

FILED

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA, FLORIDA

Federal Trade Commission,

Plaintiff,

v.

Civil No. 8:03cv2353-TJTBm

Peoples Credit First, LLC,  
Consumer Preferred, LLC, formerly known as  
Consumer First, LLC,  
Shaun Olinstead, and  
Julie Connell,

Defendants.

**SEALED**

**(PENDING) TEMPORARY RESTRAINING ORDER WITH  
ASSET FREEZE AND OTHER EQUITABLE RELIEF**

Plaintiff Federal Trade Commission ("Commission" or "FTC"), having filed its Complaint for Injunctive and Other Relief in this matter, pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), and having moved *ex parte* for a Temporary Restraining Order pursuant to Rule 65 of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 65, and the Court having considered the Complaint, declarations, exhibits and memorandum of law filed in support thereof, and now being advised in the premises, finds that:

1. This Court has jurisdiction over the subject matter of the case, and there is good cause to believe that the Court will have jurisdiction over the parties. The Complaint states a

I certify the foregoing to be a true  
and correct copy of the original.  
SHERYLL L. DESCH, Clerk  
United States District Court  
Middle District of Florida  
By: *[Signature]*  
Deputy Clerk

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. Venue properly lies with this Court;

3. 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), and that the Commission is likely to prevail on the merits of this action;

4. There is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief for consumers in the form of monetary redress will occur from the sale, transfer, assignment, or other disposition or concealment by Defendants of their assets and records unless Defendants are immediately restrained and enjoined by Order of this Court. The evidence set forth in the Commission's *Ex Parte* Motion for Temporary Restraining Order and Other Equitable/Injunctive Relief, and in the accompanying declarations and exhibits, shows that the Commission 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. Thus, there is good cause to believe that 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 this Court;

5. There is good cause to order an asset freeze of Defendants' assets and for appointing a temporary receiver for Peoples Credit First, LLC, and Consumer Preferred, LLC, formerly known as Consumer First, LLC. The Commission has made a prima facie case that Defendants have made misrepresentations, 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 take money from these consumers based on false and deceptive acts and practices, and that Defendants have retained ill-gotten gains from these and other practices. Accordingly, asset freezes and a temporary receiver are reasonably necessary in order to preserve the possibility of meaningful relief at the conclusion of this litigation;

6. There is good cause for issuing this Order pursuant to Federal Rule of Civil Procedure 65(b) and for relieving the Plaintiff of the duty to provide Defendants with prior notice of the Plaintiff's motion. The Commission has not provided notice to the Defendants due to the likelihood that advance 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. Thus, there is good cause for relieving the Commission of the duty to provide Defendants with prior notice of the Commission's application;

7. Weighing the equities and considering Plaintiff's likelihood of success, this Order is in the public interest; and

8. No security is required of any agency of the United States for issuance of a temporary restraining order. See Fed. R. Civ. P. 65©).

#### DEFINITIONS

1. "Defendants" mean Peoples Credit First, LLC, Consumer Preferred, LLC, formerly known as Consumer First, LLC, Shaun Olmstead and Julie Connell, and each of them by whatever names each might be known, as well as their officers, agents, directors, employees, salespersons,

independent contractors, attorneys, corporations, subsidiaries, branches or business divisions, 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 entity.

2. "Document" is synonymous in meaning and equal in scope to the term, as defined 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, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of this term.

3. "Asset" or "Assets" means all real or 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), and all chattel, leaseholds, contracts, mail or other deliveries, lists of consumer names, shares of stock, accounts, credits, receivables, and cash, wherever located;

4. "Material" means likely to affect a person's choice of, or conduct regarding, goods or services.

5. "Person" means a natural person, an organization or other legal entity, including a corporation, partnership, sole proprietorship, limited liability company, association, cooperative, or any other group or combination acting as an entity.

6. "Plaintiff" means the Federal Trade Commission ("Commission").

