

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA

Case No. 5:04cv49

FILED
STATESVILLE, N.C.

SEP 29 2004

U.S. DISTRICT COURT
W. DIST. OF NC

FEDERAL TRADE COMMISSION,)
)
)
Plaintiff,)
)
vs.)
)
TELEPHONE PROTECTION AGENCY, INC.,)
a North Carolina corporation;)
)
ROBERT THOMPSON, a/k/a)
GREG THOMPSON,)
individually and as an officer of TELEPHONE)
PROTECTION AGENCY, INC.;)
)
REBECCA PHILLIPS,)
individually and as an officer of TELEPHONE)
PROTECTION AGENCY, INC.; and)
)
ALEX MCKAUGHN,)
individually and as an officer of TELEPHONE)
PROTECTION AGENCY, INC.,)
)
Defendants.)

STIPULATED JUDGMENT AND ORDER FOR PERMANENT INJUNCTION AS TO DEFENDANTS TELEPHONE PROTECTION AGENCY, INC. AND REBECCA PHILLIPS

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), commenced this action by filing its Complaint for permanent injunction and other relief pursuant to Sections 5, 13(b), and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45, 53(b), and 57b, charging that the Defendants engaged in unfair or deceptive acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, and the FTC's Rule entitled "Telemarketing Sales

DOCUMENT
SCANNED

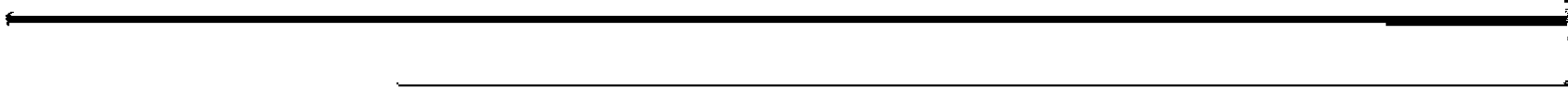


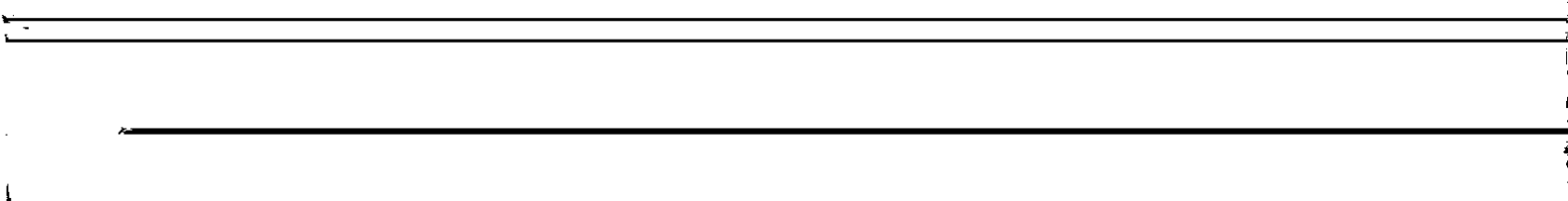

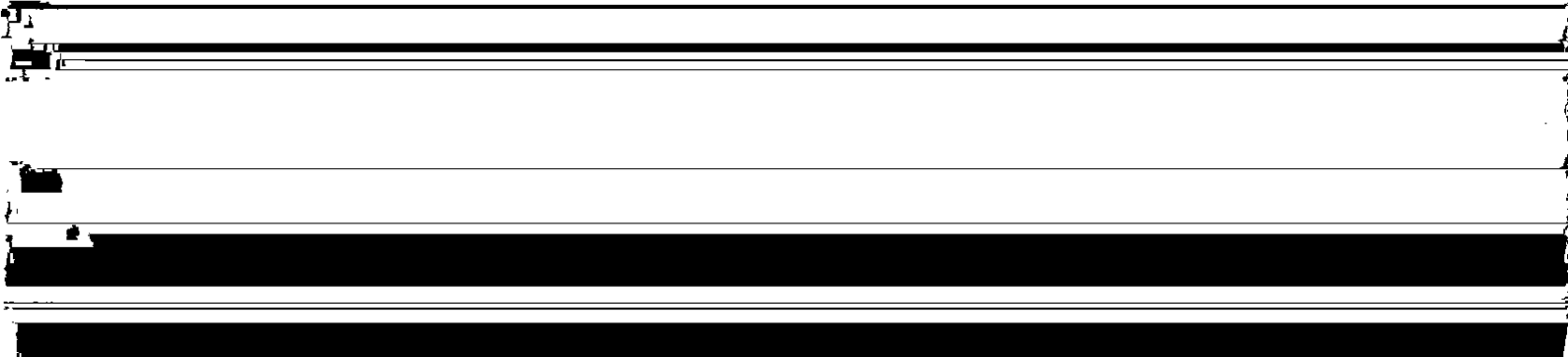
11

Defendant's ("TSPD") ...

