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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS, WACO DIVISION

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY
DEPUTY CLERK

FEDERAL TRADE COMMISSION,

Plaintiff,

vs.

ASSAIL, INC., ET AL.,

Defendants

Civ. No.

W03CA007

EX PARTE TEMPORARY
RESTRAINING ORDER WITH
ASSET FREEZE AND OTHER
EQUITABLE RELIEF
(PROPOSED)

Plaintiff Federal Trade Commission ("Commission" or "FTC") pursuant to Sections 13(b) and 19(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b(a), the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. §§ 6101 *et seq.*, and Section 522(a) of the Gramm-Leach-Bliley Act ("GLB Act"), 15 U.S.C. § 6822(a), filed a Complaint for Injunctive and Other Equitable Relief, including consumer redress, and applied *ex parte* for a Temporary Restraining Order ("TRO") and Other Equitable Relief, and for an order to show cause why a Preliminary Injunction should not be granted pursuant to Rule 65 of the Federal Rules of Civil Procedure.

FINDINGS OF FACT

The Court has considered the pleadings, declarations, exhibits, and memoranda filed in support of the Commission's application and finds that:

1. This Court has jurisdiction of the subject matter of this case, and there is good cause to believe it will have jurisdiction over all parties, pursuant to 15 U.S.C. §§ 45(a) and 53(b), and 28 U.S.C. §§ 1331, 1337(a) and 1345. The complaint states a claim upon which relief may be

granted under Sections 5 and 13(b) of the FTC Act, 15 U.S.C. §§ 45 and 53(b).

2. There is good cause to believe that Defendants have engaged in and are likely to engage in acts and practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), the Telemarketing Sales Rule, 16 C.F.R. Part 310, and Section 521 of the Gramm-Leach-Bliley Act, 15 U.S.C. § 6321, and that the Commission is likely to prevail on the merits of this action.

3. There is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief in the form of monetary restitution will occur from the sale, transfer, or other disposition or concealment by Defendants of their assets or corporate records, unless Defendants are immediately enjoined by Order of this Court. The evidence set forth in the Plaintiff's *Ex Parte* Application for Temporary Restraining Order, Preliminary Injunction and Other Equitable Relief, and in the accompanying declarations and exhibits, shows that the FTC is likely to prove that Defendants have engaged in a concerted course of illegal activity in connection with the sale of "advance-fee credit cards" to consumers nationwide, in violation of Section 5 of the FTC Act, the TSR, 16 C.F.R. Part 310, and Section 521 of the GLB Act, 15 U.S.C. § 6821. Thus there is good cause to believe that the Defendants will attempt to conceal the scope of their illegal actions to avoid returning their ill-gotten gains to consumers injured by their unlawful practices if not restrained from doing so by Order of this Court.

4. The Commission has not provided notice to the Defendants due to the likelihood that advanced notice of this action will lead to the same irreparable harm, including the dissipation of assets and destruction of evidence, that the Commission seeks to prevent through its application for an *ex parte* temporary restraining order. The Commission's request for this emergency *ex parte* relief is not the result of any lack of diligence on the part of the Commission, but is instead based on the nature of the Defendants' unlawful conduct. There is thus good cause for relieving

the Commission of the duty to provide Defendants with prior notice of the Commission's application.

5. There is good cause for the Court to order an asset freeze and appoint a temporary receiver for the Receivership Defendants. The FTC has made a prima facie case that the Receivership Defendants have made misrepresentations and omissions, directly and through their employees, to those consumers for whom they are supposed to be providing goods or services; that Defendants have engaged in a widespread effort to debit money from these consumers based on deceptive and unfair acts and practices; and that Defendants have retained ill-gotten gains from these and other practices. Accordingly, a receiver and asset freeze are reasonably necessary in order to preserve the possibility of complete and meaningful relief at the conclusion of this litigation.

6. Weighing the equities and considering the Commission's likelihood of ultimate success, this Preliminary Injunction is in the public interest.

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

ORDER

Definitions

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

A. "Assets" means all real and personal property of any defendant, or held for the benefit of any defendant, including but not limited to, "goods," "instruments," "equipment," "fixtures," "general intangibles," "inventory," "checks," or "notes," (as these terms are defined in the Uniform Commercial Code), lines of credit and all cash, wherever located.

