

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
DIVISION

Case No. ~~00-7599~~ CIV. HURLEY

FEDERAL TRADE COMMISSION,

Plaintiff,

vs.

AUTOMATED TRANSACTION CORP., a  
Delaware corporation; WWW PROVIDER CO., a  
company; EDWARD S. LIPTON, individually and  
as an officer of AUTOMATED TRANSACTION  
CORP. and as owner of WWW PROVIDER CO.;  
WORLD TELNET, INC., a Florida corporation;  
and, DONALD TETRO, individually and as an  
officer of WORLD TELNET, INC.

Defendants.

MAGISTRATE JUDGE  
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TEMPORARY RESTRAINING ORDER WITH OTHER EQUITABLE RELIEF

Plaintiff Federal Trade Commission ("Commission"), pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b), filed a Complaint for Permanent Injunction and other relief, including consumer redress, and applied ex parte for a Temporary Restraining Order with Asset Freeze and Order Appointing a Temporary Receiver, and for an Order to show cause why a Preliminary Injunction should not be granted pursuant to Rule 65 of the Federal Rules of Civil Procedure, and why a Permanent Receiver should not be appointed. The Court has considered the pleadings, declarations, exhibits, and memoranda filed in support of the Commission's application and makes the following findings of fact:

1. This Court has jurisdiction of the subject matter of this case, and there is good cause to believe it will have jurisdiction over all parties.
2. There is good cause to believe that Defendants Automated Transaction Corp.,

WWW Provider Co., World Telnet, Inc., Edward Lipton and Donald Tetro have engaged in and are likely to engage in acts and practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a). Plaintiff Commission therefore is likely to prevail on the merits of this action.

3. There is good cause to believe that immediate and irreparable harm will result from Defendants' ongoing violations of Section 5(a) of the FTC Act, and that immediate and irreparable damage to the Court's ability to grant effective final relief for consumers in the form of monetary redress will occur from the sale, transfer, assignment, or other disposition or concealment by Defendants of their assets or records unless Defendants are immediately restrained and enjoined by Order of this Court. There is thus good cause for issuing this Order without prior notice to the Defendants of the Commission's Application, pursuant to Federal Rule of Civil Procedure 65(b).

4. Good cause exists for the appointment of a Temporary Receiver.

5. Weighing the equities and considering the Commission's likelihood of success in its causes of action, this Temporary Restraining Order is in the public interest.

6. No security is required of any agency of the United States for issuance of a restraining order. Fed. R. Civ. P. 65(c).

## ORDER

### Definitions

A. "Adult-content Internet services" shall refer to web pages, usually sexually explicit in nature, displayed on the World Wide Web.

B. "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, effects, leaseholds, premises, contracts, mail or other deliveries, shares of stock, lists of consumer names, inventory, checks, notes, accounts, credits, receivables, funds, and all cash, wherever located.

C. "Audiotext service(s)" shall mean audio information or audio entertainment, for which the caller pays a per-call or per-time-interval charge that is greater than, or in addition to,

the charge for transmission of the call, and which is accessed through use of international dialing patterns or a 900 telephone number or other prefix or area code designated by the Federal Communications Commission.

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

E. Defendants means Automated Transaction Corp., WWW Provider Co., World Telnet, Inc., Edward Lipton and Donald Tetro, and each of them.

F. "Internet" means a worldwide system of linked computer networks that use a common protocol to deliver and receive information. The "Internet" includes but is not limited to the following forms of electronic communication: electronic mail, the World Wide Web, newsgroups, Internet Relay Chat, and file transfers.

G. "Receivership Defendants" means Automated Transaction Corp., WWW Provider Co., and World Telnet, Inc., parents, subsidiaries, affiliates, successors and assigns, including, but not limited to, Internet Service, Co.

H. "World Wide Web" means a system used on the Internet for cross-referencing and retrieving information. A "web site" is a set of electronic documents, usually a home page and subordinate pages, readily viewable on computer by anyone with access to the Web, standard software, and knowledge of the web site's location or address.

## I. PROHIBITED CONDUCT

**IT IS THEREFORE ORDERED** that in connection with the advertising, promotion, offering or sale of goods or services by telephone, on or through the Internet, the World Wide Web, any web site, or otherwise in commerce, Defendants and their officers, agents, servants, employees, attorneys, affiliates or subsidiaries, successors or assigns, and all persons or entities

directly or indirectly under their control or under common control with them, and all other persons or entities in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, are hereby temporarily restrained and enjoined from making or assisting others in making, directly or by implication, orally or in writing, any misrepresentation of material fact, including but not limited to:

A. Falsely representing that a consumer purchased or agreed to purchase a good or service; and

B. Falsely representing that a consumer purchased or agreed to purchase a good or service because Defendants have the consumer's social security number and address.

