

UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

FILED
United States District Court
Denver, Colorado

Civil Action No. 04-F-1065 (MJW)

MAY 27 2004

FEDERAL TRADE COMMISSION,

GREGORY C. LANGHAM

Plaintiff,

CLERK

v.

PHILLIP W. RANNEY, individually;
ARMOR MORTGAGE;
ABACUS MORTGAGE;
COMMUNITY HOMEBANC MORTGAGE SERVICES, INC.;
HARBOR PACIFIC FUNDING, INC.;
HIGH CENTER, INC.;
LENDING STRATEGIES OF COLORADO, INC.;
LITE REALTY CORP.;
PWR PROCESSING, INC., dba First Source America Mortgage Corp. dba NexLoan;
PWR PRESS, INC.; and
SOURCE FUNDING COMPANY, Colorado corporations;
KACE, LLC, dba Aristocrat Mortgage, a Colorado limited liability company; and
MORTGAGE WATCH, a California corporation;

Defendants; and

KATHLEEN A. RANNEY, individually,

Relief Defendant.

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

Plaintiff Federal Trade Commission ("FTC" or "Commission"), having filed its
Complaint for Injunctive and Other Equitable Relief, including redress to consumers, and having
applied *ex parte* for a temporary restraining order and other equitable relief against defendants

Phillip W. Ranney, Armor Mortgage; Abacus Mortgage; Community Homebank Mortgage Services, Inc.; Harbor Pacific Funding, Inc.; High Center, Inc.; Lending Strategies of Colorado, Inc.; Lite Realty Corp.; PWR Processing, Inc., dba First Source America Mortgage Corp. dba NexLoan; PWR Press, Inc.; Source Funding Company; KACE, LLC,; and Mortgage Watch("defendants") pursuant to Fed. R. Civ. P. 65(b), and the Court having considered the Complaint, plaintiff's Application for Temporary Restraining Order, and the Memorandum of Points and Authorities and other materials filed in support thereof, and now being advised in the premises, finds

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

2. There is good cause to believe that defendants have engaged in and are likely to engage in acts that violate Section 5(a) of the Federal Trade Commission Act ("FTC Act"), as amended, 15 U.S.C. §45(a), and Section 24(a) of Regulation Z, 16 C.F.R. § 226.24(a), and that the Commission is likely to prevail on the merits of this action;

3. There is good cause to believe that immediate and irreparable harm will result from defendants' ongoing violations of the FTC Act through the present marketing and advertising of defendants' home mortgage refinancing services unless defendants are restrained and enjoined by order of this Court;

4. There is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief to consumers in the form of monetary redress will occur from the sale, transfer, or other disposition or concealment by defendants of their assets or

business records unless defendants are immediately restrained and enjoined by order of this Court;

5. Plaintiff has represented to the Court that telephonic notice of the hearing was attempted to be provided by telephoning Mr. Eric Litvak, known to be defendants' counsel, and that a message was left with Mr. Litvak's wife when she answered the telephone. Mr. Litvak did not contact the Court, or attempt to contact the Court to the Court's knowledge. Under these circumstances the Court finds that there is good cause for relieving the Commission of the duty to provide defendants with further prior notice of the Commission's application;

6. There is good cause for the Court to appoint a temporary receiver over corporate defendants Armor Mortgage; Abacus Mortgage; Community Homebanc Mortgage Services, Inc.; Harbor Pacific Funding, Inc.; High Center, Inc.; Lending Strategies of Colorado, Inc.; Lite Realty Corp.; PWR Processing, Inc., dba First Source America Mortgage Corp. dba NexLoan; PWR Press, Inc.; Source Funding Company; KACE, LLC.; and Mortgage Watch;

7. Good cause exists for requiring defendants to produce an accounting of their business, sworn financial statements, profit-and-loss statements, and individual assets, and for giving the Commission immediate access to the business premises of the corporate defendants;

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

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

ORDER

DEFINITIONS

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

1. "Advertising" means any written or verbal statement, illustration or depiction that is designed to effect a sale or create interest in the purchasing of goods or services, whether it appears in a brochure, newspaper, magazine, pamphlet, leaflet, circular, mailer, book insert, free standing insert, letter, catalogue, poster, chart, billboard, public transit card, point of purchase display, packaging, package insert, label, film, slide, radio, television or cable television, audio program transmitted over a telephone system, program-length commercial ("infomercial"), Internet, or in any other medium;

2. "Assets" means any legal or equitable interest in, right to, or claim to, any real and personal property, including, but not limited to, chattels, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail or other deliveries, inventory, checks, notes, accounts, credits, receivables (as those terms are defined in the Uniform Commercial Code), contracts, shares of stock, and all cash, wherever located;

3. "Home mortgage refinancing services" means soliciting consumers or negotiating loans or performing services for consumers in connection with the refinancing of loans secured directly or collaterally by liens on the residential real property of such consumers.

