

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NUMBER: 03-81105-CIV-COHN/SNOW

FEDERAL TRADE COMMISSION,

Plaintiff,

vs.

SUN SPECTRUM COMMUNICATIONS ORGANIZATION, INC. d/b/a ROYAL CREDIT SOLUTIONS; NORTH AMERICAN COMMUNICATIONS ORGANIZATION, INC. d/b/a IMPERIAL CONSUMER SERVICES; WWC12002, INC. d/b/a BENEFICIAL CLIENT CARE; 9106-7843 QUEBEC, INC. D/B/A INTELAGENT MEDIA; WILLIAM H. MARTELL; TRACEY A. BASCOVE; MITCHEL KASTNER; RONALD CORBER; AND JASON KASTNER,

Defendants.

FILED by *[Signature]* D.C.
DEC 03 2003
CLARENCE MADDOX
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EX PARTE TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE

THIS CAUSE is before the Court upon the Federal Trade Commission's ("Commission" or "FTC") Emergency *Ex Parte* Motion for Temporary Restraining Order and Other Equitable Relief and for an Order to show cause why a preliminary injunction should not be granted pursuant to Rule 65 of the Federal Rules of Civil Procedure, and the Certification of Emergency and Declaration of Plaintiff's Counsel, Pursuant to Fed. R. Civ. P. 65(b)(2), in Support of Emergency *Ex Parte* Motion for Temporary Restraining Order and Other Equitable Relief. The FTC has

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contemporaneously filed its Complaint for Permanent Injunction and Other Equitable Relief in this matter pursuant to section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b). The Court having considered the Complaint, declarations, exhibits, and memorandum of points and authorities filed in support thereof, finds that:

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

2. There is good cause to believe that the Defendants, Sun Spectrum Communications Organization, Inc. ("Sun Spectrum"), North American Communications Organization, Inc. ("NACO"), WWCI2002, Inc. ("WWCI"), 9106-7843 Quebec, Inc. ("Quebec, Inc."), William H. Martell ("Martell"), Tracey A. Bascove ("Bascove"), Mitchel Kastner, Ronald Corber ("Corber") and Jason Kastner, have engaged and are likely to engage in acts and practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), the Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310, and Section 521 of the Gramm-Leach-Bliley Act ("GLB Act"), 15 U.S.C. § 6821 and that the Plaintiff is therefore likely to prevail on the merits of this action;

3. There is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief will occur from the sale, transfer, or other disposition or concealment by Defendants of their assets or business records unless the Defendants are immediately restrained and enjoined by Order of this Court. The evidence set forth in the Plaintiff's Motion for Temporary Restraining Order, Preliminary Injunction and Other Equitable Relief, and in the accompanying

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declarations and exhibits, shows that the Defendants have engaged in a concerted course of illegal activity in their dealings with consumers nationwide in connection with the marketing and sale of advance-fee credit cards in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, the TSR, and Section 521 of the GLB Act. Thus, there is good cause to believe that the Defendants will attempt to conceal the scope of their deliberate illegal actions to avoid returning their ill-gotten gains to consumers injured by their unlawful practices, if not restrained from doing so by Order of this Court. There is thus good cause for relieving the Plaintiff of the duty to provide the Defendants with prior notice of the Plaintiff's motion;

4. Weighing the equities and considering the Plaintiff's likelihood of ultimate success, a temporary restraining order with asset freeze and other equitable relief is in the public interest; and

5. Fed. R. Civ. P. 65(c) does not require security of the United States or an officer or agency thereof.

Definitions

For the purpose of this temporary restraining order, the following definitions shall apply:

A. "Defendants" means Sun Spectrum Communications Organization, Inc. d/b/a "Royal Credit Solutions," North American Communications Organization, Inc. d/b/a "Imperial Consumer Services," WWCI2002, Inc. d/b/a "Beneficial Client Care," 9106-7843 Quebec, Inc. d/b/a "Intelagent Media," William H. Martell, Tracey A. Bascove, Mitchel Kastner, Ronald Corber and Jason Kastner, and each of them

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individually, as well as their assigns, agents, servants, employees, or affiliates, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, or other device, unless specified otherwise.

B. **"Asset" or "Assets"** means any legal or equitable interest in, right to, or claim to any real or personal property of any Defendant, or held for the benefit of any Defendant, including, but not limited to "goods," "instruments," "equipment," "fixtures," "general intangibles," "inventory," "checks," or "notes" (as these terms are defined in the Uniform Commercial Code), and all chattels, leaseholds, contracts, mails or other deliveries, shares of stock, lists of consumers, accounts, credits, receivables, and cash, wherever located.

