

EOD 3602

FILED - CLERK
DISTRICT COURT
02 MAR -6 PM 4:43
TEXAS EASTERN
BY Joyan McEach

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

Case No. 4:02cv44
Judge Paul Brown

Federal Trade Commission,)
)
Plaintiff,)
)
vs.)
)
Certified Merchant Services, Ltd., et al.,)
)
Defendants.)

**STIPULATED PRELIMINARY
INJUNCTION WITH ASSET FREEZE,
APPOINTMENT OF A RECEIVER
AND OTHER EQUITABLE RELIEF
AS TO DEFENDANTS CERTIFIED
MERCHANT SERVICES, LTD.,
CERTIFIED MERCHANT GP, INC.,
CERTIFIED MERCHANT SERVICES,
INC., JONATHAN FRANKEL AND
CRAIG FRANKEL**

WHEREAS plaintiff, the Federal Trade Commission ("Commission" or "FTC"), having filed a Complaint for Injunctive and Other Equitable Relief, including redress to consumers, pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), and moved for an ex parte Temporary Restraining Order pursuant to Rule 65 of the Federal Rules of Civil Procedure (Fed. R. Civ. P. 65); and

WHEREAS the Court, having issued an ex parte Temporary Restraining Order against Defendants on February 11, 2002, and ordered Defendants to show cause why a preliminary injunction should not be entered; and

WHEREAS the Complaint and summons having been served on all Defendants, and Defendants and counsel for the Commission having agreed to entry of this Stipulated Preliminary Injunction (this "Order") by this Court, and the Court, now being fully advised of the premises, it is hereby **ORDERED** and **ADJUDGED** that:

- A. The Commission and the Defendants agree that this Order is binding in form and scope pursuant to Fed. R. Civ. P. 65(d);
- B. No provision of this Order shall be construed as an admission or denial that any Defendant has engaged in violations of the FTC Act;
- C. Fed. R. Civ. P. 65(c) does not require security of the United States for the issuance of a preliminary injunction; and
- D. Entry of this Order is in the public interest.

DEFINITIONS

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

- A. "ACH" means the Federal Reserve Bank's Automated Clearing House, a processing and delivery system for the distribution of electronic debits and credits among financial institutions.
- B. "Acquiring Bank" means any bank that provides Merchant Accounts and has an agreement with Defendants relating to Merchant Accounts.
- C. "Assets" means all real and personal property of Defendants, or held for the benefit of Defendants, including, but not limited to "goods," "instruments," "equipment," "fixtures," "general intangibles," "inventory," "checks," or "notes" (as these terms are defined in the Uniform Commercial Code), all cash, funds, real or personal property, accounts, contracts, shares of stock, lists of Merchant names, or other assets, or any interest therein, wherever located.
- D. "Card processing" means goods and services relating to the acceptance, authorization, settlement, and payments for credit- or debit-card related sales.

E. "Check conversion processing" means any goods and services that may relate to truncated check debits, as that term is used in the ACH Rules and Operating Guidelines, published by the National Automated Clearing House Association.

F. "Clearly and conspicuously" means:

1. If presented in writing, the information shall be in a type size and location sufficient for an ordinary consumer to read and comprehend it, and shall be disclosed in a manner that would be easily recognizable and understandable in language and syntax to an ordinary consumer. If the information is contained in a multi-page print document, the disclosure shall appear on the first page.
2. If presented orally, the information shall be disclosed in a volume, cadence and syntax sufficient for an ordinary consumer to hear and comprehend.
3. Nothing contrary to any information disclosed shall be imparted at or near the time of the disclosure. Further, a subsequent disclosure made orally or in writing only limits or qualifies a prior disclosure and cannot cure a false claim.

G. "Corporate Defendants" means Certified Merchant Services, Ltd., Certified Merchant GP, Inc., Certified Merchant Services, Certified Merchant Services, Inc., TMS, CMS, Inc., Transaction Merchant Services, Transaction Merchant Services.Com, and Electrocheck, and their subsidiaries, affiliates (including CJF Corporation, Inc.), divisions, successors, and assigns, whether acting directly or through any of their officers, directors, agents, servants, employees, joint ventures, or other devices, unless specified otherwise.

