

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
Charlotte Division**

**FEDERAL TRADE COMMISSION and
STATE OF NORTH CAROLINA,**

Plaintiffs,

v.

RESORT SALES GROUP, INC. *et al.*,

Defendants.

Case No. 3-97-CV-382 (Mu)

**STIPULATED FINAL
JUDGMENT AND ORDER
FOR PERMANENT
INJUNCTION AND
MONETARY RELIEF WITH
SETH MILLER**

Plaintiffs, the Federal Trade Commission ("FTC" or "Commission") and the State of North Carolina ("North Carolina"), have filed a Complaint for Permanent Injunction, Consumer Redress, and Other Equitable Relief pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and Section 4(a) of the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. § 6103(a), charging defendants Resort Sales Group, Inc., Cruise Link Travel, Inc., Design Travel of Altamonte Springs, Inc., Check America Corporation, Inc., Willie L. Biles, Margaret Katherine Alexander, Seth Miller, and Steven Brewer with violating Section 5 of the FTC Act, 15 U.S.C. § 45, and the FTC's Telemarketing Sales Rule, 16 C.F.R. §§ 310.3(a)(1)(i), 310(a)(2)(iii), and 310.3(b).

Plaintiffs FTC and North Carolina, and Defendant Seth Miller ("Miller"), have agreed to the entry of this Stipulated Final Judgment and Order for Permanent Injunction and Monetary Relief ("Order") by this Court to resolve all matters of dispute between them in this action. The FTC, North Carolina, and Defendant Miller have consented to the entry of this Order to avoid the costs of additional litigation. Defendant Miller denies any wrongdoing or liability.

NOW, THEREFORE, Plaintiffs FTC and North Carolina, and Defendant Miller, having requested the Court to enter this Order,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter and the parties to this action.
2. Venue is proper in the Western District of North Carolina.
3. The Complaint states a claim upon which relief may be granted against Defendant Miller under Sections 5, 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45, 53(b), and 57b; and Sections 310.3(a)(1)(i), 310.3(a)(2)(iii), and 310.3(b) of the Telemarketing Sales Rule, 16 C.F.R. §§ 310.3(a)(1)(i), 310.3(a)(2)(iii), and 310.3(b).
4. The activities of Defendant Miller are or were affecting commerce, as commerce is defined in 15 U.S.C. § 44.
5. Defendant Miller has waived all rights that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412, *amended by* Pub. L. 104-121, 110 Stat. 847, 863-64 (1996).
6. This Order does not constitute and shall not be interpreted to constitute an admission by Defendant Miller or a finding by the Court that Defendant Miller has engaged in violations of the FTC Act, the Telemarketing and Consumer Fraud and Abuse Prevention Act, or the Telemarketing Sales Rule.
7. This Order resolves all matters arising from the allegations in the Complaint.

8. Defendant Miller waives any claim he may have to any of the assets of defendants Resort Sales Group, Inc., Cruise Link Travel, Inc., Design Travel of Altamonte Springs, Inc., and Check America Corporation, Inc., including any proceeds from the sale of a condominium on Roswell Avenue in Charlotte, North Carolina, titled in the name of Resort Sales Group.

9. Defendant Miller waives all rights to seek judicial review or otherwise challenge or contest the validity of this Order, and further waives and releases any claim he may have arising from this law enforcement action against the FTC or North Carolina; the employees, agents, or representatives of the FTC and North Carolina; and the permanent receiver, Joseph W. Grier, III, and his employees, agents, or representatives.

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

DEFINITIONS

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

1. "Defendant Miller" means Steven Brewer, his successors, assigns, agents, employees, salespersons, affiliates, all other entities or persons directly or indirectly under his control, and all persons or entities in active concert or participation with him who receive actual notice of this Order by personal service, facsimile, or otherwise.

