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JUN 24 2003
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

TREK ALLIANCE, INC., et al.

Defendants.

Case No. CV-02-9270 JSL (AJWx)

PRELIMINARY INJUNCTION WITH ASSET FREEZE, APPOINTMENT OF A PERMANENT RECEIVER, AND OTHER EQUITABLE RELIEF

PROCEDURAL BACKGROUND

On December 6, 2002, Plaintiff Federal Trade Commission filed its Complaint for a permanent injunction and other equitable relief in this matter pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b). Plaintiff also filed an Ex Parte Application for a Temporary Restraining Order with Asset Freeze, Appointment of a Temporary Receiver and Other Equitable Relief, and Order to Show Cause Why a Preliminary Injunction Should Not Issue and a Permanent Receiver Not Be Appointed ("TRO"). On December 9, 2002, the Court granted Plaintiff's application for a TRO and scheduled a hearing on the OSC for December 23, 2002. The individual Defendants filed opposition papers on December 19, 2002, and Plaintiff filed reply papers on December 20, 2002.

At the hearing on December 23, 2002, the individual Defendants, through their counsel, consented to entry of an extension of the TRO, and a new hearing date of January 8, 2003 was

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scheduled. A hearing was held on January 8, 2003, at which time counsel for Plaintiff and the individual Defendants advised the Court that they had agreed to stipulate to further extend the TRO and to continue the hearing on the OSC to allow additional time for discovery. The Court approved the parties' stipulation, establishing a briefing schedule and continuing the hearing until March 24, 2003. At the parties' request, the Court subsequently modified the briefing schedule and hearing date.

On March 25, 2003, the individual Defendants filed a memorandum of points and authorities in opposition to the entry of a preliminary injunction and the appointment of a permanent receiver, including numerous declarations and exhibits. On April 2, 2003, Plaintiff filed a reply brief, as well as numerous declarations. On June 10, 2003, a hearing was held at which counsel for Plaintiff and the individual Defendants presented oral argument.

DISPOSITION

Having considered all materials and arguments submitted by both Plaintiff and Defendants, Plaintiff's request for a preliminary injunction and the appointment of a permanent receiver is **HEREBY GRANTED**.

FINDINGS

1. This Court has jurisdiction of the subject matter of this case and venue in this district is proper.

2. There is good cause to believe that Defendants Trek Alliance, Inc., Trek Education Corporation, VonFlagg Corporation, Jeffrey Kale Flagg, a/k/a Kale Flagg, Richard Von Alvensleben, a/k/a Rich Von, Tiffani Von Alvensleben, a/k/a Tiffani Von, and Harry M. Flagg have engaged in and are likely to engage in acts that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and that the Commission is likely to prevail on the merits of this action.

3. There is good cause to believe that violations of Section 5(a) of the FTC Act are likely to recur unless Defendants are restrained and enjoined by Order of this Court, and that immediate and irreparable harm will result from such violations of the FTC Act.

4. There is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief for consumers in the form of monetary restitution will occur from the sale, transfer, or other disposition or concealment by Defendants of assets or records unless Defendants are immediately restrained and enjoined by order of this Court.

5. Good cause exists for the appointment of a Receiver over corporate Defendants Trek Alliance, Inc., Trek Education Corporation, and VonFlagg Corporation.

6. Considering Plaintiff's likelihood of ultimate success and weighing the equities, a preliminary injunction with asset freeze, the appointment of a Receiver, 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 Order, the following definitions shall apply:

1. "Plaintiff" means the Federal Trade Commission.

2. "Named Defendants" means Trek Alliance, Inc., Trek Education Corporation, VonFlagg Corporation, Jeffrey Kale Flagg, a/k/a Kale Flagg, Richard Von Alvensleben, a/k/a Rich Von, Tiffani Von Alvensleben, a/k/a Tiffani Von, and Harry M. Flagg, and each of them, by whatever names each might be known by.

3. "Defendants" means the Named Defendants, as well as their successors, assigns, officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, corporations, subsidiaries, all other persons or entities directly or indirectly under their control or under common control with any of them, and all other persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service or

otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, including, but not limited to, fictitious business names.

4. "Corporate Defendants" refers to Trek Alliance, Inc., Trek Education Corporation, and VonFlagg Corporation.

