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FILED
CLERK, U.S. DISTRICT COURT
DEC - 7 2005
CENTRAL DISTRICT OF CALIFORNIA
BY *W* DEPUTY

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CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

11 FEDERAL TRADE COMMISSION,
12 Plaintiff,
13 v.
14 CHASE FINANCIAL FUNDING,
15 INC., et al.,
16 Defendants.

Case No. SACV 04-549 R (PLAx)
STIPULATION AND
~~PROPOSED~~ ORDER RE CIVIL
CONTEMPT OF DEFENDANT
JAMES F. BERRY

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20 Plaintiff Federal Trade Commission ("FTC") and Defendant James F. Berry
21 ("Defendant Berry") hereby enter into a stipulation which would allow the release
22 of Defendant Berry from custody of the United States Marshal for civil contempt
23 of Court. As set forth below, the grounds for this stipulation are that Defendant
24 Berry will appear for a deposition before the FTC, turn over \$150,000 to the FTC
25 and liquidate other assets to pay to the FTC in partial satisfaction of his obligations
26 under the Court's Contempt Order (entered July 26, 2005), and provide
27 documentation to fully comply with the Contempt Order.

DOCKETED ON CM
DEC 8 2005
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RECITALS

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2 1. Defendant Berry is currently in the custody of the United States
3 Marshal. He is being held at the Santa Ana Jail, 62 Civic Center Plaza, Santa Ana,
4 California 92701.

5 2. Defendant Berry is not in full compliance with the terms of the
6 Court's Contempt Order (entered July 26, 2005). Beginning November 21, 2005,
7 he began forwarding documentation to the FTC in compliance with the Court's
8 Contempt Order. As of November 20, 2005, the daily contempt sanctions totaled
9 \$275,000.

10 3. Defendant Berry represents to the Court and the FTC the following
11 about his financial assets:

12 a. Through his wholly-owned corporations, Chase Enterprises,
13 Inc. and Choice Financial Funding, Inc., which are both in Chapter 11 bankruptcy
14 proceedings in the Central District of California (Southern Division), Defendant
15 Berry owns two pieces of commercial real property located in Aliso Viejo,
16 California. The Bankruptcy Court has appointed a trustee over both bankruptcy
17 cases (#SA05-17110 JR and #SA05-17111 JR), so Defendant Berry no longer has
18 control over the sale of these properties.

19 b. Defendant Berry also owns one piece of residential real
20 property located in Laguna Hills, California. That property is currently offered for
21 sale.

22 c. Defendant Berry owns a 2000 Porsche Carrera, as well as two
23 other automobiles.

24 d. On or about October 28, 2005, Defendant Berry received a
25 cashier's check in the amount of \$182,177.07 issued by San Diego National Bank
26 payable to WCM QSUB-34, Inc. These funds are assets of WCM QSUB-34, Inc.,
27 a company wholly owned by Defendant Berry. Other than this cashier's check,
28 Defendant Berry has depleted his liquid assets.

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1 4. Defendant Berry represents to the Court and the FTC the following
2 about his current financial obligations:

3 a. Defendant Berry has several debts which are secured by his
4 residential real property located in Laguna Hills, California, and which are now
5 past due. These debts include three months' payments due on his primary
6 mortgage (\$19,019.92) and payments due on his second and third mortgages
7 (\$4,541.64 and \$2,280.88). These payments, totaling \$25,842.44, must be made in
8 December 2005 in order to avoid foreclosure proceedings on the Laguna Hills
9 property. Defendant Berry is also past due on his car payments (\$1,548.70) and
10 utilities (\$2,513.20) in the total amount of \$4,061.90. In addition, Defendant Berry
11 has been presented with other demands for payment related to household matters.

12 5. The parties represent the following about the status of the bankruptcy
13 cases of Defendant Berry's companies, Chase Enterprises and Choice Financial
14 Funding:

15 a. Counsel for the trustee has informed the FTC that the trustee
16 appointed by the Bankruptcy Court over both bankruptcy estates is considering
17 sales offers on at least one of the two commercial properties which are the sole
18 assets of the bankruptcy estates and that under the most optimistic circumstances
19 (acceptance of an offer by the trustee now with a bankruptcy court hearing in late
20 January 2006), the proceeds from the sale of the property in the Chase Enterprises
21 bankruptcy matter would be available to secured creditors no earlier than late
22 January 2006, and to unsecured creditors when the case is closed several months
23 later.

24 b. Plaintiff FTC is listed on Choice Financial Funding's
25 bankruptcy schedules as an unsecured creditor.

26
27 STIPULATION

28 6. Based on and in reliance on Defendant Berry's representations as to

1 his circumstances, as set forth above, the parties hereby stipulate as follows:

2 a. Defendant Berry may be released from the custody of the
3 United States Marshal. Defendant Berry understands that this release is intended
4 for him to expedite his compliance with the terms of the Contempt Order.
5 Defendant Berry understands that he may be subject to further contempt
6 proceedings and additional sanctions if he fails to comply with the Contempt Order
7 and this Stipulation and Order.