4. "Defendants" means Phillip W. Ranney, Armor Mortgage; Abacus Mortgage; Community Homebank Mortgage Services, Inc.; Harbor Pacific Funding, Inc.; High Center, Inc.; Lending Strategies of Colorado, Inc.; Lite Realty Corp.; PWR Processing, Inc., dba First Source America Mortgage Corp. dba NexLoan; PWR Press, Inc.; Source Funding Company; KACE,

LLC.; and Mortgage Watch;

5. "Receivership defendants" means, collectively, Armor Mortgage; Abacus Mortgage; Community Homebank Mortgage Services, Inc.; Harbor Pacific Funding, Inc.; High Center, Inc.; Lending Strategies of Colorado, Inc.; Lite Realty Corp.; PWR Processing, Inc., dba First Source America Mortgage Corp. dba NexLoan; PWR Press, Inc.; Source Funding Company; KACE, LLC.; and Mortgage Watch, and their respective subsidiaries, divisions, affiliates, successors, and assigns; and "receivership defendant" means any of the receivership defendants;

6. "Relief defendant" means Kathleen A. Ranney; and

7. The terms "and" and "or" in this Order shall be construed conjunctively or disjunctively as necessary, to make the applicable sentence or phrase inclusive rather than exclusive.

I. PROHIBITED BUSINESS ACTIVITIES

IT IS HEREBY ORDERED that defendants and their officers, directors, agents, servants, employees, salespersons, distributors, corporations, subsidiaries, affiliates, successors, assigns, and those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service, facsimile, or otherwise are hereby enjoined from

A. Making, or assisting others in making, expressly or by implication, any false or misleading oral or written statement or representation in connection with the advertising, marketing, promotion, offer for sale, or sale of home mortgage refinancing services, including, but not limited to:

1. Misrepresenting that they can provide home mortgage refinancing at

interest rates competitive with the lowest rates currently available in the marketplace or at any specific interest rate;

2. Misrepresenting that the fees and costs associated with processing consumers' loan applications, including but not limited to closing costs, application fees, credit report fees, appraisal fees, document preparation fees, points, origination fees, broker/lender fees, title insurance fees, underwriting fees, recording fees, and pre-payment penalties, will be paid at no cost to consumers;
3. Misrepresenting that consumers will not be required to make any mortgage payments on an interim loan because a second, lower-interest loan will be funded before any payments were due on the interim loan or because any such payments would be covered by the fees paid by the lenders; and
4. Misrepresenting that they are licensed to conduct business as mortgage brokers by an agency of any state; and

- B. Violating any provision of the Truth-in-Lending Act, 15 U.S.C. §§ 1601-1666j or Regulation Z, 16 C.F.R. Part 226, including but not limited to Section 24(a) of Regulation Z, 16 C.F.R. § 226.24(a), by advertising credit terms other than those that actually are or will be offered.

II. ASSET FREEZE

IT IS FURTHER ORDERED that defendants and the relief defendant and their officers, directors, agents, servants, employees, salespersons, distributors, corporations, subsidiaries, affiliates, successors, assigns, and those persons or entities in active concert or participation with

them who receive actual notice of this Order by personal service, facsimile, or otherwise, are hereby temporarily restrained and enjoined from

- A. Selling, liquidating, assigning, transferring, converting, loaning, encumbering, pledging, concealing, dissipating, spending, withdrawing, 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. in the actual or constructive possession of any defendant or the relief defendant; or
 2. owned or controlled by, or held, in whole or in part for the benefit of, or subject to access by, or belonging to, any defendant or the relief defendant; or
 3. in the actual or constructive possession of, or owned or controlled by, or subject to access by, or belong to, any corporation, partnership, trust, or other entity directly or indirectly under the control of any defendant or the relief defendant;
- B. Opening or causing to be opened any safe deposit boxes titled in the name of any defendant or the relief defendant, or subject to access by any defendant or the relief defendant;
- C. Incurring charges or cash advances on any credit or debit card issued in the name, singly or jointly, of any defendant or the relief defendant, or any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by

any defendant or the relief defendant; and

- D. Failing to disclose to the Commission, immediately upon service of this Order, information that fully identifies each asset of any defendant or the relief defendant, and each entity holding such asset, including, but not limited to, the entity's name, address, and telephone number, the number of the account, and the name under which the account is held.

