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FEDERAL TRADE COMMISSION,)	CIVIL ACTION NO.
)	1:96-CV-1464-ODE
Plaintiff,)	
)	[proposed]
v.)	STIPULATED FINAL JUDGMENT
)	AND ORDER FOR
CAREER INFORMATION SERVICES, INC.,)	PERMANENT INJUNCTION AND
a Georgia corporation,)	OTHER EQUITABLE RELIEF
)	
CIS ASSOCIATES, INC.,)	
a Georgia corporation,)	
)	
DAVID LEE SMITH, an individual, and)	
)	
WILLIAM PHILLIPS, an individual,)	
)	
Defendants.)	
)	

WHEREAS, plaintiff, Federal Trade Commission ("FTC" or "Commission"), filed this action under Sections 5(a), 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a), 53(b) and 57b on June 13, 1996; the Court entered an *Ex Parte*, Temporary Restraining Order with Asset Freeze and Other Equitable Relief on the same day; the Court entered a Preliminary Injunction with Asset Freeze and Other Equitable Relief on June 21, 1996, after a noticed hearing; and

WHEREAS, the FTC and the defendants ("parties") have agreed to entry of this Stipulated Final Judgment and Order for Permanent

Injunction and Other Equitable Relief ("Final Judgment" or "Order");

THEREFORE, the Court being advised in the premises, now finds:

1. This Court has jurisdiction over the subject matter and the parties.

2. Venue in the Atlanta Division of the Northern District of Georgia, United States District Court, is proper.

3. Process and service of process are proper.

4. This is an action by the FTC instituted under Sections 5(a), 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 53(b) and 57b. The Complaint seeks both permanent injunctive relief and consumer redress for alleged deceptive practices by defendants in connection with the offering for sale and sale of career advisory goods or services in alleged violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and alleged violations of the Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992 ("the 900 Number Rule" or "Rule"), 16 C.F.R. Part 308 (promulgated 1993).

5. The Commission has the authority to seek the relief it requests and the Court has the authority to grant it under Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b.

6. The activities of defendants are in or affecting commerce, as the term is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

7. Defendants have stipulated to the entry of this Final Judgment without trial or adjudication of any issue of law or fact herein. Defendants' stipulation to the entry of this Final Judgment

does not constitute an admission of liability, wrongdoing or any of the allegations set forth in the Complaint, nor a waiver of any of their affirmative defenses, except and only to the extent specified herein. The parties have requested the Court to enter this Final Judgment.

8. By entering into this agreement, each defendant has agreed to waive all rights to seek judicial review or otherwise challenge or contest the validity of this Final Judgment.

9. Defendants waive any claims they had or may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the date of the entry of this Final Judgment.

10. This action and the relief awarded herein are in addition to, and not in lieu of, other remedies as may be provided by law, including both civil and criminal remedies. All relief set forth in this Order is purely remedial in nature and is not a fine, penalty, punitive assessment, exemplary damage or forfeiture.

11. Each settling party shall bear its own costs and attorneys' fees incurred in connection with this action; *provided however*, in the event the Commission initiates proceedings to enforce the provisions of this Final Judgment and, *provided further*, the Court determines that any defendant has violated any term or provision of this Final Judgment, the culpable defendant shall pay the reasonable costs and

attorneys' fees incurred by the Commission in connection with proceedings to enforce this Final Judgment.

12. Defendants have offered for sale and sold career advisory goods or services to consumers nationwide through the use of classified advertisements, toll-free telephone numbers, live operators and pay-per-call services.

13. Defendants David Lee Smith and William L. Phillips are owners, directors and officers of the corporate defendants and have the authority to bind the corporate defendants to this Final Judgment.

