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7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 _____)
11 **FEDERAL TRADE COMMISSION,**)
12 **Plaintiff,**)
13 **v.**)
14 **CONSUMER REPAIR SERVICES,**)
INC., a Georgia Corporation;)
15 **MARK STEINBERG, individually**)
and as an officer of)
CONSUMER REPAIR SERVICES,)
17 **INC.;**)
18 **JAMES DEHART, individually**)
and as an officer of)
19 **CONSUMER REPAIR SERVICES,**)
INC.; and)
20 **FRANK CIARAVINO,**)
individually and as an agent)
of CONSUMER REPAIR SERVICES,)
22 **INC.,**)
23 **Defendants.**)
24 _____)

CV-

[PROPOSED]
TEMPORARY RESTRAINING ORDER
WITH ASSET FREEZE, APPOINTMENT
OF A TEMPORARY RECEIVER, ORDER
PERMITTING EXPEDITED
DISCOVERY, AND ORDER TO SHOW
CAUSE WHY A PRELIMINARY
INJUNCTION SHOULD NOT ISSUE

25 Plaintiff Federal Trade Commission ("Commission" or "FTC"),
26 pursuant to Section 13(b) and 19 of the Federal Trade Commission
27 Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the
28 Telemarketing and Consumer Fraud and Abuse Prevention Act

1 ("Telemarketing Act"), 15 U.S.C. §§ 6101-6108, filed a complaint
2 for permanent injunction and other relief and applied *ex parte*
3 for a Temporary Restraining Order with Asset Freeze, Appointment
4 of a Temporary Receiver, an Order Permitting Expedited Discovery,
5 and an Order to Show Cause Why a Preliminary Injunction Should
6 Not Issue pursuant to Federal Rule of Civil Procedure 65.

7 **FINDINGS OF FACT**

8 The Court has considered the pleadings, declarations,
9 exhibits, and memoranda filed in support of the Commission's
10 application and makes the following findings of fact:

11 1. This Court has jurisdiction of the subject matter of
12 this case, and there is good cause to believe it will have
13 jurisdiction over all parties.

14 2. Venue lies properly within this Court.

15 3. There is good cause to believe that Defendants Consumer
16 Repair Services, Inc., Mark Steinberg, James DeHart, and Frank
17 Ciaravino have engaged in and are likely to engage in acts and
18 practices that violate Section 5(a) of the FTC Act, 15 U.S.C.
19 § 45(a), and the Telemarketing Sales Rule, 16 C.F.R. Part 310,
20 and that the Commission is likely to prevail on the merits of
21 this action.

22 4. There is good cause to believe that immediate and
23 irreparable harm will result from the Defendants' ongoing
24 violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and
25 the Telemarketing Sales Rule, 16 C.F.R. Part 310, absent entry of
26 this Temporary Restraining Order ("Order").

27 5. There is good cause to believe that immediate and
28 irreparable damage to the Court's ability to grant effective

1 final relief for consumers in the form of monetary redress or
2 restitution will occur from the sale, transfer, assignment or
3 other disposition or concealment by Defendants of their assets or
4 records unless Defendants are immediately restrained and enjoined
5 by Order of this Court.

6 6. There is good cause for issuing this Order without
7 prior notice to the Defendants of the Commission's application,
8 pursuant to Federal Rule of Civil Procedure 65(b) and Local Rule
9 7.18.2.

10 7. Good cause exists for appointing a temporary receiver
11 for Consumer Repair Services, Inc.

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

15 **ORDER**

16 **Definitions**

1 predecessor association of any of the Named Defendants (as
2 defined below).

3 B. "Document" is synonymous in meaning and equal in scope
4 to the usage of the term in Federal Rule of Civil Procedure
5 34(a), and includes writings, drawings, graphs, charts,
6 photographs, audio and video recordings, computer records, and
7 other data compilations from which information can be obtained
8 and translated, if necessary, through detection devices into
9 reasonably usable form. A draft or non-identical copy is a
10 separate document within the meaning of the term.