## II.

**IT IS FURTHER ORDERED** that the Defendants and their officers, agents, servants, employees, attorneys, affiliates or subsidiaries, successors or assigns, and all persons or entities directly or indirectly under their control or under common control with them, and all other persons or entities in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, are temporarily restrained and enjoined from:

A. Billing or collecting or attempting to collect payment, directly or indirectly, from any consumer for any good or service without the express verifiable authorization from the consumer that he or she accepts or authorizes the purchase of such good or service:

B. Charging or debiting a consumer's credit card or debit card, directly or indirectly, without the express verifiable authorization from the consumer that he or she accepts or authorizes the purchase of such good or service; and

C. Turning an account over to a debt collector without the express verifiable authorization from the consumer that he or she accepts or authorizes the purchase of such good or service.

## III. ASSET FREEZE

**IT IS FURTHER ORDERED** that Defendants and their officers, agents, servants, employees, attorneys, affiliates or subsidiaries, successors or assigns, and all persons or entities directly or indirectly under their control or under common control with them, and all other

persons or entities in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, are hereby temporarily restrained and enjoined from:

A. Transferring, converting, encumbering, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, perfecting a security interest in, or otherwise disposing of any funds, real or personal property, accounts, contracts, shares of stock or other assets, wherever located, inside or outside the United States of America, that are:

1. owned or controlled by any Defendant, in whole or in part, including but not limited to property, bank accounts or other assets where the title is taken in the name of the Defendant alone, as joint tenancy or common ownership with a non-party, co-owned with a spouse, or held in trust; such property, bank accounts or other assets shall include, but not be limited to, real property located at 3305 Corporate Avenue, Westin, Florida 33331, 7 Harborage, Ft. Lauderdale, Florida, 33316, 1600 S. Ocean Dr., Ft. Lauderdale, Florida 33335 and First Union National account number 2090002977602.

2. in the actual or constructive possession of the Defendant; or

3. owned, controlled by, or in the actual or constructive possession of any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by, or under common control of the Defendant, including but not limited to any assets held for or by any of the Defendants or subject to access by any Defendant at any bank or savings and loan institution or with any broker, dealer, escrow agent, title company, commodity trading company, precious metal dealer, or other financial institution or depository of any kind;

Provided however, a Defendant may transfer funds for the sole purpose of repatriating them and depositing them in a designated domestic account, as set forth in Paragraph IV.

B. Opening or causing to be opened any safe deposit boxes titled in the name of a Defendant, or subject to access by any of them; and

C. Incurring charges or cash advances on any credit card issued in the name, singly or jointly, of Defendant;

D. Obtaining a personal or secured loan; and

E. Incurring liens or other encumbrances on real property, personal property or other assets in the name, singly or jointly of any Defendant.

#### IV. REPATRIATION OF ASSETS AND DOCUMENTS LOCATED IN FOREIGN COUNTRIES

IT IS FURTHER ORDERED that Defendants and their officers, agents, servants, employees, attorneys, affiliates or subsidiaries, successors or assigns, and all persons or entities directly or indirectly under their control or under common control with them, and all other persons or entities in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, shall:

A. Within forty-eight (48) hours following the service of this Order, take such steps as are necessary to transfer to the territory of the United States of America all documents and assets that are located outside of such territory and are held by or for Defendants or are under their direct or indirect control, jointly, severally, or individually;

B. Within forty-eight (48) hours following service of this Order, provide Plaintiff Commission and the Temporary Receiver with a full accounting of all documents and assets that are located outside of the territory of the United States of America and are held by or for Defendants or are under their direct or indirect control, jointly, severally, or individually;

C. Hold and retain all transferred documents and assets and prevent any transfer, disposition, or dissipation whatsoever of any such assets or funds, except for transfers to the Temporary Receiver; and

D. Provide Plaintiff Commission and the Temporary Receiver with access to records and documents of the Defendants held by financial institutions outside the territorial United States of America, by signing and delivering to Plaintiff Commission the Consent to Release of Financial Records attached hereto as Attachment A within forty-eight (48) hours of Service of this Order.

