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7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 WESTERN DIVISION
11

12 _____)
FEDERAL TRADE COMMISSION,)
13)
Plaintiff,)
14)
v.)
15)
WESTERN UNITED SERVICE)
16 CORPORATION d/b/a)
TITAN BUSINESS SOLUTIONS,)
17 and)
18 SCOTT FORD,)
19 Defendants.)
20)
21)
22 _____)

CV-

**EX PARTE TEMPORARY RESTRAINING
ORDER FREEZING ASSETS,
PROHIBITING DESTRUCTION OR
ALTERATION OF BOOKS AND
RECORDS, GRANTING ACCESS AND
INSPECTION, AND ORDERS
APPOINTING A TEMPORARY
RECEIVER, PERMITTING EXPEDITED
DISCOVERY AND TO SHOW CAUSE
WHY A PRELIMINARY INJUNCTION
SHOULD NOT ISSUE AND WHY A
PERMANENT RECEIVER SHOULD NOT
BE APPOINTED**

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1 Plaintiff Federal Trade Commission ("Commission"), pursuant
2 to Sections 13(b) and 19 of the Federal Trade Commission Act
3 ("FTC Act"), 15 U.S.C. §§ 53(b), 57b, filed a complaint for
4 permanent injunction and other relief, including consumer
5 redress, and applied ex parte for a temporary restraining order
6 with asset freeze and order appointing a temporary receiver, and
7 for an order to show cause why a preliminary injunction should
8 not be granted pursuant to Rule 65 of the Federal Rules of Civil
9 Procedure, and why a permanent receiver should not be appointed.

11 FINDINGS OF FACT

12 The Court has considered the Complaint for Permanent
13 Injunction, Application for ex parte Restraining Order and
14 appointment of Temporary Receiver, Memorandum of Points and
15 Authorities with supporting Exhibits and attachments, and all
16 other papers filed herein, and it appears to the satisfaction of
17 the Court that:

- 18 1. This Court has jurisdiction over the subject matter of the
19 case and there is good cause to believe it will have
20 jurisdiction over all parties.
- 21 2. The June 22, 1999, bankruptcy petition filed by WESTERN
22 UNITED SERVICE CORPORATION does not impact this Court's
23 power to exercise jurisdiction in this case because the case
24 involves the FTC's exercise of regulatory authority.
- 25 3. There is good cause to believe Defendants WESTERN UNITED
26 BUSINESS CORPORATION d/b/a TITAN BUSINESS SOLUTIONS and
27 SCOTT FORD [hereinafter referred to collectively as
28 "Defendants"] have engaged in and are likely to engage in

1 acts and practices that violate Section 5(a) of the FTC Act,
2 15 U.S.C. § 45(a) and that the Commission is likely to
3 prevail on the merits of this action, and that these actions
4 have continued after the filing of the bankruptcy petition.

5 4. There is good cause to believe that immediate and
6 irreparable harm, specifically, injury to consumers, will
7 result from Defendants' ongoing violations of Section 5(a)
8 of the Federal Trade Commission Act, 15 U.S.C. § 45(a)
9 unless Defendants are restrained and enjoined by Order of
10 this Court.

11 5. There is good cause to believe that immediate and
12 irreparable damage to the Court's ability to grant effective
13 final relief for consumers in the form of monetary redress
14 will occur from the dissipation or concealment of assets or
15 the disposition, destruction, alteration or concealment by
16 Defendants of their records unless the Defendants are
17 immediately restrained and enjoined by Order of this Court.

18 6. There is thus good cause for issuing this Order without
19 prior notice to the Defendants of the Commission's
20 application, pursuant to Federal Rule of Civil Procedure
21 65(b) and Local Rule 7.18.2.

22 7. Good cause exists for the appointment of a Temporary
23 Receiver for TITAN BUSINESS SOLUTIONS.

24 8. Weighing the equities and considering the Commission's
25 likelihood of success in its causes of action, this
26 Temporary Restraining Order is in the public interest.

27 9. The Commission is an independent agency of the United States
28 of America and no security is required of any agency of the

1 United States of America for issuance of a restraining order
2 under Fed. R. Civ. P. 65(c).

3 4 **ORDER**

5 **Definitions**

- 6 1. **"Assets"** means any legal or equitable interest in, right to,
7 or claim to, any real and personal property, including but
8 not limited to chattel, goods, instruments, equipment,
9 fixtures, general intangibles, effects, leaseholds, mail or
10 other deliveries, inventory, checks, notes, accounts,
11 credits, receivables, and all cash, wherever located.
- 12 2. **"Document"** is synonymous in meaning and equal in scope to
13 the usage of the term in Federal Rule of Civil Procedure
14 34(a), and includes writings, drawings, graphs, charts,
15 photographs, audio and video recordings, computer records,
16 and other data compilations from which information can be
17 obtained and translated, if necessary, through detection
18 devices into reasonably usable form. A draft or non-
19 identical copy is a separate document within the meaning of
20 the term.
- 21 3. **"Named Defendants"** means WESTERN UNITED SERVICE CORPORATION
22 d/b/a TITAN BUSINESS SOLUTIONS and SCOTT FORD.
- 23 4. **"Defendants"** means the Named Defendants and their officers,
24 agents, servants, employees, attorneys, and all persons or
25 entities directly or indirectly under their control or under
26 common control with them, and all other persons or entities
27 in active concert or participation with them.
- 28 5. **"Receivership Defendant"** means WESTERN UNITED SERVICE

