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**ORIGINAL FILED**

**MAY 19 2003**

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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

CHECK INVESTORS, INC., et al.,

Defendants.

Civil No. 03-2115 (JWB)

**TEMPORARY RESTRAINING ORDER WITH AN ASSET FREEZE, EXPEDITED  
DISCOVERY, AND OTHER EQUITABLE RELIEF AND ORDER FOR DEFENDANTS  
TO SHOW CAUSE WHY PRELIMINARY INJUNCTION SHOULD NOT BE ENTERED**

Plaintiff Federal Trade Commission ("FTC"), has filed a Complaint seeking a permanent injunction and other relief, pursuant to Section 13(b) of the Federal Trade Commission Act

("FTC Act"), 15 U.S.C. § 53(b), and Section 814(a) of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692l(a), and a motion for a temporary restraining order with an asset freeze, expedited discovery, and other equitable relief, pursuant to Rule 65(b) of the Federal Rules of Civil Procedure and Local Rule 65.1. A hearing was held, after notice to Defendants, on May 15, 2003. This Court has considered the pleadings and exhibits filed in support of the FTC's motion, as well as the argument of the parties during the May 15 hearing, and now being advised in the premises, finds that:

1 This Court has jurisdiction over the subject matter of this case, there is good cause to believe it will have jurisdiction over all the parties hereto, and venue in this district is proper;

2. There is good cause to believe that Check Investors, Inc., Check Enforcement, Inc., Jaredco, Inc., Barry S. Sussman, Elisabeth M. Sussman, and Charles T. Hutchins have engaged and are likely to continue to engage in acts or practices that violate the FDCPA, 15 U.S.C. § 1692 et seq., and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and that the FTC is therefore likely to prevail on the merits of this action;

3. There is good cause to believe that immediate and irreparable harm will result from Defendants' ongoing violations of the FDCPA and Section 5(a) of the FTC Act unless Defendants are restrained and enjoined by order of this Court;

4. Weighing the equities and considering the FTC's likelihood of ultimate success, a temporary restraining order with an asset freeze, expedited discovery, and other equitable relief, is in the public interest;

5. No security is required of any agency of the United States for issuance of a restraining order. Fed. R. Civ. P. 65(c); and

6. This temporary restraining order is in the public interest.

**IT IS THEREFORE ORDERED AS FOLLOWS:**

**DEFINITIONS**

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

A. "Defendants" means Check Investors, Inc., Check Enforcement, Inc., Jaredco, Inc., Barry S. Sussman, Elisabeth M. Sussman, and Charles T. Hutchins.

B. "Document(s)" or "record(s)" means

1. The original or a true copy of any written, typed, printed, electronically stored, transcribed, taped, recorded, filmed, punched, or graphic matter or other data compilations of any kind, including, but not limited to, letters, e-mail or other correspondence, messages, memoranda, interoffice communications, notes, reports, summaries, manuals, magnetic tapes or discs, tabulations, books, records, checks, invoices, work papers, journals, ledgers, statements, returns, reports, schedules, or files; and

2. Any information stored on any desktop personal computer ("PC") and workstations, laptops, notebooks, and other portable computers, whether assigned to individuals or in pools of computers available for shared use; and home computers used for work-related purposes; backup disks and tapes, archive disks and tapes, and other forms of offline storage, whether stored onsite with the computer used to generate them, stored offsite in another company facility or stored offsite by a third-party, such as in a disaster recovery center; and computers and related offline storage used by Defendants' participating associates, which may include persons who are not employees of the company or who do not work on company premises.

C. "Assets" means any legal or equitable interest in, right to, or claim to, any real and personal property, including but not limited to chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail or other deliveries, inventory, checks, notes, accounts, credits, receivables, funds, monies, and all cash, wherever located.

D. "Financial institution" means any bank, savings and loan institution, credit union, or any financial depository of any kind, including but not limited to any brokerage house, trustee, broker-dealer, escrow agent, title company, commodity trading company, or precious metal dealer.

