cancellations or
2 refunds are not provided;

3 E. Debiting or charging consumers' credit or bank
4 accounts without obtaining prior authorization from
5 consumers for the debit or charge;

6 F. Failing to disclose the dollar amount of any
7 shipping and handling charge that will be added to the cost
8 of defendants' products or services, or that such charges
9 are non-refundable if that is the case;

10 G. Failing to refund within 15 business days all
11 monies paid, excluding any shipping and handling cost that
12 was fully disclosed prior to the receipt of payment, to any
13 consumer who has purchased any product or service after
14 June 19, 2000, and who, for any reason, requests a refund
15 and returns defendants' booklet any time after 90 days have
16 passed since the consumer submitted full payment to
17 defendants;

18 H. Failing to refund all monies paid to any consumer
19 who has purchased any product or service after June 19,
20 2000, within 15 business days of determining that payment
21 thereof was made in conjunction with a sales call in which
22 the provisions of this Section or Section II of this Order
23 were not adhered to;

24 I. Failing to refund within 15 business days all
25 monies paid, excluding any shipping and handling cost that
26 was fully disclosed prior to the receipt of payment, for
27 any product or service purchased after June 19, 2000, other
28 than those that contain lists of auctioneers or lists of

1 foreclosed homes, to consumers who have complied with the
2 material terms of any existing refund policy of defendants;

3 J. Failing to cancel any purchase within 72 hours of
4 a request to do so from a consumer who has satisfied the
5 material terms of any cancellation policy of defendants;

6 K. Violating the Telemarketing Sales Rule, 16 C.F.R.
7 Part 310, as currently written or as amended, including
8 without limitation:

9 1. 16 C.F.R. § 310.3(a)(1)(i), by failing to
10 disclose, in a clear and conspicuous manner, before a
11 customer pays or authorizes payment for goods or services
12 offered, the total costs to purchase, receive, or use, and
13 the quantity of, any goods or services that are the subject
14 of the sales offer;

15 2. 16 C.F.R. § 310.3(a)(1)(ii), by failing to
16 disclose in a clear and conspicuous manner, before a
17 customer pays or authorizes payment for goods or services
18 offered, all material restrictions, limitations, or
19 conditions to purchase, receive, or use the goods or
20 services that are the subject of the sales offer;

21 3. 16 C.F.R. § 310.3(a)(iii), by failing to
22 disclose in a clear and conspicuous manner, if the seller
23 has a policy of not making refunds, cancellations,
24 exchanges, or repurchases, a statement informing the
25 customer that this is the seller's policy; or, if the
26 seller makes a representation about a refund, cancellation,
27 exchange, or repurchase policy, a statement of all material
28 terms and conditions of such policy; and

1 4. 16 C.F.R. § 310.3(a)(4), by making a false or
2 misleading statement to induce any person to pay for goods
3 or services; and

4 L. Misrepresenting any fact material to a consumer's
5 decision to purchase or use defendants' products or
6 services.

7 **II. RECORDING OF SALES CALLS**

8 **IT IS FURTHER ORDERED** that if defendants or their
9 agents record any conversation with a consumer to verify or
10 confirm that a consumer is agreeing to purchase any service
11 or product, defendants and their officers, agents,
12 directors, servants, employees, sales persons, independent
13 contractors, attorneys, corporations, subsidiaries,
14 successors, assigns, and all other persons or entities in
15 active concert or participation with them, who receive
16 actual notice of this Order by personal service or
17 otherwise, whether acting directly or through any trust,
18 corporation, company, subsidiary, division, or other
19 device, or any of them, are permanently restrained and
20 enjoined from accepting or processing such purchases unless
21 the recording meets the following criteria:

22 A. After obtaining permission from the consumer to
23 record the conversation, the recording shall reflect the
24 entirety of the conversation;

25 B. The recording must include clear, complete
26 and understandable disclosures of all material terms of the
27 purchase, and the consumer's express agreement to such
28 terms. The material terms disclosed in the recorded

1 conversation shall be consistent with any information
 2 previously disclosed to the consumer. Material terms
 3 include, but are not limited to:

- 4 1. A description of the service or product;
- 5 2. The cost of the service or product;
- 6 3. The amount of any recurring charges;
- 7 4. Limitations on any right to obtain a refund;

8 and

- 9 5. The business name, address, and telephone
 10 number to which the consumer may address any questions or
 11 complaints.

