

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 00-514-CIV-GOLD/SIMONTON

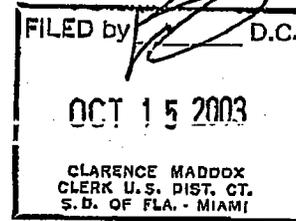
FEDERAL TRADE COMMISSION,

Plaintiff,

vs.

AMERITEL PAYPHONE DISTRIBUTORS,
INC., a Florida corporation; and ROY B.
GOODMAN, individually and as an officer
of the corporation,

Defendants.



CIVIL CONTEMPT ORDER

THIS CAUSE is before the Court upon an evidentiary hearing that was held on September 10, 2003. The purpose of the hearing was to determine whether Respondents Ameritel Payphone Distributors, Inc. ("Ameritel"), Roy B. Goodman, Lenora Kaus, Nathan Matalon, Kimberly Matalon, Public Telephone Corporation ("PTC"), Jakina Consulting Corp. ("Jakina"), and American Payphone Distributors, L.L.C. ("American Payphone") should be held in civil contempt for violating the Stipulated Judgment and Order for Permanent Injunction ("Permanent Injunction") in this case. In the Permanent Injunction, this Court retained "jurisdiction of this matter for the purpose of enabling the parties to apply to the Court at any time for such further orders and directives as may be necessary or appropriate for the enforcement of compliance therewith. . . ." Permanent Injunction (PCX 2 p.22, ¶XIII).

At the evidentiary hearing, the FTC presented several witnesses. Respondents Roy B. Goodman, Lenora Kaus, Nathan Matalon, and Kimberly Matalon each invoked the Fifth

Amendment privilege against self-incrimination.

Upon a full review of the evidence presented at the hearing, the entire record, and applicable case and statutory law, the Court concludes that Respondents shall be held in civil contempt. Accordingly, the Court appoints a temporary receiver to manage Respondents' assets, and Respondents are restrained from taking part in any business venture. Before stating the remedies in detail, the Court will discuss (1) the background of this case, including the scope of the Permanent Injunction against Defendants Ameritel and Goodman and the reasons for it, (2) the ways in which Respondents Kaus, the Matalons, PTC, Jakina, and American Payphone received notice of the Permanent Injunction, (3) Goodman's and Ameritel's violations of the Permanent Injunction, and (4) the ways in which the remaining Respondents aided and abetted in these violations.

I. Background

The Commission commenced this action on February 7, 2000 by filing a Complaint for Injunction and Other Equitable Relief (DE #1). The Commission alleged that Ameritel and Roy Goodman engaged in deceptive acts in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, and the Franchise Rule, 16 C.F.R. Part 436, in connection with the sale of payphone business ventures. On February 1, 2001, the parties stipulated to and this Court signed and filed the Permanent Injunction (DE #62).

A. Events Leading to the Permanent Injunction

Ameritel was a Florida corporation that promoted and sold payphone business ventures. Complaint (PCX 1 ¶5).¹ Roy Goodman was president and sole shareholder of

¹ The Permanent Injunction provides, "Defendants agree that the facts as alleged in the Complaint filed in this action shall be taken as true in any subsequent litigation filed by the

Ameritel. *Id.*

Ameritel, Goodman, and their employees or agents, in response to calls to their toll-free number, typically represented to consumers that their "payphone locations average between \$200 and \$300 per payphone per month in coin deposits alone." *Id.* at ¶¶10-11. Few, if any, of Ameritel's customers actually earned \$200 a month. *Id.* at ¶¶13-14. Ameritel and its agents also represented that consumers who purchased Ameritel's payphone business ventures would be provided with profitable locations, yet few consumers were in fact provided such locations. *Id.* at ¶¶16-17.

Further, Ameritel's payphone business ventures were "franchises" as defined in Sections 436.2(a)(1)(ii), (a)(2),² and (a)(5)³ of the Franchise Rule, 16 C.F.R. 436, *et. seq.*

Commission to enforce its rights pursuant to this Order. . . ." Permanent Injunction, (PCX 2 p.12 ¶ III.H). [Plaintiff's Contempt Exhibits are referred to herein by the declarant's name or document title followed by ("PCX", the exhibit number, and pinpoint cite)].