Provided, however, that the freeze imposed in this Paragraph shall be construed to apply to assets that defendant Phillip W. Ranney and relief defendant Kathleen A. Ranney acquire following service of this Order only if such assets are derived from the sale of home mortgage refinancing services.

Provided further, that, pending further order of the Court, defendant Phillip W. Ranney and relief defendant Kathleen A. Ranney shall collectively be allowed to spend up to, but no more than, \$150 per day of previously acquired assets for living expenses out of a personal account which has been identified to the Commission.

III. RETENTION OF ASSETS BY THIRD PARTIES

IT IS FURTHER ORDERED that, pending determination of the Commission's request for a preliminary injunction, any bank, savings and loan, financial or brokerage institution, fund, escrow agent, trustee, mail receipt facility, or other person or entity served with a copy of this Order, or who otherwise has actual knowledge of this Order, that has possession, custody, or control of any account, asset, safe deposit box, or document held on behalf of, or relating or belonging to Phillip W. Ranney; Kathleen A. Ranney; Armor Mortgage; Abacus Mortgage; Community Homebanc Mortgage Services, Inc.; Harbor Pacific Funding, Inc.; High Center, Inc.;

Lending Strategies of Colorado, Inc.; Lite Realty Corp.; PWR Processing, Inc., dba First Source America Mortgage Corp. dba NexLoan; PWR Press, Inc.; Source Funding Company; KACE, LLC,; or Mortgage Watch, shall

- A. Hold and retain within such entity's or person's control, and prohibit the withdrawal, removal, assignment, transfer, pledge, hypothecation, encumbrance, disbursement, dissipation, conversion, sale, liquidation, or other disposal of any funds, documents, property, or other assets held by or under such entity's or person's control:
1. on behalf of, or for the benefit of, any defendant or the relief defendant;
 2. in any account maintained in the name of, or subject to withdrawal by, any defendant or the relief defendant; or
 3. that are subject to access or use by, or under the signatory power of, any defendant or the relief defendant;
- B. Deny access to any safe deposit boxes that are
1. titled in the name, individually or jointly, of any defendant or the relief defendant; or
 2. subject to access by any defendant or the relief defendant;
- Provided, however,** that the Temporary Receiver may have access to any safe deposit box titled in the name of any of the receivership defendants or subject to access by agents of any of the receivership defendants;
- C. Provide to counsel for the Commission and to the Temporary Receiver, within three (3) days, a statement setting forth

1. the identification of each account or asset titled in the name, individually or jointly, or held on behalf of, or for the benefit of, any defendant or the relief defendant, whether in whole or in part;
2. the balance of each such account, or a description of the nature and value of such asset;
3. the identification of any safe deposit box that is either titled in the name of, individually or jointly, or is otherwise subject to access or control by, any defendant or the relief defendant, whether in whole or in part; and
4. for any account, safe deposit box, or other asset that has been closed or removed within one year from the date of entry of this Order, the date closed or removed and the balance on said date; and

D. Upon request by the Commission or by the Temporary Receiver, promptly provide the Commission or the Temporary Receiver with copies of all records or other documentation pertaining to such account, asset, or safe deposit box, 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.

Provided further that the accounts subject to this Paragraph include existing assets and assets deposited after the effective date of this Order. This Paragraph shall not prohibit transfers or withdrawals in accordance with any provision of this Order, authorized in writing by counsel for the Commission, by the Temporary Receiver, or by further order of the Court.