5. "Individual Defendants" refers to Richard Von Alvensleben, a/k/a Rich Von, Tiffani Von Alvensleben, a/k/a Tiffani Von, and Harry M. Flagg.

6. "Receivership Defendants" means corporate Defendants Trek Alliance, Inc., Trek Education Corporation, and VonFlagg Corporation, their affiliates and subsidiaries, and any other corporations or businesses under the control of any of the corporate Defendants.

7. "Marketing Program" includes, but is not limited to, any multi-level marketing program, business investment opportunity, pyramid marketing scheme, Ponzi scheme, or chain marketing scheme.

8. "Prohibited Marketing Program" means any Marketing Program or plan in which any participants pay money or valuable consideration to the company in return for which they receive the right to receive rewards, in return for recruiting other participants into the program, which are unrelated to the sale of products or services to ultimate users. For purposes of this definition, "sale of products to ultimate users" does not include sales to other participants or recruits in the marketing program or to participants' own accounts.

9. "Material" means likely to affect a person's choice of, or conduct regarding, goods or services.

10. "Assets" means any legal or equitable interest in, right to, or claim to, any real or personal property, including, without limitation, chattels, goods, instruments, equipment, fixtures, general intangibles, leaseholds, mail or other deliveries, inventory, checks, notes, accounts, credits, contracts, receivables, shares of stock, and all cash, wherever located.

11. "Document" is equal in scope and synonymous in meaning to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and any other data compilations from

which information can be obtained. A draft or non-identical copy is a separate document within the meaning of the term.

12. "Person" means a natural person, 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.

13. 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.

ORDER

I.

PROHIBITED REPRESENTATIONS

A. **IT IS HEREBY ORDERED** that each of the named Defendants, and the agents, servants, employees, and attorneys of any of them, and all persons or entities directly or indirectly under the control of any of them, and all other persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, and each such person, whether acting directly or through any corporation, subsidiary, division, or other device, in connection with the offering or sale of the right to participate in any Marketing Program, are hereby prohibited from:

1. Falsely representing, or assisting others in falsely representing, expressly or by implication, the amount of earnings or income that can be or which is likely to be derived from participation in the program;

2. Falsely representing, or assisting others in falsely representing, expressly or by implication, that persons who participate in such a program are likely to realize substantial financial gain;

3. Falsely representing, or assisting others in falsely representing, expressly or by implication, the benefits that can or are likely to be derived from participation in the program;

4. Falsely representing, or assisting others in falsely representing, expressly or by implication, the amount of sales that any person or persons have made, or that participants can or are likely to make;

5. Making any false or misleading hypothetical earnings claims, expressly or by implication;

6. Making any oral, written or visual representation, or assisting others in making any representation, expressly or by implication, which states a specific level of potential sales, income, gross or net profit for a prospective participant, or which states other facts that suggest such a specific level, unless at the time such representation is made, a reasonable basis exists for such representation and the individual Defendants have in their possession material that constitutes a reasonable basis for such representation, and such material is made available to any prospective participant and to the Commission or its staff upon reasonable demand;

7. Representing, or assisting others in representing, expressly or by implication, that the people who fail to make significant income from the program are those who do not devote substantial or sufficient effort;

8. Falsely representing, or assisting others in falsely representing, expressly or by implication, that salaried or permanent employment opportunities are available; and

9. Falsely representing, or assisting others in falsely representing, expressly or by implication, any other material fact.

B. **IT IS FURTHER ORDERED** that each of the individual Defendants, and the agents, servants, employees, and attorneys of any of them, and all persons or entities directly or indirectly under the control of any of them, and all other persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, and each such person, whether acting directly or through any corporation, subsidiary, division, or other device, are hereby prohibited from making, or assisting others in making, any false or misleading representation of material fact in connection with the advertising, promotion marketing, distribution, offering for sale or sale or **any** good or service.

II.

