| 1 | STEPHEN CALKINS General Counsel | |
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| 2 3 | CHARLES A. HARWOOD Regional Director | |
| 4 | ELEANOR DURHAM NADINE S. SAMTER | |
| 5 | Federal Trade Commission 915 Second Avenue, Suite 2896 | |
| 6 | Seattle, WA 98174 (206) 220-6350 | |
| 7 | ATTORNEYS FOR PLAINTIFF | |
| 8 | | |
| 9 | | |
| 10 | UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA | |
| 11 | FEDERAL TRADE COMMISSION, | |
| 12 13 | Plaintiff, | CV-S-97- |
| 13 | V. | |
| 15 | WOOFTER INVESTMENT CORPORATION, | |
| 16 | and PATSY M. BARBOUR a.k.a. PATSY BARBOUR-WOOFTER, | |
| 17 | Defendants. | |
| 18 | | |
| 19 | TEMPORARY RESTRAINING ORDER AN PRELIMINARY INJUNCTION SHOULD NOT 1 | |
| 20 | Plaintiff, the Federal Trade Commission ("Cor | nmission"), having filed a Complaint for a |
| 21 | permanent injunction and other relief, including restitution to consumers, pursuant to Section | |
| 22 | 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and | |
| 23 | having moved for an <i>ex parte</i> temporary restraining order and for an order to show cause why a | |
| 24 | preliminary injunction should not be granted pursuant to Rule 65(b) of the Federal Rules of Civil | |
| 25 | Procedure, and the Court having considered the pleadings, declarations, exhibits, and | |
| 26 | memorandum filed in support thereof, it is the finding | g of this Court that: |

11.This Court has jurisdiction of the subject matter of this case and there is2good cause to believe it will have jurisdiction over all parties hereto.

- 2. There is good cause to believe the Commission will ultimately succeed in
 establishing that defendants have engaged in and are likely to engage in acts and practices that
 violate Sections 310.3(a), (b) and (c) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a), (b)
 and (c).
- 7 3. There is good cause to believe that immediate and irreparable damage will
 8 be done to the public and to this Court's ability to grant full and effective relief among the parties
 9 hereto absent entry of this Order on an *ex parte* basis.
- 4. Weighing the equities and considering the Commission's likelihood of
 ultimate success, a Temporary Restraining Order is in the public interest.
- 12

I. CEASE AND DESIST

13 IT IS THEREFORE ORDERED that defendants Woofter Investment Corporation
14 ("Woofter"), which does business as A.T.M.S., and Patsy M. Barbour a.k.a. Patsy Barbour15 Woofter are hereby temporarily restrained and enjoined from:

A. Promoting, offering for sale, selling, reselling, or purchasing on behalf of others,
directly or indirectly, tickets, chances or interests in any foreign or U.S. lottery.

B. Providing customer service, registration of tickets, chances or interests in any
foreign or U.S. lottery, or any other service to any telemarketer or seller of tickets, chances or
interests in any foreign or U.S. lottery.

C. Providing credit card processing for any telemarketer or seller in a manner that
violates the Telemarketing Sales Rule, 16 C.F.R. 310.3(c).

23

II. ASSET FREEZE

IT IS FURTHER ORDERED that, except as stipulated by the parties, or as directed by
further order of the Court, defendants are hereby temporarily restrained and enjoined from,
directly or through any other person or entity:

1 A. Transferring, converting, encumbering, selling, concealing, dissipating, disbursing, 2 assigning, spending, withdrawing, or otherwise disposing of any funds, real or personal property, 3 accounts, contracts, membership or mailing lists, shares of stock or other assets, or any interest 4 therein, wherever located, that are: (a) owned or controlled by defendants, in whole or in part; or 5 (b) in the actual or constructive possession of defendants; or (c) owned, controlled by, or in the actual constructive possession of any corporation, partnership, or other entity directly or 6 7 indirectly owned, managed, or controlled by, or under common control with, defendants, 8 including, but not limited to, any assets held by or for defendants at any bank or savings and loan 9 institution, or with any broker-dealer, escrow agent, title company, commodity trading company, 10 precious metal dealer, or other financial institution or depository of any kind; 11 Β. Opening or causing to be opened any safe deposit boxes titled in the name of any 12 of these defendants, or subject to access by defendants; and 13 C. Incurring charges on any credit card issued in the name, singly or jointly, of 14 defendants. 15 The assets affected by this section shall include both existing assets and assets acquired 16 after issuance of this Order, and defendants shall hold and account for these assets and all 17 payments received by them, including but not limited to borrowed funds or property and gifts. 18 **III. MAINTENANCE OF RECORDS** 19 IT IS FURTHER ORDERED that defendants are hereby temporarily restrained and 20 enjoined from: 21 A. Failing to create and maintain books, records, and accounts which, in reasonable 22 detail, accurately, fairly, and completely reflect the incomes, disbursements, transactions, and use 23 of monies by defendants. 24 Β. Destroying, erasing, mutilating, concealing, altering, transferring or otherwise 25 disposing of, in any manner, directly or indirectly, any contracts, client lists, membership or

26 mailing lists, accounting data, correspondence, advertisements, computer tapes, disks, or other

computerized records, books, written or printed records, handwritten notes, telephone logs,
 telephone scripts, "verification" tapes or other audio or video tape recordings, receipt books,
 invoices, postal 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 the business
 practices or business or personal finances of defendants.

IV. DUTIES OF ASSET HOLDERS

8 IT IS FURTHER ORDERED that, except as stipulated by the parties or as directed by 9 further order of the Court, any financial or brokerage institution, business entity, or person that 10 holds, controls, or maintains custody of any account or asset, including any membership or 11 mailing lists, real or personal of property defendants, or has held, controlled, or maintained 12 custody of any account or asset of defendants at any time since December 31, 1995, shall

A. Prohibit all persons and entities except, with respect to Woofter's assets, the
receiver appointed by this Order and his designated representatives or agents, from withdrawing,
removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting,
selling, or otherwise disposing of any of these assets.

B. Deny all persons and entities, except, with respect to Woofter's assets, the receiver
appointed by this Order and his designated representatives and agents, access to any safe deposit
box that is titled in the name of either defendant, either individually or jointly, or otherwise subject
to access by either defendant.

C. Provide counsel for plaintiff and, with respect to Woofter's assets, the receiver,
within five (5) business days of receiving a copy of this Order, a certified statement setting forth:

the identification number of each account or asset titled in the name,
 individually or jointly, of defendants, or held on behalf of, or for the benefit of, defendants,
 including all trust accounts managed on behalf of defendants or subject to defendants' control;

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1 2. the balance of each identified account, or a description of the nature and 2 value of the asset as of the close of business on the day on which this Order is served, and, if the 3 account or other asset has been closed or removed since January 1, 1997, the date closed or 4 removed, the total funds removed in order to close the account, and the name of the person or 5 entity to whom the account or other asset was remitted; and 6 3. the identification and location of any safe deposit box that is either titled in 7 the name, individually or jointly, of defendants, or is otherwise subject to access by defendants. 8 D. Upon request and within five (5) business days, provide to counsel for plaintiff 9 and, with respect to Woofter's assets, to the receiver, copies of all records or other 10 documentation pertaining to the accounts or assets described in Paragraph C above, including but 11 not limited to originals or copies of account applications, account statements, signature cards, 12 checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit 13 instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs. 14 E. 15 16 17 18 19 20 21 22 23 24 25 26

possession of any records, assets, property, or property right of defendants, and any other person,
 partnership, corporation, or legal entity that may be subject to any provision of this Order.