2. "Travel-related product or service" means wholesale or retail air, sea, rail, or motorcoach transportation, lodging, accommodations, transfers, tours, car rental, or other such products or services, however denominated, including travel planning services, booking and reservation services, travel certificates or vouchers, coupons, reservation forms, or other documents that purport to be for full or partial payment or redeemable for any of the foregoing. "Travel-related product or service" does not include offering for sale or selling timeshares, or arranging for a consumer to visit timeshare facilities provided that: 1) the consumer is advised in

advance of any such visit if he or she is required to attend a sales presentation; 2) the consumer is not required to pay to stay at the timeshare facility during the visit; and 3) the timeshare visit is not part of any other package for which the consumer has to pay.

3. "Person" includes any natural person, proprietorship, partnership, company, firm, corporation, and any other form of legal entity.

4. The "Telemarketing Sales Rule" ("TSR") means 16 C.F.R. Part 310, or as it may be amended.

5. "Telemarketing" is as defined in Section 310.2(u) of the TSR, or as it may be amended.

ORDER

BAN

I.

IT IS THEREFORE ORDERED that Defendant Miller is hereby permanently restrained and enjoined from directly or indirectly promoting, advertising, marketing, offering for sale, selling, providing, accepting payment for, or processing payment for, any travel-related product or service.

II.

IT IS FURTHER ORDERED that Defendant Miller is hereby permanently restrained and enjoined from directly or indirectly providing any of the following goods or services to (1) others engaged in, or who plan to engage in, or (2) assisting any person or entity that Defendant Miller knows, or who he should know, is assisting others engaged in, advertising, promoting, marketing, offering for sale, selling, or providing any travel-related products or services:

- A. Procuring or providing office space or equipment;
- B. Procuring or providing financial support;
- C. Processing or arranging for the processing of charges to a consumer's credit card account or debits to a consumer's checking account;
- D. Creating, writing, or formulating, or participating in the creation, writing, or formulation of any sales brochure, direct mail piece, facsimile, Internet page, e-mail, contract, or other marketing material;
- E. Creating, writing, or formulating, or participating in the creation, writing, or formulation of any sales script, sales outline, or verification script;
- F. Providing leads or lists of names and/or addresses of consumers;
- G. Receiving or responding to consumer inquiries or complaints; or
- H. Fulfilling or arranging for the fulfillment of any travel-related product or service.

PROHIBITED BUSINESS PRACTICES

III.

IT IS FURTHER ORDERED that, in connection with the sale of any product or service, Defendant Miller, individually or by or through any entity that he owns, operates, or controls, is hereby permanently enjoined and restrained from facilitating any credit or debit card transactions unless the consumer to be billed personally signs the credit or debit card slip.

IV.

IT IS FURTHER ORDERED that, in connection with the sale of any product or service, Defendant Miller, individually or by or through any entity that he owns, operates, or controls, is hereby permanently enjoined and restrained from: (1) creating any check or other financial instrument by which a consumer's checking account may be debited; and (2) depositing any check or other financial instrument by which a consumer's checking account may be debited unless the consumer personally signs the check or financial instrument.

V.

IT IS FURTHER ORDERED that, in connection with promoting, advertising, marketing, offering for sale, or selling timeshares, Defendant Miller is hereby permanently enjoined and restrained from misrepresenting, or assisting anyone Defendant Miller knows, or who he should know, is misrepresenting, in writing or orally, expressly or by implication:

- A. The total cost of a timeshare;
- B. The nature and amount of any fees, taxes, shipping costs, and other supplemental charges that a consumer must pay to obtain a timeshare;
- C. The value of a timeshare, including its value as an investment;
- D. The nature, characteristics, components, efficacy, or features of a timeshare;
- E. The ability to resell or in any way recoup or recover money invested in the timeshare; and
- F. Any other material facts regarding a timeshare.

VI.