11 C. "Named Defendants" means Consumer Repair Services,
12 Inc., Mark Steinberg, James DeHart, and Frank Ciaravino, and each
13 of them, by whatever names each might be known.

14 D. "Receivership Defendant" means Consumer Repair
15 Services, Inc. and any formal or informal predecessor association
16 of any of the Named Defendants.

17 **I. PROHIBITED BUSINESS ACTIVITIES**

18 **IT IS THEREFORE ORDERED** that Defendants are hereby
19 temporarily restrained and enjoined from:

20 A. Falsely representing, expressly or by implication, that
21 Defendants are calling from Visa, MasterCard, or the consumer's
22 credit card issuer;

23 B. Falsely representing, expressly or by implication, that
24 if consumers do not purchase Defendants' services, consumers will
25 be held fully liable for any unauthorized charges made to their
26 credit card accounts;

27 C. Falsely representing, expressly or by implication, that
28 consumers have purchased or agreed to purchase goods or services

1 from Defendants, and therefore owe money to Defendants;

2 D. Failing to return, credit or otherwise refund the
3 purchase price to any consumers who sought a refund and have
4 satisfied the material terms of Defendant's refund policy.

5 **II. ASSET FREEZE**

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

8 A. Except as otherwise provided herein, transferring,
9 converting, encumbering, selling, concealing, dissipating,
10 disbursing, assigning, spending, withdrawing, or otherwise
11 disposing of any funds, property, accounts, contracts, shares of
12 stock, or other assets (collectively "assets"), wherever located,
13 that are (1) owned or controlled by Defendants in whole or in
14 part; or (2) in the actual or constructive possession of
15 Defendants; or (3) owned, controlled by, or in the actual or
16 constructive possession of any corporation, partnership, or other
17 entity directly or indirectly owned, managed, or controlled by,
18 or under common control with Named Defendants, including but not
19 limited to, DeBerg Management, Inc., a Georgia corporation,
20 Select Properties Group, LLC, a Georgia LLC, Cherry Blossom
21 Promotions, Inc., a Georgia corporation, and Manhattan West
22 Marketing, Inc., a Nevada corporation. This Section shall
23 include, but not be limited to, any assets held for, on behalf
24 of, for the benefit of, or by Named Defendants, or their
25 affiliates or subsidiaries, at any bank or savings and loan
26 institution, or with any broker, dealer, escrow agent, title
27 company, commodity trading company, precious metal dealer, or
28 other financial institution or depository of any kind, including

1 without limitation any assets at:

2 First Union National Bank (including account number
3 2000006557979 in the name of Consumer Repair Services,
4 Inc.);

5 First National Bank of Newton County (including account
6 numbers 090492 in the name of DeBerg Management, Inc. and
7 087432 in the name of Consumer Repair Services, Inc.);

8 Wells Fargo Bank (including account number 0488648270 in the
9 name of Manhattan West Marketing, Inc.); or

10 First National Bank of Metropolis;

11 B. Opening or causing to be opened any safe deposit boxes
12 or storage facilities titled in the name of any Named Defendants
13 or subject to access by Named Defendants or under their control,
14 without providing the Commission prior notice and an opportunity
15 to inspect the contents in order to determine whether they
16 contain assets covered by this Section.

17 Provided that this Section shall be construed to apply to assets
18 that Defendants acquire following entry of this Order only if
19 such assets are derived from the operation of any activity
20 prohibited by this Order or any other illegal activity.