12 This Section shall not affect any obligation to comply
 13 with any federal, state, or local law regarding the
 14 recording of telephone conversations.

15 **III. MONETARY PAYMENT FROM DEFENDANTS**

16 **IT IS FURTHER ORDERED** that payment in the amount of
 17 not more than \$1.225 million in favor of the Commission
 18 against defendants for equitable monetary relief shall be
 19 made notwithstanding that defendants have made no admission
 20 of liability and the Court has made no such finding in
 21 connection with this Order. The payment amount is hereby
 22 entered against the defendants as follows:

23 A. Nine hundred thousand dollars from accounts
 24 maintained by defendants Hall, Kim, Lee, and Osborne;

25 B. The entire balance from accounts of The Kohl
 26 Group, LLC, that were frozen by the Court's June 19, 2000,
 27 Temporary Restraining Order, less any Court authorized fees
 28 paid to the temporary receiver, against The Kohl Group,

1 LLC;

2 C. Within 24 hours after notice of entry of this
3 Order: (1) Salomon-Smith-Barney shall transfer to the
4 Commission \$827,000 from account number 557-17078-26086
5 held in the name of defendant Kim; and (2) Roth Capital
6 Partners shall transfer to the Commission \$73,000 from
7 account number 712-07-004 held in the name of defendant
8 Kim. Defendant Kim will cooperate as necessary to
9 facilitate such transfers. These transfers to the
10 Commission from accounts maintained by the individual
11 defendants shall be deemed as being made on behalf of
12 defendant The Kohl Group, LLC;

13 D. Within 24 hours after notice of entry of this
14 Order attorney Peter Morris shall transfer to the
15 Commission the total amount of monies previously
16 transferred to him, plus any accumulated interest thereon,
17 on behalf of The Kohl Group, LLC, by Jean Morris, Esq., the
18 temporary receiver pursuant to the Stipulated Preliminary
19 Injunction executed by the Kohl Group, LLC, on July 7,
20 2000. This transfer to the Commission shall be deemed as
21 being made on behalf of defendant The Kohl Group, LLC;

22 E. These payments by defendants are for equitable
23 monetary relief, including, but not limited to consumer
24 refunds and for paying any attendant expenses of
25 administering any consumer fund. The Commission in its
26 sole discretion may use a designated agent to administer
27 the fund. The Commission shall have full and sole
28 discretion to:

1 1. Determine the criteria for participation by
2 individual claimants in any program for consumers
3 implemented pursuant to this Order;

4 2. Determine the manner and timing of any
5 notices to be given to consumers regarding the existence
6 and terms of such programs; and

7 3. Delegate any and all tasks connected with
8 such program to any individuals, partnerships, or
9 corporations; and pay the fees, salaries, and expenses
10 incurred thereby from the payments made pursuant to this
11 Order;

12 F. Defendants shall provide the Commission, or its
13 agent, within thirty days of such a request, the name, last
14 known address, telephone number, date of purchase, credit
15 card or bank account information, and the complete file
16 record, including computer records and correspondence, of
17 each consumer who paid defendants for their foreclosure or
18 auction products during the time period between January 1,
19 1996, and the date this Order is entered, as well as any
20 further information the Commission deems necessary to
21 effectuate any program for consumers;

22 G. Unless he or it has already done so, each
23 defendant shall furnish to the Commission, in accordance
24 with 31 U.S.C. § 7701, his or its taxpayer identification
25 number (social security number, social insurance number,
26 employer identification number, or Revenue Canada
27 identification number), which shall be used for purposes of
28 collecting and reporting on any delinquent amount arising

1 out of each defendant's relationship with the government;