IT IS FURTHER ORDERED that, in connection with offering for sale or selling timeshares, Defendant Miller is hereby permanently enjoined and restrained from failing to

disclose, or assisting anyone Defendant Miller knows, or who he should know, fails to disclose, in any written marketing and sales material and during any sales presentations, clearly and conspicuously, the total cost of a timeshare, including the nature and amount of any costs, taxes, and other supplemental charges that a consumer must pay to obtain or use a timeshare; *provided that*, the sale or selling of timeshares does not include arranging for a consumer to visit timeshare facilities provided that: 1) the consumer is advised in advance of any such visit if he or she is required to attend a sales presentation; 2) the consumer is not required to pay to stay at the timeshare facility during the visit; and 3) the timeshare visit is not part of any other package for which the consumer has to pay.

VII.

IT IS FURTHER ORDERED that, in connection with promoting, advertising, marketing, offering for sale, or selling any product or service, Defendant Miller is hereby permanently enjoined and restrained from making, or assisting anyone Defendant Miller knows, or who he should know, is making, directly or by implication, orally or in writing, any statement or representation of material fact that is false or misleading including but not limited to any misrepresentation regarding the total costs of any product or service.

VIII.

IT IS FURTHER ORDERED that Defendant Miller is hereby permanently enjoined and restrained from violating, or assisting others to violate, the TSR, including but not limited to:

A. Failing to disclose in a clear and conspicuous manner before a consumer discloses his or her credit card number, the total costs of any product or service; or

B. Misrepresenting, expressly or by implication, material aspects of the performance, efficacy, nature or central characteristics of any product or service.

A copy of the TSR is Attachment A to this Order and is incorporated in this Order as if fully set forth verbatim. In the event the TSR is amended or modified, Defendant Miller's compliance with the modified TSR shall not be deemed a violation of this Part of the Order.

IX.

IT IS FURTHER ORDERED that, in connection with promoting, advertising, marketing, offering for sale, or selling any product or service, Defendant Miller is hereby permanently enjoined and restrained from directly or indirectly failing to comply with, or assisting anyone Defendant Miller knows, or who he should know, fails to comply with North Carolina General Statutes §§ 75-32, 75-33, and 75-34, which cover representations concerning winning a prize, the eligibility to win a prize, and being specially selected. The North Carolina Prize Promotion Statutes are Attachment B to this Order, and their provisions are specifically incorporated by reference in this Part.

BOND FOR TELEMARKETING

X.

IT IS FURTHER ORDERED that Defendant Miller is permanently enjoined and restrained from engaging in, directly or indirectly, or assisting anyone Defendant Miller knows, or who he should know, plans to engage in any telemarketing in which Defendant Miller receives any remuneration from a consumer as a result of such telemarketing, whether directly or indirectly, unless at least ten (10) business days prior to any such telemarketing, Defendant Miller obtains a performance bond in the principal sum of Five Hundred Thousand Dollars (\$500,000) covering his telemarketing; *provided, however*, that this provision shall not apply to Defendant Miller's arranging for a consumer to visit timeshare facilities provided that: 1) the consumer is advised in advance of any such visit if he or she is required to attend a sales presentation; 2) the consumer is not required to pay to stay at the timeshare facility during the visit; and 3) the timeshare visit is not part of any other package for which the consumer has to pay; *provided, further*, that Defendant Miller may receive remuneration from a third party for arranging for consumers to visit a timeshare facility, or as a result of a consumer purchasing a timeshare. The terms and conditions of the bond that Defendant Miller must obtain are as follows:

A. The bond shall be conditioned upon compliance by the Defendant Miller with: Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45; the TSR; the provisions of this Order; and North Carolina General Statute § 75-1.1. The bond shall be deemed continuous and remain in full force and effect as long as Defendant Miller continues to engage in any telemarketing, and for at least four (4) years after Defendant Miller has ceased to engage or participate in any telemarketing. The bond shall cite this Order as the subject matter of the bond, and shall provide surety thereunder against financial loss resulting from failure of performance

due, in whole or in part, to: any violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45; the TSR; the provisions of this Order; and North Carolina General Statute § 75-1.1;