H. "Defendant" means any of the Individual Defendants and the Corporate Defendants. "Defendants" means all of the Individual Defendants and the Corporate Defendants, individually, collectively, or in any combination.

I. "Document" is equal in scope and synonymous in meaning to the usage of the term in Federal Rule Civil Procedure 34(a), and includes writings, drawings, charts, graphs, photographs, audio and video recordings, computer records, and any other data compilations from which information can be obtained.

J. "In or affecting commerce" shall mean as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

K. "Individual Defendants" means Jonathan Frankel and Craig Frankel, individually, collectively, or in any combination, and whether acting directly or through any successor, assign, agent, entity, corporation, subsidiary, division, or other device, unless specified otherwise.

L. "Merchant" means a person, corporation or any other entity, who/which sells or leases goods or services, and acts as a consumer by purchasing, leasing or renting goods or services other than primarily for personal, family or household purposes. "Merchants" means any of the Merchants, individually, collectively, or in any combination.

M. "Merchant Account" means a bank account opened at an Acquiring Bank in the name of a Merchant for deposits of the proceeds of the Merchant's credit or debit card-related sales transactions. "Merchant Account" also includes, but is not limited to, goods, leases and services related to that account.

N. "Merchant Account Portfolio" means all Merchant Accounts from which Defendants derive any income.

O. "Receiver" shall mean the receiver appointed in Paragraph VIII of this Order. The term "Receiver" also includes any deputy receivers as may be named by the Receiver.

P. "Relate to" means refer to, concern, regard, reflect, discuss, constitute, mention, pertain to, allude to or associate with. "Relating to" means referring to, concerning, regarding, reflecting, discussing, constituting, mentioning, pertaining to, alluding to or associated with.

PROHIBITED BUSINESS ACTIVITIES

I.

IT IS THEREFORE ORDERED that in connection with the advertising, promotion, offering or sale of goods or services in commerce, Defendants are hereby preliminarily restrained and enjoined from altering or adding to, or assisting others in altering or adding to, without consent of Merchants, signed documents relating to Merchant Accounts, thereby producing changes to material terms, including but not limited to, increased rates and added fees and expenses.

II.

IT IS FURTHER ORDERED that in connection with the provision of card processing or check conversion processing, Defendants are hereby preliminarily restrained and enjoined from debiting, billing or receiving money, or assisting others in debiting, billing or receiving money:

- A. From Merchants before Defendants have provided such Merchants with promised card processing services or goods;
- B. From Merchants for check conversion processing before such Merchants have signed up for and activated such services; and

- C. From Merchants for services or goods provided after the Merchants have cancelled in writing.

III.

IT IS FURTHER ORDERED that in connection with the advertising, promotion, offering or sale of goods or services in commerce, Defendants are hereby preliminarily restrained and enjoined from making or assisting others in making, directly or by implication, orally or in writing, any misrepresentation of material fact, including but not limited to:

- A. If Merchants purchase Defendants' services, such Merchants will save money each month on their card processing expenses;
- B. If Merchants are dissatisfied with any services or representations made by Defendants, Merchants can cancel or transfer to another card processor at any time with no further obligation;
- C. There is no monthly minimum fee or expense associated with Merchant Accounts or associated services offered by Defendants;
- D. There are no fees or expenses in addition to the discount rate and per-transaction fee agreed to by Merchants; and
- E. If Merchants are charged cancellation fees by prior card processors, Defendants will reimburse the Merchants.

IV.

IT IS FURTHER ORDERED that in connection with the advertising, promotion, offering or sale of goods or services in commerce, if Defendants represent directly or by implication that they charge any particular percentage or fee, then Defendants are hereby

preliminarily restrained and enjoined from failing to disclose clearly and conspicuously, directly or by implication, orally or in writing, any material fact relating to fees, including but not limited to:

- A. Whether, under what conditions, and in what amounts the Defendants charge or debit any monthly minimum fees;
- B. Whether, under what conditions, and in what amounts the Defendants charge or debit any semi-annual fees; and
- C. Whether, under what conditions, and in what amounts the Defendants charge or debit any cancellation fees.

V.