PROHIBITION AGAINST MATERIAL OMISSIONS

IT IS FURTHER ORDERED that each of the named Defendants, and the agents, servants, employees, and attorneys of any of them, and all persons or entities directly or indirectly under the control of any of them, and all other persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, and each such person, whether acting directly or through any corporation, subsidiary, division, or other device, in connection with the offering or sale of the right to participate in any Marketing Program, are hereby prohibited from:

A. Failing to disclose, clearly and conspicuously, before any consumer becomes a Marketing Program participant, all information material to a consumer's decision to participate in the Marketing Program, including but not limited to the following:

(1) The number and percentage of current Marketing Program participants who have not received any commissions, bonuses or overrides;

(2) The median amount of commissions, bonuses and overrides received by all participants in the Marketing Program, together with a true statement setting forth the percentage of participants who have received less than that amount, and the percentage who have received more;

(3) The average amount of commissions, bonuses and overrides that have been received by all participants in the Marketing Program; and

(4) For each level or rank within the pay plan or compensation structure of the Marketing Program, the number and percentage of current Marketing Program participants who have reached that level or rank, and the average length of time it took to reach that level;

B. Failing to obtain from each prospective participant, before such person becomes a participant, a signed and dated statement, on a separate sheet of paper, acknowledging that the

person has received a written disclosure statement, on a separate sheet of paper, making the specific disclosures enumerated above, with a copy of such statement attached to the statement;

C. Failing to mail to each participant, promptly upon the participant's enrollment in the program, a letter–

(1) which includes, on a separate sheet of paper, a written disclosure statement setting forth the specific disclosures enumerated above; and

(2) which advises the participant that he or she may rescind any agreement relating to the participant's right to participate in the program, and receive a full refund of any money paid to the company or its representatives, including money paid for the purchase of product, by mailing a notice to the company or by calling a toll-free telephone number established specifically for such purpose, within three business days of receipt of the letter.

III.

PROHIBITED MARKETING PROGRAMS

IT IS FURTHER ORDERED that each of the named Defendants, and the agents, servants, employees, and attorneys of any of them, and all persons or entities directly or indirectly under the control of any of them, and all other persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, and each such person, whether acting directly or through any corporation, subsidiary, division, or other device, are hereby prohibited from engaging or participating in, or assisting others in, (i) the operation or promotion of any Prohibited Marketing Program, as defined above, or (ii) or the advertising, offering, sale, or marketing of the right to participate in any Prohibited Marketing Program.

IV.

ASSET FREEZE

IT IS FURTHER ORDERED that

A. Defendants are hereby restrained and enjoined, subject to the exceptions and conditions set forth in Paragraphs B through D of this Section, below, until further order of this Court, from:

1. Transferring, encumbering, selling, concealing, pledging, hypothecating, assigning, spending, withdrawing, disbursing, conveying, gifting, dissipating, or otherwise disposing of any funds, property, coins, lists of consumer names, shares of stock, insurance proceeds, or other assets, wherever located, that are (1) owned or controlled by any of the named Defendants, in whole or in part; (2) in the actual or constructive possession of any of the named Defendants; (3) held by an agent of any of the named Defendants, as a retainer for the agent's provision of services to a named 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 or controlled by any of the named Defendants.

2. Opening or causing to be opened any safe deposit boxes titled in the name of any of the named Defendants, or subject to access by any of the named Defendants;

3. Incurring charges or cash advances on any credit or debit card issued in the name, singly or jointly, any of the named Defendants, or any corporation, partnership, or other entity directly or indirectly owned or controlled by any of the named Defendants; and

4. Failing to disclose to Plaintiff, immediately upon receiving notice of this Order, information that fully identifies each asset of the named Defendants, and each entity holding such asset, including, without limitation, the entity's name, address, and telephone number, the number of the account, and the name under which the account is held, unless the Defendant has previously disclosed such information to Plaintiff;

B. The freeze imposed in this Section shall not be construed to apply to assets that the Individual Defendants acquired following service of the Temporary Restraining Order or acquire

following entry of this Preliminary Injunction unless such assets (i) were or are derived from activity that was prohibited by the Temporary Restraining Order or is prohibited by this Preliminary Injunction, or (ii) are received as the result of any insurance coverage paid in connection to this lawsuit;

C. Robb Evans is appointed as Special Master with respect to the release of any personal assets of the individual defendants and the payment of attorneys fees. The Special Master shall have the following duties and powers:

1. The Special Master shall have the authority to approve the release of frozen assets, subject to the terms and factors set forth below in this Section, and subject to review by the Court in the event the parties disagree with any determination made by the Special Master and they are unable to work out a solution among themselves;