21 **III. FINANCIAL REPORTS**

22 **IT IS FURTHER ORDERED** that Named Defendants shall within
23 three business days from service of this Order complete and
24 deliver to the Commission the financial disclosure forms as
25 follows:

26 A. Any corporate Defendant shall complete and deliver to
27 counsel for the Commission either the "Financial Statement of
28 Corporate Defendant" that is attached to this Order as Attachment

1 1, provided that any corporate Defendant need not separately
2 complete this form if it is provided by an individual Defendant
3 pursuant to Part B of this Section;

4 B. Any individual Defendants shall, for himself,

5 1. complete and deliver to counsel for the Commission
6 the "Financial Statement of Individual Defendant" that
7 is attached to this Order as Attachment 2, and

8 2. for each business entity he owns, controls,
9 operates, or of which he is an officer, and for each
10 trust of which he or she is a trustee, complete and
11 deliver to counsel for the Commission the "Financial
12 Statement of Corporate Defendant" that is attached to
13 this Order as Attachment 1.

14 IV. FOREIGN ASSETS

15 **IT IS FURTHER ORDERED** that, within three business days
16 following service of this Order, Named Defendants shall:

17 A. Provide counsel for the Commission with a full
18 accounting of all funds, documents and assets outside of the
19 territory of the United States which are held either: (1) by
20 them, (2) for their benefit, or (3) under their direct or
21 indirect control, jointly or singly;

22 B. Take such steps as are necessary to repatriate to the
23 territory of the United States of America all assets held: (1)
24 by them, (2) for their benefit, or (3) under their direct or
25 indirect control, jointly or singly;

26 C. The same business day as any repatriation under Section
27 IV.B. above, (1) notify counsel for the Commission of the name
28 and location of the financial institution or other entity that is

1 the recipient of such funds, documents, or assets; and (2) serve
2 this Order on any such financial institution or other entity;

3 D. Thereafter hold and retain all repatriated funds,
4 documents and assets within their control and otherwise prevent
5 any transfer, disposition, or dissipation whatsoever of any such
6 assets or funds; and

7 E. Provide the Commission access to Named Defendants'
8 records and documents held by financial institutions outside the
9 territory of the United States by signing the Consent to Release
10 of Financial Records attached to this Order as Attachment 3.

11 **V. APPOINTMENT OF TEMPORARY RECEIVER**

12 **IT IS FURTHER ORDERED** that Susan I. Montgomery is appointed
13 temporary receiver ("Receiver") for Consumer Repair Services,
14 Inc. and any of its affiliates or subsidiaries that the
15 Receivership Defendant controls, with the full power of an equity
16 receiver. The Receiver shall be the agent of this Court and
17 solely the agent of this Court in acting as Receiver under this
18 Order. The Receiver shall be accountable directly to this Court.
19 The Receiver shall comply with all Local Rules of this Court
20 governing receivers, including Local Rule 25.

21 **VI. RECEIVERSHIP DUTIES**

22 **IT IS FURTHER ORDERED** that the Receiver is directed and
23 authorized to accomplish the following:

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

1 Receivership Defendant;

2 B. Take exclusive custody, control and possession of all
3 assets and documents of, or in the possession, custody or under
4 the control of, the Receivership Defendant, wherever situated.
5 The Receiver shall have full power to divert mail and to sue for,
6 collect, receive, take in possession, hold, and manage all assets
7 and documents of the Receivership Defendant and other persons or
8 entities whose interests are now held by or under the direction,
9 possession, custody, or control of the Receivership Defendant.
10 Provided, however, that the Receiver shall not attempt to collect
11 any amount from a consumer if the Receiver believes the consumer
12 was a victim of the unfair or deceptive acts or practices alleged
13 in the Complaint in this matter. Provided further that the
14 Receiver shall immediately return to consumers without further
15 court order any funds that are identifiable as received from
16 specific consumers following the Receiver's appointment or that
17 are received at the Receivership Defendant's premises or
18 mailboxes or forwarded to the Receiver after entry of this Order
19 and that were, based upon the Receiver's good faith
20 determination, procured by use of the unfair or deceptive acts or
21 practices alleged in the Complaint in this matter. Likewise,
22 upon the Receiver's appointment, the Receiver shall take all
23 reasonable steps to halt immediately the debit of consumer bank
24 accounts or charges to consumer credit cards that in the
25 Receiver's good faith determination were procured by use of the
26 unfair or deceptive acts or practices alleged in the Complaint in
27 this matter;