#### **I. PROHIBITED BUSINESS ACTIVITIES**

**IT IS THEREFORE ORDERED** that, in connection with the advertising, promotion, offering for sale, sale or provision of any goods or services, including but not limited to offers for

credit cards in return for the payment of an advance fee, Defendants are hereby temporarily restrained and enjoined from making or assisting in the making of, expressly or by implication, orally or in writing, any false or misleading statement or representation of material fact, including but not limited to the following:

A. That by paying a fee, consumers will, or are highly likely to, receive a major credit card, such as a VISA credit card; and

B. About any material term, condition, or limitation of the transaction or about the use of any offered good or service.

## **II. ASSET FREEZE**

**IT IS FURTHER ORDERED** that Defendants, and their officers, agents, servants, employees, and attorneys, 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, are hereby restrained and enjoined from:

A. Transferring, liquidating, converting, encumbering, pledging, loaning, 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, automobiles, accounts, contracts, consumer lists, coins, precious metals, artwork, shares of stock, uncashed checks, or other assets, wherever located, that are: (1) owned or controlled by any Defendant, in whole or in part; (2) in the actual or constructive possession of any Defendant; (3) held by an agent of any Defendant as a retainer for the agent's provision of services to any Defendant; or (4) owned, controlled by, or in the actual or constructive possession of, or otherwise held for the benefit of, any corporation, partnership or other entity directly or indirectly owned, managed, or controlled by any Defendant including, but not limited to, Product Dynamics, LLC, Dynamic

Fulfillment and Services, LLC, Foundation Commercial Properties, LLC, SOHO Holdings, LLC, Generation Housing, LLC, Digital Vision Security, Members Platinum, Inc., and/or Green Investment Planning, Inc., dba American Credit Solutions and American Credit Express, and including but not limited to, any assets held by or for any Defendant in any account at any bank or savings and loan institution, credit card processing agent or with any broker-dealer, escrow agent, title company, commodity trading company, precious metal dealer, merchant account processor, or other financial institution or organization of any kind;

B. Opening or causing to be opened any safe deposit boxes or commercial mail boxes titled in the name of any Defendant, or subject to access by any Defendant, including, but not limited to:

1. Peoples Credit First, LLC, mail box 15650;
2. Consumer Preferred, LLC, formerly known as Consumer First, LLC, mail box 15386.

C. Incurring charges or cash advances on any credit or debit card issued in the name, individually 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 asset held in the name, individually or jointly, of any Defendant.

*Provided further*, that the assets affected by this Section shall include both existing assets and assets acquired after the effective date of this Order, including, without limitation, those acquired by loan or gift, and assets in the form of retainers paid to any Defendants' agents as compensation for the provision of services to any Defendant. Defendants, or any third party holding assets for the benefit of any Defendant, shall hold all assets, including without limitation, payments, loans, and gifts, received after service of this Order. Notwithstanding the asset freeze provisions of Section II.

A - E above, Defendants may pay reasonable, usual, ordinary, and necessary living expenses, and reasonable attorneys fees after obtaining prior written approval by the Commission or by the Court.

### **III. DUTIES OF ASSET HOLDERS**

**IT IS FURTHER ORDERED** that, effective immediately upon notification of this Order, any financial or brokerage institution, escrow agent, money market or mutual fund, title company, commodity trading company, common carrier, storage company, trustee, commercial mail receiving agency, merchant account processor, mail holding or forwarding company, creditor or credit card issuer, or any other person or entity including, but not limited to, Product Dynamics, LLC, Dynamic Fulfillment and Services, LLC, Foundation Commercial Properties, LLC, SOHO Holdings, LLC, Generation Housing, LLC, Digital Vision Security, Members Platinum, Inc., and Green Investment Planning, Inc., dba American Credit Solutions and American Credit Express, having possession, custody or control of any assets or records of any Defendant, or of any account, safe deposit box, or other asset of any Defendant, either individually or jointly, or held on behalf of or for the benefit of any Defendant, at any time since June 1, 2001, shall:

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

B. Deny any person or entity access to any safe deposit box titled individually or jointly in the name of any Defendant or otherwise held for the benefit of or subject to access by any Defendant;

C. Provide to counsel for the Commission, within five (5) business days of notice of this Order, a sworn statement setting forth:

1. The identification number of each account or asset titled in the name, individually or jointly, of any Defendant, or held on behalf of, or for the benefit of, any Defendant;
2. The balance of each account or a description of the nature and value of each asset as of the close of business on the day this Order is served, and, if the account or asset has been closed or moved, 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 or storage facility that is either titled in the name of or subject to access by the Defendant.

