

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

USA FINANCIAL, LLC, a Florida Limited
Liability Company,

AMERICAN FINANCIAL CARD, INC.,
formerly known as CAPITAL FINANCIAL,
INC., a corporation,

JEFFREY R. DEERING, individually and as
owner, officer, or manager of the
above-listed corporations,

RICHARD R. GUARINO, individually and as
owner, officer, or manager of the
above-listed corporations, and

JOHN F. BUSCHEL, Jr., individually and as
owner, officer, or manager of one or both of
the above-listed corporations,

Defendants.

Case No. 8:08LV899-T-17-map

SEALED

TEMPORARY RESTRAINING ORDER
WITH ASSET FREEZE, AND
ORDER TO SHOW CAUSE WHY A
PRELIMINARY INJUNCTION SHOULD NOT ISSUE

Plaintiff Federal Trade Commission (“Commission”), having filed its complaint for a permanent injunction and other relief in this matter pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57, and Section 4(a) of the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. § 6103(a), and having moved *ex parte* for a Temporary Restraining Order (“TRO”) pursuant to Rule 65 of the Federal Rules of Civil Procedure, and the Court having considered the complaint, memorandum of law, declarations and other exhibits filed in support thereof, and now being advised in the premises, finds as follows:

1. This Court has jurisdiction of the subject matter of this case and there is good cause to believe it will have jurisdiction of all parties hereto.
2. Venue properly lies with this Court.
3. Good cause exists to believe that the Commission will ultimately succeed in establishing that the above-named Defendants have engaged in and are likely to engage in acts and practices that violate Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a), and the Telemarketing Sales Rule, 16 C.F.R. Part 310, (“TSR”) and that the Commission is likely to prevail on the merits.
4. Good cause exists for issuing this Order pursuant to Federal Rule of Civil Procedure 65(b) and for relieving the Plaintiff of the duty to provide Defendants with prior notice of the Plaintiff’s motion. The Commission has not provided notice to the Defendants due to the likelihood that advance notice of this action will lead to irreparable harm, including the dissipation of assets and destruction of evidence, that the Commission seeks to prevent through

its motion for an *ex parte* temporary restraining order. The Commission's request for this emergency *ex parte* relief is not the result of any lack of diligence on the part of the Commission, but is instead based on the nature of the Defendants' unlawful conduct. Thus, there is good cause for relieving the Commission of the duty to provide Defendants with prior notice of the Commission's motion.

5. Good cause exists to believe that immediate and irreparable damage to the Court's ability to grant effective final relief for consumers in the form of monetary redress will occur from the sale, transfer, assignment, or other disposition or concealment by Defendants of their assets and records unless Defendants are immediately restrained and enjoined by Order of this Court. The evidence contained in the Commission's complaint, declarations, exhibits, and memorandum of points and authorities shows that the Defendants have engaged in a concerted course of illegal activity in connection with the sale of "advance-fee credit cards" to consumers nationwide, in violation of Section 5 of the FTC Act and the Telemarketing Sales Rule ("TSR"). Thus, there is good cause to believe that Defendants will attempt to conceal the scope of their illegal actions to avoid returning their ill-gotten gains to consumers injured by the Defendants' unlawful practices unless the Defendants are restrained and enjoined by order of this Court. Accordingly, asset freezes and appointment of a temporary receiver are reasonably necessary to preserve the possibility of meaningful relief at the conclusion of this litigation.

6. Weighing the equities and considering the Commission's likelihood of ultimate success, issuance of an *ex parte* temporary restraining order with asset freeze and other equitable relief is in the public interest.

7. No security is required of any agency of the United States for issuance of a restraining order. Fed. R. Civ. P. 65(c).

DEFINITIONS

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

1. “**Defendants**” means corporate Defendants USA Financial LLC, and American Financial Card, Inc. (“corporate Defendants”); and individual Defendants Jeffrey R. Deering, Richard R. Guarino, and John F. Buschel, Jr.

2. “**Person**” means a natural person, an organization or other legal entity, including a corporation, partnership, proprietorship, association, cooperative, government or governmental subdivision or agency, or any other group or combination acting as an entity.

3. “**Consumer**” means any individual, business, group, unincorporated association, limited or general partnership, corporation or other entity such as governmental agencies and non-profit organizations.