B. "Defendants" means Assail, Inc., Kyle Kimoto, Cliff Dunn, Mike Henriksen,

Infinium, Inc., Market-Rep.com, Inc., d/b/a Market-Reps.com, Inc., Brian Schofield, Specialty Outsourcing Solutions, Ltd., Jay Lankford, Lee Murphy, Summit Communications International, Inc. d/b/a Advantage Capital, Matthew Ho, Capital First Benefits Inc., Ben Lee, Premier One Benefits, Inc., and Johnson Salanga and each of them. Pursuant to the provisions of Fed. R. Civ. P. 65(d), the provisions of this Order shall be binding upon the defendants and upon their officers, agents, directors, employees, salespersons, independent contractors, attorneys, subsidiaries, affiliates, successors, assigns and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division or other device.

C. "Document" is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes but is not limited to audio and video recordings and computer records. A draft or non-identical copy is a separate document within the meaning of the term.

D. "Plaintiff" means Federal Trade Commission.

E. "Receivership Defendants" means Assail, Inc.; Infinium, Inc.; Market-Rep.com, Inc.; Summit Communications International, Inc. d/b/a Advantage Capital; Capital First Benefits Inc.; Premier One Benefits, Inc.; and any d/b/a's of the aforementioned entities including but not limited to Advantage Capital Benefits.

F. "SOS Defendant" means Specialty Outsourcing Solutions, Ltd.

G. "Temporary receiver" shall mean the temporary receiver appointed in Paragraph IX of this Order. The term "temporary receiver" also includes any deputy receivers as may be named by the temporary receiver. *WJH*

H. "Credit," "credit card," "customer," "seller," "telemarketer," and "telemarketing" are

defined as in Section 310.2 of the TSR, 16 C.F.R. § 310.2.

PROHIBITED BUSINESS ACTIVITIES

I.

IT IS THEREFORE ORDERED that in connection with the advertising, promotion, offering or sale of goods or services by telephone or otherwise in commerce, Defendants are hereby temporarily restrained and enjoined from making any express or implied representation or omission of material fact that is false or misleading, in any manner, orally or in writing, to any consumer or entity, including, but not limited to, the following:

A. Falsely representing that Defendants are affiliated with, or calling from or on behalf of, a bank or other financial institution, Visa, MasterCard, or a consumer protection agency;

B. Falsely representing that after consumers pay Defendants a fee, consumers are highly likely or are guaranteed to receive a major credit card, such as a VISA or Mastercard credit card;

C. Falsely representing that after consumers pay Defendants a fee, consumers will receive, as a bonus, additional discounted products or services, or membership enrollment in a discount buyer's club that offers significant discounts on a variety of products and services;

D. Falsely representing that after consumers pay Defendants a fee, Defendants will report consumers payment history to a credit reporting agency;

E. Falsely representing that Defendants already possess, and are merely verifying, consumers' credit card numbers, or that Defendants require consumers to provide evidence of a valid personal bank account to establish the consumers' eligibility for a credit card;

F. Falsely representing that consumers purchased or agreed to purchase goods or services from Defendants, and therefore owe money to defendants;

G. Falsely representing any information material to a consumer's decision to purchase

Defendants' services.

II.

IT IS THEREFORE ORDERED that in connection with the advertising, promotion, offering or sale of goods or services by telephone or otherwise in commerce, Defendants are hereby temporarily restrained and enjoined from causing consumers' credit card accounts to be charged or consumers' bank accounts to be electronically debited without having previously obtained both unequivocal and verifiable authorization from the consumer for such charges or debits.

III.

IT IS THEREFORE ORDERED that in connection with the advertising, promotion, offering or sale of goods or services by telephone or otherwise in commerce, Defendants are hereby temporarily restrained and enjoined from violating any provision of Section 521 of the Gramm-Leach-Bliley Act, 15 U.S.C. § 6821.

IV.

IT IS THEREFORE ORDERED that in connection with the advertising, promotion, offering or sale of goods or services by telephone or otherwise in commerce, Defendants are hereby temporarily restrained and enjoined from violating any provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310.

ASSET FREEZE

V.

