

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

BUSINESS CARD EXPERTS, INC. d/b/a BCE  
Media, a Minnesota corporation;  
BCE, INC., a Minnesota corporation;  
SCOTT R. BOARDMAN, individually and as  
an officer of Business Card Experts, Inc. and  
BCE, Inc.; STEWART P. GRANDPRE,  
individually and as an officer of Business  
Card Experts, Inc. and BCE, Inc.; and  
KELLEY P. BOARDMAN,

Defendants.

Case No. 06 CV 4671 PJS/RLE

STIPULATED JUDGMENT  
AND ORDER FOR  
PERMANENT INJUNCTION  
AGAINST DEFENDANTS,  
AND ORDER OF DISGORGE-  
MENT FOR RELIEF  
DEFENDANT KELLEY P.  
BOARDMAN

This matter comes before the Court on stipulation of Plaintiff Federal Trade Commission ("Commission" or "FTC"), Business Card Experts, Inc., BCE, Inc. and Scott R. Boardman (collectively, "Defendants") and Relief Defendant Kelley P. Boardman ("Relief Defendant").

On November 29, 2006, the FTC filed a Complaint for a Permanent Injunction and Other Relief, including redress to consumers, pursuant to Sections 13(b) and 19(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b(a), and applied *ex parte* for a temporary restraining order pursuant to Rule 65 of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 65. The Commission charged that Defendants, together with Stewart P. Grandpre, engaged in deceptive acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a), and the Commission's Telemarketing Sales Rule ("TSR"), 16 C.F.R.

Part 310, in the telemarketing and sale of Defendants' business card dealership opportunity. On the same day, the Court issued a temporary restraining order with an asset freeze, appointment of a Receiver, and other ancillary equitable relief ("TRO"). On April 27, 2007, after considering the affidavits, memoranda of law, and oral arguments of the parties, the Court issued a written opinion entering a preliminary injunction against Defendants ("Preliminary Injunction Order"). On May 25, 2007, the Commission filed a motion for leave to file an Amended Complaint naming Kelley P. Boardman as a relief defendant.

The Commission, the Defendants, and the Relief Defendant now offer the following Stipulated Judgment and Order for Permanent Injunction and Other Equitable Relief for Scott R. Boardman and Order of Disgorgement for Kelley P. Boardman (herein "Permanent Injunction Order" or "Order"). The parties consent to the entry of this Permanent Injunction Order as a final judgment in this action, and agree that entry of this Order resolves all matters in dispute between them in this action. Upon the joint motion of Plaintiff, Defendants, and Relief Defendant, the Court makes the following findings and enters final judgment in this action as follows:

#### FINDINGS

1. This Court has jurisdiction over the subject matter of this case and there is good cause to believe it has jurisdiction over all the parties hereto.
2. Venue in this District is proper under 15 U.S.C. §§ 53(b) and 28 U.S.C. §§ 1391(b) and 1391(c).
3. The activities of Defendants are in or affecting commerce, as "Commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
4. The 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 57(b), and the Telemarketing Sales Rule, 16 C.F.R. Part 310.

5. Defendants and Relief Defendant have entered into this Order freely and without coercion. Defendants and Relief Defendant further acknowledge that they have read the provisions of this Order and are prepared to abide by them.

6. Relief Defendant, Kelley P. Boardman, agrees to the filing and entry of the Commission's First Amended Complaint for the purpose of adding her as a Relief Defendant in this case, and the Court finds that the First Amended Complaint states a claim upon which relief may be granted against her.

7. Defendants and Relief Defendant waive all rights to seek appellate review or otherwise challenge or contest the validity of this Order. Defendants and Relief Defendant further waive and release any claim they may have against the Commission, its employees, representatives, or agents.

8. Defendants and Relief Defendant agree that this Order does not entitle them to seek or to obtain attorneys' fees as a prevailing party under the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended by Pub. L. 104-121, 110 Stat. 847, 863-864 (1996), and Defendants and Relief Defendant further waive any rights to attorneys' fees that may arise under said provision of law.

9. This Order is in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law.

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

11. This Order is for settlement purposes only and does not constitute an admission by Defendants or Relief Defendant that the law has been violated as alleged in the Complaint. However, for the purposes of bankruptcy proceedings, if any, this order is governed by Section V, Paragraph K.