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

D. **"Person" or "Persons"** means any individual, group, unincorporated association, limited or general partnership, corporation, or other entity.

E. **"Telemarketing"** means the advertising, offering for sale, or sale of any good or service by use of one or more telephones, either exclusively or in conjunction with the use of other marketing techniques.

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F. "Credit-related products, programs, or services" means any product, program, or service that is advertised, promoted, offered for sale, or sold to consumers as a method by which consumers may establish or obtain any extension of credit or credit device, including, but not limited to, credit cards, lines of credit, or loans, or as a method by which consumers may consolidate or liquidate debt.

CONDUCT PROHIBITIONS

I.

INJUNCTION AGAINST FALSE OR MISLEADING STATEMENTS

IT IS THEREFORE ORDERED that, in connection with the advertising, promotion, offering for sale, or sale of any credit-related products, programs, or services, Defendants are hereby temporarily restrained and enjoined from making any express or implied representation or omission of material fact that is false or misleading, in any manner, orally or in writing, to any consumer, including, but not limited to, any false or misleading representation that consumers who pay Defendants a fee will receive, or are likely to receive, an unsecured major credit card, such as a Visa or MasterCard credit card.

II.

INJUNCTION AGAINST VIOLATING THE TELEMARKETING SALES RULE

IT IS FURTHER ORDERED that the Defendants are hereby temporarily restrained and enjoined from violating or assisting any person in the violation of any provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310, *et seq.*, including, but not limited to the following:

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A. Violating or assisting any person in the violation of Section 310.3(a)(2) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(2), by misrepresenting, directly or by implication, any material aspect of the performance, efficacy, nature, or central characteristics of any goods or services that are the subject of a sales offer, including, but not limited to, misrepresenting that consumers who pay Defendants or any other person a fee will receive, or are likely to receive, an unsecured major credit card, such as a Visa or MasterCard credit card; and

B. Violating or assisting any person in the violation of Section 310.4(a)(4) of the Telemarketing Sales Rule, 16 C.F.R. § 310.4(a)(4), by requesting or receiving payment of any fee or consideration in advance of obtaining or arranging an extension of credit when they have guaranteed or represented a high likelihood of success in obtaining or arranging an extension of credit.

III.

INJUNCTION AGAINST VIOLATING SECTION 521 OF THE GRAMM-LEACH-BLILEY ACT

IT IS FURTHER ORDERED that the Defendants are hereby temporarily restrained and enjoined from violating or assisting any person in the violation of Section 521 of the Gramm-Leach-Bliley Act, 15 U.S.C. § 6821, including, but not limited to, inducing consumers to divulge their personal financial information by making any false, fictitious, or fraudulent representation including, but not limited to, the following:

A. Any false, fictitious, or fraudulent representation that Defendants are affiliated with, or calling from or on behalf of, a bank, financial institution, or credit

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card company; and

B. Any false, fictitious, or fraudulent representation that Defendants already possess, and are merely verifying, consumers' prior credit applications.

**IV.
ASSET FREEZE**

IT IS FURTHER ORDERED that Defendants are temporarily restrained and enjoined from:

A. Transferring, converting, encumbering, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, perfecting a security interest in, or otherwise disposing of any assets, including, but not limited to, funds, property, accounts, contracts, shares of stock, lists of consumer names, or other assets, wherever located, including outside the United States, that are (1) owned or controlled, directly or indirectly, by any Defendant, in whole or in part; (2) in the actual or constructive possession of any Defendant; or (3) owned, controlled by, or in the actual or constructive possession of any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by any Defendant, including but not limited to, any assets held by, for, or under the name, alias, or fictitious "doing business as" name of any Defendant at any bank or savings and loan institution, or with any broker-dealer, escrow agent, title company, commodity trading company, precious metal dealer, or other financial institution or depository of any kind;

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B. Opening or causing to be opened any safe deposit box titled in the name, alias, or fictitious "doing business as" name, of any Defendant, or subject to access by any Defendant;

C. Incurring charges or cash advances on any credit card, charge card, or debit card issued in the name, alias, or fictitious "doing business as" name, singly or jointly, of any Defendant;

D. Obtaining a personal or secured loan; and

E. Incurring liens or encumbrances on real property, personal property, or other assets in the name, singly or jointly, of any Defendant.

Provided, however, that the assets affected by this Paragraph IV shall include: (1) all of the assets of the Defendants existing as of the date this Order was entered, and (2) for assets obtained after the date this Order was entered, only those assets that are derived from or otherwise related to the activities alleged in the Commission's complaint.