Telephone Protection Agency, Inc. and Rebecca Phillins hereby agree to the entry of this

5. Defendants have entered into this Order freely and without coercion. Defendants

further acknowledge that they have read and understand the terms and conditions of this Order.

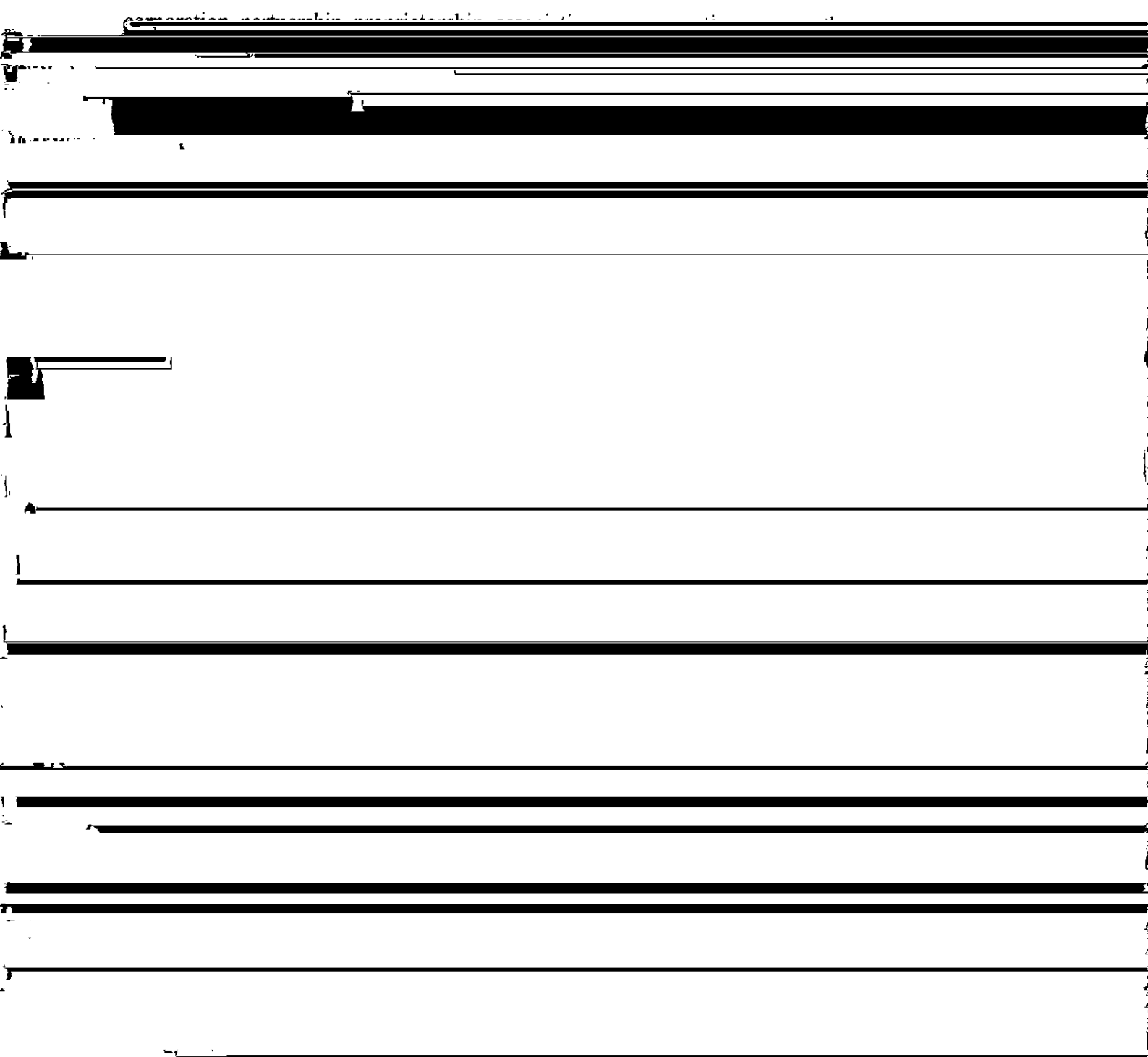


prepared to abide by them.