DEFINITIONS

1. “Assisting others engaged in telemarketing” means knowingly providing any of the following goods or services to any person or entity engaged in telemarketing:
  - a. performing customer service functions for an entity engaged in telemarketing, including, but not limited to, receiving or responding to consumer complaints;
  - b. formulating or providing, or arranging for the formulation or provision of, any telephone sales script or any other marketing material for an entity engaged in telemarketing;
  - c. providing names of, or assisting in the generation of, potential customers for an entity engaged in telemarketing; or
  - d. performing marketing services of any kind for an entity engaged in telemarketing.
2. “Assets” means any legal or equitable interest in, right to, or claim to, any real and personal property, including, but not limited to chattel, goods, instruments, equipment, fixtures, general intangibles, inventory, checks, notes, leaseholds, effects, contracts, mail or other deliveries, shares of stock, lists of consumer names, accounts, credits, premises, receivables, funds, and cash, wherever located, whether in the United States or abroad;
3. “Business venture” means any written or oral business arrangement, however denominated, regardless of whether covered by the Franchise Rule or Business Opportunity Rule, which consists of the payment of any consideration for:
  - a. the right or means to offer, sell, or distribute goods or services (regardless of whether identified by a trademark, service mark, trade

- name, advertising, or other commercial symbol); and
- b. more than nominal assistance to any person or entity in connection with or incident to the establishment, maintenance, or operation of a new business or the entry by an existing business into a new line or type of business;
4. "Corporate Defendants" means Business Card Experts, Inc., BCE, Inc., and any affiliates, fictitious names, d/b/a's, subsidiaries, successors, or assigns of the aforementioned entities;
  5. "Defendant Boardman" means Scott R. Boardman;
  6. "Defendants" means a) each Corporate Defendant; and b) Scott R. Boardman;
  7. "Document" is synonymous in meaning and equal in scope to the usage of the term in Fed. R. Civ. P. 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 the term;
  8. "Franchise Rule or Business Opportunity Rule" means:
    - a. The FTC Trade Regulation Rule codified at 16 C.F.R. Part 436, until the effective date of the amendments to the FTC Trade Regulation Rule titled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures," approved by the Commission on January 22, 2007;
    - b. After the effective date of the amendments to the FTC Trade Regulation Rule titled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures,"

approved by the Commission on January 22, 2007:

- (i) The FTC Trade Regulation Rule titled "Disclosure Requirements Concerning Franchising," to be codified at 16 C.F.R. Part 436, or as it may be amended; and
- (ii) The FTC Trade Regulation Rule titled "Disclosure Requirements concerning Business Opportunities," to be codified at 16 C.F.R. Part 437, or as it may be amended.

9. "Investment opportunity" means anything, tangible or intangible, that is offered, offered for sale, sold, or traded based wholly or in part on representations, either express or implied, about past, present, or future income, profit, or appreciation;

10. "Receiver" means Francis X. Hermann, the Receiver appointed by the Court in this matter over Corporate Defendants;

11. "Receivership Defendants" means each Corporate Defendant;

12. "Relief Defendant" means Kelley P. Boardman; and

13. "Telemarketing" means any plan, program or campaign (whether or not covered by the Telemarketing Sales Rule, 16 C.F.R. Part 310, attached hereto as Appendix A) that is conducted to induce the purchase of goods or services by means of the use of one or more telephones.

ORDER

I. BAN ON FUTURE INVOLVEMENT WITH BUSINESS VENTURES OR INVESTMENT OPPORTUNITIES

IT IS THEREFORE ORDERED that Defendant Scott R. Boardman is permanently restrained and enjoined from:

- A. Advertising, marketing, promoting, offering for sale, or selling any business venture or investment opportunity or assisting in the advertising, marketing, promoting, offering for sale, or selling of any business venture or investment opportunity;
- B. Receiving any remuneration or other consideration of any kind whatsoever as a result of engaging in the advertising, marketing, promoting, offering for sale, or selling of any business venture or investment opportunity;
- C. Holding any ownership interest, share, or stock in any business entity which engages in or assists in the advertising, marketing, promoting, offering for sale, or selling of any business venture or investment opportunity (however, this prohibition does not apply to any publicly-traded company in which Individual Defendant Scott R. Boardman does not own more than one percent (1%) of the outstanding common shares);
- D. Serving as an employee, officer, director, trustee, general manager of, or consultant or advisor in a position with duties or responsibilities that require engaging or assisting in the advertising, marketing, promoting, offering for sale, or selling of any business venture or investment opportunity.

## II. BAN ON FUTURE TELEMARKETING ACTIVITIES

IT IS FURTHER ORDERED that Defendant Scott R. Boardman is permanently restrained and enjoined from telemarketing, or assisting others engaged in telemarketing, whether directly or through any entity, corporation, subsidiary, division, or other device.

## III. PROHIBITION AGAINST VIOLATION OF SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT

IT IS FURTHER ORDERED that:

- A. In connection with the sale or selling of any goods or services, Defendant Scott R. Boardman and his officers, agents, servants, employees, and attorneys, and persons in active concert or participation with him who receive actual notice of this Permanent Injunction Order by personal service or otherwise, are hereby permanently restrained and enjoined from:
  1. Misrepresenting, directly or by implication, orally or in writing, to any potential purchaser of any goods or services, any material fact, including, but not limited to:
    - a. The total cost to purchase, receive, or use, and the quantity of, any goods or services that are subject to the sales offer;
    - b. Any material restrictions, limitations, or conditions to purchase, receive, or use the goods or services;
    - c. Any material aspect of the nature or terms of a refund, cancellation, exchange, or repurchase policy for the



goods or services; or

d. The income, profits, or sales volume likely to be achieved from the goods or services; and

2. Providing substantial assistance to any third party to make any material misrepresentation, including, but not limited to, those misrepresentations prohibited by Paragraph A.1, above.

