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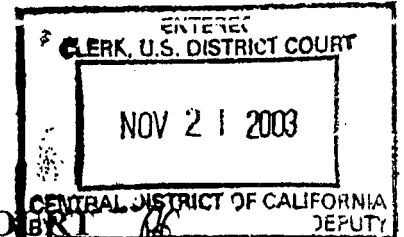
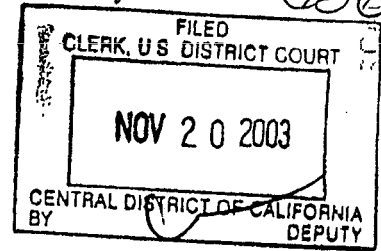
11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA
13 WESTERN DIVISION

14 FEDERAL TRADE COMMISSION,
15 Plaintiff,
16 v.
17 PATRICK CELLA, et al.,
18 Defendants.

CV 03-3202 GAF (SHSx)

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**STIPULATED JUDGMENT AND
ORDER FOR PERMANENT
INJUNCTION AS TO
DEFENDANTS DAVID HERRERA,
IRENE HERRERA,
JAMES ZEZULA AND
VINCENT ZEZULA**

20 Plaintiff Federal Trade Commission ("Commission" or "FTC") filed its
21 complaint for a permanent injunction and other relief in this matter, pursuant to
22 Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b)
23 on May 7, 2003, and moved *ex parte* for a Temporary Restraining Order ("TRO")
24 pursuant to Rule 65 of the Federal Rules of Civil Procedure and C.D. Cal. L.R. 7-
25 19.2. That same day, this Court, having considered the complaint, memorandum of
26 law, declarations, and other exhibits filed in support of Plaintiff's motion, issued an
27 *ex parte* TRO including an asset freeze. On May 28, 2003, the FTC, and Defendants
28 Patrick Cella, Irene Herrera, James Zezula and Vincent Zezula consented to a



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U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES

1 Preliminary Injunction that provided for a continuation of all of the relief in the TRO.
2 Upon stipulation of the parties to an order allowing Plaintiff to amend the complaint
3 to add David Herrera as a Defendant, the Court Clerk filed Plaintiff's First Amended
4 Complaint on July 14, 2003. Now Plaintiff FTC and Defendants David Herrera, Irene
5 Herrera, James Zezula and Vincent Zezula, hereby stipulate to the entry of and
6 request the Court to enter this Stipulated Judgment and Order for Permanent
7 Injunction ("Final Order") to resolve all matters of dispute between them in this
8 action.

9 **IT IS THEREFORE STIPULATED, AGREED, AND ORDERED** as follows:

10 **FINDINGS**

11 1. This Court has jurisdiction over the subject matter and the parties pursuant
12 to 15 U.S.C. §§ 45(a), 53(b), and 28 U.S.C. §§ 1331, 1337(a), and 1345.

13 2. Venue is proper as to all parties in the Central District of California
14 pursuant to 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b) and (c).

15 3. The activities of Defendants are in or affecting commerce, as defined in
16 Section 4 of the FTC Act, 15 U.S.C. § 44.

17 4. The complaint states a claim upon which relief may be granted against
18 Defendants under Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and
19 53(b).

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

23 6. The Plaintiff and Defendants, by and through their counsel, have agreed that
24 the entry of this Final Order resolves all matters of dispute between them arising from
25 the complaint in this action, up to the date of entry of this Final Order.

26 7. Defendants waive all rights to seek appellate review or otherwise challenge
27 or contest the validity of this Final Order. Defendants further waive and release any
28

1 claim they may have against the Commission, its employees, representatives, or agents.

2 8. Defendants agree that this Final Order does not entitle Defendants to seek or
3 to obtain attorneys' fees as a prevailing party under the Equal Access to Justice Act,
4 28 U.S.C. § 2412, as amended by Pub. L. 104-121, 110 Stat. 847, 863-64 (1996), and
5 Defendants further waive any rights to attorneys' fees that may arise under said
6 provision of law.

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

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

10 ORDER

11 **Definitions**

12 A. "Assets" means any legal or equitable interest in, right to, or claim to,
13 any real and personal property, including but not limited to chattel, goods,
14 instruments, equipment, fixtures, general intangibles, effects, leaseholds, premises,
15 contracts, mail or other deliveries, shares of stock, lists of consumer names,
16 inventory, checks, notes, accounts, credits, receivables, funds, and all cash, wherever
17 located.

