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JUN - 5 2001
CENTRAL DISTRICT OF CALIFORNIA
BY *amy* DEPUTY

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION
Plaintiff,
v.
KEITH GILL, ET AL.
Defendants.

CV-98-1436 LGB (MCx)
[UNDER SEAL]
ORDER GRANTING PLAINTIFF'S
EX PARTE APPLICATION FOR
OSC WHY DEFENDANTS SHOULD
NOT BE HELD IN CONTEMPT OF
NOV. 4, 1999 FINAL ORDER
AND TEMPORARY RELIEF
INCLUDING ASSET FREEZE,
APPOINTMENT OF TEMPORARY
RECEIVER, AND ORDER
AUTHORIZING IMMEDIATE
ACCESS AND EXPEDITED
DISCOVERY

I. INTRODUCTION

On November 4, 1999, the Court granted summary judgment for Plaintiff, Federal Trade Commission ("FTC") and held that the Defendants, Keith Gill ("Gill") and Richard Murkey ("Murkey"), unlawfully sold credit repair service. The Court's Order prohibited Defendants from engaging in the credit repair business and related activities. Defendants bring the instant ex parte application for an order to show cause why Defendants should not

1 be held in contempt of the Court's Order and temporary relief
2 including asset freeze, appointment of temporary receiver, and an
3 order authorizing immediate access and expedited discovery.

4 II. FACTS AND PROCEDURAL HISTORY

5 A. THE PARTIES

6 Defendant Gill is a licensed attorney who does business as a
7 sole practitioner at the Law Offices of Keith Gill. See Summ. J.
8 Order at 2. In addition to a general law practice, Gill has
9 offered credit repair services to consumers since 1995. See *id.*
10 Defendant Murkey is a retired attorney. See *id.* Since 1995, in
11 conjunction with Gill's office, Murkey has offered credit repair
12 services to consumers. See *id.*

13 While this litigation was pending, Murkey began operating
14 the Credit Restoration Corporation of America, Inc. ("CRCA"). See
15 Stahl Decl., Ex. 18 at 248, 252. The CRCA is a nonprofit
16 organization whose articles of incorporation attest to the fact
17 that its "specific purposes, without limitation, is to counsel
18 and educate consumers on legitimate ways to obtain and maintain
19 good credit." See Stahl Decl., Ex. 20. Beginning in March or
20 April 1999, new clients signed credit repair contracts with CRCA
21 rather than with Gill. See Stahl Decl., Ex. 18 at 254, 254B, 252,
22 255; Summ. J. Order at 36. The CRCA also began servicing Gill's
23 customers. See *id.* Murkey is the president and director of the
24 CRCA and exercises primary authority over the company. See Stahl
25 Decl., Ex. 18 at 248-51, 257, 263, 268.

26 B. Procedural History

27 On March 2, 1998, Plaintiff filed its Complaint against
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1 Defendants. The Complaint alleged violations of the Credit
2 Repair Organization Act ("CRO Act") and Section 5 of the Federal
3 Trade Commission Act ("FTC Act"). In particular, the Complaint
4 alleged that Defendants were charging and receiving payment for
5 credit repair service before such service was performed. Also,
6 the Defendants were accused of violating the CRO Act and the FTC
7 Act by making misrepresentations to induce customers to purchase
8 their services, including promises to improve credit reports by
9 permanently and lawfully removing negative information even where
10 such information was accurate and not obsolete.

11 Plaintiff sought a temporary restraining order and
12 preliminary injunction. The parties stipulated to a preliminary
13 injunction against Defendants on April 21, 1998. Murkey
14 thereafter violated the preliminary injunction by misrepresenting
15 information to credit bureaus regarding his clients' credit
16 reports and attempting to collect payment from previous customers
17 through the CRCA. See Summ. J. Order at 20, n.13, 21.

18 On November 3, 1999, the Court granted summary judgment in
19 favor of Plaintiff.¹ In its Order, the Court found that
20 Defendants had violated the CRO Act by making misrepresentations
21 and by accepting payment before service had been rendered. See
22 Summ. J. Order at 15-28, 31. Additionally, the Court ruled that
23 Defendants had violated the FTC Act by making misrepresentations
24 that were likely to mislead consumers. See *id.* at 33.