#### V. FINANCIAL REPORTS

IT IS FURTHER ORDERED that each Defendant, within forty-eight (48) hours of service of this Order, prepare and deliver to the Court, counsel for Plaintiff Commission, and the

Temporary Receiver completed financial statements on the forms attached to this Order as Attachments B and C, for themselves individually and for each business entity under which they conduct business, or of which they are an officer, and for each trust of which they are a trustee. The financial statements shall be accurate as of the date of entry of this Order.

**VI. IDENTIFYING INFORMATION RELATING TO ACCOUNTANTS, FINANCIAL PLANNERS, INVESTMENT ADVISORS, STOCK BROKERS AND OTHERS**

**IT IS FURTHER ORDERED** that each Defendant, within (48) hours after service of this Order, shall provide counsel for the Commission and the Temporary Receiver: (1) the name, address and telephone number for each accountant, financial planner, investment advisor, stock broker or other individual, corporation or partnership whom they hired for financial, business or tax advice or services, since January 1, 1996, and (2) the name, address and telephone number for each accountant, financial planner, investment advisor, stock broker or other individual, corporation or partnership who was hired on behalf of any of the Receivership Defendants since January 1, 1996.

**VII. PRESERVATION OF RECORDS**

**IT IS FURTHER ORDERED** that Defendants and their officers, agents, servants, employees, attorneys, affiliates or subsidiaries, successors or assigns, and all persons or entities directly or indirectly under their control or under common control with them, and all other persons or entities in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, are hereby temporarily restrained and enjoined from destroying, erasing, mutilating, concealing, altering, transferring or otherwise disposing of, in any manner, directly or indirectly, any documents that relate to the business practices or business or personal finances of any Defendant.

**VIII. RECORD KEEPING/BUSINESS OPERATIONS**

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

A. Failing to create and maintain documents that, in reasonable detail, accurately, fairly, and completely reflect their incomes, disbursements, transactions, and use of money; and

B. Creating, operating, or exercising any control over any business entity, including any partnership, limited partnership, joint venture, sole proprietorship or corporation, without first providing Plaintiff Commission with a written statement disclosing: (1) the name of the business entity; (2) the address and telephone number of the business entity; (3) the names of the business entity's officers, directors, principals, managers and employees; and (4) a detailed description of the business entity's intended activities.

#### IX. DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that the Defendants shall immediately provide a copy of this Order to each affiliate, subsidiary, division, sales entity, successor, assign, officer, director, employee, independent contractor, agent, attorney, spouse and representative of the Defendants and Receivership Defendants, and shall, within ten (10) days from the date of entry of this Order, provide the Commission and the Temporary Receiver with a sworn statement that the Defendants have complied with this provision of the Order, which statement shall include the names and addresses of each such person or entity who received a copy of the Order. A Temporary Receiver has no obligations under this Paragraph.

#### X. APPOINTMENT OF TEMPORARY RECEIVER

IT IS FURTHER ORDERED that JANE W. MOSCOWITZ<sup>Esg.</sup> is appointed Temporary Receiver for the Receivership Defendants. The Receiver shall be the agent of this Court and solely the agent of this Court in acting as Receiver under this Order. The Receiver shall be accountable directly to this Court. The Receiver shall comply with all Local Rules of this Court governing receivers.

#### XI. RECEIVERSHIP DUTIES

IT IS FURTHER ORDERED that the Temporary Receiver is directed and authorized to accomplish the following:

A. Assume full control of the Receivership Defendants by removing, as the Receiver deems necessary or advisable, any director, officer, independent contractor, employee, or agent of any of the Receivership Defendants, including any Defendant, from control of, management of, or participation in, the affairs of the Receivership Defendants;



B. Collect, marshal, and take exclusive custody, control and possession of all assets and documents of, or in the possession, custody, or under the control of, the Receivership Defendants, wherever situated. The Receiver shall have full power to divert mail and to sue for, collect, receive, take in possession, hold, and manage all assets and documents of the Receivership Defendants and other persons or entities whose interests are now held by or under the direction, possession, custody, or control of the Receivership Defendants. The Receiver shall assume control over the income and profits therefrom and all sums of money now or hereafter due or owing to the Receivership Defendants. *Provided, however,* the Receiver shall not attempt to collect any amount from a consumer whom the Receiver believes was a victim of the deceptive acts or practices alleged in the Complaint in this matter, without prior Court approval;

