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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

**FILED**  
IN CLERK'S OFFICE  
U S DISTRICT COURT E.D.N.Y.

★ MAR 31 2004 ★

rg 4-2-04  
LONG ISLAND OFFICE

FEDERAL TRADE COMMISSION, )  
)  
Plaintiff, )  
)  
v. )  
)  
CREDIT ENHANCEMENT SERVICES, LLC, )  
a limited liability company, )  
)  
LIBERTY BENEFITS, LLC, )  
a limited liability company, )  
)  
BROADWAY MANAGEMENT, LLC, )  
a limited liability company, )  
)  
CHECK FEE, LLC, )  
a limited liability company, )  
a/k/a TITANIUM BLUE, )  
)  
PORT OF CALL CENTERS, LLC, )  
a limited liability company, )  
)  
PORT OF CALL CENTERS NY, LLC, )  
a limited liability company, and )  
)  
FREDERICK J. DICK, JR., )  
individually and as the sole member of )  
CREDIT ENHANCEMENT SERVICES, )  
LLC, LIBERTY BENEFITS, LLC, )  
BROADWAY MANAGEMENT, LLC, )  
CHECK FEE, LLC a/k/a TITANIUM BLUE, )  
PORT OF CALL CENTERS, LLC, and )  
PORT OF CALL CENTERS NY, LLC, )  
)  
Defendants. )

Hon. Seybert, J., Hon. Orenstein, M.

Civil No. CV-02-2134

~~(PROPOSED)~~ FINAL JUDGMENT  
AND ORDER OF PERMANENT  
INJUNCTION AND OTHER  
EQUITABLE RELIEF  
AGAINST ALL DEFENDANTS

On April 9, 2002, Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), filed its Complaint for permanent injunction and other equitable relief in this matter, including consumer redress, pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101 *et seq.*, charging Defendants with violating Section 5 of the FTC Act and the FTC's Trade Regulation Rule entitled, the "Telemarketing Sales Rule," 16 C.F.R. Part 310, in connection with the offering for sale and sale of advance fee credit cards. The original Complaint named the following Defendants: Credit Enhancement Services, LLC, Liberty Benefits, LLC, and Frederick J. Dick, Jr., individually and as the sole member of Credit Enhancement Services, LLC and Liberty Benefits, LLC ("Original Defendants"). On May 29, 2002, this Court entered a Stipulation and Order of Preliminary Injunction, Granting Plaintiff an Asset Freeze, Immediate Access to Defendants' Business Premises, and Other Equitable Relief regarding the Original Defendants.

On October 1, 2002, this Court granted the FTC's motion, on consent, for leave to file an Amended Complaint that: (1) added the following limited liability companies as Defendants: Broadway Management, LLC, Check Fee, LLC a/k/a Titanium Blue, Port of Call Centers, LLC, and Port of Call Centers NY, LLC ("New Defendants"), and (2) alleged additional liability on the part of Frederick J. Dick, Jr., individually and as the sole member of the New Defendants. On October 7, 2002, the FTC served and filed its Amended Complaint on all of the Defendants. On November 7, 2002, this Court granted the FTC's motion, on consent, for a preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 65, with asset freeze, immediate access to business premises and other equitable relief as to the New Defendants.

Having reviewed the Commission's motion for summary judgment on liability and damages and the responses by Defendants thereto, the motion is granted, and, **IT IS HEREBY ORDERED ADJUDGED, AND DECREED** as follows:

**FINDINGS OF FACT**

1. This Court has jurisdiction of the subject matter of this case and all parties hereto;
2. Venue in the Eastern District of New York is proper under 28 U.S.C. § 1391(b) and (c) and 15 U.S.C. §53(b);
3. The acts and practices of the Defendants were or are in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44;
4. The Amended Complaint states a claim upon which relief may be granted against Defendants under Sections 5(a), 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 53(b) and 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b); and
5. Entry of this Order is in the public interest.

**DEFINITIONS**

For purposes of this Order, the following definitions shall apply:

1. "Plaintiff" means the Federal Trade Commission or Commission.
2. "Limited Liability Company Defendants" means Credit Enhancement Services, LLC, Liberty Benefits, LLC, Broadway Management, LLC, Check Fee, LLC a/k/a Titanium Blue, Port of Call Centers, LLC, and Port of Call Centers NY, LLC, and their successors, assigns, affiliates, or subsidiaries.
3. "Individual Defendant" means Frederick J. Dick, Jr., individually and as the sole member of the Limited Liability Company Defendants.