8 b. Subject to the Court's approval, Plaintiff FTC agrees to toll the
9 \$2,500 daily monetary sanctions as of November 21, 2005, the date Defendant
10 Berry began to provide the documentation requested by the FTC. As of November
11 20, 2005, the daily monetary sanctions total \$275,000 (\$2,500 per day from August
12 3, 2005 through November 20, 2005).

13 c. Defendant Berry agrees to testify under oath at a deposition to
14 be conducted by the FTC at 10877 Wilshire Blvd., Suite 700, Los Angeles, CA
15 90024 within sixty days of his release from the U.S. Marshal's custody concerning
16 his assets, disposition of assets, and business transactions (including but not limited
17 to the disposition of the proceeds from the sale of Defendant Berry's property
18 located on Eva Street in Laguna Hills) for the time period May 12, 2004 to the date
19 of the deposition. Defendant Berry agrees that the deposition will not be limited by
20 Rule 30(d)(2) of the Federal Rules of Civil Procedure and may last more than one
21 day of seven hours.

22 d. Defendant Berry may cash the \$182,177.07 cashier's check.
23 He agrees to use the proceeds in the following manner:

24 i. Defendant Berry will pay \$150,000 of the proceeds from
25 the \$182,177.07 cashier's check to the Federal Trade Commission as partial
26 payment of the \$675,000 contempt sanctions (\$400,000 compensatory sanctions
27 and \$2,500 per day from August 3, 2005 through November 20, 2005).

28 ii. Defendant Berry will use \$25,842.44 to bring current the

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1 first, second, and third mortgage loans on his residential real property located in
2 Laguna Hills, California. He will use \$4,061.90 to bring his car and utility bills
3 current. He may use \$2,272.73 for other expenses.

4 e. Defendant Berry understands that he is not to use the proceeds
5 from the \$182,177.07 cashier's check for any purpose other than as stated in this
6 Stipulation and Order.

7 f. Defendant Berry take immediate steps to sell his 2000 Porsche
8 Carrera for fair market value and turn those proceeds over to the FTC within five
9 business days of the transfer of title. If Berry has not sold this vehicle within
10 ninety days from the date of his release from the U.S. Marshal's custody, Berry
11 will, within five business days thereafter, transfer title of his 2000 Porsche Carrera
12 to the FTC.

13 g. Defendant Berry agrees to execute a promissory note in the
14 amount of \$525,000, to be paid within one hundred twenty days from the date of
15 his release from the U.S. Marshal's custody, secured by a recordable deed of trust
16 on his residential real property located in Laguna Hills, California, in favor of the
17 FTC. Defendant Berry agrees to execute a recordable subordination agreement in
18 which he and his company WCM QSUB-34, Inc. will subordinate all deeds of trust
19 recorded in favor of WCM QSUB-34, Inc. against his residential real property
20 located in Laguna Hills, California, to the deed of trust in favor of the FTC.
21 Defendant Berry understands that if he does not comply with the terms of the
22 promissory note, the FTC may foreclose on the property.

23 h. Defendant Berry agrees that he will turn over to the FTC any
24 assets which revert to Chase Enterprises, Inc. or Choice Financial Funding, Inc.
25 upon the conclusion of those bankruptcy cases within five business days of receipt
26 of those funds, if he has not fully paid his \$675,000 obligation to the FTC by that
27 time.

28 i. Defendant Berry agrees not to travel out of the United States


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1 while he works to bring himself into compliance with the Contempt Order, as
2 modified by this Stipulation and Order. He agrees to surrender to the FTC within
3 five business days of his release from the U.S. Marshal's custody, his passport,
4 which will be returned to him upon full compliance.

5 j. Defendant Berry understands that failing to comply with the
6 terms of this Stipulation and Order may result in further contempt proceedings and
7 additional contempt sanctions, including but not limited to incarceration under the
8 custody of the U.S. Marshal.


9
10 **SO STIPULATED:**

11 December 7, 2005



Faye Chen Barnouw
Attorney for Plaintiff Federal Trade Commission

12
13
14 December 2, 2005



Harvey I. Saferstein
Nada I. Shamonki
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, PC
Attorneys for Defendant James F. Berry
and Relief Defendant WCM QSUB-34, Inc.

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18 **ORDER**

19 It is hereby ordered that:

20 1. Defendant Berry is being held at the Santa Ana Jail, 62 Civic Center
21 Plaza, Santa Ana, California 92701. Defendant Berry shall be released from the
22 custody of the United States Marshal immediately. Defendant Berry is
23 admonished that this release is intended for him to expedite his compliance with
24 the terms of the Contempt Order.

