

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

FEDERAL TRADE COMMISSION

Plaintiff,

v.

GLOBAL MARKETING GROUP, INC.;  
GLOBAL BUSINESS SOLUTIONS, LLC;  
GLOBALPAY, INC.; GLOBALPAY, LLC;  
GLOBALPAY BV; SYNERGY CONSULTING  
SERVICES, LLC; FIRST PROCESSING  
CORPORATION; ELITE FUNDING GROUP,  
INC.; ONE WORLD GROUP, LLC; ONE  
WORLD CORPORATION; EFT COMMERCE,  
LLC; CELSIUS INTERNATIONAL, LLC;  
CELSIUS, LLC d/b/a GLOBAL  
PRODUCTIONS; GEMINI TRADING  
GROUP, LLC; GEMINI TRADING GROUP,  
INC., d/b/a GEMBILL; KWIKBILL.COM,  
LTD.; EWALLET EXPRESS, INC.; ONE  
PHARM SERVICES, INC; 17407, LLLP;  
555018, LLC; MARKETING SERVICES, LLC,  
d/b/a MED-COST; MERCHANT PROVIDER  
SOLUTIONS, LLC; MERCHANT PROVIDER  
SOLUTIONS, LTD., d/b/a MPS, LTD.;  
UNITRADE BUSINESS, LLC; IRA N. RUBIN;  
and KEVIN D. ASTL;

Defendants, and

PHOELICIA DANIELS;

Relief Defendant.

Case No. 8:06-cv-2272-T-30TGW

**PLAINTIFF FEDERAL TRADE  
COMMISSION'S MEMORANDUM  
OF POINTS AND AUTHORITIES  
IN SUPPORT OF ITS MOTION  
FOR ORDER TO SHOW CAUSE  
WHY DEFENDANT IRA RUBIN  
SHOULD NOT BE HELD IN  
CONTEMPT**

## **I. INTRODUCTION**

On December 13, 2006, just hours after being served with a Temporary Restraining Order freezing his assets and the assets of the other defendants in this matter, Ira Rubin took over half a million dollars from frozen bank accounts and subsequently converted, transferred, dissipated, concealed, spent, or otherwise disposed of these assets. Although Rubin has thus far refused to account for the disposition of most of these funds, records obtained by the Federal Trade Commission indicate that he has used a significant portion of this money to finance a global gambling and shopping spree that he embarked on just days after the Court froze his assets. This outrageous conduct undermines the central purpose of the asset freeze -- namely, preserving funds for eventual return to the consumers that Rubin helped defraud.

Rubin's violations of the Temporary Restraining Order and a Preliminary Injunction entered by this Court on January 11, 2007 are not limited simply to the misappropriation of frozen assets. Other violations include: (1) the dissipation of tens -- if not hundreds -- of thousands of dollars in assets on international travel, luxury goods, gambling, jewelry, trips to Las Vegas, and prohibited business expenses; (2) the submission of a false sworn financial statement; (3) incurring over \$95,000 in illicit charges on a credit card that Rubin deliberately concealed from the FTC; (4) the concealment of corporate records, including several boxes of files pertaining to defendants' business operations as well as the hard drives from three computers; and (5) assisting in the operation of a payment processing business. Although much of this illicit conduct occurred several months ago, most of the evidence regarding this

conduct came to light only recently and, as discussed below, is also the subject of a separate contempt proceeding that the FTC has been pursuing in the Northern District of Illinois.

The FTC respectfully requests that Rubin be ordered to appear personally before the Court and provide a detailed accounting of all funds that he has transferred, withdrawn, spent, or dissipated in violation of the Court's orders. The FTC further requests that Rubin be ordered to return or repatriate all remaining misappropriated assets to the Court-appointed receiver. Finally, the FTC also requests that Rubin be ordered to return the hard drives of the three computers that he concealed in a U-Haul storage unit that he has been renting in violation of the Preliminary Injunction. If Rubin fails to comply with these requirements, the Court should order Rubin incarcerated until he does so.<sup>1</sup>