25 Both Defendants were served with the Summary Judgment Order.
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27 ¹ The Court entered two amended judgments on November 5, 1999
28 and November 30, 1999. The amended judgments did not substantively
alter the judgment entered on November 3, 1999.

1 Proofs of service show that Murkey was served with the Summary
2 Judgment Order on November 10, 1999 and that Gill signed a return
3 receipt for the Order that was sent to him by certified mail. The
4 Court also sent the Order to all parties on November 4, 1999.

5 Both Defendants have appealed the Court's Order to the Ninth
6 Circuit. Neither Defendant has obtained a stay of the Court's
7 Order during the pendency of the appeal.

8 **C. Injunctive Provisions of the Summary Judgment Order**

9 The Court's Summary Judgment Order included a monetary
10 judgment and extensive injunctive provisions. The injunctive
11 provisions are central to the instant application.

12 **1. Ban on Credit Repair**

13 The Court banned Defendants from the credit repair business
14 as follows:

15 Defendants Gill and Murkey, individually and doing
16 business as any other entity, and their agents,
17 servants, employees, attorneys, and all persons or
18 entities directly or indirectly under their control,
19 and those in active concert or participation with them
20 who receive actual notice of the Order by personal
21 service or otherwise, whether acting directly or
22 through any business entity or other device, are hereby
23 permanently restrained and enjoined from participating
24 in the advertising, promoting, offering for sale, sale,
25 performance, or distribution of any credit repair
26 service, including but not limited to sitting on the
27 board of directors of any credit repair organization,
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1 including any non-profit organization or any other
2 organization that performs credit repair service.

3 Summ. J. Order at 39-40.

4 **2. Prohibition on Specified Representations**

5 The Court barred Defendants from making specific
6 representations to consumers. The Court specified:

7 Defendants Gill and Murkey, individually and doing
8 business as any other entity, and their agents,
9 servants, employees, attorneys . . . are hereby
10 permanently restrained and enjoined from:

- 11 1. Misrepresenting any fact material to a consumer's
12 decision to purchase any credit repair product or
13 service from either Defendant;
- 14 2. Representing that either Defendant can
15 substantially improve most consumers' credit
16 reports or profiles by effectuating the permanent
17 lawful removal of bankruptcies, liens, judgments,
18 charge-offs, late payments, foreclosures,
19 repossessions, and other negative information from
20 consumers' credit reports where such information
21 is accurate and not obsolete;
- 22 3. Representing that either Defendant will
23 substantially improve any consumer's credit report
24 or profile by effectuating the permanent lawful
25 removal of bankruptcies, liens, judgments, charge-
26 offs, late payments, foreclosures, repossessions,
27 or other negative information from the consumer's
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credit report where such information is accurate and not obsolete;

4. Inducing, encouraging, or requesting, or assisting or advising any consumer to induce, encourage, or request, any creditor to report false or misleading information, with respect to any consumer's credit worthiness, credit standing, or credit capacity, to a credit reporting agency;

5. Violating the Credit Repair Organization Act, 15 U.S.C., §§ 1679 to 1679j, as presently enacted or as it may hereinafter be amended, including:

a. Violating 15 U.S.C. § 1679(a)(1) by making any untrue or misleading statement, or counseling or advising any consumer to make any untrue or misleading statement, with respect to any consumer's credit worthiness, credit standing, or credit capacity to any consumer reporting agency as defined in 15 U.S.C. § 1681(f) or to any person who has extended credit to the consumer or to whom the consumer has applied or is applying for an extension of credit; or

b. Violating 15 U.S.C. § 1679(a)(2) by making or using any untrue or misleading statement, or counseling or advising any consumer to make any untrue or misleading statement, the intended effect of which is to alter the

1 consumer's identification to prevent the
2 display of the consumer's credit record,
3 history, or rating for the purpose of
4 concealing adverse information that is
5 accurate and not obsolete.

