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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

FEDERAL TRADE COMMISSION,)	CIV-96-2374-PHX-ROS
Plaintiff,)	
v.)	FINAL JUDGMENT AND ORDER
)	FOR PERMANENT INJUNCTION
ROBERT J. MAYNARD, JR.,)	WITH RESPECT TO DEFENDANT
an individual,)	ROBERT J. MAYNARD, JR.
)	
BRIAN W. CUTRIGHT,)	
an individual,)	
)	
MARK F. GUIMOND,)	
an individual,)	
)	
NCF CORP.,)	
a corporation, and)	
)	
HAL Z. LEDERMAN,)	
individually and as an)	
officer of NCF Corp.,)	
)	
Defendants.)	

Plaintiff Federal Trade Commission ("Commission") has filed herein a Complaint for a permanent injunction and other equitable relief pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), charging defendants Robert J. Maynard, Jr. ("Maynard"), Brian W. Cutright, Mark F. Guimond, NCF Corp., and Hal Z. Lederman with

1 violations of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45. Plaintiff Commission and
2 defendant Maynard, having been represented by the attorneys whose names appear hereafter,
3 have stipulated to entry of this Final Judgment and Order for Permanent Injunction ("Final
4 Judgment" or "Order") by the Court to resolve all matters as to defendant Maynard in dispute in
5 this action. Plaintiff Commission and defendant Maynard have consented to entry of this Order
6 without trial or adjudication of any issue of law or fact herein.

7
8 FINDINGS

9 1. This is an action by the Commission instituted under Sections 5 and 13(b) of the
10 FTC Act. The Complaint seeks permanent injunctive relief against defendant Maynard for alleged
11 unfair or deceptive acts or practices by the defendants in connection with the sale of credit
12 improvement services advertised in an infomercial and the collection of fees by depositing drafts
13 drawn on consumers' checking accounts.

14 2. This Court has jurisdiction of the subject matter of this case and over defendant
15 Maynard. Venue in the District of Arizona is proper.

16 3. The Complaint states a claim upon which relief may be granted against defendant
17 Maynard under Sections 5 and 13(b) of the FTC Act.

18 4. The Commission has the authority under Section 13(b) of the Act to seek the relief
19 it has requested.

20 5. The alleged activities of defendant Maynard are in or affecting commerce, as
21 defined in 15 U.S.C. § 44.

22 6. Defendant Maynard, without admitting the allegations set forth in the Complaint,
23 agrees to entry of this final Order under Section 13(b) of the FTC Act.

24 7. Defendant Maynard has waived all rights to seek judicial review or otherwise
25 challenge or contest the validity of this final Order.

26 8. A voluntary bankruptcy petition filed by any or all defendants in this action does
27 not automatically stay this action, which is the "commencement or continuation of an action or
28 proceeding by a governmental unit to enforce such governmental unit's police or regulatory

1 power," 11 U.S.C. § 362(b)(4), *Federal Trade Commission v. R.A. Walker & Assocs., Inc.*, 37
2 B.R. 608, 610 (D.D.C. 1983).

3 9. A voluntary bankruptcy petition filed by any or all defendants does not divest this
4 Court of jurisdiction to enter this final judgment against defendant Maynard.

5 10. Entry of this Order is in the public interest.

6 11 Defendant Maynard waives all claims under the Equal Access to Justice Act, 28
7 U.S.C. § 2412, *amended by* PL 104-121, 110 Stat. 847, 863-64 (1996).

8 DEFINITIONS

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

10 1. "Credit Report" or "Profile" means any written, oral or other communication of
11 information by a consumer reporting agency bearing on a person's creditworthiness, credit
12 standing, credit capacity, character, general reputation, personal characteristics or mode of living
13 that is used or expected to be used or collected in whole or in part for the purpose of establishing
14 the person's eligibility for credit.

15 2. "Credit Improvement Service(s)" means any service to improve a person's credit
16 report or profile by removing adverse information appearing therein, changing the rating of such
17 information from negative to positive, or otherwise enhancing said credit profile in return for the
18 payment of money.

19 3. "Credit Bureau" or "Consumer Reporting Agency" means any person which, for
20 monetary fees, dues, or on a cooperative basis, regularly engages in whole or in part in the
21 practice of assembling or evaluating consumer credit information or other information on
22 consumers for the purpose of furnishing consumer reports to third parties, and which uses any
23 means or facility of interstate commerce for the purpose of preparing or furnishing consumer
24 reports.

25 4. "Obsolete," when used to describe credit history information, means any
26 information that a consumer reporting agency may not report under Section 605 of the Fair Credit
27 Reporting Act, 15 U.S.C. § 1681c, due to its age.

1 § 310.3(a)(3), are employed. A copy of the Telemarketing Sales Rule is attached hereto as
2 Attachment 1 and incorporated herein as if fully set forth verbatim.