4. **“Defendants” means the Limited Liability Company Defendants and the Individual Defendant.**
5. **“Advance Fee Credit Cards” means the advertisement, promotion, offering for sale, purported sale, or sale of any product or service represented to register credit or debit accounts in exchange for a fee or similar payment by the purchaser prior to the issuance of a credit or debit account, including, but not limited to, a merchandise buying club membership card that offers an extension of credit.**
6. **“Assets” means any legal or equitable interest in, right to, claim to, or expectation to receive, any real or personal property, 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), lines of credit, all cash, and any other thing of value, wherever located.**
7. **“Assisting others” includes: (1) performing customer service functions, including, but not limited to, receiving or responding to consumer complaints, receiving identifying and financial information from consumers, and communicating with consumers about extensions of credit; (2) developing or providing or arranging for the development or provision of sales scripts or any other marketing material; (3) providing names of, or arranging for the provision of names of, potential customers; or (4) performing marketing services of any kind.**
8. **“Consumer” means a purchaser, customer, subscriber, or natural person.**
9. **“Credit-related goods or services” means any good or service which is marketed, advertised, offered for sale or sold to consumers as a method by which consumers may,**

directly or indirectly, establish or obtain any extension of credit or credit device, including, but not limited to, credit cards, merchandise buying club membership cards that offer an extension of credit, loans, or financing; or as a method to restore, repair or improve derogatory information contained in consumers' credit reporting files; or as a method to consolidate or liquidate debts.

10. "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 all computer files and written, recorded, and graphic materials of every kind in the possession, custody, or control of the Defendants. The term "documents" includes electronic correspondence and drafts of documents, non-identical copies of documents produced from a single file, identical copies of documents produced from different files, and copies of documents the originals of which are not in the possession, custody, or control of the Defendants. The term "computer files" includes information stored in, or accessible through, computer or other information retrieval systems.
11. "Material" means likely to affect a person's choice of, or conduct regarding, goods or services.
12. "Person" means any individual, group, unincorporated association, limited liability company, limited or general partnership, corporation, or other business entity.
13. "Telemarketing," "telemarketer," and "seller" are defined in Section 310.2 of the Telemarketing Sales Rule, 16 C.F.R. § 310.2.

**I.**

**PERMANENT BAN**

**IT IS THEREFORE ORDERED that:**

A. Defendant Frederick J. Dick, Jr., whether acting individually, directly, indirectly, or through any corporation, limited liability company, partnership, subsidiary, division, trust, or other device, is hereby permanently restrained and enjoined from engaging in; receiving any remuneration of any kind whatsoever from; or holding any ownership interest, share, or stock in (except for shares of stock in a publicly traded company) or serving as an employee, independent contractor, officer, director, member, partner, trustee, or general manager of, any business entity engaged in whole or in part in the marketing by any means whatsoever, including, but not limited to, telemarketing, direct mail, e-mail, the Internet, the Worldwide Web, or any web site; advertising; promoting; offering for sale; sale; or purported sale of any advance fee credit card or any other credit-related goods or services, or assisting others in the same; and

B. Nothing in this Order shall be read as an exception to this Paragraph I.

**II.**

**PROHIBITED BUSINESS PRACTICES**

**IT IS FURTHER ORDERED that:**

A. In connection with the marketing, including, but not limited to, telemarketing, direct mail, e-mail, the Internet, the Worldwide Web, or any web site; advertising; promoting; offering for sale; sale; or purported sale of any good or service, or assisting others in the same, Defendants, and their successors, assigns, officers, directors, members, agents, attorneys, servants, employees, salespersons, independent contractors, and all other persons or entities in

active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly, indirectly, or through any corporation, limited liability company, partnership, subsidiary, division, trust, or other device, are hereby permanently restrained and enjoined from misrepresenting, expressly or by implication, either orally or in writing, any material fact, including, but not limited to, the following:

1. That after paying Defendants a fee, consumers will, or are highly likely to, receive an unsecured major credit card, such as a VISA or MasterCard credit card; and
2. That Defendants will unconditionally refund the purchase price if a consumer seeks a refund within 30 days of receipt of Defendants' package;

B. Defendants and their successors, assigns, officers, directors, members, agents, attorneys, servants, employees, salespersons, independent contractors, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly, indirectly, or through any corporation, limited liability company, partnership, subsidiary, division, trust, or other device, are hereby permanently restrained and enjoined from violating, or assisting others with violating, the Telemarketing Sales Rule, 16 C.F.R. Part 310, including, but not limited to:

1. Violating Section 310.3(a)(2)(iii) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(2)(iii), by misrepresenting, directly, indirectly, or by implication, any material aspect of the performance, efficacy, nature or central characteristics of goods or services that are the subject of a sales offer, including, but not limited to, the representation that after paying

Defendants a fee, consumers will, or are highly likely to, receive an unsecured major credit card, such as a VISA or MasterCard credit card; and

2. Violating Section 310.3(a)(2)(iv) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(a)(2)(iv), by misrepresenting, directly, indirectly, or by implication, any material aspect of the nature or terms of the Defendants' refund, cancellation, exchange, or repurchase policies; and
3. Violating 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 a loan or other extension of credit when the Defendants or their telemarketers have guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit for a person; and
4. Misrepresenting, directly, indirectly, expressly, or by implication, any fact material to a consumer's decision to purchase such good or service; and

C. Nothing in this Paragraph or in any other Paragraph of this Order shall void any of the ban provisions set forth in Paragraph I of this Order.

### III.

#### MONETARY RELIEF AND CONSUMER REDRESS

IT IS FURTHER ORDERED that:

- ✓ A. Judgment in the amount of Eleven Million, Seven Hundred and Seventy-seven Thousand, Eight Hundred and Eighty-one Dollars, and Forty-one Cents (\$11,777,881.41) is



hereby entered against Defendants, jointly and severally, for equitable monetary relief, including but not limited to consumer redress and/or disgorgement, and for paying any attendant expenses of administering any redress fund;

B. Defendants relinquish all right, title and interest to all frozen assets held by or on behalf of the Commission pursuant to the Stipulation and Order of Preliminary Injunction, Granting Plaintiff an Asset Freeze, Immediate Access to Defendants' Business Premises, and Other Equitable Relief regarding the Original Defendants, entered on May 29, 2002, and the Stipulation and Order of Preliminary Injunction, Granting Plaintiff an Asset Freeze, Immediate Access to Defendants' Business Premises, and Other Equitable Relief regarding the New Defendants, entered on November 7, 2002, and all assets subject to claims by the Commission. This includes, but is not limited to, all extraterritorial assets as well as assets in the United States; the assets identified by the Commission, as set forth in Paragraph II of the May 29<sup>th</sup> and November 7<sup>th</sup> Orders; and all of the Defendants' assets held, controlled by, or in the custody of United Capturdyne Technologies, Inc.;

C. All such frozen funds and assets shall be transferred directly to the FTC pursuant to Section IV of this Order, in partial satisfaction of this judgment.

D. Defendants shall remain jointly and severally liable to pay to the Commission consumer redress in an amount equal to the \$11,777,881.41 judgment, less any part of that judgment that is collected from the frozen assets. Defendants shall assist the Commission with its efforts to collect on the judgment that is not satisfied by surrender of Defendants' frozen assets, including, but not limited to, providing the Commission with semiannual reports of their income and expenses, sworn to under penalty of perjury, and their tax returns. The semiannual

financial reports shall be provided by December 31<sup>st</sup> and June 30<sup>th</sup>, and the tax returns shall be provided within ten (10) days of filing with the state or federal government, until such time as the judgment is satisfied in full;

E. All funds paid pursuant to this Paragraph 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 direct redress to consumers is wholly or partially impracticable or 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 Amended Complaint. Any funds not used for such equitable relief shall be deposited to the Treasury as disgorgement. Defendants shall have no right to challenge the Commission's choice of remedies under this Paragraph;

F. Defendants shall also furnish to the Commission, in accordance with 31 U.S.C. § 7701, their taxpayer identification numbers (Social Security number, employer identification number, or Revenue Canada identification number), which shall be used for purposes of collecting and reporting on any delinquent amount arising out of each Defendant's relationship with the government; and

G. Defendant Frederick J. Dick, Jr. is further required to provide the Commission with clear, legible and full-size photocopies of all valid driver's licenses he possesses, which will be used for collection, reporting, and compliance purposes, within ten (10) days of the Court's entry of this Order.