#### IV. BAN ON USE OF CONSUMER LISTS

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, facsimile, or otherwise, are hereby permanently restrained and enjoined from selling, renting, leasing, transferring, disclosing, using, or commercially benefitting from the name, address, telephone number, credit card number, bank account number, e-mail address, or other identifying information of any person who, in connection with the advertising, promotion, marketing, offering for sale, or sale of business card dealership opportunities, paid any money to any Defendant at any time prior to entry of this Order; *provided, however*, that Defendants may disclose such identifying information to a law enforcement agency, or as required by any law, regulation or court order.

#### V. MONETARY JUDGMENT

IT IS FURTHER ORDERED that:

A. Judgment for consumer redress in the amount of \$16,095,030 is entered against Defendants jointly and severally with any other defendants found liable in this matter, and judgment for disgorgement in the amount of approximately \$3,575,000 is entered

against Relief Defendant. Provided, however, that these judgments shall be suspended upon Defendants' and Relief Defendant's fulfillment of the obligations contained in Paragraphs C and D, below, except for a sum equal to the value of the assets listed in Paragraph B, below, that are subject to the asset freeze in this case pursuant to the Preliminary Injunction Order.

B. For the purposes of this Section of the Order, the term asset includes:

1. Current balances of the following accounts at financial institutions, whether held jointly or individually, that have been identified in the corresponding Reference List of Personal Data Identifiers filed under seal together with the parties' stipulation for the Court to enter this Order ("Boardman Reference List"), as disclosed in the financial statements of Defendant Scott R. Boardman, signed, sworn, and dated May 11, 2007:
  - a. Account 1 with an approximate balance of \$1,009,682;
  - b. Account 2 with an approximate balance of \$99,409;
  - c. Account 3 with an approximate balance of \$1,278,006;
  - d. Account 4 with an approximate balance of \$569,849;
  - e. Account 5 with an approximate balance of \$611,051;
  - f. Account 6 with an approximate balance of \$500,000;
  - g. Account 7 with an approximate balance of \$1,003,384;
  - h. Account 8 with an approximate balance of \$776;
  - i. Account 9 with an approximate balance of \$12,219;
  - j. Account 10 with an approximate balance of \$1,122;
  - k. Account 11 with an approximate balance of \$6,000;

- l. Account 12 with an approximate balance of \$34;
    - m. Account 13 with an approximate balance of \$12;
  2. Defendant Boardman's entire interest or ownership in real property located at 2909 South Ocean Boulevard, Unit 3-B-2, Highland Beach, Florida ("Florida Property");
  3. Relief Defendant Kelley Boardman's entire interest or ownership in the Florida Property; and
  4. Any assets of the Corporate Defendants that are held by the Receiver or subject to actions challenging fraudulent or voidable transfers filed by the Receiver.
- C. Defendant Scott R. Boardman shall:
  1. Immediately, upon the lifting of the Asset Freeze pursuant to Section VII of this Order, transfer title, unencumbered and free of any liens or mortgages, to the Florida Property to Gerald Wald, the Special Receiver appointed herein by Section XIII of this Order; and
  2. Relinquish all control, dominion, and interest in the financial accounts referenced in Paragraph B.1, above.
- D. Relief Defendant Kelley P. Boardman shall:
  1. Immediately, upon the lifting of the Asset Freeze pursuant to Section VII of this Order, transfer title, unencumbered and free of any liens or mortgages, to the Florida Property to Gerald Wald, the Special Receiver appointed herein by Section XIII of this Order; and
  2. Relinquish all control, dominion, and interest in the financial accounts referenced in Paragraph B.1, above.

- E. The financial institutions holding Accounts 1 - 5, referenced in Paragraphs B.1(a) - (e), above, shall:
1. Immediately, upon lifting of the Asset Freeze pursuant to Section VII of this Order, liquidate the investments held in each account and calculate the net gain or loss resulting from the liquidation and sale of any stocks for which a cost-basis may be determined;
  2. Within ten (10) days of liquidating the investment accounts, transfer or remit to the Internal Revenue Service, for the benefit of Scott R. Boardman and Kelley P. Boardman, fifteen percent (15%) of the capital gains calculated in Paragraph E.1, above, as pre-payment for estimated capital gains taxes due and owing;
  3. Within ten (10) days of liquidating the investment accounts, transfer or remit to the Minnesota Department of Revenue, for the benefit of Scott R. Boardman and Kelley P. Boardman, seven percent (7%) of the capital gains calculated in Paragraph E.1, above, as pre-payment for estimated capital gains taxes due and owing; and
  4. Within ten (10) days of liquidating the investment accounts, transfer or remit the entire balance of the liquidated investment accounts (less payments made pursuant to Paragraphs E.2 and E.3 above) to the Commission. These payments shall be made to the Commission by certified check(s) or other guaranteed funds payable to the Federal Trade Commission, Financial Management Office, or by wire

transfer in accordance with directions provided by the Commission. The check(s) or written confirmation of the wire transfer(s) shall be delivered to: Associate Director, Division of Marketing Practices, 600 Pennsylvania Avenue, N.W., Room 286, Washington, D.C. 20580.