3 **III.**

4 **IT IS FURTHER ORDERED** that defendant Maynard and his representatives, agents,
5 servants and employees, and all other persons or other entities in active concert or participation
6 with any one or more of them, who receive actual notice of this Order by personal service or
7 otherwise, directly or through any corporation, subsidiary, division, or other device, in connection
8 with the advertising, promotion, offering for sale, sale, or distribution of any product or service, in
9 or affecting commerce, as commerce is defined in the FTC Act, are hereby restrained and enjoined
10 from creating, producing, selling, or disseminating:

11 A. Any commercial or other advertisement for any such product or service that
12 misrepresents, directly or by implication, that it is an independent program and not a paid
13 advertisement; and

14 B. Any commercial or other advertisement for any such product or service longer
15 than fifteen (15) minutes in length that does not display visually, in a clear and prominent manner
16 and for a length of time sufficient for an ordinary consumer to read, within the first thirty (30)
17 seconds of the commercial and immediately before each presentation of ordering instructions for
18 the product or service, the following disclosure:

19 "THE PROGRAM YOU ARE WATCHING IS A PAID
20 ADVERTISEMENT FOR [THE PRODUCT OR SERVICE]."

21 PROVIDED THAT, for the purposes of this provision, the oral or visual presentation of a
22 telephone number or address for viewers to contact to place an order for the product or service
23 shall be deemed a presentation of ordering instructions so as to require the display of the
24 disclosure provided herein.

25 **REDRESS**

26 **IV.**

27 **IT IS FURTHER ORDERED** that, subject to compliance with Section V of this Order,
28 defendant Maynard shall not be required to pay consumer redress or disgorgement.

1 V.

2 **IT IS FURTHER ORDERED** that within three (3) business days after entry of this
3 Order, defendant Maynard shall submit to the Commission a truthful sworn statement, in the form
4 shown on Exhibit 1 to this Order, that shall reaffirm and attest to the truth, accuracy and
5 completeness of the sworn Financial Statement of Individual Defendant executed by defendant
6 Maynard on November 14, 1996, and previously submitted to the Commission.

7 VI.

8 **IT IS FURTHER ORDERED** that the Court's approval of this Order is expressly
9 premised upon the financial condition of defendant Maynard, as represented by him in the sworn
10 Financial Statement of Individual Defendant, as referenced in Paragraph V, which contains
11 material information relied upon by the Commission in negotiating and agreeing to the terms of
12 this Order. If, upon motion by the Commission, this Court finds that defendant Maynard failed to
13 file the sworn statement required by Paragraph V or filed a Financial Statement of Individual
14 Defendant that materially failed to disclose any asset, materially misrepresented the value of any
15 asset, or made any other material misrepresentation in or omission from his Financial Statement of
16 Individual Defendant, the Commission may request that this Order be reopened to allow the
17 Commission to modify the monetary liability of defendant Maynard; provided, however, that in all
18 other respects this Order shall remain in full force and effect unless otherwise ordered by the
19 Court, and, provided further, that proceedings instituted under this Paragraph are in addition to
20 and not in lieu of any other civil or criminal remedies as may be provided by law, including any
21 other proceedings the Commission may initiate to enforce this Order.

22 Solely for purposes of this Paragraph, defendant Maynard waives any right to contest any
23 of the allegations in the Commission's complaint.

24 **RECORDKEEPING**

25 VII.

26 **IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry of
27 this Order, defendant Maynard, in connection with any and every business entity of which he is a
28 majority owner, or which he otherwise manages or controls, and which engages in telemarketing,

1 is hereby restrained and enjoined from failing to create, and from failing to retain for a period of
2 five (5) years following the date of such creation, unless otherwise specified:

3 A. Books, records and accounts which, in reasonable detail, accurately and fairly
4 reflect the cost of goods or services sold, and the income, disbursements, transactions and use of
5 funds;

6 B. Records accurately reflecting: the name, address and phone number of each person
7 that such business entity employs in any capacity, including as an independent contractor; that
8 person's job title or position; the date upon which the person commenced work; and the date and
9 reason for the person's termination, if applicable. Defendant Maynard shall retain such records for
10 any terminated employee for a period of two (2) years following the date of termination;

11 C. Records containing the names, addresses, phone numbers and dollar amounts paid,
12 for all consumers to whom such business entity has sold, invoiced or shipped any goods or
13 services, or from whom any of the business entities accepted money or other items of value;

14 D. Records that reflect, for every consumer complaint or refund request, whether
15 received directly or indirectly through any third party:

16 1. The consumer's name, address, telephone number and the dollar amount
17 paid by the consumer;

18 2. The written complaint, if any , and the date of the complaint or refund
19 request;

