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FEDERAL TRADE COMMISSION

10
11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE DISTRICT OF ARIZONA

13 _____) No. 2:99-cv-01637 - JAT
14 FEDERAL TRADE COMMISSION,)
15 Plaintiff,)
16 vs.) STIPULATION FOR ENTRY OF
17 LIBERTY DIRECT, INC.,) FINAL JUDGMENT AND
18) ORDER FOR PERMANENT
19 PAUL L. WIGGS, individually) INJUNCTION AGAINST DEFENDANTS
and as an officer of Liberty) LIBERTY DIRECT, INC.,
Direct Inc., and) PAUL L. WIGGS, AND DAVID C.
20) FURNIA
21 DAVID C. FURNIA, individually)
and as an officer of Liberty)
Direct, Inc.,)
22)
23 Defendants.)
_____)

24 Plaintiff, the Fédéral Trade Commission ("Commission"), and
25 defendants Liberty Direct, Inc., Paul L. Wiggs, and David C.
26 Furnia hereby stipulate and agree to entry of a final judgment
27 and order for permanent injunction against the defendants under
28 the terms stated herein. This stipulation and the accompanying

1 Final Judgment and Order for Permanent Injunction Against
2 Defendants Liberty Direct, Inc., Paul L. Wiggs, and David C.
3 Furnia ("Order") resolves all matters raised by the Complaint the
4 Commission filed against defendants on September 13, 1999,
5 pursuant to Sections 13(b) and 19 of the "Federal Trade Commission
6 Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the
7 Telemarketing and Consumer Fraud and Abuse Prevention Act
8 ("Telemarketing Act"), 15 U.S.C. §§ 6101 et seq., which charged
9 the defendants with violating Section 5 of the FTC Act, and the
10 FTC's Telemarketing Sales Rule ("TSR").

11 The Summons and Complaint having been served on the
12 defendants, plaintiff Commission and defendants request that the
13 Court enter the accompanying Order with the following terms to
14 resolve all matters of dispute between them in this action:

15 **FINDINGS**

16 1. This Court has jurisdiction of the subject matter of
17 this case and of the parties consenting hereto;

18 2. Venue is proper as to all parties in the District of
19 Arizona;

20 3. The activities of the defendants are in or affecting
21 commerce, as defined in the FTC Act, 15 U.S.C. § 44;

22 4. The Complaint states a claim upon which relief may be
23 granted against defendants under Sections 5, 13(b), and 19 of the
24 FTC Act, 15 U.S.C. §§ 45(a), 53(b), and 57b, and the TSR, 16
25 C.F.R. Part 310;

26 5. The Commission and defendants stipulate and agree to
27 entry of this Order freely, without coercion, and without trial
28 or final adjudication of any issue of fact or law, to settle and

1 resolve all matters in dispute arising from the Complaint through
2 the date of entry of this Order. By entering this stipulation
3 defendants acknowledge that each understands the provisions of
4 the Order are prepared to abide by them, but do not admit any of
5 the allegations set forth in the Complaint other than
6 jurisdictional facts;

7 6. The defendants have waived all rights that may arise
8 under the Equal Access to Justice Act, 28 U.S.C. § 2412, *amended*
9 by Pub. L. 104-121, 110 Stat. 847, 863-64 (1996);

10 7. The defendants have also waived all rights to seek
11 appellate review or otherwise challenge or contest the validity
12 of this Order, and have further waived and released any claim
13 they may have against the Commission, its employees, and agents;
14 and

15 8. Entry of this Order is in the public interest.

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

17 **DEFINITIONS**

18 1. "Defendants" mean Liberty Direct, Inc. dba Liberty
19 Credit Card Protection, Potomac Service Company, Ascendix
20 Seminars, Source One, Inc., and Liberty Credit Card Protection
21 Company; Paul L. Wiggs; and David C. Furnia; their successors and
22 assigns, and their agents, employees, officers, and servants, and
23 those persons in active concert or participation with each of
24 them who receive actual notice of this order by personal service
25 or otherwise.

26 2. "Corporate Defendant" means Liberty Direct, Inc., dba
27 Liberty Credit Card Protection, Potomac Service Company, Ascendix
28

1 Seminars, Source One, Inc., and Liberty Credit Card Protection
2 Company.

3 5. "Telemarketing" means a plan, program, or campaign that
4 is conducted to induce the purchase of goods or services by use
5 of one or more telephones and involves more than one interstate
6 telephone call made to or from any customer, provided however,
7 that "telemarketing" does not include telephone calls in which
8 the sale of goods or services is not completed, and payment or
9 authorization of payment is not required, until after a face-to-
10 face sales presentation by the seller or the seller's agent.