28 C. Take all steps necessary to secure the business

1 premises operating on behalf of or for the benefit of the
2 Receivership Defendant, including but not limited to all such
3 premises located at 1131 and 1133 West Avenue SW, Conyers,
4 Georgia and 6244 Laurel Canyon Blvd., North Hollywood,
5 California. Such steps may include, but are not limited to, the
6 following as the Receiver deems necessary or advisable: (1)
7 serving and filing this Order; (2) completing a written inventory
8 of all receivership assets; (3) obtaining pertinent information
9 from all employees and other agents of the Receivership
10 Defendant, including but not limited to, the name, home address,
11 social security number, job description, method of compensation,
12 and all accrued and unpaid commissions and compensation of each
13 employee or agent; (4) video taping or photographing all portions
14 of the location; (5) securing the location by changing the locks
15 and disconnecting any computer modems or other means of access to
16 the computer or other records maintained at that location; (6)
17 requiring any persons present on the premises at the time this
18 Order is served to leave the premises, to provide the Receiver
19 with proof of identification, or to demonstrate to the
20 satisfaction of the Receiver that such persons are not removing
21 from the premises documents or assets of the Receivership
22 Defendant; and (7) regardless of any other provision of this
23 Order, the Receiver shall determine what constitutes reasonable
24 access by other persons or entities to the business premises of
25 the Receivership Defendant; and

26 D. Conserve, hold, and manage all receivership assets, and
27 perform all acts necessary or advisable to preserve the value of
28 those assets, in order to prevent any irreparable loss, damage,

1 or injury to consumers or to creditors of the Receivership
2 Defendant, including, but not limited to, obtaining an accounting
3 of the assets and preventing transfer, withdrawal, or
4 misapplication of assets;

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

7 F. Prevent the inequitable distribution of assets to
8 determine, adjust, and protect the interests of consumers and
9 creditors who have transacted business with the Receivership
10 Defendant;

11 G. Manage and administer the business of the Receivership
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1 payments;

2 J. Determine and implement the manner in which the
3 Receivership Defendant will comply with, and prevent violations
4 of, this Order and all other applicable laws, including but not
5 limited to, revising sales materials and implementing monitoring
6 procedures;

7 K. Institute, compromise, adjust, appear in, intervene in,
8 or become party to such actions or proceedings in state, federal
9 or foreign courts that the Receiver deems necessary and advisable
10 to preserve or recover the assets of the Receivership Defendant
11 or that the Receiver deems necessary and advisable to carry out
12 the Receiver's mandate under this Order;

13 L. Defend, compromise, adjust, or otherwise dispose of any
14 or all actions or proceedings instituted in the past or in the
15 future against the Receiver in his or her role as Receiver, or
16 against the Receivership Defendant that the Receiver deems
17 necessary and advisable to preserve the assets of the
18 Receivership Defendant or that the Receiver deems necessary and
19 advisable to carry out the Receiver's mandate under this Order;

20 M. Continue and conduct the business of the Receivership
21 Defendant in such a manner, to such extent, and for such duration
22 as the Receiver may in good faith deem to be necessary or
23 appropriate to operate the business profitably and lawfully, if
24 at all; provided, however, that the continuation and conduct of
25 the business shall be conditioned upon the Receiver's good faith
26 determination that the business can be lawfully operated at a
27 profit using the assets of the receivership estate;

28 N. Issue subpoenas to obtain documents and records

1 pertaining to the receivership, and conduct discovery in this
2 action on behalf of the receivership estate;

3 O. Open one or more bank accounts in the Central District
4 of California as designated depositories for funds of the
5 Receivership Defendant. The Receiver shall deposit all funds of
6 the Receivership Defendant in such a designated account and shall
7 make all payments and disbursements from the receivership estate
8 from such an account;

