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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

FEDERAL TRADE COMMISSION,	)	CIV-96-2374-PHX-ROS
Plaintiff,	)	
v.	)	FINAL JUDGMENT AND ORDER
	)	FOR PERMANENT INJUNCTION
ROBERT J. MAYNARD, JR.,	)	WITH RESPECT TO DEFENDANT
an individual,	)	ROBERT J. MAYNARD, JR.
	)	
BRIAN W. CUTRIGHT,	)	
an individual,	)	
	)	
MARK F. GUIMOND,	)	
an individual,	)	
	)	
NCF CORP.,	)	
a corporation, and	)	
	)	
HAL Z. LEDERMAN,	)	
individually and as an	)	
officer of NCF Corp.,	)	
	)	
Defendants.	)	

Plaintiff Federal Trade Commission ("Commission") has filed herein a Complaint for a permanent injunction and other equitable relief pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), charging defendants Robert J. Maynard, Jr. ("Maynard"), Brian W. Cutright, Mark F. Guimond, NCF Corp., and Hal Z. Lederman with

1 violations of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45. Plaintiff Commission and  
2 defendant Maynard, having been represented by the attorneys whose names appear hereafter,  
3 have stipulated to entry of this Final Judgment and Order for Permanent Injunction ("Final  
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1 power," 11 U.S.C. § 362(b)(4), *Federal Trade Commission v. R.A. Walker & Assocs., Inc.*, 37  
2 B.R. 608, 610 (D.D.C. 1983).

3 9. A voluntary bankruptcy petition filed by any or all defendants does not divest this  
4 Court of jurisdiction to enter this final judgment against defendant Maynard.

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

6 11 Defendant Maynard waives all claims under the Equal Access to Justice Act, 28  
7 U.S.C. § 2412, *amended by* PL 104-121, 110 Stat. 847, 863-64 (1996).

### 8 DEFINITIONS

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

10 1. "Credit Report" or "Profile" means any written, oral or other communication of  
11 information by a consumer reporting agency bearing on a person's creditworthiness, credit  
12 standing, credit capacity, character, general reputation, personal characteristics or mode of living  
13 that is used or expected to be used or collected in whole or in part for the purpose of establishing  
14 the person's eligibility for credit.

15 2. "Credit Improvement Service(s)" means any service to improve a person's credit  
16 report or profile by removing adverse information appearing therein, changing the rating of such  
17 information from negative to positive, or otherwise enhancing said credit profile in return for the  
18 payment of money.

19 3. "Credit Bureau" or "Consumer Reporting Agency" means any person which, for  
20 monetary fees, dues, or on a cooperative basis, regularly engages in whole or in part in the  
21 practice of assembling or evaluating consumer credit information or other information on  
22 consumers for the purpose of furnishing consumer reports to third parties, and which uses any  
23 means or facility of interstate commerce for the purpose of preparing or furnishing consumer  
24 reports.

25 4. "Obsolete," when used to describe credit history information, means any  
26 information that a consumer reporting agency may not report under Section 605 of the Fair Credit  
27 Reporting Act, 15 U.S.C. § 1681c, due to its age.



1 § 310.3(a)(3), are employed. A copy of the Telemarketing Sales Rule is attached hereto as  
2 Attachment 1 and incorporated herein as if fully set forth verbatim.

3 **III.**

4 **IT IS FURTHER ORDERED** that defendant Maynard and his representatives, agents,  
5 servants and employees, and all other persons or other entities in active concert or participation  
6 with any one or more of them, who receive actual notice of this Order by personal service or  
7 otherwise, directly or through any corporation, subsidiary, division, or other device, in connection  
8 with the advertising, promotion, offering for sale, sale, or distribution of any product or service, in  
9 or affecting commerce, as commerce is defined in the FTC Act, are hereby restrained and enjoined  
10 from creating, producing, selling, or disseminating:

11 A. Any commercial or other advertisement for any such product or service that  
12 misrepresents, directly or by implication, that it is an independent program and not a paid  
13 advertisement; and

14 B. Any commercial or other advertisement for any such product or service longer  
15 than fifteen (15) minutes in length that does not display visually, in a clear and prominent manner  
16 and for a length of time sufficient for an ordinary consumer to read, within the first thirty (30)  
17 seconds of the commercial and immediately before each presentation of ordering instructions for  
18 the product or service, the following disclosure:

19 "THE PROGRAM YOU ARE WATCHING IS A PAID  
20 ADVERTISEMENT FOR [THE PRODUCT OR SERVICE]."

21 PROVIDED THAT, for the purposes of this provision, the oral or visual presentation of a  
22 telephone number or address for viewers to contact to place an order for the product or service  
23 shall be deemed a presentation of ordering instructions so as to require the display of the  
24 disclosure provided herein.

25 **REDRESS**

26 **IV.**

27 **IT IS FURTHER ORDERED** that, subject to compliance with Section V of this Order,  
28 defendant Maynard shall not be required to pay consumer redress or disgorgement.