11 6. "Credit Card Protection" means the advertisement,
12 promotion, offering for sale, or sale of any product or service
13 represented to register credit or debit accounts, including
14 credit card accounts, or protect, indemnify, or reimburse the
15 holder of a credit or debit account against unauthorized use or
16 charges.

17 **I. BAN ON SELLING OR MARKETING CREDIT CARD PROTECTION**

18 **IT IS THEREFORE ORDERED** that defendants are permanently
19 restrained and enjoined from engaging in, receiving any
20 remuneration of any kind whatsoever from, holding any ownership
21 interest, share, or stock in, or serving as an officer, director,
22 trustee of, or consultant or advisor to, any business entity
23 engaged in, in whole or in part, credit card protection.

24 **II. BOND TO ENGAGE IN TELEMARKETING**

25 **IT IF FURTHER ORDERED** that each defendant, in connection
26 with any business where (1) any of the defendants, individually,
27 or in combination with any of the other defendants, is the
28 majority owner of the business or directly or indirectly controls

1 the business, and where (2) the business is engaged in
2 telemarketing or assisting others engaged in telemarketing, is
3 permanently restrained and enjoined from failing to obtain a
4 performance bond in the principal sum of ONE MILLION DOLLARS for
5 each corporation, subsidiary, division, partnership, sole
6 proprietorship, or other device, prior to the start of any
7 telemarketing activity by any such entity:

8 A. This bond shall be conditioned upon compliance with
9 Section 5 of the FTC Act, 15 U.S.C. § 45, the provisions of this
10 Order, the TSR, or any other statute enforced by the Commission.
11 The bond shall be deemed continuous and remain in full force and
12 effect as long as the defendant continues to engage in the
13 business of advertising, promoting, offering for sale, sale, or
14 distribution of any product or service while utilizing
15 telemarketing as a means of achieving the sale, and for at least
16 three years after the defendant has ceased to engage in such
17 business activity. The bond shall cite this Order as the subject
18 matter of the bond, and shall provide surety thereunder against
19 financial loss resulting from any violation of Section 5 of the
20 FTC Act, 15 U.S.C. § 45, the provisions of this Order, the TSR,
21 or any other statute enforced by the Commission;

22 B. The performance bond requirement pursuant to this
23 section shall be an insurance agreement providing surety for
24 financial loss issued by a surety company that is admitted to do
25 business in each of the states in which the defendant is doing
26 business and that holds a Certificate of Authority As
27 Acceptable Surety on Bond and Reinsuring. Each such
28 performance bond shall be in favor of both (i) the Trade

1 Commission for the benefit of any consumer injured as a result of
2 any violation of Section 5 of the FTC Act, 15 U.S.C. § 45, any
3 provision of this Order, the TSR, or any other statute enforced
4 by the Commission made while engaged in the business of selling
5 products or services through telemarketing, and (ii) any consumer
6 so injured;

7 C. The bond requirement pursuant to this section is in
8 addition to, and not in lieu of, any other bond required by
9 federal, state, or local law;

10 D. The defendant shall provide a copy of the bond required
11 by this section to the Assistant Regional Director of the FTC's
12 Western Region - Los Angeles at the address specified in Section
13 IX(E) at least ten days before commencing any business that
14 advertises, promotes, offers for sale, sells, or distributes any
15 product or service while utilizing telemarketing as a means of
16 achieving the sale;

17 E. The defendant shall not disclose the existence of the
18 performance bond to any consumer, or other purchaser or
19 prospective purchaser of any product or service that is
20 advertised, promoted, offered for sale, sold, or distributed via
21 telemarketing, without also disclosing clearly and prominently,
22 at the same time, "AS REQUIRED BY ORDER OF THE UNITED STATES
23 DISTRICT COURT IN SETTLEMENT OF CHARGES THAT DEFENDANTS ENGAGED
24 IN FALSE AND MISLEADING REPRESENTATIONS IN THE PROMOTION AND SALE
25 OF CREDIT CARD PROTECTION";

26 F. The Commission may execute against the performance bond
27 if it demonstrates to this Court by a preponderance of the
28 evidence that, after the effective date of this Order, the