5. The parties shall have no right to contest or demand the refund of an overpayment or reimbursement for the underpayment of the pre-paid estimated capital gains taxes on the liquidated investment accounts referenced herein.
- F. The financial institutions holding Accounts 6 - 13, referenced in Paragraphs B.1(f) - (m), above, shall immediately, upon the lifting of the Asset Freeze pursuant to Section VII of this Order, remit the entire balances of the accounts to the Commission. These payments shall be made to the Commission by certified check(s) or other guaranteed funds payable to the Federal Trade Commission, Financial Management Office, or by wire transfer in accordance with directions provided by the Commission. The check(s) or written confirmation of the wire transfer(s) shall be delivered to: Associate Director, Division of Marketing Practices, 600 Pennsylvania Avenue, N.W., Room 286, Washington, D.C. 20580.
- G. The Commission's agreement to this Order is expressly premised upon the truthfulness, accuracy and completeness of the signed financial statements referenced in Paragraph B.1, above, and supporting documents of Defendant Boardman. Such documents contain material information upon which the Commission relied in negotiating and agreeing to this Order. If, upon motion by the

Commission, the Court finds that Defendant Boardman, in executing his financial statement, has (i) materially misstated the value of any asset that should have been disclosed in the statement(s) that Defendant Boardman executed; (ii) materially misstated his financial condition by failing to disclose any asset that should have been disclosed in the statement(s) that he executed; or (iii) has made any other material misstatement or omission in his Financial Statements, the Court shall enter the full suspended judgments set forth in Paragraph A, above, against Defendant Boardman and Relief Defendant, and said judgments, plus applicable post-judgment interest computed pursuant to 28 U.S.C. § 1961(a), shall be immediately due and payable.

- H. Proceedings to lift the suspension of judgment instituted under this Section are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings the Commission may initiate to enforce this Order.
- I. In accordance with 31 U.S.C. § 7701, Defendant Scott Boardman and Relief Defendant Kelley Boardman are hereby required, unless they have done so already, to furnish to the Commission their taxpayer identification numbers (social security numbers or employer identification numbers) which shall be used for purposes of collecting and reporting on any delinquent amount arising out of Defendant Scott Boardman's and Relief Defendant Kelley Boardman's relationship with the government.
- J. Defendant Scott Boardman and Relief Defendant Kelley Boardman are further required, unless they have done so already, to provide

the Commission with clear, legible and full-size photocopies of all valid driver's licenses they possess, which will be used for reporting and compliance purposes.

- K. Defendant Scott Boardman and Relief Defendant Kelley Boardman agree that the facts as alleged in the Complaint filed in this action shall be taken as true for the purpose of a nondischargeability complaint in any bankruptcy proceeding.
- L. Defendant Scott Boardman and Relief Defendant Kelley Boardman surrender all claims to dominion, title, and control of assets titled in the name of the Corporate Defendants, including Excel Bank and ITEX accounts titled in the name of the Corporate Defendants, and Defendant Scott Boardman and Relief Defendant Kelley Boardman also surrender and relinquish all ownership interest in and control over the Corporate Defendants.
- M. The judgment entered herein for equitable monetary relief is solely remedial in nature and is not a fine, penalty, punitive assessment, or forfeiture.

#### VI. COMMISSION'S USE OF MONETARY JUDGMENT

IT IS FURTHER ORDERED that all funds paid to the Commission or its agents pursuant to Section V of this Order shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including but not limited to consumer redress and any attendant expenses for the administration of any redress fund. In the event that direct redress to consumers is wholly or partially impracticable, or funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably

related to Defendants' practices alleged in the complaint. Any funds not used for such equitable relief shall be deposited to the United States Treasury as disgorgement. Defendants and Relief Defendant shall have no right to challenge the Commission's choice of remedies under this Section.

#### VII. LIFTING OF THE ASSET FREEZE

IT IS FURTHER ORDERED that the freeze of Defendant Boardman's assets set forth in the Preliminary Injunction Order, entered by this Court on April 27, 2007, shall be lifted to the extent necessary to transfer and turn over Defendant's assets as required by Section V, Paragraphs C, D, E, and F of this Order, and upon completion of the turn-over, shall be lifted permanently.

#### VIII. ACKNOWLEDGMENT OF RECEIPT OF ORDER

IT IS FURTHER ORDERED that within ten (10) business days of receipt of this Order as entered by the Court, Defendant Boardman shall submit to the Commission a truthful sworn statement that shall acknowledge receipt of this Order (see sample form attached as Appendix B).