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VI. DEFENDANTS' FINANCIAL STATEMENTS

4 IT IS FURTHER ORDERED that defendants shall, within four business days from service 5 of this Order, prepare and deliver to the counsel for the Commission and, with respect to Woofter's assets, the receiver, completed financial statements on the forms attached to this Order. 6 7 The completed financial statements shall be accurate as of the date of service of this Order upon 8 the defendants. Defendants shall attach to these completed financial statements copies of all state 9 and federal income and property tax returns for each individual and entity since January 1, 1995 10 and copies of all policies of insurance in effect since January 1, 1996 with attachments and 11 schedules thereto, insuring against loss of, or damage to, real or personal property owned or held 12 by or for defendants.

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VII. ACCESS TO PREMISES

14 IT IS FURTHER ORDERED that defendants shall allow plaintiff and the receiver, and 15 their representatives, agents, and assistants, immediate access to Woofter's business premises and 16 any other locations where Woofter's property or business records are located. The locations of 17 defendant Woofter's business premises specifically include, but are not limited to, the Woofter 18 offices and facilities at 1500 Tropicana in Las Vegas, NV. The purpose of plaintiff's access shall 19 be to inspect and inventory all defendants' property, assets, and documents and to inspect and 20 copy any documents relevant to this action. For purposes of this provision, the term "document" 21 shall include all those items described in Paragraph III.B above. The Commission shall have the 22 right to remove documents from defendants' premises in order that they may be inspected, 23 inventoried, and copied. The documents so removed shall be returned to Woofter's premises, or 24 any other location directed by the receiver, within seven business days unless the receiver agrees 25 to a longer period. The FTC may also have immediate access to documents for purposes of 26 inspection, inventorying, and copying, in the event they have been removed from defendants'

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provision of services, for any telemarketer or seller of tickets, chances or interests in any foreign
 or U.S. lottery.

3 E. Cease all credit card laundering activity, as "credit card laundering" is defined in
4 Section 310.3(c) of the Telemarketing Sales Rule, 16 C.F.R. 310.3(c).

5 F. Continue and conduct any lawful business of Woofter not incident to telemarketing or selling of tickets, chances or interests in any foreign or U.S. lottery, in such manner, to such 6 7 extent, and for such duration as the receiver may in good faith deem to be necessary or 8 appropriate to profitably and lawfully operate that business, if at all; **provided** that the 9 continuation and conduct of the business shall be conditioned upon Woofter first demonstrating to 10 the satisfaction of the Court, at the show cause hearing scheduled in Section XX below, that the 11 business can be lawfully operated at a profit using the funds and other assets of the receivership 12 estate. Woofter shall immediately, and thereafter from time to time upon request of the receiver, 13 advise the receiver concerning each location at which Woofter conducts business and all matters 14 relevant to the continuation and conduct of that business.

G. Employ any managers, agents, employees, servants, accountants, and technical
specialists as may in the receiver's judgment be advisable or necessary in the management,
conduct, control, or custody of the affairs of Woofter and the assets thereof, and otherwise
generally to assist in the receivership.

H. Make any payments and disbursements that may be necessary and advisable for the
preservation of the properties of Woofter and as may be necessary and advisable in discharging
the receivership duties.

I. Give information, in a form to be provided or approved by counsel for the plaintiff,
regarding the status of Woofter and this action to current, former, or prospective customers of
Woofter that the receiver in its judgment deems advisable or necessary and practicable, including
but not limited to notice through answering machines and faxes.

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J. Receive and collect any and all sums of money due or owing Woofter in any
 manner whatsoever, whether the same are now due or shall hereafter become due and payable,
 except to the extent that debts are owed by members of the public who purchased tickets, chances
 or interests in any foreign or U.S. lottery, and to do such things and enter into such agreements in
 connection with the administration, care, preservation, and maintenance of the properties of
 Woofter as the receiver may deem advisable.