## **II. BACKGROUND**

### **A. Proceedings in the Middle District of Florida (*FTC v. Global Marketing Group*)**

The FTC filed its Complaint for Injunctive and Other Relief on December 11, 2006 against Ira Rubin and several corporations that he owned or controlled, charging them with violating Section 5(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45(a), and the FTC's Trade Regulation Rule entitled "Telemarketing Sales Rule," 16 C.F.R. Part 310. The FTC alleged that Rubin knowingly provided substantial assistance to at least nine

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<sup>1</sup> Most of the information underlying the FTC's motion has been provided to the court-appointed receiver, Robb Evans & Associates, LLC. In some cases, the receiver has assisted in the gathering of this information. The FTC has informed the receiver about the timing and substance of this motion.

advance-fee telemarketing scams, withdrawing or attempting to electronically withdraw millions of dollars from consumers' bank accounts on behalf of these scams via the Automated Clearing House Network. The FTC also alleged that Rubin provided other forms of assistance to these scams, including customer service, order fulfillment, and list brokering.

On December 12, 2006, the Court entered an *Ex Parte* Temporary Restraining Order with Asset Freeze, Other Equitable Relief, and Order to Show Cause Why a Preliminary Injunction Should Not Issue ("TRO"). The TRO appointed Robb Evans & Associates, LLC as the temporary equity receiver for corporate defendants Global Marketing Group, Inc., Global Business Solutions, LLC, Globalpay, Inc., Globalpay, LLC, Globalpay BV, Synergy Consulting Services, LLC, First Processing Corporation ("Receivership Defendants"), and any of their affiliates, subsidiaries, or divisions, wherever located, with the full power of an equity receiver. The TRO imposed various conduct restrictions and reporting requirements, as well as a freeze on all of the defendants' assets.

On January 11, 2007, the Court entered a Stipulated Preliminary Injunction Order ("Preliminary Injunction"), continuing essentially the same conduct and asset restrictions as the TRO, and appointing the Robb Evans firm as permanent receiver over the Receivership Defendants. On March 19, 2007, the FTC filed an amended complaint naming one individual, Kevin Astl, and seventeen new business entities as defendants. On June 19, 2007, the Court entered a Preliminary Injunction adding all of the new corporate entities to the existing receivership.

**B. Contempt Proceedings in the Northern District of Illinois (*FTC v. Centurion Financial Benefits*)**

Rubin is also the subject of a separate contempt proceeding in a different FTC case filed in federal court in Chicago. Specifically, in September 2005, the FTC brought a civil enforcement action against a Canadian telemarketing operation engaged in the sale of non-existent credit cards to U.S. consumers. *See FTC v. Centurion Financial Benefits LLC*, No. 05-C-5442 (N.D. Ill. 2005). On January 23, 2006, the U.S. District Court for the Northern District of Illinois entered a Stipulated Preliminary Injunction Order (“*Centurion Preliminary Injunction*”) against several of the *Centurion* defendants, including individual defendant Frank Bellissimo. The FTC served a copy of the *Centurion Preliminary Injunction* on Rubin in his capacity as a third party payment processor for the *Centurion* defendants.

On March 3, 2007, in the Northern District of Illinois, the FTC filed a show cause motion asking the court to hold Rubin and Bellissimo in contempt of the *Centurion Preliminary Injunction*, alleging that they had violated the *Centurion Preliminary Injunction* through their operation of another alleged telemarketing scam. On May 23, 2007, the Honorable James Moran of the Northern District of Illinois entered an order (“*Contempt Order*”) finding Rubin and Bellissimo in contempt of the *Centurion Preliminary Injunction*. Among other things, the *Contempt Order* directs Rubin and Bellissimo to immediately deposit \$657,648 into an escrow account in the United States and imposes fines of \$5,000 per day for their failure to comply with this requirement.