B. The performance bond required pursuant to this Part shall be an insurance agreement providing surety for financial loss issued by a surety company that is admitted to do business in each of the states in which Defendant Miller is doing business and that holds a Federal Certificate of Authority As Acceptable Surety On Federal Bond and Reinsuring. Each such performance bond shall be in favor of both: (1) the Federal Trade Commission and North Carolina for the benefit of any consumer injured as a result of any violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, the TSR, the provisions of this Order, and North Carolina General Statute § 75-1.1; and (2) any consumer so injured;

C. Defendant Miller shall provide the bond to the FTC at the address specified in Part XX of this Order at least ten (10) business days before commencing any telemarketing;

D. Defendant Miller shall not disclose the existence of the performance bond to any consumer, or other purchaser or prospective purchaser of any product or service, without also disclosing clearly and prominently, at the same time, "As required by Court Order."

E. The Commission may execute against the performance bond if it is demonstrated to this Court by a preponderance of evidence that, after the effective date of this Order, Defendant Miller has, individually or through any person or entity, violated Section 5 of the FTC Act, 15 U.S.C. § 45;

F. The Commission or North Carolina may execute against the performance bond if it is demonstrated to this Court by a preponderance of the evidence that, after the effective date of this Order, Defendant Miller has, individually or through any other person or entity (1) violated the

TSR; (2) violated the terms of this Order; (3) violated North Carolina General Statute § 75-1.1; or (4) failed to provide any goods or services that resulted in financial loss to any consumer; and

G. Proceedings instituted under this Part are in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any other proceedings the Commission or North Carolina may initiate to enforce this Order.

CUSTOMER NAMES

XI.

IT IS FURTHER ORDERED that Defendant Miller is permanently enjoined and restrained from, directly or indirectly, knowingly selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, facsimile number, credit or debit card number, bank card number, bank account number, E-mail address, or other identifying information of any person who paid any money to any defendant in this matter, their affiliates, or any companies or corporations they owned or controlled, in connection with the purchase of any travel-related product or service.

Provided, however, that Defendant Miller may disclose such identifying information to a bank, a law enforcement agency, Plaintiffs' or Defendant Miller's counsel or their agents, or as required by any law, regulation, or court order.

CONSUMER REDRESS

XII.

IT IS FURTHER ORDERED that Defendant Miller shall pay to Plaintiffs FTC and North Carolina as full satisfaction of all monetary claims asserted by Plaintiffs FTC and North Carolina in the Complaint the sum of Thirty-Two Thousand Dollars (\$32,000).

A. Payment to the FTC shall be made by: 1) wire transfer to the account of the Federal Trade Commission, Treasury ABA number: 021030004, ALC number: 29000001, Reference information: FTC v. Resort Sales Group, Matter Number X-97-0075, or by 2) certified check to the FTC, Division of Finance, 600 Pennsylvania Ave, N.W., Washington, DC 20580, Reference information: FTC v. Resort Sales Group, Matter Number X-97-0075, as follows:

1. Ten Thousand Dollars (\$10,000), less any monies transferred to the FTC pursuant to Part XIII of this Order, within seven (7) business days of entry of this Order;
2. Twenty-Two Thousand Dollars (\$22,00) paid in twenty-four (24) equal installments of Nine Hundred Sixteen Dollars and Sixty-Six Cents (\$916.66) beginning thirty (30) days after the date this Order is entered by the Court and continuing every thirty (30) days thereafter; *provided, however,* that at any time, and without penalty, Defendant Miller may pay the balance due, make more frequent payments, make advance payments, or make larger payments than scheduled;

3. To ensure payment of the above \$22,000, Defendant Miller shall, within seven (7) business days of entry of this Order, execute a Promissory Note in such amount in favor of the Federal Trade Commission. This Note is attached as Attachment E;

B. Time is of the essence for the payments described above. If Defendant Miller fails to make any of the payments on the due date, Plaintiff FTC shall notify Defendant Miller and his counsel by mail and fax to the addresses and telephone numbers specified in this Order, and if payment is not then received within five (5) business days, without further notice or proceeding, judgment shall be entered against Defendant Miller in the amount of Two Million Dollars (\$2,000,000) for consumer redress. Defendant Miller expressly waives any right to contest the amount of the judgment, and this judgment does not constitute a fine or penalty.

