

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

Case No. _____ CIV _____

FEDERAL TRADE COMMISSION,

Plaintiff,

vs.

IRA SMOLEV, *et al.*,

Defendants.

_____ /

**STIPULATED FINAL JUDGMENT AND ORDER FOR PERMANENT INJUNCTION
AND MONETARY SETTLEMENT**

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), has filed its complaint for permanent injunction and other 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 the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101 *et seq.*, charging Defendants with violating Section 5(a) of the FTC Act, 15 U.S.C. § 45(a) and the FTC’s Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310.

Plaintiff Federal Trade Commission and Defendants have agreed to the entry of this Stipulated Final Judgment and Order for Permanent Injunction and Monetary Settlement (“Order”) by this Court to resolve all matters of dispute between the settling parties with respect to the conduct alleged in the complaint in this action. Defendants Triad Discount Buying Service, Inc., Member Service of America, L.L.C., Orchid Associates, L.L.C., and Premier Membership Services, L.L.C., on September 29,

2000, filed for reorganization under Chapter 11 of the Bankruptcy Code, on June 29, 2001, filed their First Amended Joint Chapter 11 Plan, and, on August 7, 2001, filed their Second Amended Joint Chapter 11 Plan (“Plan”) with the United States Bankruptcy Court, Southern District of Florida, West Palm Beach Division (“Bankruptcy Court”), Case Nos. 00-35053-BKC-SHF through 00-35056-BKC-SHF.

NOW, THEREFORE, Plaintiff Federal Trade Commission and Defendants having requested the Court to enter this Order,

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

FINDINGS

1. This Court has jurisdiction of the subject matter of this case and of the parties consenting hereto.
2. Venue is proper as to all parties in the Southern District of Florida.
3. The activities of Defendants are in or affecting commerce, as defined in 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 57b, the Telemarketing Act, 15 U.S.C. §§ 6101 *et seq.*, and the TSR, 16 C.F.R. Part 310.
5. Defendants have 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). Defendants also have waived all rights to seek judicial review of, or otherwise challenge or contest the validity of, this Order. Defendants also have waived service of a summons.

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

DEFINITIONS

1. “Defendants” means, unless otherwise specified, Triad Discount Buying Service, Inc., Member Service of America, L.L.C., Orchid Associates, L.L.C., Premier Membership Services, L.L.C., Inter*Act Travel, Inc., Inter*Act Communications, Inc., Consumer Data Depot, L.L.C., ERevenue Partners, L.L.C., Far Services, L.L.C., Linden Investments, L.L.C., Lynstrom Information Service, L.L.C., Premier Club Services, L.L.C., Premier Marketing Services of America, L.L.C., Residents Resource Network, L.L.C., Revenue Solutions, L.L.C., Spanish River Investors, L.L.C., The Backend Company of America, Inc., The Shoppers Edge, L.L.C., Triad Marketing Group, Inc, and Tritell of Nevada, L.L.C., and their successors and assigns, and Ira Smolev.
2. “Corporate Defendants” means all Defendants, except Defendant Ira Smolev.
3. “Debtor Defendants” means Triad Discount Buying Service, Inc., Member Service of America, L.L.C., Orchid Associates, L.L.C., and Premier Membership Services, L.L.C., and their successors and assigns.
4. “Nondebtor Corporate Defendants” means all Corporate Defendants, except Debtor Defendants.
5. “Assisting others” means knowingly providing any of the following services to any person or entity: (a) performing customer service functions for any person or entity, including, but not limited to, receiving or responding to consumer complaints; (b) formulating or providing, or arranging for the formulation or provision of, any telephone sales script or any other marketing

material for any person or entity; (c) performing marketing services of any kind for any person or entity, or (d) providing credit card merchant processing accounts, or otherwise providing access to a billing and collection system, such as a credit card, checking, savings, share or similar account, utility bill, telephone bill, mortgage loan account or debit card.

6. "Billing information" means any data that describes, constitutes or provides access to a billing and collection system, such as a credit card, checking, savings, share or similar account, utility bill, telephone bill, mortgage loan account or debit card.
7. "Charge" means any amount charged or debited to a consumer's credit card, checking, savings, share or similar account, utility bill, telephone bill, mortgage loan account or debit card, or any similar form of collecting money from a consumer.
8. With respect to advertisements and promotional and marketing materials, "clear(ly) and conspicuous(ly)" means:
 - a. In an advertisement communicated through an electronic medium (such as television, video, radio, and interactive electronic media such as software, the Internet and online services), the disclosure must be presented simultaneously in both the audio and visual portions of the advertisement; **provided, however**, that in any advertisement presented solely through visual or audio means, the disclosure may be made through the same means in which the advertisement is presented; **provided further**, that in any advertisement disseminated by means of an interactive electronic medium such as software, the Internet, or online services, a disclosure made through the use of a hyperlink will not be deemed "clear and conspicuous" unless the hyperlink itself is clear

and conspicuous, is clearly identified as a hyperlink, is labeled to convey the nature and relevance of the information it leads to, is on the same Web page, online service page, or other electronic page and proximate to the triggering representation, and takes the consumer directly to the disclosure on the click-through electronic page or other display window or panel. The audio disclosure must be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The visual disclosure must be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it; and

- b. In a print advertisement or any print promotional or marketing material, the disclosure shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, and in print that contrasts with the background against which it appears.

The disclosure must be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement, promotional or marketing material.

