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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

CANADA PREPAID LEGAL SERVICES, INC.,
D.B.A. BSI PREMIUM BONDS;
DAVID JOHN EDWIN HYDE and JOSEPH
SHAWN PROULX, individually and as directors of
Canada Prepaid Legal Services, Inc.;
E.R.S. HOLDINGS LTD.;
NEIL JOHN SCHULER, individually and as
Director of E.R.S. Holdings Ltd.;
ITH ENTERPRISES LTD.;
KAILEY LEWIS BABUIN, individually and as
Director of ITH Enterprises Ltd.;
NAGG HOLDINGS LTD.;
WAYNE WEIS, individually and as Director of
NAGG Holdings Ltd.;
557631 B.C. LTD., D.B.A. GUARANTEED
CAPITAL HOLDINGS;
FERNANDO VILLAGRAN, individually and as
president of 557631 B.C. Ltd.;
TIMOTHY RYAN BABUIN; and
CALGARY CONCRETE AND HOME
IMPROVEMENT CORP., D.B.A. UNION GLOBAL
TRADING;
MARTIN ROY LAMB, individually and as Director
of Calgary Concrete and Home Improvement Corp.,

Defendants.

Civil No.

**TEMPORARY
RESTRAINING ORDER
WITH ASSET FREEZE AND
APPOINTMENT OF
TEMPORARY RECEIVER,
AND ORDER TO SHOW
CAUSE WHY A
PRELIMINARY
INJUNCTION SHOULD NOT
ISSUE**

1 Plaintiff, Federal Trade Commission (“FTC” or “Commission”), having filed its
2 complaint for a permanent injunction and other relief in this matter, pursuant to sections 13(b)
3 and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and
4 having moved *ex parte* for a Temporary Restraining Order and for an order to show cause why a
5 preliminary injunction should not be granted pursuant to Rule 65(b) of the Federal Rules of
6 Civil Procedure, Fed. R. Civ. P. 65(b), and the Court having considered the complaint,
7 declarations, exhibits, and memorandum of law filed in support thereof, and now being advised
8 in the premises finds, that:

9 1. This Court has jurisdiction of the subject matter of this case and there is good
10 cause to believe it will have jurisdiction of all parties hereto;

11 2. There is good cause to believe that the Commission will ultimately succeed in
12 establishing that defendants Canada Prepaid Legal Services Inc., dba. BSI Premium Bonds;
13 David John Edwin Hyde and Joseph Shawn Proulx; E.R.S. Holdings Ltd.; Neil John Schuler;
14 ITH Enterprises Ltd.; Kailey Lewis Babuin; NAGG Holdings Ltd.; Wayne Weis; 557631 B.C.
15 Ltd., dba Guaranteed Capital Holdings; Fernando Villagran; Timothy Ryan Babuin; Calgary
16 Concrete and Home Improvement Corp., dba Union Global Trading; and Martin Roy Lamb have
17 engaged in and are likely to engage in the future in acts and practices that violate Section 5(a) of
18 the FTC Act, 15 U.S.C. § 45(a), and/or the FTC’s Trade Regulation Rule entitled
19 “Telemarketing Sales Rule” (“TSR”), 16 C.F.R. Part 310, and that the Commission is therefore
20 likely to prevail on the merits of this action;

21 3. There is good cause to believe that immediate and irreparable damage will be
22 done to the public and to this Court's ability to grant full and effective final relief among the
23 parties hereto absent entry of this Order on an *ex parte* basis; and

24 4. Weighing the equities and considering plaintiff’s likelihood of ultimate success, a
25 Temporary Restraining Order is in the public interest.