C. The Commission and North Carolina may apply any or all funds received from Defendant Miller pursuant to this Order, and any interest received thereon, to a consumer redress program and to related administrative expenses, or to the receivership estate; *provided, however*, that if the Commission and North Carolina determine that a consumer redress program is not feasible, the Commission and North Carolina will divide the funds in a manner agreed upon between the Commission and North Carolina; *provided, further*, that the Commission may pay its portion to the United States Treasury as disgorgement, and North Carolina may use its portion to cover attorneys' fees and investigation costs, with the remaining amount to go to consumer protection or enforcement purposes. The Commission and North Carolina shall have full and sole discretion to:

1. Determine the criteria for participation by individual claimants in any consumer redress program implemented pursuant to this Order;

2. Determine the manner and timing of any notices to be given to consumers regarding the existence and terms of such programs; and
3. Delegate any and all tasks connected with such redress program to any individuals, partnerships, or corporations; and pay the fees, salaries, and expenses incurred thereby from the payments made pursuant to this Order; and

D. Defendant Miller expressly waives his rights to litigate the issue of disgorgement, and shall not have any right to contest any decision or action of the FTC or North Carolina concerning the disbursement or disposition of the funds. Defendant Miller acknowledges and agrees that all money paid pursuant to this Order is irrevocably paid to the Commission and North Carolina for purposes of settlement between Plaintiffs FTC and North Carolina, and Defendant Miller.

XIII.

IT IS FURTHER ORDERED that the following entity is hereby directed to release whatever funds it holds on behalf of Defendant Miller in the accounts specified herein, and to immediately transmit such funds by wire transfer to the account of the Federal Trade Commission, Treasury ABA number: 021030004, ALC number: 29000001, Reference information: FTC v. Resort Sales Group, Matter Number X970075:

- | | |
|----------|------------------|
| (a) BB&T | No. 159-304-4471 |
| (b) BB&T | No. 359-100-5072 |

RIGHT TO REOPEN

XIV.

IT IS FURTHER ORDERED that the Court's approval of this Order is expressly premised upon the truthfulness, accuracy, and completeness of the financial statement provided to counsel for Plaintiffs FTC and North Carolina by Defendant Miller. If, at any time following entry of this Order, the Commission or North Carolina obtains information indicating that Defendant Miller's representations on his financial statement concerning his assets, income, liabilities, or net worth were materially fraudulent, misleading, inaccurate, or incomplete, the Commission or North Carolina may, upon motion to the Court, request that the Order herein be reopened for the purpose of requiring additional consumer redress, and Defendant Miller agrees not to contest any reasonable evidence Plaintiffs FTC or North Carolina introduce on consumer injury; *provided, however,* that in all other respects this Order shall remain in full force and effect unless otherwise ordered by this Court; and *provided further,* that proceedings instituted under this Part are in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any other proceedings Plaintiffs FTC and North Carolina may initiate to enforce this Order.

XV.

IT IS FURTHER ORDERED that, within five (5) business days of signing this Order, Defendant Miller shall submit to the Commission and North Carolina a truthful sworn statement, in the form that is Attachment C, that shall reaffirm and attest to the truth, accuracy, and completeness of the financial statement executed by Defendant Miller on _____.

The Commission and North Carolina are authorized to verify any information provided on the financial statement with any appropriate third party, including but not limited to any financial institution or credit reporting bureau.

LIFTING OF PRIOR ORDERS

XVI.

IT IS FURTHER ORDERED that all prior orders shall be lifted as to Defendant Miller.

BANKRUPTCY PROVISIONS

XVII.