IV. PRESERVATION OF RECORDS AND OTHER EVIDENCE

IT IS FURTHER ORDERED that defendants and the relief defendant, and their officers, directors, agents, servants, employees, salespersons, distributors, corporations, subsidiaries, affiliates, successors, assigns, and those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service, facsimile, or otherwise, are hereby enjoined from

- A. Destroying, erasing, mutilating, concealing, altering, transferring or otherwise disposing of, in any manner, directly or indirectly, contracts, agreements, customer files, customer lists, customer addresses and telephone numbers, correspondence, advertisements, brochures, sales material, training material, sales presentations, documents evidencing or referring to defendants' home mortgage refinancing services, data, computer tapes, disks, or other computerized records, books, written or printed records, handwritten notes, telephone logs, "verification" or "compliance" tapes or other audio or video tape recordings, receipt books, invoices, postal receipts, 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, and other documents or records of any kind, including electronically-stored materials, that relate to the business practices or business or personal finances of any defendant or other entity directly or indirectly under the control of any defendant; and
- B. Failing to create and maintain books, records, and accounts which, in reasonable detail, accurately, fairly, and completely reflect the incomes, assets,

disbursements, transactions, and use of monies by any defendant or other entity directly or indirectly under the control of any defendant or the relief defendant.

V. ACCOUNTING PROVISIONS

IT IS FURTHER ORDERED that, within three (3) calendar days after service of this

Order,

- A. Defendants and the relief defendant shall prepare and provide to the Commission complete and accurate individual or corporate financial statements, as applicable, in a form to be provided by the Commission, signed under penalty of perjury;
- B. Defendants and the relief defendant shall further provide the Commission with a complete and accurate corporate financial statement in a form to be provided by the Commission, signed under penalty of perjury, for any corporation owned or controlled by any defendant or the relief defendant and not named in the caption;
- C. The receivership defendants shall provide profit-and-loss statements from the date of incorporation or formation through the date of this Order;
- D. Defendants and the relief defendant shall further provide the Commission with statements, verified under oath, of all transfers and assignments of assets and property worth \$1,000 or more since January 1, 2003, that shall include the amount or value transferred or assigned, the name and address of the transferee or assignee, the date of the transfer or assignment, and the type and amount of consideration paid to any defendant or the relief defendant; and
- E. Each defendant and the relief defendant shall provide the Commission, and the Temporary Receiver with respect to the receivership defendants, with access to

records and documents pertaining to assets of such defendant that are held by financial institutions outside the territory of the United States, by signing a document entitled "Consent to Release of Financial Records," which the Commission shall provide.

VI. REPATRIATION OF ASSETS

IT IS FURTHER ORDERED that within five (5) business days following service of this Order, all defendants and the relief defendant shall

- A. Repatriate to the United States all funds, documents, or assets in foreign countries held, jointly or singly, either by, for the benefit of, or under the direct or indirect control of any defendant or the relief defendant;
- B. On the same business day as any repatriation under Subparagraph A above,
 1. notify the Commission and the Temporary 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;
- C. Provide the Commission and the Temporary Receiver with a full accounting of all funds, documents, and assets outside of the territory of the United States held, jointly or singly, either by, for the benefit of, or under the direct or indirect control of any defendant or the relief defendant; and
- D. Hold and retain all repatriated funds, documents, and assets and prevent any transfer, disposition, or dissipation whatsoever of any such assets or funds.

VII. NOTIFICATION OF BUSINESS ACTIVITIES

IT IS FURTHER ORDERED that defendant Phillip W. Ranney and relief defendant Kathleen A. Ranney are 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 providing counsel for the Commission with 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.

IT IS FURTHER ORDERED that defendant Phillip W. Ranney shall notify the Commission at least seven (7) days prior to any affiliation with any new or previously inactive business or employment. Each notice shall include the defendant Phillip W. Ranney's new business address and a statement of the nature of the new business or employment and of his duties and responsibilities in connection with that business or employment.

VIII. APPOINTMENT OF TEMPORARY RECEIVER

IT IS FURTHER ORDERED that Mr. Harvey Sender, Esq. is hereby appointed Temporary Receiver, with the full power of an equity receiver, for the receivership defendants. 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. The receiver has the directions and authority to

- A. Assume full control of the receivership defendants and all power of the

receivership defendants' directors, officers, and managers, and remove defendant Phillip W. Ranney, relief defendant Kathleen A. Ranney, and any other officer, independent contractor, employee, attorney, or agent of the receivership defendants, from control or management of, or participation in, the affairs of the receivership defendants as the receiver deems necessary and advisable;

