

ORDER

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), commenced this action by filing its Complaint, and subsequently its Amended Complaint, for injunctive and other equitable relief pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. § 6101 *et seq.*, charging that Defendants Bay Area Business Council, Inc., Bay Area Business Council Customer Service Corp., American Leisure Card Corp., Bay Memberships, Inc., Bay Vacations, Inc., Sr. Marketing Consultants, Inc., and Special Technologies, Inc., Peter J. Porcelli, II, individually and as an officer or director of the corporate defendants, Christopher Tomasulo, individually and as an officer or director of the corporate defendants, and Bonnie A. Harris, individually and as an officer or director of the corporate defendants, engaged in deceptive acts or practices in violation of Section 5 of the FTC Act (“FTC Act”), 15 U.S.C. § 45, and the FTC’s Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310.

Summary Judgment has been entered by separate order in favor of the Commission on all counts against Defendants Bay Area Business Council, Inc., Bay Area Business Council Customer Service Corp., American Leisure Card Corp., Bay Memberships, Inc., Sr. Marketing Consultants, Inc., Special Technologies, Inc., Peter J. Porcelli, II, and Bonnie A. Harris, pursuant to Rule 56 of the Federal Rules of Civil Procedure and LR56.1 of the Local Rules for the United States District Court for the Northern District of Illinois. The Commission’s motion for summary judgment is hereby granted, and it is therefore **ORDERED, ADJUDGED, AND DECREED** as follows:

FINDINGS

As more specifically set out in the part in the Court's order for Summary Judgment, the Court finds as follows:

1. This Court has jurisdiction over the subject matter and all parties hereto.
2. Venue is proper as to all parties in the United States District Court for the Northern District of Illinois.
3. The activities of Defendants are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
4. The Commission's Amended Complaint states a claim upon which relief may be granted against Defendants under Sections 5(a), 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 53(b), and 57b, and the TSR, 16 C.F.R. Part 310.
5. There is no genuine issue as to any material fact concerning the liability of Defendants for false and deceptive acts and practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the TSR, 16 C.F.R. Part 310, or the amount of consumer losses caused by Defendants' deceptive acts and practices.
6. Defendants, directly or through their telemarketers, have made false or misleading statements, or assisted others in making false or misleading statements, to induce the purchase of Credit-Related Products, that include but are not limited to the following:
 - a. After paying a fee, consumers will, or are highly likely to, receive an unsecured MasterCard credit card; and
 - b. Consumers who agree to purchase goods or services from the defendants would be charged the amount specified in the sales calls.

7. Defendants or their employees or agents have requested and received payment of a fee in advance from consumers for obtaining credit when Defendants have guaranteed or represented a high likelihood of success in obtaining or arranging for the acquisition of credit for such consumers.

8. Defendants violated Section 5 of the FTC Act, 15 U.S.C. § 45 and the TSR, 16 C.F.R. Part 310.

9. Defendants are likely to continue to engage in the activities alleged in the Amended Complaint unless they are permanently enjoined from such acts and practices.

10. Plaintiffs are entitled to judgment as a matter of law against Defendants pursuant to Rule 56(c) of the Federal Rules of Civil Procedure.

11. Plaintiffs are entitled to judgment against Defendants in the amount of \$12,563,962.34, for which Defendants are jointly and severally liable.

12. Entry of this Order is in the public interest.

DEFINITIONS

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

1. "Plaintiff" means the Federal Trade Commission.
2. "Defendant" or "Defendants" means Bay Area Business Council, Inc., Bay Area Business Council Customer Service Corp., American Leisure Card Corp., Bay Memberships, Inc., Sr. Marketing Consultants, Inc., Special Technologies, Inc., Peter J. Porcelli, II, and Bonnie A. Harris, and their successors, assigns, officers, agents, servants, employees, and those persons 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 entity, corporation, subsidiary,

division, or other device, and fictitious business entities or business names created or used by these entities, or any of them.

3. "Corporate Defendants" means Bay Area Business Council, Inc., Bay Area Business Council Customer Service Corp., American Leisure Card Corp., Bay Memberships, Inc., Sr. Marketing Consultants, Inc., and Special Technologies, Inc., and any subsidiaries, affiliates, and any fictitious business entities or business names created or used by these entities; or any of them.

4. "Receivership Defendants" means Bay Area Business Council, Inc., Bay Area Business Council Customer Service Corp., and American Leisure Card Corp.

5. "Individual Defendants" means Peter J. Porcelli, II, and Bonnie A. Harris, or either of them.