I. DEFINITIONS

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

14. *Assisting others engaged in the business of marketing career advisory goods or services or pay-per-call services* means knowingly providing any of the following goods or services to any person or entity engaged in the business of marketing career advisory goods or services or any pay-per-call services: (1) career advisory books, brochures, training manuals or other career advisory information; (2) receiving or responding to consumer complaints against any person or entity engaged in, and in connection with, the business of marketing career advisory goods or services or any pay-per-call services; (3) receiving or responding to consumer inquiries to a person or entity engaged in, and in connection with, the business of marketing career

advisory goods or services or any pay-per-call services; (4) formulating, or arranging for the formulation of, any telephone sales script or career advisory recording or any other marketing material for a person or entity engaged in the business of marketing career advisory goods or services or any pay-per-call services; (5) providing customer lists, lead lists or potential customer lists for career advisory or pay-per-call services; (6) placing advertisements in newspapers or other media offering to assist persons seeking employment; or (7) performing marketing services of any kind for an entity engaged in, and in connection with, the business of marketing career advisory goods or services or any pay-per-call services.

15. *Business of marketing career advisory goods or services* refers to any activity involving attempts to induce consumers to purchase any item, product, good, or service represented to assist consumers in obtaining employment, by any means including telephone sales presentations, newspaper solicitations, classified advertisements exclusively or in conjunction with the use of other forms of marketing.

16. *Business of marketing pay-per-call services* refers to any activity involving attempts to induce consumers to call a pay-per-call service by any means including telephone sales presentations, newspaper solicitations, classified advertisements, television solicitations exclusively or in conjunction with the use of other

forms of marketing.

17. *Defendants* shall refer to Career Information Services, Inc., CIS Associates, Inc., David Lee Smith, and William L. Phillips or any combination thereof.

18. *Documents* shall refer to written, typed, printed, transcribed, or retrievable electronic information whether tangible or intangible, however produced, recorded or accessed.

19. *Marketing* shall refer to the act of advertising, promoting, offering for sale, selling, trading or distribution of goods or services to consumers, directly or indirectly.

20. *Pay-per-call services* shall have the definition in Section 308.2(c) of the 900 Number Rule, 16 C.F.R. § 308.2(c) (incorporating the definition of pay-per-call in Section 228 of the Communications Act of 1934).

21. *Plaintiff* shall refer to the Federal Trade Commission ("Commission"), an independent federal regulatory agency created and established by Section 1 of the FTC Act, 15 U.S.C. § 41, as amended.

II. PROHIBITED BUSINESS PRACTICES

22. **THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that defendants Career Information Services, Inc., CIS Associates, Inc., David Lee Smith, and William L. Phillips and, pursuant to F.R.C.P. 65(d), their officers, agents, servants, employees, and attorneys and those persons in active concert or participation with them who receive

actual notice of this order by personal service or otherwise, are hereby permanently restrained and enjoined from making or assisting others in making, directly or by implication, any false or misleading oral or written statement or representation in connection with the business of marketing career advisory goods or services, or in connection with any pay-per-call service including but not limited to:

a. Misrepresenting in any manner, directly or by implication, that consumers can apply for U.S. Postal Service or federal government jobs by calling any pay-per-call service;

b. Misrepresenting in any manner, directly or by implication, that any party can provide applications for vacant, locally available postal and federal government jobs;

c. Misrepresenting in any manner, directly or by implication, the salary ranges for postal and federal government jobs;

d. Misrepresenting in any manner, directly or by implication, the quantity of positions available in postal and federal government employment;

e. Misrepresenting in any manner, directly or by implication, the proximity or location of postal or federal government job opportunities;

f. Misrepresenting in any manner, directly or by implication, the qualifications for postal or federal government jobs;

g. Misrepresenting in any manner, directly or by implication, the procedures and testing requirements to apply for postal or federal

government jobs;

h. Misrepresenting in any manner, directly or by implication, the classifications or types of positions available in postal or federal employment;

i. Misrepresenting in any manner, directly or by implication, the ability of any goods or services to increase or affect performance on an employment examination;

j. Misrepresenting in any manner, directly or by implication, the accuracy of any goods or services;

k. Misrepresenting in any manner, directly or by implication, any fact material to a consumer's decision to purchase a good or service, to forego a right or to incur any detriment;