18 B. "Defendants" means David Herrera, individually and d/b/a Quik Cash, U-
19 Mail, Innovative Services, Central Solutions, Parallax Business Services, Ace
20 Distributing Center, Executive Worldwide, Easy Money, Coast Distributing, and
21 Credit Solutions; Irene Herrera, individually and d/b/a Quik Cash, Innovative
22 Services, Central Solutions, and Executive Worldwide; James Zezula, individually
23 and d/b/a Easy Money, Coast Distributing, and Credit Solutions; Vincent Zezula,
24 individually and d/b/a Coast Distributing and Executive Worldwide; any other d/b/a
25 names associated with these four individuals; each of them individually, collectively,
26 or in any combination; and their officers, agents, servants, employees, and all persons
27 or entities in active concert or participation with them who receive notice of this Final
28 Order by personal service or otherwise.

1 C. "Document" is synonymous in meaning and equal in scope to the usage
2 of the term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings,
3 graphs, charts, photographs, audio and video recordings, computer records, and other
4 data compilations from which information can be obtained and translated, if
5 necessary, into reasonably usable form through detection devices. A draft or non-
6 identical copy is a separate document within the meaning of the term.

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

9 E. "Plaintiff" means the Federal Trade Commission ("Commission").

10 F. "Relate to" means refer to, concern, regard, reflect, discuss, constitute,
11 mention, pertain to, allude to or associate with. "Relating to" means referring to,
12 concerning, regarding, reflecting, discussing, constituting, mentioning, pertaining to,
13 alluding to or associated with.

14 G. "Unsolicited commercial email" means an electronic mail message that
15 consists of or contains a communication advertising, promoting, soliciting, offering,
16 or offering to sell any product or service, and that is not requested by the addressee or
17 recipient or sent pursuant to a pre-existing business or personal relationship between
18 the sender and the addressee or recipient of the email.

19 H. "Work-At-Home Opportunity" means any program, plan, product or
20 service that enables a participant or purchaser to earn money by working at home.

21 I. BAN REQUIREMENTS

22 **IT IS THEREFORE ORDERED** that Defendants are hereby permanently
23 restrained and enjoined from engaging, participating in, or assisting in any manner or
24 in any capacity whatsoever, whether directly or indirectly, in concert with others, or
25 through any intermediary, third party, business entity, or device, in the marketing,
26 advertising, promotion, or sending of unsolicited commercial email.

1 **III. INJUNCTION AGAINST PROVIDING OTHERS WITH**
2 **THE MEANS AND INSTRUMENTALITIES TO**
3 **VIOLATE SECTION 5 OF THE FTC ACT**

SCANNED

4 **IT IS FURTHER ORDERED** that in connection with the offering for sale or
5 sale of goods or services in or affecting commerce, Defendants are hereby
6 permanently restrained and enjoined from providing to others the means and
7 instrumentalities with which to make, expressly or by implication, orally or in
8 writing, any false or misleading statement or representation of material fact,
9 including, but not limited to:

- 10 A. Any statement regarding any fact material to a consumer's decision to
11 purchase Defendants' services or products;
- 12 B. Any statement that anyone can substantially improve consumers' credit
13 reports or profiles by effectuating permanent lawful removal of bankruptcies,
14 foreclosures, slow payments, court judgments, liens, or other negative information
15 from consumers' credit reports where such information is accurate and not obsolete;
16 and
- 17 C. Any statement that consumers' credit reports or profiles can be
18 substantially improved by effectuating permanent lawful removal of bankruptcies,
19 foreclosures, slow payments, court judgments, liens, or other negative information
20 from consumers' credit reports where such information is accurate and not obsolete.

21 **IV. MONITORING COMPLIANCE OF SALES PERSONNEL**

22 **IT IS FURTHER ORDERED** that Defendants, in connection with any
23 business where Defendants are the majority owner of the business or directly or
24 indirectly manage or control the business, are hereby permanently restrained and
25 enjoined from:

- 26 A. Failing to take reasonable steps sufficient to monitor and ensure that all
27 employees and independent contractors engaged in sales or other customer service
28 functions comply with Paragraphs I, II and III of this Final Order. Such steps shall

1 include adequate monitoring of calls with customers, and shall also include, at a
2 minimum, the following: (1) establishing a procedure for receiving and responding to
3 consumer complaints; and (2) ascertaining the number and nature of consumer
4 complaints regarding transactions in which each employee or independent contractor
5 is involved;

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

8 C. Failing to take corrective action with respect to any sales person whom
9 Defendants determine is not complying with this Final Order, which may include
10 training, disciplining, and/or terminating such sales person.