**V.
DUTIES OF ASSET HOLDERS**

IT IS FURTHER ORDERED that, pending determination of the Plaintiff's request for a preliminary injunction, any financial or brokerage institution, business entity, or person served with a copy of this Order that holds, controls, or maintains custody of any account or asset of any Defendant, including but not limited to any account or asset held by, for, or under the name, alias, or fictitious "doing business as" name of any Defendant, or has held, controlled or maintained custody of any

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such account or asset at any time since January 1, 1999 shall:

- A. Hold and retain within its control and prohibit the withdrawal, removal, assignment, transfer, pledge, encumbrance, disbursement, dissipation, conversion, sale, or other disposal of any such asset except by further order of the Court;
- B. Deny the Defendants access to any safe deposit box that is:
1. Titled in any of their names, aliases, or fictitious "doing business as" names, individually or jointly; or
 2. Otherwise subject to access by any Defendant;
- C. Provide the Commission's counsel, within five (5) business days of receiving a copy of this Order, a sworn statement setting forth:
1. The identification number of each such account or asset titled in the name, alias, or fictitious "doing business as" name, individually or jointly, of any Defendant, or held on behalf of, or for the benefit of any Defendant;
 2. The balance of each such account, or a description of the nature and value of such asset as of the close of business on the day on which this Order is served, and, if the account or other asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other asset was remitted; and
 3. The identification of any safe deposit box that is titled in the name, alias, or fictitious "doing business as" name, individually or jointly, of any Defendant, or is otherwise subject to access by any Defendant; and

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D. Upon the request by the Commission, promptly provide the Commission with copies of all records or other documentation pertaining to each such account or asset, including but not limited to originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs. Any such financial institution, account custodian, or other aforementioned entity may arrange for the Commission to obtain copies of any such records which the Commission seeks.

VI.**REPATRIATION OF ASSETS AND DOCUMENTS****LOCATED IN FOREIGN COUNTRIES**

IT IS FURTHER ORDERED that Defendants, whether acting individually or through any trust, corporation, subsidiary, division, or other device, shall:

A. Within three (3) business days following service of this Order, take such steps as are necessary to transfer to the territory of the United States of America all documents and assets that are located outside of such territory and are held by or for any Defendant or are under any Defendant's direct or indirect control, jointly, severally, or individually; and

B. Within three (3) business days following service of this Order, provide the Plaintiff with a full accounting of all documents and assets that are located outside of the territory of the United States of America and are held by or for any Defendant or are under any Defendant's direct or indirect control, jointly, severally,

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or individually; and

C. Hold and retain all transferred documents and assets and prevent any transfer, disposition, or dissipation whatsoever of any such assets or funds; and

D. Provide the Plaintiff access to the Defendants' records and documents held by financial institutions outside the territorial United States, by signing the Consent to Release of Financial Records attached hereto as Attachment A.

VII.

INTERFERENCE WITH REPATRIATION

IT IS FURTHER ORDERED that Defendants are hereby temporarily restrained and enjoined from taking any action, directly or indirectly, that may result in the encumbrance or dissipation of foreign assets, or in the hindrance of the repatriation required by the preceding Section of this Order, including but not limited to:

A. Sending any statement, letter, fax, email, or wire transmission, telephoning or engaging in any other act, directly or indirectly, that results in a determination by a foreign trustee or other entity that a "duress" event has occurred under the terms of a foreign trust agreement, until such time that all assets have been fully repatriated pursuant to the preceding Section of this Order; and

B. Notifying any trustee, protector, or other agent of any foreign trust or other related entity of either the existence of this Order, or of the fact that repatriation is required pursuant to a court order, until such time that all assets have been fully repatriated pursuant to the preceding Section of this Order.

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**VIII.
FINANCIAL STATEMENTS**

IT IS FURTHER ORDERED that within three (3) days after service of this Order on any Defendant, the Defendant served shall provide the Commission with a completed sworn financial statement. Martell, Bascove, Mitchel Kastner, Corber, and Jason Kastner shall provide Individual Financial Statements on the form attached to this Order as Attachment B, and Sun Spectrum, NACO, WWCI, and Quebec, Inc. shall provide Corporate Financial Statements on the form attached to this Order as Attachment C. The Defendants shall complete the corporate financial statement for Sun Spectrum, NACO, WWCI, and Quebec, Inc., and for each entity under which any Defendant conducts business, or for which any Defendant is an officer, manager, or director, and for any trust of which any Defendant is a trustee. All financial statements shall be accurate as of the date of entry of this Order. Defendants shall attach to these completed financial statements copies of all state and federal income and property tax returns, with attachments and schedules, as called for by the financial statements. Within ten (10) days of any material change in the information contained in any financial statement required above, or any other material change to any Defendant's financial condition, the Defendants shall make a sworn amendment to the appropriate financial statement to reflect such change.