9. "Membership service" means any arrangement whereby persons who purportedly agree to the arrangement (often called "members") receive specified benefits over a period of time, including but not limited to, travel benefits, health benefits, home protection, credit card protection, legal services and discounts on goods and services.
10. An offer or agreement with a "negative option" feature means an offer or agreement to sell or provide any goods or services under which (a) a consumer must take an affirmative action to

reject goods or services or cancel the agreement, and (b) the consumer's silence or failure to reject goods or services or to cancel the agreement is interpreted by the seller or provider as acceptance or continuing acceptance of the goods or services. Agreements with negative option features include, but are not limited to, agreements in which the consumer, subsequent to agreeing to the offer, will automatically be billed or charged at the end of a trial period (whether or not there is a fee for the trial period) unless the consumer cancels, and continuity plans in which, subsequent to the consumer's agreement to the plan, the seller or provider automatically ships goods to a consumer unless the consumer notifies the seller or provider within a certain time not to ship the goods.

11. A “partner” of Defendants means any third party that contracts with any of the Defendants to provide telemarketing or other marketing services in connection with any transaction wherein any of the Defendants provide, offer to provide or arrange for others to provide goods or services to consumers in exchange for consideration.
12. “Renewal” means an extension beyond the original term of a membership, subscription or agreement for goods or services that are offered on a periodic basis.
13. The “Synchronal Order” means the Commission’s Order issued in *Synchronal Corp.*, 116 F.T.C. 989, 1033 (1993).
14. "Telemarketing" means any business activity (which includes, but is not limited to, initiating or receiving telephone calls, managing others who initiate or receive telephone calls, operating an enterprise that initiates or receives telephone calls, owning an enterprise that initiates or receives telephone calls, or otherwise participating as an officer, director, employee or independent

contractor in an enterprise that initiates or receives telephone calls) that involves attempts to induce consumers to purchase any item, good, service, partnership interest, trust interest or other beneficial interest, or to enter a contest for a prize, by means of telephone sales presentations, either exclusively or in conjunction with the use of other forms of marketing; **provided** that the term “telemarketing” does not include transactions that are not completed until after a face-to-face contact between the seller or solicitor and the consumers solicited; **provided further**, that for the purposes of Part III of this Order, the definition of telemarketing will be consistent with 16 C.F.R. § 310.2.

15. “Third party” means (a) any entity that is not owned or controlled by Defendants, and (b) any person who is not acting in his or her capacity as an officer or employee of Defendants or any entity owned or controlled by Defendants.

I.

ESCROW ACCOUNT

IT IS FURTHER ORDERED that:

- A. Defendant Ira Smolev, whether directly, in concert with others, or through any business entity or other device, is hereby permanently restrained and enjoined from engaging or participating in any of the following activities, unless at least two weeks prior to such activities, he establishes and funds, pursuant to the terms set forth herein, an escrow account in cash, or marketable securities approved by the Commission’s Associate Director for Enforcement, with a total market value of One Million and Five Hundred Thousand Dollars (\$1,500,000) (“Escrow Account”), and maintains such assets, and

any accrued interest, dividends and distributions, in that Escrow Account until at least three (3) years after ceasing to engage in the listed activities:

1. Advertising, promoting, offering for sale, selling or distributing to the general public any goods or services;
2. Engaging or participating in the business of telemarketing; and
3. Assisting others engaging or participating in the business of telemarketing;

provided, that, if the average market value of the cash and securities in the Escrow Account during any calendar week falls below One Million and Four Hundred Thousand Dollars (\$1,400,000), then Defendant Ira Smolev, within five (5) business days, must deposit additional cash or marketable securities into the Escrow Account to increase the market value of the assets in the Escrow Account to One Million and Five Hundred Thousand Dollars (\$1,500,000); **provided further**, that Defendant Ira Smolev and the Commission agree that the assets held in the escrow account established and maintained pursuant to Part XVII of the Synchronal Order will be transferred, in partial satisfaction of this Part, into the escrow account established and maintained pursuant to this Part and thereafter subject to the requirements of this Part; and, **provided further**, that the creation and funding of a single escrow account by Defendant Ira Smolev pursuant to this Part will be deemed sufficient whether Defendant Ira Smolev engages in the listed activities through a single entity or multiple entities;

- B. Defendant Ira Smolev must pay all costs associated with the creation and funding of the Escrow Account. After the Escrow Account has been created and funded, the costs of

operating and administering the Escrow Account must be paid out of assets in the Escrow Account. Defendant Ira Smolev may select the escrow agent, subject to the right of the Commission's Associate Director for Enforcement to reject such selection. Rejection of the escrow agent will be within the sole discretion of the Commission's Associate Director for Enforcement;

- C. The escrow agreement must be in substantially the form attached to this Order as Appendix A. The escrow agreement must provide that the escrow agent, within thirty (30) days following receipt of notice that a final judgment or an order of the Commission against Defendant Ira Smolev for consumer redress or disgorgement in an action brought under the provisions of the FTC Act or the Telemarketing Act has been entered, or, in the case of an order of the Commission, has become final, finding that he has violated this Order, the Commission's Synchronal Order, or the provisions of the FTC Act, the Telemarketing Act or the TSR, and determining the amount of consumer redress or disgorgement to be paid, must pay to the Commission so much of the assets of the Escrow Account as does not exceed the amount of consumer redress or disgorgement ordered, and which remains unsatisfied at the time notice is provided to the escrow agent; **provided** that, if Defendant Ira Smolev has agreed to the entry of a court order or an order of the Commission, a specific finding that Defendant Ira Smolev has violated the terms of this Order, the Commission's Synchronal Order, or the provisions of the FTC Act, the Telemarketing Act or the TSR will not be necessary;

- D. The escrow account required by this Part is in addition to, and not in lieu of, any performance bond or escrow account required by any applicable federal, state or local law or by Order of any other federal, state or local court.
- E. At least two weeks prior to the commencement of any activity for which an escrow account is required under this Part, Defendant Ira Smolev must provide a copy of the escrow agreement to the Commission's Associate Director for Enforcement; and
- F. Defendant Ira Smolev, his agents, and any persons acting in concert or participation with him or under his authority, supervision or control must not disclose the existence of the Escrow Account to any consumer, or other purchaser or prospective purchaser to whom a product or service is advertised, promoted, offered for sale, sold, or distributed, without also disclosing the following, clearly and conspicuously, and in close proximity to, the disclosure of the Escrow Account's existence:

“The escrow account is required by an Order of the U.S. District Court to settle charges that Ira Smolev made false and misleading representations in promoting and selling discount buying clubs and other membership services.”