1 defendant has, individually, or in connection with any
2 corporation, subsidiary, division, partnership, or sole
3 proprietorship, in which defendant holds an ownership interest,
4 shares, or stock, or in which they serve as an officer, director,
5 or trustee:

6 1. Misrepresented any fact directly or by implication,
7 in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, or the
8 TSR, 26 C.F.R. Part 310;

9 2. Violated the terms of this Order, the TSR, or any
10 statute enforced by the Commission; or

11 3. Failed to render any required performance that
12 results in financial loss to any consumer, in connection with the
13 advertising, promoting, offering for sale, sale, or distribution
14 of any product or service while utilizing telemarketing as a
15 means of achieving the sale; and

16 G. Proceedings instituted under this section are in
17 addition to, and not in lieu of, any other civil or criminal
18 remedies as may be provided by law, including any other
19 proceedings the Commission may initiate to enforce this Order.

20 **III. PROHIBITED BUSINESS PRACTICES**

21 **IT IS FURTHER ORDERED** that defendants in connection with the
22 sale of any product or service are hereby restrained and enjoined
23 from:

24 A. Misrepresenting an affiliation with a consumer's credit
25 card issuer or any other third party;

26 B. Representing that consumers are liable for unauthorized
27 charges on their credit card accounts in excess of the \$50 limit
28 set forth in 15 U.S.C. § 1643 and 12 C.F.R. § 226.12(b);

1 C. Misrepresenting that a consumer has purchased or has
2 agreed to purchase a good or service, and therefore owes money to
3 the seller;

4 D. Consummating a sale for credit card protection or any
5 other credit related product or service over the telephone;

6 E. Failing to comply with the TSR, 16 C.F.R. Part 310, as
7 set forth in Attachment A, or as amended;

8 F. Debiting a consumer's credit card or checking account
9 prior to possessing a signed, original, written authorization for
10 the particular debit from the consumer on the form attached
11 hereto as Attachment B;

12 G. Misrepresenting facts pertaining to consumers' credit-
13 related rights or obligations under the law;

14 H. Misrepresenting that consumers have been pre-approved
15 for, or are likely to obtain, an extension of credit; and

16 I. Misrepresenting any other fact material to a consumer's
17 decision to purchase a good or service.

18 IV. DISTRIBUTION OF CUSTOMER RECORDS

19 **IT IS FURTHER ORDERED** that defendants are hereby permanently
20 restrained and enjoined from providing to any person, except
21 agents of the Commission or other law enforcement authorities,
22 the name, address, telephone number, or credit card or bank
23 account number of any consumer who provided such information to
24 defendants in connection with the sale of any credit related
25 product or service; provided, however, that defendants may
26 provide such information if required to do so by court order.

27 V. RECORDING OF SALES CALLS

28 **IT IS FURTHER ORDERED** that, in the event that defendants or

1 their agents record any conversation with a consumer to verify or
2 confirm that a consumer is agreeing to purchase any service or
3 product, defendants are permanently restrained and enjoined from
4 accepting or processing such purchases unless the recording meets
5 the following criteria:

6 A. After obtaining permission from the consumer to record
7 the conversation, the recording shall reflect the entirety of the
8 conversation;

9 B. The recording must include clear, complete, and
10 understandable disclosures of all material terms of the purchase,
11 and the consumer's express agreement to such terms. The material
12 terms disclosed in the recorded conversation shall be consistent
13 with any information previously disclosed to the consumer.

14 Material terms include, but are not limited to:

- 15 1. A description of the service or product;
- 16 2. The cost of the service or product;
- 17 3. The amount of any recurring charges;
- 18 4. Limitations on any right to obtain a refund; and
- 19 5. The business name, address, and telephone number to
20 which the consumer may address any questions or complaints.

21 This section shall not affect any obligation to comply with
22 any federal, state, or local law regarding the recording of
23 telephone conversations.