l. Misrepresenting in any manner, directly or by implication, the terms, effect, basis or purpose of this Final Judgment;

m. Failing to disclose in any advertisement for a pay-per-call service the per-minute or per-call cost of the service in accordance with Section 308.3(b) of the 900 Number Rule, 16 C.F.R. § 308.3(b);

n. Failing to disclose in any advertisement for a pay-per-call service that the service is not affiliated, endorsed or approved by the U.S. Postal Service or the federal government (where implied) in accordance with Section 308.3(d) of the 900 Number Rule, 16 C.F.R. § 308.3(d); and,

o. Failing to state in the preamble of any pay-per-call service the name of the service provider, the cost of the call, the beginning

of the billing period, the age requirement, and the absence of federal affiliation, approval or endorsement (where implied), in accordance with Section 308.5(a) of the 900 Number Rule, 16 C.F.R. § 308.5(a).

III. BOND REQUIREMENTS

23. **IT IS FURTHER ORDERED** that the defendants Career Information Services, Inc., CIS Associates, Inc., David Lee Smith, and William L. Phillips, individually and collectively, whether as a business owner, officer, director, employee, or consultant, are permanently restrained and enjoined from: (1) engaging in the business of marketing career advisory goods or services, (2) engaging in the business of marketing pay-per-call services, or (3) assisting others in the business of marketing career advisory goods or services or pay-per-call services unless they first obtain a surety bond in the principal sum of one million dollars (\$1,000,000). Each defendant shall obtain a separate surety bond.

a. This bond shall warrant the respective defendant's compliance with Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), the 900 Number Rule, 16 C.F.R. Part 308, and the provisions of this Order. The bond shall be continuous and remain in full force and effect as to the respective defendant so long as the respective defendant continues to engage in, or assist others in, any of the business activities cited in this paragraph above, and for at least three years after he has ceased to engage in such business. The bond shall cite this Order

as the basis of the bond, and shall provide surety thereunder against financial loss resulting from the defendant's violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), the 900 Number Rule, 16 C.F.R. Part 308, or the provisions of this Order.

b. The surety bond required by paragraph 23 shall be an insurance agreement providing surety for financial loss issued by a surety company that is admitted to do business in each of the states in which any defendant does business and must hold a Federal Certificate of Authority As Acceptable Surety On Federal Bond and Reinsuring. Each such surety bond shall be in favor of both: (1) the Commission for the benefit of any consumer injured as a result of any false or misleading representation made by any defendant, his agents or any other persons acting in concert with him or under his authority, supervision or control, while engaged in, or assisting others in any of the businesses referenced in paragraph 23; and (2) any consumer so injured.

24. The bond required pursuant to paragraph 23 is in addition to, and not in lieu of, any other bond required by federal, state, or local law.

25. At least ten days before commencing activities in any of the businesses referenced above in paragraph 23, each defendant shall provide a copy of the bond required by paragraph 23 to the Associate Director for Service Industry Practices at the address specified in paragraph 29 of this Order.

26. Each defendant, his agents or any persons acting in concert or participation with him or under his authority, supervision or control shall not disclose the existence of the surety bond to any consumer or prospective customer without simultaneously making the following disclosure: "THE BOND IS REQUIRED BY ORDER OF THE U.S. DISTRICT COURT IN SETTLEMENT OF CHARGES THAT CAREER INFORMATION SERVICES, INC., CIS ASSOCIATES, INC., DAVID LEE SMITH AND WILLIAM L. PHILLIPS ENGAGED IN FALSE AND MISLEADING REPRESENTATIONS IN THE PROMOTION AND SALE OF CAREER ADVISORY GOODS AND SERVICES." The required written disclosure shall be set forth in a clear and conspicuous manner, separated from all other text, in 100% black ink against a light background, in print at least as large as the main text of the sales material or document, and enclosed in a box containing only the required disclosure. The disclosure, if required, shall appear in all sales materials, all publications and on the front side of all documents sent to customers to acknowledge orders or the receipt of funds.