4. The terms “**and**” and “**or**” shall be construed conjunctively or disjunctively as necessary, and to make the applicable phrase or sentence inclusive rather than exclusive.

5. “**Asset**” or “**Assets**” means all 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), lines of credit, reserve accounts, chattel, leaseholds, contracts, mail or other deliveries, lists of consumer names, shares of stock, accounts, credits, receivables, funds and cash, wherever located.

6. “**Credit-related products, programs, or services**” means any product, program,

or service which is advertised, 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, loans, or financing, or as a method to consolidate or liquidate debts.

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

8. **“Material”** means likely to affect a person’s choice of, or conduct regarding goods or services.

9. **“Receivership Defendants”** means USA Financial LLC, and American Financial Card, Inc.

10. **“Plaintiff”** means the Federal Trade Commission (“Commission”).

I. PROHIBITED BUSINESS ACTIVITIES

IT IS THEREFORE ORDERED that, in connection with the advertising, marketing, offering for sale or sale of any goods and services, including credit cards or credit-related products, programs, or services, Defendants and their officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, corporations, subsidiaries, affiliates, successors, and assigns, 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 or through any trust, corporation, subsidiary, division, or other device,

or any of them, are hereby temporarily restrained and enjoined from:

A. Misrepresenting, directly or by implication, that after paying a fee, Defendants will provide consumers with, or arrange for consumers to receive, a credit card that can be used to purchase items at most retail stores;

B. Misrepresenting any material terms, restrictions, conditions, or limitations to purchase, receive or use goods or services that are the subject of a sales offer;

C. Violating any provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310, et seq., including, but not limited to:

1. Violating 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 goods or services that are the subject of a sales offer, 16 C.F.R. § 310.3(a)(2)(iii); and

2. 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 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; and

D. Assisting others who violate any provision of Subsections A, B, or C of this Section.

II. PROHIBITION ON RELEASE OF CUSTOMER INFORMATION OR CUSTOMER LISTS

IT IS FURTHER ORDERED that Defendants, and officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, corporations, subsidiaries, affiliates, successors, and assigns, 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 or through any trust, corporation, subsidiary, division, or other device, or any of them, are hereby temporarily restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, credit card number, bank account number, e-mail address, or other identifying information of any person who paid money to any of the Defendants for purchase of any good or service or who were contacted or on a list to be contacted by any of the Defendants; provided that Defendants may disclose such identifying information to a law enforcement agency or as required by any law, regulation, or court order.

III. ASSET FREEZE

IT IS FURTHER ORDERED that Defendants and their officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, corporations, subsidiaries, affiliates, successors, and assigns, 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 or through any trust, corporation, subsidiary, division, or other device, or any of them, are hereby restrained and enjoined from:

A. Assigning, concealing, converting, disbursing, dissipating, encumbering, liquidating, lending, pledging, selling, spending, transferring, withdrawing, granting a lien or security interest or other interest in, or otherwise disposing of any funds, real or personal

property, accounts, artwork, automobiles, coins, consumer lists, contracts, precious metals, shares of stock, uncashed checks, or other assets, wherever located, that is: (1) owned or controlled by any Defendant, in whole or in part; (2) in the actual or constructive possession of any Defendant; (3) held by an agent of any Defendant as a retainer for the agent's provision of services to any Defendant; or (4) owned, controlled by, or in the actual or constructive possession of, or otherwise held for the benefit of, any corporation, partnership or other entity directly or indirectly owned, managed, or controlled by, or under common control with, any Defendant, including, but not limited to, any asset held by or for any Defendant in any account at any bank or savings and loan institution, credit card processing agent, or with any broker-dealer, escrow agent, title company, commodity trading company, precious metal dealer, merchant account processor, check processor, money broker, or other financial institution or organization of any kind;

B. Opening or causing to be opened any safe deposit boxes or commercial mail boxes titled in the name of any Defendant, or subject to access by any Defendant;

C. Incurring charges or cash advances on any credit card, debit card, or lines of credit issued in the name, individually or jointly, of any Defendant;

D. Obtaining a personal or secured loan; and

E. Incurring liens or other encumbrances on real property, personal property, or other asset held in the name, individually or jointly, of any Defendant.