26 I.

27 PROHIBITED PRACTICES

28 IT IS THEREFORE ORDERED that defendants, and each of them, and their successors

1 and assigns, whether acting directly or through any entity, corporation, subsidiary, division or
2 other device and all persons in active concert or participation with them who receive actual
3 notice of this Order by personal service or otherwise, are hereby temporarily restrained and
4 enjoined from:

5 A. Promoting, offering for sale or selling, directly or indirectly, any interests,
6 holdings, shares or registrations in any bond program with a lottery, random drawing or game of
7 chance feature to any U.S. consumer;

8 B. In connection with the advertising, marketing, proposed sale, or sale of any
9 product or service, or in the course of billing, attempting to collect, or collecting money from
10 any U.S. consumer, misrepresenting or omitting any fact material to a consumer's decision to
11 purchase any defendant's products or services;

12 C. Charging the consumers' credit card accounts without the consumers' express
13 authorization or charging in excess of the amount authorized by the consumers;

14 D. Obtaining consumers' confidential credit account information, including
15 consumers' credit card account numbers and expiration dates, and selling, renting, brokering,
16 providing and/or otherwise transmitting such information to others without the consumers'
17 authorization.

18 E. Failing to disclose promptly and in a clear and conspicuous manner before a
19 consumer pays for any goods or services, all material restrictions, limitations or conditions to
20 purchase, receive or use those goods or services.

21 F. Providing substantial assistance or support to sellers or telemarketers who
22 defendants know or consciously avoid knowing are engaged in acts or practices that violate the
23 TSR..

24 II.

25 ASSET FREEZE

26 IT IS FURTHER ORDERED that, except as stipulated by the parties or as directed by
27 further order of the Court, defendants and their successors and assigns, whether acting directly or
28 through any entity, corporation, subsidiary, division or other device and all persons in active

1 concert or participation with them who receive actual notice of this Order by personal service or
2 otherwise, are hereby temporarily restrained and enjoined from transferring, converting,
3 encumbering, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing or
4 otherwise disposing of any funds, real or personal property, accounts, contracts, membership or
5 mailing (including "Email") lists, shares of stock or other assets, or any interest therein,
6 wherever located, that are (a) owned or controlled by any defendant, in whole or in part; or (b) in
7 the actual or constructive possession of any defendant, or (c) owned, controlled by or in the
8 actual or constructive possession of any corporation, partnership or other entity, directly or
9 indirectly owned, managed, controlled by or under common control with any defendant,
10 including, but not limited to, any assets held by or for defendants at any bank, savings and loan
11 institution, broker-dealer, escrow agent, title company, commodity trading company, precious
12 metal dealer or other financial institution or depository of any kind. The assets affected by this
13 section shall include both existing assets and assets acquired after issuance of this Order, and
14 defendants shall hold and account for these assets and all payments received by them, including,
15 but not limited to, borrowed funds or property and gifts.

16 **III.**

17 **REPATRIATION OF FOREIGN ASSETS**

18 IT IS FURTHER ORDERED that defendants shall:

19 A. Immediately upon service of this Order, or as soon as relevant banking hours
20 permit, transfer to the territory of the United States all funds, documents, and assets in foreign
21 countries held: (1) by any defendant; (2) for their benefit; or (3) under their direct or indirect
22 control, jointly or singly;

23 B. Hold and retain all repatriated funds, documents, and assets, and prevent any
24 transfer, disposition or dissipation of these funds, documents, and assets;

25 C. Provide plaintiff with access to defendants' records and documents held by
26 financial institutions outside the territorial United States; and
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1 D. Provide plaintiff with a full accounting of all funds, documents and assets outside
2 of the territory of the United States which are held : (1) by any defendant; (2) for their benefit; or
3 (3) under their direct or indirect control, jointly or singly.

4 **IV.**

5 **MAINTENANCE OF RECORDS**

6 IT IS FURTHER ORDERED that defendants and their successors and assigns, whether
7 acting directly or through any entity, corporation, subsidiary, division or other device are hereby
8 temporarily restrained and enjoined from:

9 A. Failing to create and maintain books, records, and accounts which, in reasonable
10 detail, accurately, fairly, and completely reflect the incomes, disbursements, transactions, and
11 use of monies by defendants;

12 B. Failing to maintain complete records of any consumer complaints and disputes,
13 whether coming from the consumer or any intermediary, such as a government agency or Better
14 Business Bureau, and any responses made to those complaints or disputes; and

15 C. Destroying, erasing, mutilating, concealing, altering, transferring or otherwise
16 disposing of, in any manner, directly or indirectly, any contracts, client lists, membership or
17 mailing lists, accounting data, correspondence, advertisements, computer tapes, disks or other
18 computerized records, books, written or printed records, handwritten notes, telephone logs,
19 telephone scripts, "verification" tapes or other audio or video tape recordings, receipt books,
20 invoices, postal receipts, ledgers, personal and business canceled checks and check registers,
21 bank statements, appointment books, copies of federal, state or local business or personal
22 income or property tax returns, and other documents or records of any kind that relate to the
23 business practices or business or personal finances of defendants.

