

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
Charlotte Division**

**FEDERAL TRADE COMMISSION and
STATE OF NORTH CAROLINA,**

Plaintiffs,

v.

RESORT SALES GROUP, INC. *et al.*,

Defendants.

Case No. 3-97-CV-382 (Mu)

**STIPULATED FINAL
JUDGMENT AND ORDER
FOR PERMANENT
INJUNCTION AND
MONETARY RELIEF WITH
WILLIE L. BILES**

Plaintiffs, the Federal Trade Commission ("FTC" or "Commission") and the State of North Carolina ("North Carolina"), have filed a Complaint for Permanent Injunction, Consumer Redress, and Other Equitable Relief pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and Section 4(a) of the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. § 6103(a), charging defendants Resort Sales Group, Inc., Cruise Link Travel, Inc., Design Travel of Altamonte Springs, Inc., Check America Corporation, Inc., Willie L. Biles, Margaret Katherine Alexander, Seth Miller, and Steven Brewer with violating Section 5 of the FTC Act, 15 U.S.C. § 45, and the FTC's Telemarketing Sales Rule, 16 C.F.R. §§ 310.3(a)(1)(i), 310(a)(2)(iii), and 310.3(b).

Plaintiffs FTC and North Carolina, and Defendant Willie L. Biles ("Biles"), have agreed to the entry of this Stipulated Final Judgment and Order for Permanent Injunction and Monetary Relief ("Order") by this Court to resolve all matters of dispute between them in this action. The FTC, North Carolina, and Defendant Biles have consented to the entry of this Order to avoid the costs of additional litigation. Defendant Biles denies any wrongdoing or liability.

NOW, THEREFORE, Plaintiffs FTC and North Carolina, and Defendant Biles, having requested the Court to enter this Order,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter and the parties to this action.
2. Venue is proper in the Western District of North Carolina.
3. The Complaint states a claim upon which relief may be granted against Defendant Biles under Sections 5, 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45, 53(b), and 57b; and Sections 310.3(a)(1)(i), 310.3(a)(2)(iii), and 310.3(b) of the Telemarketing Sales Rule, 16 C.F.R. §§ 310.3(a)(1)(i), 310.3(a)(2)(iii), and 310.3(b).
4. The activities of Defendant Biles are or were affecting commerce, as commerce is defined in 15 U.S.C. § 44.
5. Defendant Biles has waived all rights that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412, *amended by* Pub. L. 104-121, 110 Stat. 847, 863-64 (1996).
6. This Order does not constitute and shall not be interpreted to constitute an admission by Defendant Biles or a finding by the Court that Defendant Biles has engaged in violations of the FTC Act, the Telemarketing and Consumer Fraud and Abuse Prevention Act, or the Telemarketing Sales Rule.
7. This Order resolves all matters arising from the allegations in the Complaint.

8. Defendant Biles waives any claim he may have to any of the assets of defendants Resort Sales Group, Inc., Cruise Link Travel, Inc., Design Travel of Altamonte Springs, Inc., and Check America Corporation, Inc., including any proceeds from the sale of a condominium on Roswell Avenue in Charlotte, North Carolina, titled in the name of Resort Sales Group.

9. Defendant Biles waives all rights to seek judicial review or otherwise challenge or contest the validity of this Order, and further waives and releases any claim he may have arising from this law enforcement action against the FTC or North Carolina; the employees, agents, or representatives of the FTC and North Carolina; and the permanent receiver, Joseph W. Grier, III, and his employees, agents, or representatives.

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

DEFINITIONS

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

1. "Defendant Biles" means Willie L. Biles, his successors, assigns, agents, employees, salespersons, affiliates, all other entities or persons directly or indirectly under his control, and all persons or entities in active concert or participation with him who receive actual notice of this Order by personal service, facsimile, or otherwise.