C. Take all steps necessary to secure the business premises of the Receivership Defendants, including but not limited to all such premises located at 3305 Corporate Avenue, Westin, Florida 33331 and 10011 Pines Boulevard, Suite 101, Fort Lauderdale, Florida 33024. Such steps may include, but are not limited to, the following, as the Receiver deems necessary or advisable: (1) serving and filing this Order, (2) completing a written inventory of all receivership assets, (3) obtaining pertinent information from all employees and other agents of the Receivership Defendants, including, but not limited to, the name, home address, social security number, job description, method of compensation, and all accrued and unpaid commissions and compensation of each such employee or agent, (4) photographing and videotaping all portions of the location, (5) securing the location by changing the locks and disconnecting any computer modems or other means of access to the computer or other records maintained at that location, and (6) requiring any persons present on the premises at the time this Order is served to leave the premises, to provide the Receiver with proof of identification, or to demonstrate to the satisfaction of the Receiver that such persons are not removing from the premises documents or assets of the Receivership Defendants. Law enforcement personnel, including but not limited to police or sheriffs, may assist the Receiver in implementing these provisions in order to keep the peace and maintain security.

D. Conserve, hold, and manage all receivership assets, and perform all acts necessary

or advisable to preserve the value of those assets, in order to prevent any irreparable loss, damage, or injury to consumers or to creditors of the Receivership Defendants, including, but not limited to, obtaining an accounting of the assets and preventing transfer, withdrawal, or misapplication of assets;

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

F. Prevent the inequitable distribution of assets and determine, adjust, and protect the interests of consumers and creditors who have transacted business with the Receivership Defendants;

G. Manage and administer the business of each Receivership Defendant until further order of this Court by performing all incidental acts that the Receiver deems to be advisable or necessary, which includes retaining, hiring, or dismissing any employees, independent contractors, or agents;

H. Choose, engage, and employ attorneys, accountants, appraisers, and other independent contractors and technical specialists, as the Receiver deems advisable or necessary in the performance of duties and responsibilities under the authority granted by this Order;

I. Have the sole authority to hire legal counsel on behalf of any of the Receivership Defendants;

J. 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 any Receivership Defendant prior to the date of entry of this Order, except payments that the Receiver deems necessary or advisable to secure assets of any Receivership Defendant, such as rental payments;

K. Determine and implement the manner in which the Receivership Defendants will comply with, and prevent violations of, this Order and all other applicable laws, including, but not limited to, revising sales materials and implementing monitoring procedures;

L. Institute, compromise, adjust, appear in, intervene in, or become party to such actions or proceedings in state, federal or foreign courts that the Receiver deems necessary and

advisable to preserve or recover the assets of any Receivership Defendant or that the Receiver deems necessary and advisable to carry out his mandate under this Order, including but not limited to, actions challenging fraudulent or voidable transfers;

M. 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 any Receivership Defendant, that the Receiver deems necessary and advisable to preserve the assets of any Receivership Defendant or that the Receiver deems necessary and advisable to carry out his mandate under this Order;

N. Continue and conduct the business of each Receivership Defendant in such manner, to such extent, and for such duration as the Receiver may in good faith deem to be necessary or appropriate to operate the business profitably and lawfully, if at all; *provided that* the continuation and conduct of the business shall be conditioned upon the Receiver's good faith determination that the business can be lawfully operated at a profit using the assets of the receivership estate;

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

P. Open one or more bank accounts as designated depositories for funds of the Receivership Defendants. The Receiver shall deposit all funds of the Receivership Defendants in such a designated account and shall make all payments and disbursements from the receivership estate from such an account. The Receiver shall serve copies of monthly account statements on all parties;

Q. Maintain accurate records of all receipts and expenditures that he makes as Receiver, and

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

#### XII. ACCESS TO BUSINESS OFFICES AND RECORDS

IT IS FURTHER ORDERED that the temporary receiver and his/her representatives, agents, and assistants shall have immediate access to the business premises of the Receivership

Defendants, and immediate access to any other location where property or business records are likely to be located. Such locations specifically include, but are not limited to, the offices and facilities of the Receivership Defendants at 3305 Corporate Avenue, Westin, Florida 33331 and 10011 Pines Boulevard, Suite 101, Fort Lauderdale, Florida 33024. The Receiver is authorized to employ the assistance of law enforcement officers as he or she deems necessary, to effect service and to implement peacefully the provisions of this Order. The temporary receiver, its agents, and assistants, shall have the right to remove documents from the above-listed premises in order that they may be inspected, inventoried, and copied.

If any property, business records, documents, or computer files relating to the Receivership are located in the personal residence of a Defendant and a request to enter such residence is denied, then such defendant shall, within twenty four (24) hours of service of this Order.