#### IX. DISTRIBUTION OF ORDER BY DEFENDANT

IT IS FURTHER ORDERED that, for a period of seven (7) years from the date of entry of this Permanent Injunction Order, Defendant Boardman shall deliver copies of this Order as directed below:

- A. Individual Defendant Boardman as Control Person: For any business controlled, directly or indirectly, by Defendant Scott R. Boardman, or in which he has a majority ownership interest, he must deliver a copy of this Permanent Injunction Order to all principals, officers, directors, and managers of that business. For current personnel, delivery shall be within five (5) days of service of this Order upon Defendant Scott R. Boardman. For new personnel,



delivery shall occur prior to their assumption of their responsibilities; and

- B. Defendant Boardman must secure a signed and dated statement acknowledging receipt of the Permanent Injunction Order, within thirty (30) days of delivery, from all persons receiving a copy of the Order pursuant to this Section.

#### X. COMPLIANCE REPORTING BY DEFENDANT BOARDMAN

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

- A. For a period of seven (7) years from the date of entry of this Order, Defendant Boardman shall notify the Commission of any of the following:
  - 1. Any changes in residence, mailing addresses, and telephone numbers of Defendant Boardman, within ten (10) days of the date of such change;
  - 2. Any changes in employment status (including self-employment) of Defendant Boardman, and any change in the ownership of Defendant Boardman in any business entity, within ten (10) days of such change. Such notice shall include the name and address of each business that Defendant Boardman is affiliated with, employed by, creates or forms, or performs services for; a statement of the nature of the business, and a statement of his duties and responsibilities in connection with the business or employment;
  - 3. Any changes in Defendant's name or use of any aliases or fictitious names; and

4. Any changes in any business entity that Defendant Boardman directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Order, including, but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided that*, with respect to any proposed change in the corporation about which Defendant Boardman learns less than thirty (30) days prior to the date such action is to take place, he shall notify the Commission as soon as is practicable after obtaining such knowledge;
- B. One hundred eighty (180) days after the date of entry of this Order, Defendant Boardman shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which he has complied and is complying with this Order. This report shall include but not be limited to:
  1. The then-current residence address, mailing addresses and telephone numbers of Defendant Boardman;
  2. The then-current employment and business addresses and telephone numbers of Defendant Boardman, a description of the business activities of each such employer or business, and the title and responsibilities of Defendant Boardman, for each

- such employer or business;
3. Any other changes required to be reported under Paragraph A of this Section;
  4. A copy of each acknowledgment of receipt of this Order, obtained pursuant to Section IX by Defendant Boardman;
- C. For the purposes of this Order, Defendant Boardman shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:
- Associate Director for Enforcement  
Federal Trade Commission  
600 Pennsylvania Ave., N.W.  
Washington, D.C. 20580  
Re: FTC v. Business Card Experts, Inc., et al.,  
06-CV-4671PJS/RLE (D. Minn.)
- D. For purposes of the compliance reporting and monitoring required by this Order, the Commission is authorized to communicate directly with Defendant Boardman.

#### XI. RECORD-KEEPING PROVISIONS

IT IS FURTHER ORDERED that for the period of ten (10) years from the date of entry of this Order, for those businesses where Defendant Boardman is the majority owner or otherwise controls the business, Defendant Boardman, his agents, employees, officers, corporations, successors, and assigns, and those persons 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 failing to create and retain the following records:

- A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
- B. Personnel records accurately reflecting: the name, address, and

- telephone number of each person employed in any capacity by such business, 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;
- C. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;
  - D. Copies of any complaints and refund requests (whether received directly, indirectly or through any third party) and any responses to those complaints or requests;
  - E. Copies of any sales scripts, training materials, advertisements, or other marketing materials; and
  - F. All records and documents necessary to demonstrate full compliance with each provision of this Order, including but not limited to, copies of acknowledgments of receipt of this Order, required by Section IX.B., and all reports submitted to the FTC pursuant to Section X.

## XII. COMMISSION'S AUTHORITY TO MONITOR COMPLIANCE

IT IS FURTHER ORDERED that, for the purpose of monitoring and investigating compliance with any provision of this Order:

- A. Within ten (10) days of receipt of written notice from a representative of the Commission, Defendant Boardman shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to

any business location in his possession or direct or indirect control to inspect the business operation;

- B. In addition, the Commission is authorized to monitor compliance with this Order by all other lawful means, including but not limited to the following:
1. obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45; and
  2. posing as consumers and suppliers to Defendant Boardman, his employees, or any entity managed or controlled, in whole or in part, by Defendant Boardman, without the necessity of identification or prior notice; and
- C. Defendant Boardman shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present. *Provided, however,* that 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, 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce within the meaning of 15 U.S.C. § 45(a)(1).

### XIII. APPOINTMENT OF SPECIAL RECEIVER

IT IS FURTHER ORDERED, that:

- A. Gerald Wald, Esq., is hereby appointed as Special Receiver for the

Florida Property, referenced in Section V, Paragraph B.2, for the purpose of taking the necessary steps to market and sell the Florida Property and to secure, inventory, and liquidate the contents located therein.