9 P. Maintain accurate records of all receipts and
10 expenditures that he or she makes as Receiver; and

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

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1 Receivership Defendant, including but not limited to, books,
2 records, accounts, writings, drawings, graphs, charts,
3 photographs, audio and video recordings, computer records, and
4 other data compilations, electronically-stored records, or any
5 other papers of any kind or nature;

6 C. Transferring, receiving, altering, selling,
7 encumbering, pledging, assigning, liquidating, or otherwise
8 disposing of any assets owned, controlled, or in the possession
9 or custody of, or in which an interest is held or claimed by, the
10 Receivership Defendant, or the Receiver;

11 D. Excusing debts owed to the Receivership Defendant;

12 E. Failing to notify the Receiver of any asset, including
13 accounts, of the Receivership Defendant held in any name other
14 than the name of the Receivership Defendant, or by any person or
15 entity other than the Receivership Defendant, or failing to
16 provide any assistance or information requested by the Receiver
17 in connection with obtaining possession, custody, or control of
18 such assets;

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

28 G. Filing, or causing to be filed, any petition on behalf

1 of the Receivership Defendant for relief under the United States
2 Bankruptcy Code, 11 U.S.C. et seq., without prior permission from
3 this Court.

4 **VIII. DELIVERY OF RECEIVERSHIP PROPERTY**

5 **IT IS FURTHER ORDERED** that:

6 A. Immediately upon service of this Order upon them, or
7 within such period as may be permitted by the Receiver,
8 Defendants or any other person or entity shall transfer or
9 deliver possession, custody, and control of the following to the
10 Receiver:

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1 B. In the event any person or entity fails to deliver or
2 transfer any asset or otherwise fails to comply with any
3 provision of this Section, the Receiver may file ex parte an
4 Affidavit of Non-Compliance regarding the failure. Upon filing
5 of the affidavit, the Court may authorize, without additional
6 process or demand, Writs of Possession or Sequestration or other
7 equitable writs requested by the Receiver. The writs shall
8 authorize and direct the United States Marshal or any sheriff or
9 deputy sheriff of any county, or any other federal or state law
10 enforcement officer, to seize the asset, document, or other thing
11 and to deliver it to the Receiver.

12 **IX. TRANSFER OF FUNDS TO RECEIVER**

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

21 **X. STAY OF ACTIONS**

22 **IT IS FURTHER ORDERED** that:

23 A. Except by leave of this Court, during pendency of the
24 receivership ordered herein, Named Defendants and all other
25 persons and entities be and hereby are stayed from taking any
26 action to establish or enforce any claim, right, or interest for,
27 against, on behalf of, in, or in the name of, the Receivership
28 Defendant, any of its subsidiaries, affiliates, partnerships,

1 assets, documents, or the Receiver or the Receiver's duly
2 authorized agents acting in their capacities as such, including
3 but not limited to, the following actions:

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

8 2. Accelerating the due date of any obligation or
9 claimed obligation; filing, creating, perfecting, or
10 enforcing any lien; enforcing any right of setoff;
11 taking or attempting to take possession, custody or
12 control of any asset; attempting to foreclose, forfeit,
13 alter, or terminate any interest in any asset, whether
14 such acts are part of a judicial proceeding, are acts
15 of self-help, or otherwise;

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

22 4. Doing any act or thing whatsoever to interfere
23 with the Receiver taking custody, control, possession,
24 or management of the assets or documents subject to
25 this receivership, or to harass or interfere with the
26 Receiver in any way, or to interfere in any manner with
27 the exclusive jurisdiction of this Court over the
28 assets or documents of the Receivership Defendant.

1 B. This Section does not stay:

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

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

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

11 4. The commencement of any action by the Secretary of
12 the United States Department of Housing and Urban
13 Development to foreclose a mortgage or deed of trust in
14 any case in which the mortgage or deed of trust held by
15 the Secretary is insured or was formerly insured under
16 the National Housing Act and covers property, or
17 combinations of property, consisting of five or more
18 living units; and

19 5. The issuance to the Receivership Defendant of a
20 notice of tax deficiency.