IT IS FURTHER ORDERED that Defendants are hereby temporarily restrained and enjoined from:

- A. Transferring, liquidating, converting, encumbering, pledging, leasing, selling,

concealing, dissipating, disbursing, assigning, spending, withdrawing, granting a lien or security interest or other interest in, or otherwise disposing of any funds, real or personal property, accounts, contracts, consumer lists, shares of stock, or other assets, or any interest therein, wherever located, that are: (1) owned or controlled by the Defendants, in whole or in part, for the benefit of Defendants; (2) in the actual or constructive possession of Defendants; or (3) owned, controlled by, or in the actual constructive possession of any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by any Defendant, including, but not limited to any assets held by or for, or subject to access by, any of the Defendants, at any bank or savings and loan institution, or with any broker-dealer, escrow agent, title company, commodity trading company, precious metals dealer, or other financial institution or depository of any kind;

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

C. Incurring charges or cash advances on any credit card issued in the name, singly or jointly, of any Defendant;

D. Obtaining a personal or secured loan; and

E. Incurring liens or other encumbrances on real property, personal property or other assets in the name, singly or jointly, of any Defendant.

Provided further, that the assets affected by this Section shall include: (1) all assets of the Defendants as of the time this Order was entered; and (2) for assets obtained after the time this Order was entered, only those assets of the Defendants that are derived from the actions alleged in Plaintiff's Complaint.

Notwithstanding, SOS Defendant may make any expenditure in the normal course of business that is both reasonable and necessary for the continuation of its operations in

compliance with this Order; provided however, that SOS Defendant shall make no expenditure of over \$10,000 without leave of court.

FINANCIAL REPORTS

VI.

IT IS FURTHER ORDERED that each Defendant, within forty-eight (48) hours of service of this Order, shall:

A. Prepare and deliver to the Court and counsel for Plaintiff Commission completed financial statements on the forms attached to this Order as Attachments A and B, for themselves individually and for each business entity under which they conduct business, or of which they are an officer, and for each trust of which they are a trustee. The financial statements shall be accurate as of the date of entry of this Order;

B. Provide Plaintiff Commission with a full accounting of all assets and documents that are located inside or outside of the territory of the United States of America and are held by or for Defendants or are under their direct or indirect control, jointly, severally, or individually.

IDENTIFYING INFORMATION RELATING TO ACCOUNTANTS, FINANCIAL PLANNERS, INVESTMENT ADVISORS, STOCK BROKERS AND OTHERS

VII.

IT IS FURTHER ORDERED that each Defendant, within forty-eight (48) hours after service of this Order, shall provide counsel for the Commission: (1) the name, address and telephone number for each accountant, financial planner, investment advisor, stock broker or other individual, corporation or partnership whom they hired for financial, business or tax advice or services, since January 1, 2000; and (2) the name, address and telephone number for each accountant, financial planner, investment advisor, stock broker or other individual, corporation or

partnership who was hired on behalf of any of the Defendants since January 1, 2000.

PRESERVATION OF RECORDS

VIII.

IT IS FURTHER ORDERED that Defendants are hereby temporarily restrained and enjoined from destroying, erasing, mutilating, concealing, altering, transferring or otherwise disposing of, in any manner, directly or indirectly, any documents that relate to the business practices or business or personal finances of any Defendant.

RECORD KEEPING/BUSINESS OPERATIONS

IX.

IT IS FURTHER ORDERED that Defendants are hereby temporarily restrained and enjoined from:

A. Failing to create and maintain documents that, in reasonable detail, accurately, fairly, and completely reflect their incomes, disbursements, transactions, and use of money; and

B. Creating, operating, or exercising any control over any business entity, including any partnership, limited partnership, joint venture, sole proprietorship or corporation, without first providing Plaintiff Commission with a written statement disclosing: (1) the name of the business entity; (2) the address and telephone number of the business entity; (3) the names of the business entity's officers, directors, principals, managers and employees; and (4) a detailed description of the business entity's intended activities.

APPOINTMENT OF TEMPORARY RECEIVER

X.

IT IS FURTHER ORDERED that Ruth E. ... is appointed Temporary Receiver for the Receivership Defendants. The Receiver shall be the agent of this

Court, and solely the agent of this Court, in acting as Receiver under this Order. The Receiver shall be accountable directly to this Court. The Receiver shall comply with all Local Rules governing receivers.

RECEIVER'S DUTIES

XI.

