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MAR 23 2004

U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
DEPUTY CLERK

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS, WACO DIVISION

Federal Trade Commission,

Plaintiff,

v.

Electronic Financial Group, Inc.,

EFG Card Services, Inc.,

Paul McClinton,

individually and as an officer of  
Electronic Financial Group, Inc. and  
EFG Card Services, Inc.,

Jerry Federico,

individually and as an officer of  
Electronic Financial Group, Inc. and  
EFG Card Services, Inc. and

Randy Balusek,

individually and as an officer of  
Electronic Financial Group, Inc.,

Defendants.

Civ. No. W-03-CA-211

STIPULATED ORDER  
FOR PERMANENT INJUNCTION  
AND MONETARY JUDGMENT

Plaintiff Federal Trade Commission ("Commission" or "FTC"), filed its Complaint for a Permanent Injunction and Other Relief in this matter, pursuant to Sections 13(b) and 19(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b(a), and the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. §§ 6101 et seq., charging that Defendants engaged in deceptive and unfair acts or

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practices in violation of Section 5 of the FTC Act, 15 U.S.C. §45, and that Defendants provided substantial assistance and support to deceptive telemarketers in violation of Section 310.3(b) of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(b). The Commission and Defendants, as hereinafter defined, hereby stipulate to the entry of this Stipulated Order for Permanent Injunction and Monetary Judgment ("Order") to resolve all matters of dispute between them in this action.

**IT IS THEREFORE STIPULATED, AGREED, AND ORDERED AS FOLLOWS:**

**FINDINGS OF FACT**

1. This Court has jurisdiction over the subject matter of this case and the parties pursuant to 15 U.S.C. §§ 45(a), 53(b), 57(b), 6101(b), and 6102(c), as well as 28 U.S.C. §§ 1331, 1337(a), and 1345.
2. Venue in this District is proper under 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b) and (c).
3. The activities of Defendants are in or affecting "commerce," as that term is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
4. The Complaint states a claim upon which relief may be granted against Defendants under Sections 5(a), 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 53(b), and 57(b).
5. Defendants have entered into this Order freely and without coercion. Defendants further acknowledge that they have read the provisions of this Order and are prepared to abide by them.
6. The undersigned, individually and by and through their counsel, have agreed that

the entry of this Order resolves all matters of dispute between them arising from the Complaint in this action, up to the date of entry of this Order.

7. Defendants waive all rights to seek appellate review or otherwise challenge or contest the validity of this Order. Defendants further waive and release any claim they may have against the Commission, its employees, representatives, or agents.
8. Defendants agree that this Order does not entitle Defendants to seek or to obtain attorneys' fees as a prevailing party under the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended by Pub. L. No. 104-121, 110 Stat. 847, 863-64 (1996), and Defendants further waive any right to attorneys' fees that may arise under said provision of law.
9. The parties have conferred through counsel and have agreed to settle this action without the Defendants admitting fault or liability or any wrongdoing whatsoever in connection with the violations alleged in the Complaint. By entry of this Order, the Defendants do admit the jurisdictional facts alleged in the Complaint.
10. There being no just reason for delay, the Clerk is directed to enter judgment immediately.

#### **DEFINITIONS**

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

1. "ACH network" shall mean the electronic funds transfer system governed by the NACHA Operating Rules that provides for the interbank clearing of credit and debit entries to accounts at financial institutions.
2. "ACH transaction" shall mean any completed or attempted debit or credit to a

consumer's account at a financial institution that is processed electronically through the automated clearing house ("ACH") network.

3. "Access Device" shall be defined according to the definition provided in Regulation E of the Electronic Fund Transfer Act, 15 U.S.C. § 1693 et seq.
4. "Corporate Defendants" shall mean Electronic Financial Group, Inc., EFG Card Services, Inc., and each of them, whether acting directly or through any corporation, subsidiary, division, or other device.
5. "Credit card" shall be defined according to the definition provided in Regulation Z of the Truth in Lending Act, 15 U.S.C. § 1601 et seq., currently defined as any card, plate, coupon book, or other single credit device that may be used from time to time to obtain credit.
6. "Debit card" shall mean any pay-as-you-go card, ATM card, or Access Device that purports to facilitate purchases drawn on a consumer deposit or asset account, including but not limited to the First Freedom card, AmeriOne card, United USA card, and any good or service that is represented, directly or indirectly, to have the characteristics of a debit card, even if the good or service fails to fulfill such representation in fact. "Debit card" does not mean "Payroll card" as defined herein.
7. "Defendants" shall mean Electronic Financial Group, Inc. ("EFG"), EFG Card Services, Inc. ("Card Services"), Paul McClinton, Jerry Federico, and Randy Balusek.
8. "Document" shall be synonymous in meaning and equal in scope 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 other data compilations from which information can be obtained and translated, if necessary, into reasonably usable form through detection devices. A draft or non-identical copy is a separate document within the meaning of the term.