6 Id. at 40-42.

7 **3. Prohibition on Demanding Payment and the Customer**
8 **Notification Requirement**

9 The Court included a requirement that Defendants rescind
10 their preexisting contracts, return their consumers' payments,
11 and provide consumers with notification of rescission. The Court
12 held:

13 Defendants Gill and Murkey are hereby permanently
14 restrained and enjoined from:

- 15 1. Failing to return within ten days of receipt any
16 payment either Defendant receives for any credit
17 repair service pursuant to any contract or
18 agreement that was entered into prior to March 4,
19 1998, and to include with each such returned
20 payment a notice to the client stating that as a
21 result of a court order the contracts are
22 rescinded and no further payments are due;
- 23 2. Demanding payment or enforcing or threatening to
24 enforce any contract or agreement for the
25 performance of credit repair service entered into
26 prior to March 4, 1998; or
- 27 3. Failing to mail notices within ten days after the
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1 date this Order is entered, to all credit repair
2 clients, if any, who have payments that are due or
3 may become due on contracts for the performance of
4 credit repair service signed prior to March 4,
5 1998, stating that as a result of a court order
6 the contracts are rescinded and no further
7 payments are due.

8 Id. at 42-43.

9 **4. Compliance Report Requirement**

10 Lastly, the Court included numerous monitoring provisions
11 which included the requirement that each Defendant provide a
12 compliance report to the FTC. The compliance report was to
13 include a statement of the manner in which each Defendant had
14 complied with the Court's Order as of the date of the report.

15 See id. at 46-49.

16 **D. The Instant Ex Parte Application**

17 On May 14, 2001, the Plaintiff filed the instant ex parte
18 Application for an order to show cause ("OSC") why Defendants
19 should not be held in contempt of Nov. 4, 1999 Final Order and
20 temporary relief including asset freeze, appointment of temporary
21 receiver, and order authorizing immediate access and expedited
22 discovery. On May 14, 2001, the Court granted the Plaintiff's ex
23 parte application to seal the file until the close of the third
24 court day following issuance of the OSC. On the same day, the
25 Court also granted the Plaintiff's ex parte application to waive
26 the requirement of advance notice to Defendants of Plaintiff's ex
27 parte application for an OSC and temporary relief.

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1 **E. Defendants' Post-Order Conduct**

2 Defendant Murkey has continued to conduct the credit repair
3 business in violation of the Court's Order. Defendants Murkey
4 and Gill have failed to comply with the monitoring provisions of
5 the Court's Order.

6 **1. Advertising, promoting and offering to sell credit**
7 **repair service**

8 **a. Infomercials**

9 Murkey has continued to air paid, program-length
10 advertisements ("infomercials") for CRCA on the Cable Radio
11 Network ("CRN"). Murkey advertised his credit repair service on
12 CRN prior to the Court's Order and resumed advertising on CRN in
13 April 2000. See Stahl Decl., Ex. 18 at 266. Murkey ran ten two-
14 hour infomercials for CRCA on a weekly basis through June 2000.
15 See Smart Decl., Ex. 2 at 12-14, 39; Stahl Decl., Ex. 16. The
16 infomercials resumed recently in March 2001. See Stahl Decl. ¶ 2.
17 The recent infomercials featured Murkey and commercials
18 specifically advertising the CRCA. See Stahl Decl., Ex. 13 at
19 142, Ex. 14 at 196; Smart Decl., Ex. 2 at 10-12 ("The Program
20 you're about to hear is 'Turn Your Life Around,' hosted by credit
21 report expert and former lawyer, Rick Murkey" and "'Rick Murkey
22 is still part of the company. He's the boss."); Smart Decl., Ex.
23 2 at 27-28 (commercial for CRCA); Stahl Decl., Ex. 13 at 152-53
24 (same). The commercials advertise CRCA's telephone number and
25 encourage consumers to call to improve their credit reports. See
26 Smart Decl., Ex. 2 at 27-28 (commercial for CRCA); Stahl Decl.,
27 Ex. 13 at 152-53, 164, 182 (same). In general, the infomercials
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1 solicit customers for CRCA's services. See Stahl Decl. ¶ 7.

2 **b. Newspaper Ads and Website**

3 The CRCA advertises its services in three weekly newspapers
4 in the San Fernando Valley. See Smart Decl., Ex. 6. The ads list
5 typical credit problems and promise "Positive Results in Only 2-3
6 Months." Id. The ads also provide CRCA's phone number, which
7 coincides with the number Murkey provided on the title page of
8 court documents filed by him in this lawsuit and the number
9 provided in the infomercials. See id.; Smart Decl., ex. 2 at 25;
10 Murkey's Answer to Compl. filed on Mar. 10, 1998.