2. The Special Master shall determine whether the living expenses or attorneys fees and expenses which any individual Defendant seeks to pay pursuant to Paragraph D of this Section are reasonable;

3. The Special Master shall determine whether any proposed release of frozen assets is necessary, taking into account other sources of income. The individual Defendants subject to the asset freeze shall cooperate with the Special Master by providing all information and documents necessary to allow him to assess the amount of income that they are receiving from other sources. The Special Master shall approve of the release of frozen funds only to the extent necessary to pay for reasonable living expenses and reasonable attorneys fees and expenses, and subject to the limitations set forth in Paragraph D of this Section.

4. The Special Master shall have the power to choose and employ deputies, attorneys and independent contractors as he deems advisable or necessary in the performance of his duties. The Special Master and his deputies,

attorneys and independent contractors shall be compensated and reimbursed for reasonable fees and expenses from the Receivership estate in accordance with Section XVI of this Order, below.

D. The individual Defendants may, under the supervision of the Special Master, pay living expenses and attorneys fees and expenses as follows:

1. Defendant J. Kale Flagg shall through December 2003 be permitted to obtain on the tenth day of each month up to $12,000.00 from his frozen assets for the limited purpose of paying reasonable living expenses and reasonable expenses incurred in the defense of any of the defendants in this action, including attorneys fees and costs against future billings rendered and approved, but not attorneys fees and costs for past bills incurred. The court has reduced the estimated amount to be used to treat Defendant's autistic son. Upon the provision of adequate documentation of bills paid over a substantial period and explanation given by care providers for the need of such services, the court may reconsider an increase in the estimated amount.

2. Defendants Richard and Tiffani Von Alvensleben shall through December 2003 be permitted to obtain on the tenth day of each month up to $12,000.00 from their frozen assets for the limited purpose of paying reasonable living expenses and reasonable expenses incurred in the defense of any of the defendants in this action, including attorneys fees and costs against future billings rendered and approved, but not attorneys fees and costs for past bills incurred. Beginning in January 2004, this monthly amount shall decrease to $10,600.00.

3. Defendant Harry Flagg may spend no more than $7,000 per month on reasonable expenses incurred in the defense of any of the defendants in this action, including attorneys fees and costs against future billings rendered, but not attorneys fees and costs for past bills incurred.

Provided, however, that (i) payment of attorneys fees as described in this Paragraph must be approved by the Special Master, and (ii) the individual Defendants and their counsel shall not allow more than $30,000 in attorneys fees and costs to accrue before being approved by the Special Master, and (iii) all money so paid from frozen funds shall be applied only toward outstanding

balances for services and costs that were rendered or incurred after the last day included in any bills that have previously been submitted to the Special Master for review;

Provided further that payment of any money toward any outstanding balance for attorneys fees and expenses that have been previously submitted to the Special Master for review may be paid out of frozen assets as the Court shall determine is proper and just after briefing from the parties, with a deadline of ten days after entry of this Order for any brief from any of the individual Defendants, and a deadline of seven days after service of the defendants' brief for any reply from Plaintiff.

V.

PRESERVATION OF RECORDS

IT IS FURTHER ORDERED that Defendants, and their agents, servants, employees, and attorneys, and all persons or entities directly or indirectly under the control of any of them, and all other persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, and each such person, are hereby restrained and enjoined from destroying, erasing, mutilating, concealing, altering, transferring or otherwise disposing of, in any manner, directly or indirectly, any documents that relate to the business practices or business or personal finances of any of the Individual Defendants or the business practices or business finances of any of the Corporate Defendants, including, but not limited to, such documents as any contracts, accounting data, correspondence, advertisements, computer tapes, discs or other computerized records, books, written or printed records, handwritten notes, telephone logs, telephone scripts, receipt books, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, copies of federal, state, or local business or personal income or property tax returns.

VI.

NOTIFICATION OF BUSINESS ACTIVITIES

IT IS FURTHER ORDERED that

A. Each of the Individual Defendants is hereby restrained and enjoined from creating, operating, or exercising any control over any business entity, including any partnership, limited partnership, joint venture, sole proprietorship or corporation, without first serving on counsel for the Commission a written statement disclosing the following: (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.