9. "Individual Defendants" shall mean Paul McClinton, Jerry Federico, and Randy Balusek.
10. "NACHA" shall mean the National Automated Clearing House Association.
11. "Payroll card" shall mean any Access Device not marketed or sold directly to individual cardholders, whereby employer-purchasers use the card as a means of compensating employee-cardholders.
12. "Plaintiff" shall mean the Federal Trade Commission.
13. "Telemarketing" shall mean any business activity, regardless of whether or not covered by the Telemarketing Sales Rule, 16 C.F.R. Part 310, that involves attempts to induce consumers to purchase goods, services, or investments, by means of telephone sales presentations, either exclusively or in conjunction with the use of other forms of marketing.

## **BAN ON PROCESSING FOR TELEMARKETING OPERATIONS**

### **I.**

**IT IS HEREBY ORDERED** that the Defendants are hereby permanently restrained and enjoined from processing any ACH transaction or causing the account of any consumer to be

debited by any means, where the consumer purportedly authorized the debit as a result of telemarketing.

**BAN ON MARKETING, SALE, PROVISION OF CUSTOMER SERVICE, OR EARNING OF FEES IN CONNECTION WITH DEBIT CARDS OR CREDIT CARDS**

**II.**

**IT IS FURTHER ORDERED** that the Corporate Defendants and defendants McClinton and Federico are hereby permanently restrained and enjoined from:

- A. Advertising, marketing, promoting, offering for sale, or selling any debit card or credit card;
- B. Providing customer service in connection with the advertising, marketing, promotion, offering for sale, or sale of any debit card or credit card; and
- C. Earning any fees from the conduct proscribed in Section II.A and B.

This provision shall not be construed to prevent Defendants from providing ACH processing for transactions involving debit cards or credit cards and collecting ACH processing fees charged for such transactions, provided the ACH transaction does not violate any provision of this Order including, but not limited to, Sections I, III, IV, V and VI.

**PROHIBITION AGAINST VIOLATING TELEMARKETING SALES RULE**

**III.**

**IT IS FURTHER ORDERED** that Defendants, their successors, assigns, officers, agents, servants, employees, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, are hereby permanently restrained and enjoined from violating any provision of the Telemarketing Sales Rule ("TSR"), 16 C.F.R.

Part 310, including any act which assists or facilitates a violation of the TSR as set forth in 16 C.F.R. § 310.3(b), including but not limited to providing substantial assistance or support to any telemarketer or seller who:

- A. Induces consumers to pay for goods or services through the use of false or misleading statements in violation of Section 310.3(a)(4) of the Telemarketing Sales Rule;
- B. Falsely represents that after paying an advance fee, consumers are guaranteed or highly likely to receive a credit card in violation of Section 310.4(a)(4) of the Telemarketing Sales Rule; or
- C. Requests or receives an advance fee or other consideration for goods or services represented to improve a person's credit history, credit record, or credit rating in violation of Section 310.4(a)(2) of the Telemarketing Sales Rule.

#### **CONDUCT PROHIBITIONS**

#### **IV.**

**IT IS FURTHER ORDERED** that Defendants, their successors, assigns, officers, agents, servants, employees, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, are hereby permanently restrained and enjoined from processing, by ACH Network or any other means, any transaction where:

- A. Defendants receive information demonstrating that the consumer has requested cancellation of the purchase to which the debit or charge relates or discontinuance of any debits or charges related to the purchase;

- B. Defendants fail to comply with any NACHA rule regarding consumer authorization of debits for transactions involving the PPD, TEL, or WEB standard entry class codes;
- C. Defendants do not possess documents that demonstrate that the business practices of the originator, or any other person who transmits the ACH transaction to Defendants, comply with any applicable NACHA rules regarding consumer authorization of debits for transactions involving the PPD, TEL, or WEB standard entry class codes; or
- D. Defendants receive information demonstrating that the business practices of the originator or any other person who transmits the transaction to Defendants do not comply with the FTC's Telemarketing Sales Rule, applicable NACHA rules, or other applicable law.