11 V. PROHIBITIONS INVOLVING CONSUMER LISTS

12 **IT IS FURTHER ORDERED** that Defendants are hereby permanently
13 restrained and enjoined from:

14 A. Selling, renting, leasing, transferring, or otherwise disclosing the name,
15 address, telephone number, credit card number, bank account number, date of birth,
16 email address, or other identifying information of any person who submitted such
17 information to Defendants at any time prior to entry of this Final Order, in connection
18 with the advertising, promotion, offering for sale, or sale of any goods or services in
19 commerce; and

20 B. Benefitting from or using the name, address, telephone number, credit
21 card number, bank account number, date of birth, email address, or other identifying
22 or financial information of any person who submitted such information to Defendants
23 as a result of, derived from, or otherwise related to the activities alleged in the
24 Commission's complaint.

25 *Provided however*, that Defendants may disclose such identifying information
26 to a law enforcement agency, or as required by any law, regulation or court order.

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1 **VI. MONETARY JUDGMENT**

2 **IT IS FURTHER ORDERED** that:

3 A. Judgment in the amount of \$536,412 (five hundred thirty-six thousand
4 four hundred twelve dollars) is hereby entered against Defendants.

5 B. Judgment shall be partially satisfied by the Defendants by the release to
6 the Commission, upon entry of this Final Order, of all dominion, title and control to
7 all funds or assets listed in Appendix A.

8 C. Upon release provided in this Paragraph, the remainder of the judgment
9 shall be suspended subject to the conditions set forth in Subparagraphs D and E of
10 this Paragraph.

11 D. The Commission's agreement to this Final Order is expressly premised
12 upon the truthfulness, accuracy and completeness of each of the undersigned
13 Defendants' sworn financial statements and supporting documents submitted to the
14 Commission, namely those of Defendant David Herrera, dated October 9, 2003; those
15 of Defendant Irene Herrera, dated September 19, 2003; those of Defendant James
16 Zezula, dated September 19, 2003; and those of Defendant Vincent Zezula, dated July
17 21, 2003. Such financial statements and supporting documents provide the basis for
18 the assets listed in Appendix A to this Final Order and contain material information
19 upon which the Commission relied in negotiating and agreeing to this Final Order.

20 E. If, upon motion by the Commission, this Court finds that any of the
21 undersigned Defendants have failed to disclose any material asset or materially
22 misstated the value of any asset in the financial statements and related documents
23 described in Subparagraph VI.D above, or has made any other material misstatement
24 or omission in the financial statements and related documents described above, then
25 this Final Order shall be reopened and suspension of the judgment shall be lifted for
26 the purpose of requiring payment by the undersigned Defendants of monetary relief in
27 the amount of the judgment set forth in Subparagraph A of this Paragraph, less the
28 sum of any amounts paid to the Commission pursuant to Subparagraph B of this

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1 Paragraph. Provided, however, that in all other respects this Final Order shall remain
2 in full force and effect, unless otherwise ordered by the Court.

3 F. In accordance with 31 U.S.C. § 7701, Defendants are hereby required,
4 unless they have done so already, to furnish to the Commission their respective
5 taxpayer identifying numbers (social security numbers or employer identification
6 numbers) which shall be used for purposes of collecting and reporting on any
7 delinquent amount arising out of Defendants' relationship with the government.

8 G. Defendants are further required, unless they have done so already, to
9 provide the Commission with clear, legible and full-size photocopies of all valid
10 driver's licenses he or she possesses, which will be used for reporting and compliance
11 purposes.

12 H. Defendants agree that the facts as alleged in the Complaint filed in this
13 action shall be taken as true for the purpose of a nondischargeability complaint in any
14 bankruptcy proceeding.

15 I. Proceedings instituted under this Paragraph are in addition to, and not in
16 lieu of, any other civil or criminal remedies that may be provided by law, including
17 any other proceedings the Commission may initiate to enforce this Final Order.

18 **VII. COMMISSION'S USE OF MONETARY JUDGMENT**

19 **IT IS FURTHER ORDERED** that all funds paid pursuant to Paragraph VI of
20 this Final Order shall be deposited into a fund administered by the Commission or its
21 agent to be used for equitable relief, including, but not limited to, consumer redress
22 and any attendant expenses for the administration of any redress fund. In the event
23 that direct redress to consumers is wholly or partially impracticable or funds remain
24 after redress is completed, the Commission may apply any remaining funds for such
25 other equitable relief (including consumer information remedies) as it determines to
26 be reasonably related to Defendants' practices alleged in the complaint. Any funds
27 not used for such equitable relief shall be deposited to the United States Treasury as
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1 disgorgement. Defendants shall have no right to challenge the Commission's choice
2 of remedies under this Paragraph.