II.

PROHIBITED BUSINESS PRACTICES

IT IS FURTHER ORDERED that Defendants, and their officers, agents, employees, and attorneys, and all those persons or entities 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 entity, corporation, subsidiary, division, or other device, are hereby permanently restrained and enjoined from making, or causing or assisting others to make, expressly or by implication, any false or misleading representation in connection with the advertising, promoting, marketing, offering for sale, sale, or distribution of any goods or services in or affecting commerce, including but not limited to:

- A. Falsely representing, through, *inter alia*, mailings, email, billings, credit card charges and checking account debits, that a consumer purchased or agreed to purchase goods or services, or that a transaction has been authorized by a consumer;
- B. Falsely representing (1) the amount that a consumer will be charged or billed for any goods or services, (2) that a consumer will not be charged or billed for any goods or services, (3) the timing or manner of any charge or bill, or (4) that a consumer will not be charged or billed without the consumer's authorization;
- C. Making any representation that a consumer will receive a trial membership, or that any information kit, good or service is offered "free," "risk-free," with "no obligation," or words of similar import denoting or implying the absence of any obligation on the part of the recipient of such offer to pay for the information kit, good or service or to take affirmative action to avoid incurring payment obligations, without disclosing clearly and conspicuously, and in close proximity to such representation, prior to requesting the consumer's authorization to be charged or billed for the offered trial membership, information kit, good or service, or any other goods or services:

1. Any obligation of the consumer associated with accepting the offered trial membership, information kit, good or service (including, but not limited to, payment of shipping and handling fees, the obligation to purchase other goods or services, the obligation to accept a trial membership or trial period, and the obligation to cancel or take other affirmative action to avoid incurring payment obligations and the manner in which such a cancellation request may be submitted);
 2. The amount and number of payments (if more than one) that will or may be required, and the circumstances under which additional payments may be required; and
 3. All conditions, limitations and restrictions on the ability of the consumer to use the offered trial membership, information kit, good or service; and
- D. Making any representation that a consumer who accepts an offer for goods or services will receive an additional good or service for “free” or with “no obligation,” or as discounted or reduced in price, or words of similar import, without disclosing clearly and conspicuously, and in close proximity to such representation, prior to requesting the consumer’s authorization to be charged or billed for the goods or services with which the purportedly free or discounted good or service is offered, all conditions, limitations and restrictions on the ability of the consumer to use any such purportedly free or discounted good or service.

III.

VIOLATIONS OF TELEMARKETING SALES RULE

IT IS FURTHER ORDERED that Defendants, and their officers, agents, employees, and attorneys, and all those persons or entities 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 entity, corporation, subsidiary, division, or other device, are hereby permanently restrained and enjoined from violating any provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310, as in effect now or as it may be amended.

IV.

PROHIBITED FAILURES TO DISCLOSE

IT IS FURTHER ORDERED that Defendants, and their officers, agents, employees, and attorneys, and all those persons or entities 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 entity, corporation, subsidiary, division, or other device, in connection with the advertising, promoting, marketing, offering for sale, sale, or distribution of any goods or services, are hereby permanently restrained and enjoined from failing to disclose, clearly and conspicuously, before obtaining the consumer's express authorization to bill or charge the consumer for any such goods or services, all material terms and conditions for the purchase of any such goods or services, including but not limited to:

- A. That a purpose of the solicitation is to sell goods or services;

- B. The fact, if true, that a good or service is offered on behalf of a seller that is a separate entity from the seller doing the telemarketing, and, if so, the name of the separate seller and the entity to which payment will be made;
- C. The number of payments (if more than one), the date(s) or time period(s) at which the payment(s) will be required or charged, the amount of the payment(s), and the total cost;
- D. The fact, if true, that the billing information the seller already possesses, either because the consumer previously provided it to the seller, or the seller obtained it from another source, will be used to bill or charge the consumer;
- E. The terms of the seller's refund, cancellation, exchange, or repurchase policies;
- F. If the consumer will be automatically billed at the end of a trial period unless the consumer cancels: this fact; the length of the trial period; the manner in which a cancellation request may be submitted; the date or time period by which a cancellation request must be received; and either a telephone number or address to which a cancellation request may be directed or the fact, if true, that such information will be included in written materials provided to the consumer within a reasonable period prior to the date by which a cancellation request must be received;
- G. If the seller automatically ships goods to a consumer or automatically renews a membership, subscription or agreement for goods or services that is offered on a periodic basis, unless the consumer notifies the seller within a certain time not to ship or renew: this fact; the manner in which a notice not to ship or renew may be submitted;

the date or time period by which a notice not to ship or renew must be received to avoid shipment or renewal; and either a telephone number or address to which such a notice may be directed or the fact, if true, that such information will be included in written materials provided to the consumer within a reasonable period prior to the date by which such a notice must be received;

provided that, if Defendants obtain a consumer's billing information to purchase any goods or services and then further solicit the purchase of other goods or services, Defendants must affirmatively disclose all material terms and conditions for the purchase of each additional good or service, including but not limited to those set forth in this Part, before obtaining the consumer's express authorization to bill or charge the consumer for such additional good or service; and **provided further**, that, in connection with the advertising, promoting, marketing, offering for sale, sale, or distribution of any goods or services pursuant to an offer or agreement with a negative option feature, Defendants, prior to billing or charging the consumer for such goods or services, must provide the consumer with a document disclosing, clearly and conspicuously, all material terms and conditions of the sale, including but not limited to those set forth in this Part.

V.