IV.

**ASSETS HELD BY THIRD PARTIES**

**IT IS FURTHER ORDERED** that:

A. The First Union Bank, which holds, controls, or maintains custody of Defendants' assets, shall transfer all funds held in account numbers 2000010824245, 2000010814925, 2000007811300, and 2000007811313 to the Commission by electronic fund transfer in accordance with the instructions provided by the Commission to effectuate such transfer, within ten (10) business days of receiving a copy of this Order;

B. The Hudson United Bank, which holds, controls, or maintains custody of Defendants' assets, shall transfer all funds held in account numbers 3980312284, 3980312174, 3980312187, 03980312116, 03980312213, and 03980312161 to the Commission by electronic fund transfer in accordance with the instructions provided by the Commission to effectuate such transfer, within ten (10) business days of receiving a copy of this Order; and

C. The Clerk for the United States District Court for the Eastern District of New York, which holds, controls, or maintains custody of approximately Two Hundred and Fifty Thousand Dollars (\$250,000.00) of Defendants' liquid assets in connection with the criminal case against Defendant Frederick J. Dick, Jr., *United States v. Dick*, 02 - Cr. - 148 (Seybert, J.), shall transfer all funds held in the cash bail account identified by criminal case number 02 - Cr. - 148, to the Commission by electronic fund transfer in accordance with the instructions provided by the Commission to effectuate such transfer, within ten (10) business days of receiving a copy of this Order.

**V.**

**LIFTING OF ASSET FREEZES**

**IT IS FURTHER ORDERED** that, upon payment of the monetary judgment pursuant to Paragraph III of this Order, and liquidation of Defendants' assets pursuant to Paragraph IV of this Order, the freezes of Defendants' assets, as ordered in the Preliminary Injunction Orders entered by this Court on May 29, 2002 and November 7, 2002, respectively, shall be dissolved.

**VI.**

**RETENTION OF RECORDS BY REDRESS ADMINISTRATOR**

**IT IS FURTHER ORDERED** that the redress administrator shall destroy all records relating to this matter six (6) years after the transfer of any remaining redress funds to the FTC Treasury account or the closing of the account from which such funds were disbursed, whichever is earlier, provided that no records shall be destroyed unless and until a representative of the Commission has received and approved the administrator's final accounting report. Records shall be destroyed in accordance with disposal methods and procedures to be specified by the Commission. The Commission may, in its sole discretion, require that such records, in whole or in part, be transferred, in lieu of destruction, to the Commission.

**VII.**

**ENFORCEMENT OF CONTRACTS**

**IT IS FURTHER ORDERED** that Defendants are hereby permanently restrained and enjoined from demanding payment on, or enforcing or threatening to enforce, any contract or agreement, in conjunction with the sale of advance fee credit cards, entered into by any Defendant prior to the effective date of this Order.

**VIII.**

**CUSTOMER LISTS**

**IT IS FURTHER ORDERED** that Defendants and their successors, assigns, officers, directors, members, agents, attorneys, servants, employees, salespersons, independent contractors, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly, indirectly, or through any corporation, limited liability company, partnership, subsidiary, division, trust, or other device, are hereby permanently restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing to any person the name, address, telephone number, credit card number, bank account number, Social Security number, e-mail address, or other identifying information of: (1) any person who paid any money to any Defendant; (2) any person solicited by any Defendant; or (3) any person on a list maintained by any Defendant for future solicitation. Defendants are further ordered to turn over to the Commission within three (3) days of the entry of this Order, all such identifying information and all copies thereof in the Defendants' possession, custody or control, in whatever format maintained, including, but not limited to, mailing lists, mailing labels, computer disks, and data compilations. *Provided,* however, that Defendants may disclose such identifying information to a law enforcement agency or as required by any law, regulation, or court order.