V.

**IT IS FURTHER ORDERED** that in connection with the advertising, marketing, promotion, offering for sale, or sale of goods or services, Defendants, their successors, assigns, officers, agents, servants, employees, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, are permanently restrained and enjoined from falsely representing or assisting others in falsely representing, expressly or by implication, orally or in writing, any fact material to a consumer's decision to purchase such goods or services.



**VI.**

**IT IS FURTHER ORDERED** that in connection with the advertising, marketing, promotion, offering for sale, or sale of goods or services, except processing any transaction by ACH Network or any other means on behalf of third parties, Defendants, their successors, assigns, officers, agents, servants, employees, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, are permanently restrained and enjoined from causing a consumer's credit card, debit card, or bank account to be charged without having previously obtained the consumer's express verifiable authorization.

**CONSUMER REDRESS**

**VII.**

**IT IS FURTHER ORDERED** that Defendants shall pay consumer redress in the amount of \$3,935,338 by wire transfer, subject to any offset from any funds in any escrow account maintained by the Monitor as referenced in Section XVI.C, into an account to be designated by the FTC ("Redress Account") on or before the thirtieth (30th) day following entry of this Order, subject to the following terms and conditions:

- A. Defendants shall have no obligation to make any payment to the FTC prior to the entry of this Order;
- B. Defendants have placed One Million Dollars (\$1,000,000) into a trust account at the law firm of Howrey Simon Arnold & White to be held and transferred to the Refund Account within three (3) days after entry of this Order by the Court; and

C. Defendants shall transfer an additional \$2,935,338 into the Redress Account on or before the thirtieth (30th) day following entry of this Order by the Court, less any offset from funds wired by the Monitor to the Redress Account pursuant to Section XVI.C of this Order.

#### **COMMISSION'S USE OF MONETARY JUDGMENT**

#### **VIII.**

**IT IS FURTHER ORDERED** that all funds paid to the Commission or its designated agent(s) pursuant to Section VII of this Order shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including but not limited to consumer redress and any attendant expenses for the administration of any redress fund. In the event that direct redress to consumers is wholly or partially impracticable or that funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendants' practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited into the United States Treasury as disgorgement. Defendants shall have no right to challenge the Commission's choice of remedies under this Section.

#### **ACKNOWLEDGMENT OF RECEIPT OF ORDER**

#### **IX.**

**IT IS FURTHER ORDERED** that each Defendant, within five (5) business days of receipt of this Order as entered by the Court, shall submit to the Commission a truthful sworn statement, acknowledging receipt of this Order.

## DISTRIBUTION OF ORDER BY DEFENDANTS

### X.

**IT IS FURTHER ORDERED** that:

- A. **Defendants as Control Persons:** For a period of five (5) years from the date of entry of this Order, for any business that engages in conduct related to the subject matter of this Order or the FTC's Complaint, which Defendants directly or indirectly control, or in which Defendants have a majority ownership interest, Defendants shall deliver a copy of this Order to all principals, officers, directors, and managers of that business. Defendants shall also deliver copies of this Order to all employees, agents, and representatives who engage in conduct related to the subject matter of the Order. For current personnel, delivery shall be within twenty (20) days of service of this Order upon Defendants. For new personnel, delivery shall occur prior to them assuming their responsibilities.
- B. **Corporate Defendants and Defendants McClinton and Federico as employees or non-control persons:** For a period of five (5) years from the date of entry of this Order, for any business where the Corporate Defendants or Defendants McClinton and Federico are not a controlling person of a business but otherwise engage in conduct related to the subject matter of this Order, the Defendants shall deliver a copy of this Order to all principals and managers of such business.
- C. **Defendant Balusek as an employee or non-control person:** For a period of three (3) years from the date of entry of this Order, for any business where Defendant Balusek is not a controlling person of a business but otherwise engages

in conduct related to the subject matter of this Order, the Defendant Balusek shall deliver a copy of this Order to all principals and managers of such business.

Defendants must secure a signed and dated statement acknowledging receipt of the Order, within thirty (30) days of delivery, from all persons receiving a copy of the Order pursuant to this paragraph.