IT IS FURTHER ORDERED that in connection with the sale of goods or services in commerce, if Defendants obtain the signature of any Merchant on a contract pertaining to such sale, including but not limited to an application, agreement or lease, then Defendants are hereby preliminarily restrained and enjoined from failing to furnish that Merchant, at the time such document is executed by the Merchant, with a copy of such executed document, in its entirety.

ASSET FREEZE

VI.

IT IS FURTHER ORDERED that Defendants are hereby preliminarily restrained and enjoined from directly or indirectly:

- A. Transferring, liquidating, converting, encumbering, pledging, loaning, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, granting a lien or security interest in, or otherwise disposing of any assets, wherever located,

including outside the United States, that are (1) owned or controlled, directly or indirectly, by any Defendant, in whole or in part, or held, in whole or in part for the benefit of any Defendant; (2) in the actual or constructive possession of any Defendant; or (3) owned, controlled by, or in the actual or constructive possession of any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by, or under common control with any Defendant, including but not limited to, any assets held by, for, or under the name of any Defendant at any bank, savings and loan institution, or correspondent bank, or with any broker-dealer, escrow agent, title company, commodity trading company, precious metal dealer, or other financial institution or depository of any kind;

- B. Opening or causing to be opened any safe deposit boxes titled in the name of any Defendant, or subject to access by any Defendant;
- C. Incurring charges or cash advances on any credit card, debit card, or checking card issued in the name, singly or jointly, of any Defendant;
- D. Obtaining a personal or secured loan;
- E. Incurring liens or encumbrances on real property, personal property or other assets in the name, singly or jointly of any Defendant; and
- F. The provisions set forth in subparagraph A, above, shall be subject to the exception that the Individual Defendants may use, for reasonable, usual, ordinary and necessary living expenses, business expenses and attorneys' fees, funds that (1) they receive after the effective date of this Order, and (2) are not derived from or otherwise related to the activities alleged in the Commission's complaint. The

provisions set forth in subparagraph C, above, shall be subject to the exception that the Individual Defendants may use checking cards or debit cards to transfer, spend or disburse, for ordinary and necessary living expenses, funds that they are not otherwise prohibited from transferring, disbursing, or spending under the terms of this Order.

Provided, however, that subparagraph F shall not be construed to excuse the Individual Defendants from compliance with Paragraph X of this Order; provided, further, however, that the Receiver may transfer funds from any account relating to the Corporate Defendants for the purposes of operating the Corporate Defendants' business or any portion thereof.

**RETENTION OF ASSETS BY BANKS AND
OTHER THIRD PARTIES**

VII.

IT IS FURTHER ORDERED that any financial or brokerage institution, escrow agent, title company, commodity trading company, business entity, trust, or person that holds, controls or maintains accounts or assets of, or on behalf of, any Defendant, or has held, controlled or maintained any account or asset of, or on behalf of, any Defendant at any time since January 1, 1999, shall continue to:

- A. Hold and retain within its control and prohibit the withdrawal, removal, assignment, transfer, pledge, hypothecation, encumbrance, disbursement, dissipation, conversion, sale, gift, or other disposal of any of the assets, funds, or other property held by or on behalf of any Defendant in any account maintained in the name of or for the benefit of any Defendant, in whole or in part, except:

1. as directed by further order of the Court;
 2. as directed in writing by the Receiver (regarding assets held in the name or for the benefit of the Corporate Defendants and determined by the Receiver to be necessary for the operation of the business or any portion thereof); or
 3. for specific transfers agreed to in writing by counsel for the Commission.
- B. Deny access to any safe deposit boxes that are either:
1. titled in the name, individually or jointly, of any Defendant; or
 2. otherwise subject to access by any Defendant.
- C. The Commission and Receiver are granted leave, pursuant to Fed. R. Civ. P. 45, and notwithstanding Fed. R. Civ. P. 26, to subpoena documents immediately from any such financial institution, account custodian, or other aforementioned entity concerning the nature, location, status, and extent of Defendants' assets, and compliance with this Order.

APPOINTMENT OF RECEIVER

VIII.