**IX.**

**RECORDING OF SALES CALLS**

**IT IS FURTHER ORDERED** that in the event that Defendants or their agents record any sales presentation or verification call with a consumer in connection with the sale of any

service or product, Defendants are permanently restrained and enjoined from accepting or processing any purchases resulting from such calls unless:

A. The sales presentation and any verification call are recorded in their entirety with the consumer's permission;

B. The recording includes clear, complete, and understandable disclosures of all material terms of the purchase, and the consumer's express agreement to such terms; and

C. The material terms disclosed in the recorded conversation shall be consistent with any information previously disclosed to the consumer. Material terms include, but are not limited to:

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

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

**X.**

**MONITORING COMPLIANCE OF SALES PERSONNEL**

**IT IS FURTHER ORDERED** that the Individual Defendant, in connection with any business where he is the majority owner of the business, or directly or indirectly manages or controls the business, and where the business is engaged in the sale of goods or services to

consumers, is hereby permanently restrained and enjoined from:

A. Failing to take reasonable steps sufficient to monitor and ensure that all employees and independent contractors engaged in sales or other customer service functions comply with Paragraphs I and II of this Order. Such steps shall include, at a minimum, the following: (1) providing employees and independent contractors with scripts, guidelines, and other sales material that comply with this Order; (2) listening to a representative sample of the oral representations made by persons engaged in sales or other customer service functions; (3) establishing a procedure for receiving and responding to consumer complaints; and (4) ascertaining the number and nature of consumer complaints regarding transactions in which each employee or independent contractor is involved; *provided* that this Subparagraph does not authorize or require Defendants to take any steps that violate any federal, state, or local laws;

B. Failing promptly to investigate fully any consumer complaint received by any business to which this Paragraph applies; and

C. Failing to take corrective action with respect to any sales person whom any Defendant or representative determines is not complying with this Order, which may include training, disciplining, and/or terminating such sales person;

*Provided, however,* that this Paragraph X does not authorize or require a Defendant to take any action that violates any federal, state, or local law.

## XI.

### PLAINTIFF'S AUTHORITY TO MONITOR COMPLIANCE

IT IS FURTHER ORDERED that, for the purpose of monitoring and investigating compliance with any provision of this Order:

**A. Within ten (10) days of receipt of written notice from a representative of the Commission, Defendants each shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in such Defendant's possession, or direct or indirect control, to inspect the business operation;**

**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**
- 2. Posing as consumers and suppliers to: Defendants' employees, or any other entity managed or controlled in whole or in part by the Defendants, without the necessity of identification or prior notice;**

***Provided* that nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)); and**

**C. Defendants shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present.**



**XII.**

**COMPLIANCE REPORTING BY DEFENDANTS**

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

- A.** For a period of five (5) years from the date of entry of this Order:
- 1.** The Individual Defendant shall notify the Commission of the following:
    - i.** Any changes in the Individual Defendant's residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;
    - ii.** Any changes in the Individual Defendant's employment status (including self-employment) within ten (10) days of the date of such change. Such notice shall include the name and address of each business that the Individual Defendant is affiliated with, employed by, or performs services for; a statement of the nature of the business; and a statement of the Individual Defendant's duties and responsibilities in connection with the business; and
    - iii.** Any changes in the Individual Defendant's name or use of any aliases or fictitious names;
  - 2.** Defendants shall notify the Commission of any changes in limited liability company or corporate structure that may affect compliance obligations arising under this Order, including, but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the

emergence of a successor limited liability company or corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of a bankruptcy petition; or a change in the company name or address, at least thirty (30) days prior to such change, *provided that*, with respect to any proposed change in the limited liability company or corporation about which the Defendants learn less than thirty (30) days prior to the date such action is to take place, Defendants shall notify the Commission as soon as is practicable after obtaining such knowledge;

B. One hundred eighty (180) days after the date of entry of this Order, Defendants each shall provide a written report to the FTC, 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.