- B. Take immediate and exclusive custody, control, and possession of all properties, premises, assets, and documents of, in the possession of, or under the control of, any receivership defendant, wherever situated, including, but not limited, to 3806 East Pikes Peak Avenue, Colorado Springs, Colorado. The receiver shall have full power to divert mail and to sue for, collect, receive, and take possession of
1. all assets and documents of the receivership defendants and members of the public whose interests are now held by or are under the direction, possession, custody, or control of any receivership defendant; and
 2. all sums of money now or hereafter due and owing to any receivership defendant. 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;
- C. Perform all acts necessary to conserve, hold, manage, and preserve the value of all such assets;
- D. Hold, preserve, and administer the business of the receivership defendants until further order of this Court, with full authority to perform all acts necessary or

incidental thereto, including retaining, hiring, or dismissing any employees, independent contractors, or agents;

- E. Take such actions and enter into such agreements in connection with the administration of the receivership defendants as the Temporary Receiver deems necessary;
- F. Choose, engage, and employ attorneys, accountants, appraisers, and other independent contractors, and technical specialists, as the Temporary Receiver deems advisable or necessary in the performance of duties and responsibilities under the authority granted by this Order;
- G. Make payments and disbursements from the receivership estate that the Temporary Receiver deems necessary to secure or preserve the receivership defendants' assets or to carry out the Temporary Receiver's mandate under this Order;
- H. Institute, prosecute and defend, compromise, intervene in, or become party to such actions or proceedings in state, federal, or foreign court that the Temporary Receiver deems necessary to collect, recover, protect, maintain, or preserve the value of the assets of the receivership defendants or to carry out the Temporary Receiver's mandate under this Order;
- I. Defend, compromise, or otherwise dispose of any actions or proceedings instituted against the Temporary Receiver in his role as temporary receiver or the receivership defendants, whether now pending or hereinafter filed, that the Temporary Receiver deems necessary to preserve the assets of the receivership.

defendants or to carry out the Temporary Receiver's mandate under this order;

- I. Take all steps the Temporary Receiver deems necessary to secure the business premises of the receivership defendants, including, but not limited to,
1. completing a written inventory of all receivership assets;
 2. obtaining pertinent information from all employees and other agents of the receivership defendants, such as the name, home address, social security number, job description, method of compensation, accrued and unpaid commission and compensation of each employee or agent;
 3. changing the locks and disconnecting any computer modems or other means of access to the computer or other documents maintained at that location; or
 4. requiring any persons present on the premises at the time this Order is served to leave the premises, to provide the Temporary Receiver with proof of identification, and to demonstrate to the Temporary Receiver's satisfaction that such persons are not removing from the premises any of the receivership defendants' documents or assets;
- K. Obtain, by presentation of this Order, tangible and intangible assets as well as information in the custody or control of any person, firm, or entity sufficient to identify the accounts, employees, properties, or other assets or obligations of the receivership defendants;
- L. Issue subpoenas to obtain documents pertaining to the receivership, conduct discovery in this action on behalf of the receivership estate, attend any deposition

noticed by any party to this action, and ask any question of any deponent which, in the receiver's opinion, is pertinent to the receivership estate;

- M. Allow representatives of the Commission and the defendants reasonable access to inspect the receivership defendants' books, records, accounts, premises, and other property, wherever located;
- N. 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;
- O. Continue and 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 business profitably and lawfully, if at all; provided, however, 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; and
- P. Open one or more bank accounts as designated depositories for funds of the receivership defendants. The Temporary Receiver shall deposit all funds of the receivership defendants in such designated accounts and shall make all payments and disbursements from the receivership estate from such accounts.

IX. COMPENSATION FOR RECEIVER

IT IS FURTHER ORDERED that the Temporary Receiver and all personnel hired by the Temporary Receiver shall be entitled to reasonable compensation for the services they render

to the receivership estate and for the cost of actual out-of-pocket expenses incurred by them, from the assets now held by, in the possession or control of, or which may be received by the receivership defendants. The Temporary Receiver shall file with the Court and serve on the parties periodic requests for payment, outlining the services rendered and the related fees and expenses, with the first such request filed no more than sixty (60) days after the entry of this Order. The Temporary Receiver shall not increase the hourly rates used as the bases for such fee applications without prior approval of the Court.