- A. Produce to temporary receiver all contracts, accounting data, written or electronic correspondence, advertisements, computer tapes, disks, or other computerized records, books, written or printed records, handwritten notes, telephone logs, telephone scripts, membership records and lists, refund records, receipts, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, copies of federal, state or local business or personal income or property tax returns, and other documents or records of any kind that relate to Defendant's business practices;
- B. Produce to temporary receiver all computers and data in whatever form, used by such defendant or any of such defendant's agents, employees, officers, servants or those persons in active concert with him or her, in activities relating to Receivership Defendants; and
- C. Produce to receiver a list of all agents, employees, officers, servants or those persons in active concert and participation with him or her, who have been associated or done business with Receivership Defendants.

### XIII. COOPERATION WITH THE RECEIVER

IT IS FURTHER ORDERED that Defendants and their officers, agents, servants, employees, attorneys, affiliates or subsidiaries, successors or assigns, and all persons or entities directly or indirectly under their control or under common control with them, and all other persons or entities in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, shall fully cooperate with and assist the Receiver. Defendants' cooperation and assistance shall include, but not be limited to, providing any information to the Receiver that the Receiver deems necessary for exercising the authority and discharging the responsibilities of the Receiver under this Order, providing any password or entry code required to access any computer or electronic files in any medium; or advising all persons who owe money to any Receivership Defendant that all debts should be paid directly to the Receiver. Defendants and their officers, agents, servants, employees, attorneys, affiliates or subsidiaries, successors or assigns, and all persons or entities directly or indirectly under their control or under common control with them, and all other persons or entities in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from directly or indirectly:

- A. Transacting any business of any Receivership Defendant;
- B. Destroying, secreting, defacing, transferring, or otherwise altering or disposing of any documents of any Receivership Defendant, including, but not limited to, books, records, accounts, or any other papers of any kind or nature;
- C. Transferring, receiving, altering, selling, encumbering, pledging, assigning, liquidating, or otherwise disposing of any assets owned, controlled, or in the possession or custody of, or in which an interest is held or claimed by, any Receivership Defendant, or the Receiver;
- D. Excusing debts owed to any Receivership Defendant;
- E. Failing to notify the Receiver of any asset, including accounts, of a Receivership Defendant held in any name other than the name of the Receivership Defendant, or by any person or entity other than the Receivership Defendant, or failing to provide any assistance or

information requested by the Receiver in connection with obtaining possession, custody, or control of such assets; or

F. Doing any act or refraining from any act whatsoever to interfere with the Receiver's taking custody, control, possession, or managing of the assets or documents subject to this receivership; or to harass or interfere with the Receiver in any way; or to interfere in any manner with the exclusive jurisdiction of this Court over the assets or documents of any Receivership Defendant; or to refuse to cooperate with the Receiver or the Receiver's duly authorized agents in the exercise of their duties or authority under any Order of this Court.

#### XIV. DELIVERY OF RECEIVERSHIP PROPERTY

IT IS FURTHER ORDERED that:

A. Immediately upon service of this Order upon them, or within a period permitted by the Receiver, Defendants and their officers, agents, servants, employees, attorneys, affiliates or subsidiaries, successors or assigns, and all persons or entities directly or indirectly under their control or under common control with them, and all other persons or entities in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, shall transfer or deliver possession, custody, and control of the following to the Receiver:

1. All assets of the Receivership Defendants;
2. All documents of the Receivership Defendants, including, but not limited to, books and records of accounts, all financial and accounting records, balance sheets, income statements, bank records (including monthly statements, canceled checks, records of wire transfers, and check registers), client lists, title documents and other papers;
3. All assets belonging to members of the public now held by any Receivership Defendant; and
4. All keys, pass cards, and codes necessary to gain or to secure access to any assets or documents of the Receivership Defendants, including, but not limited to, access to their business premises, means of communication, accounts, computer systems, or other property.

B. In the event any person or entity fails to deliver or transfer any asset or otherwise fails to comply with any provision of this Paragraph, the Receiver may file *ex parte* an Affidavit of on-Compliance regarding the failure. Upon filing of the affidavit, the Court may authorize, without additional process or demand, Writs of Possession or Sequestration or other equitable writs requested by the Receiver. The writs shall authorize and direct the United States Marshal or any sheriff or deputy sheriff of any county to seize the asset, document, or other thing and to deliver it to the Receiver.

#### **XV. BANKRUPTCY PETITIONS**

**IT IS FURTHER ORDERED** that, in light of the appointment of the Receiver, the Receivership Defendants are hereby prohibited from filing, or causing to be filed, a petition for relief under the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, without prior permission from this Court.