IT IS FURTHER ORDERED that Garrett Vogel, is appointed as Receiver, with the full power of an equity receiver, for the Corporate Defendants, and of all the funds, properties, premises (including 6101 West Plano Parkway, Plano, Texas 75093; P.O. Box 260077, Plano, Texas 75026; and P.O. Box 800697, Dallas, Texas 75380), accounts and other assets directly or indirectly owned, beneficially or otherwise, by the Corporate Defendants, with directions and authority to accomplish the following:

- A. Continue to maintain full control of the Corporate Defendants, with the power to retain or remove, as the Receiver deems necessary or advisable, any officer, director, independent contractor, employee, or agent of these entities;
- B. Continue to collect, marshal, and take custody, control and possession of all the funds, property, premises, accounts, mail and other assets of, or in the possession or under the control of the Corporate Defendants, wherever situated, the income and profits therefrom, and all sums of money now or hereafter due or owing to the Corporate Defendants, with full power to collect, receive and take possession of all goods, chattels, rights, credits, monies, effects, lands, leases, books and records, limited partnership records, work papers, and records of accounts, including computer-maintained information, contracts, financial records, monies on hand in banks and other financial institutions, and other papers and documents of other individuals, partnerships or corporations whose interests are now held by or under the direction, possession, custody or control of the Corporate Defendants;
- C. Pay, in due course, all bills for necessary operating expenses of the receivership estate;
- D. Perform all acts necessary to conserve, hold, manage, and preserve the value of those assets, in order to prevent any irreparable loss, damage and injury to Merchants;
- E. Enter into such agreements in connection with administration of the receivership, including, but not limited to: (1) the retention and employment of investigators, attorneys and accountants of the Receiver's choice, including, without limitation,

members and employees of the Receiver's firm, to assist, advise, and represent the Receiver, and (2) the movement and storage of any equipment, furniture, documents, records, files or other physical property of the Corporate Defendants; provided, however, that nothing in this Order shall be deemed a "plan of reorganization" as that term is used in the Texas Revised Limited Partnership Act or any other statute;

- F. Institute, prosecute, compromise, adjust, intervene in or become party to such actions or proceedings in state, federal or foreign courts that the Receiver deems necessary and advisable to preserve the value of the properties of the Corporate Defendants, or that the Receiver deems necessary and advisable to carry out the Receiver's mandate under this Order, and likewise to defend, compromise, or adjust or otherwise dispose of any or all actions or proceedings instituted against the Corporate Defendants, that the Receiver deems necessary and advisable to preserve the properties of the Corporate Defendants, or that the Receiver deems necessary and advisable to carry out the Receiver's mandate under this Order;
- G. Prepare and submit periodic reports to this Court and to the parties, as directed by the Court;
- H. The Receiver shall file with the Court and serve on the parties periodic requests for the payment of such reasonable compensation. The Receiver shall not increase his fee rate billed to the receivership estate without prior approval of the Court;

- I. Obtain, by presentation of this Order, documents, books, records, accounts, deposits, testimony or other information within the custody or control of any person or entity sufficient to identify accounts, properties, liabilities, causes of action, or employees of the receivership estate. The attendance of a person or entity for examination and/or production of documents may be compelled in a manner provided in Rule 45, Fed. R. Civ. P., or as provided under the laws of any foreign country where such documents, books, records, accounts, deposits or testimony may be located;
- J. Intercept, divert and open any mail addressed to any of the Corporate Defendants that comes into the Receiver's possession, custody or control; and
- K. Identify, and serve with a copy of this Order, additional affiliates and subsidiaries of the Corporate Defendants.

For the purposes of this Order, delivery of documents or property to the Receiver shall be effected upon delivery to the Receiver at 6101 West Plano Parkway, Plano, Texas 75093.

ACCESS TO BUSINESS PREMISES AND RECORDS

IX.

IT IS FURTHER ORDERED that the Receiver and his representatives and agents shall continue to have access to any business premises of the Corporate Defendants, and immediate access to any other location where the Corporate Defendants have conducted business and where property or business records are likely to be located. Such locations specifically include, but are not limited to, the offices and facilities of the Corporate Defendants: 6101 West Plano Parkway, Plano, Texas 75093; P.O. Box 260077, Plano, Texas 75026; and P.O. Box 800697, Dallas, Texas

75380. The Receiver is authorized to employ the assistance of law enforcement officers as the Receiver deems necessary, to effect service and to implement peacefully the provisions of this Order. The purpose of access shall be to implement and carry out the Receiver's duties set forth in Paragraph VIII, and to inspect and inventory all of the receivership estate's property, assets, and documents and inspect and copy any documents relevant to this action. The Receiver, his agents and those specifically designated by the Receiver shall have the right to remove the above-listed documents from those premises in order that they may be inspected, inventoried, and copied. The Receiver, at his discretion, shall allow representatives of the Commission into any such location(s) described in this Paragraph IX and shall allow Commission representatives to inspect, inventory and copy documents of the receivership estate or documents relevant to this action.