24 VI. COMMISSION'S RELIANCE ON DEFENDANT'S REPRESENTATIONS

25 The Commission's agreement to this Order is expressly
26 premised upon the truthfulness, accuracy, and completeness of the
27 financial condition of each defendant, as represented in (1) the
28 financial statements of each that were executed on

1 April 19, 2000 (Liberty), February 17, 2000 (Wiggs), and February
2 17, 2000 (Furnia), and (2) the documents that were submitted by
3 defendants that are listed in Attachment C, upon which the
4 Commission relied in negotiating and agreeing to the terms of
5 this Order. If, upon motion by the Commission, this Court finds
6 that any defendant failed to disclose any material asset, or
7 materially misrepresented the value of any asset, or made any
8 other material misrepresentation in or omission from the
9 defendant's financial statement or the submitted documents, the
10 Court shall enter judgment against that defendant, in favor of
11 the Commission in the amount of \$3,633,333, which is intended to
12 represent the total amount of defendants' unjust enrichment, and
13 which will become immediately due and payable. For purposes of
14 this section and any subsequent proceedings, including but not
15 limited to a non-dischargeability complaint filed in a bankruptcy
16 proceeding, each defendant waives any right to contest any of the
17 allegations in the Commission's Complaint.

18 **VII. MONITORING COMPLIANCE OF SALES PERSONNEL**

19 **IT IS FURTHER ORDERED** that defendants, in connection with
20 any business where (1) any of the defendants, individually, or in
21 combination with any of the other defendants is the majority
22 owner of the business or directly or indirectly controls the
23 business and where (2) the business is engaged in telemarketing,
24 or assisting others engaged in telemarketing, are hereby
25 permanently restrained and enjoined from:

26 A. Failing to take reasonable steps sufficient to monitor
27 and ensure that all employees and independent contractors engaged
28 in sales or other customer service functions comply with the

1 restrictions placed on defendants by Sections I - III of this
2 Order, the FTC Act, and the TSR. Such steps shall include
3 adequate monitoring of sales presentations or other calls with
4 customers, and shall also include, at a minimum, the following:

5 1. Listening to oral representations made by persons
6 engaged in sales or other customer service functions;

7 2. Establishing a procedure for receiving and
8 responding to consumer complaints;

9 3. Ascertaining the number and nature of consumer
10 complaints regarding transactions in which each employee or
11 independent contractor is involved; provided that this section
12 does not authorize or require defendants to take any steps that
13 violate any federal, state, or local laws;

14 B. Failing to promptly and fully investigate any consumer
15 complaint received by any business to which this section applies;
16 and

17 C. Failing to take corrective action with respect to any
18 sales person whom the defendant determines is not complying with
19 the conditions stated in this Order. Such corrective action may
20 include training, disciplining, and/or terminating such sales
21 person.

22 VIII. RECORD KEEPING PROVISIONS

23 **IT IS FURTHER ORDERED** that, for a period of five years from
24 the date of entry of this Order, defendants, in connection with
25 any business where (1) any of the defendants, individually, or in
26 combination with any of the other defendants is the majority
27 owner of the business or directly or indirectly controls the
28 business and where (2) the business is engaged in telemarketing,

1 or assisting others engaged in telemarketing, are hereby
2 restrained and enjoined from failing to create, and from failing
3 to retain for a period of three years following the date of such
4 creation, unless otherwise specified:

5 A. Books, records and accounts that, in reasonable detail,
6 reflect the cost of goods or services sold, revenues generated,
7 and the disbursement of such revenues;

8 B. Records that reflect: the name, address, and telephone
9 number of each person employed in any capacity by such business,
10 including as an independent contractor; that person's job or
11 position; the date upon which the person commenced work; and the
12 date and reason for the person's termination, if applicable. The
13 businesses subject to this section shall retain such records for
14 any terminated employee for a period of two years following the
15 date of termination;

16 C. Records that reflect the names, addresses, phone
17 numbers, dollar amounts paid, quantity of items or services
18 purchased or provided, and description of items or services
19 purchased or provided for all consumers to whom such business has
20 sold or provided any goods or services;

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

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

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

28 3. The basis of the complaint, including the name of

1 any salesperson complained against, and the nature and result of
2 any investigation conducted concerning any complaint;

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

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

6 6. In the event of a denial of a refund request, the
7 reason for the denial; and

8 E. Copies of all sales scripts, training materials,
9 advertisements, or other marketing materials utilized; provided
10 that copies of all sales scripts, training materials,
11 advertisements, or other marketing materials utilized shall be
12 retained for three years after the last date of dissemination of
13 any such materials.