#### **XVI. TRANSFER OF FUNDS TO THE RECEIVER**

**IT IS FURTHER ORDERED** that, upon service of a copy of this Order, all banks, broker-dealers, savings and loans, escrow agents, title companies, commodity trading companies, or other financial institutions, shall cooperate with all reasonable requests of the Receiver relating to implementation of this Order, including transferring funds at his direction and producing records related to the assets of the Receivership Defendants.

#### **XVII. STAY OF ACTIONS**

**IT IS FURTHER ORDERED** that:

A. Except by leave of this Court, during pendency of the receivership ordered herein, Defendants and all customers, principals, investors, creditors, stockholders, lessors, and other persons seeking to establish or enforce any claim, right, or interest against or on behalf of the Defendants, and all others acting for or on behalf of such persons, including attorneys, trustees, agents, sheriffs, constables, marshals, and other officers and their deputies, and their respective attorneys, servants, agents and employees, be and are hereby stayed from:

1. Commencing, prosecuting, continuing, catering, or enforcing any suit or proceeding, except that such actions may be filed to toll any applicable statute of limitations;

2. Accelerating the due date of any obligation or claimed obligation; filing or enforcing any lien; taking or attempting to take possession, custody, or control of any asset; attempting to foreclose, forfeit, alter, or terminate any interest in any asset, whether such acts are part of a judicial proceeding, are acts of self-help, or otherwise;

3. Executing, issuing, serving, or causing the execution, issuance or service of, any legal process, including, but not limited to, attachments, garnishments, subpoenas, writs of replevin, writs of execution, or any other form of process whether specified in this Order or not;

4. Causing any Receivership Defendant to be placed in involuntary bankruptcy, or

5. Doing any act or thing whatsoever to interfere with the Receiver taking custody, control, possession, or management of the assets or documents subject to this receivership, or to harass or interfere with the Receiver in any way, or to interfere in any manner with the exclusive jurisdiction of this Court over the assets or documents of the Receivership Defendants.

B. This paragraph does not stay:

1. The commencement or continuation of a criminal action or proceeding;

2. The commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power, or

3. The enforcement of a judgment, other than a money judgment, obtained in an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power.

#### **XVIII. COMPENSATION OF TEMPORARY RECEIVER**

**IT IS FURTHER ORDERED** that the Temporary Receiver and all personnel and independent contractors hired by the Temporary Receiver as herein authorized, including counsel to the Temporary Receiver and accountants, are entitled to reasonable compensation for the performance of duties pursuant to this Order and for the cost of actual out-of-pocket expenses incurred by them, from the assets now held by or in the possession or control of or which may be received by the Receivership Defendants. The Temporary Receiver shall file with the Court and



serve on the parties periodic requests for the payment of such reasonable compensation, with the first such request filed no more than sixty (60) days after the date of this Order. The Temporary Receiver shall not increase the hourly rates used as the bases for such fee applications without prior approval of the Court.

#### **XIX. RECEIVER'S BOND**

**IT IS FURTHER ORDERED** that the Receiver shall file with the Clerk of this Court a bond in the sum of ~~\$50,000.~~<sup>∞</sup> with sureties to be approved by the Court, conditioned that the Receiver will well and truly perform the duties of the office and abide by and perform all acts the Court directs.

#### **XX. SERVICE OF ORDER**

**IT IS FURTHER ORDERED** that copies of this Order may be served by any means, including facsimile transmission, upon any financial institution or other entity or person that may have possession, custody, or control of any documents or assets of any Defendant or Receivership Defendant, or that may otherwise be subject to any provision of this Order. Service upon any branch or office of any financial institution shall effect service upon the entire financial institution.

#### **XXI. CONSUMER CREDIT REPORTS**

**IT IS FURTHER ORDERED** that pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(1), any consumer reporting agency may furnish a consumer report concerning any Defendant to Plaintiff Commission.

#### **XXII. RETENTION OF ASSETS AND RECORDS**

**IT IS FURTHER ORDERED** that, any financial or brokerage institution, business entity, trustee or person after having been provided with notice of this Order shall:

A. Prohibit the Defendants and their officers, agents, servants, employees, attorneys, affiliates or subsidiaries, successors or assigns, and all persons or entities directly or indirectly under their control or under common control with them, and all other persons or entities in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, from withdrawing, removing, assigning, transferring, pledging, encumbering,

disbursing, dissipating, converting, selling, or otherwise disposing of any account, funds, property or other asset:

1. Titled in the name of a Defendant, either individually or jointly, or maintained in the name of a Defendant, either individually or jointly;
2. Held on behalf of or for the benefit of a Defendant, either individually or jointly, including but not limited to First Union National account number 2090002977602; or
3. Subject to access or use by a Defendant, either individually or jointly.