6. Defendants waive all rights to seek judicial review or otherwise challenge or contest the validity of this Order. Defendants further waive and release any claim that they may have for attorneys' fees as a prevailing party under the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended by Pub. L. 104-121, 110 Stat. 847, 863-64 (1996), and any claim they may have against the Commission, its employees, representatives, or agents.

through detection devices. A draft or non-identical copy is a separate document within the meaning of the term.

4. "Person" means a natural person, organization or other legal entity, including a



misleading representations or omissions about [REDACTED]

nature or central characteristics of a product or service that is the subject of a sales offer, such as representations that:

- A. Consumers will receive fewer telemarketing calls, or none at all, as a result of purchasing Defendant's products or services;
- B. Defendant can or will register a consumer with, or enroll him or her in, any federal, state or private list or program to prevent or limit unsolicited telemarketing calls, including the National Do Not Call Registry maintained by the FTC;
- C. Defendant can or will protect or enhance a consumer's privacy or the

B. A consumer will receive an EZ-Call, U.D. or other

program or software designed, marketed or represented to reduce or stop telemarketing calls or unsolicited commercial email from reaching the consumer.

III. PROHIBITION AGAINST UNAUTHORIZED BILLING

IT IS FURTHER ORDERED that, in connection with the advertising, promotion, offering for sale or sale of goods or services by any means whatsoever, each Defendant, and each of their successors, assigns, officers, agents, servants, employees, and those persons in active concert or participation with them who receive actual notice of this Order by personal service, facsimile, or otherwise, whether acting directly or indirectly through any corporation, subsidiary, division, or other device, are hereby permanently restrained and enjoined both from submitting a charge to a consumer's credit or debit card or bank account and from otherwise billing a consumer:

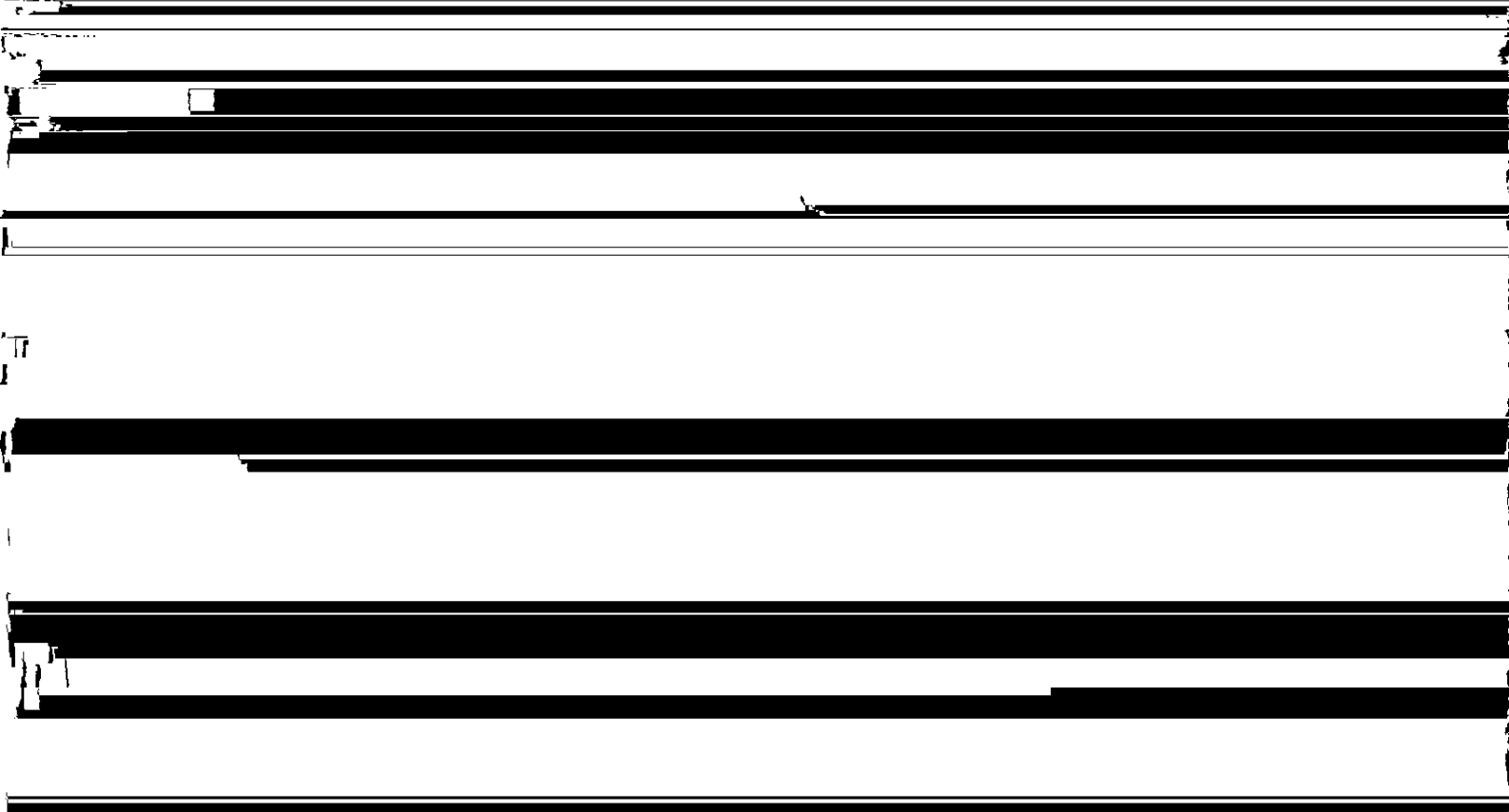
A. Without having clearly and conspicuously disclosed to the consumer all material