2 H. Any administrator of any program for consumers
 3 shall destroy all records relating to this matter six years
 4 after the closing of the account from which such funds were
 5 disbursed or transfer of any remaining funds to the FTC
 6 Treasury account, whichever is earlier, provided that no
 7 records shall be destroyed unless and until a
 8 representative of the Commission has received and approved
 9 the administrator's final accounting report. Records shall
 10 be destroyed in accordance with disposal methods and
 11 procedures to be specified by the Commission. The
 12 Commission may, in its sole discretion, require that such
 13 records, in whole or in part, be transferred, in lieu of
 14 destruction, to the Commission; and

15 I. If the Commission determines, however, in its sole
 16 discretion, that refunds to purchasers are wholly or
 17 partially impractical, any funds not so used shall be
 18 disgorged to, and deposited in, the United States Treasury.
 19 This judgment for equitable monetary relief is solely
 20 remedial in nature and is not a fine, penalty, punitive
 21 assessment, or forfeiture.

22 **IV. TERMINATION OF ASSET FREEZE**

23 **IT IS FURTHER ORDERED** that, except as otherwise stated
 24 in Section XV, below, the freeze on the individual
 25 defendants' assets ordered by this Court shall terminate
 26 when the Commission files a notice with the Court that the
 27 payments stated in Section III, above, have been made.

28

V. RIGHT TO REOPEN

1

2 IT IS FURTHER ORDERED that the Commission's agreement

3 to this Order is expressly premised upon the truthfulness,

4 accuracy, and completeness of the financial condition of

5 the defendants, as represented in their respective

6 financial statements dated: July 14, 2000 (The Kohl Group,

7 LLC), June 26, 2000, (Hall); June 26, 2000 (Kim); June 27,

8 2000 (Lee); and June 26, 2000 (Osborne); upon which the

9 Commission relied in negotiating and agreeing to the terms

10 of this Order. If, upon motion by the Commission, this

11 Court finds that any defendant failed to file the sworn

12 statement required by Section VIII, or filed a financial

13 statement that failed to disclose any material asset, or

14 materially misrepresented the value of any asset, or made

15 any other material misrepresentation in or omission from

16 the financial statement, the Court shall enter judgment

17 against such defendant, in favor of the Commission, in the

18 amount of \$15,000,000, less any prior payments made on

19 behalf of or by that defendant, which is intended to

20 represent the alleged total loss to consumers or unjust

21 enrichment obtained by defendants, and which will become

22 immediately due and payable. For purposes of this Section

23 only, and any subsequent proceedings to enforce payments

24 made pursuant to this Order, including but not limited to a

25 non-dischargeability complaint filed in a bankruptcy

26 proceeding, the defendants waive any right to contest any

27 allegations in the Commission's Complaint.

28

1 below, of this Order, the FTC Act, and the TSR. Such steps
 2 shall include adequate monitoring of sales presentations or
 3 other calls with customers, and shall also include, at a
 4 minimum, the following:

5 1. Listening to oral representations made by
 6 sales agents;

7 2. Establishing a procedure for receiving and
 8 responding to consumer complaints;

9 3. Ascertaining the number and nature of
 10 consumer complaints regarding transactions in which each
 11 sales agent is involved; provided that this Section does
 12 not authorize or require defendants to take any steps that
 13 violate any federal, state, or local laws;

14 B. Failing to promptly and fully investigate any
 15 consumer complaint received by any business to which this
 16 Section applies;

17 C. Failing to take corrective action with respect to
 18 any sales agent whom defendants determine is not complying
 19 with the conditions stated in this Order. Such corrective
 20 action may include training, disciplining, and/or
 21 terminating such sales person.

22 **VIII. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS**

23 **IT IS FURTHER ORDERED** that, within five business days
 24 after receipt by defendants of this Order as entered by the
 25 Court, defendants shall submit to plaintiff a truthful
 26 sworn statement, in the form shown on Attachment A, that
 27 shall acknowledge receipt of this Order.