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. For the purposes of this Section, the Commission may properly serve this Order on any financial or brokerage institution, business 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 at any time since April 1, 2001, by facsimile transmission, hand delivery or overnight carrier.

#### **IV. RECORD KEEPING/MAINTAINING BUSINESS RECORDS**

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

- A. Failing to create and maintain books, records, accounts, bank statements, current accountants' reports, general ledgers, general journals, cash receipts ledgers, cash disbursements



ledgers and source documents, documents indicating title to real or personal property, and any other data which, in reasonable detail, accurately, fairly and completely reflect their incomes, disbursements, transactions, and dispositions of the assets of the Defendants; and

B. Destroying, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, any books, records, tapes, discs, accounting data, checks (fronts and backs), correspondence, forms, advertisements, brochures, manuals, electronically stored data, banking records, customer lists, customer files, invoices, telephone records, ledgers, payroll records, or other documents of any kind, including information stored in computer-maintained form, in their possession, custody, or control that relate to the business practices or business or personal finances of any Defendant from April, 2001, to the present.

**V. DISTRIBUTION OF ORDER BY DEFENDANTS**

**IT IS FURTHER ORDERED** that Defendants shall immediately provide a copy of this Order to each affiliate, partner, division, sales entity, successor, assignee, officer, director, employee, independent contractor, spouse, Internet web host or master, agent, attorney, and/or representative of Defendants and shall, within ten (10) days from the date of entry of this Order, serve upon counsel for the Commission a sworn statement that the Defendants have complied with this provision of this Order, which statement shall include the names and addresses of each such person or entity who has received a copy of the Order.

**VI. SERVICE OF ORDER**

**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 or entity shall effect service upon the entire financial institution or entity.

Plaintiff's agents or employees may serve this Order upon Defendants or other person that may be subject to any provision of this Order by serving a copy personally or by first class mail, overnight delivery, facsimile or electronic mail.

#### **VII. CREDIT REPORTS**

**IT IS FURTHER ORDERED** that the Commission may obtain credit reports concerning Defendants Shaun Olmstead and Julie Connell pursuant to Section 604(a)(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(1), and that upon written request, any credit reporting agency from which such report is requested shall provide it to the Commission.

#### **VIII. CUSTOMER SALES INFORMATION**

**IT IS FURTHER ORDERED** that, within forty-eight (4) hours from service of this Order upon them, Defendants and any other person or entity served with a copy of this Order, shall provide to Plaintiff:

- A. A statement of the total number of advance fee credit cards issued by Defendants; and
- B. A complete and accurate statement providing the names, addresses and telephone numbers of each customer who was charged for an advance fee credit card, whether directly by Defendants or through a third party, and the total dollar amount of money received from each customer.

#### **IX. FINANCIAL REPORTS**

**IT IS FURTHER ORDERED** that each Defendant shall, within forty-eight (48) hours of service of this Order, prepare and provide to counsel for the Commission:

A. A completed financial statement accurate as of the date of service of this Order upon Defendants which shall include all financial information as requested by the Financial Statement of Individual Defendant, appended as Attachment A, and Financial Statement of Corporate Defendant, appended as Attachment B, for themselves and for each business entity under which they conduct business, or of which they are an officer or member, 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 and shall be verified under oath;

B. 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; and

C. The name, address and telephone number of 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 June 1, 2001.

**X. APPOINTMENT OF TEMPORARY RECEIVER**

IT IS FURTHER ORDERED that MARK JAMES BERNET is appointed as a temporary receiver ("Receiver") for Defendants Peoples Credit First, LLC, and Consumer Preferred, LLC, formerly known as Consumer First, LLC (hereinafter the "Receivership Defendants") with the full power of an equity receiver, and with directions and authority 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. The Receiver shall, however, not interfere with or be privy to the defense of this action;

B. Take custody, control, and possession of all funds, property, premises, accounts, mail, and other assets and documents of, or in the possession, custody, or under the control of, the Receivership Defendants, wherever situated and including, but not limited to, the business premises of the Receivership Defendants, Product Dynamics, LLC, Dynamic Fulfillment and Services, LLC, Foundation Commercial Properties, LLC, SOHO Holdings, LLC, Generation Housing, LLC, Digital Vision Security, Members Platinum, Inc., and/or Green Investment Planning, Inc., dba American Credit Solutions and American Credit Express, take 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 goods, chattels, rights, credits, moneys, 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. *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 and every 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;