EXPRESS VERIFIABLE AUTHORIZATION FOR SALES

IT IS FURTHER ORDERED that Defendants, and their officers, agents, employees, and attorneys, and all those persons or entities 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 entity, corporation, subsidiary, division, or other device, in connection with the advertising, promoting,

marketing, offering for sale, sale, or distribution of any goods or services, are hereby permanently restrained and enjoined from submitting billing information for payment, transferring billing information to a third party, or collecting or attempting to collect payment for goods or services, directly or indirectly, without the consumer's express verifiable authorization as follows:

A. Such express verifiable authorization must clearly evidence the consumer's name, the consumer's express authorization to purchase the goods or services and of the amount and manner of the billing or payment for such goods and service, and the date of the consumer's express authorization, and that all of the following information has been disclosed to the consumer, clearly and conspicuously, and in close proximity to, the consumer's express authorization:

1. The amount and manner of the billing or payment for such goods or services, including but not limited to, the disclosures set forth in Subparts C and D of Part IV of this Order, prior to the consumer's express authorization (*e.g.*, during the express automated electronic authorization referenced in Subpart B.4 of this Part, such disclosures must be made prior to the time the consumer inputs the personal identification number);
2. All of the disclosures set forth in Subparts A, B, E, F and G of Part IV of this Order, prior to the consumer's express authorization, **provided, however**, for purposes of this Subpart, the express verifiable authorization may evidence, if true, that such disclosures have previously been disclosed to the consumer,

clearly and conspicuously, in a print advertisement or print promotional or marketing material;

3. To the extent not already disclosed pursuant to Subpart A.1 of this Part, the consumer's specific billing information, including the name of the account and the account number, that will be used to collect payment for the goods or services that are the subject of the sales offer; and
4. A telephone number for consumer inquiry that is answered during normal business hours;

B. For the sale of any goods or services by means of telemarketing, the consumer's express authorization will be deemed verifiable only if one of the following means is employed:

1. Express written authorization by the consumer, which includes the consumer's signature (the term "signature" includes a verifiable electronic or digital form of signature, to the extent such form of signature is recognized as a valid signature under applicable federal law or state contract law);
2. Express oral authorization that is verified by an independent third party verifier ("TPV") that meets the requirements of Part VI of this Order;
3. Express oral authorization that is tape recorded, and meets the following criteria:
 - a. For telemarketing conducted by Defendants and any entities owned or controlled, in whole or in part, directly or indirectly, or managed, by

- Defendants, and their officers, agents, and employees, the tape recording must include the entire telephone call during which the consumer gave oral authorization;
- b. For telemarketing conducted by Defendants' partners, the tape recording must include the entire portion of the telephone call that relates to the goods and services that are the subject of Defendants' sales offer and during which the consumer gave oral authorization; and
 - c. A copy of the tape recording is provided upon request to the consumer, the consumer's bank, credit card company or other billing entity, state attorney general or consumer protection agency or the Commission; and
4. Express automated electronic authorization in which the consumer provides the authorization by calling a toll-free telephone number used exclusively for such authorizations and by inputting a personal identification number that has been mailed to the consumer at the consumer's home address.

VI.

THIRD PARTY VERIFICATION

IT IS FURTHER ORDERED that, if any of the Defendants chooses to use a third party verifier ("TPV") to obtain express verifiable authorization, as described in Subpart B.2 of Part V of this Order, the following requirements apply:

- A. Such Defendants must give written notice to the Commission's Associate Director for Enforcement at least twenty (20) days prior to the use of a TPV to obtain express verifiable authorization; **provided** that the Commission's Associate Director for Enforcement, at his or her sole discretion, may reject the selected TPV at any time, and, within thirty (30) days of receipt of a written notification from the Commission's Associate Director for Enforcement that the TPV has been rejected, such Defendants must cease using the TPV to obtain express verifiable authorization;
- B. The TPV must not be owned, managed, controlled, or directed by any of the Defendants, or any business entity owned or controlled, directly or indirectly by any of the Defendants or their partners, and must not have any financial incentive to confirm orders for any of the Defendants;
- C. Defendants must not be on the telephone line during the verification by the TPV;
- D. The TPV must, by telephone confirm that the consumer has agreed to the offer of goods or services, and has authorized billing for such goods or services, by the method and subject to the terms and conditions of the offer, and ensure that no misrepresentations have been made and no material information has been omitted during the sales call by describing the material terms and conditions of the offer in a clear and conspicuous manner (including, but not limited to, those enumerated in Part IV of this Order) and asking whether the consumer agrees to the described terms and conditions;

- E. Unless the consumer, during the verification by the TPV, affirmatively and unambiguously states that he or she agreed to each material term and condition of the offer, the sale will not be considered properly verified, and Defendants must not enforce or attempt to enforce any obligation whatsoever against any consumer in connection with such unverified sale; and
- F. If express verifiable authorization pursuant to this Part is obtained through:
 - 1. A live interaction between the verifier and the consumer, the TPV must tape record the entire telephone call between the verifier and the consumer;
 - 2. An automated system, such as an interactive voice response system, the TPV must maintain records showing when the confirmation occurred, how the content of the telephone call was created and how the consumer's responses were recorded.

VII.