14 **IX. COMPLIANCE REPORTING BY DEFENDANTS**

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

17 A. For a period of five years from the date of entry of
18 this Order, each individual defendant shall notify the Commission
19 of the following:

20 1. Any changes in his residence, mailing addresses,
21 and telephone numbers, within ten days of the date of such
22 change;

23 2. Any changes in his employment status (including
24 self-employment) within ten days of such change. Such notice
25 shall include the name and address of each business that he is
26 affiliated with or employed by, a statement of the nature of the
27 business, and a statement of his duties and responsibilities in
28 connection with the business or employment; and

1 3. Any proposed change in the corporate structure of
2 any corporate defendant, or any proposed change in the structure
3 of any business entity owned or controlled by either individual
4 defendant, such as creation, incorporation, dissolution,
5 assignment, sale, merger, creation, dissolution of subsidiaries,
6 proposed filing of a bankruptcy petition, or change in the
7 corporate name or address, or any other change that may affect
8 compliance obligations arising out of this Order, thirty days
9 prior to the effective date of any proposed change; provided,
10 however, that, with respect to any proposed change in a business
11 entity about which either individual defendant learns of less
12 than thirty days prior to the date such action is to take place,
13 he shall notify the Commission as soon as is practicable after
14 learning of such proposed change;

15 B. For a period of five years following the date of entry
16 of this Order, each defendant shall notify the Commission, within
17 ten days of obtaining or divesting an ownership interest in such
18 business entity, the name, address, telephone number, and the
19 defendant's percentage of stock owned or ownership interest in,
20 any publically traded business entity that has engaged or does
21 engage, in whole or in part, in credit card protection;

22 C. One hundred eighty days after the date of entry of this
23 Order, each defendant shall provide a written report to the
24 Commission, sworn to under penalty of perjury, setting forth in
25 detail the manner and form in which the defendant has complied
26 and is complying with this Order. This report shall include but
27 not be limited to:

28 1. The defendant's current residence address and

1 telephone number;

2 2. The defendant's current employment, business
3 addresses and telephone numbers, a description of the business
4 activities of each such employer, and responsibilities for each
5 employer;

6 3. A copy of each acknowledgment of receipt of this
7 Order obtained by the defendant pursuant to Section XII;

8 4. A statement describing the manner in which the
9 defendant has complied and is complying with the injunctive
10 provisions of this Order (Sections I-V);

11 D. Upon written request by a representative of the
12 Commission, each defendant shall submit additional written
13 reports (under oath, if requested) and produce documents on
14 fifteen days' notice with respect to any conduct subject to this
15 Order;

16 E. For the purposes of this Order, each defendant shall,
17 unless otherwise directed by the Commission's authorized
18 representatives, mail all written notifications to the Commission
19 to: Assistant Regional Director, $\hat{A} \acute{e} \mathbb{1} \acute{'} \ll \tilde{A} \frac{1}{2}$ Trade Commission, 10877
20 Wilshire Blvd., Suite 700, Los Angeles, California 90024;

21 F. For the purposes of this section, "employment" includes
22 the performance of services as an employee, consultant, or
23 independent contractor; and "employers" include any individual or
24 entity for whom any defendant performs services as an employee,
25 consultant, or independent contractor; and

26 G. For purposes of the compliance reporting required by
27 this section, the Commission is authorized to communicate
28 directly with defendants.

1 **X. AUTHORITY TO MONITOR COMPLIANCE**

2 **IT IS FURTHER ORDERED** that the Commission is authorized to
3 monitor defendants' compliance with this Order by all lawful
4 means, including but not limited to the following:

5 A. The Commission is authorized, without further leave of
6 the Court, to obtain discovery from any person in the manner
7 provided by Chapter V of the Federal Rules of Civil Procedure,
8 Fed. R. Civ. P. 26 - 37, including the use of compulsory process
9 pursuant to Fed. R. Civ. P. 45, for the purpose of monitoring and
10 investigating defendants' compliance with any provision of this
11 Order;

12 B. The Commission is authorized to use representatives
13 posing as consumers or suppliers to any defendant, their
14 employees, or any other entity owned or controlled in whole or in
15 part by any defendant, without the necessity of identification or
16 prior notice; and

17 C. Nothing in this Order shall limit the Commission's
18 lawful use of compulsory process, pursuant to Sections 9 and 20
19 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to investigate whether
20 any defendant has violated any provision of this Order, the FTC
21 Act, or the TSR.