- B. In acting as Special Receiver under this Permanent Injunction Order, the Special Receiver shall be the agent of this Court and shall be accountable directly to this Court.

#### XIV. POWERS AND DUTIES OF SPECIAL RECEIVER

IT IS FURTHER ORDERED, that:

- A. The Special Receiver is authorized and directed to:
1. Immediately access and enter the Florida Property by any means necessary, including, but not limited to, breaking door locks or seeking the assistance of Wiltshire House condominium association personnel.
  2. Inventory and value any personalty located within the Florida Property, and arrange for the liquidation of all such property of value. Such valuation shall be in the sole discretion of the Special Receiver. For personalty determined to be of *de minimis* value, the Special Receiver may give Defendant or Relief Defendant written notice of the opportunity to remove any such *de minimis* personalty. Upon receiving such notice, Defendant and Relief Defendant shall have fifteen (15) days to remove any such *de minimis* personalty, after which time the Special Receiver shall have the right to remove and dispose of such property as he sees fit;
  3. Hire a real estate agent, auctioneer, or any other personnel

necessary to assist him in the marketing and sale of the Florida Property and personalty therein;

4. Establish any bank, trust, or escrow accounts necessary to receive or hold funds related to the sale of the Florida Property and personalty located therein;
  5. Pay all taxes and association fees due in order to effectuate the sale of the Florida Property.
- B. The Special Receiver shall close and settle the Florida Property and sell any valuable personalty as soon as possible after the Court enters this Order.
- C. Within ten (10) days of the settlement of the sale of the Florida Property, the Special Receiver shall transfer or remit to the Internal Revenue Service, for the benefit of Scott R. Boardman and Kelley P. Boardman, fifteen percent (15%) of the capital gains realized from the sale, as pre-payment for estimated capital gains taxes due and owing. For purposes of determining such capital gains, the Special Receiver shall assume \$150,000 in cost-basis.
- D. Within ten (10) days of the settlement of the sale of the Florida Property, the Special Receiver shall transfer or remit to the Minnesota Department of Revenue, for the benefit of Scott R. Boardman and Kelley P. Boardman, seven percent (7%) of the capital gains realized from the sale, as pre-payment for estimated capital gains taxes due and owing. For purposes of determining such capital gains, the Special Receiver shall assume \$150,000 in cost-basis. *Provided, however,* that the parties shall have no right to contest or demand the refund of an overpayment or reimbursement for the

underpayment of the pre-paid estimated capital gains taxes on the sale of the Florida Property.

- E. Within ten (10) days of the settlement of the sale of the Florida Property and personalty, the Special Receiver shall transfer or remit to the Commission the net proceeds from the sale, less any amount held as a reserve pursuant to Paragraph F below, to partially satisfy the monetary judgment in this Order.
- F. With Court approval, the Special Receiver may hold back funds for a specified period as a reserve to cover fees and costs related to actions to be addressed in the Final Report or a Supplemental Report, as defined in Section XVI.A. If the Receiver does not make a supplemental application for fees and expenses within the specified period, or if funds remain in the reserve fund after the payments of fees and expenses approved by the Court in response to such a supplemental application, all funds remaining in the reserve fund will be paid to the FTC or its designated agent.

#### XV. COMPENSATION OF SPECIAL RECEIVER

IT IS FURTHER ORDERED, that the Special Receiver and those he employs are entitled to reasonable compensation for the performance of duties pursuant to this Order and for the costs of actual out-of-pocket expenses incurred by them, resulting from the marketing and sale of the assets held by or in the possession or control of, or which may be received by, the Special Receiver or Special Receivership estate.

#### XVI. SPECIAL RECEIVER'S FINAL REPORT AND DISBURSEMENT OF ASSETS OF THE SPECIAL RECEIVERSHIP ESTATE

IT IS FURTHER ORDERED that:



- A. No later than sixty (60) days from the date of settlement of the Florida Property, the Special Receiver shall file and serve on the parties a report (the "Final Report") to the Court that details the steps taken to dissolve the Special Receivership estate. The Final Report must include an accounting of the Special Receivership estate's finances and total assets and a description of what other actions, if any, must be taken to wind-up the Special Receivership. Promptly thereafter, but no later than thirty (30) days after submission of the Final Report, the Special Receiver shall file an application for payment of compensation and expenses associated with his performance of duties as Special Receiver under this Permanent Injunction Order. If subsequent actions (such as the completion of tax returns or further actions to recover funds for the Receivership) are appropriate, the Special Receiver shall file an additional report or reports (the "Supplemental Reports") describing the subsequent actions and a subsequent application for the payment of fees and expenses related to the subsequent acts.
- B. The Court will review the Final Report and any objections to the report and, absent a valid objection, will issue an order directing that the Special Receiver:
1. Pay the reasonable costs and expenses of administering the Special Receivership, including compensation of the Special Receiver and his personnel authorized by Section XV of this Permanent Injunction Order or other orders of this Court, and the actual out-of-pocket costs incurred by the Special Receiver in carrying-out his duties; and

2. To the extent that funds remain, pay all remaining funds to the FTC or its designated agent to partially satisfy the monetary judgment in Section V.