LIMITATION ON DISSEMINATING OR OBTAINING CONSUMER'S INFORMATION

IT IS FURTHER ORDERED that Defendants, and their officers, agents, employees, and attorneys, and all those persons or entities 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 entity, corporation, subsidiary, division, or other device, are permanently restrained and enjoined from:

- A. Providing or disclosing to any third party, whether or not in exchange for payment or other consideration, any of the following information relating to a consumer:

1. Billing information;
2. Unique identifying information, such as social security number, date of birth, place of birth and mother's maiden name;
3. Credit information;
4. Income information; and
5. Asset and liability information;

provided, however, that this Subpart A will not apply to the disclosure by Defendants, or any entity managed or controlled in whole or in part, directly or indirectly, by Defendants, of consumer information: (1) necessary to effectuate or administer a transaction for which Defendants have obtained the consumer's express verifiable authorization; (2) pursuant to Section 623 of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681s-2, to a "consumer reporting agency" as defined by Section 603(f) of the FCRA, 15 U.S.C. § 1681a(f); or (3) to a law enforcement agency either voluntarily, or as required by any law, regulation, or court order; and

B. Entering into any agreement or arrangement pursuant to which any third party provides or discloses to Defendants, whether or not in exchange for payment or other consideration, any of the following information relating to a consumer:

1. Billing information;
2. Unique identifying information, such as social security number, date of birth, place of birth and mother's maiden name;
3. Credit information;

4. Income information; and
5. Asset and liability information;

unless Defendants have taken steps adequate to ensure that: (1) such third party has clearly and conspicuously disclosed to such consumer what information the third party proposes to provide or disclose, the intended use of the information, and that the third party proposes to provide or disclose the information to Defendants; and (2) the consumer has expressly authorized the third party to provide or disclose such information to Defendants; **provided, however**, that this Subpart B will not apply to any agreement or arrangement pursuant to which a bona fide "consumer report" is provided by a "consumer reporting agency" (as those terms are defined in Sections 603(d) and 603(f) the FCRA, 15 U.S.C. §§ 1681a(d) and (f), respectively) to Defendants pursuant to the permissible purposes requirements of Section 604 of the FCRA, 15 U.S.C. § 1681b.

VIII.

PROHIBITION ON RENEWALS OF CURRENT OR PAST MEMBERSHIPS

IT IS FURTHER ORDERED that Defendants, and their officers, agents, employees, and attorneys, and all those persons or entities 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 entity, corporation, subsidiary, division, or other device, are hereby permanently restrained and enjoined from causing any charges to be made or any payments to be billed to a consumer, or causing collection of, or attempts to collect, payment, directly or indirectly, from a consumer, for any renewal of any membership services offered or provided to consumers by any of Defendants or by any entity

owned or controlled directly or indirectly by Defendant Ira Smolev, where the consumer's purported authorization of the membership occurred prior to the effective date of this Order, without first obtaining from the consumer, within sixty (60) days prior to the date on which the consumer is charged or billed for such renewal, express verifiable authorization of such renewal that complies with the requirements of Part V of this Order.

IX.

MONETARY RELIEF

IT IS FURTHER ORDERED that:

- A. On the Effective Date of the Plan, Debtor Defendants, jointly and severally, must pay to the Federal Trade Commission the amount to be distributed to the Commission pursuant to the Plan, and must transfer this amount by electronic funds transfer to the Commission or its agent, pursuant to instructions provided by the Commission;
- B. Three days prior to the hearing at which the Bankruptcy Court confirms the Plan, Defendant Ira Smolev and Nondebtor Corporate Defendants, jointly and severally, must pay into a Trust Account, held and controlled by Collier Shannon Scott, cash or marketable securities with a total market value of One Million and One Hundred Thousand Dollars (\$1,100,000) (hereinafter referred to as "the Trust Account"); **provided** that, if the average market value of the cash and securities in the Trust Account during any calendar week falls below One Million Dollars (\$1,000,000), then Defendant Ira Smolev and Nondebtor Corporate Defendants, jointly and severally, within five (5) business days, must deposit additional cash or marketable securities into

the Trust Account to increase the value of the Trust Account to One Million and One Hundred Thousand Dollars (\$1,100,000); **provided further**, that Defendant Ira Smolev and Nondebtor Corporate Defendants may buy and sell securities in the Trust Account if and only if the market value of the Trust Account is greater than One Million and One Hundred Thousand Dollars (\$1,100,000) and such transactions do not result in the market value of the Trust Account falling below One Million and One Hundred Thousand Dollars (\$1,100,000); **provided further**, that, if Defendant Ira Smolev or the Nondebtor Corporate Defendants deposit additional cash into the Trust Account so that the total amount of cash in the Trust Account equals One Million and One Hundred Thousand Dollars (\$1,100,000), then Collier Shannon Scott, no earlier than three (3) business days after written notice has been received by the Commission, may transfer all securities in the Trust Account to Defendant Ira Smolev or the Nondebtor Corporate Defendants;

- C. If the amount paid by Debtor Defendants to the Commission pursuant to Subpart A of this Part is less than \$8.3 million (\$8,300,000), Defendants, jointly and severally, on the Effective Date of the Plan, must pay to the Commission an amount equal to \$8.3 million (\$8,300,000) **minus** the amount paid to the Commission by the Debtor Defendants pursuant to Subpart A of this Part;
- D. On the Effective Date of the Plan, Collier Shannon Scott must transfer the amount required to be paid pursuant to Subpart C of this Part in cash from the Trust Account by electronic funds transfer to the Commission or its agent, pursuant to instructions

provided by the Commission; **provided** that, if the amount in the Trust Account is less than the amount required to be paid pursuant to Subpart C of this Part, then Defendants, jointly and severally, must pay to the Commission, on the Effective Date of the Plan, the remaining amount due, and must transfer this sum in cash by electronic funds transfer to the Commission or its agent, pursuant to instructions provided by the Commission; and **provided further**, that, if the amount in the Trust Account is greater than the amount required to be paid to the Commission pursuant to Subpart C of this Part, then Collier Shannon, no earlier than three (3) business days after written notice has been received by the Commission, may transfer any remaining cash or securities in the Trust Account to Defendants;

- E. All payments made to the Commission under this Part will be (1) used to provide redress to consumers and any administrative costs associated with providing such redress, or (2) paid to the U.S. Treasury as equitable disgorgement, if the Commission, in its sole discretion, determines that consumer redress is impracticable with respect to all or a portion of the funds; **provided** that if the Commission, in its sole discretion, determines that consumer redress is appropriate, it shall submit a plan for the disbursement of funds to consumers to the Court for review and approval; and **provided further**, that Defendants will have no right to contest the manner of distribution chosen by the Commission;
- F. Acceptance of redress payments made to consumers under Subpart E of this Part will be conditioned on those consumers releasing Defendants from all claims related to the

purchase of any membership service from Defendants prior to the date of entry of this Order, and a list of all consumers providing such a release will be provided to Defendants by the Commission;