1 CORPORATION d/b/a TITAN BUSINESS SOLUTIONS.

2 6. **"Business Venture"** means any written or oral business
3 arrangement, however denominated, which consists of the
4 payment of any consideration for: (a) the right or means to
5 offer, sell or distribute goods or services (whether or not
6 identified by a trademark, service mark, trade name,
7 advertising, or other commercial symbol); and (b) assistance
8 to any person or entity in connection with or incident to
9 the establishment, maintenance, or operation of a new
10 business or the entry by an existing business into a new
11 line or type of business.

12
13 **I.**

14 **PROHIBITED BUSINESS ACTIVITIES**

15 **IT IS THEREFORE ORDERED** that Defendants, who receive actual
16 notice of this order by personal service or otherwise, in
17 connection with the advertising, promotion, offering for sale or
18 sale of any employment opportunity, business venture, or any
19 work-at-home product or service, are hereby restrained and
20 enjoined from:

21 A. Making, or assisting in the making of, expressly or by
22 implication, orally or in writing, any statement or
23 representation of material fact that is false or
24 misleading, including but not limited to, any
25 misrepresentation that:

26 1. that consumers who purchase the medical billing
27 employment opportunity from Defendants will
28 receive a complete package suitable for a consumer

- 1 to start his or her own medical billing business;
- 2 2. that Defendants will furnish consumers with the
- 3 names and addresses of pre-screened physicians who
- 4 are likely to use the consumers to process their
- 5 medical claims; or
- 6 3. that consumers, by use of Defendants' medical
- 7 billing employment opportunity, will earn specific
- 8 high levels of earnings; or

9 B. Making, or assisting in the making of, expressly or by

10 implication, orally or in writing, any statement or

11 representation of material fact that is false or

12 misleading, including but not limited to, any

13 misrepresentation about any other fact material to a

14 consumer's decision to purchase any business venture,

15 employment opportunity or any work-at-home product or

16 service.

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18 **II.**

19 **ASSET FREEZE**

20 **IT IS FURTHER ORDERED** that Named Defendants are hereby

21 temporarily restrained and enjoined from:

22 A. Transferring, converting, encumbering, selling,

23 concealing, dissipating, disbursing, assigning,

24 spending, withdrawing, or otherwise disposing of any

25 funds, property, accounts, contracts, shares of stock

26 or other assets, wherever located, that are:

- 27 1. Owned or controlled by Named Defendants, or their
- 28 affiliates or subsidiaries (without limitation),

1 in whole or in part;

2 2. In the actual or constructive possession of Named
3 Defendants, or their affiliates or subsidiaries
4 (without limitation); or

5 3. Owned, controlled by, or in the actual or
6 constructive possession of any corporation,
7 partnership, or other entity directly or
8 indirectly owned, managed, or controlled by, or
9 under common control with any Named Defendant,
10 including but not limited to, Western United
11 Service Corp., dba Titan Business Solutions and
12 Scott Ford, and Scomark, Inc. and Affordable
13 Merchant Services, Inc.

14 This paragraph shall include, but not be limited to, any
15 assets held for, on behalf of, for the benefit of, or by
16 Named Defendants, or their affiliates or subsidiaries, at
17 any bank or savings and loan institution, or with any
18 broker, dealer, escrow agent, title company, commodity
19 trading company, precious metal dealer, or other financial
20 institution or depository of any kind, including without
21 limitation any assets set forth in Attachment 1.

22 B. Opening or causing to be opened any safe deposit boxes
23 titled in the name of any Named Defendant, or their
24 companies, affiliates or subsidiaries, or subject to
25 access by any of these defendants.

26 C. Notwithstanding the provisions of this Paragraph, Named
27 Defendants may make transfers as directed by any
28 Temporary Receiver appointed by this Court, or as

1 otherwise ordered by this Court upon proper showing and
2 after notice to the Commission.

3 D. Provided further that this Section shall be construed
4 to apply to assets that Named Defendants acquire
5 following entry of this Order only if such assets are
6 derived from the operation of any activity prohibited
7 by this Order or derived from any other violation of
8 Section 5(a) of the Federal Trade Commission Act, 15
9 U.S.C. § 45(a).

11 III.

12 FINANCIAL REPORTS

13 **IT IS FURTHER ORDERED** that Named Defendants shall each,
14 within forty-eight hours after entry of this Order, prepare and
15 deliver a Financial Statement to this Court, counsel for the
16 Commission and the Temporary Receiver. A Financial Statement
17 shall be completed for each Named Defendant and for each business
18 entity under which they conduct business, or of which they are an
19 officer, and of each trust for which they are a trustee. The
20 Financial Statements shall be accurate as of the date of the
21 entry of this Order and shall be verified under oath.