A. Any and all funds paid pursuant to this Paragraph or Paragraph V shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including but not limited to consumer redress and any attendant expenses for the administration of any redress fund. In the event that redress to purchasers is wholly or partially impracticable, or any funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to the Defendants' practices alleged in the complaint. Any funds not used for such equitable relief shall be deposited in the United States Treasury as disgorgement.

Defendants shall have no right to contest the Commission's choice of remedies under this Paragraph.

B. In accordance with 31 U.S.C. § 7701, Defendant Telephone Protection Agency, Inc., is hereby required, unless it has done so already, to furnish the FTC with its taxpayer

~~_____ (E. U. S. C. § 7701, Defendant Telephone Protection Agency, Inc., is hereby required, unless it has done so already, to furnish the FTC with its taxpayer~~



the sworn financial statements provided to the Commission by Defendant Telephone Protection Agency, Inc. dated October 16, 2003 (as supplemented November 12, 2003), and May 13, 2004, all of which include material information upon which the Commission relied in negotiating and consenting to this Stipulated Judgment;

B. If, upon motion by the Commission, this Court finds that Defendant Telephone Protection Agency, Inc. made a material misrepresentation or omitted material information

concerning the Defendant's financial condition, then the Court shall enter a modified judgment holding the Defendant liable to the Commission for the full amount of \$672,717.85, which the Plaintiff and Defendant stipulate is the amount of consumer injury caused by Defendant. This

amount, less the sum of \$_____

receive actual notice of this Order by personal service, facsimile, or otherwise, whether or not

[REDACTED]

B. **Defendant Rebecca Phillips as Control Person:** For any business that Defendant Rebecca Phillips controls, directly or indirectly, or in which she has a majority ownership interest, Defendant Rebecca Phillips must deliver a copy of this Order to all principals, officers, directors and managers of that business. Defendant Rebecca Phillips

to all employees, agents and representatives of that business who engage in conduct related to the subject matter of the Order. For current personnel, delivery shall be within five (5) days of service of this Order upon Defendant. For new personnel, delivery shall occur prior to their assumption of their responsibilities;

C. **Defendant Rebecca Phillips as employee or non-control person:** For any business where Defendant Rebecca Phillips is not a controlling person of the business, Defendant

a. Any changes in her residence, mailing addresses, and telephone numbers within ten (10) days of the date of such change. Such notice shall include the date of such change.

b. Any changes in her employment status (including self-employment), and any change in her ownership in any business entity, within ten (10) days of the date of such change. Such notice shall include the date of such change.