2. "Travel-related product or service" means wholesale or retail air, sea, rail, or motorcoach transportation, lodging, accommodations, transfers, tours, car rental, or other such products or services, however denominated, including travel planning services, booking and reservation services, travel certificates or vouchers, coupons, reservation forms, or other documents that purport to be for full or partial payment or redeemable for any of the foregoing. "Travel-related product or service" does not include offering for sale or selling timeshares, or arranging for a consumer to visit timeshare facilities provided that: 1) the consumer is advised in

- A. Procuring or providing office space or equipment;
- B. Procuring or providing financial support;
- C. Processing or arranging for the processing of charges to a consumer's credit card account or debits to a consumer's checking account;
- D. Creating, writing, or formulating, or participating in the creation, writing, or formulation of any sales brochure, direct mail piece, facsimile, Internet page, e-mail, contract, or other marketing material;
- E. Creating, writing, or formulating, or participating in the creation, writing, or formulation of any sales script, sales outline, or verification script;
- F. Providing leads or lists of names and/or addresses of consumers;
- G. Receiving or responding to consumer inquiries or complaints; or
- H. Fulfilling or arranging for the fulfillment of any travel-related product or service.

PROHIBITED BUSINESS PRACTICES

III.

IT IS FURTHER ORDERED that, in connection with the sale of any product or service, Defendant Biles, individually or by or through any entity that he owns, operates, or controls, is hereby permanently enjoined and restrained from facilitating any credit or debit card transactions unless the consumer to be billed personally signs the credit or debit card slip.

IV.

IT IS FURTHER ORDERED that, in connection with the sale of any product or service, Defendant Biles, individually or by or through any entity that he owns, operates, or controls, is hereby permanently enjoined and restrained from: (1) creating any check or other financial instrument by which a consumer's checking account may be debited; and (2) depositing any check or other financial instrument by which a consumer's checking account may be debited unless the consumer personally signs the check or financial instrument.

V.

IT IS FURTHER ORDERED that, in connection with promoting, advertising, marketing, offering for sale, or selling timeshares, Defendant Biles is hereby permanently enjoined and restrained from misrepresenting, or assisting anyone Defendant Biles knows, or who he should know, is misrepresenting, in writing or orally, expressly or by implication:

- A. The total cost of a timeshare;
- B. The nature and amount of any fees, taxes, shipping costs, and other supplemental charges that a consumer must pay to obtain a timeshare;
- C. The value of a timeshare, including its value as an investment;
- D. The nature, characteristics, components, efficacy, or features of a timeshare;
- E. The ability to resell or in any way recoup or recover money invested in the timeshare; and
- F. Any other material facts regarding a timeshare.

VI.

IT IS FURTHER ORDERED that, in connection with offering for sale or selling timeshares, Defendant Biles is hereby permanently enjoined and restrained from failing to

disclose, or assisting anyone Defendant Biles knows, or who he should know, fails to disclose, in any written marketing and sales material and during any sales presentations, clearly and conspicuously, the total cost of a timeshare, including the nature and amount of any costs, taxes, and other supplemental charges that a consumer must pay to obtain or use a timeshare; *provided that*, the sale or selling of timeshares does not include arranging for a consumer to visit timeshare facilities provided that: 1) the consumer is advised in advance of any such visit if he or she is required to attend a sales presentation; 2) the consumer is not required to pay to stay at the timeshare facility during the visit; and 3) the timeshare visit is not part of any other package for which the consumer has to pay.

VII.

IT IS FURTHER ORDERED that, in connection with promoting, advertising, marketing, offering for sale, or selling any product or service, Defendant Biles is hereby permanently enjoined and restrained from making, or assisting anyone Defendant Biles knows, or who he should know, is making, directly or by implication, orally or in writing, any statement or representation of material fact that is false or misleading including but not limited to any misrepresentation regarding the total costs of any product or service.

VIII.

IT IS FURTHER ORDERED that Defendant Biles is hereby permanently enjoined and restrained from violating, or assisting others to violate, the TSR, including but not limited to:

A. Failing to disclose in a clear and conspicuous manner before a consumer discloses his or her credit card number, the total costs of any product or service; or

B. Misrepresenting, expressly or by implication, material aspects of the performance, efficacy, nature or central characteristics of any product or service.