24 **V.**

25 **DEFENDANTS' FINANCIAL STATEMENTS**

26 IT IS FURTHER ORDERED that defendants shall, within four (4) business days from
27 service of this Order, prepare and deliver to counsel for plaintiff completed financial statements
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1 on the forms attached to this Order. The completed financial statements shall be accurate as of
2 the date of service of this Order upon the defendants.

3 **VI.**

4 **DUTIES OF ASSET HOLDERS**

5 IT IS FURTHER ORDERED that, except as stipulated by the parties or as directed by
6 further order of the Court, any financial or brokerage institution, business entity or person that
7 holds, controls or maintains custody of any account or asset, including any membership or
8 mailing (including "Email") lists, real or personal property of any defendant, or has held,
9 controlled or maintained custody of any account or asset of any defendant, at any time since
10 January 1, 1999, shall:

11 A. Prohibit all persons and entities from withdrawing, removing, assigning,
12 transferring, pledging, encumbering, disbursing, dissipating, converting, selling or otherwise
13 disposing of any of these assets and provide counsel for plaintiff a certified statement setting
14 forth:

- 15 1. the identification number of each account or asset titled in the name of
16 any defendant, or held on behalf of, or for the benefit of, any defendant,
17 including all reserve or trust accounts managed on behalf of any
18 defendant, or subject to the control of any defendant; and
- 19 2. the balance of each identified account, or a description of the nature and
20 value of the asset as of the close of business on the day on which this
21 Order is served, and, if the account or other asset has been closed or
22 removed since January 1, 1999, the date closed or removed, the total
23 funds removed in order to close the account, and the name of the person
24 or entity to whom the account or other asset was remitted; and

25 B. Upon request and within ten (10) business days, provide to counsel for plaintiff
26 all records or other documentation pertaining to the account or asset described in Paragraph A.1
27 above, including, but not limited to, originals or copies of account applications, account
28 agreements, account statements, signature cards, checks, drafts, deposit tickets, transfers to and

1 from the accounts, all other debit and credit instruments or slips, currency transaction reports,
2 1099 forms, and safe deposit box logs.

3 **VII.**

4 **RECEIVER**

5 IT IS FURTHER ORDERED that Michael D. McKay is appointed Receiver to take
6 custody, control and possession of the assets of defendants Canada Prepaid Legal Services, Inc.,
7 dba BSI Premium Bonds; E.R.S. Holdings Ltd.; ITH Enterprises Ltd.; NAGG Holdings Ltd.;
8 557631 B.C. Ltd., dba Guaranteed Capital Holdings; Calgary Concrete and Home Improvement
9 Corp., dba Union Global Trading (hereinafter referred to as “receivership defendants”), and
10 wherever they may be located, for the purpose of distributing those assets, upon final disposition
11 of this case, to the consumers injured by defendants’ violations of the Telemarketing Sales Rule
12 and the FTC Act. The Receiver shall have the full power, rights and duties of an equity receiver
13 within the scope of the goals the Receiver needs to accomplish, and with authority to specifically
14 accomplish the duties as set forth in this Order.

15 **VIII.**

16 **DUTIES OF RECEIVER**

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

19 A. To take exclusive custody, control and possession of all of the receivership
20 defendants’ assets, including, but not limited to, all funds, property and accounts at financial
21 institutions and brokerage firms, and all other assets in the possession, custody, or under the
22 control of the receivership defendants, wherever situated;

23 B. Conserve, hold, and manage all receivership assets, and perform all acts necessary
24 or advisable to preserve the value of those assets, in order to prevent any irreparable loss,
25 damage, or injury to consumers, including, but not limited to, obtaining an accounting of the
26 assets and preventing transfer, withdrawal, or misapplication of assets;