- G. Defendants must, within ten (10) days of the date of entry of this Order, provide to the Commission, in computer-readable format, for each Complaining Consumer: the consumer's name, most recent known address and telephone number, the name of each of Defendants' membership services for which the consumer paid, the date and amount of each such payment, and the date and amount of any refunds or chargebacks of such payments, as shown in Defendants' records; **provided** that Defendants must take all reasonable steps to ensure that this data is accurate, up-to-date and in a useable format; and **provided further**, that, for purposes of this Subpart, "Complaining Consumer" means any consumer who, prior to the date of entry of this Order: (1) has paid for any membership service offered by any of the Defendants or any other entity owned, in whole or in part, or controlled, by Defendant Ira Smolev; (2) has requested a refund for any such payments, has filed a complaint about such membership service with any of the Defendants, or has filed a complaint about such membership service that is in the possession of the FTC or any state agency and has been provided to any of the Defendants; and (3) has not previously received a full refund for all such payments, whether from the Defendants, the company telemarketing the membership service or through a chargeback;

- H. In the event of any default on any obligation to make any payment to the Commission required under this Part, interest, computed pursuant to 28 U.S.C. §§1961(a), accrues from the date of default to the date of payment, and immediately becomes due and payable; and
- I. In the event that Defendants fail to make any payment to the Commission required under this Part, the facts as alleged in the Complaint filed in this action must be taken as true in any subsequent litigation filed by the Commission to collect any unpaid amounts or otherwise enforce this Part of the Order, including but not limited to a nondischargeability complaint in any subsequent bankruptcy case.

X.

THIRD PARTY MONITORING

IT IS FURTHER ORDERED that within sixty (60) days from the date of the entry of this Order:

- A. Defendants must (1) retain a third party monitor (“TPM”), subject to the written approval of the Commission's Associate Director for Enforcement, to audit the Defendants’ records and activities for purposes of preparing and providing to the Defendants and to the Commission periodic written reports on Defendants' compliance with the Order and the TSR; (2) pay the TPM its customary or usual fees and all reasonable costs and expenses related to the performance of its duties under this Part; and (3) afford the TPM promptly upon request (a) access to, or assistance in gaining access to, documents (including but not limited to books, records and tape recordings)

in the possession of any corporation, subsidiary, division, agency or other person controlled, employed or acting in concert with any of the Defendants; and (b) interviews with any officer, agent or employee engaged, directly or indirectly, in the advertising, promoting, marketing, offering for sale, sale, or distribution of any goods or services;

B. The TPM's audit must be conducted according to procedures and methods selected by the TPM and must include the following:

1. For outbound and inbound telemarketing calls made by Defendants and any entities owned or controlled, in whole or in part, directly or indirectly, or managed, by Defendants, and their officers, agents, and employees, monitoring on a monthly basis a random sample consisting of at least 250 or 1% of such telemarketing calls per month, whichever is greater, up to a maximum of 500 telemarketing calls per month;
2. Investigating on a quarterly basis a random sample consisting of 10% of consumer complaints received by Defendants and any entities owned or controlled, in whole or in part, directly or indirectly, or managed, by Defendants, during that quarterly time period;
3. Contacting by telephone on a monthly basis a random sample consisting of at least 1% of consumers who, during that month, purportedly agreed to an offer of goods or services by Defendants or Defendants' partners, up to a maximum of 250 such consumers per month, to confirm whether Defendants and Defendants' partners complied with the terms of the Order, and whether the

consumers authorized billing for such goods or services, by the method and subject to the terms and conditions of the offer; **provided** that the consumers to be contacted pursuant to this Subpart B.3 will not include consumers whose express oral authorization was verified by a TPV as provided in Parts V and VI of this Order; and

4. A quarterly written report provided to the Commission on November 30 of the year 2001, and February 28, May 30, August 30 and November 30 of the year 2002, and subsequently, an annual written report provided to the Commission no later than May 30 of each year starting with the year 2003, which report must address the following issues: (a) with respect to records and materials Defendants are required by the Order or the TSR to keep and maintain, whether Defendants' records are complete and accurate; (b) the extent to which Defendants and Defendants' partners are in compliance with the Order and the TSR; and (c) whether there is a need for any significant modification in Defendants' operations that would result in improved compliance with the Order or the TSR;

provided, that the TPM must not be owned, managed, controlled, or directed by any of the Defendants, or any business entity owned or controlled, directly or indirectly by any of the Defendants or their partners; **provided further**, that Defendants must retain the same TPM to perform the audits required by this Part, unless the TPM declines or is unable to perform such work or the Commission's Associate Director for Enforcement notifies Defendants in writing

that, for good cause, a new TPM should be retained; **provided further**, if the Defendants fail to retain a TPM acceptable to the Commission's Associate Director for Enforcement, the Commission may petition this Court pursuant to Rule 53 of the Federal Rules of Civil Procedure, and the Court may, for good cause shown, order the appointment of a TPM to perform the audit required by this Part at Defendants' expense, as may be appropriate;

C. The TPM and Defendants must maintain records that accurately reflect the activities of the TPM required by this Part, including:

1. The name, address, and telephone number of the TPM;
2. The number of telemarketing calls monitored by the TPM;
3. The number of complaints investigated by the TPM;
4. The number of sales that the TPM attempted to verify;
5. Copies of all scripts used by the TPM to verify Defendants' sales;
6. The number and date of sales that the TPM did verify;
7. The name, address, telephone number and date of alleged sale for each consumer whose sale the TPM attempted to verify but was unable to verify;
8. Copies of all contracts and agreements between Defendants and the TPM; and
9. Copies of all reports provided by the TPM to Defendants; and

D. The requirement to retain a TPM pursuant to this Part may be suspended by the Commission's Associate Director for Enforcement upon thirty (30) days written notice to Defendants; **provided, however**, that the Associate Director for Enforcement, at his or her sole discretion, may revoke any such suspension upon thirty (30) days written

notice to Defendants, after which Defendants must comply fully with all requirements of this Part.