On July 9, 2007, this Court granted a joint motion by the FTC and Rubin to lift the

asset freeze imposed in this case for the limited purpose of allowing Rubin to transfer assets in compliance with the Contempt Order. Shortly thereafter, the FTC discovered that Rubin had laundered \$320,000 through two Las Vegas casinos. The FTC then filed a motion in the Northern District to have Rubin incarcerated for his continued failure to comply with the Contempt Order. On October 5, 2007, the parties conducted an evidentiary hearing in the Northern District at which Rubin testified.<sup>2</sup> At the close of this hearing, Judge Moran declined to rule on the FTC's motion to have Rubin incarcerated. Instead, Judge Moran subsequently issued an order requiring Rubin to transfer several hundred thousand dollars in assets to the Northern District in compliance with the Contempt Order.<sup>3</sup> Rubin has not yet complied with this order and the FTC's motion to incarcerate Rubin is still pending before Judge Moran.

### **III. VIOLATIONS OF THE TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

#### **A. Rubin Has Stolen, Converted, Dissipated, or Concealed Over Half A Million Dollars in Frozen Assets in Violation of Section III(A) of the TRO**

On December 13, 2006, at approximately 9:32 a.m., FTC investigator Douglas McKenney personally served Rubin with a copy of the TRO,<sup>4</sup> which contains the following provision preventing Rubin and other defendants from:

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<sup>2</sup> In advance of this hearing, the FTC deposed Rubin. True and correct transcripts of the hearing and deposition are attached hereto as Exhibits 1 and 2, respectively.

<sup>3</sup> This order is attached hereto as Exhibit 3.

<sup>4</sup> See Declaration of Service of Douglas M. McKenney ¶ 3 at Dkt. #21 Att. 3.

Transferring, liquidating, converting, encumbering, pledging, loaning, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, granting a lien or security interest or other interest in, or otherwise disposing of any funds, real or personal property, or other Assets, or any interest therein, wherever located, including any Assets outside the territorial United States, that are: (1) owned, controlled or held by, or for the benefit of, in whole or in part, any Defendant; or (2) in the actual or constructive possession of any Defendant, including, but not limited to, any Assets held for or by any Defendant in any account at any bank or savings and loan institution . . . or other financial institution or depository of any kind, either within or outside the United States;

(TRO § III.A.) We have recently learned that approximately three hours after being served with the TRO, at 12:21 p.m., Rubin withdrew \$320,000 from a frozen account at Regions Bank in the form of two cashiers checks, one for \$250,000 and a second for \$70,000.<sup>5</sup> On January 17, 2007, Rubin deposited the \$70,000 check into a so-called “front money account” at the Mandalay Bay Resort and Casino in Las Vegas.<sup>6</sup> The next day, Rubin deposited the \$250,000 check into an account at the Wynn Las Vegas.<sup>7</sup>

Approximately two hours after taking \$320,000 from Regions Bank, Rubin transferred an additional \$250,000 out of another frozen account at a different bank. Specifically, on the afternoon of December 13, 2006, Rubin initiated the following three wires from a subsidiary account of Defendant Globalpay, LLC at Wells Fargo bank:<sup>8</sup>

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<sup>5</sup> See Exhibit 4, Declaration of Douglas M. McKenney in Support of Plaintiff's Motion for Order to Show Cause (“McKenney Dec.”) ¶ 2 Att. A. Although the court-appointed receiver served Regions Bank with the TRO the morning of December 13, 2006, the bank had apparently not processed the order in time to stop Rubin.

<sup>6</sup> Id. at ¶ 3 Att. B.

<sup>7</sup> Id. at ¶ 4 Att. C.

<sup>8</sup> Id. at ¶ 5 Att. D. As of December 13, 2006, Rubin was the only individual with signature authority on this account and therefore the only one capable of initiating these

<u>Time</u>	<u>Amount</u>	<u>Recipient Account</u>	<u>Receiving Bank</u>
2:03 p.m.	\$124,874.94	Arista Solutions, LLC	Mercantile Bank
2:09 p.m.	\$52,764.06	Internet Transaction Services, Inc	Wells Fargo Bank
2:24 p.m.	\$71,135.96	CSTR Solutions, Inc.	Bank of America
<b>TOTAL: \$248,774.96</b>			