Provided further, that the assets affected by this Section shall include: (1) all of the assets of the Defendants existing as of the date this Order was entered; (2) all assets acquired by Corporate Defendants after the effective date of this Order; and (3) all assets acquired by

Individual Defendants after the effective date of this Order that are derived from or otherwise related to the sale or offering for sale of purported advance-fee credit cards.

IV. DUTIES OF THIRD PARTY ASSET HOLDERS

IT IS FURTHER ORDERED that, effective immediately upon notification of this Order, any financial or brokerage institution, escrow agent, money market or mutual fund, title company, commodity trading company, common carrier, storage company, trustee, commercial mail receiving agency, merchant account processor, mail holding or forwarding company, creditor or credit card issuer, or any other person or entity having possession, custody or control of any assets or documents of any Defendant, or of any account, safe deposit box, or other asset of any Defendant, either individually or jointly, or held on behalf of or for the benefit of any Defendant, at any time since January 1, 2006, shall:

A. Hold and retain within its control and prohibit the assignment, dissipation, encumbrance, pledge, removal, sale, transfer, withdrawal, or other disposal of any of the assets or other property held by, under its control, or on behalf of any Defendant in any account maintained in the name of, or for the benefit or use of, any Defendant, in whole or in part, except as directed by further order of this Court, or by written agreement of Plaintiff and the parties claiming an interest in such account or asset;

B. Deny Defendants access to any safe deposit boxes, commercial mail boxes, or storage facilities that are titled in the name, individually or jointly, of any Defendant, or otherwise subject to access by any Defendant;

C. Provide to counsel for the Commission, within five (5) business days of notice of this Order, a sworn statement setting forth:

1. The identification number of each account or asset titled in the name, individually or jointly, of any Defendant, or to which any Defendant is a signatory, or which is held on behalf of, or for the benefit or use of, any Defendant or subject to any Defendant's control, including all trust accounts on behalf of any Defendant or subject to any Defendant's control;
2. The balance of each such account, or a description and appraisal of the value of such asset, as of the close of business on the day on which notice of this Order is received, and, if the account or asset has been closed or removed, or more than \$1,000 withdrawn or transferred from it within the ninety (90) days prior to the date of this order, the date of the closure or removal of funds, the total funds removed or transferred, and the name and account number of the person or entity to whom such account, funds, or other asset was remitted; and
3. The identification and location of any safe deposit box, commercial mail box, or storage facility that is either titled in the name, individually or jointly, of any Defendant, or is otherwise subject to access by any Defendant.

D. Upon request by the Commission, provide copies of all records or other documents pertaining to each such account or asset, including, but not limited to, originals or copies of account applications, corporate resolutions, 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, within five (5) days of said request. For the purposes of this Section, the Commission may properly serve this Order on any financial or brokerage institution, business entity or person that holds, controls or maintains custody of any account or asset of any Defendant or has held, controlled or maintained custody of any account or asset of any Defendant at any time since January 1, 2006, by facsimile transmission, hand delivery, or overnight carrier. The assets affected by this Section shall include both existing assets and assets acquired after the effective date of this Order.

V. FINANCIAL REPORTS

IT IS FURTHER ORDERED that each Defendant shall, within five (5) days of service of this Order, prepare and provide to counsel for the Commission:

A. A completed financial statement, accurate as of the date of signature of the financial statement, which shall include all financial information requested by the Financial Statement of Individual Defendant, appended as Attachment A, and Financial Statement of Corporate Defendant, appended as Attachment B, for each business entity under which they conduct business, or of which they are an officer or member, and for each trust of which they are a trustee. The financial statements shall be accurate as of the date of entry of this Order and shall be verified under oath; and

B. The name, address and telephone number of each accountant, financial planner, investment advisor, stock broker or other individual, corporation, or partnership whom they hired for financial, business or tax advice or services, since January 1, 2006.

VI. REPATRIATION OF FOREIGN ASSETS AND DOCUMENTS

IT IS FURTHER ORDERED that, within five (5) business days following service of this Order, Defendants shall:

A. Repatriate to the United States all funds, documents or assets in foreign countries held either: (1) by any Defendant; (2) for the benefit of any Defendant; or (3) under the direct or indirect control, jointly or individually, of any Defendant and deliver them to the Receiver;

B. The same business day as any repatriation, (1) notify counsel for the Commission and the Receiver of the name and location of the financial institution or other entity that is the recipient of such funds, documents or assets; and (2) serve this Order on any such financial institution or other entity; and

C. Provide the Commission and the Receiver with a full accounting of all funds, documents, and assets outside of the territory of the United States held either: (1) by the Defendants; (2) for the Defendants' benefit; or (3) under the Defendants' direct or indirect control, individually or jointly.