X. TEMPORARY RECEIVER'S BOND

IT IS FURTHER ORDERED that the Temporary Receiver shall file with the Clerk of this Court a bond in the sum of \$1,000.00 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.

XI. DELIVERY OF RECEIVERSHIP PROPERTY

IT IS FURTHER ORDERED that defendants and the relief defendant and any other person or entity served with a copy of this Order, shall immediately deliver or transfer possession, custody, and control of the following to the Temporary Receiver:

- A. All assets of the receivership defendants;
- B. All documents and records relating to the assets of the receivership defendants, including, but not limited to, financial and accounting records, balance sheets, income statements, bank records (including monthly statements, canceled checks, records of wire transfers, and check registers), distributor lists, and title documents;

- C. All keys, lock combinations, passwords, or codes required to open, gain access to, or secure any of the receivership defendants' assets or documents, including, but not limited to, access to their business premises, computer systems or files, telephone or other communication systems, and bank accounts; and
- D. Information identifying the assets, employees, or obligations of the receivership defendants.

IT IS FURTHER ORDERED that 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 Temporary 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 (pursuant to Fed. R. Civ. P. 4(c)(1)), or any other federal or state law enforcement officer, to seize the asset, document, or other thing and to deliver it to the receiver.

XII. COOPERATION WITH THE RECEIVER

IT IS FURTHER ORDERED that all defendants and the relief defendant, 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, shall cooperate fully with and assist the Temporary Receiver. Such cooperation and assistance shall include, but not be limited to, providing any information to the Temporary Receiver that the Temporary Receiver deems necessary to exercise the authority and discharge

the responsibilities of the Temporary 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 any of the receivership defendants (other than customers) that all debts should be paid directly to the Temporary Receiver. All defendants are hereby restrained and enjoined from, directly or indirectly,

- A. Transacting any of the business of the receivership defendants, or transacting business under any name used by any of the receivership defendants;
- B. Destroying, secreting, defacing, transferring, or otherwise altering or disposing of any documents of either 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, either of the receivership defendants, or the Temporary Receiver;
- D. Excusing debts owed to any receivership defendant;
- E. Failing to notify the Temporary Receiver of any asset, including accounts, of any receivership defendant held in any name other than the name of any receivership defendant, or by any person or entity other than the receivership defendants, or failing to provide any assistance or information requested by the Temporary 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

Temporary Receiver's taking custody, control, possession, or management of the assets or documents subject to this receivership; or to harass or interfere with the Temporary Receiver in any way; or to interfere in any manner with the exclusive jurisdiction of this Court over the assets or documents of any receivership defendants; or to refuse to cooperate with the Temporary Receiver or the Temporary Receiver's duly authorized agents in the exercise of their duties or authority under any order of this Court.

XIII. TRANSFER OF FUNDS TO THE TEMPORARY RECEIVER

IT IS FURTHER ORDERED that, upon service of a copy of this Order, all banks, broker-dealers, savings and loan associations, escrow agents, title companies, commodity trading companies, and other financial institutions shall cooperate with all reasonable requests of the Temporary Receiver relating to implementation of this Order, including transferring funds at his direction and producing records related to the assets of either of the receivership defendants.

XIV. STAY OF ACTIONS

IT IS FURTHER ORDERED that, except by leave of this Court and except for any federal, state, or local law enforcement or regulatory authority action against the receivership defendants, during the pendency of the receivership, defendants and the relief defendant and all other persons seeking to establish or enforce any claim, right, or interest against or on behalf of any receivership defendant, be and hereby are stayed from

- A. ~~Commencing, prosecuting, continuing, or enforcing any suit against any~~ receivership defendant, except that such actions may be filed to toll any applicable statute of limitations;

- B. Commencing, prosecuting, continuing, or enforcing any suit or proceeding in the name of or on behalf of any receivership defendant;
- C. Accelerating the due date of any receivership defendant's obligation or claimed obligation; enforcing any lien upon, or taking, attempting to take, or retaining possession of any receivership defendant's assets; ~~attempting to foreclose, forfeit,~~ alter, or terminate any interests of any receivership defendant, whether such acts are part of a judicial proceeding or otherwise;
- D. Using self-help or executing or issuing any process to impound, take possession of, interfere with, create, or enforce a lien upon any asset owned by or in the possession of any receivership defendant, the Temporary Receiver, or any agent appointed by the Temporary Receiver; and
- E. Committing any act to interfere with the Temporary Receiver's taking control, possession, or management of the receivership defendants and their assets and documents, or to interfere with the exclusive jurisdiction of this Court over the property and assets of the receivership defendants.