22 A. Any corporate Defendant shall complete and deliver the
23 "Financial Statement of Corporate Defendant" a form of
24 which is attached to this Order as Attachment 2,
25 provided that any corporate Defendant need not
26 separately complete this form if it is provided by an
27 individual Defendant pursuant to Part B of this
28 Paragraph; and

- 1 B. Any individual Defendant shall, for himself,
2 1. Complete and deliver the "Financial Statement of
3 Individual Defendant" a form of which is attached
4 to this Order as Attachment 3; and
5 2. for each business entity he owns, controls,
6 operates, or of which he is any officer, and for
7 each trust of which he or she is a trustee,
8 complete and deliver the "Financial Statement of
9 Corporate Defendant" that is attached to this
10 Order as Attachment 2.
11

12 IV.

13 REPATRIATION OF ASSETS

14 **IT IS FURTHER ORDERED** that within 48 hours of the service of this
15 Order, the Defendants shall:

- 16 A. Provide Commission and the Temporary Receiver access to
17 the Named Defendants' records and documents held by
18 financial institutions outside the territory of the
19 United States by signing the Consent to Release of
20 Financial Records attached to this Order as Attachment
21 4;
22 B. Transfer to the territory of the United States all
23 funds, documents and assets in foreign countries held
24 either: (a) by them, (b) for their benefit, or (c)
25 under their direct or indirect control, jointly or
26 singly;
27 C. Hold and retain all such repatriated funds and prevent
28 any transfer, disposition, or dissipation whatsoever of

1 any such assets or funds in full compliance with
2 Section II of this Order until further Order of this
3 Court;

4 D. Provide Commission and the Temporary Receiver with a
5 full accounting of all funds, documents and assets
6 outside of the territory of the United States which are
7 held either (1) by them, (2)for their benefit, or (3)
8 under their direct or indirect control, jointly or
9 singly; and

10 E. Specifically notify the Court, the Commission and the
11 Temporary Receiver of the location of the transferred
12 funds within the United States.

13
14 **V.**

15 **PRESERVATION OF RECORDS**

16 **IT IS FURTHER ORDERED** that Defendants are hereby temporarily
17 restrained and enjoined from destroying, erasing, mutilating,
18 concealing, altering, transferring or otherwise disposing of, in
19 any manner, directly or indirectly, any documents that relate to
20 the business practices or business or personal finances of any
21 Named Defendant and to the business practices of entities
22 directly or indirectly under control of a Named Defendant,
23 including but not limited to Western United Business Service
24 Copr. dba Titan Business Solutions, Scott Ford and Scomark, Inc.
25 and Affordable Merchant Services, Inc., or under common control
26 with a Named Defendant and all other persons in active concert or
27 participation with them.

1 VI.

2 RECORD KEEPING/BUSINESS OPERATIONS

3 IT IS FURTHER ORDERED that the Named Defendants are hereby
4 temporarily restrained and enjoined from:

5 A. Failing to make, keep, and provide to the Commission
6 and the Temporary Receiver, an accurate accounting for
7 themselves and any business or entity owned or
8 controlled, in whole or in part, directly or
9 indirectly, by them, including but not limited to
10 Scomark, Inc. and Affordable Merchant Services, Inc.,
11 which accounting shall included the creation and
12 retention of documents that, in reasonable detail,
13 accurately, fairly, and completely reflect all assets
14 received (including, but not limited to, loans, gifts
15 and revenue), disbursements, transfers, transactions,
16 and expenditures, beginning immediately upon service or
17 actual notice of this Order; and

18 B. Creating, operating, or exercising any control over any
19 business entity, including but not limited to any
20 partnership, limited partnership, joint venture, sole
21 proprietorship or corporation, without first providing
22 the Commission and Temporary Receiver with a written
23 statement disclosing:

- 24 1. the name of the business entity;
25 2. the address and telephone number of the business
26 entity;
27 3. the names of the business entity's officers,
28 directors, principals, managers and employees; and

1 directly to this Court and that he shall comply with
2 all Local Rules of this Court governing receivers;

3 B. The Temporary Receiver shall assume all the powers of
4 the Receivership Defendant's officers, directors and
5 managers, whose powers and authority are hereby
6 suspended;

7 C. The Temporary Receiver shall have full power to divert
8 mail and to sue for, collect, receive, take in
9 possession, hold, and manage all assets and documents
10 of the Receivership Defendant and other persons or
11 entities whose interests are now held by or under the
12 direction, possession, custody, or control of the
13 Receivership Defendant. The Temporary Receiver is
14 fully authorized to effect a change in the rights to
15 use any and all post office boxes or private mail
16 facilities in use by the Receivership Defendant; and

17 D. The Temporary Receiver shall allow representatives of
18 the Commission and the Named Defendants' attorneys
19 access to inspect the premises of the Receivership
20 Defendant, and to copy books, records, accounts and
21 other property of the Receivership Defendant, wherever
22 located, at such times and in such manner as determined
23 solely at the discretion of the Temporary Receiver.