XI.

RIGHT TO REOPEN

IT IS FURTHER ORDERED that:

- A. The Commission's agreement to this Order is expressly premised on the truthfulness, accuracy and completeness of the financial statements submitted to the Commission on January 24, 2001, and April 25, 2001, by Defendants. If, upon motion, this Court finds that in their sworn financial statements, Defendants have made a material misrepresentation or omission understating their net worth, then the Court will enter a modified judgment holding Defendants liable to the Commission for consumer redress for the difference between the declared and actual net worth; **provided, however**, that in all other respects this Order will remain in full force and effect unless otherwise ordered by the Court; **provided further**, for purposes of this Subpart A, Defendants waive any right to contest any of the allegations in the Complaint; and
- B. If the Bankruptcy Court enters an order dismissing Debtor Defendants' Case Nos. 00-35053-BKC-SHF through 00-35056-BKC-SHF, or converting Debtor Defendants' reorganization cases under Chapter 11 to liquidation cases under Chapter 7 or Chapter 11 of the Bankruptcy Code, then the Commission may move to reopen Part IX [Monetary Relief] of this Order, and the remaining provisions of this Order shall remain in full force and effect;

provided further, that proceedings instituted under Subparts A or B of this Part would be in addition to, and not in lieu of, any other legal or equitable remedies as may be provided by law.

XII.

ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANT IRA SMOLEV

IT IS FURTHER ORDERED that, within five (5) business days after receipt by Defendant Ira Smolev of this Order as entered by the Court, Defendant Ira Smolev must submit to the Commission a truthful sworn statement, in the form shown on Appendix B, that acknowledges receipt of this Order.

XIII.

DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that, for a period of ten (10) years from the date of entry of this Order, Defendants must each:

- A. Provide:
 1. A copy of this Order and obtain a signed and dated acknowledgment of receipt from each officer and director;
 2. A summary of this Order, as set forth in Appendix C to, and obtain a signed and dated acknowledgment of receipt from:
 - a. Each individual serving in a management capacity;
 - b. All sales and marketing personnel and all personnel involved in responding to consumer complaints or inquiries, whether such persons are designated as employees, consultants, independent contractors or

otherwise, of any of the Defendants or of any business entity owned or controlled, directly or indirectly, or managed, by any of the Defendants, and

c. Each partner of any of the Defendants;

provided that each of the Defendants must deliver the copy of the Order or summary of the Order, as appropriate, to current personnel and partners within thirty (30) days after the date of entry of the Order, and to future personnel and partners within thirty (30) days after the person assumes such position or responsibilities; and

B. Maintain for a period of three (3) years after creation, and, within fifteen (15) days of receipt of a written request, make available to representatives of the Commission, the original signed and dated acknowledgments of the receipt of the Order or summary or summary of the Order, as required in Subpart A of this Part.

XIV.

RECORD-KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of ten (10) years from the date of entry of this Order, Defendants, and their officers, agents, employees, and attorneys, and all those persons or entities 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 entity, corporation, subsidiary, division, or other device, in connection with any of the businesses entities described below, are 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 by such business;
- B. Each tape recording of a telemarketing call made pursuant to Part V of the Order;
- C. Records that accurately reflect the name, address, and telephone number of each person employed or retained in any capacity by such business, whether such person is designated as an employee, consultant, independent contractor or otherwise; 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;
- D. Records that accurately reflect the names, addresses, phone numbers, dollar amounts paid, quantity of goods or services purchased, and description of goods or services purchased, for all consumers to whom such business has sold, invoiced, billed, or shipped any goods or services;
- E. For every consumer complaint or refund request, whether received directly or indirectly or through any third party, records that accurately reflect:
 - 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. A tape recording of each complaint received by telephone;

4. 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;
 5. Each response and the date of the response;
 6. Any final resolution and the date of the resolution; and
 7. In the event of a denial of a refund request, the reason for the denial;
- F. Copies of all sales scripts, training materials, advertisements, or other marketing materials utilized, and records that accurately reflect the time periods during which such materials were used and the persons and business entities that used such materials; **provided** that these marketing materials and records must be retained for three (3) years after the last date of dissemination of any such marketing materials;
- G. For each of Defendants' credit card merchant processing accounts:
1. A copy of the contract providing the account;
 2. Records that accurately reflect the name, address and telephone number of the acquirer bank, and its credit card processor(s),
 3. Copies of correspondence from VISA, MasterCard, any similar entity, and any acquirer bank or credit card processor describing a finding by such entities that any of the Defendants have incurred excessive chargebacks on such account, or that any of the Defendants have engaged in any other fraud, abuse or questionable activity with respect to such account;

- H. Copies of any contracts providing any of the Defendants with access to a billing and collection system, such as a credit card, checking, savings, share or similar account, utility bill, telephone bill, mortgage loan account or debit card;
- I. For each of Defendants' partners:
1. A copy of the contract and any amendments thereto between such partner and any of the Defendants;
 2. Records that accurately reflect the name, address and telephone number of such partner;
 3. Records that accurately reflect all payments made to such partner by any of the Defendants, all payments made to any of the Defendants by such partner, the reasons for such payments, and how such payments were calculated; and
 4. Copies of any correspondence with Defendants' partners or any person or entity that relate to complaints from consumers, government entities or any other parties about the sales, billing or collection practices or any questionable activities of Defendants' partners; and
- J. For the purposes of this Part:
1. The provisions of this Part apply to the Corporate Defendants and any business entity directly or indirectly owned or controlled by any of the Corporate Defendants; and

2. As to Defendant Ira Smolev, the provisions of this Part apply to any business entity which Defendant Ira Smolev owns or controls directly or indirectly, or manages.