IT IS FURTHER ORDERED that the Temporary Receiver is authorized and directed to accomplish the following:

A. Assume full control of the Receivership Defendants by removing, as the Receiver deems necessary or advisable, any director, officer, independent contractor, employee, or agent of any of the Receivership Defendants, including any Defendant, from control of, management of, or participation in, the affairs of the Receivership Defendants;

B. Take exclusive custody, control, and possession of all assets and documents of, or in the possession, custody, or under the control of, the Receivership Defendants, wherever situated. The Receiver shall have full power to divert mail and to sue for, collect, receive, take in possession, hold, and manage all assets and documents of the Receivership Defendants and other persons or entities whose interests are now held by, or are under the direction, possession, custody, or control of, the Receivership Defendants. The Receiver shall assume control over the income and profits therefrom and all sums of money now or hereafter due or owing to the Receivership Defendants. *Provided, however,* that the Receiver shall not attempt to collect any amount from a consumer if the Receiver believes the consumer was a victim of the unfair or deceptive acts or practices alleged in the Complaint in this matter, without prior Court approval;

C. Take all steps necessary to secure each location from which the Receivership Defendants operate their business. Such steps may include, but are not limited to, any of the

following, as the Receiver deems necessary or advisable: (1) serving this Order; (2) completing a written inventory of all receivership assets; (3) obtaining pertinent information from all employees and other agents of the Receivership Defendants, including, but not limited to, the name, home address, social security number, job description, passwords or access codes, method of compensation, and all accrued and unpaid commissions and compensation of each such employee or agent; (4) photographing and video taping any or all portions of the location; (5) securing the location by changing the locks and disconnecting any computer modems or other means of access to the computer or other records maintained at that location; and (6) requiring any persons present on the premises at the time this Order is served to leave the premises, to provide the Receiver with proof of identification, or to demonstrate to the satisfaction of the Receiver that such persons are not removing from the premises documents or assets of the Receivership Defendants. Law enforcement personnel, including, but not limited to, police or sheriffs, may assist the Receiver in implementing these provisions in order to keep the peace and maintain security;

C. Conserve, hold, and manage all assets of the Receivership Defendants, and perform all acts necessary or advisable to preserve the value of those assets in order to prevent any irreparable loss, damage, or injury to consumers or creditors of the Receivership Defendants, including, but not limited to, obtaining an accounting of the assets and preventing unauthorized transfer, withdrawal, or misapplication of assets;

D. Enter into contracts and purchase insurance as advisable or necessary;

E. Prevent the inequitable distribution of assets and determine, adjust, and protect the interests of consumers and creditors who have transacted business with the Receivership Defendants;

F. Manage and administer the business of the Receivership Defendants until further order of this Court by performing all incidental acts that the Receiver deems to be advisable or necessary, which includes retaining, hiring, or dismissing any employees, independent contractors, or agents;

G. Choose, engage, and employ attorneys, accountants, appraisers, and other independent contractors and technical specialists, as the Receiver deems advisable or necessary in the performance of duties and responsibilities under the authority granted by this Order.

with approval of the Court VLP

H. Have the ~~same~~ authority to hire legal counsel on behalf of any of the Receivership Defendants; *well*

I. Make payments and disbursements from the receivership estate that are necessary or advisable for carrying out the directions of, or exercising the authority granted by, this Order. The Receiver shall apply to the Court for prior approval of any payment of any debt or obligation incurred by the Receivership Defendants prior to the date of entry of this Order, except payments that the Receiver deems necessary or advisable to secure assets of the Receivership Defendants, such as rental payments;

J. Determine and implement the manner in which the Receivership Defendants will comply with, and prevent violations of, this Order and all other applicable laws, including, but not limited to, revising sales materials and implementing monitoring procedures;

K. Institute, compromise, adjust, appear in, intervene in, or become party to such actions or proceedings in state, federal or foreign courts or arbitration proceedings as the Receiver deems necessary and advisable to preserve or recover the assets of the Receivership Defendants, or that the Receiver deems necessary and advisable to carry out the Receiver's mandate under this Order, including but not limited to, actions challenging fraudulent or voidable transfers;

L. Defend, compromise, adjust, or otherwise dispose of any or all actions or proceedings instituted in the past or in the future against the Receiver in his role as Receiver, or against the Receivership Defendants, as the Receiver deems necessary and advisable to preserve the assets of the Receivership Defendants, or as the Receiver deems necessary and advisable to carry out the Receiver's mandate under this Order;