D. 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;

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

F. 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;

G. 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;

H. 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;

I. 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;

J. Except as to the instant case, 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;

K. 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;

L. 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;

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

N. 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;

O. Maintain accurate records of all receipts and expenditures made as Receiver; and

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

**XI. COOPERATION WITH THE TEMPORARY RECEIVER**

**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.

#### XII. STAY OF ACTIONS

**IT IS FURTHER ORDERED** that except by leave of this Court, during the pendency of the receivership ordered herein, the Defendants and all customers, principles, investors, creditors, stockholders, lessors, and other persons, seeking to establish or enforce any claim, right or interest against or on behalf of the Receivership Defendants, or any of its subsidiaries or affiliates, 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:



- A. Commencing, prosecuting, continuing or enforcing any suit or proceeding against the Receivership Defendants, or any of its subsidiaries or affiliates, except that such actions may be filed to toll any applicable statute of limitations;
- B. Commencing, prosecuting, continuing or entering any suit or proceeding in the name or on behalf of the Receivership Defendants, or any of its subsidiaries or affiliates;
- C. Accelerating the due date of any obligation or claimed obligation, enforcing any lien upon, or taking or attempting to take possession of, or retaining possession of, a property of the Receivership Defendants, or any of its subsidiaries or affiliates or any property claimed by any of them or attempting to foreclose, forfeit, alter or terminate any of the Receivership Defendants's interests in property, including without limitation, the establishment, granting, or perfection of any security interest, whether such acts are part of a judicial proceeding or otherwise;
- D. Using self-help or executing or issuing, or causing the execution or issuance of any court attachment, subpoena, replevin, execution or other process for the purpose of impounding or taking possession of or interfering with, or creating or enforcing a lien upon, any property, wheresoever located, owned by or in the possession of the Receivership Defendants, or the Receiver appointed pursuant to this Final Order or any agent appointed by said Receiver; and
- E. Doing any act or thing whatsoever to interfere with the Receiver taking control, possession or management of the property subject to the receivership, or to in any way interfere with the Receiver, or to harass or interfere with the duties of the Receiver, or to interfere with the exclusive jurisdiction of this Court over the

- A. Commencing, prosecuting, continuing or enforcing any suit or proceeding against the Receivership Defendants, or any of its subsidiaries or affiliates, except that such actions may be filed to toll any applicable statute of limitations;
- B. Commencing, prosecuting, continuing or entering any suit or proceeding in the name or on behalf of the Receivership Defendants, or any of its subsidiaries or affiliates;
- C. Accelerating the due date of any obligation or claimed obligation, enforcing any lien upon, or taking or attempting to take possession of, or retaining possession of, a property of the Receivership Defendants, or any of its subsidiaries or affiliates or any property claimed by any of them or attempting to foreclose, forfeit, alter or terminate any of the Receivership Defendants's interests in property, including without limitation, the establishment, granting, or perfection of any security interest, whether such acts are part of a judicial proceeding or otherwise;
- D. Using self-help or executing or issuing, or causing the execution or issuance of any court attachment, subpoena, replevin, execution or other process for the purpose of impounding or taking possession of or interfering with, or creating or enforcing a lien upon, any property, wheresoever located, owned by or in the possession of the Receivership Defendants, or the Receiver appointed pursuant to this Final Order or any agent appointed by said Receiver; and
- E. Doing any act or thing whatsoever to interfere with the Receiver taking control, possession or management of the property subject to the receivership, or to in any way interfere with the Receiver, or to harass or interfere with the duties of the Receiver, or to interfere with the exclusive jurisdiction of this Court over the

property and assets of the Receivership Defendants, or its subsidiaries or affiliates, including the filing by Defendants of a petition for relief under the United States Bankruptcy Code, 11 U.S.C. § 101 et seq., as to the Receivership Defendants.

Provided, however, nothing in this Paragraph shall prohibit any federal or state law enforcement or regulatory authority from commencing or prosecuting an action against the Receivership Defendants.