7 K. Institute, prosecute, and defend, compromise, adjust, intervene in, or become party 8 to any actions or proceedings in state, federal, or foreign courts as may in the receiver's opinion 9 be necessary or proper for the protection, maintenance, and preservation of the assets of Woofter 10 or the carrying out of the terms of this Order, and likewise to defend, compromise, or adjust or 11 otherwise dispose of any or all actions or proceedings instituted against the receiver or against 12 Woofter and also to appear in and conduct the defense of any suit or adjust or compromise any 13 actions or proceedings now pending in any court by or against Woofter where the prosecution, 14 defense, or other disposition of those actions or proceedings will, in the judgment of the receiver, 15 be advisable or proper for the protection of the properties of Woofter.

L. Make periodic reports, observations, and recommendations to this Court, and seek
guidance and instructions from this Court, if the receiver deems it necessary, upon one day's

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24 25 estate, provided that the receiver shall provide a monthly accounting to the Court, that the Court
 shall retain the right to accept or deny any particular charges, and that the receiver shall apply to
 the Court for approval of these charges at regular intervals of three months.

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IX. TURN OVER TO RECEIVER

5 IT IS FURTHER ORDERED that, immediately upon service of this Order upon them,
6 defendants, and any other person or entity served with a copy of this Order, shall immediately
7 deliver over to the receiver:

8 A. Possession and custody of all funds, assets, property owned beneficially or
9 otherwise, and all other assets, wherever situated, of Woofter.

B. Possession and custody of all 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,
membership and mailing lists, title documents, and other papers of Woofter.

C. Possession and custody of all funds and other assets belonging to members of the
public now held by Woofter.

16 D. All passwords or codes required to access any hardware, software, or electronic17 files on any media.

E. All keys, passwords, identification numbers, entry codes, and combinations to
locks required to open or gain access to any of Woofter's property or effects, Woofter's
computer files (including all backup tapes), and all monies in any bank deposited by or to the
credit of Woofter, wherever situated.

F. Information identifying the accounts, employees, properties, or other assets orobligations of Woofter.

G. A statement providing the total number of individuals and entities, and the name,
address, phone number, and account records of each of them, who is a customer or client of
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1 Woofter, whether directly or through any other entity, and the total dollar amount of money 2 received from each customer or client and paid out to each customer or client.

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X. NON-INTERFERENCE WITH RECEIVER

4 IT IS FURTHER ORDERED that the defendants shall refrain from interfering with the 5 receiver taking custody, control, or possession and from interfering in any manner, directly or 6 indirectly, with the custody, possession, and control of the receiver; shall fully cooperate with and 7 assist the receiver appointed in this action; and shall take no action, directly or indirectly, to hinder 8 or obstruct the receiver in the conduct of its duties or to interfere in any manner, directly or 9 indirectly, with the custody, possession, management, or control by the receiver.

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| 10 | XI. THIRD PARTY COOPERATION WITH RECEIVER |
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establish or enforce any claim, right or interest against or on behalf of defendants, or its
 subsidiaries or affiliates, and all others acting for or on behalf of those persons, including
 attorneys, trustees, agents, sheriffs, constables, marshals, and other officers, and their deputies
 and their respective attorneys, agents, servants, and employees, be and are hereby stayed from:

A. Commencing, prosecuting, continuing, or enforcing any suit or proceeding against
Woofter, or its subsidiaries or affiliates, or the receiver, except that any action may be filed to toll
any applicable statutes of limitations.

8 B. Commencing, prosecuting, continuing, or enforcing any suit or proceeding in the
9 name of the defendants or their subsidiaries or affiliates.

10 C. Accelerating the due date of any obligation or claimed obligation, enforcing any
11 lien upon, or taking or attempting to take possession or retaining possession of, property of
12 defendant Woofter, or its subsidiaries or affiliates, or any property claimed by Woofter, or
13 attempting to foreclose, forfeit, alter, or terminate any interests of Woofter in any property,
14 whether these acts are part of a judicial proceeding or otherwise.

D. Using self-help or executing or issuing, or causing the execution or issuance, of any court attachment, subpoena, replevin, execution, or other process for the purpose of impounding or taking possession of or interfering with or creating or enforcing a lien upon any property, wheresoever located, owned or in the possession of the Woofter, or its subsidiaries or affiliates, or the receiver appointed pursuant to this Order or any agents appointed by the receiver.