6. "Asset" or "Assets" means any legal or equitable interest in, right to, or claim to, any real or personal property, 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, chattels, leaseholds, contracts, mail or other deliveries, shares of stock, lists of consumer names, accounts, credits, premises, receivables, funds, and all cash, wherever located.

7. The term "Document" or "Documents" means any materials listed in Federal Rule of Civil Procedure 34(a) and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, into reasonably usable form through detection devices. A draft or nonidentical copy is a separate Document within the meaning of the term.

8. "Credit-Related Product" means any product, program, or service which is advertised, offered for sale, or sold as a method by which persons may establish or obtain any extension of credit or credit device, including, but not limited to credit cards, loans, or financing, or as a method to consolidate or liquidate debts.

9. "Telemarketing" means the advertising, offering for sale, or sale of any good or service to any person by means of telephone sales presentations, either exclusively or in conjunction with the use of other advertising.

I. BAN ON THE TELEMARKETING OF ANY PRODUCT OR SERVICE TO CONSUMERS

IT IS THEREFORE ORDERED THAT Defendants are hereby permanently restrained and enjoined from engaging in, participating in, or assisting in the Telemarketing, in any manner, of any product or service to any consumer.

II. BAN ON SELLING CREDIT-RELATED PRODUCTS

IT IS FURTHER ORDERED THAT Defendants are hereby permanently restrained and enjoined from promoting, offering for sale, or selling, directly or indirectly, Credit-Related Products to any consumer.

III. PROHIBITED BUSINESS PRACTICES

IT IS FURTHER ORDERED THAT in connection with the advertising, offering for sale, licensing, contracting, sale or other promotion, in or affecting commerce, of any products or services, Defendants are hereby permanently restrained and enjoined from:

A. Making, or materially assisting in the making of, any statement or representation of material fact that is false or misleading, whether directly or by implication, orally or in writing, including, but not limited to, any or all of the following:

1. After paying a fee, consumers will, or are highly likely to, receive an unsecured credit card; and

2. Consumers who agree to purchase goods or services from the defendants will be charged the amount specified in the sales calls.

B. Misrepresenting or omitting any fact material to a person's decision to purchase Defendants' products or services, including but not limited to:

1. After paying a fee, consumers will, or are highly likely to, receive an unsecured credit card; and

2. Consumers who agree to purchase goods or services from the defendants will be charged the amount specified in the sales calls; and

3. Representing that the consumer will receive a low interest credit card, in return for an advance payment.

C. Failing to comply with the TSR, 16 C.F.R. Part 310, as currently written or amended.

IV. MONETARY JUDGMENT AND REDRESS

IT IS FURTHER ORDERED THAT:

A. Defendants, jointly and severally, shall pay consumer redress in the amount of twelve million, five hundred sixty-three thousand, nine hundred sixty-two dollars and thirty-four cents (\$12,563,962.34), pursuant to Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b)

and 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b). This redress amount shall become immediately due and payable by Defendants upon entry of this Order, and interest computed at the rate prescribed under 28 U.S.C. § 1961, as amended, shall immediately begin to accrue on the unpaid balance.

B. These payments shall be made in U.S. funds by certified or cashier's check, made payable to the Federal Trade Commission, and delivered to the Regional Director, Federal Trade Commission, 55 E. Monroe, Suite 1860, Chicago, Illinois 60603. These funds will be used to provide redress to consumers injured by Defendants' violations of the FTC Act and the TSR. If Plaintiff determines, in its sole discretion, that redress is wholly or partially impracticable, any funds not so used shall be paid into the U.S. Treasury as disgorgement. Defendants may be notified as to how funds are disbursed, but shall have no right to contest the manner of distribution chosen by Plaintiff.

V. CUSTOMER LISTS

IT IS FURTHER ORDERED THAT Defendants are hereby permanently restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, credit card number, bank account number, e-mail address, or other identifying information of any person who paid any money to any Defendant, at any time prior to entry of this Order, in connection with the marketing or sale of Credit-Related Products to consumers in the U.S. **Provided, however,** that Defendants may disclose such identifying information to agents of the Federal Trade Commission, other law enforcement agencies, or as required by any law, regulation or court order. **Further,** Defendants are ordered to provide Plaintiff not later than five (5) days after entry of this Order with a list of the name, address, telephone number, credit

card number, bank account number, e-mail address, or other identifying information of any person who paid any money to any Defendant, at any time prior to entry of this Order, in connection with the marketing or sale of Credit-Related Products to consumers in the U.S.