IT IS FURTHER ORDERED that Defendant Miller agrees that, for ninety (90) days following the entry of this Order, he will not file or cause to be filed a petition for protection under the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* Defendant Miller expressly agrees that he will not seek to have the liability under this Order discharged by any proceeding under the U.S. Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*, and Defendant Miller further agrees that the liability under this Order is not so dischargeable.

XVIII.

IT IS FURTHER ORDERED that Defendant Miller shall notify the Commission and North Carolina contemporaneously upon filing a petition for relief under the U.S. Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*, involving him. In the event that any of the Defendant Miller's creditors file a petition for relief under the U.S. Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*, Defendant Miller shall notify the Commission and North Carolina within five (5) business days of receiving notice of such a petition.

RECORD RETENTION

XIX.

IT IS FURTHER ORDERED that, for a period of four (4) years from the date of entry of this Order, Defendant Miller, in connection with any business owned, operated, or controlled by Defendant Miller engaged in telemarketing, or engaged in assisting others engaged in such business, is hereby restrained and enjoined from failing to create, and from failing to retain for a period of three (3) years following the date of such creation, unless otherwise specified:

- A. Books, records and accounts that, in reasonable detail, accurately and fairly reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
- B. 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.

The businesses subject to this Part shall retain such records for any terminated employee for a period of two (2) years following the date of termination;

- C. Records containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased for all consumers to whom such business has sold any goods or services, if any;
- D. Records that reflect, for every consumer complaint or refund request, whether received by Defendant Miller directly or indirectly or through any third party:
 - 1. The consumer's name, address, telephone number, and the dollar amount paid by the consumer;

2. The written complaint or refund request, if any, and the date of the complaint or refund request;
 3. The basis of the complaint, including the name of any salesperson complained against, and the nature and result of any investigation conducted concerning any complaint;
 4. Each response and the date of the response;
 5. Any final resolution and the date of the resolution; and
 6. In the event of a denial of a refund request, the reason for the denial; and
- E. Copies of all sales scripts, training materials, advertisements, or other marketing materials utilized; *provided that*, copies of all sales scripts, training materials, advertisements, or other marketing materials utilized shall be retained for three (3) years after the last date of dissemination of any such materials.

MONITORING COMPLIANCE WITH THIS ORDER

XX.

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

- A. For a period of four (4) years from the date of entry of this Order, Defendant Miller shall notify the Commission and North Carolina of the following:
1. Any changes in his residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;
 2. Any changes in his employment status (including self-employment) within ten (10) days of such change. Such notice shall include the name and

address of each business that he is employed by, a statement of the nature of the business, and a statement of his duties and responsibilities in connection with the business or employment; and

3. Within thirty (30) days of any change in the corporate structure of Defendant Miller, such as creation, incorporation, dissolution, assignment, sale, merger, creation, dissolution of subsidiaries, proposed filing of a bankruptcy petition, or change in the corporate name or address, or any other change that may affect compliance obligations arising out of this Order;

B. Sixty (60) days after the date of entry of this Order, Defendant Miller shall provide a written report to the FTC and North Carolina, sworn to under penalty of perjury, setting forth in detail the manner and form in which Defendant Miller has complied and is complying with this Order. This report shall include but not be limited to:

1. The Defendant Miller's then-current residence address and telephone number;
2. The Defendant Miller's then-current employment, business addresses and telephone numbers, a description of the business activities of each such employer, and Defendant Miller's title and responsibilities for each employer;
3. A copy of each acknowledgment of receipt of this Order obtained by Defendant Miller pursuant to Part XXIII;
4. A statement describing the manner in which Defendant Miller has complied and is complying with the injunctive provisions of this Order;

C. Upon written request by a representative of the Commission or North Carolina, Defendant Miller shall submit additional written reports (under oath, if requested) and produce documents on thirty (30) days' notice with respect to compliance with this Order, subject to Defendant Miller's fifth amendment privileges;

D. For the purposes of this Order all written notifications shall be mailed to:

Associate Director
Division of Marketing Practices
Federal Trade Commission Room 238
600 Pennsylvania Avenue, NW
Washington, DC 20580