B. Each of the Individual Defendants shall notify the Commission at least seven (7) days prior to any affiliation with any new or previously inactive business or employment, and shall immediately notify the Commission of any affiliation with any business or employment since December 10, 2002, that they have not previously disclosed to the Commission. Each notice shall include the defendant's new business address and a statement of the nature of the business or employment and of his or her duties and responsibilities in connection with that business or employment.

VII.

FINANCIAL INSTITUTIONS

IT IS FURTHER ORDERED that any financial or brokerage institution, insurance company, business entity, or person having possession, custody, or control of any records of Defendants Trek Alliance, Inc., Trek Education Corporation, VonFlagg Corporation, Jeffrey Kale Flagg, a/k/a Kale Flagg, Richard Von Alvensleben, a/k/a Rich Von, or Tiffani Von Alvensleben, a/k/a/ Tiffani Von, or of any account, safe deposit box, or other asset titled in the name of any of these Defendants, either individually or jointly or held for the benefit of any of these Defendants, or that has maintained any such account, safe deposit box, or other asset at any time since January 1, 1999, shall:

A. Hold and retain within its control and prohibit the transfer, encumbrance, pledge, assignment, removal, withdrawal, dissipation, sale, or other disposal of any such account or other asset, except for transfers or withdrawals authorized in writing by Special Master/Receiver Robb Evans, his deputies, his attorneys (Frandzel, Robins, Bloom & Csato, L.C.) or counsel for Plaintiff, or by further order of this Court;

B. Deny access to any safe deposit box titled individually or jointly in the name of any of these Defendants or otherwise subject to access by the defendant;

C. Provide to Plaintiff and to the Receiver, within three (3) business days of notice of this Order, unless previously provided pursuant to the TRO, a sworn statement setting forth:

1. The identification of each account or asset;

2. The balance of each account or a description of the nature and value of each asset as of the close of business on the day notification of this Order is received, and, if the account or asset has been closed or moved, the balance or value removed and the person or entity to whom it was transferred; and

3. the identification of any safe deposit box titled in the name of or subject to access by any of the named Defendants.

D. Upon request by counsel for Plaintiff or the Receiver/Special Master, promptly provide Plaintiff or the Receiver with copies of all records or other documentation pertaining to such account or asset, including but not limited to originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs; and

E. At the direction of Plaintiff or the Receiver appointed herein, and without further order of this Court, convert any stocks, bonds, options, mutual funds, or other securities to their cash equivalents.

VIII.

ACCESS TO DEFENDANTS' RECORDS

IT IS FURTHER ORDERED that the Receiver shall allow the Commission's representatives, the representatives of the named Defendants, and the named Defendants themselves, reasonable access to the records 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 and manner of this access.

IT IS FURTHER ORDERED that if, at the time of service of this Order, any records or property (as described below) relating to Defendants' business or assets were, as of December 10, 2002, located at the personal residence of any of the named Defendants, or at any other location to which the defendant had access, and such records or property have not previously been provided to Plaintiff or the Receiver, then such Defendant shall, within forty-eight (48) hours of service of this Order, produce to Plaintiff, at a location designated by Plaintiff, all such records and property, including but not limited to:

A. All contracts, accounting data, written or electronic correspondence, advertisements, computer tapes, discs, or other computerized or electronic records, books, written or printed records, handwritten notes, telephone logs, telephone scripts, telephone bills, receipt books, ledgers, membership records and lists, refund records, receipts, ledgers, bank records (including personal and business monthly statements, canceled checks, records of wire transfers, and check registers), appointment books, copies of federal, state, and local business or personal income or property tax returns, 1099 forms, title records, and other documents or records of any kind that relate to Defendants' business and assets; and

B. All computers and data in whatever form, used by Defendants, in whole or in part, relating to Defendants' business and assets.

IX.

APPOINTMENT OF RECEIVER

IT IS FURTHER ORDERED that Robb Evans is appointed Receiver for Corporate Defendants Trek Alliance, Inc., Trek Education Corporation, and VonFlagg Corporation, and their affiliates and subsidiaries (hereinafter referred to as the "Receivership Defendants"), with the full power of an equity receiver. The Receiver shall be the agent of this Court and solely the agent of this Court in acting as Receiver under this Order. The Receiver shall be accountable directly to this Court. The Receiver shall comply with all Local Rules of this Court governing receivers.