22 **XI. ACCESS TO BUSINESS PREMISES**

23 **IT IS FURTHER ORDERED** that, for a period of five years from
24 the date of entry of this Order, for the purpose of further
25 determining compliance with this Order, defendants shall permit
26 representatives of the Commission, within three business days of
27 receipt of written notice from the Commission:

28 A. Access during normal business hours to any office, or

1 facility storing documents, of any business where (1) any of the
2 defendants, individually, or in combination with any of the other
3 defendants is the majority owner of the business or directly or
4 indirectly controls the business, and where (2) the business is
5 engaged in telemarketing, or in assisting others engaged in such
6 business. In providing such access, the defendant shall permit
7 representatives of the Commission to inspect and copy all
8 documents relevant to any matter contained in this Order; and
9 shall permit Commission representatives to remove documents
10 relevant to any matter contained in this Order for a period not
11 to exceed five business days so that the documents may be
12 inspected, inventoried, and copied;

13 B. To interview the officers, directors, and employees,
14 including all personnel involved in responding to consumer
15 complaints or inquiries, and all sales personnel, whether
16 designated as employees, consultants, independent contractors or
17 otherwise, of any business to which sub-section (A) applies,
18 concerning matters relating to compliance with the terms of this
19 Order. The person interviewed may have counsel present; and

20 C. Upon application of the Commission and for good cause
21 shown, the Court may enter an *ex parte* order granting immediate
22 access to the business premises of any defendant for the purposes
23 of inspecting and copying all documents relevant to any matter
24 contained in this Order.

25 XII. DISTRIBUTION OF ORDER BY DEFENDANTS

26 **IT IS FURTHER ORDERED** that, for a period of five years from
27 the date of entry of this Order, defendants shall:

28 A. Provide a copy of this Order (excluding Attachments C,

1 D, and E) to, and obtain a signed and dated acknowledgment of
2 receipt of same from, each officer or director, each individual
3 serving in a management capacity, all personnel involved in
4 responding to consumer complaints or inquiries, and all sales
5 personnel, whether designated as employees, consultants,
6 independent contractors or otherwise, immediately upon employing
7 or retaining any such persons, for any business where (1) any of
8 the defendants, individually, or in combination with any of the
9 other defendants is the majority owner of the business or
10 directly or indirectly controls the business, and where (2) the
11 business is engaged in telemarketing, or in assisting others
12 engaged in such business; and

13 B. Maintain for a period of three years after creation,
14 and upon reasonable notice, make available to representatives of
15 the Commission, the original signed and dated acknowledgments of
16 the receipt of copies of this Order, as required in
17 sub-section (A).

18 **XIII. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS**

19 **IT IS FURTHER ORDERED** that within five business days after
20 receipt of this Order as entered by the Court each defendant
21 shall submit to the Commission a truthful sworn and notarized
22 statement, in the form shown on Attachment E, that shall
23 acknowledge receipt of this Order as entered and shall reaffirm
24 and attest to the truthfulness, accuracy, and completeness of
25 that defendant's financial statement.

26 **XIV. RETENTION OF JURISDICTION**

27 **IT IS FURTHER ORDERED** that this Court will retain
28 jurisdiction of this matter for the purpose of enabling any of

1 the parties to this Order to apply to the Court at any time for
2 such further orders or directives as may be necessary or
3 appropriate for the interpretation or modification of this Order,
4 for the enforcement of compliance therewith or the punishment of
5 violations thereof.

6 Defendants and the Commission, by its counsel, hereby
7 consent to the terms and conditions of this stipulation as set
8 forth above and consent to the entry of an Order with the same
9 terms.

10 DATED: _____, 2000

PAUL L. WIGGS, individually and as
an officer of Liberty Direct, Inc.

12 DATED: _____, 2000

DAVID C. FURNIA, individually and
as an officer of Liberty Direct, Inc.

15 DATED: _____, 2000

LIBERTY DIRECT, INC. by
David C. Furnia, its President

18 DATED: _____, 2000

RAYMOND E. MCKOWN
Attorney for Plaintiff
Trade Commission

20 APPROVED AS TO FORM:

21 DATED: _____, 2000

Thomas V. Rawles
Kimerer & Lavelle, PC
Attorneys for Defendants

24 Dated: _____, 2000

Peter F. Fisher
Attorney for Defendants

28

ATTACHMENT A
TELEMARKETING SALES RULE

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ATTACHMENT B

WARNING
DON'T SIGN UP OR PAY MONEY UNTIL YOU READ THIS NOTICE

Please initial where applicable:

1. I understand that the company that is offering to sell me this product or service, (*company name, to be completed by seller), is not related in any way to Visa, MasterCard, or any bank that issues credit cards.