3 **VIII. ASSET FREEZE**

4 **IT IS FURTHER ORDERED** that, the freeze against the assets of Defendants
5 Irene Herrera, James Zezula and Vincent Zezula pursuant to Paragraph IV of the
6 Stipulated Preliminary Injunction Order entered by this Court on May 28, 2003
7 ("Preliminary Injunction"), shall be lifted for the sole purpose of transferring funds to
8 the FTC pursuant to Paragraph VI of this Final Order, and shall be dissolved upon
9 transfer of all such funds.

10 **IX. WITHHELD MAIL**

11 **IT IS FURTHER ORDERED** that the Commission may retain, open and/or
12 dispose of any mail forwarded to it from commercial mail receiving agencies pursuant
13 to Paragraph XIII of the Preliminary Injunction. In its discretion, the Commission
14 may return any of the retained mail back to consumers, forward the mail to the
15 Defendants or destroy the mail as it deems appropriate. Defendants shall have no
16 right to challenge the Commission's actions under this Paragraph.

17 **X. COMPLIANCE MONITORING**

18 **IT IS FURTHER ORDERED** that, for the purpose of monitoring and
19 investigating compliance with any provision of this Final Order,

20 A. Within ten (10) days of receipt of written notice from a representative of
21 the Commission, David Herrera, Irene Herrera, James Zezula and Vincent Zezula
22 each shall submit additional written reports, sworn to under penalty of perjury;
23 produce documents for inspection and copying; appear for deposition; and/or provide
24 entry during normal business hours to any business location in such Defendant's
25 possession or direct or indirect control to inspect the business operation.

26 B. In addition, the Commission is authorized to monitor compliance with
27 this Final Order by all other lawful means, including but not limited to the following:
28

1 1. obtaining discovery from any person, without further leave of
2 court, using the procedures proscribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;
3 and

4 2. posing as consumers to David Herrera, Irene Herrera, James
5 Zezula, and Vincent Zezula; David Herrera's, Irene Herrera's, James Zezula's, and
6 Vincent Zezula's employees; or any other entity managed or controlled in whole or in
7 part by David Herrera, Irene Herrera, James Zezula and Vincent Zezula, without the
8 necessity of identification or prior notice;

9 *Provided* that nothing in this Final Order shall limit the Commission's lawful
10 use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C.
11 §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or
12 information relevant to unfair or deceptive acts or practices in or affecting commerce
13 (within the meaning of 15 U.S.C. § 45(a)(1)).

14 C. David Herrera, Irene Herrera, James Zezula and Vincent Zezula each
15 shall permit representatives of the Commission to interview any employer, consultant,
16 independent contractor, representative, agent, or employee who has agreed to such an
17 interview, relating in any way to any conduct subject to this Final Order. The person
18 interviewed may have counsel present.

19 **XI. COMPLIANCE REPORTING BY DEFENDANTS**

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

22 A. For a period of five (5) years from the date of entry of this Final Order,
23 David Herrera, Irene Herrera, James Zezula and Vincent Zezula each shall notify the
24 Commission of the following:

25 1. Any changes in that Defendant's residence, mailing addresses,
26 and telephone numbers, within twenty (20) days of the date of such change;

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1 2. Any changes in that Defendant's employment status (including
2 self-employment) within twenty (20) days of the date of such change. Such notice
3 shall include the name and address of each business that the Defendant is affiliated
4 with, employed by, or performs services for; a statement of the nature of the business;
5 and a statement of the Defendant's duties and responsibilities in connection with the
6 business; and

7 3. Any changes in that Defendant's name or use of any aliases or
8 fictitious names.

9 B. One hundred eighty (180) days after the date of entry of this Final Order,
10 David Herrera, Irene Herrera, James Zezula and Vincent Zezula each shall provide a
11 written report to the FTC, sworn to under penalty of perjury, setting forth in detail the
12 manner and form in which he or she has complied and is complying with this Final
13 Order. This report shall include, but not be limited to:

14 1. Any changes required to be reported pursuant to Subparagraph A
15 of this Paragraph; and

16 2. A copy of each acknowledgment of receipt of this Final Order
17 obtained by that Defendant pursuant to Paragraph XIV of this Final Order.