Upon submission of the Special Receiver's final report or upon this Court's Order for Final Payment, whichever is later, the Special Receivership shall terminate.

#### XVII. RECEIVERSHIP PROVISIONS

IT IS FURTHER ORDERED, that Francis X. Hermann, the Receiver appointed by this Court's Preliminary Injunction With Asset Freeze, Appointment of Receiver and Other Equitable Relief, entered on April 27, 2007, is hereby appointed Receiver for the Corporate Defendants for the purpose of taking the necessary steps to effectuate the sale of the businesses of the Corporate Defendants, liquidate their assets, and pay any net assets to the Commission to partially satisfy the monetary judgment in this Permanent Injunction Order. In acting as Receiver under this Order, the Receiver shall be the agent of this Court and shall be accountable directly to this Court. In carrying out these duties, the Receiver is authorized and directed to:

- A. Take all steps necessary or advisable to liquidate all assets of the Receivership Defendants, cancel the Receivership Defendants' contracts, collect on amounts owed to the Receivership Defendants, and take such other steps as may be necessary to terminate and dissolve the Receivership Defendants efficiently;
- B. Provide the Commission, upon request, with any business records of the Receivership Defendants that (i) identify customers from whom the Receivership Defendants collected business card dealership fees, including the most recent known address, telephone number, social security number, and the amount of any fees paid by such

customers; or (ii) identify customers who received refunds of their business card dealership fees from the Receivership Defendants and the amount of the refund;

- C. Continue to exercise full control of the Receivership Defendants and continue to collect, marshal, and take custody, control and possession of all the funds, property, premises, accounts, documents, 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 goods, chattels, rights, credits, monies, effects, lands, leases, books and records, limited partnership 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 other individuals, partnerships, or corporations whose interests are now held by or under the direction, possession, custody, or control of the Receivership Defendants;

*Provided, however,* that the Receiver is not authorized to take any actions regarding the assets identified in Section V.B.1-3 of this Order.

- D. Dispose of, or arrange for the disposal of, the records of the Receivership Defendants no later than six (6) months after the Court's approval of the Receiver's final report, provided that the Receiver already has provided such information to the Commission pursuant to Paragraph B, above. To safeguard the privacy of consumers, records containing personal financial information shall

be shredded, incinerated, or otherwise disposed of in a secure manner. For records that must be retained, the Receiver may elect to retain records in their original form, or to retain photographic or electronic copies so long as said records are: 1) kept in a secure, locked area; 2) stored electronically on a computer network or drive with restricted access or an encrypted electronic storage device; or 3) redacted of all personally identifiable information including dates of birth, Social Security numbers, driver's license numbers or other state identification numbers, passport numbers, financial account numbers, or credit or debit card numbers. *Provided, however,* that the Receiver is not authorized to sell, rent, lease, transfer, disclose, use, or otherwise benefit from 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 advertising, promotion, marketing, offering for sale, or sale of business card dealerships, except that the Receiver may disclose such identifying information to a law enforcement agency, or as required by any law, regulation or court order.

- E. Continue to take all steps necessary to secure each location from which the Receivership Defendants operated their business;
- F. Continue to perform all acts necessary or advisable to complete an accounting of the assets, and prevent unauthorized transfer, withdrawal, or misapplication of assets;
- G. 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 the temporary restraining order in this action, except payments that the Receiver deems necessary or advisable to secure and liquidate assets of the Receivership Defendants, such as rental payments or payment of liens;

- H. Enter into contracts and purchase insurance as advisable or necessary;
- I. Perform all incidental acts that the Receiver deems to be advisable or necessary, which includes retaining, hiring, or dismissing any employees, independent contractors, or agents;
- J. Continue to 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 carry out the Receiver's mandate under this Permanent Injunction Order, including but not limited to, actions challenging fraudulent or voidable transfers;
- K. Continue to 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 carry out the Receiver's mandate under this Order;
- L. Issue subpoenas to obtain documents and records pertaining to the receivership, and conduct discovery in this action on behalf of the Receivership estate;

- M. Open one or more bank accounts as designated depositories for funds of the Receivership Defendants, and 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;
- N. Continue to maintain accurate records of all receipts and expenditures that he makes as Receiver; and
- O. Continue to cooperate with reasonable requests for information or assistance from any state or federal law enforcement agency.

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 April 27, 2007 shall remain in full force and effect.

#### XVIII. COMPENSATION OF RECEIVER

IT IS FURTHER ORDERED that the Receiver and those he employs are entitled to reasonable compensation for the performance of duties pursuant to this Order and for the costs of actual out-of-pocket expenses incurred by them, from the Receivership Defendants' assets held by or in the possession or control of, or which may be received by, the Receiver or Receivership Defendants.