² Section 436.2(a)(1)(ii) provides the following:

(A) A person (hereinafter 'franchisee') offers, sells, or distributes to any person other than a 'franchisor' (as hereinafter defined), goods, commodities, or services which are: (1) Supplied by another person (hereinafter 'franchisor'), or (2) Supplied by a third person (e.g., a supplier) with whom the franchisee is directly or indirectly required to do business by another person (hereinafter 'franchisor'); or (3) Supplied by a third person (e.g., a supplier) with whom the franchisee is directly or indirectly advised to do business by another person (hereinafter 'franchisor') where such third person is affiliated with the franchisor; and (B) The franchisor: (1) Secures for the franchisee retail outlets or accounts for said goods, commodities, or services; or (2) Secures for the franchisee locations or sites for vending machines, rack displays, or any other product sales display used by the franchisee in the offering, sale, or distribution of said goods, commodities, or services; or (3) Provides to the franchisee the services of a person able to secure the retail outlets, accounts, sites or locations referred to in paragraphs (a)(1)(ii)(B) (1) and (2) of this section; and (2) The franchisee is required as a condition of obtaining or commencing the franchise operation to make a payment or a commitment to pay to the franchisor, or to a person

Complaint (PCX 1 ¶¶19). Thus, Ameritel and Goodman were required to have a reasonable basis for any earnings claims made to prospective purchasers, 16 C.F.R. §§436.1(b)(2), ©(2), and (e)(1), and to provide these prospective purchasers with a document substantiating any earnings claims they made. Ameritel, Goodman, and their agents failed to meet these requirements. Complaint (PCX 1 ¶¶24-25).

The Defendants caused an estimated \$8 million in consumer loss. Permanent Injunction (PCX 2 p.11, ¶III.C.). Because the Defendants' sworn financial statements showed an ability to pay only \$40,000, the Commission accepted that amount for consumer redress. *Id.* at pp.9-10.

B. Provisions of the Permanent Injunction

The parties agreed to the Permanent Injunction, which the Court entered on February 1, 2001. The Permanent Injunction includes requirements pertaining to (1) the use of false or misleading statements, (2) the Franchise Rule, and (3) monitoring compliance.

(1) False or Misleading Statements

The Permanent Injunction restrains the Defendants, their successors, assigns, officers, agents, servants, employees, and those persons in active concert or participation with them from making or assisting in making any oral or written statement or representation that is false or misleading, whether directly or by implication, including

affiliated with the franchisor.

³Section 436.2(a)(5) reads, "Any relationship which is represented either orally or in writing to be a franchise (as defined in this paragraphs (a) (1) and (2) of this section) is subject to the requirements of this part."

statements (1) that consumers will earn in excess of \$200 per payphone per month in coin deposits alone; Permanent Injunction (PCX 2 p.6, ¶I.A.1), (2) that consumers will be provided with profitable locations for their payphones; *Id.* at ¶I.A.2, (3) the income, profit, or sales volume that a purchaser is likely to achieve; *Id.* at ¶I.B.1, (4) the independence or authenticity of any third-party references, including persons represented to be prior purchasers, that are provided to potential purchasers; *Id.* at ¶I.B.4, (5) a purchaser's territorial rights to any geographic area; *Id.* at ¶I.B.5, (6) the availability or existence of profitable locations in a purchaser's geographic area; *Id.* at ¶I.B.6, and (7) the assistance that will be provided to purchasers, including, but not limited to, providing profitable locations. *Id.* at ¶I.B.7.

(2) Franchise Rule

The Permanent Injunction also restrains the same parties from violating the Franchise Rule by, among other things: (1) making any earnings claim or projection without having a reasonable basis, and (2) engaging in any other act or practice prohibited by the Franchise Rule or failing to fulfill any obligation imposed by the Rule. *Id.* (PCX 2 p.8 ¶II.D. and II.E).

The Franchise Rule also prohibits any representation to a prospective purchaser which states a specific level of potential sales, income, gross or net profit unless the franchisor has material containing a reasonable basis for the representation and such material is set forth in a legible document provided to the prospective purchaser. 16 C.F.R. § 436.1(b). Further, the Rule provides that profit projections must be "relevant to the geographic market in which the franchise is to be located." *Id.* at (b)(1). It prohibits "any

claim or representation which is contradictory to the information required to be disclosed" to the prospective purchaser. *Id.* at § 436.1(f).