1 C. Liquidate any or all securities, commodities, or commodity futures contracts
2 owned by or for the benefit of the receivership defendants as the Receiver deems to be advisable
3 or necessary;

4 D. Enter into contracts and purchase insurance as the Receiver deems advisable or
5 necessary;

6 E. Prevent the inequitable distribution of assets and determine, adjust, and protect
7 the interests of consumers;

8 F. Choose, engage, and employ attorneys, paralegals, accountants, appraisers,
9 agents, employees, servants, and other independent contractors and technical specialists, as the
10 Receiver deems advisable or necessary in the performance of duties and responsibilities under
11 the authority granted by this Order;

12 G. Make payments and disbursements from the receivership estate that the Receiver
13 deems advisable or necessary for carrying out the directions of, or exercising the authority
14 granted by, this Order;

15 H. Institute, appear in, intervene in, become a party to or compromise such actions or
16 proceedings in state or federal courts that the Receiver deems advisable or necessary to preserve
17 or recover the assets of the Corporate Defendants, or that the Receiver deems advisable or
18 necessary to carry out the Receiver's mandate under this Order;

19 I. Enter into an agreement with the United States Department of Justice, and in
20 compliance with applicable law, to appear in, intervene in, or become a party to actions or
21 proceedings in foreign courts instituted by the United States Department of Justice on behalf of
22 the Federal Trade Commission, to preserve or recover assets within foreign jurisdictions which
23 may be used to effect restitution to injured consumers. The Receiver shall make every
24 practicable effort to distribute all such assets so recovered, as well as any other assets which
25 might be recovered in foreign actions by the United States Department of Justice on behalf of the
26 Federal Trade Commission, as restitution to injured consumers. The Receiver shall institute an
27 interpleader action for disposal of any such assets not so distributed;

1 J. Issue or cause to be issued subpoenas and other discovery requests to obtain
2 documents and records pertaining to the receivership or any other matter relevant to this action
3 on behalf of the receivership estate;

4 K. Open one or more bank accounts in King County, Washington, as designated
5 depositories for funds of the receivership defendants. The Receiver shall deposit all funds of the
6 receivership defendants in such a designated account and shall make all payments and
7 disbursements from the receivership estate from such account(s);

8 L. Maintain accurate records of all receipts and expenditures made by the Receiver;

9 M. The Receiver is entitled to rely on all outstanding rules of law and court orders,
10 and shall not be liable to anyone for his own good faith compliance with any order, rule, law,
11 judgment, or decree. Nor shall he be liable for complying with the orders of this Court. In no
12 event shall he be liable to the defendants for his good faith compliance with his duties and
13 responsibilities under this Order, nor shall he be liable to anyone for any action taken or omitted
14 by him except upon a finding by this Court that he acted or failed to act as a result of
15 misfeasance, bad faith, gross negligence, or in reckless disregard of his duties; and

16 N. The Receiver may be removed at any time by the Court, and replaced with a
17 successor. In the event the Receiver decides to resign, he shall first give written notice to the
18 parties and the Court of his intentions, and his resignation shall not be effective until the Court
19 has appointed a successor. The Receiver shall then follow such instructions as his successor or
20 the Court gives him in turning over custody and control of the receivership estate.

21 **IX.**

22 **NON-INTERFERENCE AND COOPERATION WITH THE RECEIVER**

23 IT IS FURTHER ORDERED that defendants shall refrain from interfering with said
24 Receiver taking such custody, control or possession and from interfering in any manner, directly
25 or indirectly, with such custody, possession and control of said Receiver; and shall fully
26 cooperate with and assist the Receiver appointed in this action; and shall take no action, directly
27 or indirectly, to hinder or obstruct the Receiver in the conduct of his duties or to interfere in any
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1 manner, directly or indirectly, with the custody, possession, management or control by said
2 Receiver.