VII. INTERFERENCE WITH REPATRIATION

IT IS FURTHER ORDERED that Defendants are hereby temporarily restrained and enjoined from taking any action, directly or indirectly, which 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, e-mail or wire transmission, or 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 as 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 entities of either the existence of this Order, or of the fact that repatriation is required pursuant to a Court Order, until such time as all assets have been fully repatriated pursuant to the preceding Section of this Order.

VIII. DISCLOSURE OF CUSTOMER SALES INFORMATION

IT IS FURTHER ORDERED that, within forty-eight (48) hours from service of this Order upon them, Defendants and any other person or entity served with a copy of this Order, shall provide to Plaintiff:

A. A statement of the total number of advance-fee credit cards issued by Defendants; and

B. A complete and accurate statement providing the names, addresses and telephone numbers of each customer who was charged for an advance-fee credit card, whether directly by Defendants or through a third party, and the total dollar amount of money received from each customer.

IX. MAINTAIN RECORDS AND REPORT NEW BUSINESS ACTIVITY

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

A. Destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any books, records, tapes, discs, accounting data, checks (fronts and backs), correspondence, forms, advertisements, website

designs and texts, telemarketing scripts or outlines, brochures, manuals, banking records, customer lists, customer files, customer payment histories, invoices, telephone records, ledgers, payroll records, or other documents of any kind, including electronically stored information, in their possession, custody, or control that relate to the business practices or business or personal finances of any Defendant from January 1, 2006, to the present;

B. Failing to create and maintain books, records, accounts, bank statements, accountants' reports, cash disbursement ledgers, cash receipt ledgers, general journals, general ledgers, documents indicating title to real or personal property, and any other data which, in reasonable detail, accurately, completely, and fairly reflect the Defendants' incomes, disbursements, transactions, and use of funds;

C. Creating, operating, or exercising any control over any new business entity, whether newly formed or previously inactive, including any partnership, limited partnership, joint venture, sole proprietorship, or corporation, without first providing Plaintiff 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.

X. APPOINTMENT OF TEMPORARY RECEIVER

IT IS FURTHER ORDERED that Mark J. Bernet is appointed as a Temporary Receiver ("Receiver") for corporate Defendants, with the full power of an equity receiver, and with directions and authority to accomplish the following:

A. Assume full control of the Receivership Defendants by removing, as the

Receiver deems necessary or advisable, any director, officer, independent contractor, employee, or agent of the Receivership Defendants, including any Defendant, from control of, management of, or participation in, the affairs of the Receivership Defendants. The Receiver shall, however, not interfere with or be privy to the defense of this action;

B. Take custody, control, and possession of all funds, property, premises, accounts, mail, and other assets and documents of, or in the possession, custody, or under the control of, the Receivership Defendants, wherever situated and including, but not limited to, the business premises of the Receivership Defendants;

C. Take the income and profits therefrom, and all sums of money now or hereafter due or owing to the Receivership Defendants, with full power to collect, receive and take possession of all goods, chattels, rights, credits, moneys, effects, lands, leases, books and records, work papers, and records of accounts, including computer-maintained information, contracts, financial records, monies on hand in banks and other financial institutions, and other papers and documents of the Receivership Defendants. *Provided, however,* that the Receiver shall not attempt to collect any amount from a consumer if the Receiver believes the consumer was a victim of the unfair or deceptive acts or practices alleged in the Complaint in this matter, without prior Court approval;

D. Take all steps necessary to secure each and every location from which the Receivership Defendants operates their business. Such steps may include, but are not limited to, any of the following, as the Receiver deems necessary or advisable: (1) serving this Order; (2) completing a written inventory of all receivership assets; (3) obtaining pertinent information from all employees and other agents of the Receivership Defendants, including,

but not limited to, the name, home address, social security number, job description, passwords or access codes, method of compensation, and all accrued and unpaid commissions and compensation of each such employee or agent; (4) photographing and video taping any or all portions of the location; (5) securing the location by changing the locks and disconnecting any computer modems or other means of access to the computer or other records maintained at that location; and (6) requiring any persons present on the premises at the time this Order is served to leave the premises, to provide the Receiver with proof of identification, or to demonstrate to the satisfaction of the Receiver that such persons are not removing from the premises documents or assets of the Receivership Defendants. Law enforcement personnel, including, but not limited to, police or sheriffs, may assist the Receiver in implementing these provisions in order to keep the peace and maintain security;