Provided that this Paragraph does not stay any suit pending in a State court, upon motion and a finding by the Court that the moving party will suffer substantial injury if it is not permitted to proceed.

XV. EXPEDITED DISCOVERY

IT IS FURTHER ORDERED that the Commission is granted leave at any time after service of this Order to demand the production of documents from any person or entity relating to the nature, status, extent, location, or other relevant information relating to defendants' or the

relief defendant's assets, income, personal or business financial records, or the location of a defendant or the relief defendant. Forty-eight (48) hours notice shall be deemed sufficient for any such production of documents from the defendants or the relief defendant and three (3) business days notice shall be deemed sufficient for any such production of documents from any other person or entity, including, but not limited to, any bank, savings and loan, financial or brokerage institution, fund, escrow agent, or trustee. The production of documents submitted pursuant to this provision shall not in any way waive the Commission's rights to seek the production of additional documents.

XVI. RIGHT OF IMMEDIATE ACCESS

IT IS FURTHER ORDERED that defendants and the relief defendant, the Temporary Receiver, and any other person who receives actual notice of this Order by personal service or otherwise, shall permit the Commission's employees, agents, and assistants immediate access to any defendant's or the relief defendant's business premises and storage facilities, whether owned, controlled, or used by any defendant or the relief defendant in whole or in part, including, but not limited to, the offices located at 3806 E. Pikes Peak Ave., Colorado Springs, Colorado. The purpose of this access shall be to effect service and to inspect, copy, and inventory documents or other material relevant to this action. The Commission's representatives may remove original documents from defendants' or the relief defendant's business premises to make photocopies, provided that the originals are returned within a reasonable period of time. Defendants and the relief defendant, to the extent that they are in possession of documents relevant to this action, shall provide Commission employees, agents, and assistants with any necessary means of access to these documents including, but not limited to, keys and lock combinations, computer access

codes, and storage access information. Defendants and the relief defendant are hereby enjoined and restrained from interfering with the Commission's right of access described herein.

IT IS FURTHER ORDERED that the Temporary Receiver shall subsequently allow the Commission's representatives, and the representatives of the corporate defendants and of defendant Phillip W. Ranney and relief defendant Kathleen A. Ranney reasonable access to the business premises of the receivership defendants for the purpose of inspecting and copying any and all books, records, accounts, and other property owned by or in the possession of the receivership defendants. The Temporary 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 relating to any defendant's or the relief defendant's business or assets are located in the personal residence of any individual defendant or the relief defendant, then such individual defendant or the relief defendant shall, within forty-eight (48) hours of service of this Order, produce to the Commission, at a location designated by the Commission,

- 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 any defendant's or the relief defendant's business and assets; and

- B. All computers and data in whatever form, used by defendants, in whole or in part, relating to any defendant's or the relief defendant's business and assets.

XVII. CONSUMER REPORTS

IT IS FURTHER ORDERED that the Commission may obtain consumer reports concerning any defendant and the relief defendant 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 the Commission.

IT IS FURTHER ORDERED that the Commission may provide to the Temporary Receiver copies of any consumer reports it receives pursuant to this provision.

XVIII. DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that defendants shall immediately provide a copy of this Order to each affiliate, subsidiary, division, sales entity, successor, assign, officer, director, employee, independent contractor, distributor, agent, attorney, ad broker, advertising agency, fulfillment house, call center, domain registrar, mail receipt facility, and representative of the defendants, and, within ten (10) calendar days following service of this Order on defendants, defendants shall provide the Commission with an affidavit identifying the names, titles, addresses, and telephone numbers of the persons and entities that defendants have served with a copy of this Order in compliance with this provision. The Temporary Receiver has no obligation under this provision.

XIX. SERVICE OF THIS ORDER BY THE COMMISSION

IT IS FURTHER ORDERED that copies of this Order may be served by facsimile transmission, personal or overnight delivery, or U.S. Mail, by employees of the Commission, employees of any other law enforcement agency, agents of any process servers retained by the Commission, the Temporary Receiver, or agents of the Temporary Receiver on (1) defendants and the relief defendant, (2) any financial or brokerage institution, entity, or person that holds, controls, or maintains custody of any account or asset of any defendant or the relief defendant, or (3) any other person or entity that may be subject to any provision of this Order. Service upon any branch or office of any entity shall effect service upon the entire entity.