M. Continue to conduct the business, or cease operation of the business, of the Receivership Defendants in such manner, to such extent, and for such duration as the Receiver may in good faith deem to be necessary or appropriate to operate the businesses profitably and lawfully, if at all; *provided that*, the continuation and conduct of the business shall be conditioned upon the Receiver's good faith determination that the businesses can be lawfully operated at a profit using the assets of the receivership estate;

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

O. Open one or more bank accounts as designated depositories for funds of the Receivership Defendants. The Receiver shall deposit all funds of the Receivership Defendants in such a designated account and shall make all payments and disbursements from the receivership estate from such an account. The Receiver shall serve copies of monthly account statements on all parties;

P. Maintain accurate records of all receipts and expenditures that he makes as Receiver; and

Q. Cooperate with reasonable requests for information or assistance from any state or federal law enforcement agency.

FOREIGN ASSET REPATRIATION

XII.

~~IT IS FURTHER ORDERED~~ that within five (5) business days following the service of this Order, the Defendants shall:

A. Provide the Commission and the Receiver with a full accounting of all funds, documents, and assets outside of the United States which are (1) titled in the name, individually or jointly, of the Defendants; or (2) held by any person or entity for the benefit of the Defendants; or (3) under the direct or indirect control, whether jointly or singly, of the Defendants;

B. Transfer to the territory of the United States and deliver to the Receiver all funds, documents, and assets located in foreign countries which are (1) titled in the name, individually or jointly, of any Defendant; or (2) held by any person or entity, for the benefit of any Defendant; or (3) under any Defendant's direct or indirect control, whether jointly or singly;

C. Provide the Commission access to all records of accounts or assets of the Defendants held by financial institutions located outside the territorial United States by signing the Consent to Release of Financial Records attached to this Order (Attachment C).

INTERFERENCE WITH REPATRIATION

XIII.

~~IT IS FURTHER ORDERED~~ that Defendants are hereby temporarily restrained and enjoined from taking any action, directly or indirectly, which may result in the encumbrance or dissipation of foreign assets, or in the hindrance of the repatriation required by the preceding Paragraph of this Order, including but not limited to:

A. Sending any statement, letter, fax, e-mail or wire transmission, telephoning or engaging in any other act, directly or indirectly, that results in a determination by a foreign trustee

or other entity that a "duress" event has occurred under the terms of a foreign trust agreement until such time that all assets have been fully repatriated pursuant to the preceding Paragraph of this Order;

B. Notifying any trustee, protector or other agent of any foreign trust or other related entities of either the existence of this Order, or of the fact that repatriation is required pursuant to a Court Order, until such time that all assets have been fully repatriated pursuant to the preceding Paragraph of this Order.

COOPERATION WITH THE TEMPORARY RECEIVER

XIV.

IT IS FURTHER ORDERED that Defendants and all other persons or entities served with a copy of this Order shall fully cooperate with and assist the Receiver. This cooperation and assistance shall include, but not be limited to, providing information to the Receiver that the Receiver deems necessary in order to exercise the authority and discharge the responsibilities of the Receiver under this Order; providing any password required to access any computer, electronic file, or telephonic data in any medium; and advising all persons who owe money to the Receivership Defendants that all debts should be paid directly to the Receiver. Defendants are hereby restrained and enjoined from directly or indirectly:

A. Transacting any of the business of the Receivership Defendants;

B. Destroying, secreting, defacing, transferring, or otherwise altering or disposing of any documents of the Receivership Defendants, including, but not limited to, books, records, accounts, writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations, electronically-stored records, or any other papers of any kind or nature;

C. Transferring, receiving, altering, selling, encumbering, pledging, assigning, liquidating, or otherwise disposing of any assets owned, controlled, or in the possession or custody of, or in which an interest is held or claimed by, the Receivership Defendants, or the Receiver;

D. Excusing debts owed to the Receivership Defendants;

E. Failing to notify the Receiver of any asset, including accounts, of a Receivership Defendant held in any name other than the name of the Receivership Defendant, or by any person or entity other than the Receivership Defendant, or failing to provide any assistance or information requested by the Receiver in connection with obtaining possession, custody, or control of such assets;

F. Doing any act or refraining from any act whatsoever to interfere with the Receiver managing, or taking custody, control, or possession of, the assets or documents subject to this receivership; or to harass or interfere with the Receiver in any way; or to interfere in any manner with the exclusive jurisdiction of this Court over the assets or documents of the Receivership Defendants; or to refuse to cooperate with the Receiver or the Receiver's duly authorized agents in the exercise of their duties or authority under any order of this Court.