### **ORDER PROHIBITING CERTAIN BUSINESS ACTIVITIES**

II. IT IS HEREBY ORDERED that Defendants and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with Defendants who receive actual notice of this Order by personal service or otherwise, and each of them, are hereby restrained and enjoined from:

A. Violating the FDCPA, 15 U.S.C. § 1692 *et seq.*, including but not limited to:

1. Violating Section 805(b) of the FDCPA, 15 U.S.C. § 1692c(b), by communicating with third parties for purposes other than acquiring location information about a consumer, without having obtained directly the prior consent of the consumer or the express permission of a court of competent jurisdiction, and when not reasonably necessary to effectuate a post judgment judicial remedy;

2. Violating Section 806 of the FDCPA, 15 U.S.C. § 1692d, by engaging in conduct the natural consequence of which is to harass, oppress, or abuse a person, including, but not limited to (a) using obscene or profane language or language the natural consequence of

which is to abuse the hearer, in violation of section 806(2) of the FDCPA, 15 U.S.C. § 1692d(2); and (b) causing a telephone to ring or engaging a person in telephone conversation repeatedly or continuously with the intent to annoy, abuse, or harass a person at the number called, in violation of section 806(5) of the FDCPA, 15 U.S.C. § 1692d(5);

3. Violating Section 807 of the FDCPA, 15 U.S.C. § 1692e, by using false, deceptive, or misleading representations or means, including, but not limited to (a) falsely representing the character, amount, or legal status of a debt, or any services rendered or compensation which may be lawfully received by a debt collector for collection of a debt, in violation of sections 807(2)(A) and (B) of the FDCPA, 15 U.S.C. §§ 1692e(2)(A) and (B); (b) falsely representing or implying that an individual is an attorney or that a communication is from an attorney, in violation of section 807(3) of the FDCPA, 15 U.S.C. § 1692e(3); (c) falsely representing or implying that nonpayment of a debt will result in the arrest or imprisonment of a person or seizure, garnishment, or attachment of a person's property or wages, when such action is not lawful or when Defendants have no intention of taking such action, in violation of section 807(4) of the FDCPA, 15 U.S.C. § 1692e(4); (d) threatening to take action that Defendants do not intend to take, such as filing a lawsuit, in violation of section 807(5) of the FDCPA, 15 U.S.C. § 1692(5); (e) falsely representing or implying that a consumer committed a crime or other conduct in order to disgrace the consumer, in violation of section 807(7), 15 U.S.C. § 1692e(7); and (f) using false representations or deceptive means to collect or attempt to collect a debt or to obtain information concerning a consumer, in violation of section 807(10) of the FDCPA, 15 U.S.C. § 1692e(10);

4. Violating Section 808(1) of the FDCPA, 15 U.S.C. § 1692f(1), by using unfair or unconscionable means to collect or attempt to collect a debt, including but not limited to collecting amounts (including any interest, fee, charge, or expense incidental to the principal obligation) not authorized by the agreement creating the debt or permitted by law; and

5. Violating Section 809(a) of the FDCPA, 15 U.S.C. § 1692g(a), by failing to notify consumers of their right to dispute and obtain verification of their debts and to obtain the name of the original creditor, either in the initial communication with consumers by Defendants, or within five days thereafter;

B. Misrepresenting, directly or by implication, the amount that a consumer owes to satisfy any debt or purported debt;

C. Misrepresenting, directly or by implication, that any person is an attorney or that such person's communication is from an attorney;

D. Misrepresenting, directly or by implication, that nonpayment of a debt will result in a consumer's arrest or imprisonment, or seizure, garnishment, or attachment of a consumer's property or wages

E. Misrepresenting, directly or by implication, that any person intends to take legal action against a consumer;

F. Misrepresenting, directly or by implication, that a consumer has committed a crime by issuing an NSF check; and

G. Commencing, prosecuting, continuing, entering, or enforcing any suit or proceeding against any consumer relating or referring to the collection of any debt or alleged debt.

## **ASSET FREEZE**

III. IT IS FURTHER ORDERED that:

A. Except as identified in sub-sections B and C of this Section III, Defendants and their officers, agents, servants, employees, attorneys, and all persons or entities directly or indirectly under the control of any of them, including any financial institution, and all other persons or entities acting in concert or participation with any of them who are served with a copy of this Order by personal service, facsimile, or otherwise, are hereby temporarily restrained and enjoined from directly or indirectly:

1. Selling, liquidating, assigning, transferring, converting, loaning, encumbering, pledging, concealing, dissipating, spending, withdrawing, or otherwise disposing of any funds, real or personal property, or other assets or any interest therein, wherever located, including any assets outside the territorial United States, which are (1) in the actual or constructive possession of any Defendant; or (2) owned or controlled by, or held, in whole or in part for the benefit of, or subject to access by, or belong to, any Defendant; or (3) in the actual or constructive possession of, or owned or controlled by, or subject to access by, or belong to, any corporation, partnership, trust or other entity directly or indirectly under the control of Defendant.