24 **IT IS FURTHER ORDERED** that the Temporary Receiver shall not
25 attempt to collect any amount from a consumer if the Temporary
26 Receiver believes the consumer was a victim of the deceptive acts
27 or practices alleged in the Complaint in this matter, without
28 prior court approval.

1 IX.

2 RECEIVERSHIP AUTHORITY AND DUTIES

3 IT IS FURTHER ORDERED that the Temporary Receiver is directed and
4 authorized as follows:

5 A. To assume full control of the Receivership Defendant by
6 removing, as the Temporary Receiver deems necessary or
7 advisable, Defendants and any officer, director,
8 independent contractor, employee, or agent of any of
9 the Receivership Defendant, including any Named
10 Defendant, from control of, management of, or
11 participation in, the affairs of the Receivership
12 Defendant;

13 B. To take exclusive custody, control and possession of
14 all assets and documents of, or in the possession,
15 custody, or under the control of, the Receivership
16 Defendant, wherever situated;

17 C. To immediately return to consumers without further
18 court order any funds that are identifiable as received
19 from specific consumers following the Temporary
20 Receiver's appointment or that are received at the
21 Receivership Defendant's premises or mailboxes or
22 forwarded to the Temporary Receiver after entry of this
23 Order and that were, based upon the Temporary
24 Receiver's good faith determination, procured by use of
25 the unfair or deceptive acts or practices alleged in
26 the Complaint in this matter. Likewise, upon the
27 Temporary Receiver's appointment, the Temporary
28 Receiver shall take all reasonable steps to halt

1 immediately the debit of consumer bank accounts or
2 charges to consumer credit cards that in the Temporary
3 Receiver's good faith determination were procured by
4 use of the unfair or deceptive acts or practices
5 alleged in the Complaint in this matter;

6 D. Conserve, hold, and manage all receivership assets, and
7 perform all acts necessary or advisable to preserve the
8 value of those assets, in order to prevent any
9 irreparable loss, damage, or injury to consumers or to
10 creditors of the Receivership Defendant, including, but
11 not limited to, obtaining an accounting of the assets
12 and preventing transfer, withdrawal, or misapplication
13 of assets;

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

16 F. Prevent the inequitable distribution of assets and
17 determine, adjust, and protect the interests of
18 consumers and creditors who have transacted business
19 with the Receivership Defendant;

20 G. Manage and administer the business of the Receivership
21 Defendant until further order of this Court by
22 performing all incidental acts that the Temporary
23 Receiver deems to be advisable or necessary, which
24 includes retaining, hiring, or dismissing any
25 attorneys, employees, independent contractors, or
26 agents;

27 H. Choose, engage, and employ attorneys, accountants,
28 appraisers, and other independent contractors and

1 technical specialists, as the Temporary Receiver deems
2 advisable or necessary in the performance of duties and
3 responsibilities under the authority granted by this
4 Order;

5 I. Request the assistance of Federal and State officers in
6 the execution of this Order;

7 J. Make payments and disbursements from the receivership
8 estate that are necessary or advisable for carrying out
9 the directions of, or exercising the authority granted
10 by, this Order. The Temporary Receiver shall apply to
11 the Court for prior approval of any payment of any debt
12 or obligation incurred by the Receivership Defendant
13 prior to the date of entry of this Order, except
14 payments that the Temporary Receiver deems necessary or
15 advisable to secure assets of the Receivership
16 Defendant, such as rental payments;

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

22 L. Institute, compromise, adjust, appear in, intervene in,
23 or become party to such actions or proceedings in
24 state, federal or foreign courts that the Temporary
25 Receiver deems necessary and advisable to preserve or
26 recover the assets of the Receivership Defendant or
27 that the Temporary Receiver deems necessary and
28 advisable to carry out the Temporary Receiver's mandate

1 under this Order;

2 M. Defend, compromise, adjust, or otherwise dispose of any
3 or all actions or proceedings instituted in the past or
4 in the future against the Temporary Receiver in his
5 role as Temporary Receiver, or against the Receivership
6 Defendant that the Temporary Receiver deems necessary
7 and advisable to preserve the assets of the
8 Receivership Defendant or that the Temporary Receiver
9 deems necessary and advisable to carry out the
10 Temporary Receiver's mandate under this Order;

11 N. Continue and conduct the business of the Receivership
12 Defendant in such manner, to such extent, and for such
13 duration as the Temporary Receiver may in good faith
14 deem to be necessary or appropriate to operate the
15 business profitably and lawfully, if at all; provided
16 that the continuation and conduct of the business shall
17 be conditioned upon the Temporary Receiver's good faith
18 determination that the businesses can be lawfully
19 operated at a profit using the assets of the
20 receivership estate;