11 Additionally, the CRCA has operated a website advertising
12 its credit repair service and the ability to remove accurate
13 information. See Jacobs Decl., Ex. 1.

14 **2. Representations**

15 Murkey continues to represent, through the CRCA, that he can
16 lawfully and permanently remove accurate, nonobsolete information
17 from credit reports.

18 The message conveyed by the infomercials is that the CRCA
19 can and will improve anyone's credit report by removing all the
20 negative information lawfully and permanently. For instance, in
21 the April 1, 2000 infomercial, the CRCA representative claims,
22 "CRCA is one of the only firms that has actually proven that they
23 can handle things legally and get these things taken care of."
24 See Smart Decl., Ex. 2 at 17. The infomercials also promise that
25 the CRCA will remove accurate information and that it will
26 guarantee that the information remains deleted from credit
27 report. See Stahl Decl., Ex. 19. Plaintiff's investigative calls
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1 show that consumers who call the CRCA in response to the
2 infomercials and ads receive the same solicitation and
3 representations. See Smart Decl. ¶¶ 7-8, Exs. 3, 7.

4 **3. Payment from Customers and Failure to Issue**
5 **Notices and to File Compliance Reports**

6 Murkey has continued to demand payment from consumers of the
7 CRCA who signed up for credit repair service prior to March 1998.
8 See Consumer Decls. in Supp. of OCS: Frye Decl. ¶ 5, Ex. 4;
9 Wachuku Decl. ¶¶ 7-12, Exs. 4-9. Murkey and Gill have also failed
10 to mail notices to such consumers. See Consumer Decls. in Supp.
11 of OCS: Carlson Decl. ¶ 3; Frye Decl. ¶ 8; Wachuku Decl. ¶¶ 13-
12 14.

13 According to Plaintiff, Gill provided a compliance report
14 but failed to detail any efforts to mail rescission notices to
15 consumers, despite Plaintiff's specific request that Gill include
16 a description of his efforts to distribute such notices. See
17 Jacobs Decl. ¶ 16-17, Exs. 5, 6. Murkey failed to provide any
18 compliance report. See id. at ¶ 18.

19 **III. LEGAL STANDARD**

20 The purpose of the preliminary injunction is to preserve the
21 status quo until a full trial on the merits can be conducted.
22 See University of Texas v. Camenisch, 451 U.S. 390, 395 (1981).
23 The Supreme Court "has repeatedly held that the basis for
24 injunctive relief in the federal courts has always been
25 irreparable injury and the inadequacy of legal remedies."
26 Weinberger v. Romeo-Barcelo, 456 U.S. 305, 312 (1982). The
27 limited record usually available on such motions renders a final
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1 decision on the merits inappropriate. See Brown v. Chote, 411
2 U.S. 452, 456 (1973).

3 In the Ninth Circuit, two interrelated tests exist for
4 determining the propriety of the issuance of a preliminary
5 injunction. Under the first test, the Court may not issue a
6 preliminary injunction unless: (1) the moving party has
7 established a strong likelihood of success on the merits; (2) the
8 moving party will suffer irreparable injury and has no adequate
9 remedy at law if injunctive relief is not granted; (3) the
10 balance of hardships tips in favor of the movant; and (4)
11 granting the injunction is in the public interest. See Martin
12 International Olympic Committee, 740 F.2d 670, 674-75 (1984)
13 Greene v. Bowen, 639 F. Supp. 554, 558 (E.D. Cal. 1986). An
14 alternative articulation of the test is whether the moving party
15 "meet[s] its burden by demonstrating either a combination of
16 probable success on the merits and the possibility of irreparable
17 injury or that serious questions are raised and the balance of
18 hardships tips sharply in its favor." Martin, 740 F.2d at 675.
19 The two tests are not, however, separate and unrelated. Each
20 represents the "extremes of a single continuum." Benda v. Grand
21 Lodge of Int'l Ass'n of Machinists, 584 F.2d 308, 315 (9th Cir.
22 1978).