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IX.**IDENTIFYING INFORMATION RELATING TO ACCOUNTANTS, FINANCIAL PLANNERS, INVESTMENT ADVISORS, STOCK BROKERS, AND OTHERS**

IT IS FURTHER ORDERED that each Defendant, within forty-eight (48) hours after service of this Order, shall provide counsel for the Commission the name, address, and telephone number for each accountant, financial planner, investment advisor, stock broker, or other individual, corporation, or partnership from whom they have received or whom they have retained to provide financial, business, or tax advice or services since January 1, 2001.

X.**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 the Defendants to the Commission.

XI.**PLAINTIFF'S ACCESS TO BUSINESS RECORDS**

IT IS FURTHER ORDERED that the Defendants shall allow the Plaintiff's representatives, agents, and assistants immediate access to all of the Defendants' business records to inspect and copy documents and other materials so the Commission may identify injured consumers, the total amount of consumer injury, and the nature, extent, and location of the assets of Defendants. Accordingly, Defendants shall, within seventy-two (72) hours of service of this Order:

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A. Produce to the Plaintiff for inspection, inventory and/or copying at any location designated by the Plaintiff, all materials related or referring, directly or indirectly, to the Defendants' telemarketing or any offer, sale or provision of credit-related products, programs, or services, and/or any materials, information, products, or data related thereto, including, but not limited to, computers, computerized files, storage media (including but not limited to floppy disks, hard drives, cd-roms, zip disks, punch cards, magnetic tape, backup tapes, and computer chips) on which information has been saved, any and all equipment needed to read any such material, contracts, accounting data, correspondence (including, but not limited to, electronic correspondence), advertisements (including, but not limited to, advertisements placed on the World Wide Web), USENET Newsgroup postings, World Wide Web pages, customer lists, books, written or printed records, handwritten notes, telephone logs, telephone scripts, receipt books, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, copies of federal, state or local business or personal income or property tax returns, 1099 forms, and other documents or records of any kind that relate to Defendants' business or business practices; and

B. Produce to the Plaintiff for inspection, inventory and/or copying, at any location designated by the Plaintiff, all computers and data in whatever form, used by the Defendants, in whole or in part, in relation to the Defendants' business practices. To facilitate production of these materials, each Defendant shall, within twelve (12) hours of service of this Order, contact counsel for the FTC by telephone

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and cooperate in arranging an appropriate time and place for the production. The Commission shall return materials so removed or produced by the Defendants, within five (5) business days of completing said inventory and copying.

**XII.
PRESERVATION OF RECORDS**

IT IS FURTHER ORDERED that the Defendants are hereby temporarily restrained and enjoined from destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any computers, computerized files, storage media (including but not limited to floppy disks, hard drives, cd-roms, zip disks, punch cards, magnetic tape, backup tapes, and computer chips) on which information has been saved, any and all equipment needed to read any such material, contracts, accounting data, correspondence (including, but not limited to, electronic correspondence), advertisements (including, but not limited to, advertisements placed on the World Wide Web), USENET Newsgroup postings, World Wide Web pages, customer lists, books, written or printed records, handwritten notes, telephone logs, telephone scripts, receipt books, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, copies of federal, state or local business or personal income or property tax returns, 1099 forms, and other documents or records of any kind that relate to the business, business practices, or business or personal finances of the Defendants.

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**XIII.
MAINTENANCE OF CURRENT BUSINESS RECORDS**

IT IS FURTHER ORDERED that the Defendants are hereby temporarily restrained and enjoined from:

A. Failing to create and maintain documents that, in reasonable detail, accurately, fairly, and completely reflect the Defendants' incomes, disbursements, transactions, and use of money; and

B. Creating, operating, or exercising any control over any business entity, 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.

**XIV.
EXPEDITED DISCOVERY**

IT IS FURTHER ORDERED that, prior to the preliminary injunction hearing or the expiration of this Temporary Restraining Order, whichever occurs first, Plaintiff may depose or subpoena any Defendant or third party, pursuant to Fed. R. Civ. P. 30 and 45, upon seventy-two (72) hours' notice. Any deposition taken pursuant to this provision is in addition to, and not subject to, any of the presumptive limits on depositions set forth in Fed. R. Civ. P. 30 and 31 and S.D. Fla. L.R. 26.1. Subpoenas may be served by agents or attorneys of the Commission and by agents

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of any process server retained by the Commission. Nothing in this provision shall affect the Court's ability to further modify the discovery rules as they apply in this matter.