Significantly, one of these recipients, Internet Transaction Services, is owned by Edward Courdy, an associate of Rubin's. A few weeks after receiving this wire, Courdy provided Rubin with an American Express credit card on which, as explained in greater detail below, Rubin incurred approximately \$95,000 in charges over the next several months. The largest transfer -- nearly \$125,000 to Arista Solutions -- stayed in the recipient's bank account for just one day before being wired on December 15, 2006 to an offshore account in Chennai, India.<sup>9</sup>

Thus far, Rubin has refused to account for the disposition of the vast majority of funds that he took from the receivership estate on December 13, 2006. Invoking his Fifth Amendment privilege against self-incrimination, Rubin has either been unwilling to acknowledge that he took the funds in the first place or declined to explain what has become

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transfers. Id. As with Regions Bank, Wells Fargo had been served with the TRO the morning of December 13, 2006, but had apparently not placed a hold on the account in question prior to Rubin's initiation of these transfers.

<sup>9</sup> Id. at ¶ 6 Att. E. The \$71,135 transfer to CSTR Solutions remains frozen in the recipient's bank account.



of the funds.<sup>10</sup> Rubin should be compelled both to return funds that he has taken in violation of the TRO and Preliminary Injunction as well as provide a detailed accounting of such funds.

**B. Rubin Has Incurred Nearly One Hundred Thousand Dollars in Illicit Expenses in Violation of Section III(E) of the Preliminary Injunction**

Section III(E) of the Preliminary Injunction allows Rubin to spend no more than \$7,000 per month for “reasonable, usual, ordinary, and necessary living expenses.” Rubin has systematically violated this provision since entry of the Preliminary Injunction, dissipating in excess of \$95,000 on gambling, jewelry, and luxury goods that have no reasonable connection to his “living expenses.” Indeed, Rubin has admitted using some of the money he took from Regions Bank to maintain “a standard of living and way of life to which he had become accustomed.”<sup>11</sup> Examples of these “standard of living” expenditures include:

<u>Date</u>	<u>Expense</u>	<u>Amount</u>	<u>Citation</u>
January 2007	Gambling losses	\$27,900	Rubin Dep. at p. 27
January - July 2007	Lodging at Mandalay Bay and Wynn Las Vegas casinos	\$5,458	McKenney Dec. ¶ 9

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<sup>10</sup> See, e.g., Exhibit 2, Deposition of Ira Rubin (“Rubin Dep.”) at pp. 19-21, 23-24, 31, 35-37, 41-42. Rubin has, however, acknowledged buying jewelry and other expensive gifts for an ex-employee and various Columbian “girls” that he has consorted with on his many recent trips to Costa Rica. *Id.* at 49-54.

<sup>11</sup> McKenney Dec. ¶ 16 Att. N at p.10.

February-March 2007	Shoes	\$3,020	Rubin Dep. at pp. 54-55
March 23, 2007	Eyewear	\$2,430	McKenney Dec. ¶ 9
April 2007	Jewelry	\$2,782	McKenney Dec. ¶ 9
May 2007	Jewelry	\$12,370	McKenney Dec. ¶¶ 9, 16 Att. N at p. 12
May - July 2007	Luggage	\$3,870	McKenney Dec. ¶¶ 9, 16 Att. N at p. 12
May - July 2007	Clothes and Shoes	\$10,727	McKenney Dec. ¶ 9
June 2007	Jewelry	\$1,582	McKenney Dec. ¶ 9
June - July 2007	Victoria's Secret	\$1,592	McKenney Dec. ¶ 9
July - August 2007	Car rental	\$2,502	McKenney Dec. ¶ 9
January - August 2007	Airfare for 10 trips to Costa Rica and one trip each to London, Amsterdam, Spain and Toronto	\$9,898	McKenney Dec. ¶ 9
February - August 2007	Airfare for third parties to fly to and from Costa Rica, New York and London	\$2,877	McKenney Dec. ¶ 9
June - July 2007	Check processing hardware, software and supplies	\$1,311	McKenney Dec. ¶ 9
September - October 2007	Airfare and lodging	\$9,088	McKenney Dec. ¶ 9

Some of these expenditures, such as Rubin's purchase of check processing materials, appear related to business ventures that Rubin has been operating in violation of Section I of the Preliminary Injunction. Regardless of their purpose, however, none of the above expenses can be characterized as reasonable, usual, ordinary, or necessary.