A copy of the TSR is Attachment A to this Order and is incorporated in this Order as if fully set forth verbatim. In the event the TSR is amended or modified, Defendant Biles's compliance with the modified TSR shall not be deemed a violation of this Part of the Order.

IX.

IT IS FURTHER ORDERED that, in connection with promoting, advertising, marketing, offering for sale, or selling any product or service, Defendant Biles is hereby permanently enjoined and restrained from directly or indirectly failing to comply with, or assisting anyone Defendant Biles knows, or who he should know, fails to comply with North Carolina General Statutes §§ 75-32, 75-33, and 75-34, which cover representations concerning winning a prize, the eligibility to win a prize, and being specially selected. The North Carolina Prize Promotion Statutes are Attachment B to this Order, and their provisions are specifically incorporated by reference in this Part.

BOND FOR TELEMARKETING

X.

IT IS FURTHER ORDERED that Defendant Biles is permanently enjoined and restrained from engaging in, directly or indirectly, or assisting anyone Defendant Biles knows, or who he should know, plans to engage in any telemarketing in which Defendant Biles receives any remuneration from a consumer as a result of such telemarketing, whether directly or indirectly, unless at least ten (10) business days prior to any such telemarketing, Defendant Biles obtains a performance bond in the principal sum of Five Hundred Thousand Dollars (\$500,000) covering

his telemarketing; *provided, however*, that this provision shall not apply to Defendant Biles's arranging for a consumer to visit timeshare facilities provided that: 1) the consumer is advised in advance of any such visit if he or she is required to attend a sales presentation; 2) the consumer is not required to pay to stay at the timeshare facility during the visit; and 3) the timeshare visit is not part of any other package for which the consumer has to pay; *provided, further*, that Defendant Biles may receive remuneration from a third party for arranging for consumers to visit a timeshare facility, or as a result of a consumer purchasing a timeshare. The terms and conditions of the bond that Defendant Biles must obtain are as follows:

A. The bond shall be conditioned upon compliance by the Defendant Biles with: Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45; the TSR; the provisions of this

Federal Trade Commission Act, 15 U.S.C. § 45, the TSR, the provisions of this Order, and North

IT IS FURTHER ORDERED that Defendant Biles is permanently enjoined and restrained from, directly or indirectly, knowingly selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, facsimile number, credit or debit card number, bank card number, bank account number, E-mail address, or other identifying information of any person who paid any money to any defendant in this matter, their affiliates, or any companies or corporations they owned or controlled, in connection with the purchase of any travel-related product or service.

Provided, however, that Defendant Biles may disclose such identifying information to a bank, a law enforcement agency, Plaintiffs' or Defendant Biles's counsel or their agents, or as required by any law, regulation, or court order.

CONSUMER REDRESS

XII.

IT IS FURTHER ORDERED that Defendant Biles shall pay to Plaintiffs FTC and North Carolina as full satisfaction of all monetary claims asserted by Plaintiffs FTC and North Carolina in the Complaint the sum of Forty-Five Thousand Dollars (\$45,000).

A. Payment to the FTC shall be made by: 1) wire transfer to the account of the Federal Trade Commission, Treasury ABA number: 021030004, ALC number: 29000001, Reference information: FTC v. Resort Sales Group, Matter Number X-97-0075, or 2) certified check to the FTC, Division of Finance, 600 Pennsylvania Ave, N.W., Washington, DC 20580, Reference information: FTC v. Resort Sales Group, Matter Number X-97-0075, as follows:

1.

2. Thirty-Five Thousand Dollars (\$35,000) paid in twenty-four (24) equal installments of One Thousand Four Hundred and Fifty Eight Dollars and Thirty-Three Cents (\$1458.33) beginning thirty (30) days after the date this Order is entered by the Court and continuing every thirty (30) days thereafter; *provided, however*, that at any time, and without penalty, Defendant Biles may pay the balance due, make more frequent payments, make advance payments, or make larger payments than scheduled;
3. To ensure payment of the above \$35,000, Defendant Biles shall, within seven (7) business days of entry of this Order, execute a Promissory Note and a Security Agreement in such amount in favor of the Federal Trade Commission. Such note, which is attached as Attachment E, shall be secured by certain collateral described in the Security Agreement, which is attached as Attachment F. This secured collateral shall remain in place and in accordance with the terms of the Security Agreement until the judgment amount is paid in full. The parties will separately execute a Security Agreement concerning this secured collateral;