20 3. The basis of the complaint, including the name of any salesperson
21 complained against, and the nature and result of any investigation conducted as to the validity of
22 any complaint;

23 4. Each response and the date of the response;

24 5. Any final resolution and the date of the resolution; and

25 6. In the event of a denial of a refund request, the reason for such denial, or if
26 the complaint was cured, the basis for determining that the complaint has been cured;

27 E. Videotape copies and transcripts of all infomercials;

28

1 F. Records reflecting the date, time and station of each broadcast of each infomercial,
2 or if the defendant has not directly or indirectly purchased the airtime for the broadcast, the name
3 and address of the company making each such purchase of airtime;

4 G. Copies of all sales scripts, training packets, advertisements, or other marketing
5 materials utilized. Defendant shall retain such marketing materials for a period of two (2) years
6 after their last use; and

7 H. All contracts, agreements or correspondence with any sales company, supplier,
8 mailinghouse, printer, information provider, customer lead provider, telephone company or
9 telephone service common carrier (including telephone bills), advertisers or promoters of goods
10 and services, except where related to routine purchases of office supplies or equipment.

11 PROVIDED THAT the records and other information defendant Maynard is required to
12 maintain hereunder may be, to the extent possible, in the form of computerized records including
13 data recorded in user-accessible computerized data bases, and that defendant Maynard will make
14 such records available for inspection by a duly authorized representative of the Commission
15 following reasonable notice.

16 **DISTRIBUTION OF ORDER**

17 VIII.

18 IT IS FURTHER ORDERED that defendant Maynard, in connection with any and every
19 business entity of which he is a majority owner, or which he otherwise manages or controls,
20 distribute a copy of this Order to all present or future officers, agents, representatives, supervisors
21 and managers and all other persons or other entities in active concert or participation with them
22 having sales, advertising, or policy responsibilities with respect to the subject matter of this Order,
23 and that defendant Maynard secure from each such person a signed statement acknowledging
24 receipt of said Order.

25 **MONITORING**

26 IX.

27 **IT IS FURTHER ORDERED** that defendant Maynard promptly notify the Regional
28 Director of the Los Angeles Regional Office of the Commission in writing of the discontinuance

1 of his present business or employment. In addition, for a period of five (5) years from the date of
2 entry of this Order, he shall promptly notify the Commission of each affiliation with a new
3 business or employment. Each such notice shall include the defendant's new business address and
4 a statement of the nature of the business or employment in which the defendant is newly engaged
5 as well as a description of the defendant's duties and responsibilities in connection with the
6 business or employment.

7 X.

8 **IT IS FURTHER ORDERED** that defendant Maynard shall, within sixty (60) days
9 following the date of entry of this Order, file with the Regional Director of the Los Angeles
10 Regional Office of the Commission a report, in writing, setting forth in detail the manner and form
11 in which he has complied with this Order.

12 **INDEPENDENCE OF OBLIGATIONS**

13 XI.

14 **IT IS FURTHER ORDERED** that the expiration of any requirements imposed by this
15 Order shall not affect any other obligation arising under this Order.

16 **ATTORNEYS FEES**

17 XII.

18 **IT IS FURTHER ORDERED** that each party to this Consent Judgment and Order bear
19 its own costs and attorney fees incurred in connection with this action; *provided, however*, in the
20 event plaintiff or the United States initiates proceedings to enforce the provisions of this Consent
21 Judgment and Order and *provided further* the Court determines that the defendant has violated
22 any term or provision of this Consent Judgment and Order, the defendant shall pay the costs and
23 attorney fees incurred by plaintiff or the United States in connection with proceedings to enforce
24 this Consent Judgment and Order.

25 **CONTINUING JURISDICTION**

26 XIII.

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

ENTRY BY CLERK

XIV.

There being no just reason for delay, the Clerk of the Court is hereby directed to enter this Order.

DATED this _____ day of _____, 199____.

United States District Judge

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1 **EXHIBIT 1**

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7 **IN THE UNITED STATES DISTRICT COURT**
8 **FOR THE DISTRICT OF ARIZONA**
9

10 _____)
11 FEDERAL TRADE COMMISSION,) CIV-96-2374-PHX-ROS
12 Plaintiff,)
13 v.) DECLARATION OF
14 JR.) DEFENDANT ROBERT J. MAYNARD,
15 ROBERT J. MAYNARD, JR.,)
16 an individual, et al.)
17 Defendants.)
18 _____)

17
18 I, Robert J. Maynard, Jr., hereby state that the information contained in the financial
19 statement I signed on November 14, 1996 and provided shortly thereafter to the Federal Trade
20 Commission was true, accurate and complete at such time. A true and correct copy of the
21 aforementioned financial statement is attached hereto as Appendix A.

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

23 Executed on this ____ day of _____, 199__.

24 _____
25 (Signature)
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