**C. Rubin Submitted A False Financial Statement in Violation of Section V of the Preliminary Injunction**

Section V of the Preliminary Injunction requires Rubin to complete a sworn financial statement “accurate as of the date of the entry of this Order.” Purportedly in compliance with this provision, Rubin provided the FTC with a financial statement on or about January 29, 2007.<sup>12</sup> This document, which bears Rubin's signature, is dated January 26, 2007.

As of January 11, 2007, the date that the Court entered the Preliminary Injunction, Rubin possessed at least \$320,000 in cashier's checks obtained from Regions Bank on December 13, 2006.<sup>13</sup> Rubin did not disclose these checks on his sworn financial statement.<sup>14</sup> Other omissions from Rubin's financial statement include a bank account that he opened on January 9, 2007, through which Rubin subsequently laundered tens of thousands of dollars,<sup>15</sup> and an American Express credit card that Rubin secretly obtained from a friend some time during the first week of January 2007.<sup>16</sup> The motive behind these omissions is clear: Rubin sought to hide assets and illicit activity from the FTC, the receiver, and the Court.<sup>17</sup>

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<sup>12</sup> Id. at ¶ 15 Att. M.

<sup>13</sup> Id. at ¶ 2 Att. A.

<sup>14</sup> See, e.g., id. at ¶ 15 Att. M at p. 5 (Item 12, “Cash, Bank, and Money Market Accounts”).

<sup>15</sup> Id. at ¶ 12 Att. J.

<sup>16</sup> Id. at ¶¶ 7-9, Atts. F and G. Rubin obtained this credit card from his friend and business associate, Edward Courdy, just weeks after wiring Courdy \$52,764 from an account frozen by the TRO. See supra Sec. III(A).

<sup>17</sup> For example, failing to disclose the accounts he opened with Coast Bank and Superior Bank enabled Rubin to launder tens of thousands of dollars in cash through these

**D. Rubin Incurred Over \$100,000 in Charges on an American Express Card and other Credit Cards in Violation of Section III(C) of the Preliminary Injunction**

Rubin used numerous credit cards to pay for many of the illicit expenses described above in Section III(B). In doing so, Rubin directly violated Section III(C) of the Preliminary Injunction, which prohibits Rubin from incurring more than \$5,000 in charges or cash advances on any credit cards issued in his name.

In particular, Rubin has amassed over \$95,000 in charges on an American Express card between January 9 and October 26, 2007.<sup>18</sup> Rubin also made frequent use of a Citibank MasterCard credit card which he obtained in July 2007, as well as a Chase Bank Visa credit card issued to him in August 2007.<sup>19</sup> As with the American Express card, Rubin used these credit cards to pay for expenses, such as an August 2007 trip to Spain from London as well as a September 2007 trip to Costa Rica, that he clearly sought to conceal from the FTC and the Court.<sup>20</sup>

The monthly balances on Rubin’s American Express, Visa, and MasterCard credit cards grossly exceeded the \$5,000 cap imposed by Section III(C) of the Preliminary Injunction. The total monthly charges on Rubin’s American Express card alone has ranged

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accounts. See, e.g., McKenney Dec. ¶¶ 12-13, Atts. J and K. One such deposit, which consisted of \$7,000 all in \$100 bills, prompted Coast Bank to conduct an internal “suspicious activity” investigation. Id. at ¶ 13 Att. at pp. 24-25.

<sup>18</sup> Id. at ¶¶ 7-9, Atts. F and G.

<sup>19</sup> Id. at ¶¶ 10-11, Atts. H and I.