1 V.

2 **IT IS FURTHER ORDERED** that within three (3) business days after entry of this  
3 Order, defendant Maynard shall submit to the Commission a truthful sworn statement, in the form  
4 shown on Exhibit 1 to this Order, that shall reaffirm and attest to the truth, accuracy and  
5 completeness of the sworn Financial Statement of Individual Defendant executed by defendant  
6 Maynard on November 14, 1996, and previously submitted to the Commission.

7 VI.

8 **IT IS FURTHER ORDERED** that the Court's approval of this Order is expressly  
9 premised upon the financial condition of defendant Maynard, as represented by him in the sworn  
10 Financial Statement of Individual Defendant, as referenced in Paragraph V, which contains  
11 material information relied upon by the Commission in negotiating and agreeing to the terms of  
12 this Order. If, upon motion by the Commission, this Court finds that defendant Maynard failed to  
13 file the sworn statement required by Paragraph V or filed a Financial Statement of Individual  
14 Defendant that materially failed to disclose any asset, materially misrepresented the value of any  
15 asset, or made any other material misrepresentation in or omission from his Financial Statement of  
16 Individual Defendant, the Commission may request that this Order be reopened to allow the  
17 Commission to modify the monetary liability of defendant Maynard; provided, however, that in all  
18 other respects this Order shall remain in full force and effect unless otherwise ordered by the  
19 Court, and, provided further, that proceedings instituted under this Paragraph are in addition to  
20 and not in lieu of any other civil or criminal remedies as may be provided by law, including any  
21 other proceedings the Commission may initiate to enforce this Order.

22 Solely for purposes of this Paragraph, defendant Maynard waives any right to contest any  
23 of the allegations in the Commission's complaint.

24 **RECORDKEEPING**

25 VII.

26 **IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry of  
27 this Order, defendant Maynard, in connection with any and every business entity of which he is a  
28 majority owner, or which he otherwise manages or controls, and which engages in telemarketing,

1 is hereby restrained and enjoined from failing to create, and from failing to retain for a period of  
2 five (5) years following the date of such creation, unless otherwise specified:

3       A.     Books, records and accounts which, in reasonable detail, accurately and fairly  
4 reflect the cost of goods or services sold, and the income, disbursements, transactions and use of  
5 funds;

6       B.     Records accurately reflecting: the name, address and phone number of each person  
7 that such business entity employs in any capacity, including as an independent contractor; that  
8 person's job title or position; the date upon which the person commenced work; and the date and  
9 reason for the person's termination, if applicable. Defendant Maynard shall retain such records for  
10 any terminated employee for a period of two (2) years following the date of termination;

11       C.     Records containing the names, addresses, phone numbers and dollar amounts paid,  
12 for all consumers to whom such business entity has sold, invoiced or shipped any goods or  
13 services, or from whom any of the business entities accepted money or other items of value;

14       D.     Records that reflect, for every consumer complaint or refund request, whether  
15 received directly or indirectly through any third party:

16             1.     The consumer's name, address, telephone number and the dollar amount  
17 paid by the consumer;

18             2.     The written complaint, if any , and the date of the complaint or refund  
19 request;

20             3.     The basis of the complaint, including the name of any salesperson  
21 complained against, and the nature and result of any investigation conducted as to the validity of  
22 any complaint;

23             4.     Each response and the date of the response;

24             5.     Any final resolution and the date of the resolution; and

25             6.     In the event of a denial of a refund request, the reason for such denial, or if  
26 the complaint was cured, the basis for determining that the complaint has been cured;

27       E.     Videotape copies and transcripts of all infomercials;

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1 F. Records reflecting the date, time and station of each broadcast of each infomercial,  
2 or if the defendant has not directly or indirectly purchased the airtime for the broadcast, the name  
3 and address of the company making each such purchase of airtime;

4 G. Copies of all sales scripts, training packets, advertisements, or other marketing  
5 materials utilized. Defendant shall retain such marketing materials for a period of two (2) years  
6 after their last use; and

7 H. All contracts, agreements or correspondence with any sales company, supplier,  
8 mailinghouse, printer, information provider, customer lead provider, telephone company or  
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**ENTRY BY CLERK**

XIV.

There being no just reason for delay, the Clerk of the Court is hereby directed to enter this Order.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_\_\_.

\_\_\_\_\_  
United States District Judge

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1 **EXHIBIT 1**

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7 **IN THE UNITED STATES DISTRICT COURT**  
8 **FOR THE DISTRICT OF ARIZONA**  
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10 \_\_\_\_\_ )  
11 FEDERAL TRADE COMMISSION, ) CIV-96-2374-PHX-ROS  
12 Plaintiff, )  
13 v. ) DECLARATION OF  
14 JR. ) DEFENDANT ROBERT J. MAYNARD,  
15 ROBERT J. MAYNARD, JR., )  
16 an individual, et al. )  
17 Defendants. )  
18 \_\_\_\_\_ )

17 I, Robert J. Maynard, Jr., hereby state that the information contained in the financial  
18 statement I signed on November 14, 1996 and provided shortly thereafter to the Federal Trade  
19 Commission was true, accurate and complete at such time. A true and correct copy of the  
20 aforementioned financial statement is attached hereto as Appendix A.  
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