ACCESS TO BUSINESS OFFICES AND RECORDS

XV.

IT IS FURTHER ORDERED that:

A. Plaintiff and Receiver, and their representatives, agents, and assistants, shall have immediate access to the business premises of the Receivership Defendants. Such locations include, but are not limited to: (i) 1071 East 100 South, St. George, Utah, 84770, (ii) 1579 North Main, Cedar City, UT 84720, (iii) 4911 State Ave. Kansas City, Kansas 66102, and (iv) 1552

West 200 North, Cedar City, Utah 84720. Plaintiff and Receiver are authorized to employ the assistance of law enforcement officers as they deem necessary, to effect service and to implement peacefully the provisions of this Order. The Plaintiff and Receiver, and their representatives, agents, and assistants, shall have the right to remove documents from the above-listed premises in order that they may be inspected, inventoried, and copied; and

B. The Receiver, and his or her representatives, agents, and assistants, shall have immediate access to any other business location where business-related property, records, and equipment are located. The Receiver, and his or her representatives, agents, and assistants, shall have the right to remove documents from any other business locations connected with the Defendants' businesses in order that they may be inspected, inventoried, and copied. The Receiver shall allow the parties access to these other business locations. The Receiver shall have the discretion to determine the time, manner, and reasonable conditions of such access;

C. If any property, business records, documents, or computer files relating to the Receivership are located at a location other than those listed herein and a request to enter said location is denied, then such defendant shall, within twenty four (24) hours of service of this Order:

1. Produce to the Receiver all contracts, accounting data, written or electronic correspondence, advertisements, computer tapes, disks, or other computerized records, books, written or printed records, handwritten notes, telephone logs, telephone scripts, membership records and lists, refund records, 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 that relate to Defendant's business practices;

2. Produce to the Receiver all computers and data in whatever form used by such defendant or any of such defendant's agents, employees, officers, servants or those persons in active concert with him or her, in activities relating to Receivership Defendants; and
3. Produce to the Receiver a list of all agents, employees, officers, servants or those persons in active concert and participation with him or her, who have been associated or done business with Receivership Defendants.

DELIVERY OF RECEIVERSHIP PROPERTY

XVI.

IT IS FURTHER ORDERED that:

A. Immediately upon service of this Order upon them, or within such period as may be permitted by the Receiver, Defendants shall transfer or deliver possession, custody, and control of the following to the Receiver:

1. All assets of the Receivership Defendants;
2. All documents of the Receivership Defendants, including, but not limited to, books and records of accounts, all financial and accounting records, balance sheets, income statements, bank records (including monthly statements, canceled checks, records of wire transfers, and check registers), client lists, title documents and other papers;
3. All assets belonging to members of the public now held by the Receivership Defendants; and

4. All keys, codes, and passwords necessary to gain or to secure access to any assets or documents of the Receivership Defendants, including, but not limited to, access to their business premises, means of communication, accounts, computer systems, or other property.

B. In the event any person or entity fails to deliver or transfer any asset or otherwise fails to comply with any provision of this Paragraph, the Receiver may file ex parte an Affidavit of Non-Compliance regarding the failure. Upon filing of the affidavit, the Court may authorize, without additional process or demand, Writs of Possession or Sequestration or other equitable writs requested by the Receiver. The writs shall authorize and direct the United States Marshal or any sheriff or deputy sheriff of any county, or any other federal or state law enforcement officer, to seize the asset, document, or other thing and to deliver it to the Receiver.

TRANSFER OF FUNDS TO THE RECEIVER

XVII.

IT IS FURTHER ORDERED that, upon service of a copy of this Order, all banks, broker-dealers, savings and loans, escrow agents, title companies, commodity trading companies, precious metals dealers and other financial institutions and depositories of any kind, and all third-party billing agents, LEC's, common carriers, and other telecommunications companies shall cooperate with all reasonable requests of the FTC and the Receiver relating to implementation of this Order, including transferring funds at his direction and producing records related to the assets and sales of the Receivership Defendants.

STAY OF ACTIONS

XVIII.