### **COMPLIANCE REPORTING BY DEFENDANTS**

#### **XI.**

**IT IS FURTHER ORDERED** that, in order that compliance with the provisions of this Order may be monitored:

- A. For a period of five (5) years from the date of entry of this Order:
  - 1. Each Individual Defendant shall notify the Commission in writing of any of the following:
    - a. Any changes in residence, mailing addresses, and telephone numbers of the Individual Defendant, within twenty (20) days of the date of such change;
    - b. Any change in employment status (including self-employment) of the Individual Defendant, and any change in the ownership interest of the Individual Defendant in any business entity that engages in conduct related to the subject matter of this Order or the FTC's Complaint, within twenty (20) days of such change. Such notice shall include the name and address of each business that the Individual Defendant is affiliated with, employed by, creates or

forms, or performs services for, a statement of the nature of the business, and a statement of the Individual Defendant's duties and responsibilities in connection with the business or employment; and

- c. Any changes in the Individual Defendant's name;
2. Each Individual Defendant and Corporate Defendant shall notify the Commission of any changes in the structure of the Corporate Defendants, or any business entity that the Individual Defendants directly or indirectly control, or have an ownership interest in, that may affect compliance obligations arising under this Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided that*, with respect to any proposed change in the business entity about which the Defendants learn less than thirty (30) days prior to the date such action is to take place, the Defendants shall notify the Commission as soon as is practicable after obtaining such knowledge;
- B. One hundred eighty (180) days after the date of entry of this Order, Defendants shall provide a written report to the Commission, sworn under penalty of perjury, setting forth in detail the manner and form in which they have complied and are

complying with this Order. This report shall include, but not necessarily be limited to, the following:

1. For each Individual Defendant:
    - a. The then-current residence address, mailing addresses, and telephone numbers of the Individual Defendant;
    - b. The then-current employment and business addresses and telephone numbers of the Individual Defendant, a description of the business activities of each such employer or business, and the title and responsibilities of the Individual Defendant, for each such employer or business; and
    - c. Any other changes required to be reported under subd. A of this Section;
  2. For all Defendants:
    - a. A copy of each acknowledgment of receipt of this Order, obtained pursuant to Section X; and
    - b. Any other changes required to be reported under subd. A of this Section;
- C. For a period of five (5) years from the date of entry of this Order, within five (5) business days of receipt, Defendants shall provide Plaintiff with all notices of NACHA rules violations and related correspondence regarding customer authorization involving any of Defendants' ACH transactions for the PPD, TEL, and WEB standard entry class codes;

- D. For the purposes of this Order, the Defendants shall, unless otherwise directed by a representative of the Commission, identify all written notifications to the FTC as being in reference to FTC v. Electronic Financial Group, United States District Court, Western District of Texas, Waco Division, Case No. W-03-CA-211, and mail them to:

Associate Director  
Division of Marketing Practices  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. 238  
Washington, DC 20580

- E. For purposes of the compliance reporting and monitoring required by this Order, the Commission is authorized to communicate directly with the Defendants in writing, with a copy to counsel of record.

**MONITORING COMPLIANCE OF SALES PERSONNEL**

**XII.**

**IT IS FURTHER ORDERED** that, in connection with any business that Defendants directly or indirectly manage, control, or have a majority ownership interest in and such business engages in conduct related to the subject matter of this Order or the FTC's Complaint, Defendants are permanently restrained and enjoined from:

- A. Failing to take reasonable steps sufficient to monitor and ensure that all employees and independent contractors engaged in sales or other customer service functions comply with Sections IV and V of this Order;
- B. Failing to investigate fully and promptly any consumer complaint received by any business to which this Section applies;

- C. Failing to take corrective action with respect to any salesperson whom the Defendants determine is not complying with this Order, which may include training, disciplining, and/or terminating such sales person; and
- D. Failing to keep records of consumer complaints and the monitoring of consumer complaints.

### **RECORD-KEEPING PROVISIONS**

#### **XIII.**

**IT IS FURTHER ORDERED** that, for a period of eight (8) years from the date of entry of this Order, Corporate Defendants and any businesses where any Individual Defendant is the majority owner or otherwise controls the business and such business engages in conduct related to the subject matter of this Order or the FTC's Complaint, are hereby permanently restrained and enjoined from failing to create and retain the following records:

- A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
- B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;
- C. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services



purchased, to the extent such information is obtained in the ordinary course of business;

- D. Complaints and refund requests (whether received directly, indirectly, or through any third party) and any responses to those complaints or requests;
- E. Copies of all sales scripts, training materials, advertisements, or other marketing materials, including e-mail and Internet websites or web pages, regarding any good, service, company or website disseminated by any Defendant to any person; and
- F. All records and documents necessary to demonstrate full compliance with each provision of this Order, including but not limited to documents related to Section IV.D, copies of acknowledgment of receipt of this Order required by Sections IX and X, and all reports submitted to the FTC pursuant to Section XI.