28

1 IX. DISTRIBUTION OF ORDER BY DEFENDANTS

2 IT IS FURTHER ORDERED that, for a period of three
3 years from the date of entry of this Order, defendants
4 shall:

5 A. Provide a copy of Sections I, II, VII, and XV of
6 this Order to, and obtain a signed and dated acknowledgment
7 of receipt from each officer or director, each individual
8 serving in a management capacity, all personnel involved in
9 responding to consumer complaints or inquiries, and all
10 sales representatives, whether designated as telemarketers,
11 employees, sales persons, independent contractors,
12 consultants, agents, or otherwise, immediately upon
13 employing or retaining any such persons, of The Kohl Group,
14 LLC, or any other business where telemarketing is used as a
15 means to market or sell any product or service, which is
16 directly or indirectly controlled by any defendant, or
17 where any defendant is the majority owner of the business;
18 and

19 B. Maintain for a period of three years after
20 creation, and upon reasonable notice, make available to
21 plaintiff's representatives, the original signed and dated
22 acknowledgments of the receipt of copies of this Order, as
23 required in Subsection (A).

24 X. RECORD KEEPING PROVISIONS

25 IT IS FURTHER ORDERED that, for a period of three
26 years after entry of this Order, in connection with The
27 Kohl Group, LLC, or any other business where telemarketing
28 is used as a means to market or sell any product or

1 service, which is directly or indirectly controlled by any
2 defendant, or where any defendant is the majority owner of
3 the business, the defendants are restrained and enjoined
4 from failing to create, and from failing to retain for a
5 period of three years following the date of such creation,
6 unless otherwise specified:

7 A. Books, records and accounts that, in reasonable
8 detail, accurately and fairly reflect the cost of goods,
9 products or services sold; revenues generated, and the
10 disbursement of such revenues;

11 B. Records accurately reflecting: the name, address,
12 and telephone number of each person employed in any
13 capacity by such business, including as an independent
14 contractor; that person's job title or position; the date
15 upon which the person commenced work; and the date and
16 reason for the person's termination, if applicable. The
17 businesses subject to this Section shall retain such
18 records for any terminated employee for a period of two
19 years following the date of termination;

20 C. Records containing the names, addresses, phone
21 numbers, dollar amounts paid, quantity of items or services
22 purchased, and description of items or services purchased,
23 for all consumers to whom such business has sold, invoiced
24 or shipped any goods, products or services;

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

28 1. The consumer's name, address, telephone

1 number and the dollar amount paid by the consumer;

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

4 3. The basis of the complaint, including the
5 name of any salesperson complained against, and the nature
6 and result of any investigation conducted concerning any
7 complaint;

8 4. Each response and the date of the response;

9 5. Any final resolution and the date of the
10 resolution; and

11 6. In the event of a denial of a refund request,
12 the reason for the denial; and

13 E. Copies of all sales scripts, training materials,
14 advertisements, or other marketing materials utilized;
15 provided that copies of all sales scripts, training
16 materials, advertisements, or other marketing materials
17 utilized shall be retained for three years after the last
18 date of dissemination of any such materials.

19 **XI. COMPLIANCE REPORTING BY DEFENDANTS**

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

22 A. For a period of three years from the date of entry
23 of this Order, defendants shall notify plaintiff of the
24 following:

25 1. Any changes in defendants' residence,
26 mailing addresses, and telephone numbers, within ten days
27 of the date of such change;

28 2. Any changes in defendants' employment status

1 (including self-employment) within ten days of such change.
2 Such notice shall include the name and address of each
3 business that such defendant is affiliated with or employed
4 by, a statement of the nature of the business, and a
5 statement of such defendants' duties and responsibilities
6 in connection with the business or employment; and

7 3. Any proposed change in the structure of any
8 corporate or company defendant, or of any business entity
9 engaged in the sale, offering for sale, or distribution of
10 information about foreclosed or repossessed homes, or
11 auctions, owned or controlled by any defendant, such as
12 creation, incorporation, dissolution, assignment, sale,
13 merger, creation of subsidiaries, dissolution of
14 subsidiaries, proposed filing of a bankruptcy petition,
15 change in the corporate or company name or address, or any
16 other change that may affect compliance obligations arising
17 out of this Order, thirty days prior to the effective date
18 of any proposed change; *provided, however, that, with*
19 *respect to any proposed change in a corporation or company*
20 *about which defendants learn less than thirty days prior to*
21 *the date such action is to take place, defendants shall*
22 *notify plaintiff as soon as is practicable after learning*
23 *of such proposed change;*