XX. RIGHT TO INVESTIGATE AND ADD ADDITIONAL PARTIES AND CLAIMS

Nothing in this Temporary Restraining Order should be construed as limiting or restricting the Commission's right or ability to investigate, take discovery from, add to this action, or bring further actions against any person or entity not specifically named herein as a defendant or relief defendant who may be in active concert or participation with any defendant or relief defendant

XXI. ORDER TO SHOW CAUSE

IT IS FURTHER ORDERED, pursuant to Fed. R. Civ. P. 65(b), that defendants and the relief defendant shall appear before this Court on the 4th day of June, 2004 at 11:00 a.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 and the relief defendant enjoining them from violation of Sections 5(a) of the FTC Act, 15 U.S.C. § 45(a), and Section

24(a) of Regulation Z, 16 C.F.R. § 226.24(a), and imposing such additional relief as may be appropriate.

XXII. SERVICE OF ANSWERING AFFIDAVITS, MEMORANDA, AND EVIDENCE

IT IS FURTHER ORDERED that

- A. Defendants and the relief defendant shall file any answering affidavits, pleadings, or legal memoranda with the Court and serve the same on counsel for the Commission no later than four (4) business days prior to the preliminary injunction hearing in this matter. The Commission may file responsive or supplemental pleadings, materials, affidavits, or memoranda with the Court and serve the same on counsel for defendants and the relief defendant no later than two (2) business days prior to the preliminary injunction hearing in this matter. *Provided that* service shall be performed by personal or overnight delivery or by facsimile or electronic mail, and documents shall be delivered so that they shall be received by the other parties no later than 5 p.m. local time on the appropriate service dates required by this Subparagraph; and
- B. There will be no direct examination of witnesses at the preliminary injunction hearing in this matter. Direct testimony shall be presented in the form of declarations or affidavits.

XXIII. SERVICE UPON THE COMMISSION

IT IS FURTHER ORDERED, with regard to any correspondence, pleadings, or notifications related to this Order, that service on the Commission shall be performed by either

(A) overnight delivery or (B) facsimile and first class mail delivery to

DAVID M. NEWMAN
Federal Trade Commission
901 Market Street, Suite 570
San Francisco, CA 94103
Phone (415) 848-5100/Fax (415) 848-5184

XXIV. EXPIRATION OF THIS ORDER

IT IS FURTHER ORDERED that the Temporary Restraining Order granted herein shall expire ten (10) days after entry unless within such time the Order, for good cause shown, is extended, or unless, as to any defendant, the defendant consents that it should be extended for a longer period of time and the reasons therefor are entered of record.

XXV. RETENTION OF JURISDICTION

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

Dated: May 27, 2004

Phillip S. Egan
UNITED STATES DISTRICT
COURT JUDGE

Presented by:

DAVID M. NEWMAN
SARAH SCHROEDER
KERRY O'BRIEN
Federal Trade Commission
901 Market Street, Suite 570
San Francisco, CA 94103
Phone (415) 848-5100/ Fax (415) 848-5184
Attorneys for Plaintiff
Federal Trade Commission

I, the undersigned, Clerk of the United States District Court for the District of Colorado, do certify that the foregoing is a true copy of an original document remaining on file and record in my office.
WITNESS my hand and SEAL of said Court this 27th day of May 2004
GREGORY C. LANGHAM
By *Gregory C. Langham*
Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
CERTIFICATE OF SERVICE

Case No. 04-F-1065 (MJW)

The undersigned certifies that a copy of the foregoing **Temporary Restraining Order With Asset Freeze and Other Equitable Relief, and Order to Show Cause Why a Preliminary Injunction Should Not Issue** was served on May 27, 2004, by:

delivery to:

Magistrate Judge Michael J. Watanabe

e-mail to:

facsimile to:

depositing the same in the U.S. Mail, postage prepaid, addressed to:

David Newman
Sarah Schroeder
Kerry O'Brien
Federal Trade Commission 901 Market
Street, Suite 570
San Francisco, CA 94103

GREGORY C. LANGHAM, CLERK

By


Deputy Clerk/Secretary