#### **COMMISSION'S AUTHORITY TO MONITOR COMPLIANCE**

#### **XIV.**

**IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry of this Order, for the purpose of monitoring and investigating compliance with any provision of this Order:

- A. Within twenty (20) days of receipt of written notice from a representative of the Commission, Defendants shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business

location in such Defendant's possession or direct or indirect control to inspect the business operation;

B. In addition, the Commission is authorized to monitor compliance with this Order by all other lawful means, including but not limited to the following:

1. Obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45; and
2. Posing as consumers and suppliers to Defendants, Defendants' employees, or any other entity managed or controlled in whole or in part by Defendants, without the necessity of identification or prior notice; and

C. Defendants shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, officer, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present.

*Provided, however,* that nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49 and 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

## **FEEES AND COSTS**

### **XV.**

**IT IS FURTHER ORDERED** that each party to this Order hereby agrees to bear its own costs and attorneys' fees incurred in connection with this action.

## **DISCHARGE OF MONITOR; MONITOR'S COMPENSATION**

### **XVI.**

**IT IS FURTHER ORDERED** that:

- A. Upon entry of this Order, all rights, authority, duties, and responsibilities of the Monitor shall terminate;
- B. The Monitor and all personnel hired by the Monitor are entitled to reasonable compensation for the performance of duties pursuant to prior orders in this case, as well as for payment of costs for actual out-of-pocket expenses, subject to approval of such compensation and costs by this Court. The compensation and costs of the Monitor shall be paid from the corporate assets of the Defendants. The Monitor shall file with the Court and serve on the parties a request for the payment of all reasonable compensation and out-of-pocket costs that have not heretofore been paid within sixty (60) days after entry of this Order; and
- C. Within three (3) days of entry of this Order by the Court, the Monitor shall wire all funds, if any, remaining in any escrow account maintained by the Monitor pursuant to Paragraph II.B of the Stipulated Preliminary Injunction to the Redress

Account as described in Section VII of this Order in partial satisfaction of the consumer redress as set forth in Section VII of this Order.

**RETENTION OF JURISDICTION**

**XVII.**

**IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

**SEVERABILITY**

**XVIII.**


**IT IS FURTHER ORDERED** that the provisions of this Order are separate and severable from one another. If any provision is stayed or determined to be invalid, the remaining provisions shall remain in full force and effect.

**COMPLETE SETTLEMENT**

**XIX.**

**IT IS FURTHER ORDERED** that the parties hereby consent to entry of the foregoing Order which shall constitute a final judgment and order in this matter. The parties further stipulate and agree that the entry of the foregoing order shall constitute a full, complete, and final settlement of this action.

**SO ORDERED** this 3<sup>rd</sup> day of March, 2004.

  
WALTER S. SMITH, JR.  
United States District Judge

The parties hereby consent to the terms and conditions set forth above and hereby consent to entry of this Stipulated Order for Permanent Injunction and Monetary Judgement at the Court's convenience and without further notice to the parties.

HOWREY SIMON ARNOLD & WHITE, LLP



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Date: 2/4/2004


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ATTORNEYS FOR DEFENDANTS



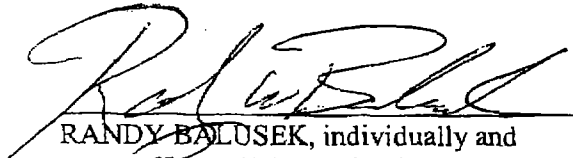
PAUL McCLINTON, individually and  
as an officer of Electronic Financial  
Group, Inc. and EFG Card Services, Inc.

Date: 2/2/04



JERRY FEDERICO, individually and  
as an officer of Electronic Financial  
Group, Inc. and EFG Card Services, Inc.

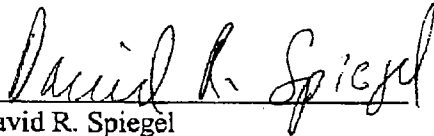
Date: 2/2/2004



RANDY BALUSEK, individually and  
as an officer of Electronic Financial  
Group, Inc.

Date: 2/2/2004

FEDERAL TRADE COMMISSION



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Date: 3/12/2004

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