2. Opening or causing to be opened any safe deposit boxes titled in the name of any Defendant, or subject to access by any Defendant.

B. Bank of New York account number 6106614243, in the name of Check Investors, Inc. Operating Account dba National Check Control, shall remain free of the asset freeze provisions of this Order. Bank of New York account number 6105870440, in the name of Barry Sussman, shall remain free of the asset freeze provisions of this Order. Fleet Bank account

number 9437138484, in the name of Elisabeth Sussman, shall remain free of the asset freeze provisions of this Order. First Union Bank account number 1030004396653, in the name of Charles Hutchins, shall remain free of the asset freeze provisions of this Order.

C. The amount of \$150,000 shall be transferred from Bank of New York account number 6106614251 to the client trust account of Stephen Robert LaCheen and Associates, 31<sup>st</sup> Floor Lewis Tower Building, 15<sup>th</sup> and Locust Streets, Philadelphia, Pennsylvania, for purposes of paying Defendants' living expenses and attorneys fees. On or before June 9, 2003, Stephen Robert LaCheen and Associates will provide the Court and counsel for the FTC an accounting of such funds.

D. The funds, property and assets affected by this Section III shall include those assets existing as of the effective date of this Order, including without limitation, those acquired by loan or gift. The individual Defendants may retain and spend income received from employment performed after the date of entry of this Order, provided that such income shall first be deposited into the respective accounts designated in sub-section B of this Section III. The corporate Defendants may retain and spend income received in the ordinary course of business performed after the date of entry of this Order, other than payments received from consumers as a result of collection efforts initiated prior to the date of entry of this Order, provided that such income shall first be deposited into the account designated in sub-section B of this Section III; provided, further, that the corporate Defendants may only make payments that are reasonable, necessary, and in the ordinary course of business. Further, Defendants may retain and spend assets acquired by loan or gift after the date of entry of this Order, provided that assets acquired by loan or gift in an amount greater than \$500 may be used only after disclosing in writing to



FTC counsel the source and amount of such loan(s) or gift(s) and depositing such loan(s) or gift(s) into the respective accounts designated in sub-section B of this Section III.

D. Within 3 days of receipt, Defendants shall provide to FTC counsel copies of all monthly bank statements or other statements from the accounts designated in sub-section B of this Section III.

#### **RETENTION OF ASSETS AND DOCUMENTS BY THIRD PARTIES**

IV. IT IS FURTHER ORDERED that, pending determination of the FTC's request for a preliminary injunction, any financial institution, or any person or other entity served with a copy of this Order shall:

A. Hold and retain within such entity's or person's control, and prohibit the withdrawal, removal, assignment, transfer, pledge, hypothecation, encumbrance, disbursement, dissipation, conversion, sale, liquidation, or other disposal of any funds, documents, property, or other assets, except for those identified in Sections III.B and III.C above, held by or under such entity's or person's control (1) on behalf of, or for the benefit of, any Defendant or other party subject to Section III above; (2) in any account maintained in the name of, or subject to withdrawal by, any Defendant or other party subject to Section III above; or (3) that are subject to access or use by, or under the signatory power of, any Defendant or other party subject to Section III above;

B. Deny access to any safe deposit boxes that are either (1) titled in the name, individually or jointly, of any Defendant or other party subject to Section III above; or (2) subject to access by Defendant or other party subject to Section III above.

C. Provide to counsel for the FTC, within three (3) days, a statement setting forth: (1) the identification of each account or asset titled in the name, individually or jointly, or held on behalf of, or for the benefit of, any Defendant or other party subject to Section III above, whether in whole or in part; (2) the balance of each such account, or a description of the nature and value of such asset; (3) the identification of any safe deposit box that is either titled in the name of, individually or jointly, or is otherwise subject to access or control by, any Defendant or other party subject to Section III above, whether in whole or in part; and (4) if the account, safe deposit box, or other asset has been closed or removed, the date closed or removed and the balance on said date.

D. The accounts subject to this provision include existing assets and assets deposited after the effective date of this Order, other than those identified in Sections III.B and III.C above. This Section shall not prohibit transfers in accordance with any provision of this Order, or any further order of the Court.

E. The FTC is granted leave, pursuant to Fed. R. Civ. P. 45, to subpoena documents immediately from any such financial institution, account custodian, or other entity concerning the nature, location, status, and extent of Defendants' assets, and compliance with this Order, and such financial institution, account custodian or other entity shall respond to such subpoena within five business days after service.