<sup>20</sup> Id.

from a low of \$5,546 to a high of \$15,889.<sup>21</sup> The combined September 2007 balances for Rubin’s Visa and MasterCard credit cards amounted to \$10,230.18.<sup>22</sup>

Rubin’s violation of Section III(C) is compounded by his deliberate concealment of the American Express credit card from the FTC. Although Rubin began using this card as early as January 9, 2007,<sup>23</sup> he did not disclose the card on his sworn financial statement dated January 26, 2007. Citing his Fifth Amendment privilege against self-incrimination, Rubin has also refused to explain any of the charges reflected on statements associated with the card.<sup>24</sup> However, as described above in Section III(B), the international travel, luxury goods, and other indulgences that constitute the vast majority of these charges cannot possibly be characterized as the type of “reasonable,” “ordinary,” or “necessary” living expenses allowed under Section III of the Preliminary Injunction.

When asked about the American Express card at a deposition on September 26, 2007, Rubin stated under oath that he no longer had the card in his possession.<sup>25</sup> In reality, Rubin used the card that very day to pay \$800 in travel-related expenses and proceeded to incur tens

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<sup>21</sup> Id. at ¶ 9.

<sup>22</sup> Id. at ¶¶ 10, 11

<sup>23</sup> Id. at ¶ 7 Att. F.

<sup>24</sup> See, e.g., Exhibit 2, Rubin Dep. at pp. 58-62.

<sup>25</sup> Q: Do you have [the American Express] card right now?  
A: No.

Id. at p. 61.

of thousands of dollars in additional charges over the next several weeks.<sup>26</sup> Thus, even after lying about the American Express card on his financial statement and in his deposition, and even after being put on notice that his possession of the card violated the Preliminary Injunction, Rubin nevertheless continued using it.

**E. Rubin Has Concealed Corporate Documents in Violation of Sections II, III(B) and VII(D) of the TRO and Preliminary Injunction**

Section II of both the TRO and Preliminary Injunction prohibits Rubin and his “officers, agents, servants, employees . . . and all other persons or entities in active concert or participation with [him]” from:

Destroying, erasing, mutilating, concealing, altering, transferring, or otherwise, disposing of, in any manner, directly or indirectly, any books, records, tapes, disks, . . . or other Documents of any kind, including electronically-stored materials, that relate to the business practices or business or personal finances of Defendants or other entities directly or indirectly under the control of any Defendant.

Similarly, Section VII(D) of both orders directs Rubin to “immediately” deliver to the receiver “[a]ll documents of the Receivership Defendants, including, but not limited to, books and records of accounts, all financial and accounting records, . . . client lists . . . and other papers.”

In brazen disregard for these provisions, Rubin has concealed thirteen boxes of documents containing materials pertaining to the business practices of the Receivership Defendants.<sup>27</sup> Rubin hid these materials in a U-Haul storage unit that he rented in January

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<sup>26</sup> McKenney Dec. ¶ 7 Att. F at pp. 17-19.

<sup>27</sup> Exhibit 5, Declaration of Robert Bonanno (“Bonanno Dec.”) ¶¶ 3-6.

2007. The mere renting of such a unit represents yet another clear violation of Section III(B) of the TRO, which flatly prohibits Rubin from doing so without providing the FTC prior notice and an opportunity to inspect its contents.<sup>28</sup> In addition to boxes of business records, the storage unit also contained three computers with missing hard drives.<sup>29</sup> Rubin should be required to return the hard drives from these computers or account for their whereabouts.

**F. Rubin Is Engaging in Or Assisting Others in Engaging in Payment Processing in Violation of Section I of the Preliminary Injunction**

Rubin has violated Section I of the Preliminary Injunction by assisting in the operation of a payment processing business. The Preliminary Injunction clearly and unambiguously prohibits Rubin from: “Engaging in, or assisting others in engaging in, payment processing.” (Preliminary Injunction § I.A.) The order broadly defines “payment processing” to include:

the performance of any function of collecting, charging, or transmitting a consumer’s payment for goods or services by debiting or otherwise accessing a consumer’s bank account or credit card account, through the use of any payment mechanism, including, but not limited to, remotely created checks, ACH processing, and credit card transactions.

(Preliminary Injunction at p. 5.)