21 C. Except as otherwise provided in this Order, all persons
22 and entities in need of documentation from the Receiver shall in
23 all instances first attempt to secure such information by
24 submitting a formal written request to the Receiver, and, if such
25 request has not been responded to within 30 days of receipt by
26 the Receiver, any such person or entity may thereafter seek an

1 in whole or in part, directly or indirectly, by Named Defendants.

2 **XIV. RECORD KEEPING/BUSINESS OPERATIONS**

3 **IT IS FURTHER ORDERED** that Named Defendants are each hereby
4 temporarily restrained and enjoined from:

5 A. Failing to make, keep, and provide to the Commission
6 upon request by counsel for the Commission, an accurate
7 accounting for themselves and for DeBerg Management, Inc., Cherry
8 Blossom Promotions, Inc., Select Properties Group, LLC, Manhattan
9 West Marketing, Inc., and any business or entity owned or
10 controlled, in whole or in part, directly or indirectly, by them,
11 which accounting shall include the creation and retention of
12 documents that, in reasonable detail, accurately, fairly, and
13 completely reflect all assets (including, but not limited to,
14 loans, gifts and revenue) received, disbursements, transactions,
15 and expenditures of money, beginning immediately upon service or
16 actual notice of this Order; and

17 B. Creating, operating, or exercising any control over any
18 business entity, including any partnership, limited partnership,
19 joint venture, sole proprietorship or corporation, without first
20 serving on counsel for the Commission a written statement
21 disclosing: (1) the name of the business entity; (2) the address
22 and telephone number of the business entity; (3) the names of the
23 business entity's officers, directors, principals, managers and
24 employees; and (4) a detailed description of the business
25 entity's intended activities.

26 **XV. REQUIRED DISTRIBUTION OF ORDER BY DEFENDANTS**

27 **IT IS FURTHER ORDERED** that Named Defendants shall
28 immediately provide a copy of this Order to each affiliate,

1 partner, division, sales entity, successor, assign, employee,
2 independent contractor, agent, attorney, and representative, of
3 Named Defendants, including every independent telemarketing sales
4 room and every billing agent in the sale of or billing for
5 Defendants' services, and shall, within ten days from the date of
6 entry of this Order, serve upon counsel for the Commission a
7 sworn statement that they have complied with this provision of
8 the Order, which statement shall include the names and street
9 addresses of each such person or entity who received a copy of
10 the Order.

11 **XVI. SERVICE OF ORDER**

12 **IT IS FURTHER ORDERED** that:

13 A. Plaintiff's agents or employees and the Receiver may
14 serve this Order upon any financial institution, or other entity
15 or person that may have possession, custody, control, or
16 knowledge of any documents or assets of any Named Defendant, or
17 any other entity or person that may be otherwise subject to any
18 provision of this Order, by delivering a copy of the Order by any
19 means, including facsimile transmission, to any office, branch or
20 location; and

21 B. For purposes of service on anyone in possession of
22 records, assets, property, or property rights, actual notice of
23 this Order shall be deemed complete upon notification by any
24 means, including but not limited to, notice from service by
25 facsimile transmission of pages 1-28 of this Order, without
26 Attachments 1-3.

27 **XVII. IMMEDIATE ACCESS TO DEFENDANTS' BUSINESS RECORDS**

28 **IT IS FURTHER ORDERED** that the Commission's representatives,

1 agents, and assistants, as well as Named Defendants and their
2 representatives shall have reasonable access to any premises
3 operating on behalf of or for the benefit of the Receivership
4 Defendant, including without limitation, 1133 West Ave. SW,
5 Conyers, Georgia, 1131 West Ave. SW, Conyers, Georgia, and 6244
6 Laurel Canyon Blvd., North Hollywood, California. The purpose of
7 this access shall be to inspect and copy any and all material
8 that may be relevant to this action, including without limitation
9 documents, books, records, accounts, computer data, tapes, and
10 any materials relating to any of the Defendants' assets.