B. The Commission and North Carolina may apply any or all funds received from Defendant Biles pursuant to this Order, and any interest received thereon, to a consumer redress program and to related administrative expenses, or to the receivership estate; *provided, however*, that if the Commission and North Carolina determine that a consumer redress program is not feasible, the Commission and North Carolina will divide the funds in a manner agreed upon between the Commission and North Carolina; *provided, further*, that the Commission may pay its portion to the United States Treasury as disgorgement, and North Carolina may use its portion to

cover attorneys' fees and investigation costs, with the remaining amount to go to consumer protection or enforcement purposes. The Commission and North Carolina shall have full and sole discretion to:

1. Determine the criteria for participation by individual claimants in any consumer redress program implemented pursuant to this Order;
2. Determine the manner and timing of any notices to be given to consumers regarding the existence and terms of such programs; and
3. Delegate any and all tasks connected with such redress program to any individuals, partnerships, or corporations; and pay the fees, salaries, and expenses incurred thereby from the payments made pursuant to this Order;

and

C. Defendant Biles expressly waives his rights to litigate the issue of disgorgement, and shall not have any right to contest any decision or action of the FTC or North Carolina concerning the disbursement or disposition of the funds. Defendant Biles acknowledges and agrees that all money paid pursuant to this Order is irrevocably paid to the Commission and North Carolina for purposes of settlement between Plaintiffs FTC and North Carolina, and Defendant Biles.

RIGHT TO REOPEN agrees that all money all implement impdge47e 1

of this Order, the Commission or North Carolina obtains information indicating that Defendant Biles's representations on his financial statement concerning his assets, income, liabilities, or net worth were materially fraudulent, misleading, inaccurate, or incomplete, the Commission or North Carolina may, upon motion to the Court, request that the Order herein be reopened for the purpose of requiring additional consumer redress, and Defendant Biles agrees not to contest any reasonable evidence Plaintiffs FTC or North Carolina introduces on consumer injury; *provided, however*, that in all other respects this Order shall remain in full force and effect unless otherwise ordered by this Court; and *provided further*, that proceedings instituted under this Part are in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any other proceedings Plaintiffs FTC and North Carolina may initiate to enforce this Order.

XIV.

IT IS FURTHER ORDERED that, within five (5) business days of signing this Order, Defendant Biles shall submit to the Commission and North Carolina a truthful sworn statement, in the form that is Attachment C, that shall reaffirm and attest to the truth, accuracy, and completeness of the financial statement executed by Defendant Biles on _____.

The Commission and North Carolina are authorized to verify any information provided on the financial statement with any appropriate third party, including but not limited to any financial institution or credit reporting bureau.

LIFTING OF PRIOR ORDERS

XV.

IT IS FURTHER ORDERED that all prior orders shall be lifted as to Defendant Biles.

BANKRUPTCY PROVISIONS

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 employed in any capacity by such business, including as an independent contractor; that person's job title or position; 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 Part shall retain such records for any terminated employee for a period of two (2) 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 for all consumers to whom such business has sold any goods or services, if any;

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

1. The consumer's name, address, telephone number, and the dollar amount paid by the consumer;
2. The written complaint or refund request, if any, and the date of the complaint or refund request;
3. The basis of the complaint, including the name of any salesperson complained against, and the nature and result of any investigation conducted concerning any complaint;
4. Each response and the date of the response;
5. Any final resolution and the date of the resolution; and
6. In the event of a denial of a refund request, the reason for the denial; and

E. Copies of all sales scripts, training materials, advertisements, or other marketing materials utilized; *provided that*, copies of all sales scripts, training materials, advertisements, or other marketing materials utilized shall be retained for three (3) years after the last date of dissemination of any such materials.

MONITORING COMPLIANCE WITH THIS ORDER

XIX.