Office of the Attorney General
Consumer Protection Section
Attn: Harriet Worley, Esq.
P.O. Box 629
Raleigh, North Carolina 27602

Richard Capriola, Esq.
Weinstock & Scavo, P.C.
3405 Piedmont Rd., N.E.
Atlanta, GA 30305

Seth Miller
5600 D Strawberry Hill Drive
Charlotte, North Carolina 28211

and

E. For the purposes of this Part, "employment" includes the performance of services as an employee, consultant, or independent contractor; and "employers" include any individual or entity for whom Defendant Miller performs services as an employee, consultant, or independent contractor.

XXI.

IT IS FURTHER ORDERED that the Commission and North Carolina are authorized to monitor Defendant Miller's compliance with this Order by all lawful means, including but not limited to the following means:

A. The Commission and North Carolina may seek leave of court to obtain discovery from any person in the manner provided by Federal Rules of Civil Procedure Rules 26 - 37, including the use of compulsory process pursuant to Federal Rules of Civil Procedure Rule 45, for the purpose of monitoring and investigating Defendant Miller's compliance with any provision of this Order;

B. The Commission and North Carolina are authorized to use representatives posing as consumers or suppliers to Defendant Miller, Defendant Miller's employees, or any other entity managed or controlled in whole or in part by Defendant Miller, without the necessity of identification or prior notice;

C. 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 investigate whether Defendant Miller has violated any provision of this Order, Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, or the TSR; and

D. Nothing in this Order shall limit North Carolina's lawful use of North Carolina General Statute § 75-10 to investigate whether Defendant Miller has violated any provision of this Order, Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, the TSR, or North Carolina General Statute § 75-1.1.

IT IS FURTHER ORDERED that, for a period of four (4) years from the date of entry of this Order, for the purpose of further determining compliance with this Order, Defendant Miller shall permit representatives of the Commission and North Carolina, within ten (10) business days of receipt of written notice from the Commission or North Carolina:

A. Access during normal business hours to any office, or facility storing documents, of any business that Defendant Miller is the majority owner of, or directly or indirectly manages or controls, that is engaged in telemarketing, or that is assisting others engaged in telemarketing. In providing such access, Defendant Miller shall permit representatives of the Commission and North Carolina to inspect and copy all documents relevant to any telemarketing or compliance with this Order. Such access shall be conducted so as not to unreasonably interfere with Defendant Miller's business activities; and

B. To interview the officers, directors, and employees, including all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, of any business to which Paragraph (A) of this Part applies, concerning telemarketing or compliance with this Order. The person interviewed may have counsel present.

Provided that, upon application of the Commission or North Carolina and for good cause shown, the Court may enter an *ex parte* order granting immediate access to Defendant Miller's business premises for the purposes of inspecting and copying all documents relevant to compliance with this Order.

ORDER DISTRIBUTION

XXIII.

IT IS FURTHER ORDERED that, for a period of four (4) years from the date of entry of this Order, Defendant Miller shall:

A. Provide a copy of this Order to, and obtain a signed and dated acknowledgment of receipt of same from, each officer or director, each individual serving in a management capacity, all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, immediately upon employing or retaining any such persons, for any business that Defendant Miller is the majority owner of, or directly or indirectly manages or controls, that is engaged in telemarketing, or in assisting others engaged in such business; and

B. Maintain for a period of three (3) years after creation, and upon reasonable notice, make available to representatives of the Commission and North Carolina, the original signed and dated acknowledgments of the receipt of copies of this Order, as required in Paragraph (A) of this Part.

XXIV.

IT IS FURTHER ORDERED that within five (5) business days after receipt by Defendant Miller of this Order as entered by the Court, Defendant Miller shall submit to the Commission a truthful sworn statement, in the form shown on Attachment D, that shall acknowledge receipt of this Order.

MISCELLANEOUS PROVISIONS

XXV.