This report shall include, but not be limited to:

1. Any changes required to be reported pursuant to Subparagraph A above; and
2. A copy of each acknowledgment of receipt of this Order obtained by Defendants pursuant to Paragraph XV;

C. For the purposes of this Order, Defendants shall, unless otherwise directed by the Commission's authorized representatives, mail (by certified mail, return receipt requested) all written notifications to the Commission to:

Director  
Federal Trade Commission  
Northeast Region  
One Bowling Green, Suite 318  
New York, NY 10004

Re: *FTC v. Credit Enhancement Services, LLC, et al.*  
Civil Action No. CV-02-2134;

D. For purposes of the compliance reporting required by this Paragraph, the Commission is authorized to communicate directly with Defendants; and

E. For the purposes of this Paragraph, "employment" includes, but is not limited to, the performance of services as an employee, consultant, or independent contractor for which payment is received; and "employers" includes, but is not limited to, any individual or entity for whom a Defendant performs services for which he is paid as an employee, consultant, or independent contractor.

### **XIII.**

#### **RECORD KEEPING PROVISIONS**

**IT IS FURTHER ORDERED** that for a period of eight (8) years from the date of entry of this Order, in connection with any telemarketing business operated by the Individual Defendant, or where he is a majority owner of the business, or directly or indirectly manages or controls a business engaged in telemarketing, he and his agents, employees, officers, corporations, limited liability companies, partnerships, trusts, successors, and assigns, and those persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from failing to create and retain the following records:

A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;

B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;

C. Customer files containing the names, addresses, phone 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; and

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

#### **XIV.**

#### **DISTRIBUTION OF ORDER BY DEFENDANTS**

**IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry of this Order:

A. The Limited Liability Company Defendants shall deliver a copy of this Order to all principals, members, officers, directors, managers, employees, agents, attorneys, and representatives having responsibilities with respect to the subject matter of this Order, and shall secure from each such person a signed and dated statement acknowledging receipt of the Order. The Limited Liability Company Defendants shall deliver this Order to current personnel within thirty (30) days after the date of service of this Order, and to new personnel within thirty (30) days after the person assumes such position or responsibilities; and

B. The Individual Defendant shall deliver a copy of this Order to the principals, members, officers, directors, managers, employees, agents, attorneys, and representatives under his control for any business that (1) employs or contracts for personal services from him and (2) has responsibilities with respect to the subject matter of this Order, including, but not limited

to, the principals, officers, directors, managers, employees, agents, attorneys, and representatives of Bargain Advantage Society, LLC a/k/a BAS and Proto Call Centers, LLC. The Individual Defendant shall secure from each such person a signed and dated statement acknowledging receipt of the Order within thirty (30) days after the date of service of the Order or the commencement of the employment relationship.

**XV.**

**ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS**

IT IS FURTHER ORDERED that each Defendant, within five (5) business days of receipt of this Order as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Order.

**XVI.**

**USE OF FALSE OR FICTITIOUS NAMES**

IT IS HEREBY ORDERED that in connection with telemarketing, except as authorized under the Telemarketing Sales Rule, Defendants are hereby permanently restrained and enjoined from using any aliases, pen names, pseudonyms, or assumed business names that misrepresent their true identities in the course of business dealings or in publicly filed documents.

**XVII.**

**INDEPENDENCE OF OBLIGATIONS**

IT IS FURTHER ORDERED that the expiration of any requirements imposed by this Order shall not affect any other obligation arising under this Order.

**XVIII.**

**COSTS AND ATTORNEY'S FEES**

**IT IS FURTHER ORDERED** that each party shall bear its own costs and attorney's fees incurred in this case.

**XIX.**

**OTHER CIVIL AND CRIMINAL REMEDIES**


**IT IS FURTHER ORDERED** that this action and the relief awarded herein is in addition to, and not in lieu of, other remedies as may be provided by law, including administrative, civil, and criminal remedies.

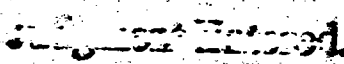
**XX.**

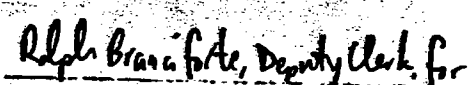
**RETENTION OF JURISDICTION**

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

SO ORDERED, this 31<sup>ST</sup> day of March, 2004, at \_\_\_\_\_.

  
\_\_\_\_\_  
HON. JOANNA SEYBERT  
UNITED STATES DISTRICT JUDGE



  
Ralph Braniff, Deputy Clerk, for

March 31, 2004