E. Doing any act or thing whatsoever to interfere with the receiver taking control,
possession, or management of the property subject to this receivership, or to in any way interfere
with the receiver, or to harass or interfere in any manner with the duties of the receiver; or to
interfere in any manner with the exclusive jurisdiction of this Court over the property and assets
of defendant Woofter or its subsidiaries or affiliates.

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Provided, however, that nothing in this section shall prohibit any federal, state, or local
 law enforcement or regulatory authority from commencing or prosecuting an action against any
 defendant.

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XIV. EXPEDITED DISCOVERY

5 IT IS FURTHER ORDERED that Plaintiff is granted leave to initiate discovery pursuant to FRCP 30(a), to take the deposition of any person, in any judicial district, at any time after the 6 7 date of this Order, upon three (3) days notice; pursuant to FRCP 33, defendants' responses to any 8 interrogatories served by the plaintiff shall be within ten (10) days after service of the 9 interrogatories; pursuant to FRCP 34, defendants' response to any request by plaintiff for 10 production of documents shall be within five (5) days after service of the request; pursuant to 11 FRCP 36 defendants' responses to any request for admissions served by plaintiff shall be within 12 five (5) days after service of the requests.

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XV. 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 or the receiver.

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XVI. NOTICE TO RELATED PERSONS AND ENTITIES

IT IS FURTHER ORDERED that 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, and representative, and shall, within ten days
from the date of entry of this Order, provide plaintiff with a sworn statement that 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.

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XVII. FILING OF PLEADINGS

IT IS FURTHER ORDERED that defendants shall file their opposition, including any
declarations, exhibits, memoranda, or other evidence on which defendants intend to rely, not less

1 than three (3) business days before the hearing on the order to show cause why a preliminary 2 injunction should not issue. Defendants shall serve copies of all these materials on plaintiff by 3 delivery or facsimile to designated counsel for the Federal Trade Commission, at 915 Second 4 Avenue, Suite 2896, Seattle, Washington 98174, prior to 4:00 p.m. on the day that it is filed.

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XVIII. WITNESSES AT HEARINGS

IT IS FURTHER ORDERED that, if any party to this action intends to present the 6 7 testimony of any witness at the hearing on a preliminary injunction in this matter, that party shall, 8 at least three (3) business days prior to the scheduled date and time of hearing, file with this Court 9 and serve on counsel for the other party, a statement of the name, address, and telephone number 10 of that witness, and either a summary of the witness' expected testimony, or the witness' 11 declaration or affidavit revealing the substance of the witness' expected testimony; and that, after 12 the service of the statement, the served party thereafter shall have two business days from the time 13 of service of the witness information to provide information to the Court and to the serving party 14 for any witness whose testimony the served party intends to present.

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XIX. EXPIRATION

XX. SHOW CAUSE

16 IT IS FURTHER ORDERED that the Temporary Restraining Order granted herein 17 expires ten (10) days after entry unless, within that time, the Order for good cause shown is 18 extended for an additional period not to exceed ten(10) days, or unless it is extended with the 19 consent of the parties.

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24 25 IT IS FURTHER Oll hed

| 1 | C.F.R. §§ 310.3(a), (b) and (c), continuing the relief provided herein and the freeze of their assets, |
|------------------------|--|
| 2 | and imposing whatever additional relief may be appropriate. |
| 3 | XXI. RETENTION OF JURISDICTION |
| 4 | IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all |
| 5 | purposes. |
| 6 | SO ORDERED, this day of April, 1997, at |
| 7 | |
| 8 | United States District Judge |
| 9 | |
| 10 11 PRESENTED BY: | PRESENTED BY |
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| 12 | |
| 13 | Eleanor Durham Nadine S. Samter |
| 14 | Attorney for Plaintiff Federal Trade Commission |
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