Provided, however, that this Order shall not prohibit transfers:

1. as directed by further order of the Court;
  2. for specific transfers authorized in writing by counsel for the Commission;
- or
3. as directed by the Temporary Receiver (regarding assets held in the name or for the benefit of the Receivership Defendants);

B. Deny Defendants and their officers, agents, servants, employees, attorneys, affiliates or subsidiaries, successors or assigns, and all persons or entities directly or indirectly under their control or under common control with them, and all other persons or entities in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, access to any safe deposit box that is:

1. titled in the name of a Defendant, either individually or jointly, or
2. otherwise subject to access by a Defendant, either individually or jointly;

C. Provide counsel for the Commission and the Temporary Receiver, within five (5) business days of receiving a copy of this Order, a sworn statement setting forth:

1. the identification number of each such account or asset titled in the name, individually or jointly, of the Defendant, or held on behalf of, or for the benefit of, any such Defendant;
2. the balance of each such account, or a description of the nature and value of such asset as of the time this Order is served, and, if the account or other asset has been closed or

removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other asset was remitted; and

3. the identification of any safe deposit box that is either titled in the name, individually or jointly, of any Defendant, or otherwise subject to access by any such Defendant;

D. Upon the request of the Temporary Receiver or the Commission, promptly provide the Temporary Receiver and the Commission with copies of all records or other documentation pertaining to such account or asset, including but not limited to originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs; and

E. Cooperate with all reasonable requests of the Temporary Receiver relating to implementation of this Order, including transferring funds at the Receiver's direction and producing records related to the accounts of the Defendants.

### **XXIII. ACCESS TO DEFENDANTS' BUSINESS PREMISES**

**IT IS FURTHER ORDERED** that the Temporary Receiver shall allow the Commission's representatives, the Defendants' representatives, and the Defendants themselves reasonable access to the premises of the Receivership Defendants, including but not limited to all such premises located at 3305 Corporate Avenue, Westin, Florida 33331 and 10011 Pines Boulevard, Suite 101, Fort Lauderdale, Florida 33024. The purpose of this access shall be to inspect and copy any and all books, records, accounts, and other property owned by or in the possession of any Receivership Defendant. The Temporary Receiver shall have the discretion to determine the time and manner of this access.

### **XXIV. EXPEDITED DISCOVERY**

**IT IS FURTHER ORDERED** that the Commission and the Temporary Receiver are granted leave at any time after service of this Order to (1) take the deposition of any person or entity for the purpose of discovering the nature, status, extent, location or other relevant information relating to the assets, income, personal or business financial records of the Defendants or the location of a Defendant and (2) demand the production of documents from any

person or entity relating to the nature, status, extent, location or other relevant information relating to the Defendant. Forty-eight (48) hours notice shall be deemed sufficient for any such deposition and production of documents from the Defendants and two (2) calendar days notice shall be deemed sufficient for any such deposition and production of documents from any other person or entity, including but not limited to financial institutions, accountants, stock brokers and financial planners. The limitations and conditions set forth in Fed. R. Civ. P. 30(a)(2)(B) regarding subsequent depositions of an individual shall not apply to depositions taken pursuant to this Paragraph. The depositions shall also not be counted in calculating any limitation on the number of depositions that can be taken without leave of the Court as set forth in the Federal Rules of Civil Procedure or the Local Rules. Additionally, the production of documents submitted pursuant to this provision shall not in any way waive plaintiff's rights to seek the production of additional documents.

#### **XXV. EXPEDITED PRODUCTION OF DOCUMENTS BY THIRD PARTIES**

**IT IS FURTHER ORDERED** that Key Bank, Capital City Bank, VISA International, First Financial Bank, Equifax and Electronic Payment Exchange shall, within seven days of being served by facsimile, mail or personal service with a copy of this Order, produce or make available for inspection and copying, the following documents:

- A. All documents concerning negotiations, understandings, or contracts for services provided to or obtained from the Defendants from January 1, 1999 to the present. This request includes all underwriting files, and any correspondence related thereto, and all merchant agreements.
- B. All documents concerning payments made by or to the Defendants from January 1, 1999 to the present. This request includes, but is not limited to, financial and accounting records, balance sheets, canceled checks, records of wire transfers, check registers, bank statements, and any correspondence related thereto. "Payments" includes penalties or fees.
- C. All documents concerning financial accountings involving the Defendants from January 1, 1999 to the present. This request includes, but is not limited to, financial and accounting