X.

RECEIVERSHIP DUTIES

IT IS FURTHER ORDERED that the Receiver is directed and authorized to perform and accomplish the following:

A. Assume full control of the Receivership Defendants by removing, as the Receiver deems necessary or advisable, any manager, independent contractor, employee, or agent of the Receivership Defendants, including any and all of the Individual Defendants, from control of, management of, or participation in, the affairs of the Receivership Defendants;

B. Take exclusive custody, control and possession of all assets and documents of, or in the possession, custody, or under the control of, the Receivership Defendants, wherever situated. The Receiver shall have full power to divert mail and to sue for, collect, receive, take in possession, hold, and manage all assets and documents of the Receivership Defendants and other persons or entities whose interests are now held by or under the direction, possession, custody, or control of the Receivership Defendants. Provided, however, the Receiver shall not attempt to collect any amount from any sales representative of the Receivership Defendants;

C. Take all steps necessary to secure all premises owned, rented, leased, or otherwise controlled by the Receivership Defendants. Such steps may include, but are not limited to, the following as the Receiver deems necessary or advisable: (1) serving and filing 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, method of compensation, and all accrued and unpaid commissions and compensation of each such employee or agent; (4) video taping 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; or (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;

D. Conserve, hold, and manage all receivership assets, 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 to creditors of the Receivership Defendants, including, but not limited to, obtaining an accounting of the assets and preventing transfer, withdrawal, or misapplication of assets;

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

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

G. 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, which includes retaining, hiring, or dismissing any employees, independent contractors, or agents;

H. Choose, engage, and employ attorneys, accountants, appraisers, and other independent contractors and technical specialists, as the Receiver deems advisable or necessary in the performance of duties and responsibilities under the authority granted by this Order;

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;

K. Institute, compromise, adjust, appear in, intervene in, or become party to such actions or proceedings in state, federal or foreign courts that the Receiver deems necessary and advisable to preserve or recover the assets of the Receivership Defendants or that the Receiver deems necessary and advisable to carry out the Receiver's mandate under this Order;

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

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, or to continue to maintain any such accounts that were opened pursuant to the TRO. 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; and

O. Maintain accurate records of all receipts and expenditures that he makes as Receiver.

XI.

COOPERATION WITH THE RECEIVER

IT IS FURTHER ORDERED that Defendants, and their agents, servants, employees, and attorneys, and all persons or entities directly or indirectly under the control of either of them, and all other persons or entities in active concert or participation with either of them who receive actual notice of this Order by personal service or otherwise, and each such person, shall fully cooperate with and assist the Receiver. Such cooperation and assistance shall include, but not be limited to, providing any information to the Receiver that the Receiver deems necessary to exercising the authority and discharging the responsibilities of the Receiver under this Order; providing any password required to access any computer or electronic files in any medium; or advising all persons who owe money to the Receivership Defendants (other than sales representatives) 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, or transacting business under the name Trek, Trek Alliance, Inc., Trek Education Corporation, TEC, VonFlagg Corporation, or any substantially similar name;

B. Destroying, secreting, defacing, transferring, or otherwise altering or disposing of any documents of the Receivership Defendants, including, but not limited to, books, records, accounts, or any other papers of any kind or nature;

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 Defendants 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; or

F. Doing any act or refraining from any act whatsoever to interfere with the Receiver's taking custody, control, possession, or managing 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.

DELIVERY OF RECEIVERSHIP PROPERTY

IT IS FURTHER ORDERED that:

A. Immediately upon service of this Order upon them, or within a period permitted by the Receiver, the Individual Defendants, and all other persons in possession, custody, and control of assets or documents of the Receivership Defendants, shall transfer or deliver possession, custody, and control of the following to the Receiver:

1. All assets of the Receivership Defendants;

2. All documents of the Receivership Defendants, including, but not limited to, books and records of accounts, all financial and accounting records, balance sheets, income statements, bank records (including monthly statements, canceled checks, records of wire transfers, and check registers), client lists, title documents and other papers;

3. All assets belonging to members of the public now held by the Receivership Defendants; and

4. All keys and codes necessary to gain or to secure access to any assets or documents of the Receivership Defendants, including, but not limited to, access to their business premises, means of communication, accounts, computer systems, or other property.