11 **XVIII. CONSUMER CREDIT REPORTS**

12 **IT IS FURTHER ORDERED** that pursuant to Section 604(a)(1) of
13 the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(1), any
14 consumer reporting agency served with this Order shall promptly
15 furnish consumer reports as requested concerning Defendants Mark
16 Steinberg, James DeHart, and Frank Ciaravino to counsel for the
17 Commission.

18 **XIX. RETENTION OF ASSETS AND RECORDS**

19 **IT IS FURTHER ORDERED** that, effective immediately upon
20 notification of this Order, and pending determination of
21 Plaintiff's request for a preliminary injunction, any bank,
22 savings and loan institution, credit union, financial
23 institution, brokerage house, escrow agent, money market or
24 mutual fund, title company, commodity trading company, common
25 carrier, storage company, trustee, commercial mail receiving
26 agency, mail holding or forwarding company, or any other
27 partnership, corporation, or legal entity, business entity, or
28 person, including but not limited to, First Union National Bank,

1 First National Bank of Newton County, Wells Fargo Bank, and First
2 National Bank of Metropolis, that holds, controls or maintains
3 custody of any account or asset belonging to or titled in the
4 name of any Named Defendant or belonging to or titled in the name
5 of any corporation, partnership, or other entity directly or
6 indirectly owned, managed, or controlled by, in whole or in part,
7 any Named Defendant, or to which they are a signatory, or which
8 is held on behalf of, or for the benefit of, any Named Defendant,
9 individually or jointly, or that has held, controlled or
10 maintained custody of any such account or asset at any time since
11 January 1, 1999, shall:

12 A. Prohibit Named Defendants and their agents, servants,
13 employees, attorneys, and all persons or entities directly or
14 indirectly under their control, or in common control with them,
15 from withdrawing, removing, assigning, transferring, pledging,
16 encumbering, disbursing, dissipating, converting, selling, or
17 otherwise disposing of any such account or asset except:

- 18 1. As directed by further order of the Court; or
- 19 2. By written agreement of the Commission and the
20 parties claiming an interest in such account or asset;

21 B. Maintain the status quo of any such account or asset
22 and shall not withdraw, remove, assign, transfer, pledge,
23 encumber, disburse, dissipate, convert, sell, or otherwise
24 dispose of any such account or asset except:

- 25 1. As directed by further Order of the Court; or
- 26 2. By written agreement of the Commission and the
27 parties claiming an interest in such account or asset;

28 C. Deny Named Defendants and their agents, servants,

1 employees, attorneys, and all persons or entities directly or
2 indirectly under their control or in common control with them,
3 unless accompanied by counsel for the Federal Trade Commission,
4 access to any safe deposit box that is:

5 1. Titled in the name of any Named Defendant or their
6 affiliates or subsidiaries, either individually or
7 jointly; or

8 2. Otherwise subject to access by any Named Defendant
9 or their affiliates;

10 D. Provide counsel for the Commission within three
11 business days of receiving a copy of this Order, a sworn
12 statement setting forth:

13 1. The identification number of each such account or
14 asset belonging to or titled in the name of any Named
15 Defendant or to which any Named Defendant is a
16 signatory, or which is held on behalf of, or for the
17 benefit of, any Named Defendant;

18 2. The balance of each such account, or a description
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1 to this Section, shall be sufficient if made by facsimile or by
2 overnight delivery; and

3 B. To demand the production of documents, on 72 hours'
4 notice, from any person, whether or not a party, relating to the
5 nature, status, or extent of Named Defendants' assets, or of
6 their affiliates or subsidiaries; the location of documents
7 reflecting the business transactions of Named Defendants; the
8 whereabouts of Named Defendants; and the applicability of any
9 evidentiary privileges to this action, provided that 24 hours'
10 notice shall be deemed sufficient for the production of any such
11 documents that are maintained or stored as electronic data.