IV. RECORD KEEPING PROVISIONS

27. **IT IS FURTHER ORDERED** that, for a period of five years from the date of entry of this Order, defendants Career Information Services, Inc., CIS Associates, Inc., David Lee Smith, and William L. Phillips and, pursuant to F.R.C.P. 65(d), their officers, agents, servants, employees and attorneys, individually and collectively, and

all other persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, in connection with the business of marketing of career advisory goods or services, or pay-per-call services of any kind, are hereby restrained and enjoined from failing to create, and from failing to retain for a period of three years following the date of such creation, unless otherwise specified:

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

b. Records accurately reflecting: the name, address, and telephone number of each person that any of the above-referenced businesses employs in any capacity, including as an independent contractor or consultant; that person's job title or position; duties; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable. The businesses subject to this paragraph shall retain such records for any terminated employee for a period of three years following the date of termination;

c. Records containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, or amounts donated, for all consumers to whom any of the above-referenced businesses has sold, invoiced or shipped any goods or services, or from whom any of the

above-referenced businesses accepted money or other items of value;

d. Records that reflect, for every consumer complaint or refund request, whether received directly or indirectly or through any third party or other means:

(i) the consumer's name, address, telephone number and the dollar amount paid by the consumer;

(ii) the written complaint or refund request, if any, and the date of the complaint or refund request;

(iii) the basis of the complaint, including the name of any salesperson complained against, and the nature and result of any investigation conducted concerning the validity of any complaint;

(iv) each response and the date of the response;

(v) the name of the person(s) who investigated the complaint;

(vi) any final resolution and the date of the resolution;

(vii) in the event of a denial of a refund request, the reason for such denial; and

e. Copies of all sales scripts, training packets, advertisements, or other marketing materials utilized.

V. EMPLOYEE NOTIFICATION

28. **IT IS FURTHER ORDERED** that, for a period of five years from the date of entry of this Order, defendants Career Information Services, Inc., CIS Associates, Inc., David Lee Smith, and William L.

Phillips shall:

a. Provide a copy of this Order to, and obtain a signed and dated acknowledgment of receipt of same from, each director, officer, each individual serving in a management capacity, all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors, free-lancers or otherwise, immediately upon employing or retaining any such persons, for any career advisory or pay-per-call service where any defendant is the majority owner or any business that any defendant otherwise directly or indirectly manages or controls that engages in, or assists others who are engaged in, the business of marketing career advisory goods or services or pay-per-call services of any kind; and

b. Maintain for a period of three years after creation, and upon reasonable notice make available to representatives of the Commission, the original signed and dated acknowledgments of the receipt of copies of this Order, as required in subsection (a) of this paragraph. In making this material available, defendants shall permit representatives of the Commission to inspect and copy all such original dated acknowledgments.

VI. MONITORING PROVISIONS

29. **IT IS FURTHER ORDERED** that, to monitor defendants'

compliance with the Order, defendants Career Information Services, Inc., CIS Associates, Inc., David Lee Smith, and William L. Phillips shall:

a. Notify the Commission by registered mail, within seven days after receiving notice of the entry of this Order, of their current residence address, mailing address, business and home telephone numbers, and employment status, including the names, telephone numbers, and business addresses of any current employers;

b. Notify the Commission in writing, for a period of five years from the date of entry of this Order, of any changes in their name, residence or mailing addresses, telephone numbers, or employment status, within thirty days of the date that any such change occurs;

c. For the purposes of this Order, all written notifications to the Commission shall be mailed to:

Associate Director for
Service Industry Practices
Room H-200
Federal Trade Commission
Washington, D.C. 20580
Attn.: CIS File, Case X960058

d. For the purposes of this paragraph, "employment" includes the performance of services as an agent, servant, employee, consultant, or independent contractor; and "employers" include any individual or entity for whom any defendant performs services as an employee, agent, consultant, or independent contractor.