24 B. One hundred eighty days after the date of entry
25 of this Order, defendants shall provide a written report to
26 plaintiff, sworn to under penalty of perjury, setting forth
27 in detail the manner and form in which defendants have
28 complied and are complying with this Order. This report

1 shall include but not be limited to:

2 1. The individual defendants' current residence
3 addresses and telephone numbers;

4 2. Defendants' current employment, business
5 addresses and telephone numbers, a description of the
6 business activities of each such employer, and defendants'
7 titles and responsibilities for each employer;

8 3. A copy of each acknowledgment of receipt of
9 this Order obtained by defendants pursuant to Section IX;
10 and

11 4. A statement describing the manner in which
12 defendants have complied and are complying with Sections I,
13 II, VII, and XV of this Order;

14 C. Upon written request by a representative of
15 plaintiff, which shall occur no sooner than three months
16 after the most recent request, defendants shall submit
17 additional written reports (under oath, if requested) and
18 produce documents on fifteen days' notice with respect to
19 any conduct subject to this Order;

20 D. For the purposes of this Order, defendants shall,
21 unless otherwise directed by the Commission's authorized
22 representatives, mail all written notifications to:

23 Assistant Regional Director, Western Region - Los Angeles,
24 10877 Wilshire Blvd., Ste. 700, Los Angeles, CA 90024; Re:
25 FTC v. The Kohl Group, LLC, et al.;

26 E. For the purposes of this Section, "employment"
27 includes the performance of services as an employee,
28 consultant, or independent contractor; and "employers"

1 include any individuals or entities for whom defendants
2 perform services as an employee, consultant, or independent
3 contractor; and

4 F. For purposes of the compliance reporting required
5 by this Section, plaintiff is authorized upon consent of
6 defendants' counsel to communicate directly with defendants
7 Hall, Kim, Lee, and Osborne.

8 **XII. AUTHORITY TO MONITOR COMPLIANCE**

9 **IT IS FURTHER ORDERED** that plaintiff is authorized to
10 monitor defendants' compliance with this Order by all
11 lawful means, including but not limited to the following
12 means:

13 A. Plaintiff is authorized, without further leave of
14 Court, to obtain discovery from any person in the manner
15 provided by Chapter V of the Federal Rules of Civil
16 Procedure, Fed. R. Civ. P. 26 - 37, including the use of
17 compulsory process pursuant to Fed. R. Civ. P. 45, for the
18 purpose of monitoring and investigating defendants'
19 compliance with any provision of this Order;

20 B. Plaintiff is authorized to use representatives
21 posing as consumers to defendants, defendants' employees,
22 or any entity where any defendant is the majority owner, or
23 where any defendant directly or indirectly controls the
24 entity, without the necessity of identification or prior
25 notice;

26 C. Defendants shall within five business days comply
27 with requests from plaintiff, which can be made as often as
28 once every month, to supply a list of current sales agents

1 and each agent's record of compliance with Sections I and
 2 II, above, or Section XV, below, maintained in accordance
 3 with Section VII, above; and

4 D. Nothing in this Order shall limit the
 5 Commission's lawful use of compulsory process, pursuant to
 6 Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1,
 7 to investigate whether defendants have violated any
 8 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.
 10 Part 310.

11 **XIII. ACCESS TO BUSINESS PREMISES**

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

18 A. Access during normal business hours to any
 19 office, or facility storing documents, of any business
 20 where any defendant is the majority owner of the business,
 21 or where the business is directly or indirectly controlled
 22 by any defendant, and where the business is engaged in the
 23 sale of any product or service. In providing such access,
 24 defendants shall permit representatives of plaintiff to
 25 inspect and copy all documents relevant to any matter
 26 contained in this Order; and shall permit plaintiff's
 27 representatives to remove documents relevant to any matter
 28 contained in this Order for a period not to exceed three

1 business days so that the documents may be inspected,
2 inventoried, and copied; and

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

11 **XIV. SERVICE OF ORDER**

12 **IT IS FURTHER ORDERED** that plaintiff's attorneys,
13 agents, or employees may serve this Order upon any
14 financial institution, or other entity or person that may
15 have possession, custody, control, or knowledge of any
16 assets of any defendant, or any other entity or person that
17 may be otherwise subject to any provision of this Order, by
18 delivering a copy of the Order by any means, including
19 facsimile transmission, to any office, branch, or location.