E. Conserve, hold, and manage all assets of the Receivership Defendants and perform all acts necessary or advisable to preserve the value of those assets in order to prevent any irreparable loss, damage, or injury to consumers or creditors of the Receivership Defendants, including, but not limited to, obtaining an accounting of the assets and preventing unauthorized transfer, withdrawal, or misapplication of assets;

F. Enter into contracts and purchase insurance as advisable or necessary;

G. Prevent the inequitable distribution of assets and determine, adjust, and protect the interests of consumers and creditors who have transacted business with the Receivership Defendants;

H. Manage and administer the business of the Receivership Defendants until further order of this Court by performing all incidental acts that the Receiver deems to be

advisable or necessary;

I. Make payments and disbursements from the receivership estate that are necessary or advisable for carrying out the directions of, or exercising the authority granted by, this Order. The Receiver shall apply to the Court for prior approval of any payment of any debt or obligation incurred by the Receivership Defendants prior to the date of entry of this Order, except payments that the Receiver deems necessary or advisable to secure assets of the Receivership Defendants, such as rental payments;

J. Determine and implement the manner in which the Receivership Defendants will comply with, and prevent violations of, this Order and all other applicable laws, including, but not limited to, revising sales materials and implementing monitoring procedures;

K. Defend, compromise, adjust, or otherwise dispose of any or all legal actions or proceedings instituted in the past or in the future against the Receiver in his role as Receiver, or against the Receivership Defendants, as the Receiver deems necessary and advisable to preserve the assets of the Receivership Defendants, or as the Receiver deems necessary and advisable to carry out the Receiver's mandate under this Order;

L. Continue to conduct the business of the Receivership Defendants in such manner, to such extent, and for such duration as the Receiver may in good faith deem to be necessary or appropriate to operate the businesses profitably and lawfully, if at all; provided that the continuation and conduct of the business shall be conditioned upon the Receiver's good faith determination that the businesses can be lawfully operated at a profit using the assets of the receivership estate;

M. Issue subpoenas to obtain documents and records pertaining to the receivership, and conduct discovery in this action on behalf of the receivership estate;

N. Open one or more bank accounts as designated depositories for funds of the Receivership Defendants. The Receiver shall deposit all funds of the Receivership Defendants in such a designated account and shall make all payments and disbursements from the receivership estate from such an account. The Receiver shall serve copies of monthly account statements on all parties;

O. Maintain accurate records of all receipts and expenditures made as Receiver; and

P. Cooperate with Plaintiff and any state or federal law enforcement agency with reasonable requests for information or assistance.

XI. COOPERATION WITH THE TEMPORARY RECEIVER

IT IS FURTHER ORDERED that Defendants, and all other persons or entities served with a copy of this Order, shall fully cooperate with and assist the Receiver. This cooperation and assistance shall include, but not be limited to, providing information to the Receiver that the Receiver deems necessary in order to exercise the authority and discharge the responsibilities of the Receiver under this Order; providing any password required to access any computer, electronic file, or telephonic data in any medium; and advising all persons who owe money to the Receivership Defendants that all debts should be paid directly to the Receiver. Defendants are hereby restrained and enjoined from directly or indirectly:

A. Transacting any of the business of the Receivership Defendants;

B. Destroying, erasing, mutilating, concealing, altering, transferring, or

otherwise disposing of, in any manner, directly or indirectly, any books, records, tapes, discs, accounting data, checks (fronts and backs), correspondence, forms, advertisements, website designs and texts, telemarketing scripts or outlines, brochures, manuals, banking records, customer lists, customer files, customer payment histories, invoices, telephone records, ledgers, payroll records, or other documents of any kind, including electronically stored information, in the possession, custody, or control that relate to the business practices or business of the Receivership Defendants;