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

A. For a period of four (4) years from the date of entry of this Order, Defendant Biles shall notify the Commission and North Carolina of the following:

1. Any changes in his residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;
2. Any changes in his employment status (including self-employment) within ten (10) days of such change. Such notice shall include the name and address of each business that he is employed by, a statement of the nature of the business, and a statement of his duties and responsibilities in connection with the business or employment; and
3. Within thirty (30) days of any change in the corporate structure of Defendant Biles, such as creation, incorporation, dissolution, assignment, sale, merger, creation, dissolution of subsidiaries, proposed filing of a bankruptcy petition, or change in the corporate name or address, or any other change that may affect compliance obligations arising out of this Order;

B. Sixty (60) days after the date of entry of this Order, Defendant Biles shall provide a written report to the FTC and North Carolina, sworn to under penalty of perjury, setting forth in detail the manner and form in which Defendant Biles has complied and is complying with this Order. This report shall include but not be limited to:

1. The Defendant Biles's then-current residence address and telephone number;
2. The Defendant Biles's then-current employment, business addresses and telephone numbers, a description of the business activities of each such employer, and Defendant Biles's title and responsibilities for each employer;
3. A copy of each acknowledgment of receipt of this Order obtained by Defendant Biles pursuant to Part XXII;
4. A statement describing the manner in which Defendant Biles has complied and is complying with the injunctive provisions of this Order;

C. Upon written request by a representative of the Commission or North Carolina, Defendant Biles shall submit additional written reports (under oath, if requested) and produce documents on thirty (30) days' notice with respect to compliance with this Order, subject to Defendant Biles's fifth amendment privileges;

D. For the purposes of this Order all written notifications shall be mailed to:

Associate Director
Division of Marketing Practices
Federal Trade Commission Room 238
600 Pennsylvania Avenue, NW
Washington, DC 20580

Office of the Attorney General

Consumer Protection Section
Attn: Harriet Worley, Esq.
P.O. Box 629
Raleigh, North Carolina 27602

Richard Capriola, Esq.
Weinstock & Scavo, P.C.
3405 Piedmont Rd., N.E.
Atlanta, GA 30305

Harold Bender, Esq.
200 N. McDowell St.
Charlotte, NC 28204

Willie Biles
6822 Linkside Court
Charlotte, NC 28277

and

E. For the purposes of this Part, "employment" includes the performance of services as an employee, consultant, or independent contractor; and "employers" include any individual or entity for whom Defendant Biles performs services as an employee, consultant, or independent contractor.

XX.

IT IS FURTHER ORDERED that the Commission and North Carolina are authorized to monitor Defendant Biles's compliance with this Order by all lawful means, including but not limited to the following means:

A. The Commission and North Carolina may seek leave of court to obtain discovery from any person in the manner provided by Federal Rules of Civil Procedure Rules 26 - 37, including the use of compulsory process pursuant to Federal Rules of Civil Procedure Rule 45, for

the purpose of monitoring and investigating Defendant Biles's compliance with any provision of this Order;

B. The Commission and North Carolina are authorized to use representatives posing as consumers or suppliers to Defendant Biles, Defendant Biles's employees, or any other entity managed or controlled in whole or in part by Defendant Biles, without the necessity of identification or prior notice;

C. Nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, and 57b-1, to investigate whether Defendant Biles has violated any provision of this Order, Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, or the TSR; and

D. Nothing in this Order shall limit North Carolina's lawful use of North Carolina General Statute § 75-10 to investigate whether Defendant Biles has violated any provision of this Order, Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, the TSR, or North Carolina General Statute § 75-1.1.

XXI.

IT IS FURTHER ORDERED that, for a period of four (4) years from the date of entry of this Order, for the purpose of further determining compliance with this Order, Defendant Biles shall permit representatives of the Commission and North Carolina, within ten (10) business days of receipt of written notice from the Commission or North Carolina:

A. Access during normal business hours to any office, or facility storing documents, of any business that Defendant Biles is the majority owner of, or directly or indirectly manages or controls, that is engaged in telemarketing, or that is assisting others engaged in telemarketing. In

providing such access, Defendant Biles shall permit representatives of the Commission and North Carolina to inspect and copy all documents relevant to any telemarketing or compliance with this Order. Such access shall be conducted so as not to unreasonably interfere with Defendant Biles'

owner of, or directly or indirectly manages or controls, that is engaged in telemarketing, or in assisting others engaged in such business; and

B. Maintain for a period of three (3) years after creation, and upon reasonable notice, make available to representatives of the Commission and North Carolina, the original signed and dated acknowledgments of the receipt of copies of this Order, as required in Paragraph (A) of this Part.