21 O. Issue subpoenas to obtain documents and records
22 pertaining to the receivership, and conduct discovery
23 in this action on behalf of the receivership estate;

24 P. Open one or more bank accounts in Los Angeles County as
25 designated depositories for funds of the Receivership
26 Defendant. The Temporary Receiver shall deposit all
27 funds of the Receivership Defendant in such a
28 designated account and shall make all payments and

1 disbursements from the receivership estate from such an
2 account; and

3 Q. Maintain accurate records of all receipts and
4 expenditures that he makes as Temporary Receiver;

5 **IT IS FURTHER ORDERED THAT** the Temporary Receiver will be
6 responsible for maintaining the chain of custody of all of
7 Defendants' records in his possession, pursuant to procedures to
8 be established in writing with the approval of the Commission.
9 In the event that the Temporary Receiver is made custodian of
10 records obtained pursuant to a criminal warrant, then the
11 Temporary Receiver will comply with the procedures of the
12 criminal agency.

13
14 **X.**

15 **AUTHORITY OF TEMPORARY RECEIVER**
16 **TO SECURE BUSINESS PREMISES**

17 **IT IS FURTHER ORDERED THAT** the Commission's representatives,
18 agents, and assistants, as well as Named Defendants and their
19 representatives shall have reasonable access to any premises
20 operating on behalf of or for the benefit of the Receivership
21 Defendant, including without limitation, 4410 W. Victory Blvd.,
22 Burbank, CA. The purpose of this access shall be to inspect and
23 copy any and all material that may be relevant to this action,
24 including without limitation, documents, books, records,
25 accounts, computer data, tapes, and any materials relating to any
26 of the Named Defendant's assets.

27 **IT IS FURTHER ORDERED THAT** the Temporary Receiver is
28 authorized to take all steps necessary to secure the business

1 premises of the Receivership Defendant, including but not limited
2 to the premises located at 4410 W. Victory Blvd., Burbank, CA.

3 Such steps may include, but are not limited to, any of the
4 following as the Temporary Receiver deems necessary or advisable:

- 5 A. serving and filing this Order,
- 6 B. completing a written inventory of all receivership
7 assets,
- 8 C. obtaining pertinent information from all employees and
9 other agents of the Receivership Defendant, including,
10 but not limited to, the name, home address, social
11 security number, job description, method of
12 compensation, and all accrued and unpaid commissions
13 and compensation of each such employee or agent,
- 14 D. video taping all portions of the location including
15 persons present at the location,
- 16 E. securing the location by changing the locks and
17 disconnecting any computer modems or other means of
18 access to the computer or other records maintained at
19 that location, or
- 20 F. requiring any persons present on the premises at the
21 time this Order is served to leave the premises, to
22 provide the Temporary Receiver with proof of
23 identification, or to demonstrate to the satisfaction
24 of the Temporary Receiver that such persons are not
25 removing from the premises documents or assets of the
26 Receivership Defendant.

27
28 **XI.**

- 1 2. Destroying, secreting, defacing, transferring, or
2 otherwise altering or disposing of any documents
3 of the Receivership Defendant, including, but not
4 limited to, books, records, accounts, or any other
5 papers of any kind or nature;
- 6 3. Transferring, receiving, altering, selling,
7 encumbering, pledging, assigning, liquidating, or
8 otherwise disposing of any assets owned,
9 controlled, or in the possession or custody of, or
10 in which an interest is held or claimed by, the
11 Receivership Defendant, or the Temporary Receiver;
- 12 4. Excusing debts owed to the Receivership Defendant;
- 13 5. Failing to notify the Temporary Receiver of any
14 asset, including accounts of the Receivership
15 Defendant held in any name other than the name of
16 the Receivership Defendant, or by any person or
17 entity other than the Receivership Defendant, or
18 failing to provide any assistance or information
19 requested by the Temporary Receiver in connection
20 with obtaining possession, custody, or control of
21 such assets;
- 22 6. Doing any act or refraining from any act
23 whatsoever to interfere with the Temporary
24 Receiver's taking custody, control, possession, or
25 managing of the assets or documents subject to
26 this receivership; or to harass or interfere with
27 the Temporary Receiver in any way; or to interfere
28 in any manner with the exclusive jurisdiction of

1 this Court over the assets or documents of the
2 Receivership Defendant; or

- 3 7. Refusing to cooperate with the Temporary Receiver
4 or the Temporary Receiver's duly authorized agents
5 in the exercise of their duties or authority under
6 any Order of this Court.

7
8 **XIII.**

9 **DELIVERY OF RECEIVERSHIP PROPERTY**

10 **IT IS FURTHER ORDERED THAT:**

11 A. Immediately upon service of this Order upon them, or
12 within a period permitted by the Temporary Receiver,
13 Defendants or any other person or entity, including but
14 not limited to banks and brokerages, shall transfer or
15 deliver possession, custody, and control of the
16 following to the Temporary Receiver:

- 17 1. All assets of the Receivership Defendant;
18 2. All documents of the Receivership Defendant,
19 including, but not limited to, books and records
20 of accounts, all financial and accounting records,
21 balance sheets, income statements, bank records
22 (including monthly statements, canceled checks,
23 records of wire transfers, and check registers),
24 client lists, title documents and other papers;
25 3. All assets belonging to members of the public now
26 held by the Receivership Defendant; and
27 4. All keys and codes necessary to gain or to secure
28 access to any assets or documents of the

1 Receivership Defendant, including, but not limited
2 to, access to their business premises, means of
3 communication, accounts, computer systems, or
4 other property.