### **XIII. COMPENSATION OF RECEIVER**

**IT IS FURTHER ORDERED** that the Receiver is entitled to reasonable compensation for the performance of all duties pursuant to this Order and for the cost of actual out-of-pocket expenses incurred, solely from the assets now held by, or 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 compensation, with the first such request due prior to sixty days after the date of this Order. The Receiver shall not increase the Receiver's fee billed to the receivership estate without prior approval of the Court.

### **XIV. BOND**

**IT IS FURTHER ORDERED** that the Receiver shall file with the Clerk of this Court a bond in the sum of \$—0— with sureties to be approved by the Court, conditioned that the Receiver will well and truly perform the duties of the office and abide by and perform all acts the Court directs.

### **XV. IMMEDIATE ACCESS TO BUSINESS OFFICES AND RECORDS**

**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) 4620 North Hale Avenue, Tampa, Florida 33614, and (ii) 5226 S. MacDill Avenue, Tampa, Florida 33611. The Plaintiff and the 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 business premises of the Receivership Defendants in order that they may be inspected, inventoried, and copied; and

B. Plaintiff and Receiver, and their representatives, agents, and assistants, shall have immediate access to any other business location where the Receivership Defendants business-related property, records, and equipment are located including, but not limited to, the business premises of Product Dynamics, LLC, and Dynamic Fulfillment and Services, LLC. Plaintiff and Receiver, and their representatives, agents, and assistants, shall also have the right to remove documents from any other business locations connected with the Receivership Defendants' business in order that they may be inspected, inventoried, and copied.

#### **XVI. DELIVERY OF BOOKS AND RECORDS**

**IT IS FURTHER ORDERED** that, immediately upon service of this Order upon them, Defendants, and any other person or entity served with a copy of this Order, shall transfer or deliver over to Plaintiff and Receiver:

A. All financial and accounting records, balance sheets, income statements, bank records (including monthly statements, canceled checks, records of wire transfers, and check registers), customer lists, title documents, 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 cancelled 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 the Receivership Defendants' business practices;

B. All computers and data in whatever form used by Defendants or any of Defendant's agents, employees, officers, servants or those persons in active concert with him or her, in activities relating to Receivership Defendants;

D. Information identifying the accounts, employees, properties, or other assets or obligations of the Receivership Defendants;

E. A list of all agents, employees, officers, servants or those persons in active concert and participation with Defendants, who have been associated or done business with the Receivership Defendants, including the address and telephone number of any businesses, whether or not incorporated, and wherever situated, with whom the Receivership Defendants transacted business since June 1, 2001.

#### **XVII. TRANSFER OF ASSETS TO THE RECEIVER**

**IT IS FURTHER ORDERED** that, upon service of a copy of this Order, Defendants, and any other person or entity served with a copy of this Order upon them, shall deliver over to the Receiver and in the manner specified by the Receiver:

A. All funds, assets, property owned beneficially or otherwise, and all other assets, wherever situated, of the Receivership Defendants;

B. All funds and other assets belonging to members of the public now held by the Receivership Defendants;

C. All keys, computer passwords, entry codes, combinations to locks required to open or gain access to any of the property or effects; and

D. All monies in any bank or financial institution deposited to the credit of the Receivership Defendants, wherever situated. All banks, broker-dealers, savings and loans, escrow agents, title companies, commodity trading companies, merchant account processors, precious metals dealers and other financial institutions and depositories of any kind, and all third-party billing agents and companies shall cooperate with all reasonable requests of Plaintiff and Receiver relating to implementation of this Order, including requests to transfer funds to the Receiver and to produce records relating to the assets and sales of the Receivership Defendants.

**XVIII. NON-COMPLIANCE WITH TRANSFERS OR DELIVERY**

**IT IS FURTHER ORDERED** that in the event any person or entity fails to transfer or deliver any asset or otherwise fails to comply with any provision of this Order requiring the delivery of documents or other things, 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.