IT IS FURTHER ORDERED that:

A. Except by leave of this Court, during pendency of the receivership ordered herein, Defendants, and all customers, principals, investors, creditors, stockholders, lessors, and other persons seeking to establish or enforce any claim, right, or interest against or on behalf of the Defendants, and all others acting for or on behalf of such persons, including attorneys, trustees, agents, sheriffs, constables, marshals, and other officers and their deputies, and their respective attorneys, servants, agents and employees, be and are hereby stayed from:

1. Commencing, prosecuting, continuing, entering, or enforcing any suit or proceeding, except that such actions may be filed to toll any applicable statute of limitations;
2. Accelerating the due date of any obligation or claimed obligation; filing or enforcing any lien; taking or attempting to take possession, custody, or control of any asset; attempting to foreclose, forfeit, alter, or terminate any interest in any asset, whether such acts are part of a judicial proceeding, are acts of self-help, or otherwise;
3. Executing, issuing, serving, or causing the execution, issuance or service of, any legal process, including, but not limited to, attachments, garnishments, subpoenas, writs of replevin, writs of execution, or any other form of process whether specified in this Order or not; or
4. Causing any Receivership Defendant to be placed in involuntary bankruptcy; or
5. Doing any act or thing whatsoever to interfere with the Receiver

managing, or taking custody, control, or possession of, the assets or documents subject to this receivership, or to harass or interfere with the Receiver in any way, or to interfere in any manner with the exclusive jurisdiction of this Court over the assets or documents of the Receivership Defendants.

B. This paragraph does not stay:

1. The commencement or continuation of a criminal action or proceeding;
2. The commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power; or
3. The enforcement of a judgment, other than a money judgment, obtained in an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power.

RETENTION OF ASSETS AND RECORDS BY FINANCIAL INSTITUTIONS

XIX.

IT IS FURTHER ORDERED that, pending determination of the Plaintiff's request for a preliminary injunction, any financial or brokerage institution, business entity, or person served with a copy of this Order that holds, controls or maintains custody of any account or asset of the Defendant, or has held, controlled or maintained custody of any such account or asset at any time since the date of entry of this Order shall:

A. Hold and retain within its control and prohibit the withdrawal, removal, assignment, transfer, pledge, encumbrance, disbursement, dissipation, conversion, sale, or other disposal of any such asset except by further order of the Court;

E. Deny the Defendants access to any safe deposit box that is:

1. titled in his name, individually or jointly; or
2. otherwise subject to access by the Defendant;

C. Provide the Commission's counsel, within five (5) business days of receiving a copy of this Order, a sworn statement setting forth:

1. the identification number of each such account, or asset titled in the name, individually or jointly, of the Defendant, or held on behalf of, or for the benefit of the Defendant;
2. the balance of each such account, or a description of the nature and value of such asset as of the close of business on the day on which this Order is served, and, if the account or other asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other asset was remitted; and
3. the identification of any safe deposit box that is titled in the name, individually or jointly, of the Defendant, or is otherwise subject to access by the Defendant; and

D. Upon the request by the Commission, promptly provide the Commission with copies of all records or other documentation pertaining to each such account or asset, including but not limited to originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs. Any such financial institution, account custodian, or other aforementioned entity may arrange for the

Commission to obtain copies of any such records which the Commission seeks.

COMPENSATION OF RECEIVER

XX.

IT IS FURTHER ORDERED that the Receiver and all personnel hired by the Receiver as herein authorized, including counsel to the Receiver and accountants, are entitled to reasonable compensation for the performance of duties pursuant to this Order and for the cost of actual out-of-pocket expenses incurred by them, from the assets now held by, in the possession or control of, or which may be received by, the Receivership Defendants. The Receiver shall file with the Court and serve on the parties periodic requests for the payment of such reasonable compensation, with the first such request filed no more than sixty (60) days after the date of this Order. The Receiver shall not increase the hourly rates used as the bases for such fee applications without prior approval of the Court.

RECEIVER'S BOND

XXI.

IT IS FURTHER ORDERED that the Receiver shall file with the Clerk of this Court a bond in the sum of \$10 — with sureties to be approved by the Court, conditioned upon the Receiver well and truly performing the duties of the office, and abiding by and performing all acts the Court directs.

DEFENDANTS' ACCESS TO THEIR BUSINESS PREMISES

XXII.

IT IS FURTHER ORDERED that the Receiver shall allow the Defendants' representatives, and the Defendants themselves, reasonable access to the premises of the Receivership Defendants. The purpose of this access shall be to inspect and copy any and all

books, records, accounts, and other property owned by or in the possession of the Receivership Defendants. The Receiver shall have the discretion to determine the time, manner, and reasonable conditions of such access.