23 IV. Analysis

24 A. District Court's Authority

25 District courts have the inherent power to enforce their
26 orders through civil contempt. See Shillitani v. United States,
27 384 U.S. 364, 370 (1966). "Absent a stay, 'all orders and
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1 judgments of courts must be complied with promptly.'" Donovan v.
2 Mazzola, 716 F.2d 1226, 1240 (9th Cir. 1983) quoting Maness v.
3 Myers, 419 U.S. 449, 458 (1975). A stay has not been issued in
4 this case. Thus, Defendants' appeal of the Court's Summary
5 Judgment Order does not bar the instant application and an
6 eventual contempt hearing. In re Crystal Palace Gambling Hall,
7 817 F.2d 1361, 1365 (9th Cir. 1987).

8 **B. Likelihood of Success**

9 In order to obtain preliminary relief, Plaintiff must show a
10 likelihood of success in proving Defendants' liability for civil
11 contempt. Plaintiff has provided sufficient evidence to meet this
12 standard.

13 First, the Court's Summary Judgement Order prohibited
14 Defendants from advertising, promoting, and offering for sale any
15 credit repair service, whether directly or through any business
16 entity. Plaintiff has presented evidence that Murkey has
17 advertised, promoted, and offered for sale credit repair service.
18 Plaintiff's evidence of transcribed infomercials and print
19 advertisements shows that Murkey has engaged in such activity on
20 the radio, on the internet, and in newspapers ads. The evidence
21 supports Plaintiff's likelihood of proving Murkey's liability for
22 violation of the Court's Order.

23 Second, the Court's Order also enjoined Defendants from
24 making representations to consumers regarding Defendants' ability
25 to improve credit reports by removing negative, but accurate and
26 nonobsolete, information. Plaintiff's evidence illustrates that
27 Murkey has continued to make such representations in
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1 infomercials, on CRCA's website, in newspaper ads, and by
2 telemarketing solicitations. Thus, Plaintiff is likely to
3 successfully show Murkey's liability for contempt.

4 Third, the Court barred Defendants from demanding payment
5 from consumers who signed contracts for credit repair service
6 prior to March 4, 1998 and ordered Defendants to mail letters
7 notifying consumers that such contracts were rescinded.
8 Plaintiff's consumer declarations, and accompanying exhibits of
9 invoices, show that Murkey has continued to demand payment from
10 consumers who contracted with Murkey prior to March 4, 1998.
11 Plaintiff's evidence shows that both Murkey and Gill failed to
12 mail notifications of rescission and have failed to report to
13 Plaintiff on their efforts to comply with this requirement.
14 Plaintiff has established a strong likelihood of success in
15 showing that both Murkey and Gill are liable for contempt.

16 Lastly, the Court's Order required both Defendants to
17 provide Plaintiff with a compliance report within 180 days.
18 Plaintiff claims that Murkey has not provided a report. See
19 Jacobs Decl. ¶ 18.

20 Plaintiff's evidence shows a strong likelihood that
21 Plaintiff will prove that Defendants have violated the Court's
22 Order and should be held liable for contempt.

23 Federal Rule of Civil Procedure 65(d) explains that
24 injunctions are binding on the parties to the action, as well as
25 "those persons in active concert or participation with them who
26 receive actual notice of the order by personal service or
27 otherwise." Fed. R. Civ. P. 65(d). Furthermore, the Court's
28 Order specifically enjoined "those in active concert or

1 participation with" Defendants, including "any non-profit
2 organization or any other organization that performs credit
3 repair service." Summ. J. Order at 39-42. Accordingly, although
4 CRCA is not a Defendant in this case, its participation in and
5 facilitation of Murkey's conduct makes it eligible for liability.
6 Plaintiff's evidence shows that CRCA had notice of the Court's
7 Order through Murkey, its owner, founder, and president. The
8 evidence shows that CRCA is either indistinct from Murkey, or at
9 minimum, an organization acting in concert with Murkey in his
10 credit repair activities. Thus, Plaintiff has also shown a
11 likelihood of success in proving CRCA's liability for contempt as
12 a nonparty.