IT IS FURTHER ORDERED that this Order and the negotiations leading to the consummation of this Order are for the purpose of settlement and compromise of a disputed claim. Pursuant to Federal Rules of Evidence Rule 408, this Order and negotiations leading to the consummation of this Order are not admissible to prove liability for or invalidity of any claim or its amount. This Order is entered without admission of liability or wrongdoing by Defendant Miller, and is entered by Defendant Miller only to avoid the cost and expense of further litigation.

XXVI.

IT IS FURTHER ORDERED that this Order is in settlement and full satisfaction of claims by the Commission, North Carolina, and the Receiver for monetary and/or injunctive relief for any and all prior dealings or involvement of Defendant Miller with Resort Sales Group, Inc., Cruise Link Travel, Inc., Design Travel of Altamonte Springs, Inc., Check America Corporation, Inc., and Promotional Marketing, Inc., and their officers, directors, employees, agents, successors, and assigns.

XXVII.

IT IS FURTHER ORDERED that this Court will retain jurisdiction of this matter for the purpose of enabling any of the parties to this Order to apply to the Court at any time for such further orders or directives as may be necessary or appropriate for the interpretation or modification of this Order, for the enforcement of compliance therewith, or the punishment of violations thereof.

Dated: _____

SO ORDERED this _____ day of _____, 1999.

United States District Court Judge

The parties agree to the terms and conditions set forth above and hereby consent to entry of this Stipulated Final Judgment and Order for Permanent Injunction and Monetary Relief at the Court's convenience and without further notice to the parties. This agreement may be executed in counterparts.

Seth Miller, Defendant
5600 D Strawberry Hill Drive
Charlotte, NC 28211

Richard Capriola, Esq.
Attorney for Seth Miller
Weinstock & Scavo, P.C.
3405 Piedmont Road, N.E.
Atlanta, Ga. 30305
404-231-3999 (o); 404-231-1618 (f)

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ATTACHMENT A
TELEMARKETING SALES RULE

ATTACHMENT B

NORTH CAROLINA PRIZE PROMOTION STATUTE

ATTACHMENT C

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
Charlotte Division**

**FEDERAL TRADE COMMISSION and
STATE OF NORTH CAROLINA,**

Plaintiffs,

v.

RESORT SALES GROUP, INC. *et al.*,

Defendants.

Case No. 3-97-CV-382 (Mu)

**REAFFIRMATION OF
FINANCIAL STATEMENT**

I, Seth Miller, hereby state that the information contained in the financial statement I signed on _____ and provided to the Federal Trade Commission and the State of North Carolina shortly thereafter was true, accurate, and complete at such time.

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

Dated: _____
Seth Miller

Notary:

ATTACHMENT D

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
Charlotte Division**

**FEDERAL TRADE COMMISSION and
STATE OF NORTH CAROLINA,**

Plaintiffs,

v.

RESORT SALES GROUP, INC. *et al.*,

Defendants.

Case No. 3-97-CV-382 (Mu)

AFFIDAVIT OF DEFENDANT

I, Seth Miller, being duly sworn, hereby states and affirms as follows:

1. My name is Seth Miller. My current residence address is 5600 D Strawberry Hill Drive, Charlotte, North Carolina 28211. I am a citizen of the United States and am over the age of eighteen. I have personal knowledge of the facts set forth in this Affidavit.

2. I am a defendant in *FTC v. Resort Sales Group et al.*, 97-Civ-382-Mu (W.D.N.C).

3. On _____, 1999, I received a copy of the Stipulated Final Judgment and Order for Permanent Injunction and Monetary Relief, which was signed by the Honorable Graham C. Mullen and entered by the Court on _____, 1999. A true and correct copy of the Order I received is appended to this Affidavit.

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

[*Seth Miller*]

Executed on _____, 1999, at _____

Seth Miller

State of _____, City of _____

Subscribed and sworn to before me
this ____ day of _____, 1999.

ATTACHMENT E

Note