Consumer initial here_____

[if product/service relates to low interest credit cards]

2. I understand that (*company name, to be completed by seller) cannot help me get any credit card. I understand that they are selling a list of banks that offer credit cards, that the banks will decide whether or not they will issue me a credit card and at what interest rate, that (*company name) has not determined whether I will qualify for credit with any of those banks, and that I could get bank information myself from other sources.

Consumer initial here_____

3. I understand that, once this authorization is received by the company selling me this product or service, my credit card account will be charged \$, by (company name, to be completed by seller).

Consumer initial here_____

[if proposed transaction is an account debit]

4. I understand that, once this authorization is received by the company selling me this service, my bank account number will be debited the amount of \$.

Consumer initial here_____

5. I understand that the company's refund policy is (*to be completed by seller).

I read and signed this notice on (Date).

CONSUMER'S SIGNATURE:

CONSUMER'S NAME (please print):

STREET ADDRESS:

CITY, STATE, ZIP CODE:

TELEPHONE NUMBER:

1 **ATTACHMENT C**

2 1. Documents enclosed with December 1, 1999, letter from
3 Peter F. Fisher to Tanya F. Mayorkas and Raymond E. McKown,
4 including:

- 5 a. Lexis document on the Ascendix Group, Inc. as
6 filed with the Arizona Secretary of State;
- 7 b. Information on the Ascendix Group, Inc. obtained
8 from the Office of the Arizona Secretary of State,
9 Corporation Commission;
- 10 c. 1st Capital Bank Statements of Account for the
11 Ascendix Group, Inc.;
- 12 d. Federal and State Tax Returns filed by the
13 Ascendix Group, Inc. for tax years 1996 and 1997;
- 14 e. Lexis document on the Ascendix Marketing and
15 Communications, L.L.C., as filed with the Arizona
16 Secretary of State;
- 17 f. Information on Ascendix Marketing and
18 Communications, L.L.C., obtained from the Office
19 of the Arizona Secretary of State, Corporation
20 Commission;
- 21 g. 1st Capital Bank Statements of Account for
22 Ascendix Marketing and Communications, L.L.C.;
- 23 h. Federal and State Tax Returns filed by Ascendix
24 Marketing and Communications, L.L.C. for tax year
25 1998;
- 26 i. Lexis document showing information On Liberty
27 Direct, Inc., as filed with the Arizona Secretary
28 of State;

- 1 j. Blank form letter from Liberty Direct, Inc. to be
- 2 sent to any customer who has requested a refund;
- 3 k. 1st Capital Bank Statements of Account for Liberty
- 4 Direct, Inc.;
- 5 l. Federal and State Tax Returns filed by Liberty
- 6 Direct, Inc. for tax years 1998 and 1999;
- 7 m. Statement of Refunds by Liberty Direct;
- 8 2. Profit and Loss Statements for:
 - 9 a. Liberty Direct, Inc. for Jan. 1, 2000 through
 - 10 February 28, 2000;
 - 11 b. Oasis Security for January 1, 2000 through
 - 12 February 28, 2000 and April 26, 1999, through
 - 13 December 31, 1999;
 - 14 c. The Ascendix Group, Inc. for January 1, 2000
 - 15 through February 28, 2000 and January 1999 through
 - 16 December 1999;
- 17 3. Balance Sheet for The Ascendix Group, Inc., dated
- 18 February 28, 2000;
- 19 4. Federal Tax Returns for:
 - 20 a. David and Anita Furnia for 1996 and 1997;
 - 21 b. Paul and Marcella Wiggs for 1995, 1996 and 1997
 - 22 (note that Paul Wiggs states that he did not file
 - 23 1998 return);
 - 24 c. The Ascendix Group, Inc. for July 1997 through
 - 25 June 1998;
- 26 5. The February 28, 2000 letter from Peter Fisher to Tanya
- 27 F. Mayorkas and Raymond E. McKown;
- 28 6. The February 29, 2000 letter from Peter Fisher to Tanya

1 F. Mayorkas and Raymond E. McKown;

2 7. Binder of Liberty Direct, Inc. Bank records for 1998 and
3 1999 listing six accounts (4 checking and 2 money market), which
4 includes an account held in the name of Ascendix Group Inc.;

5 8. Binder of Ascendix Group, Inc. Bank records, beginning
6 with July 1998 and into 1999;