18 C. For the purposes of this Final Order, each Defendant shall, unless
19 otherwise directed by the Commission's authorized representatives, mail all written
20 notifications to the Commission to:

21 Associate Director, Division of Marketing Practices
22 Federal Trade Commission
23 600 Pennsylvania Ave. NW
24 Washington, DC 20580
25 Re: FTC v. Patrick Cella, et al., Civil Action No. CV 03-3202

26 D. For purposes of the compliance reporting required by this Paragraph, the
27 Commission is authorized to communicate directly with Defendants David Herrera,
28 Irene Herrera, James Zezula and Vincent Zezula.

1 and dated statement acknowledging receipt of the Final Order. David Herrera, Irene
2 Herrera, James Zezula and Vincent Zezula shall deliver this Final Order to current
3 personnel within thirty (30) days after the date of service of this Final Order, and to
4 new personnel within thirty (30) days after the person assumes such position or
5 responsibilities.

6 B. David Herrera, Irene Herrera, James Zezula and Vincent Zezula shall
7 deliver a copy of this Final Order to the principals, officers, directors, managers and
8 employees under David Herrera's, Irene Herrera's, James Zezula's and Vincent
9 Zezula's control for any business that (a) employs or contracts for personal services
10 from David Herrera, Irene Herrera, James Zezula or Vincent Zezula and (b) has
11 responsibilities with respect to the subject matter of this Final Order. David Herrera,
12 Irene Herrera, James Zezula and Vincent Zezula shall secure from each such person a
13 signed and dated statement acknowledging receipt of the Final Order within thirty
14 (30) days after the date of service of the Final Order or the commencement of the
15 employment relationship.

16 **XIV. ACKNOWLEDGMENT OF RECEIPT OF**
17 **ORDER BY DEFENDANTS**

18 **IT IS FURTHER ORDERED** that each Defendant, within five (5) business
19 days of receipt of this Final Order as entered by the Court, must submit to the
20 Commission at the address provided in Subparagraph C of Paragraph XI of this Final
21 Order, a truthful sworn statement acknowledging receipt of this Final Order.

22 **XV. RETENTION OF JURISDICTION**

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

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1 **XVI. FEES AND COSTS**

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

SCANNED

5 **XVII. ENTRY OF THIS JUDGMENT**

6 **IT IS FURTHER ORDERED** that, as there is no just reason for delay of entry
7 of this judgment, pursuant to Fed. R. Civ. P. 54(b), the Clerk shall enter this Final
8 Order immediately.

9 **XVIII. COMPLETE SETTLEMENT**

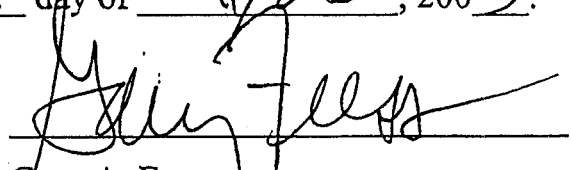
10 The parties hereby consent to entry of the foregoing Final Order which shall
11 constitute a final judgment and order in this matter. The parties further stipulate and

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1 agree that the entry of the foregoing Final Order shall constitute a full, complete, and
2 final settlement of this action.

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4 IT IS SO ORDERED, this 20th day of 11/20, 2003.

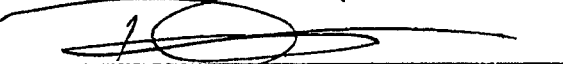
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6 
7 Gary A. Feess
8 United States District Judge


9 STIPULATED AND AGREED AS FOLLOWS:


10 FOR THE PLAINTIFF:
11 DATED: 11/18/03

FOR THE DEFENDANTS:
12 DATED: 10/17/03


13 
14 Michael J. Davis, Esq.
15 Colleen B. Robbins, Esq.
16 600 Pennsylvania Ave. NW
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(202) 326-2458, 326-2548
(202) 326-3395 facsimile
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Attorney for David Herrera, Irene Herrera,
James Zezula, and Vincent Zezula

17 
18 David Herrera

19 
20 Irene Herrera

21 
22 James Zezula

23 
24 Vincent Zezula

Appendix A

All assets or funds held in any bank, brokerage or trust account and which are held or titled in the name of or on behalf of Irene Herrera, James Zezula and Vincent Zezula including, but not limited to the following:

Account Location	Account Name and Number
Bank of America	Irene Herrera/Executive Worldwide 1195203955
Bank of America	Irene Herrera 0383708871
Bank of America	Irene Herrera/Lindsey Zezula 0976505879
Bank of America	James Zezula/Easy Money 0328307664
Christian Community Credit Union	James Zezula 54735