business that she is affiliated with, employed by, creates or forms, or performs

B. One hundred eighty (180) days after the date of entry of this Order, Defendants Telephone Protection Agency, Inc. and Rebecca Phillips, each shall provide a written report to the Commission, sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this Order. [REDACTED]

be limited to:

For Defendant Rebecca Phillips [REDACTED]

Associate Director for Marketing Practices
Federal Trade Commission

600 Pennsylvania Ave. N.W., D. C. 20540

Washington, DC 20580

Re: FTC v. Telephone Protection Agency, et. al.,
Civil Action No. 5:04cv49; and

D. For purposes of the compliance reporting required by this Paragraph the

C. Customer files containing the names, addresses, telephone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;

D. Complaints and refund requests (whether received directly, indirectly or through any third party) and any responses to those complaints or requests;

E. Copies of all sales scripts, training materials, advertisements, or other marketing materials;

B. In addition, the Commission is authorized to monitor compliance with this Order by all other lawful means, including but not limited to the following:

1. Obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45; and

XIII. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for the purpose of construction, modification and enforcement of this Order.

FOR THE PLAINTIFF:

William E. Kovacic
General Counsel

FOR THE DEFENDANTS:

F. Kelly Smith

Denver, Colorado 80202
Attorney for Defendant Telephone Protection
Agency, Inc. and Rebecca Philline

XIII. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for the purpose of construction, modification and enforcement of this Order.

FOR THE PLAINTIFF:

William E. Kovacic
General Counsel

Russell Deitch
Craig Tregillus

Russell Deitch
Craig Tregillus
Federal Trade Commission
600 Pennsylvania Ave. N.W. - Rm. 238
Washington, D.C. 20580

FOR THE DEFENDANTS:

F. Kelly Smith

F. Kelly Smith
Law Offices of F. Kelly Smith
216 Sixteenth St., Ste. 1210
Denver, Colorado 80202
Attorney for Defendant Telephone Protection
Agency, Inc., and Rebecca Phillips

Rebecca Phillips

Telephone Protection Agency,
By Rebecca Phillips, President
Rebecca Phillips

Rebecca Phillips, Individually

1st *1st*

[REDACTED]

Certificate of Service by Mail

I, Russell Deitch, certify as follows:

I am over the age of 18 years and am not a party to this action.

I work for the Federal Trade Commission in Washington, D.C. My business address is as follows: Federal Trade Commission, 6th Street and Pennsylvania Ave., N.W., Room 238, Washington, D.C. 20580. On September 20, 2004, I certify that I caused the proposed Stipulated

Judgment with Defendants Telephony Protection Association, et al., Docket No. 04-10001, to be filed with the Court.

the following attorneys by overnight mail at the following addresses:

F. Kelly Smith, Esq.
216 Sixteenth St., Suite 1210
Denver, Colorado 80202

Certificate of Service by Mail

I, Russell Deitch, certify as follows:

I am over the age of 18 years and am not a party to this action.

I work for the Federal Trade Commission, 6th Street and Pennsylvania Ave., N.W., Room 238,

follows: Federal Trade Commission, 6th Street and Pennsylvania Ave., N.W., Room 238,

Washington, D.C. 20580. On September 20, 2004, I certified that I am not a party to this action.

cbb

United States District Court
for the
Western District of North Carolina
October 1, 2004

* * MAILING CERTIFICATE OF CLERK * *

Re: 5:04-cv-00049

True and correct copies of the attached were mailed by the clerk to the following:

Russell Deitch, Esq.
Federal Trade Commission
Room H-238
600 Pennsylvania Ave., N.W.
Washington, DC 20580

Craig Tregillus, Esq.
Federal Trade Commission
Rm. H-238
600 Pennsylvania Ave., N.W.
Washington, DC 20580

F. Kelly Smith, Esq.
216 Sixteenth St., Suite 1210
Denver, CO 80202

Harold J. Bender, Esq.
Law Office of Harold Bender
200 North McDowell Street
Charlotte, NC 28204

cc:

Magistrate Judge ()
U.S. Marshal ()
Probation ()
U.S. Attorney ()
Atty. for Deft. ()
Defendant ()
Warden ()
Bureau of Prisons ()
Court Reporter ()
Courtroom Deputy ()
Orig-Security ()
Bankruptcy Clerk's Ofc. ()
Other _____ ()

Date: 10-1-04

Frank Johns, Clerk

By: Carolyn B. Bouchard
Deputy Clerk