#### **FINANCIAL STATEMENTS**

V. IT IS FURTHER ORDERED that at least (3) three days prior to the preliminary injunction hearing in this matter, and in no event later than ten calendar days after entry of this order, each Defendant shall provide counsel for the FTC:

A. A completed financial statement accurate as of the date of service of this Order upon such Defendant (individual Defendants shall include all financial information as requested in the Department of Treasury – Internal Revenue Service Collection Information Statement for Individuals (Form 433-A) attached to this Order as Attachment A and also located at <http://www.irs.gov/pub/irs-pdf/f433a.pdf>); corporate Defendants shall include all financial information as requested in the corresponding Collection Information Statement for Businesses (Form 433 – B) attached to this Order as Attachment B and also located at <http://www.irs.gov/pub/irs-pdf/f433b.pdf>);

B. A completed statement, verified under oath, of all payments, transfers, or assignment of funds, assets, or property worth \$1,000 or more since January 1, 2003. Such statement shall include (a) the amount transferred or assigned; (b) the name of each transferee or assignee; (c) the date of the assignment or transfer; (d) the type and amount of consideration paid the Defendant. Each statement shall specify the name and address of each financial institution and brokerage firm at which the Defendant has accounts or safe deposit boxes. Said statements shall include assets held in foreign as well as domestic accounts; and

C. A full accounting of all assets, accounts or documents outside of the territory of the United States which are held either: (1) by them; (2) for their benefit; (3) in trust by or for them, individually or jointly; or (4) under their direct or indirect control, individually or jointly;

#### **EXPEDITED DISCOVERY**

VI. IT IS FURTHER ORDERED that, notwithstanding the provisions of Federal Rules of Civil Procedure 26(d) and (f) and 30(a)(2)(C), and Local Rule 26.1, and pursuant to Federal

Rules of Civil Procedure 30(a), 34, and 45, Plaintiff and Defendants are granted leave, at any time after service of this Order, to:

A. Take the deposition, on three (3) days' notice, of any person, whether or not a party, for the purpose of discovering (1) the nature, location, status, and extent of assets of Defendants, or of their affiliates or subsidiaries; (2) the nature and location of documents reflecting the business transactions of Defendants, or their affiliates or subsidiaries; (3) the applicability of any evidentiary privileges to this action; or (4) any other matter that is relevant to the issue of whether a preliminary injunction should issue in this action. The limitations and conditions set forth in Fed. R. Civ. P. 30(a)(2)(B) and 31(a)(2)(B) regarding subsequent depositions of an individual shall not apply to depositions taken pursuant to this Section. Any such depositions taken pursuant to this Section shall not be counted toward the ten-deposition limit set forth in Fed. R. Civ. P. 30(a)(2)(A) and 31(a)(2)(A). Service of discovery upon a party, taken pursuant to this Section VI, shall be sufficient if made by facsimile or by overnight delivery; and

B. Demand the production of documents, on five (5) days' notice, from any person, whether or not a party, relating to (1) the nature, status, or extent of Defendants' assets, or of their affiliates or subsidiaries; (2) the location of documents reflecting the business transactions of Defendants, or of their affiliates or subsidiaries; (3) the applicability of any evidentiary privileges to this action; or (4) any other matter that is relevant to the issue of whether a preliminary injunction should issue in this action, provided that twenty four (24) hours' notice shall be deemed sufficient for the production of any such documents that are maintained or stored only as electronic data.

## **RECORD KEEPING PROVISIONS**

VII. IT IS FURTHER ORDERED that Defendants, and those persons in active concert or participation with them who receive actual notice of this Order by personal service, facsimile, or otherwise, are hereby enjoined from:

A. Destroying, erasing, mutilating, concealing, altering, transferring or otherwise disposing of, in any manner, directly or indirectly, contracts, agreements, customer files, customer lists, customer addresses and telephone numbers, correspondence, advertisements, brochures, sales material, training material, sales presentations, documents evidencing or referring to Defendants' products, data, computer tapes, disks, or other computerized records, books, written or printed records, handwritten notes, telephone logs, "verification" or "compliance" tapes or other audio or video tape recordings, receipt books, invoices, postal receipts, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, copies of federal, state or local business or personal income or property tax returns, and other documents or records of any kind, including electronically-stored materials, that relate to the business practices or business or personal finances of Defendants or other entity directly or indirectly under the control of Defendants; and

B. Failing to create and maintain books, records, and accounts which, in reasonable detail, accurately, fairly, and completely reflect the incomes, assets, disbursements, transactions and use of monies by Defendant or other entity directly or indirectly under the control of Defendants.