3 **X.**

4 **TRANSFER OF FUNDS TO THE RECEIVER**

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

10 **XI.**

11 **COMPENSATION OF RECEIVER**

12 IT IS FURTHER ORDERED that the Receiver and all personnel hired by the Receiver as
13 herein authorized, including counsel to the Receiver and accountants, are entitled to reasonable
14 compensation for the performance of duties pursuant to this Order, and for the cost of actual out-
15 of-pocket expenses incurred by them, from the assets now held by or in the possession or control
16 of or which may be received by the receivership Defendants. The Receiver shall file with the
17 Court and serve on the parties periodic requests for the payment of such reasonable
18 compensation, with the first such request filed no more than sixty days after the date of this
19 Order. The Receiver shall not increase the hourly rates used as the bases for such fee
20 applications without prior approval of the Court.

21 **XII.**

22 **RECEIVER'S BOND**

23 IT IS FURTHER ORDERED that the Receiver shall file with the Clerk of this Court a
24 bond in the sum of \$10,000 with sureties to be approved by the Court, conditioned thateivecomp
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XIII.

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.

XIV.

THIRD PARTY DISCOVERY

IT IS FURTHER ORDERED that the Commission is granted leave, at any time after service of this Order, to take the deposition of any person or entity for the purpose of discovering the nature, location, status, and extent of assets of defendants, and the location of documents reflecting the business transactions of defendants, and to demand the production of documents from any person or entity relating to the nature, status, and extent of the defendants' assets and the location of documents reflecting the business transactions of the defendants; forty-eight (48) hours notice shall be deemed sufficient for any such deposition and five (5) days notice shall be deemed sufficient for the production of any such documents. Expedited discovery for any other purpose shall not be allowed except by order of the Court for good cause shown. The limitations and conditions set forth in Fed. R. Civ. P. 30(a)(2) regarding subsequent depositions of an individual shall not apply to depositions taken pursuant to this paragraph.

XV.

CREATION OF OTHER BUSINESSES

IT IS FURTHER ORDERED that defendants are hereby temporarily restrained and enjoined from creating, operating or controlling any business entity, whether newly-formed or previously inactive, including any partnership, limited partnership, joint venture, sole proprietorship or corporation, without first providing the Commission with a written statement disclosing: (1) the name of the business entity; (2) the address and telephone number of the business entity; (3) the names of the business entity's officers, directors, principals, managers, and employees; and (4) a detailed description of the business entity's intended activities.

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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 (10) 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.

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

XVIII.

WITNESSES AT HEARINGS

IT IS FURTHER ORDERED that, if any party to this action intends to present the testimony of any witness at the hearing on a preliminary injunction in this matter, that party shall, at least three (3) business days prior to the scheduled date and time of hearing, file with this Court and serve on counsel for the other parties, a statement of the name, address, and telephone number of that witness, and either a summary of the witness' expected testimony or the witness' declaration or affidavit revealing the substance of the witness' expected testimony; and that, after the service of the statement, the served party thereafter shall have two (2) business days from the time of service of the witness information to provide information to the Court and to the serving party for any witness whose testimony the served party intends to present.

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XIX.

EXPIRATION

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

XX.

SHOW CAUSE

IT IS FURTHER ORDERED that the defendants shall appear before this Court on the _____ day of _____, at _____ o'clock ____m., to show cause, if any there be, why this Court should not enter a preliminary injunction, pending final ruling on the Complaint against these defendants, enjoining them from further violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a) and Section 310.3(a) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a), continuing the relief provided herein and imposing whatever additional relief may be appropriate.

XXI.

SERVICE OF TRO

IT IS FURTHER ORDERED that copies of this Order may be served by first class mail, overnight delivery, facsimile or personally, by employees or agents of the FTC, upon any bank, savings and loan institution, credit union, financial institution, brokerage house, escrow agent, money market or mutual fund, title company, commodity trading company, common carrier, storage company, trustee, commercial mail receiving agency, mail holding or forwarding company, or any other person, partnership, corporation or legal entity that may be in possession of any records, assets, property or property right of any defendant, and other person, partnership, corporation or legal entity that may be subject to any provision of this Order.

XXII.

RETENTION OF JURISDICTION

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

Dated this ____ day of _____, 2000.

UNITED STATES DISTRICT JUDGE

PRESENTED BY:

Mary T. Benfield, WSBA #18835
Eleanor Durham
Attorneys for Plaintiff
Federal Trade Commission