NOTIFICATION PROVISIONS

XV.

DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that the Defendants shall immediately provide a copy of this Order to each of their affiliates, subsidiaries, divisions, sales entities, successors, assigns, officers, directors, employees, independent contractors, agents, attorneys, and representatives; and shall, within ten (10) days from the date of entry of this Order, provide the Commission with a sworn statement that they have complied with this provision of the Order, which statement shall include the names and addresses of each such person or entity to whom they provided a copy of the Order.

XVI.

SERVICE OF ORDER

IT IS FURTHER ORDERED that copies of this Order may be served by any means, including facsimile transmission and email transmission, upon any financial institution or other entity or person that may have possession, custody, or control of any documents or assets of the Defendant, or that may be subject to any provision of this Order. Pursuant to Fed. R. Civ. P. 4(c)(2), this Order and the initial papers filed in this matter may be served on the Defendant by any law enforcement officer, by any agent of the Plaintiff, or by any agent of any process service retained by the

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Plaintiff.

PRELIMINARY INJUNCTION PROCEEDINGS**XVII.
SERVICE OF PLEADINGS**

IT IS FURTHER ORDERED that the parties shall serve all memoranda, affidavits and other evidence on which they intend to rely at the preliminary injunction hearing set in this matter not later than 4:00 p.m. (EST) of the second business day prior to the hearing date. Service on the Commission shall be performed by delivery to the attention of Robert G. Schoshinski at the Federal Trade Commission, 600 Pennsylvania Ave., N.W., Room H-238, Washington, DC 20580, or by facsimile transmission to (202) 326-3395, or pursuant to any arrangement agreed upon by the parties.

**XVIII.
WITNESS IDENTIFICATION**

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 forty-eight (48) hours prior to the scheduled date and time of hearing, file with this Court and serve on all other parties a statement disclosing the name, address, and telephone number of any such witness, and either a summary of the witness's expected testimony, or the witness's affidavit or declaration revealing the substance of such witness's expected testimony. Service on the Commission shall be performed by personal delivery to the attention of Robert G. Schoshinski at the Federal Trade Commission, 600 Pennsylvania Ave., N.W.,

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Room H-238, Washington, DC 20580, or by facsimile transmission to (202) 326-3395, or pursuant to any arrangement agreed upon by the parties.

XIX.**DURATION OF TEMPORARY RESTRAINING ORDER**

IT IS FURTHER ORDERED that the Temporary Restraining Order granted herein shall expire on **December 17, 2003, at 3:00 o'clock p.m.**, unless within such time the Order, for good cause shown, is extended, or unless the Defendants consent that it should be extended for a longer period of time.

XX.**PRELIMINARY INJUNCTION HEARING**

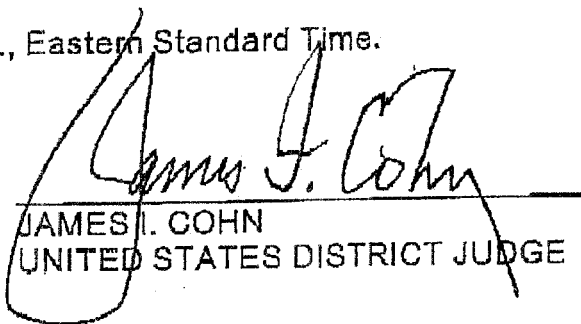
IT IS FURTHER ORDERED, pursuant to Fed. R. Civ. P. 65(b), that Defendants shall appear before The Honorable James I. Cohn, United States District Judge on **Tuesday, December 9, 2003 at 4:30 o'clock p.m.**, at the United States Courthouse, 299 East Broward Boulevard, Courtroom 203F, Ft. Lauderdale, Florida, to show cause, if there is any, why this Court should not enter a preliminary injunction, pending final ruling on the Complaint against the Defendants, enjoining them from further violations of Sections 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a), the Telemarketing Sales Rule, 16 C.F.R. Part 310, and Section 521 of the Gramm-Leach-Bliley Act, 15 U.S.C. § 6821, continuing the freeze of their assets, and imposing such additional relief as may be appropriate. The parties shall provide the Court with Proposed Findings of Fact and Conclusion of Law at the time of the hearing.

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**XXI.
RETENTION OF JURISDICTION**

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

DONE and ORDERED in Chambers at Fort Lauderdale, Florida on this 3RD day of December 2003 at 3:00 o'clock p.m., Eastern Standard Time.



JAMES J. COHN
UNITED STATES DISTRICT JUDGE

Copy Provided:
Robert G. Schoshinski, Esq.