### **NOTICE TO EMPLOYEES**

VIII. IT IS FURTHER ORDERED that Defendants shall immediately provide a copy of this Order to each of their corporations, subsidiaries, affiliates, and participating associates. Within ten (10) calendar days following service of this Order by the FTC, Defendants shall provide the FTC with an affidavit identifying the names, titles, addresses, and telephone numbers of the persons and entities that Defendants have served with a copy of this Order in compliance with this provision.

### **CONSUMER REPORTS**

IX. IT IS FURTHER ORDERED that pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(1), any consumer reporting agency may furnish a consumer report concerning any Defendant to the FTC.

### **ORDER TO SHOW CAUSE**

X. IT IS FURTHER ORDERED, pursuant to Fed. R. Civ. P. 65(b), that Defendants shall appear on the 9th day of June, 2003, at 2:30 p.m. at the United States Courthouse, Courtroom 3, Newark, New Jersey, to show cause, if any there be, why this Court should not enter a preliminary injunction, pending final ruling on the complaint, against Defendants enjoining them from further violations of the FTC Act and the FDCPA, continuing the freeze of their assets, appointing a receiver, and imposing such additional relief as may be appropriate.

### **EXPIRATION OF THIS ORDER**

XI. IT IS FURTHER ORDERED that the Temporary Restraining Order granted herein shall expire on June 9, 2003, at 11:59 p.m., unless within such time the Order, for good cause shown,

is extended, or unless, as to any Defendant, the Defendant consents that it should be extended for a longer period of time.

**SERVICE OF PLEADINGS; EVIDENCE, WITNESS LISTS**

XII. IT IS FURTHER ORDERED that

A. Defendants shall file any answering affidavits, pleadings, or legal memoranda with the Court and serve the same on counsel for the FTC no later than June 2, 2003. No other pleadings shall be submitted.

B. The question of whether this Court should enter a preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure enjoining the defendants during the pendency of this action shall be resolved on the pleadings, declarations, exhibits, and memoranda filed by and oral argument of the parties. Live testimony shall be heard only on further order of this Court on motion filed with the Court and served on counsel for the other parties no later than June 2, 2003. Such motion shall set forth the name, address, and telephone number of each proposed witness, a detailed summary or affidavit revealing the substance of each proposed witness' expected testimony, and an explanation of why the taking of live testimony would be helpful to this Court. Any papers opposing a timely motion to present live testimony or to present live testimony in response to live testimony to be presented by another party shall be filed with this Court and served on the other parties no later than June 4, 2003. Provided that service shall be performed by personal or overnight delivery or by facsimile, and documents shall be delivered so that they shall be received by the other parties no later than 4 p.m. (EDT) on the appropriate dates listed in this sub-section.

**CORRESPONDENCE WITH PLAINTIFF**

For the purposes of this Order, all service on and correspondence to the FTC shall be addressed to: Gregory A. Ashe, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Room NJ-2122, Washington, DC 20580. Telephone: (202) 326-3719; Facsimile: (202) 326-2558.

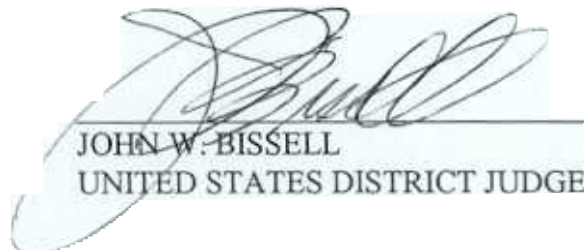
**SERVICE OF THIS ORDER**

XIV. IT IS FURTHER ORDERED that copies of this Order may be served by facsimile transmission, personal or overnight delivery, or U.S. Mail, by agents and employees of the FTC or any state or federal law enforcement agency or by private process server, on (1) Defendants, (2) any financial institution, entity or person that holds, controls, or maintains custody of any account or asset of any Defendant, or has held, controlled or maintained custody of any account or asset of any Defendant, or (3) any other person or entity that may be subject to any provision of this Order.

**RETENTION OF JURISDICTION**

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

IT IS SO ORDERED, this 19<sup>th</sup> day of May, 2003, at 4:30 P.m.

  
JOHN W. BISSELL  
UNITED STATES DISTRICT JUDGE