VI. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED THAT, within five (5) business days after receipt by Defendants of this Order, each Corporate Defendant and each Individual Defendant shall submit to the Commission a truthful sworn statement, in the form shown on Appendix A, that shall acknowledge receipt of this Order.

VII. DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED THAT, for a period of ten (10) years from the date of entry of this Order, the Corporate Defendants and the Individual Defendants shall:

A. Provide a copy of this Order to, and obtain a signed and dated acknowledgment of receipt of same from, each officer or director, each individual serving in a management capacity, all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, immediately upon employing or retaining any such persons, for any business that any Corporate Defendant or any Individual Defendant directly or indirectly manages, controls, or has a majority ownership interest in, that is engaged in marketing or selling any product or service to consumers, or materially assists others engaged in these activities; and

B. Maintain for a period of three (3) years after creation, and upon reasonable notice, make available to representatives of the Commission, the original signed and dated

acknowledgments of the receipt of copies of this Order, as required in Paragraph A of this Section.

VIII. MONITORING COMPLIANCE OF SALES PERSONNEL

IT IS FURTHER ORDERED THAT, in connection with any business that any Corporate Defendant or any Individual Defendant directly or indirectly manages, controls or has a majority ownership interest in, that is engaged in marketing or selling any product or service, or materially assists others engaged in these activities, Defendants are hereby permanently restrained and enjoined from:

A. Failing to take reasonable steps sufficient to monitor and ensure that all employees and independent contractors engaged in sales or other customer service functions comply with Sections I, II, and III of this Order. Such steps shall include adequate monitoring of sales presentations or other calls with customers, and shall also include, at a minimum, the following:

1. Listening to the oral representations made by persons engaged in sales or other customer service functions;
2. Establishing a procedure for receiving and responding to consumer complaints; and
3. Ascertaining the number and nature of consumer complaints regarding transactions in which each employee or independent contractor is involved;

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

C. Failing to terminate any sales person whom any Defendant determines is not

complying with this Order;

Provided, however, that this Section does not authorize or require any Defendant to take any action that violates any federal, state, or local law.

IX. RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED THAT, for a period of ten (10) years from the date of entry of this Order, in connection with any business that any Corporate Defendant or any Individual Defendant directly or indirectly manages, controls or has a majority ownership interest in, that is engaged in marketing or selling any product or service, or materially assists others engaged in these activities, Defendants are hereby restrained and enjoined from failing to create and maintain for a period of three (3) years following the date of their creation, unless otherwise specified:

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

B. Records containing the name, address, telephone number and social security number of each person employed by any Defendant in any capacity, including as an independent contractor, that person's job title or position, the date upon which the person commenced work, and the date and reason for the person's termination, if applicable; **Provided, however,** that the businesses subject to this requirement shall retain such records during the employment of any person, and for a period of two (2) years after the date of their termination;

C. Records containing the name, address, telephone number, quantity of goods or services purchased, and a description of the goods or services purchased and the amount paid

therefor, for all customers to whom the business has sold, invoiced, or shipped any goods or services;

D. Records that reflect, for every written or oral customer complaint or refund request, whether received directly or indirectly or through any third party: (1) the customer's name, address, telephone number; (2) the dollar amount paid by the customer; (3) the written complaint or refund request, if any; (4) the basis of the complaint or refund request, including the name of any salesperson complained about; (5) the nature and result of any investigation conducted concerning the complaint or refund request; (6) each response and the date of the response to the complaint or refund request; (7) any final resolution of the complaint or refund request, and the date of the resolution; and (8) in the event of a denial of a refund request, the reason for the denial; and

E. Copies of all sales scripts, training materials, advertisements, or other marketing materials utilized, which shall be retained for five (5) years after the last date of their dissemination or use.

X. COMPLIANCE REPORTING BY DEFENDANT

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

A. For a period of ten (10) years after the date of entry of this Order, the Corporate Defendants and the Individual Defendants shall notify the Commission in writing of the following:

1. Any changes in the residence, mailing addresses and telephone numbers of any Individual Defendant, within ten (10) days of the date of such change;

2. Any changes in the employment status (including self-employment) of any Individual Defendant, within ten (10) days of such change. Such notice shall include the name and address of each business that the Individual Defendant is affiliated with or employed by, a statement of the nature of the business, and a statement of the Individual Defendant's duties and responsibilities in connection with the business or employment; and