In violation of this provision, Rubin has provided substantial assistance to a payment processing business operated by one of his former employees, Debra Kapustin. On January 11, 2007, Kapustin filed papers with the Florida Secretary of State incorporating ACH

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<sup>28</sup> Id.; McKenney Dec. ¶ 14 Att. L.

<sup>29</sup> Bonanno Dec. ¶¶ 5-6.

Solutions, Inc.<sup>30</sup> On January 16, 2007, Kapustin posted two solicitations on a payment processing website promoting her new business.<sup>31</sup> These notices clearly indicate that Kapustin was engaged in, or sought to engage in, payment processing on behalf of high risk, outbound telemarketers – the same type of clients that Rubin specialized in serving prior to the FTC's lawsuit.<sup>32</sup> Rubin has admitted under oath to advising Kapustin about banking and risk issues.<sup>33</sup> He has also admitted purchasing over \$1,000 in check processing hardware and software for her as well as a supply of blank checks.<sup>34</sup> This conduct violates Section I(A) of the Preliminary Injunction.

#### **IV. PROPOSED ORDER**

The Court froze Rubin's assets and prohibited him from engaging in payment processing in an attempt to insure that he would not continue to victimize consumers and to preserve funds that might be used to redress consumers previously victimized by his illicit conduct. To prevent further consumer injury and asset dissipation, the Commission therefore requests that this Court take all necessary action to coerce Rubin's compliance with the Preliminary Injunction, including the following.

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<sup>30</sup> McKenney Dec. ¶ 17 Att. O.

<sup>31</sup> Id. at ¶ 18 Att. P.

<sup>32</sup> In her solicitations, Kapustin appealed to merchants who had “been turned down before,” claiming to accept “Outbound [telemarketers]” and “Recurring TEL.” Indeed, Kapustin posted both solicitations on a forum specifically dedicated to “High Risk Business.” Id.

<sup>33</sup> Rubin Dep. at pp. 72-73.

<sup>34</sup> Id. at pp. 74-77.



First, the Court should require Rubin to immediately return or repatriate all funds that he has misappropriated from frozen accounts.

Second, Rubin should be required to appear personally before the Court to provide a detailed accounting of all funds that have been spent, dissipated, loaned, or are otherwise not capable of being returned.

Third, the Commission asks the Court to impose a daily fine on Rubin until all misappropriated receivership assets have either been returned or fully accounted for. The daily fine should only cease to accrue after Rubin has satisfied this requirement.

Fourth, the Commission requests that the Court order Rubin to produce hard drives from the computers discovered in his U-Haul storage unit.

Finally, in the event that Rubin does not comply expeditiously with the requirements outlined above, the Commission asks that the Court order him to appear personally to show cause why he should not be incarcerated until such time as he complies with the Court's orders. *See, e.g., CFTC v. Wellington Precious Metals*, 950 F.2d 1525, 1531 (11th Cir. 1992) (individual may be incarcerated for civil contempt "many months or perhaps even several years"); *United States v. Lippett*, 180 F.3d 873, 877 (7th Cir. 1999) (characterizing confinement order to coerce compliance with a court order the "paradigmatic" civil contempt sanction).

WHEREFORE, the Commission requests that the Court enter an order to show cause why Defendant Ira Rubin should not be held in civil contempt for violating Sections I, II, III, V, and VII of the Preliminary Injunction and Sections II, III and VII of the Temporary

Restraining Order.

WHEREFORE, if Rubin is found to be in contempt, the Commission respectfully requests that the Court enter any and all relief that is necessary and appropriate in order to coerce Rubin's compliance with the terms of the Preliminary Injunction, up to and including incarceration.

Respectfully Submitted,

WILLIAM BLUMENTHAL  
General Counsel

DATED: December 14, 2007

/s James H. Davis  
JAMES H. DAVIS  
DAVID O'TOOLE  
Federal Trade Commission  
55 West Monroe Street, Suite 1825  
Chicago, Illinois 60603  
Voice: (312) 960-5634  
Fax: (312) 960-5600  
email: [jdavis@ftc.gov](mailto:jdavis@ftc.gov)  
[dotoole@ftc.gov](mailto:dotoole@ftc.gov)