**XIX. REPATRIATION OF FOREIGN ASSETS AND DOCUMENTS**

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

A. Repatriate to the United States all funds, documents or assets, in foreign countries held either: (1) by any Defendant; (2) for the benefit of any Defendant; or (3) under the direct or indirect control, jointly or individually, of any Defendant and deliver them to the Receiver;

B. The same business day as any repatriation, (1) notify counsel for the Commission and the Receiver of the name and location of the financial institution or other entity that is the recipient of such funds, documents or assets; and (2) serve this Order on any such financial institution or other entity;

C. Provide the Commission and the Receiver with a full accounting of all funds, documents, and assets outside of the territory of the United States held either: (1) by the Defendant; (2) for the Defendant's benefit; or (3) under the Defendant's direct or indirect control, jointly or singly; and

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

**XX. INTERFERENCE WITH REPATRIATION**

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 Section of this Order, including but not limited to:

A. Sending any statement, letter, fax, e-mail or wire transmission, or 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 as all assets have been fully repatriated pursuant to the preceding Section of this Order;  
and

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 as all assets have been fully repatriated pursuant to the preceding Section of this Order.

**XXI. DEFENDANTS' ACCESS TO THEIR BUSINESS PREMISES**

**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.

**XXII. EXPEDITED DISCOVERY**

**IT IS FURTHER ORDERED** that, notwithstanding the provisions of Federal Rules of Civil Procedure 26(d) and (f) and 30(a)(2)(C), and pursuant to Federal Rules of Civil Procedure 30(a), 34, and 45, the Plaintiff and Receiver 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 the nature, location, status, and extent of the assets of Defendants, or their affiliates or subsidiaries; the nature and location of documents reflecting Defendants' business transactions, or the business transactions of the Defendants' affiliates or subsidiaries; the location of any premises where Defendants, directly or through any third party, conducts business operations; the Defendants' whereabouts; and/or the applicability of any evidentiary privileges to 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 (10) 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, 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 the nature, status, or extent of Defendants' assets, or of their affiliates or subsidiaries; the location of documents reflecting the business transactions of Defendants, or of their affiliates or subsidiaries; the location of any premises where Defendants, directly or through any third party, conducts business operations; the Defendants' whereabouts; and/or the applicability of any evidentiary privileges to 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.

**XXIII. ORDER TO SHOW CAUSE REGARDING PRELIMINARY INJUNCTION**

IT IS FURTHER ORDERED, pursuant to Federal Rule of Civil Procedure 65(b), that Defendants shall appear before this Court, at 801 N. Florida Avenue, Tampa, Florida 33602, on the PRELIMINARY INJUNCTION REFERRED TO MAGISTRATE JUDGE. SEPARATE NOTICE OF HEARING WILL BE ISSUED. day of \_\_\_\_\_, 2003, at \_\_\_\_\_ o'clock \_\_\_\_ 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 FTC Act, 15 U.S.C. § 45(a), continuing the freeze of their assets and imposing such additional relief as may be appropriate. Defendants shall serve answering pleadings or materials on counsel for the

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Commission not less than 5 business day prior to the hearing on the Commission's request for a preliminary injunction. Plaintiff may submit reply pleadings or materials by 2 days prior to hearing.

**XXIV. CORRESPONDENCE WITH AND NOTICE TO PLAINTIFF**

IT IS FURTHER ORDERED that, for purposes of this Order, all correspondence and pleadings to the Commission shall be addressed to:

Valerie M. Verduce, Esq.  
Ronald E. Laitsch, Esq.  
Federal Trade Commission  
225 Peachtree St., Suite 1500  
Atlanta, Georgia 30303  
(404) 656-1390 (telephone)  
(404) 656-1379 (facsimile)

Notice may be provided by email to [vverduce@ftc.gov](mailto:vverduce@ftc.gov) or [rlaitsch@ftc.gov](mailto:rlaitsch@ftc.gov).

**XXVII. DURATION OF TEMPORARY RESTRAINING ORDER**

IT IS FURTHER ORDERED that the Temporary Restraining Order granted herein shall continue until ruling on the request for preliminary injunction, or ruling on a request to dissolve.

**XXVIII. RETENTION OF JURISDICTION**

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

DONE and ORDERED in Chambers, in Tampa, Florida on this 10<sup>th</sup> day of November, 2003 at 12:50 p.m.

  
ELIZABETH A. KOVACHEVICH  
United States District Judge

Copies to: All parties and counsel of record

JUDGE McCOUN