C. Transferring, receiving, altering, selling, encumbering, pledging, assigning, liquidating, or otherwise disposing of any assets owned, controlled, or in the possession or custody of, or in which an interest is held or claimed by, the Receivership Defendants, or the Receiver;

D. Excusing debts owed to the Receivership Defendants;

E. Failing to notify the Receiver of any asset, including accounts, of a Receivership Defendant held in any name other than the name of the Receivership Defendants, or by any person or entity other than the Receivership Defendants, or failing to provide any assistance or information requested by the Receiver in connection with obtaining possession, custody, or control of such assets;

F. Doing any act or refraining from any act whatsoever to interfere with the Receiver managing, or taking custody, control, or possession of, the assets or documents subject to this receivership; or to harass or interfere with the Receiver in any way; or to interfere in any manner with the exclusive jurisdiction of this Court over the assets or documents of the Receivership Defendants; or to refuse to cooperate with the Receiver or the

Receiver's duly authorized agents in the exercise of their duties or authority under any order of this Court.

XII. COMPENSATION OF RECEIVER

IT IS FURTHER ORDERED that the Receiver is entitled to reasonable compensation for the performance of all duties pursuant to this Order and for the cost of actual out-of-pocket expenses incurred, solely from the assets now held by, or in the possession or control of, or which may be received by the Receivership Defendants. The Receiver shall file with the Court and serve on the parties periodic requests for the payment of such compensation, with the first such request due prior to sixty days after the date of this Order. The Receiver shall not increase the Receiver's fee billed to the receivership estate without prior approval of the Court.

XIII. BOND

IT IS FURTHER ORDERED that the Receiver shall file with the Clerk of this Court a bond in the sum of \$ 5000.00 with sureties to be approved by the Court, conditioned that the Receiver will well and truly perform the duties of the office and abide by and perform all acts the Court directs.

XIV. IMMEDIATE ACCESS TO BUSINESS OFFICES AND RECORDS

IT IS FURTHER ORDERED that Plaintiff and Receiver, and their representatives, agents, and assistants shall have immediate access to all business locations where the Receivership Defendants' business-related property, records, and equipment are located including, but not limited, to: 1800 Drew Street, Clearwater, Florida, 33755; any business records storage facility; and any commercial mail centers. Plaintiff and Receiver, and their

representatives, agents, and assistants, shall also have the right to remove documents from any other business locations connected with the Receivership Defendants' business in order that they may be inspected, inventoried, and copied. Local law enforcement personnel are granted permission to ensure the peaceable entry and access granted by this Section.

XV. DELIVERY OF RECEIVERSHIP PROPERTY

IT IS FURTHER ORDERED that, immediately upon service of this Order upon them, or within such time as may be permitted by the Receiver, Defendants, or any other person or entity served with a copy of this Order, shall transfer or deliver possession, custody and control of the following to the Receiver:

A. All Assets of the Receivership Defendants (including, but not limited to, desktop and laptop computers and network servers);

B. All Documents of the Receivership Defendants, including, but not limited to, all financial and accounting records, balance sheets, income statements, bank records (including monthly statements, canceled checks, records of wire transfers, and check registers), customer lists, title documents, contracts, accounting data, written or electronic correspondence, advertisements, computer tapes, disks, or other computerized records, books, written or printed records, handwritten notes, telephone logs, telephone scripts, membership records and lists, refund records, receipts, ledgers, personal and business canceled checks and check registers, appointment books, copies of federal, state, or local business, personal income, or property tax returns, and other Documents or records of any kind that relate to the Receivership Defendants' business practices;

C. All funds and other Assets belonging to members of the public now

held by the Receivership Defendants; and

D. All keys, codes, and passwords, entry codes, combinations to locks, and information or devices required to open or gain access to any Asset or Document, including, but not limited to, access to their business premises, means of communication, accounts, computer systems, or other property.

XVI. TRANSFER OF ASSETS TO THE RECEIVER

IT IS FURTHER ORDERED that, upon service of a copy of this Order, all banks, broker-dealers, savings and loans, escrow agents, title companies, commodity trading companies, merchant account processors, precious metals dealers and other financial institutions and depositories of any kind, and all third-party billing agents, LEC's, common carriers, and all other companies shall cooperate with all reasonable requests of the Plaintiff and the Receiver, relating to the implementation of this Order, including transferring Assets at the direction of the Receiver, and producing Documents related to the Assets of the Receivership Defendants.