30. **IT IS FURTHER ORDERED** that, for a period of five years from

the date of entry of this Order, defendants shall permit representatives of the Commission, within seven business days of receipt of written notice from the Commission:

a. Access during normal business hours to any office, or facility storing documents, of any business where any defendant is the majority owner or otherwise directly or indirectly manages or controls, that engages in, or assists others who are engaged in, the business of marketing career advisory goods or services or pay-per-call services of any kind. In providing such access, defendants Career Information Services, Inc., CIS Associates, Inc., David Lee Smith, and William L. Phillips shall permit representatives of the Commission to inspect and copy all documents relevant to any matter contained in this Order; and

b. To interview or depose the directors, officers, and employees, including all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors, free-lancers or otherwise, of any business to which subsection (a) of this paragraph applies, concerning matters relating to compliance with the terms of this Order. The person interviewed or deposed may have counsel present. *Provided further*, the Commission may otherwise monitor defendants compliance with this Order by all lawful means available, including the taking of depositions, the use of compulsory process seeking production of documents, and the use of investigators posing

as consumers or suppliers.

31. **IT IS FURTHER ORDERED** that, subject to their rights under the Fifth Amendment to the United States Constitution or similar provisions in state constitutions or statutes, defendants shall cooperate in good faith with the Commission and its agents in all attempts to collect amounts due pursuant to this Final Judgment. Should any defendant fail to pay fully and under the terms specified in Article VII of this Final Judgment, the defaulting defendant shall provide the Commission with his federal and state tax returns for the preceding two years, and with a full financial disclosure, in the form attached as Appendix A hereto, within ten business days of receiving a request from the Commission to do so. The Commission may also verify all information provided on the financial disclosure form with all appropriate third parties, including but not limited to financial institutions.

VII. MONETARY RELIEF

32. **IT IS FURTHER ORDERED** that a judgment for equitable monetary relief in the amount of two million dollars (\$2,000,000) is hereby entered against defendant Career Information Services, Inc., and defendant CIS Associates, Inc., jointly and severally. The individual defendants hereby relinquish all rights, title and claim to the assets of defendants Career Information Services, Inc., and CIS Associates, Inc. The individual defendants shall execute all documents necessary

to facilitate the payment of this judgment.

33. **IT IS FURTHER ORDERED** that a judgment for equitable monetary relief in the amount of four hundred fifteen thousand dollars (\$415,000) is hereby entered against defendant David Lee Smith. This judgment shall be satisfied in the following manner:

a. Within ten (10) days of the date of entry of this Final Judgment by the Court, Smith shall pay to the Commission by wire transfer, certified or cashier's check the sum of two hundred thousand dollars (\$200,000).

b. Within six (6) months of the date of entry of the Final Judgment, Smith shall pay to the Commission by wire transfer, certified or cashier's check the sum of twenty-five thousand dollars (\$25,000).

c. Within twelve (12) months of the date of entry of the Final Judgment, Smith shall pay to the Commission by wire transfer, certified or cashier's check the sum of twenty-five thousand dollars (\$25,000).

d. Within eighteen (18) months of the date of entry of the Final Judgment, Smith shall pay to the Commission by wire transfer, certified or cashier's check the sum of seventy-five thousand dollars (\$75,000).

e. Within twenty-four (24) months of the date of entry of the Final Judgment, Smith shall pay to the Commission by wire transfer, certified or cashier's check the sum of ninety thousand dollars

(\$90,000).

f. Upon the satisfaction of all financial obligations, at the written request of defendant Smith, plaintiff shall release all liens securing payment in accordance with the terms of any security agreement between the parties and shall file a satisfaction of the Smith judgment.