3. Any proposed change in the structure of any Corporate Defendant, or any business entity that any Individual Defendant directly or indirectly manages, controls or has a majority ownership interest in, such as creation, incorporation, dissolution (including the dissolution of any subsidiaries), assignment, proposed filing of a bankruptcy petition, or sale or merger resulting in the emergence of a successor corporation, or any other change in that entity, including a change in the corporate name, d/b/a or address, that may affect any compliance obligation arising out of this Order, at least thirty (30) days prior to the effective date of any such change; **Provided, however,** that with respect to any proposed change in the structure of any Corporate Defendant or any business entity that any Individual Defendant directly or indirectly manages, controls or has a majority ownership interest in, about which a Defendant learns less than thirty (30) days prior to the date such action is to take place, such Defendant shall notify the Commission as soon as is practicable after learning of such proposed change;

B. One hundred eighty (180) days after the date of entry of this Order, the Corporate Defendants and the Individual Defendants shall provide a written report to the Commission, sworn to under penalty of perjury, setting forth in detail the manner and form in which such Defendants have complied and are complying with this Order. This report shall include but not be limited to:

1. Each Individual Defendant's then current residence address, mailing addresses and telephone numbers;
2. Each Individual Defendant's then current employment and business addresses and telephone numbers, a description of the business activities of each such employer or business, and the Individual Defendant's title and responsibilities for each such employer or business;
3. A copy of each acknowledgment of receipt of this Order obtained by Defendants pursuant to Section VII; and
4. A statement describing the manner in which Defendants have complied and are complying with Sections I, II, III, VIII, and IX of this Order;

C. Upon written request by a representative of the Commission, Defendants shall submit additional written reports (under oath, if requested) and produce Documents on fifteen (15) days' written notice with respect to any conduct that is subject to this Order;

D. For the purposes of this Order, Defendants shall, unless otherwise directed by a representative of the Commission, mail all written notifications to the Commission to:

Regional Director
Midwest Regional Office
Federal Trade Commission
55 East Monroe Street, Suite 1860
Chicago, IL 60603

E. For the purposes of this Section, "employment" includes the performance of services as an employee, consultant, or independent contractor; and "employers" include any individual or entity for whom any Individual Defendant performs services as an employee, consultant, or independent contractor; and

F. For purposes of the compliance reporting required by this Section, the Commission is authorized to communicate directly with Defendants.

XI. COMMISSION'S AUTHORITY TO MONITOR COMPLIANCE

IT IS FURTHER ORDERED THAT the Commission is authorized to monitor the Corporate Defendants' and the Individual Defendants' compliance with this Order by all lawful means, including but not limited to the following:

A. The Commission is authorized, without further leave of Court, to obtain discovery from any person (including a Defendant) in the manner provided by Chapter V of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 26-37, including the use of compulsory process pursuant to Fed. R. Civ. P. 45, for the purpose of monitoring and investigating Defendants' compliance with any provision of this Order;

B. The Commission is authorized to use representatives posing as potential customers to Defendants, Defendants' employees, or any other entity managed or controlled in whole or in part by any Defendant, without the necessity of identification or prior notice; and

C. Nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49 and 57b-1, to investigate whether Defendants have violated any provision herein or Section 5 of the FTC Act, 15 U.S.C. § 45.

XII. RECEIVERSHIP PROVISIONS

IT IS FURTHER ORDERED, that the appointment of Stephen T. Bobo as permanent receiver ("Receiver") is continued as set forth herein, with the full power of an equity receiver, for the Receivership Defendants, and of all the funds, properties, premises, accounts and other

assets directly or indirectly owned, beneficially or otherwise, by the Receivership Defendants, with directions and authority to accomplish the following:

- A. Maintain full control of the Receivership Defendants;
- B. Maintain custody, control, and possession of all assets and documents, including the funds, property, premises, accounts, mail and other assets of, or in the possession or under the control of, the Receivership Defendants, wherever situated, the income and profits therefrom, and all sums of money now or hereafter due or owing to the Receivership Defendants, with full power to: collect, receive and take possession of all assets and documents, including goods, chattels, rights, credits, monies, effects, lands, leases, books and records, work papers, and records of accounts, including computer-maintained information, contracts, financial records, monies on hand in banks and other financial institutions, and other papers and documents of the Receivership Defendants and customers of the Receivership Defendants whose interests are now held by or under the direction, possession, custody, or control of the Receivership Defendants;
- C. Continue performing all acts necessary to locate and preserve the value of those assets, in order to prevent any irreparable loss, damage or injury to customers of the Receivership Defendants, and all acts incidental thereto;
- D. Enter into agreements in connection with administration of the Receivership Estate, including, but not limited to: (1) the retention and employment of outside investigators, attorneys or accountants of the Receiver's choice to assist, advise,

and represent the Receiver with approval of the Court; (2) the movement and storage of any equipment, furniture, records, files, or other physical property of the Receivership Defendants; and (3) the retention of auctioneers or other professionals to assist in the liquidation of the Receivership Defendants' assets;