12 **XXI. DEFENSE COUNSEL'S ATTORNEYS' FEES**

13 **IT IS FURTHER ORDERED** that if Defendants retain counsel, the
14 Court will consider awarding attorneys' fees to Defendants'
15 counsel only upon a showing of good cause upon written motion.
16 In no event will the Court award more than a reasonable amount
17 for attorneys' fees. The term "reasonable," however, shall not
18 be solely determined in light of prevailing rates in the
19 community for the work performed. Rather, the Court will also
20 consider what is "reasonable" in light of the totality of the
21 circumstances, including the likelihood of success, the amount of
22 gross receipts from consumers, and the amount of frozen assets.
23 Defendants' attorneys' fees shall not be paid until after gross
24 receipts from consumers are ascertained.

25 **XXII. DURATION OF TEMPORARY RESTRAINING ORDER**

26 **IT IS FURTHER ORDERED** that the Temporary Restraining Order
27 granted herein shall expire on _____, 2000, unless
28 within such time, the Order is extended for an additional period

1 not to exceed ten days for good cause shown, or unless it is
2 further extended with the consent of the parties.

3 **XXIII. ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION**

4 **IT IS FURTHER ORDERED**, pursuant to Federal Rule of Civil
5 Procedure 65(b) and Local Rule 7.17, Defendants shall appear
6 before this Court in Courtroom ____ of the _____ Federal
7 Courthouse, located at _____ on the ____ day of
8 _____, 2000, at _____ o'clock ____m., to show
9 cause, if any, why this Court should not enter a preliminary
10 injunction, pending final ruling on the Complaint against Named
11 Defendants enjoining them from further violations of Section 5(a)
12 of the FTC Act, 15 U.S.C. § 45(a), and the Telemarketing Sales
13 Rule, 16 C.F.R. Part 310, and imposing such additional relief as
14 may be appropriate.

15 **XXIV. SERVICE OF DOCUMENTS AND EVIDENCE**

16 **IT IS FURTHER ORDERED** that Named Defendants, in responding
17 to this Court's Order to Show Cause, shall serve all memoranda,
18 declarations and other evidence on which they intend to rely no
19 later than 4:00 p.m. (PT) of the fourth business day prior to the
20 preliminary injunction hearing set in this matter. Service on
21 the Commission shall be performed by personal delivery to counsel
22 for the Commission or their designated agent at: Federal Trade
23 Commission, 10877 Wilshire Blvd., Suite 700, Los Angeles,
24 California 90024. The Commission may serve and file a
25 supplemental memorandum of points and authorities based on
26 evidence discovered subsequent to the filing of its Complaint by
27 no later than 4:00 p.m. (PT) of the fourth business day prior to
28 the preliminary injunction hearing, and may serve and file a

1 reply to the Named Defendants's opposition by no later than 4:00
2 p.m. on the day prior to the preliminary injunction hearing.
3 Service shall be made by delivering a copy to the Named
4 Defendants' business address identified on their opposition.

5 **XXV. NO EXAMINATION OF WITNESSES**

6 **IT IS FURTHER ORDERED** that there will be no direct
7 examination of witnesses at the preliminary injunction hearing in
8 this matter.

9 **XXVI. RETENTION OF JURISDICTION**

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

12
13 No security is required of any agency of the United States
14 for the issuance of a restraining order. Fed. R. Civ. P. 65(c).

15
16 **SO ORDERED**, this _____ day of _____, 2000, at
17 _____ .m.

18 _____
19 United States District Judge

20 Presented By:

21 _____
22 THOMAS SYTA
23 BARBARA Y.K. CHUN
24 Attorneys for Plaintiff
25 FEDERAL TRADE COMMISSION
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1 **Attachments 1-3**

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