34. **IT IS FURTHER ORDERED** that, with regard to payments by Smith pursuant to paragraph 33(b)-(e):

a. Each payment shall be postmarked by the fifteenth day of the month in which it is due;

b. If an installment is not postmarked by the fifteenth of the month in which it is due, Smith shall pay interest on the late payment at the rate of twenty-five percent (25%), *per annum*, beginning on the sixteenth day of the month in which the payment is due;

c. If an installment (and, if late, all interest on said installment) is not postmarked within thirty (30) days of the original due date, Smith shall be in default;

d. In the event of a default, the entire balance remaining shall become immediately due and payable;

e. In the event of a default, the plaintiff at its exclusive option shall have the right to execute upon the security to satisfy the debt and take any other measures it deems appropriate;

f. In the event of a default, the plaintiff shall have the

right to dispose of the collateral in a public or private proceeding and by one or more contracts;

g. In the event that execution against the security does not satisfy the principal debt and costs associated with collection, the plaintiff or its assigns shall have full recourse against the defaulter for the remaining deficiency. In any such execution, the proceeds shall be applied first to the costs of collection, including reasonable attorneys' fees, and then to the principal debt.

h. The forbearance of any one or more default, including acceptance of partial or delinquent payments, shall not act as a waiver of the plaintiff's acceleration rights or a waiver of defendant's obligations in the present or any subsequent default;

i. There shall be no obligation upon the plaintiff to give Smith presentation, notice, demand or protest of any kind before exercising its rights under the default provisions herein;

j. The death of Smith, the filing of a bankruptcy petition involving him (voluntary or involuntary), or the impairment of any collateral or security shall also constitute a default and grounds for the acceleration of this obligation; and

k. Upon acceleration of the debt by the plaintiff, Smith shall be assessed interest on the unpaid balance of his obligation at the rate set by statute, 28 U.S.C. § 1961.

35. **IT IS FURTHER ORDERED** that a judgment for equitable monetary relief in the amount of four hundred fifty thousand dollars (\$450,000)

is hereby entered in favor of the Commission against defendant William L. Phillips. This equitable monetary relief may be satisfied in the following manner:

a. Phillips shall pay to the Commission by wire transfer, certified or cashier's check the sum of one hundred thirty thousand dollars (\$130,000) within ten (10) days of the date of entry of this Final Judgment by the Court; and

b. Phillips shall pay to the Commission by wire transfer, certified or cashier's check the sum of ten thousand dollars (\$10,000) in ten (10) consecutive monthly installments of at least one thousand dollars (\$1,000) each over the ten (10) month period beginning with the month following the date of the entry of this Final Judgment.

36. **IT IS FURTHER ORDERED** that, with respect to payments by Phillips pursuant to paragraph 35(b):

a. Each payment shall be postmarked by the fifteenth day of the month in which it is due;

b. If an installment is not postmarked by the fifteenth of the month in which it is due, Phillips shall pay interest on the late payment at the rate of twenty-five percent (25%), *per annum*, beginning on the sixteenth day of the month in which the payment is due;

c. If an installment (and, if late, all interest on said installment) is not postmarked within thirty (30) days of the original due date, Phillips shall be in default;

d. In the event of a default, the entire remaining balance of the \$10,000 subject to installment payments shall become immediately due and payable;

e. The forbearance of any one or more default, including acceptance of partial or delinquent payments, shall not act as a waiver of the plaintiff's acceleration rights or a waiver of defendant's obligations in the present or any subsequent default;

f. There shall be no obligation upon the plaintiff to give Phillips presentation, notice, demand or protest of any kind before exercising its rights under the default provisions herein;

g. The death of Phillips, the filing of a bankruptcy petition involving him (voluntary or involuntary), or the impairment of any collateral or security shall also constitute a default and grounds for the acceleration of this obligation; and

h. Upon acceleration of the debt by the plaintiff, Phillips shall be assessed interest on the unpaid balance of his obligation at the rate set by statute, 28 U.S.C. § 1961.

37. Upon receipt of the payments by Phillips pursuant to paragraph 35(a)-(b), the Commission shall file a satisfaction of the Phillips judgment; *provided however*, that a finding at any time of material misrepresentation or material omission as to the financial statements of defendant Phillips shall render immediately due and payable the entire amount of the \$450,000 judgment herein entered against him, less any payments by Phillips to the Commission.

Provided further, that the Commission shall not seek an amount in excess of said judgment and reasonable costs.