If any property, business records, documents, or computer files relating to the Corporate Defendants are located in the personal residence of any person served with this Order, then such Individual Defendant or person shall, within twenty-four (24) hours of service of this Order:

- A. Produce to the Receiver all contracts, accounting data, written or electronic correspondence, advertisements, computer tapes, disks, or other computerized records, books, written or printed records, handwritten notes, telephone logs, telephone scripts, marketing materials, membership records and lists, refund records, receipts, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, limited partnership documents, copies of federal, state or local business or personal income or property tax

returns, and other documents or records of any kind that relate to the Corporate Defendants' property or assets, or are relevant to this action;

- B. Produce to the Receiver all computers, computer passwords, and data in whatever form, used by such Defendant or person or any of such Defendant's agents, employees, officers, servants or those persons in active concert with him or her, in activities relating to the Corporate Defendants; and
- C. Produce to the Receiver a list of all agents, employees, officers, servants or those persons in active concert and participation with him or her, who have been associated or done business with the Corporate Defendants.

ACCOUNTING OF EXPENDITURES

X.

IT IS FURTHER ORDERED that:

- A. The Individual Defendants shall make and keep accurate records reflecting any and all funds or assets received from any source after the effective date of this Order, and any and all expenditures after the effective date of this Order totaling \$500 or more, including without limitation expenditures for living and business expenses.
- B. Beginning thirty (30) days after the date this Order is signed, and continuing on a quarterly basis thereafter, no later than the first day of the first month of each quarter, the Individual Defendants shall provide the Commission and the Receiver with a true and accurate statement reflecting:

1. All funds or assets received from any source after the effective date of this Order, including without limitation funds received by payment, loan or gift;
 2. The name, address, and telephone number of the source of all funds or assets received from any source after the effective date of this Order, including without limitation funds received by payment, loan, or gift;
 3. The amount of each expenditure totaling \$500 or more; and
 4. The name, address, and telephone number of each recipient of any expenditure totaling \$500 or more.
- C. The reports described in this Paragraph shall be supplied to the Commission as provided in Paragraph XVIII.

DELIVERY OF PROPERTY

XI.

IT IS FURTHER ORDERED that, immediately upon entry of this Order, the Defendants, and any other person or entity served with a copy of this Order, shall forthwith or within such time as permitted by the Receiver in writing, deliver over to the Receiver:

- A. Possession and custody of all funds, assets, property owned beneficially or otherwise, and all other assets, wherever situated, of the Corporate Defendants;
- B. Possession and custody of all books and records of accounts, all financial and accounting records, balance sheets, income statements, bank records (including monthly statements, canceled checks, records of wire transfers, records of ACH

- transactions, and check registers), limited partnership documents, client lists, title document, and other papers of the Corporate Defendants;
- C. Possession and custody of all funds and other assets belonging to members of the public now held by the Corporate Defendants;
 - D. All keys, computer passwords, entry codes, combinations to locks required to open or gain access to any of the property or effects, and all monies in any bank deposited to the credit of the Corporate Defendants, wherever situated; and
 - E. Information identifying the accounts, employees, properties, or other assets or obligations of the Corporate Defendants.

REPATRIATION OF FOREIGN ASSETS AND DOCUMENTS

XII.