DISTRIBUTION OF ORDER BY DEFENDANTS

XXIII.

IT IS FURTHER ORDERED that the Defendants shall immediately provide a copy of this Order to each affiliate, subsidiary, division, sales entity, successor, assign, officer, director, employee, independent contractor, client company, agent, attorney, spouse and representative of the Defendants, and shall, within ten (10) days from the date of entry of this Order, provide the Commission with a sworn statement that the Defendants have complied with this provision of the Order, which statement shall include the names and addresses of each such person or entity who received a copy of the Order.

SERVICE OF ORDER

XXIV.

IT IS FURTHER ORDERED that copies of this Order may be served by any means, including facsimile transmission, upon any financial institution or other entity or person that may have possession, custody, or control of any documents or assets of any Defendant, or that may otherwise be subject to any provision of this Order. Service upon any branch or office of any financial institution shall effect service upon the entire financial institution.

XXV.

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 Plaintiff Commission.

EXPEDITED DISCOVERY

XXVI.

IT IS FURTHER ORDERED that the Commission and the Temporary Receiver are granted leave at any time after service of this Order to (1) take the deposition of any person or entity for the purpose of discovering the nature, status, extent, location or other relevant information relating to the Defendants' assets, income, personal or business financial records or the location of a Defendant and (2) demand the production of documents from any person or entity relating to the nature, status, extent, location or other relevant information relating to the Defendants' assets, income, personal or business financial records or the location of a Defendant. Forty-eight (48) hours notice shall be deemed sufficient for any such deposition and production of documents from the Defendants and any other person or entity, including but not limited to financial institutions, accountants, stock brokers and financial planners. The limitations and conditions set forth in Fed. R. Civ. P. 30(a)(2)(B) regarding subsequent depositions of an individual shall not apply to depositions taken pursuant to this Paragraph. The depositions shall also not be counted in calculating any limitation on the number of depositions that can be taken without the leave of the Court as set forth in the Federal Rules of Civil Procedure or the Local Rules. Additionally, the production of documents submitted pursuant to this provision shall not in any way waive plaintiff's rights to seek the production of additional documents.

SERVICE OF PLEADINGS

XXVII.

IT IS FURTHER ORDERED that the Defendants shall serve on the Commission all memoranda, affidavits and other evidence on which the Defendants intend to rely at the preliminary injunction hearing set in this matter not later than 4:00 p.m. (Central time) on the third day prior to the hearing date.

DURATION OF TEMPORARY RESTRAINING ORDER

XXVIII.

IT IS FURTHER ORDERED that the Temporary Restraining Order granted herein shall expire on July 21st, 2003 at 1:30 p.m., unless within such time, the Order, for good cause shown, is extended for an additional period not to exceed ten (10) days, or unless it is further extended pursuant to Federal Rule of Civil Procedure 65.

ORDER TO SHOW CAUSE REGARDING PRELIMINARY INJUNCTION

XXIX.

IT IS FURTHER ORDERED, pursuant to Federal Rule of Civil Procedure 65(b), that each of the Defendants shall appear before this Court on the 21st day of July, 2003, at 10:00 o'clock a.m., to show cause, if there is any, why this Court should not enter a Preliminary Injunction, pending final ruling on the Complaint against Defendants, enjoining them from further violations of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a), the TSR, 16 C.F.R. Part 310, and Section 521 of the GLB Act, 15 U.S.C. § 6821, continuing the freeze of their assets, and imposing such additional relief as may be appropriate.

SERVICE UPON PLAINTIFF

XXX.


IT IS FURTHER ORDERED, with regard to any correspondence or pleadings related to this Order, service on the Commission shall be performed by delivery to the attention of Lawrence Hodapp at the Federal Trade Commission, 600 Pennsylvania Avenue, NW, Room H-238, Washington, DC 20580, (202) 326-3105, or by facsimile transmission to (202) 326-3395.

RETENTION OF JURISDICTION

XXXI.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes. No security is required of any agency of the United States for the issuance of a restraining order. Fed. R. Civ. P. 65(c).

SO ORDERED, this 9th day of January, 2003, at 10:00 am.


WALTER S. SMITH, JR.
United States District Judge