38. **IT IS FURTHER ORDERED** that the equitable monetary relief referenced in paragraphs 32-36 above is for consumer redress, and for paying any attendant expenses of administering any redress fund. The consumer redress fund shall be distributed to consumers pursuant to a Court-approved distribution plan to be submitted by the Commission. Defendants forever disclaim all right, title and interest in all assets transferred to the Commission. Defendants shall have no right to object to the manner or contents of the distribution plan. *Provided further,* that if the monies collected are insufficient to justify such a distribution plan, the Court, on motion of the Commission, may order that such monies be paid to the United States Treasury as a disgorgement remedy.

39. Defendants acknowledge and agree that this Final Judgment for equitable monetary relief is solely remedial in nature and is not a fine, penalty, punitive assessment, or forfeiture.

40. The parties further agree and stipulate that the defendants will not oppose any motion brought by the Commission to establish that the redress amounts specified herein are nondischargeable debts under the United States Bankruptcy Code.

41. The parties further agree that the defendants, in connection with any motion brought by the Commission to establish that the

redress amounts specified herein are nondischargeable under the United States Bankruptcy Code, and subject to their rights under the Fifth Amendment to the United States Constitution or similar provisions in state constitutions or statutes, shall cooperate in good faith with the Commission including the execution of documents at the Commission's request.

42. Subject to their rights under the Fifth Amendment to the United States Constitution or similar provisions in state constitutions or statutes, the defendants agree to cooperate in good faith with the plaintiff in any investigations by plaintiff related to or associated with the allegations against defendants in the Complaint; such cooperation includes the waiving of any privileges that are asserted by third parties to withhold documents or information in their possession from plaintiff so long as defendants' waiver does not infringe defendants' rights under the Fifth Amendment to the United States Constitution or similar provisions in state constitutions or statutes.

43. **IT IS FURTHER ORDERED** that if any defendant fails to meet the payment obligations set forth in paragraphs 32-36, said defendant shall pay the reasonable costs and attorneys' fees incurred by the Commission and its agents in any attempts to collect amounts due pursuant to this Final Judgment.

44. **IT IS FURTHER ORDERED** that the facts as alleged in the

Complaint filed with this Final Judgment shall be taken as admitted and true for the sole purpose of any subsequent litigation filed by the Commission to enforce its rights pursuant to this Final Judgment, including but not limited to a nondischargeability complaint in any subsequent bankruptcy proceeding. In this subsequent litigation, defendants shall have waived their right to assert affirmative defenses.

45. Wire transfers may be directed to treasury agency bank account (ABA) number 02103004, and Commission agency locating code (ALC) 29000001.

VIII. FINANCIAL STATEMENTS

46. **IT IS FURTHER ORDERED** that, within three business days after receiving notice of the entry of this Order, defendant Smith shall submit to the Commission a truthful sworn statement, in the form shown on Appendix B, that shall reaffirm and attest to the material truth, accuracy and completeness of the financial statements Smith executed on or about July 1, 1996, and on or about September 4, 1996, and previously submitted to the Commission. The Commission's agreement to this Order is expressly premised upon the material truthfulness, accuracy, and completeness of defendant Smith's financial condition as represented in the financial statements referenced above, and at his assets deposition taken in this proceeding on or about July 17, 1996, which contain material information relied upon by the Commission in

negotiating and agreeing to this Order. If, upon motion by the Commission, this Court finds that Smith, in the above-referenced financial statements or the above-referenced deposition failed to disclose any material asset, materially misrepresented the value of any asset, or made any other material misrepresentation or material omission, the Commission may request that this Order be reopened for the limited purpose of allowing the Commission to modify his monetary liability; *provided however*, that in all other respects this Order shall remain in full force and effect unless otherwise ordered by the Court; and, *provided further*, that proceedings instituted under this provision by the Commission shall be in addition to and not in lieu of any other civil or criminal remedies as may be provided by law, including any other proceedings the Commission may initiate to enforce this Order. Defendant Smith waives any and all rights to contest any of the allegations in the Commission's Complaint in this matter in any subsequent proceeding conducted under this paragraph.