IT IS FURTHER ORDERED THAT Defendants shall have a continuing duty to:

- A. Provide the Commission with a full accounting of all assets and documents outside of the territory of the United States which are held either: (1) by them; (2) for their benefit; or (3) under their direct control, jointly or singly;
- B. Transfer to the territory of the United States all assets and documents in foreign countries held either: (1) by them; (2) for their benefit; or (3) under their direct control, jointly or singly. In the case of any liquid assets held in foreign countries, each Defendant shall transfer such assets to one domestic account in Texas, titled in that Defendant's name and designated prior to any transfer by written notice to the Receiver and the Commission, such written notice to state the amount of the transfer and identify the domestic account by financial institution, title holder and

account number; and

- C. Hold and retain all such repatriated assets and documents, and prevent any transfer, disposition or dissipation whatsoever of any such assets or funds.

COMPENSATION OF RECEIVER

XIII.

IT IS FURTHER ORDERED THAT the Receiver and all personnel hired by the Receiver as herein authorized, including counsel to the Receiver and accountants, are entitled to reasonable compensation for the performance of duties pursuant to this Order and for the cost of actual out-of-pocket expenses incurred by them, from the assets now held by or in the possession or control of, or which may be received by, the Corporate Defendants. The Receiver shall file with the Court and serve on the parties by facsimile periodic interim requests for the payment of such reasonable compensation, with the first such interim request due prior to sixty (60) days after the date of this Order. For each such interim request, if no party objects to the Court in writing within ten (10) days after the service of such request, the Receiver is authorized to make reasonable compensation payments consistent with this Paragraph XIII. The Receiver shall not increase his fee rate billed to the Defendants without prior approval of the Court.

At the conclusion of the receivership, the Receiver may make a final application for compensation, based on the compensation considerations set forth in *First Colonial Corp. of America v. American Benefit Life Insurance Company*, 544 F.2d 1291, 1298-1300 (5th Cir. 1977). The Receiver's application, which may be made in conjunction with a final report, shall set out the facts necessary for the Court to make a determination as to whether interim amounts paid to the Receiver and his personnel constitute adequate compensation, and the amount of additional

compensation, if any, that should be due. The Receiver shall serve such application on the parties, who shall have twenty (20) days to make their response thereto. If necessary, further procedural orders, including any order setting a hearing and the conditions thereof, shall issue upon the Court's consideration of the application and any response.

STAY OF OTHER ACTIONS

XIV.

IT IS FURTHER ORDERED that except by leave of this Court, during the pendency of the receivership ordered herein, the Defendants and all customers, Merchants, principals, investors, creditors, stockholders, lessors, and other persons seeking to establish or enforce any claim, right or interest against or on behalf of the Defendants, and all others acting for or on behalf of such persons, including attorneys, trustees, agents, sheriffs, constables, marshals, and other officers and their deputies, and their respective attorneys, servants, agents and employees be and are hereby stayed from:

- A. Commencing, prosecuting, continuing or enforcing any suit or proceeding against the Corporate Defendants, except that such actions may be filed to toll any applicable statute of limitations;
- B. Commencing, prosecuting, continuing or entering any suit or proceeding in the name or on behalf of the Corporate Defendants;
- C. Accelerating the due date of any obligation or claimed obligation, enforcing any lien upon, or taking or attempting to take possession of, or retaining possession of, any property of the Corporate Defendants, or any property claimed by any of them or attempting to foreclose, forfeit, alter or terminate any of the Corporate

Defendants' interests in property, including, without limitation, the establishment, granting, or perfection of any security interest, whether such acts are part of a judicial proceeding or otherwise;

- D. Using self-help or executing or issuing, or causing the execution or issuance of any court attachment, subpoena, replevin, execution or other process for the purpose of impounding or taking possession of or interfering with, or creating or enforcing a lien upon any property, wheresoever located, owned by or in the possession of the Corporate Defendants, or the Receiver appointed pursuant to this Order or any agent appointed by said Receiver;
- E. Terminating any written agreement with the Defendants based solely upon the underlying action or anything contained in this Order; and
- F. Doing any act or thing whatsoever to interfere with the Receiver taking control, possession or management of the property subject to this receivership, or to in any way interfere with the Receiver, or to harass or interfere with the duties of the Receiver; or to interfere in any manner with the exclusive jurisdiction of this Court over the property and assets of the Corporate Defendants.

Provided, however, nothing in this Paragraph XIV shall prohibit any federal or state law enforcement or regulatory authority from commencing or prosecuting an action against the Corporate Defendants.

RECORD KEEPING

XV.