- E. Institute, prosecute, compromise, adjust, intervene in or become party to such actions or proceedings in state, federal, or foreign courts that the Receiver deems necessary and advisable to preserve or increase the value of the Receivership Estate, or that the Receiver deems necessary and advisable to carry out the Receiver's mandate under this Order, and likewise to defend, compromise, or adjust or otherwise dispose of any or all actions or proceedings instituted against the Receiver or the Receivership Defendants that the Receiver deems necessary and advisable to preserve the assets of the Receivership Defendants or that the Receiver deems necessary and advisable to carry out the Receiver's mandate under this Order;
- F. Liquidate assets of the Receivership Defendants and all assets transferred to the Receiver in accordance with the terms of this Order or any prior or subsequent order of this Court; and to transfer receivership property to storage facilities, cancel leases, and reject and enter contracts; and
- G. To execute all bills of sale and deeds to personal and real property belonging to or coming into the possession of the Receivership Defendants.
- H. Immediately enforce the judgment set forth in this Order if such judgment is executed by the Court by taking all necessary or appropriate post-judgment

collection steps, including but not limited to obtaining and levying writs of execution and creating, perfecting and enforcing judgment liens on any real or personal property of the Defendants.

IT IS FURTHER ORDERED that, to the extent they are not inconsistent with this Order, all powers granted to the Receiver pursuant to the Court's Preliminary Injunction Order of October 2, 2002, shall remain in full force and effect.

XIII. WINDING UP OF RECEIVERSHIP DEFENDANTS

IT IS FURTHER ORDERED that the Receiver shall liquidate all assets of the Receivership Defendants' and wind up all activities and operations of the Receivership Defendants and their subsidiaries and affiliated entities. Upon approval of the Court, the Receiver shall transfer to the Commission or its agent all funds in the Receivership Estate, less unpaid fees and expenses as allowed by the Court.

XIV. TERMINATION OF RECEIVERSHIP

IT IS FURTHER ORDERED, that the Receiver shall, if he has not already done so, file his final application for fees with respect to the Receivership Defendants within 180 days of the execution of this Order, unless good cause is shown to extend the receivership beyond 180 days. The Receiver's final application for fees for the Receivership Defendants shall be served upon the parties through counsel. Upon submission of the Receiver's final application and this Court's Order, and subject to the terms set forth herein, the receivership shall terminate.

XV. COOPERATION WITH RECEIVER

IT IS FURTHER ORDERED, that the undersigned shall cooperate fully with the Receiver in: (A) pursuing any and all claims by the Receiver against other persons or entities; (B) assisting the Receiver in defending any and all actions or claims brought against the Receiver, the Receivership Estate or the Receivership Defendants by other persons or entities; (C) executing any documents necessary to transfer assets or ownership interests to the Receiver pursuant to the terms of this Order; and (D) refraining from any act that would interfere or impede the Receiver in execution of the performance of his duties. Cooperation by the Individual Defendant does not include the waiving of constitutional rights against self-incrimination, and right to counsel. No portion of this Order shall abridge the Individual Defendant's constitutional rights.

XVI. FEES AND COSTS

IT IS FURTHER ORDERED THAT each party to this Order shall bear its own costs and attorneys' fees incurred in connection with this action.

XVII. SEVERABILITY

IT IS FURTHER ORDERED that the provisions of this Order are separate and severable from one another. If any provision is stayed or determined to be invalid, the remaining provisions shall remain in full force and effect.

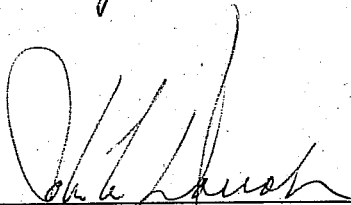
XVIII. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED THAT this Court retains jurisdiction of this matter for the purpose of enabling any party to this Order to apply to the Court at any time for such further order or directives as may be necessary or appropriate for the interpretation or modification of

this Order, for the enforcement of compliance therewith, or for the punishment of violations thereof.

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

SO ORDERED, this 14th day of April, 2003.



Honorable John W. Darrah
United States District Judge