XXIII.

IT IS FURTHER ORDERED that within five (5) business days after receipt by Defendant Biles of this Order as entered by the Court, Defendant Biles shall submit to the Commission a truthful sworn statement, in the form shown on Attachment D, that shall acknowledge receipt of this Order.

MISCELLANEOUS PROVISIONS

XXIV.

IT IS FURTHER ORDERED that this Order and the negotiations leading to the consummation of this Order are for the purpose of settlement and compromise of a disputed claim. Pursuant to Federal Rules of Evidence Rule 408, this Order and negotiations leading to the consummation of this Order are not admissible to prove liability for or invalidity of any claim or its amount. This Order is entered without admission of liability or wrongdoing by Defendant Biles, and is entered by Defendant Biles only to avoid the cost and expense of further litigation.

XXV.

IT IS FURTHER ORDERED that this Order is in settlement and full satisfaction of claims by the Commission, North Carolina, and the Receiver for monetary and/or injunctive relief

for any and all prior dealings or involvement of Defendant Biles with Resort Sales Group, Inc., Cruise Link Travel, Inc., Design Travel of Altamonte Springs, Inc., Check America Corporation, Inc., and Promotional Marketing, Inc., and their officers, directors, employees, agents, successors, and assigns.

XXVI.

IT IS FURTHER ORDERED that this Court will retain jurisdiction of this matter for the purpose of enabling any of the parties to this Order to apply to the Court at any time for such further orders or directives as may be necessary or appropriate for the interpretation or modification of this Order, for the enforcement of compliance therewith, or the punishment of violations thereof.

Dated: _____

SO ORDERED this _____ day of _____, 1999.

United States District Court Judge

The parties agree to the terms and conditions set forth above and hereby consent to entry of this Stipulated 299.

ATTACHMENT A
TELEMARKETING SALES RULE

ATTACHMENT C

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
Charlotte Division**

**FEDERAL TRADE COMMISSION and
STATE OF NORTH CAROLINA,**

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v.

RESORT SALES GROUP, INC. *et al.*,

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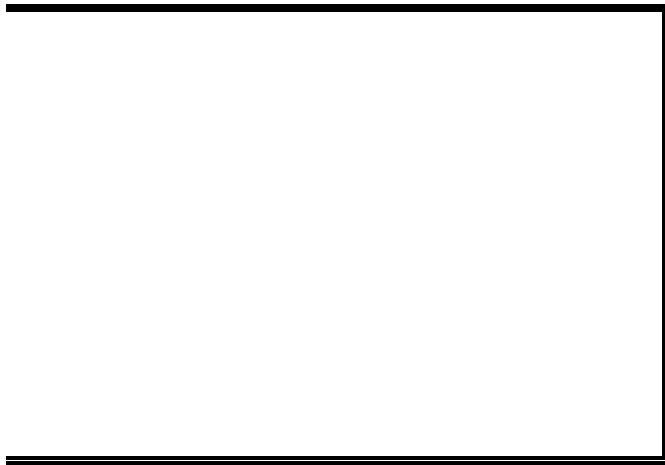
**REAFFIRMATION OF
FINANCIAL STATEMENT**

I, Willie L. Biles, hereby state that the information contained in the financial statement I signed on _____ and provided to the Federal Trade Commission and the State of North Carolina shortly thereafter was true, accurate, and complete at such time.

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

Dated: _____
Willie L. Biles

Notary:



Executed on _____, 1999, at _____

Willie L. Biles

State of _____, City of _____

Subscribed and sworn to before me
this ____ day of _____, 1999

ATTACHMENT E

Note

ATTACHMENT F

Security Agreement