- records, account statements, balance sheets, canceled checks, records of wire transfers, check registers, bank statements, and any correspondence related thereto.
- D. All documents concerning data bases supplied or transferred to the Defendants from January 1, 1999 to the present.
- E. All documents concerning data bases maintained, developed, used or accessible by the bank, financial institution or third party covered by this Order, which is accessible by the Defendants from January 1, 1999 to the present.
- F. All documents concerning services provided by third parties (including Independent Sales Organizations, Third Party Servicers, clearing houses, and processors) concerning the Defendants.
- G. Insofar as not covered by requests 1 through 6, above, all documents concerning communications with or about the Defendants.
- H. Insofar as not covered by requests 1 through 6, above, all documents concerning communications with all card associations, including Visa and MasterCard, about the Defendants.
- I. Documents sufficient to show all sales, credits and charge back information relating to the Defendants. The data should include for each sale, credit, and charge back: the card number, date of transaction, and amount.
- J. Documents sufficient to show sales, credit and charge back information relating to Internet Provider, Internet Service Co., WWW Provider, WTN or any other entity or descriptor starting with the letters ISC or IAA. The data should include for each sale, credit, and charge back: the card number, date of transaction, and amount.
- K. The merchant agreements and any other contractual agreements relating to Internet Provider, Internet Service Co., WWW Provider, WTN, or any other entity or descriptor starting with the letters ISC or IAA.

#### XXVI. SERVICE OF PLEADINGS

IT IS FURTHER ORDERED that the Defendants shall serve all memoranda, affidavits and other evidence on which they intend to rely at the Preliminary Injunction hearing set in this

matter not later than 4:00 p.m. of the fifth (5th) business day prior to the hearing date. The Commission shall be permitted a supplemental filing or reply which shall be served on the defendants not later than 4:00 p.m. of the second (2nd) business day prior to the hearing date.

#### **XXVII. WITNESS IDENTIFICATION**

**IT IS FURTHER ORDERED** that, if any party to this action intends to present the testimony of any witness at the hearing on a Preliminary Injunction in this matter, that party shall, at least five (5) business days prior to the scheduled date and time of hearing, file with this Court and serve on all other parties a statement disclosing the name, address, and telephone number of any such witness, and either a summary of the witness' expected testimony, or the witness' affidavit revealing the substance of such witness' expected testimony.

#### **XXVIII. DURATION OF TEMPORARY RESTRAINING ORDER**

**IT IS FURTHER ORDERED** that the Temporary Restraining Order granted herein shall expire on November 5, 2000, at 11:59 p.m., unless within such time, the Order, for good cause shown, is extended for an additional period not to exceed ten (10) days, or unless it is further extended pursuant to Federal Rule of Civil Procedure 65.

#### **XXIX. ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION**

**IT IS FURTHER ORDERED**, pursuant to Federal Rule of Civil Procedure 65(b), that each of the Defendants shall appear before this Court on the 2nd day of November, 2000, at 9:30 o'clock a.m. at 300 South Sixth St., Ft. Pierce, FL 34950, to show cause, if there is any, why this Court should not appoint a Permanent Receiver and enter a Preliminary Injunction, pending final ruling on the Complaint against Defendants, enjoining them from further violations of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a), continuing the freeze of their assets, and imposing such additional relief as may be appropriate.

#### **XXX. SERVICE UPON PLAINTIFF**

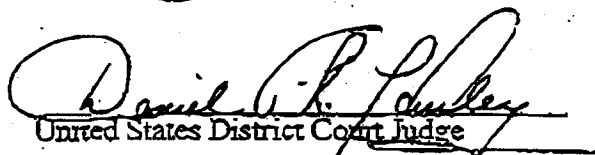
**IT IS FURTHER ORDERED**, with regard to any correspondence or pleadings related to this Order, service on the Commission shall be performed by delivery to the attention of Seena Gressin at the Federal Trade Commission, 600 Pennsylvania Avenue, NW, Room H-238, Washington, DC 20580, (202) 326-2717, or by facsimile transmission to (202) 326-3395.

**XXXI. RETENTION OF JURISDICTION**

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

No security is required of any agency of the United States for the issuance of a restraining order. Fed. R. Civ. P. 65(c).

SO ORDERED, this 26<sup>th</sup> day of Oct., 2000, at 6:15 p.m.

  
United States District Court Judge  
DANIEL T.K. HURLEY