XVII. NON-COMPLIANCE WITH TRANSFERS OR DELIVERY

IT IS FURTHER ORDERED that, in the event any person or entity fails to transfer or deliver any asset or otherwise fails to comply with any provision of this Order requiring the delivery of documents or other things, the Receiver may file *ex parte* an affidavit of non-compliance regarding the failure. Upon filing of the affidavit, the Court may authorize, without additional process or demand, writs of possession or sequestration or other equitable writs requested by the Receiver. The writs shall authorize and direct the United States Marshal or any sheriff or deputy sheriff of any county, or any other federal or state law

enforcement officer, to seize the asset, document, or other thing and to deliver it to the Receiver.

XVIII. DEFENDANTS' ACCESS TO THEIR BUSINESS PREMISES

IT IS FURTHER ORDERED that the Receiver shall allow the Defendants' representatives, and the Defendants themselves, reasonable supervised access to the premises of the Receivership Defendants. The purpose of this access shall be to inspect and copy any and all books, records, accounts, and other property owned by or in the possession of the Receivership Defendants. The Receiver shall have the discretion to determine the time, manner, and reasonable conditions of such access.

XIX. SERVICE OF ORDER UPON THIRD PARTY ASSET HOLDERS

IT IS FURTHER ORDERED that copies of this Order may be served by any means, including facsimile transmission, upon any financial institution or other entity or person that may have possession, custody, or control of any documents or assets of any Defendant, or that may otherwise be subject to any provision of this Order. Service upon any branch or office of any financial institution or entity shall effect service upon the entire financial institution or entity.

XX. CREDIT REPORTS

IT IS FURTHER ORDERED, that the Commission may obtain credit reports concerning Defendants Jeffrey R. Deering, Richard R. Guarino, and John F. Buschel, Jr. pursuant to Section 604 of the Fair Credit Reporting Act, 15 U.S.C. § 1681b, and that, upon written request, any credit reporting agency from which such report is requested shall provide it to the Commission.

XXI. BANKRUPTCY

IT IS FURTHER ORDERED that the Corporate Defendants are hereby prohibited from filing a petition for relief under the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, without prior permission from this Court.

XXII. STAY OF ACTIONS

IT IS FURTHER ORDERED that, except by leave of this Court, during the pendency of the receivership ordered herein, the Defendants and other persons and entities are hereby stayed from taking any action to establish or enforce any claim, right or interest for, against, on behalf of, in, or in the name of, the Receivership Defendants, or any of their subsidiaries, affiliates, partnerships, Assets, Documents, or the Receiver or the Receiver's duly authorized agents acting in their capacities as such, including, but not limited to, the following actions:

A. Commencing, prosecuting, continuing or enforcing any suit or proceeding, except that such actions may be filed to toll any applicable statute of limitations, including, but not limited to, any action against a purchaser or prospective purchaser of Defendants' advance-fee credit cards;

B. Accelerating the due date of any obligation or claimed obligation; filing, perfecting, or enforcing any lien; taking or attempting to take possession, custody or control of any Asset; attempting to foreclose, forfeit, alter, or terminate any interest in any Asset, whether such acts are part of a judicial proceeding, are acts of self-help, or otherwise; or setoff of any debt owing to the Receivership Defendants that arose before the date of this order against any claim against the Receivership Defendants;

C. Doing any act or thing whatsoever to interfere with the Receiver taking custody,

control, possession or management of the Assets or Documents subject to this receivership, or to harass or interfere with the Receiver in any way, or to interfere in any manner with the exclusive jurisdiction of this Court over the Assets and Documents of the Receivership Defendants.

Provided, however, nothing in this Paragraph shall prohibit any federal or state law enforcement or regulatory authority from commencing or prosecuting an action against the Receivership Defendants.

Provided further, that, except as otherwise provided in this Order, all persons and entities in need of documentation from the Receiver shall in all instances first attempt to secure such information by submitting a formal written request to the Receiver, and, if such request has not been responded to within thirty (30) days of receipt by the receiver, any such person or entity may thereafter seek an order of this court with regard to the relief requested.