5 B. In the event any person or entity fails to deliver or
6 transfer any asset or otherwise fails to comply with
7 any provision of this Paragraph, the Temporary Receiver
8 may file ex parte an Affidavit of Non-Compliance
9 regarding the failure. Upon filing of the affidavit,
10 the Court may authorize, without additional process or
11 demand, Writs of Possession or Sequestration or other
12 equitable writs requested by the Temporary Receiver.
13 The writs shall authorize and direct the United States
14 Marshal or any sheriff or deputy sheriff of any county
15 (pursuant to Fed. R. Civ. P. 4(c)(1) and Local Rule
16 4.1) to seize the asset, document, or other thing and
17 to deliver it to the Temporary Receiver.

18
19 **XIV.**

20 **BANKRUPTCY PETITIONS**

21 **IT IS FURTHER ORDERED** that, in light of the appointment of the
22 Temporary Receiver, the Named Defendants are hereby prohibited
23 from filing, or causing to be filed, a petition for relief under
24 the United States Bankruptcy Code, 11 U.S.C. § 101 et seq.,
25 without prior permission from this Court.

26
27 **XV.**

28 **TRANSFER OF FUNDS TO THE RECEIVER**

1 **IT IS FURTHER ORDERED** that, upon service of a copy of this Order,
2 all banks, broker-dealers, savings and loans, escrow agents,
3 title companies, commodity trading companies, or other financial
4 institutions shall cooperate with all reasonable requests of the
5 Temporary Receiver relating to implementation of this Order,
6 including transferring funds at his direction and producing
7 records related to the assets of the Receivership Defendant.

8
9 **XVI.**

10 **STAY OF ACTIONS**

11 **IT IS FURTHER ORDERED** that except by leave of this Court, during
12 pendency of the receivership ordered herein, Defendants and all
13 other persons and entities be and hereby are stayed from taking
14 any action to establish or enforce any claim, right, or interest
15 for, against, on behalf of, in, or in the name of, any of the
16 Receivership Defendant, any of their subsidiaries, affiliates,
17 partnerships, assets, documents, or the Temporary Receiver or the
18 Temporary Receiver's duly authorized agents acting in their
19 capacities as such, including, but not limited to, the following
20 actions:

- 21 A. Commencing, prosecuting, continuing, entering, or
22 enforcing any suit or proceeding, except that such
23 actions may be filed to toll any applicable statute of
24 limitations;
- 25 B. Accelerating the due date of any obligation or claimed
26 obligation; filing or enforcing any lien; taking or
27 attempting to take possession, custody, or control of
28 any asset; attempting to foreclose, forfeit, alter, or

1 terminate any interest in any asset, whether such acts
2 are part of a judicial proceeding, are acts of self-
3 help, or otherwise;

4 C. Executing, issuing, serving, or causing the execution,
5 issuance or service of, any legal process, including,
6 but not limited to, attachments, garnishments,
7 subpoenas, writs of replevin, writs of execution, or
8 any other form of process whether specified in this
9 Order or not; or

10 D. Doing any act or thing whatsoever to interfere with the
11 Temporary Receiver taking custody, control, possession,
12 or management of the assets or documents subject to
13 this receivership, or to harass or interfere with the
14 Temporary Receiver in any way, or to interfere in any
15 manner with the exclusive jurisdiction of this Court
16 over the assets or documents of the Receivership
17 Defendant;

18 E. Except that this paragraph shall not stay:

19 1. The commencement or continuation of a criminal
20 action or proceeding;

21 2. The commencement or continuation of an action or
22 proceeding by a governmental unit to enforce such
23 governmental unit's police or regulatory power;

24 3. The enforcement of a judgment, other than a money
25 judgment, obtained in an action or proceeding by a
26 governmental unit to enforce such governmental
27 unit's police or regulatory power;

28 4. The commencement of any action by the Secretary of

1 the United States Department of Housing and Urban
2 Development to foreclose a mortgage or deed of
3 trust in any case in which the mortgage or deed of
4 trust held by the Secretary is insured or was
5 formerly insured under the National Housing Act
6 and covers property, or combinations of property,
7 consisting of five or more living units; or

8 5. The issuance to a Receivership Defendant of a
9 notice of tax deficiency.

10 Except as otherwise provided in this Order, all persons and
11 entities in need of documentation from the Temporary Receiver
12 shall, in all instances, first attempt to secure such information
13 by submitting a formal written request to the Temporary Receiver,
14 and, if such request has not been responded to within thirty (30)
15 days of receipt by the Temporary Receiver, any such person or
16 entity may thereafter seek an Order of this Court with regard to
17 the relief requested.