(3) *Monitoring Compliance*

The Permanent Injunction requires Ameritel and Goodman, for seven years, to give a copy of the Order to, and obtain a signed acknowledgment of receipt from, each officer and director, individuals serving in a management capacity, all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, "immediately upon employing any such person, for any business Defendants directly or indirectly manage, control, or have a majority ownership interest in, that is engaged in the sale or distribution of any Franchise or Business Venture, or assisting others engaged in these activities." Permanent Injunction (PCX 2 p.13, ¶VI.A). Half a year after the Permanent Injunction was filed, the order required Ameritel and Roy Goodman to file a detailed report with the FTC and provide a signed acknowledgments of receipt of the Permanent Injunction. *Id.* at p.15, ¶VII.A.4. The Permanent Injunction enjoined the Defendants from "failing to take reasonable steps sufficient to monitor and ensure that all employees and independent contractors engaged in sales" comply with Permanent Injunction ¶¶I and II. Permanent Injunction (PCX 2-p.17; ¶VIII.A).

Roy Goodman was also required to notify the Commission of "the name and address of each business that [he] is affiliated with or employed by" within 10 days of that change. *Id.* at p.14, ¶VII.A.2. The Permanent Injunction required Ameritel and Roy Goodman, for a period of seven years, to notify the Commission in writing of "any proposed change in the structure of the Corporate Defendant and "any other change in that entity,

including a change in the corporate name or address, that may affect any compliance obligation arising out of this Order." Permanent Injunction (PCX 2 p.14, ¶VII.A).

II. Respondents' Notice of the Permanent Injunction

The injunctive provisions in paragraphs I and II of the Permanent Injunction applied to "Defendants, their successors, assigns, officers, agents, servants, employees, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise." (PCX 2 p.7). In August or September 2001, Ameritel supplied its compliance report to the FTC signed under oath by Roy Goodman on August 25, 2001. M. Goodman (PCX 3 ¶4). The compliance report alleged that "Ameritel and Goodman have distributed copies of the Order to all officers, directors, managers, sales personnel, and personnel who respond to customer inquiries and complaints. . . ." Compliance Report (PCX 3 p.3, ¶(d)). The report also claimed that the company prohibited unsubstantiated promises of earnings that its payphone venture would bring to potential purchasers. *Id.*

The FTC argues that Respondents Lenora Kaus, Kimberley Matalon, Nathan Matalon, PTC, Jakina, and American Payphone each had notice of the Permanent Injunction even though they were not parties to the action leading to the Injunction. Respondents argue that Kaus and PTC did not have notice of the Permanent Injunction, but they agree that the remaining Respondents did have notice. The Court concludes that based on the facts set forth below, each of the Respondents, including Kaus and PTC, had notice of the Permanent Injunction.

A. Lenora Kaus

Kaus had notice of the Permanent Injunction. In 2001 and 2002, Kaus acted as a "Senior Sales Manager" for Ameritel. (PCX 17 p.68). The August 25, 2001 Compliance Report stated that Goodman had distributed a copy of the Order entering the Permanent Injunction to all managers and sales personnel. (PCX 3 p.3). Further, she distributed to consumers a prospectus listing this case as "settled by entry of a Consent Order" wherein "the defendants agreed to comply with the Franchise Rule." Courtney (PCX 5 ¶5 and p.23); see *United States v. Baker*, 641 F.2d 1311, 1316-17 (9th Cir. 1981) (concluding that knowledge that an Order issued is sufficient notice for contempt).

B. Kimberly Matalon

Kimberly Matalon had notice of the Permanent Injunction. She signed an acknowledgment of receipt of the Order entering the Permanent Injunction, which was attached to the August 25, 2001 compliance report. (PCX 3 p.12).

C. Nathan Matalon

Nathan Matalon had notice of the Permanent Injunction, as indicated by his signed acknowledgment of receipt, which was attached to the August 25, 2001 compliance report. (PCX 3 p.10).

D. Public Telephone Corporation

As established in Part IV.D., *infra*, PTC is the successor to Ameritel, and as its successor, PTC had notice of the Permanent Injunction. See *Golden State Bottling Co., Inc. v. NLRB*, 414 U.S. 168, 178-79 (1973) (those to whom a business has been transferred as a means of evading an order or for other purposes may be held in

contempt).

Further, PTC was incorporated by Kaus. Laird (PCX 14 ¶5, pp.21-25); Aldridge (PCX 17 pp.667-672). On June 16, 2003, a PTC employee told AT&T counsel over the telephone that Nathan Matalon was the new president of PTC. Laird (PCX 14 ¶22). Thus, PTC's principals also had notice.