IT IS FURTHER ORDERED that Defendants, or any persons served with a copy of this Order, are hereby restrained and enjoined from:

- A. Failing to create and maintain books, records, accounts, and data which, in reasonable detail, accurately, fairly, and completely reflect their incomes, disbursements, transactions, and use of monies, in any way relating to the receivership estate or relevant to this action;
- B. Destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any contracts, accounting data, correspondence, advertisements, computer tapes, discs, or other computerized records, books, written or printed records, handwritten notes, telephone logs, telephone scripts receipt books, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, copies of federal, state or local business or personal income or property tax returns, and other documents or records of any kind that relate in any way to the receivership estate or are relevant to this action; and
- C. Failing to notify counsel for the Commission of the receipt of any funds by any Defendant subsequent to the date of entry of this Order, identifying each such receipt by the name, address, and telephone number of the payer.

CREDIT REPORTS**XVI.**

IT IS FURTHER ORDERED that pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(1), any consumer reporting agency may furnish a consumer report concerning any of the Individual Defendants to the Commission or to the Receiver.

SERVICE OF THIS ORDER**XVII.**

IT IS FURTHER ORDERED that copies of this Order may be served by any means, including facsimile transmission, upon any financial institution or other entity or person that may have possession, custody, or control of any documents or assets of the Defendants, or that may be subject to any provision of this Order. Service upon any branch or office of any financial institution shall effect service upon the entire financial institution. This Order and any subpoenas issued during the pendency of this Order may be served by agents or attorneys of the Commission.

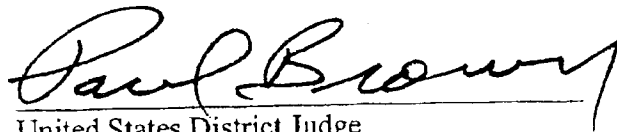
SERVICE UPON PLAINTIFF**XVIII.**

IT IS FURTHER ORDERED, with regard to any correspondence or pleadings related to this Order, service on the Commission shall be performed by delivery to the attention of Douglas V. Wolfe at the Federal Trade Commission, 600 Pennsylvania Avenue, NW, Room H-238, Washington, DC 20580, (202) 326-3113, or by facsimile transmission to (202) 326-3395.

RETENTION OF JURISDICTION**XIX.**

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

IT IS SO ORDERED, this 6th day of March, 2002, at 11:00 .m.



United States District Judge
Eastern District of Texas

CONSENTED TO:

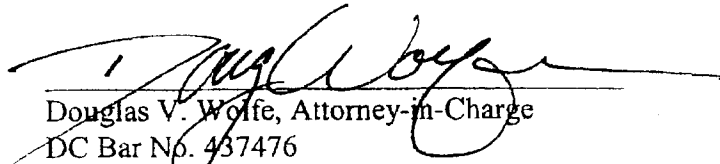
Stephen L. Neal, Jr.*, Attorney-in-Charge
DC Bar No. 441405

Attorneys for Jonathan Frankel and
Craig Frankel
MANATT PHELPS & PHILLIPS, LLP
1501 M St. NW, Suite 700
Washington, DC 20005
Tel: (202) 463-4300
Fax: (202) 463-4394
*Motion for admission pro hac vice
pending

Robert L. Wright, Attorney-in-Charge
State Bar No. 22054300
Joe B. Harrison

State Bar No. 09115500
William G. Whitehill
State Bar No. 21356550

Attorneys for Certified Merchant Services,
Ltd., Certified Merchant GP, Inc. and Certified
Merchant Services, Inc.
GARDERE WYNNE SEWELL LLP
1601 Elm St., Suite 3000
Dallas, TX 75201
Tel: (214) 999-3000
Fax: (214) 999-4667



Douglas V. Wolfe, Attorney-in-Charge

DC Bar No. 437476

Tel: (202) 326-3113; email: dwolfe@ftc.gov

Michael J. Davis, Of Counsel

NY Bar No. 3049095

Tel: (202) 326-2458; email: mdavis@ftc.gov

Attorneys for Plaintiff

FEDERAL TRADE COMMISSION

600 Pennsylvania Ave., N.W.

Room H-238

Washington, DC 20580

Fax: (202) 326-3395