47. **IT IS FURTHER ORDERED** that, within three business days after receiving notice of the entry of this Order, defendant Phillips shall submit to the Commission a truthful sworn statement, in the form shown in Appendix B, that shall reaffirm and attest to the material truth, accuracy and completeness of the financial statements he executed on July 3, 1996, and the undated financial statement he appended to Defendants' Joint Submission In Compliance With Court Order Issued On

August 22, 1996, and previously submitted to the Commission. The Commission's agreement to this Order is expressly premised upon the material truthfulness, accuracy, and completeness of Phillips' financial condition as represented in the financial statements referenced above, and at his assets deposition taken in this proceeding on or about July 16, 1996, which contains material information relied upon by the Commission in negotiating and agreeing to this Order. If, upon motion by the Commission, this Court finds that Phillips, in the above-referenced financial statements or the above-referenced deposition failed to disclose any material asset, materially misrepresented the value of any asset, or made any other material misrepresentation or omission, the Commission may request that this Order be reopened for the limited purpose of allowing the Commission to modify any such defendant's monetary liability; *provided however*, that in all other respects this Order shall remain in full force and effect unless otherwise ordered by the Court; and, *provided further*, that proceedings instituted under this provision shall be in addition to and not in lieu of any other civil or criminal remedies as may be provided by law, including any other proceedings the Commission may initiate to enforce this Order. Defendant Phillips waives any and all rights to contest any of the allegations in the Commission's Complaint in this matter in any subsequent proceeding conducted under this paragraph.

IX. LIFTING OF ASSET FREEZE

48. **IT IS FURTHER ORDERED** that the freeze of defendants' assets shall be fully lifted, as to each defendant, respectively, upon:

a. payment to the Federal Trade Commission of the first installment (\$200,000) of Smith's equitable monetary relief;

b. payment to the Federal Trade Commission of the first installment (\$130,000) of Phillips' equitable monetary relief;

c. execution of all security, collateral and financial statements or other documents required by or appurtenant to this Final Judgment;

d. transfer to the Federal Trade Commission of all the corporate defendants' assets up to the equitable monetary relief amount (\$2,000,000); and

e. issuance of a letter by counsel for the Federal Trade Commission to the complying defendant certifying that he has fulfilled his respective requirements for the lifting of the asset freeze as to him, which letter shall be issued without undue delay.

X. RETENTION OF JURISDICTION

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

XI. ENTRY OF THIS JUDGMENT

50. **IT IS FURTHER ORDERED** that there is no just reason for

delay, the Clerk shall enter this Order of Final Judgment immediately.

IT IS SO ORDERED.

Dated, Atlanta, Georgia, the _____ day of _____, 199__.

ORINDA D. EVANS
United States District Judge

STIPULATED AND AGREED TO BY:

RA'OUF M. ABDULLAH
JEFFREY S. GALVIN
Federal Trade Commission
6th & Pennsylvania Ave., N.W.
Rm. 200
Washington, D.C. 20580
(202) 326-3024

WILLIAM L. PHILLIPS
Defendant

DAVID LEE SMITH
Defendant

ANTHONY E. DIRESTA
Georgia Bar No. 222675
Federal Trade Commission
1718 Peachtree Street, N.W.
Room 1000
Atlanta, GA 30367
(404) 347-4837

CAREER INFORMATION SERVICES,
INC., by William L. Phillips,
its President

Attorneys for Plaintiff

CIS ASSOCIATES, INC.,
by William L. Phillips, its
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Attorney for Corporate
Defendants

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

_____)	
FEDERAL TRADE COMMISSION,)	CIVIL ACTION NO.
)	1:96-CV-1464-ODE
)	
Plaintiff,)	
)	
v.)	
)	
CAREER INFORMATION SERVICES, INC.,)	
a Georgia corporation, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

I, _____ , hereby state that the information contained in the financial statements of _____ provided to the Federal Trade Commission on _____ and _____, respectively, were materially true, accurate, and complete on the dates that they were executed.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Dated: _____ (Signature)_____