XV.

COMPLIANCE REPORTING BY DEFENDANTS

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

- A. For a period of ten (10) years from the date of entry of this Order, Defendants must notify the Commission of the following: Any proposed change in the structure of any of the Corporate Defendants, such as dissolution, assignment, sale, merger, creation or 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, thirty (30) days prior to the effective date of any proposed change; **provided, however,** that, with respect to any proposed change in a corporation about which Defendants learn less than thirty (30) days prior to the date such action is to take place, Defendants must notify the Commission as soon as is practicable after learning of such proposed change;
- B. One hundred eighty (180) days after the date of entry of this Order, Defendants

must provide a written report to the Commission, sworn to under penalty of perjury, setting forth in detail the manner and form in which Defendants have complied and are complying with this Order. This report must include but not be limited to:

1. For the Corporate Defendants, the current address(es) and telephone number(s), fax number(s), and email address(es) of each of the Corporate Defendants;
2. A copy of each acknowledgment of receipt of this Order obtained by the Corporate Defendants pursuant to Part XIII of this Order;
3. A statement describing the manner in which the Corporate Defendants have complied and are complying with Parts I through XIV of this Order;
4. For Defendant Ira Smolev, his current employment, business address(es) and telephone number(s), fax number(s), email address(es), a description of the business activities of each such employer, and Defendant Ira Smolev's title and responsibilities for each employer;

C. For a period of ten (10) years from the date of entry of this Order, Defendant Ira Smolev must notify the Commission of the following:

1. Any changes in his residence, mailing address, telephone numbers and email addresses 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 must include the name and address of the business entity with which he is, in any manner, affiliated or employed, a

statement of the nature of the business entity, and a statement of his duties and responsibilities in connection with the business entity; and

3. Any proposed change in the structure of any business entity owned or controlled, directly or indirectly, by him, such as creation, incorporation, dissolution, assignment, sale, merger, creation or 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, thirty (30) days prior to the effective date of any proposed change; **provided, however,** that, with respect to any proposed change in the business entity about which he learns less than thirty (30) days prior to the date such action is to take place, he must notify the Commission as soon as is practicable after learning of such proposed change;

- D. Within fifteen (15) days after receipt of a written request by a representative of the Commission, each of the Defendants must submit additional written reports (under oath, if requested) and produce documents with respect to any conduct subject to this Order; and

- E. For the purposes of this Part:

1. "Employment" includes the performance of services as an employee, consultant, or independent contractor; and "employers" include any individual or entity for whom Defendant Ira Smolev performs services as an employee, consultant, or independent contractor; and

2. The Commission and its representatives are authorized to communicate directly with Defendants.

XVI.

TAXPAYER IDENTIFICATION NUMBERS

IT IS FURTHER ORDERED that Defendants must, in accordance with 31 U.S.C. § 7701, furnish to the Commission their respective taxpayer identifying numbers (social security number or employer identification number), which will be used for purposes of collecting and reporting on any delinquent amount arising out of such Defendant's relationship with the government.

XVII.

COMMISSION'S AUTHORITY TO MONITOR COMPLIANCE

IT IS FURTHER ORDERED that the Commission is authorized to monitor compliance with this Order by all lawful means, including but not limited to the following means:

- A. The Commission is authorized, without further leave of court, to obtain discovery from any person in the manner provided by Chapter V of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 26 - 37, including the use of compulsory process pursuant to Fed. R. Civ. P. 45, for the purpose of monitoring and investigating compliance with any provision of this Order by Defendants;
- B. The Commission is authorized to use representatives posing as consumers and suppliers to (1) Defendants, (2) Defendants' employees, or (3) any entity managed or controlled in whole or in part, directly or indirectly, by any of the Defendants, without the necessity of identification or prior notice; and

- C. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to investigate whether any of the Defendants has violated any provision of the Telemarketing Act, the FTC Act, the TSR, or any other provision of law enforced by the Commission.

XVIII.

NOTIFICATIONS

IT IS FURTHER ORDERED, for the purposes of this Order, Defendants must, unless otherwise directed by the Commission or its representatives, mail all written notifications to the Commission or the Commission's Associate Director for Enforcement to:

Associate Director for Enforcement
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington D.C. 20580
Re: Ira Smolev and Triad Discount Buying Service

XIX.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court will retain jurisdiction of this matter for all purposes, including but not limited to, 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 for the punishment of violations thereof.

STIPULATED AND AGREED TO BY:

IRA SMOLEV, Defendant, individually

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ORCHID ASSOCIATES, L.L.C., and
PREMIER MEMBERSHIP SERVICES, L.L.C.,
Debtor Defendants
By: Ira Smolev, CEO

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LINDEN INVESTMENTS, L.L.C.,
PREMIER CLUB SERVICES, L.L.C.,
PREMIER MARKETING SERVICES OF AMERICA, L.L.C.,
RESIDENTS RESOURCE NETWORK, L.L.C.,
REVENUE SOLUTIONS, L.L.C.,
SPANISH RIVER INVESTORS, L.L.C.,
THE BACKEND COMPANY OF AMERICA, INC.,
THE SHOPPERS EDGE, L.L.C.,
TRIAD MARKETING GROUP, INC, and
TRITELL OF NEVADA, L.L.C.,
Nondebtor Corporate Defendants
By: Ira Smolev, CEO

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LYNSTROM INFORMATION SERVICE, L.L.C., Defendant

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Attorneys for Plaintiff

SO ORDERED, this _____ day of _____ 2001.

UNITED STATES DISTRICT JUDGE