20 **XV. PERFORMANCE BOND**

21 **IT IS FURTHER ORDERED** that:

22 A. Defendants The Kohl Group, LLC, Gregory Stewart
23 Hall, Benjamin H. Kim, Douglas Lee, and Mark Aaron Osborne,
24 are permanently restrained and enjoined from engaging in,
25 or assisting others engaged in, the offering or selling of
26 any product or service that contain lists of auctioneers or
27 lists of foreclosed homes unless they first post or obtain
28 a performance bond in the principal amount of, \$100,000 for

1 all five defendants in combination; \$100,000 for any other
2 business joining any combination of defendants; or \$100,000
3 for any defendant participating in such business apart from
4 the other defendants. Any such bond shall be conditioned
5 upon compliance by such defendants with this Order, the FTC
6 Act, 15 U.S.C. §§ 41 et seq., and if applicable, the
7 Telemarketing Sales Rule, 16 C.F.R. Part 310. The bond
8 shall be deemed continuous and remain in full force and
9 effect as long as such defendants continue to offer for
10 sale or sell any product or service that contain lists of
11 auctioneers or lists of foreclosed homes, and for at least
12 two years after they have ceased any such activity. The
13 bond shall cite this Order, the FTC Act, 15 U.S.C. §§ 41 et
14 seq., and the Telemarketing Sales Rule, 16 C.F.R. Part 310
15 as the subject matter of the bond and provide surety
16 against such defendants' failure to pay any consumer
17 redress or disgorgement that may be ordered in consequence
18 of the violation thereof. Such performance bond shall be
19 an insurance agreement providing surety issued by a surety
20 company that is admitted to do business in a state in which
21 such defendants are doing business and that holds a Federal
22 Certificate of Authority as Acceptable Surety on Federal
23 Bonding and Reinsuring. Such defendants shall provide a
24 copy of such performance bond to the Commission prior to
25 the commencement of any business for which such bond is
26 required; provided however, until such bond is obtained
27 from an appropriate surety by defendants, the amount of
28 \$100,000 held in account number 557-17078-26086 at Salomon-

1 Smith-Barney shall remain frozen and will constitute said
2 bond under the provisions stated herein. This \$100,000
3 shall remain frozen until a representative of the
4 Commission certifies, in writing, that the funds should be
5 released to defendants or transferred pursuant to
6 Subsection (B);

7 B. The performance bond shall provide that the surety
8 company shall, within 30 days following receipt of notice
9 of final judgment by a court in an action initiated by the
10 Commission or the United States against such defendants for
11 consumer redress or disgorgement in an action brought
12 pursuant to this Order, the FTC Act, 15 U.S.C. §§ 41 et
13 seq., or the Telemarketing Sales Rule, 16 C.F.R. Part 310,
14 has been entered and determining the amount of consumer
15 redress or disgorgement to be paid, pay to the Commission
16 so much of the performance bond as is equal to the amount
17 of any consumer redress or disgorgement ordered, provided
18 that, if any defendants have agreed to the entry of a court
19 order for consumer redress in such an action, a specific
20 finding that any such defendants violated the terms of this
21 Order, the FTC Act, 15 U.S.C. § 41 et seq., or the
22 Telemarketing Sales Rule, 16 C.F.R. Part 310, shall not be
23 necessary; and

24 C. Defendants shall not disclose the existence of the
25 performance bond to any consumer, or other purchaser, or
26 prospective purchaser, to whom any product or service that
27 contain lists of auctioneers or lists of foreclosed homes
28 is advertised, promoted, offered for sale, sold, or

1 distributed, without also disclosing at the same time and
2 in the same manner that the performance bond is required by
3 order of the United States District Court for the Central
4 District of California in settlement of charges that
5 defendants engaged in false and misleading representations.

6 **XVI. RETENTION OF JURISDICTION**

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

9 Defendants waive any rights that may arise under the
10 Equal Access to Justice Act, 28, U.S.C. § 2412, amended by
11 Pub. L. 104-121, 110 Stat. 847, 863-64 (1966).