7 9. Records of chargebacks to defendants' customers,
8 entitled "Total Marked as Chargebacks - Sorted by Record Number",
9 and beginning with Nera Sawfer and ending with Jason M. Delong;

10 10. The May 24, 2000 letter from Peter Fisher to Tanya
11 Mayorkas and Raymond E. McKown; the attached financial statement
12 form for Ascendix Security, Inc., d.b.a Oasis Security Company;
13 and the follow up explanatory letter from Peter Fisher to Tanya
14 Mayorkas and Raymond E. McKown, dated June 5, 2000;

15 11. The May 23, 2000, Financial Statement of Ascendix
16 Security, Inc.;

17 12. The May 1, 2000, Financial Statement of The Ascendix
18 Group, Inc.;

19 13. The financial documents attached to the November 9,
20 2000, letter from Peter F. Fisher to Raymond E. McKown;

21 14. Supplemental "Summary Financial Schedules" and
22 "Combined Average Monthly Income and Expenses for You, Your
23 Spouse, and Your Dependents for the Last 6 Months" from Wiggs and
24 Furnia submitted on November 17, 2000.

1 **ATTACHMENT E**

2 UNITED STATES DISTRICT COURT

3 DISTRICT OF ARIZONA

4 _____) CV 99 - 1637 PHX RCB

5 FEDERAL TRADE COMMISSION,)

6 Plaintiff,)

7 vs.) AFFIDAVIT OF [DEFENDANT]

8 LIBERTY DIRECT, INC.,)

9)

10 PAUL L. WIGGS, individually)

and as an officer of Liberty)

Direct, Inc., and)

11)

12 DAVID C. FURNIA, individually)

and as an officer of Liberty)

Direct, Inc.,)

13)

14 Defendants.)

_____)

15 [Defendant], being duly sworn, hereby states and affirms as
16 follows:

17 1. My name is _____. My current residence address
18 is _____ (list street, city state, zip code, country) _____. I am a
19 citizen of the United States and am over the age of eighteen. I
20 have personal knowledge of the facts set forth in this Affidavit.

21 2. I am a defendant in FTC v. Liberty Direct, Inc., et al.
22 CV. 99 - 1637 PHX RCB (United States District Court for the
23 District of Arizona).

24 3. On _____, 2000, I received a copy of the Final Judgment
25 and Order for Permanent Injunction Against Defendants Liberty
26 Direct, Inc., Paul L. Wiggs, and David C. Furnia, which was
27 signed by the Honorable [name of U.S. District Judge] and entered
28 by the Court on _____, 2000. A true and correct copy of the

1 Order I received is appended to this Affidavit.

2 4. I hereby state that the information contained my
3 financial statement, as identified in paragraph XIII of the
4 Order, which was executed signed on _____, and provided
5 to the $\hat{A} \acute{e} \text{¶} 1' \ll \tilde{A} \frac{1}{2}$ Trade Commission shortly thereafter was true,
6 accurate, and complete at such time.

7 I declare under penalty of perjury under the laws of the
8 United States that the foregoing is true and correct. Executed on
9 _____, 2000, at [place].

10
11 _____
12 [Name of Defendant & signature]

13 State of _____, City of _____

14
15 Subscribed and sworn to before me
16 this ____ day of _____, 2000.

17
18 _____
19 Notary Public

20 My Commission Expires:
21 _____
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

My name is Raymond E. McKown. I am an attorney employed by the ~~the~~ Trade Commission, 10877 Wilshire Boulevard, Suite 700, Los Angeles, California 90024. On _____ I deposited the document captioned "STIPULATION FOR ENTRY OF FINAL JUDGMENT AND ORDER FOR PERMANENT INJUNCTION AGAINST DEFENDANTS LIBERTY DIRECT, INC., PAUL L. WIGGS, AND DAVID C. FURNIA," in the first class United States mail, addressed to the following:

Peter Fisher
Schmitt, Schneck, Fisher, Smyth & Herrod, PC
1221 East Osborn Road, Suite 105
Phoenix, AZ 85014-5540

Richard Hinz & Sheri Stevens
Arizona Attorney General's Office
1275 West Washington
Phoenix, AZ 85007

Sue A. Klein
Asst. United States Attorney
U.S. Courthouse
230 North 1st Avenue, Room 4000
Phoenix, AZ 85025

I declare under penalty of perjury that the foregoing is true and correct. Executed this ____ day of _____ at Los Angeles, California.

Raymond E. McKown