25 2. The \$2,500 daily coercive monetary sanctions set forth in the
26 Contempt Order are hereby tolled as of November 21, 2005. These daily sanctions
27 total \$275,000, and are in addition to the compensatory sanctions of \$400,000 set
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1 forth in the Contempt Order.

2 3. Defendant Berry shall testify under oath at a deposition to be
3 conducted by the FTC at 10877 Wilshire Blvd., Suite 700, Los Angeles, CA 90024
4 within sixty days of his release from the U.S. Marshal's custody concerning his
5 assets, disposition of assets, and business transactions (including but not limited to
6 the disposition of the proceeds from the sale of Defendant Berry's property located
7 on Eva Street in Laguna Hills) for the time period May 12, 2004 to the date of the
8 deposition. This deposition shall not be limited by Rule 30(d)(2) of the Federal
9 Rules of Civil Procedure and may last more than one day of seven hours.

10 4. Defendant Berry shall cash the \$182,177.07 cashier's check. He shall
11 use the proceeds in the following manner:

12 a. Defendant Berry shall pay \$150,000 of the proceeds from the
13 \$182,177.07 cashier's check to the FTC as partial payment of the \$675,000
14 sanctions it owes to the FTC.

15 b. Defendant Berry shall use \$25,842.44 to bring current the first,
16 second, and third mortgage loans on his residential real property located in Laguna
17 Hills, California. He shall use \$4,061.90 to bring his car and utility bills current.
18 He may use the balance (\$2,272.73) for other expenses.

19 5. Defendant Berry is prohibited from using any portion of the proceeds
20 from the \$182,177.07 cashier's check for any purpose other than as stated in this
21 Stipulation and Order.

22 a. Defendant Berry shall take immediate steps to sell his 2000
23 Porsche Carrera for fair market value and turn those proceeds over to the FTC
24 within five business days of the transfer of title. If Berry has not sold the Porsche
25 within ninety days from the date of his release from the U.S. Marshal's custody,
26 Berry shall, within five business days thereafter, transfer title of the automobile to
27 the FTC.

28 6. Defendant Berry shall within five business days of release from the

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1 U.S. Marshal's custody, execute and deliver to the FTC a promissary note in the
2 amount of \$525,000, to be paid within one hundred twenty days from the date of
3 his release from the U.S. Marshal's custody, secured by a recordable deed of trust
4 on his residential real property located in Laguna Hills, California, in favor of the
5 FTC.

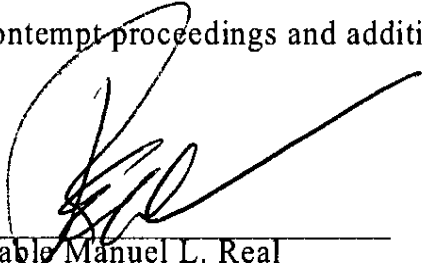
6 7. Defendant Berry shall within five business days of release from the
7 U.S. Marshal's custody, execute and deliver to the FTC a recordable subordination
8 agreement, in which he and his company WCM QSUB-34, Inc. agree to
9 subordinate all deeds of trust recorded against his residential real property located
10 in Laguna Hills, California in favor of WCM QSUB-34, Inc., to the FTC's deed of
11 trust.

12 8. Defendant Berry shall turn over to the FTC any assets which revert to
13 Chase Enterprises or Choice Financial Funding upon the conclusion of those
14 bankruptcy cases within five business days of receipt of those funds, if he has not
15 fully paid his \$675,000 obligation to the FTC by that time.

16 9. Defendant Berry shall not travel out of the United States while he
17 works to bring himself into compliance with the Contempt Order, as modified by
18 this Stipulation and Order. Defendant Berry shall surrender to the FTC within five
19 business days of his release from the U.S. Marshal's custody, his passport, which
20 shall be returned to him upon full compliance.

21 10. Any failure by Defendant Berry to comply with the terms of this
22 Stipulation and Order may result in further contempt proceedings and additional
23 contempt sanctions.

24
25 Dated: DEC. 7, 2005



Honorable Manuel L. Real
United States District Judge

CERTIFICATE OF SERVICE

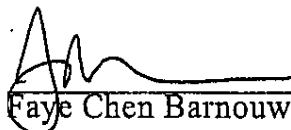
I, Faye Chen Barnouw, certify as follows:

I am over the age of 18 and am an attorney for the Federal Trade Commission. My business address is 10877 Wilshire Boulevard, Suite 700, Los Angeles, California 90024. On December 7, 2005, I caused the attached document entitled "STIPULATION AND [PROPOSED] ORDER RE CIVIL CONTEMPT OF DEFENDANT JAMES F. BERRY" to be served by U.S. Mail to:

Harvey Saferstein
Nada Shamonki
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, PC
1620-26th Street, Suite 150 South
Santa Monica, CA 90404

I declare under penalty of perjury that the foregoing is true and correct.

Dated: December 7, 2005



Faye Chen Barnouw

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