12
13 Dated: 11-29-2000 Raymond E. McKown
14 Raymond E. McKown
15 Kenneth H. Abbe
Attorneys for Plaintiff
Federal Trade Commission

16
17 Dated: 8/17/2000 Gregory Stewart Hall
18 Gregory Stewart Hall, individually
and as a member of The Kohl Group, LLC
19 Defendant

20
21 Dated: 8/17/2000 Benjamin H. Kim
22 Benjamin H. Kim, individually and
as a member of The Kohl Group, LLC
23 Defendant

24
25 Dated: 8/17/2000 Douglas Lee
26 Douglas Lee, individually and
as a member of The Kohl Group, LLC
27 Defendant
28

1 Dated: 8/17/00 Mark A Osborne
2 Mark Aaron Osborne, individually and as
3 a member of The Kohl Group, LLC
4 Defendant

5 Dated: 8/17/2000 Douglas Lee
6 The Kohl Group, LLC by its
7 member, Douglas Lee
8 Defendant

9
10 Approved as to Form: William Rothbard
11 William Rothbard
12 Attorney for Defendants

13 IT IS SO ORDERED.

14
15
16 Dated: **NOV 29 2000** RONALD S W LEW
17 UNITED STATES DISTRICT JUDGE
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ATTACHMENT A

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

THE KOHL GROUP, LLC, a
California limited liability
company doing business as
Federal Information Services;

GREGORY STEWART HALL,
individually and as a member
of The Kohl Group, LLC;

BENJAMIN H. KIM, individually
and as a member of The Kohl
Group, LLC;

DOUGLAS LEE, individually and
as a member of The Kohl
Group, LLC; and

MARK AARON OSBORNE,
individually and as a member
of The Kohl Group, LLC,

Defendants.

CIVIL NO. 00-06507 RSWL (Manx)

AFFIDAVIT OF DEFENDANT
ACKNOWLEDGING RECEIPT OF
SIGNED ORDER AND REAFFIRMING
FINANCIAL STATEMENT

I, _____ [name] _____, being duly sworn, hereby
states and affirms as follows:

1. My name is _____. My current
residence address is _____

_____. I am a citizen of the United States and am

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over the age of eighteen. I have personal knowledge of the facts set forth in this Affidavit.

2. I am a defendant in FTC v. THE KOHL GROUP, LLC, et al. Civil No. 00-06507 RSWL (Manx) (United States District Court for the Central District of California).

3. On _____ [date] _____, I received a copy of the Stipulated Final Judgment and Order for Permanent Injunction ("Order"), which was signed by the Honorable Ronald S. W. Lew on _____ [date] _____. A true and correct copy of the Order I received is appended to this Affidavit. I have read the signed Order.

4. I hereby state that the information contained in the financial statements I signed on _____ [date] _____, was true, accurate, and complete at the time the financial statements was signed.

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, state] _____.

[Defendant]

State of _____, City of _____.

Subscribed and sworn to before me
this _____ day of _____, 2000.

Notary Public
My Commission Expires:

CERTIFICATE OF SERVICE

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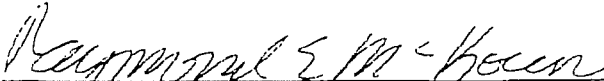
My name is Raymond E. McKown. I am an attorney employed by the Federal Trade Commission, 10877 Wilshire Boulevard, Suite 700, Los Angeles, California 90024. On November 29, 2000, I placed the document captioned, "STIPULATED FINAL JUDGMENT AND ORDER FOR PERMANENT INJUNCTION AS TO ALL DEFENDANTS," in the United States first class mail, postage prepaid, on the following:

William Rothbard
1541 Ocean Blvd., Ste. 200
Santa Monica, CA 90401

Solomon Smith Barney
10877 Wilshire Blvd., 5th Floor
Los Angeles, CA 90024

John Marrone
Roth Capital Partners
11100 Santa Monica Blvd., Ste. 800
Los Angeles, CA 90025

I declare under penalty of perjury that the foregoing is true and correct. Executed this 29th day of November 2000, at Los Angeles, California.



Raymond E. McKown