#### XIX. RECEIVER'S FINAL REPORT AND DISBURSEMENT OF ASSETS OF THE RECEIVERSHIP DEFENDANTS

IT IS FURTHER ORDERED that:

- A. The Receiver shall liquidate the assets of the Receivership Defendants. No later than sixty (60) days from the date of the entry of this Permanent Injunction Order, the Receiver shall file and serve on the parties a report (the "Receiver's Final Report") to the Court

that details the steps taken to dissolve the Receivership estate. The Receiver's Final Report must include an accounting of the Receivership estate's finances and total assets and a description of what other actions, if any, must be taken to wind-up the Receivership. Promptly thereafter, but no later than thirty (30) days after submission of the Receiver's Final Report, the Receiver shall file an application for payment of compensation and expenses associated with his performance of duties as Receiver under this Order and under the Temporary Restraining Order and the Preliminary Injunction entered in this proceeding. The Receiver shall mail copies of the Receiver's Final Report to all known creditors of the Corporate Defendants with a notice stating that any objections to paying any assets of the Corporate Defendants to satisfy the Receiver's costs and expenses and the monetary judgment set forth in this Order must be submitted to the Court and served by mail upon the Receiver and the parties within thirty (30) days of the mailing of the Receiver's Final Report. If subsequent actions (such as the completion of tax returns or further actions to recover funds for the Receivership) are appropriate, the Receiver shall file an additional report or reports (the "Receiver's Supplemental Reports") describing the subsequent actions and a subsequent application for the payment of fees and expenses related to the subsequent acts.

- B. The Court will review the Receiver's Final Report and any objections to the report and, absent a valid objection, will issue an order directing that the Receiver:
1. Pay the reasonable costs and expenses of administering the

Receivership, including compensation of the Receiver and the Receivers' personnel authorized by Section XVIII of this Permanent Injunction Order or other orders of this Court, and the actual out-of-pocket costs incurred by the Receiver in carrying-out his duties;

2. To the extent that funds remain, pay all remaining funds to the FTC or its designated agent to partially satisfy the monetary judgment in Section V.

C. With Court approval, the Receiver may hold back funds for a specified period as a reserve to cover additional fees and costs related to actions to be addressed in a Receiver's Supplemental Report. If the Receiver does not make a supplemental application for fees and expenses within the specified period, or if funds remain in the reserve fund after the payments of fees and expenses approved by the Court in response to such a supplemental application, all funds remaining in the reserve fund will be paid to the FTC or its designated agent.

Upon submission of the Receiver's final report or upon this Court's Order for Final Payment, whichever is later, and subject to the terms set forth in Section XVI herein, the Receivership shall terminate.

#### XX. COOPERATION WITH RECEIVERS

IT IS FURTHER ORDERED, that Defendants and Relief Defendant shall cooperate fully with the Receiver and Special Receiver in: (A) pursuing any and all claims by the receivership or special receivership against third parties; (B) assisting them in defending any and all actions or claims brought against the receivership or special receivership by third parties; and (C) executing any



documents necessary to transfer assets or ownership interests to the Receiver or Special Receiver pursuant to the terms of this Order.

XXI. FEES AND COSTS

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

XXII. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

XXIII. COMPLETE SETTLEMENT

The parties hereby consent to entry of the foregoing Order which shall constitute a final judgment and order in this matter as between the parties. The parties further stipulate and agree that the entry of the foregoing Order shall constitute a full, complete, and final settlement of this action as between the parties.

Date: October 4, 2007

s/Patrick J. Schiltz  
Patrick J. Schiltz  
United States District Judge

STIPULATED BY:

s/ Karen S. Hobbs  
KAREN S. HOBBS (D.C. Bar No. 469817)  
TRACEY L. THOMAS (D.C. Bar No. 490253)  
Attorneys for Plaintiff  
Federal Trade Commission  
600 Pennsylvania Avenue NW  
Washington, DC 20580

Date: 9/28/07

FOR THE DEFENDANT:

s/ Scott R. Boardman  
SCOTT R. BOARDMAN, individually

Date: 6/26/07

s/ Kevin J. Short  
KEVIN J. SHORT, ESQ.  
Attorney for Corporate Defendants for the  
purpose of settlement only and  
Attorney for Defendant Scott R. Boardman  
Short Law Firm  
150 S. Fifth Street, Suite 3260  
Minneapolis, MN 55402

Date: 6/26/07

FOR THE RELIEF DEFENDANT:

s/ Kelley P. Boardman  
KELLEY P. BOARDMAN, individually

Date: 7/ 5/07

s/ Paul Engh  
PAUL ENGH, ESQ.  
Attorney for Defendant Kelley P. Boardman,  
220 South Sixth Street  
Suite 215  
Minneapolis, Mn 55402

Date: 7/9/07

FOR THE SPECIAL RECEIVER:

s/ Gerald Wald \_\_\_\_\_  
GERALD WALD

Date: 6/25/07 \_\_\_\_\_

FOR THE RECEIVER:

s/ Francis X. Hermann \_\_\_\_\_  
FRANCIS X. HERMANN

Date: 6/25/07 \_\_\_\_\_