XXIII. CORRESPONDENCE

For the purposes of this Order, all correspondence and service of pleadings on plaintiff shall be addressed to:

Gideon E. Sinasohn, Esq.
Federal Trade Commission, Southeast Regional Office
225 Peachtree Street, NE
Suite 1500
Atlanta, Georgia 30303
Telephone (404) 656-1366; Fax (404) 656-1379

Notice may be provided by email to gsinasohn@ftc.gov.

XXIV. DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that Defendants shall immediately provide a copy of this

Order to each affiliate, agent, partner, division, sales entity, successor, assignee, officer, director, employee, independent contractor, spouse, Internet web host or master, agent, attorney, and/or representative of Defendants and shall, within ten (10) days from the date of entry of this Order, serve upon counsel for the Commission a sworn statement that the Defendants have complied with this provision of this Order, which statement shall include the names and addresses of each such person or entity who has received a copy of the Order.

XXV. ORDER TO SHOW CAUSE REGARDING PRELIMINARY INJUNCTION

IT IS FURTHER ORDERED, pursuant to Federal Rule of Civil Procedure 65(b), that Defendants shall appear before this Court, at Courtroom 17 - Sam Gibbons, Courthouse on the 22nd day of May, 2008, at 2:00 o'clock P.m., to show cause, if there is any, why this Court should not enter a preliminary injunction, pending final ruling on the complaint against Defendants, enjoining them from further violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a) and the Telemarketing Sales Rule, 16 C.F.R. Part 310, continuing the freeze of their assets, and imposing such additional relief as may be appropriate. Defendants shall serve answering pleadings or materials on counsel for the Commission not less than 2 business days prior to the hearing on the Commission's request for a preliminary injunction. Plaintiff may submit reply pleadings or materials not less than 1 days prior to the hearing.

XXVI. PAPERS ON MOTION FOR PRELIMINARY INJUNCTION

IT IS FURTHER ORDERED that, pursuant to Fed. R. Civ. P. 6(d), memoranda and affidavits, if any, supporting or opposing the motion for preliminary injunction shall be served not later than twenty-four (24) hours before the preliminary injunction hearing.

XXVII. WITNESS IDENTIFICATION

IT IS FURTHER ORDERED that, if the Defendants intend to present the testimony of any witness at the hearing to show cause in this matter, they shall, at least forty-eight (48) hours prior to the scheduled date and time of hearing, serve on counsel for the Plaintiff a statement of the name, address, and telephone number of any such witness.

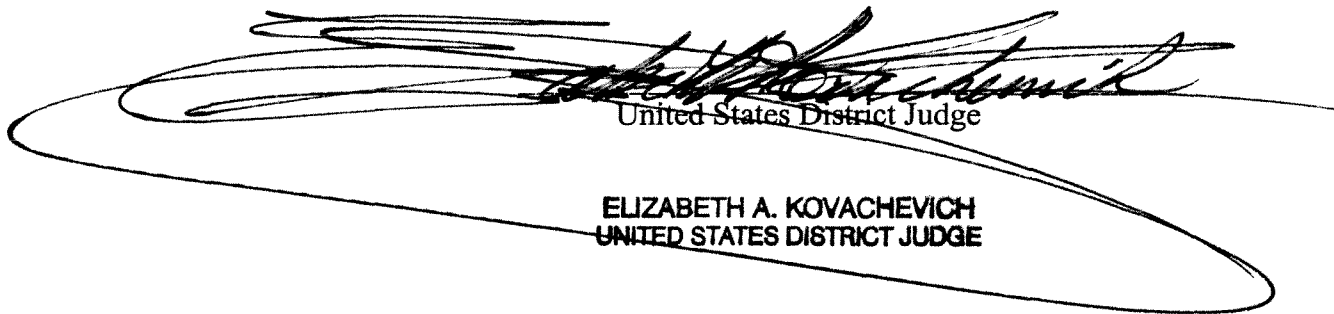
XXVIII. DURATION OF TEMPORARY RESTRAINING ORDER

IT IS FURTHER ORDERED that the Temporary Restraining Order ~~was~~ granted herein shall continue until ruling on the request for preliminary injunction, or until a ruling on a request to dissolve.

XXIX. RETENTION OF JURISDICTION

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

IT IS SO ORDERED, this 12th day of May, 2008, at 3:25 p.m.


United States District Judge
ELIZABETH A. KOVACHEVICH
UNITED STATES DISTRICT JUDGE