B. In the event any person or entity fails to deliver or transfer any asset or otherwise fails to comply with any provision of this Paragraph, the Receiver may file, on an ex parte basis, 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 (pursuant to Fed. R. Civ. P. 4(c)(1)) to seize the asset, document, or other thing and to deliver it to the Receiver.

XIII.

BANKRUPTCY PETITIONS

IT IS FURTHER ORDERED that, in light of the asset freeze and appointment of the Receiver, each of the Individual Defendants is hereby prohibited from filing, or causing to be filed, on behalf of either him- or herself or of any of the Corporate or Receivership Defendants, a petition for relief under the United States Bankruptcy Code, 11 U.S.C. § 101 et seq., without prior permission from this Court.

XIV.

TRANSFER OF FUNDS 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, or other financial institutions shall cooperate with all reasonable requests of the Receiver relating to implementation of this Order, including transferring funds at his direction and producing records related to the assets of the Receivership Defendants.

XV.

STAY OF ACTIONS

IT IS FURTHER ORDERED that:

A. Except by leave of this Court, during pendency of the receivership ordered herein, Defendants and all other persons and entities (except for Plaintiff) be and hereby are 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, any of the Corporate Defendants, or any of its assets, or the Receiver or the

Receiver's duly authorized agents acting in their capacities as such, including, but not limited to, the following actions:

1. Commencing, prosecuting, continuing, entering, or enforcing any suit or proceeding, except that such actions may be filed to toll any applicable statute of limitations;

2. Accelerating the due date of any obligation or claimed obligation; filing 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;

3. Executing, issuing, serving, or causing the execution, issuance or service of, any legal process, including, but not limited to, attachments, garnishments, subpoenas, writs of replevin, writs of execution, or any other form of process whether specified in this Order or not; or

4. 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 or documents of the Receivership Defendants.

B. This Section does not stay:

1. The commencement or continuation of a criminal action or proceeding;

2. The commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power;

3. The enforcement of a judgment, other than a money judgment, obtained in an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power;

4. The commencement of any action by the Secretary of the United States Department of Housing and Urban Development to foreclose a mortgage or deed of trust in

any case in which the mortgage or deed of trust held by the Secretary is insured or was formerly insured under the National Housing Act and covers property, or combinations of property, consisting of five or more living units; or

5. The issuance to a Receivership Defendants of a notice of tax deficiency.

C. 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.

XVI.

COMPENSATION OF RECEIVER

IT IS FURTHER ORDERED that the Receiver and all personnel hired or retained by the Receiver as herein authorized, including counsel to the Receiver and accountants, are entitled to reasonable compensation for the performance of duties pursuant to this Order and for the cost of actual out-of-pocket expenses incurred by them, 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 reasonable compensation, with the first such request filed no more than sixty days after the date of this Order. The Receiver shall not increase the hourly rates used as the bases for such fee applications without prior approval of the Court.

XVII.

RECEIVER'S BOND

IT IS FURTHER ORDERED that the Receiver shall file with the Clerk of this Court, if he has not already done so, a bond in the sum of $10,000 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.

XVIII.

CREDIT REPORTS

IT IS FURTHER ORDERED that Plaintiff may obtain credit reports concerning any of the named Defendants pursuant to Section 604(a)(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(1), and that, upon written request, any credit reporting agency from which such reports are requested shall provide them to Plaintiff.

XIX.

SERVICE OF DOCUMENTS

IT IS FURTHER ORDERED that, for the purposes of this Order, all correspondence, pleadings and other court documents directed to Plaintiff shall be sent to:

John D. Jacobs
Jennifer M. Brennan
Federal Trade Commission
10877 Wilshire Blvd., #700
Los Angeles, CA 90024
Fax: (310) 824-4380

David C. Fix
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Room H-238
Washington, D.C. 20580
Fax: (202) 326-3395

XX.

SERVICE OF THIS ORDER

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 either defendant, or that may be subject to any provision of this Order.

IT IS SO ORDERED.

Dated: 4/24/03

J. Spencer Letts
United States District Judge