13 C. Irreparable Harm

14 In addition to showing a likelihood of success in obtaining
15 final relief, Plaintiff must show that it will suffer irreparable
16 harm if temporary relief is not granted. Here, Plaintiff seeks
17 temporary relief in the form of an asset freeze, appointment of a
18 temporary receiver, and immediate access and expedited discovery.
19 Plaintiff, and the consumers to which it lends its protection,
20 will suffer injury if Defendants continue to make deceptive
21 representations and to receive payment for activities that are
22 likely to be found in violation of the Court's Order. Such harm
23 will be irreparable if Defendants are able to conceal evidence of
24 their fraud before final relief is granted.² Therefore, the Court

26 ² Furthermore, a presumption of irreparable injury is applied
27 when the FTC shows a likelihood of success in a statutory
28 enforcement action. See United States v. Odessa Union Warehouse
Co-Op, Inc., 833 F.2d 172, 175-76 (9th Cir. 1987). Although
Plaintiff's request for preliminary relief is based on contempt and

1 finds that Plaintiff made the requisite showing of irreparable
2 harm.

3 **D. Balance of Equities and Public Interest**

4 The harm posed to the general public by Defendants'
5 operation of a fraudulent credit repair business is self-evident.
6 The public has a strong interest in the eradication of fraudulent
7 credit repair businesses. This interest outweighs the Defendants'
8 interest in continuing their activities without the interruption.
9 The public interest that lies in granting the preliminary relief,
10 so as to assure Plaintiff the opportunity to execute any final
11 relief awarded, tips the balance of equities in favor of
12 Plaintiff.

13 **E. Remedies**

14 Plaintiff seeks temporary relief in the form of an asset
15 freeze, appointment of a temporary receiver, and immediate access
16 and expedited discovery.

17 The Court has the authority to grant the preliminary relief
18 requested. An asset freeze is a proper remedy in a case where
19 there is a possibility that assets will be dissipated. See ESLIC
20 v. Sabni, 868 F.2d 1096, 1097 (9th Cir. 1989). The Court grants
21 the request for an asset freeze because Plaintiff has provided
22 sufficient evidence of Defendants' disregard for the law and,
23 thus, the possibility that Defendants may dissipate assets before
24 consumers are refunded their money. To facilitate the asset
25 freeze, the Court also grants the request for the appointment of

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28 not on a finding of statutory violations per se, the Court
previously ruled that Defendants' representations violated both
Section 5 of the FTC Act and the CRO Act.

1 a temporary receiver. See SEC v. American Board of Trade, Inc.,
2 830 F.2d 431, 436 (2d Cir. 1987) (appointing temporary receiver
3 "where necessary to prevent the dissipation of a defendant's
4 assets pending further action by the court.").

5 Lastly, the Court authorizes Plaintiff to immediately access
6 CRCA's premises and to conduct discovery on Murkey's and CRCA's
7 assets and business records on an expedited basis.

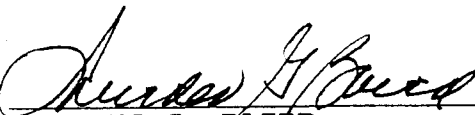
8 **VI. CONCLUSION**

9 For the foregoing reasons, the Court GRANTS Plaintiff's Ex
10 Parte Application for OSC why Defendants should not be held in
11 contempt of Nov. 4, 1999 Final Order and temporary relief
12 including asset freeze, appointment of temporary receiver, and
13 order authorizing immediate access and expedited discovery.

14
15 The Court ORDERS Richard Murkey, Keith Gill, CRCA, and the
16 Federal Trade Commission to appear before this Court on June 7,
17 2001 at 8 am to discuss the preliminary relief granted.

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22 IT IS SO ORDERED.

23 DATED: June 5, 2001


24 LOURDES G. BAIRD
United States District Judge

25 I HEREBY CERTIFY THAT THIS DOCUMENT WAS SERVED
26 BY FAX DELIVERY ON PLAINTIFF/DEFENDANT (OR PARTIES)
27 AT THEIR RESPECTIVE MOST RECENT FAX NUMBER OF RECORD
28 IN THIS ACTION ON THIS DATE.

DATE: JUN -5 2001


DEPUTY CLERK