18
19 **XVII.**

20 **COMPENSATION OF TEMPORARY RECEIVER**

21 **IT IS FURTHER ORDERED** that the Temporary Receiver and all
22 personnel hired by the Temporary Receiver as herein authorized,
23 including counsel to the Temporary Receiver and accountants, are
24 entitled to reasonable compensation for the performance of duties
25 pursuant to this Order and for the cost of actual out-of-pocket
26 expenses incurred by them, from the assets now held by or in the
27 possession or control of or which may be received by the
28 Receivership Defendant. The Temporary Receiver shall file with

1 the Court and serve on the parties periodic requests for the
2 payment of such reasonable compensation, with the first such
3 request filed no more than sixty days after the date of this
4 Order. The Temporary Receiver shall not increase the hourly
5 rates used as the bases for such fee applications without prior
6 approval of the Court.

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9
10 **XVIII.**

11 **RECEIVER'S BOND**

12 **IT IS FURTHER ORDERED** that the Temporary Receiver shall file with
13 the Clerk of this Court a bond in the sum of \$25,000 with
14 sureties to be approved by the Court, conditioned that the
15 Temporary Receiver will well and truly perform the duties of the
16 office and abide by and perform all acts the Court directs.

17
18 **XIX.**

19 **SERVICE OF ORDER**

20 **IT IS FURTHER ORDERED** that the Commission shall serve a copy of
21 this Order upon the Named Defendants in accordance with Rule 4 of
22 the Federal Rules of Civil Procedure, or in any manner provided
23 by law on or before Noon on 10/27/2000, to be deemed good and
24 sufficient service and notice of the hearing on the Order to Show
25 Cause Re Preliminary Injunction. The Commission shall notify the
26 Court seventy-two hours prior to the Hearing on the Preliminary
27 Injunction as to which, if any, of the Named Defendants have not
28 been served.

1
2 **XX.**

3 **SERVICE ON FINANCIAL INSTITUTIONS**

4 **IT IS FURTHER ORDERED** that copies of this Order may be served by
5 any means, including facsimile transmission, upon any financial
6 institution or other entity or person that may have possession,
7 custody, or control of any documents or assets of any of the
8 Named Defendants, or that may otherwise be subject to any
9 provision of this Order. Service upon any branch or office of
10 any financial institution shall effect service upon the entire
11 financial institution. For purposes of service on anyone in
12 possession of records, assets, property, or property rights,
13 actual notice of this Order shall be deemed complete upon service
14 of pages 1-36 of this Order (with Attachment 1 only).

15
16 **XXI.**

17 **RETENTION OF ASSETS AND RECORDS**

18 **IT IS FURTHER ORDERED** that, pending determination of the
19 Commission's request for a preliminary injunction, any bank,
20 savings and loan institution, credit union, financial
21 institution, brokerage house, escrow agent, money market or
22 mutual fund, title company, commodity trading company, common
23 carrier, storage company, trustee, commercial mail receiving
24 agency, mail holding or forwarding company, or any other
25 partnership, corporation, or legal entity, business entity, or
26 person, including but not limited to, Union Bank, Charter Pacific
27 Bank, Humboldt Bank, First Regional Bank, American Express, and
28 Novus (Discover), that holds, controls or maintains custody of

1 any account or asset belonging to or titled in the name of any
2 Named Defendant, or to which they are a signatory, or which is
3 held on behalf of, or for the benefit of, any Named Defendant,
4 individually or jointly, or that has held, controlled or
5 maintained custody of any such account or asset at any time since
6 September 1, 1999, shall:

7 A. Prohibit the Named Defendants and their agents,
8 servants, employees, attorneys, and all persons or
9 entities directly or indirectly under their control, or
10 in common control with them, from withdrawing,
11 removing, assigning, transferring, pledging,
12 encumbering, disbursing, dissipating, converting,
13 selling, or otherwise disposing of any such account or
14 asset except:

- 15 1. as directed by further order of the Court;
- 16 2. for specific transfers authorized in writing by
17 counsel for the Commission; or
- 18 3. as directed by the Temporary Receiver (regarding
19 assets held in the name or for the benefit of the
20 Receivership Defendant);

21 B. Deny Defendants, unless accompanied by counsel for the
22 Federal Trade Commission, access to any safe deposit
23 box that is:

- 24 1. titled in the name of Named Defendants, or their
25 affiliates or subsidiaries, either individually or
26 jointly; or
- 27 2. otherwise subject to access by Named Defendants,
28 or their affiliates or subsidiaries;

1 C. Provide counsel for the Commission and the Temporary
2 Receiver within three (3) business days of receiving a
3 copy of this Order, a sworn statement setting forth:

- 4 1. the identification number of each such account or
5 asset titled in the name, individually or jointly,
6 of Named Defendants, or their corporations,
7 affiliates or subsidiaries, or held on behalf of,
8 or for the benefit of, any such Named Defendant,
9 including but not limited to accounts or assets
10 held in the names Scott Ford, Western United
11 Service Corporation, or Titan Business Solutions;
- 12 2. the balance of each such account, or a description
13 of the nature and value of such asset as of the
14 time this Order is served, and, if the account or
15 other asset has been closed or removed, the date
16 closed or removed, the total funds removed in
17 order to close the account, and the name of the
18 person or entity to whom such account or other
19 asset was remitted; and
- 20 3. the identification of any safe deposit box that is
21 either titled in the name, individually or
22 jointly, of, Named Defendants, or their
23 corporations, affiliates or subsidiaries,
24 including but not limited to Scott Ford, Western
25 United Service Corporation, or Titan Business
26 Solutions, or is otherwise subject to access by
27 any such Defendant;

28 D. Upon the request by the Temporary Receiver or the

1 Commission, promptly provide the Temporary Receiver and
2 the Commission with copies of all records or other
3 documentation pertaining to such account or asset,
4 including but not limited to originals or copies of
5 account applications, account statements, signature
6 cards, checks, drafts, deposit tickets, transfers to
7 and from the accounts, all other debit and credit
8 instruments or slips, currency transaction reports,
9 1099 forms, and safe deposit box logs; and

- 10 E. Cooperate with all reasonable requests of the Temporary
11 Receiver relating to implementation of this Order,
12 including transferring funds at the Temporary
13 Receiver's direction and producing records related to
14 the accounts of the Receivership Defendant.

15
16 **XXII.**

17 **EXPEDITED DISCOVERY**

18 **IT IS FURTHER ORDERED** that the Commission and the Temporary
19 Receiver are granted leave at any time after service of this
20 Order to:

- 21 A. take the deposition of any person or entity, including
22 without limitation for the purpose of discovering the
23 nature, location, status, and extent of assets of the
24 Named Defendants, or their affiliates or subsidiaries
25 and the nature and location of documents reflecting the
26 business transactions of these Defendants,
27 B. demand the production of documents from any person or
28 entity relating to the nature, status, and extent of

1 10877 Wilshire Blvd., Suite 700, Los Angeles, California 90024,
2 or by facsimile transmission to (310) 824-4380. The Commission
3 shall serve any reply memoranda, affidavits and other evidence on
4 all Named Defendants who have been served, or their counsel, by
5 personal delivery or by facsimile, no later than 5:00 p.m. of the
6 second business day prior to the hearing date.

7 / /

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9 / /

10 **XXIV.**

11 **WITNESSES**

12 **IT IS FURTHER ORDERED** that there will be no direct examination of
13 witnesses at the preliminary injunction hearing in this matter.

14
15 **XXV.**

16 **DEFENSE COUNSEL'S ATTORNEY'S FEES**

17 **IT IS FURTHER ORDERED** that if Named Defendants' retain
18 counsel, the Court will consider awarding reasonable attorneys'
19 fees to Named Defendants' counsel only upon a showing of good
20 cause upon written motion submitted in accordance with the Local
21 Rules of this Court. The term "reasonable," however, shall not
22 be solely determined in light of prevailing rates in the
23 community for the work performed, but rather, the Court will also
24 consider what is "reasonable" in light of the totality of the
25 circumstances, including the likelihood of success, the amount of
26 gross receipts from consumers, and the amount of frozen assets.
27 Named Defendants' attorney's fees shall not be paid until after
28 Defendants' gross receipts from consumers are ascertained.

1
2 **XXVI.**

3 **DURATION OF TEMPORARY RESTRAINING ORDER**

4 **IT IS FURTHER ORDERED** that the Temporary Restraining Order
5 granted herein shall expire on November 3, 2000, unless within
6 such time, the Order, for good cause shown, is extended for an
7 additional period not to exceed ten days, or unless it is further
8 extended pursuant to Federal Rule of Civil Procedure 65 or by
9 stipulation of counsel.
10

11 **XXVII.**

12 **ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION**

13 **IT IS FURTHER ORDERED**, pursuant to Federal Rule of Civil
14 Procedure 65(b), that each of the Named Defendants shall appear
15 before this Court on the 3rd day of November, 2000, at 2:00
16 p.m., before the Honorable Gary Allen Feess, Courtroom 740,
17 United States District Court, Central District of California, Los
18 Angeles, California 90012 to show cause, if there is any, why a
19 Preliminary Injunction should not be granted in accordance with
20 the prayer for relief contained in the Complaint, and to show
21 cause why an order should not be made continuing the Temporary
22 Restraining Order enjoining Defendants from further violations of
23 Section 5(a) of the Federal Trade Commission Act, 15 U.S.C.
24 § 45(a), continuing the asset freeze, appointing Robb Evans &
25 Associates as permanent receiver, with all the powers of an
26 Equity Receiver and such other powers as the Court shall find
27 necessary and appropriate for the Permanent Receiver to
28 administer the receivership estate, and imposing such additional