E. Jakina

Jakina had legally sufficient notice of the Permanent Injunction, as shown by the following: Jakina's sole officer was Kimberly Matalon and she had notice of the Permanent Injunction. Aldridge (PCX 17 pp.699-702). Kimberley Matalon was co-signer on Jakina's checks with Nathan Matalon, who also had notice of the Permanent Injunction. Aldridge (PCX 21 p.4).

F. American Payphone

American Payphone had legally sufficient notice of the Permanent Injunction. American Payphone's authorized check signers were Roy Goodman and Nathan Matalon, each of whom had notice of the Permanent Injunction. (PCX 21 p.26). Further, American Payphone operated out of the same office as PTC, Ameritel's successor. See Laird (PCX 14 ¶12 and pp.30, 107). PTC paid American Payphone via checks on PTC's account at Union Bank of Florida. Aldridge (PCX 17 pp.298, 313, 327, 329, 367, 369, 371, 375, 393).

III. Ameritel's and Goodman's Violations of the Permanent Injunction

Defendants Ameritel and Goodman violated several provisions of the Permanent Injunction, including those relating to making false or misleading statements, complying with the franchise rule, and monitoring compliance.

A. Ameritel's Violations of the Permanent Injunction

(1) False or Misleading Statements

Ameritel made false or misleading statements regarding profits, competitiveness of locations, consumer assistance, and third-party references.

(a) False or Misleading Statements Regarding Profits

Ameritel's employees made misleading representations about the income, profit, or sales volume that a purchaser is likely to achieve in violation of Permanent Injunction, ¶I.B.1. Ameritel's employees told prospective purchasers to "write down" the income and expenses they could likely expect from purchasing Ameritel's payphones. Landwehr (PCX 10 p.48); Fleming (PCX 12 ¶3) ("Hollis instructed me to take notes regarding the prices and expected profits"). Those who purchased from Ameritel made nowhere near the promised "minimum" \$300 per phone monthly profit after expenses. See Courtney (PCX 5 ¶18) (making between \$5 and \$25 per month in coin deposits and net loss overall); Donkersloot (PCX 6 ¶¶12,16,18,19) (net loss on 11 phones and one phone netting less than \$100 per month); Landwehr (PCX 10 ¶28) (\$27/month average net profit).

Ameritel made misleading representations that consumers who purchased its payphone business venture would earn in excess of \$200 per month in coin deposits alone, in violation of Permanent Injunction ¶I.A.1. Landwehr (PCX 10 p.48) (was promised \$250 per month per phone); Courtney (PCX 5 ¶¶4,7) (promised "minimum" \$200 per phone per month in coin revenue alone). Purchasers earned nowhere near the promised per phone monthly coin deposits. See Courtney (PCX 5); Donkersloot (PCX 6 ¶¶12,16,18,19); Landwehr (PCX 10 ¶28).

Ameritel used a doctored report, the "Raymond James report," regarding the viability of the pay telephone industry to make the represented profits seem likely. See Courtney (PCX 5 pp.39-42); Donkersloot (PCX 6 pp.43-46). A representative of Raymond James & Associates testified that the "Raymond James report" used by Ameritel was not, in fact, authored by that company. Stein (PCX 22).

(b) False or Misleading Statements Regarding Competitiveness and Profitability of Payphone Locations

Ameritel violated the Permanent Injunction prohibition against misrepresentations of the "amount of competition within, or a purchaser's territorial rights to, any geographic territory." (PCX 2 p.7, ¶I.B.5). Ameritel's faxed solicitations state that there "are only a specific number of distributors for each area." Courtney (PCX 5 p.6). Ameritel also orally offered "exclusive" territories. Fleming (PCX 12 ¶3); Donkersloot (PCX 6 ¶5). Ameritel reiterated the exclusivity during sales calls. Courtney (PCX 5 ¶4) ("[They were] only going to choose 2 or 3 distributors for my area."). Ameritel's prospectus, however, states that purchasers are "not limited in the geographic area in which they may sell." Courtney (PCX 5 p.26); Donkersloot (PCX 6 p.18); Lanwehr (PCX 10 p.40). Therefore, Ameritel did not assign exclusive territories, and its faxes and oral representations to the contrary violate Permanent Injunction ¶I.B.5. These misrepresentations of exclusive areas also violate Permanent Injunction ¶I.B.6's prohibition against misleading statements about the "availability or existence of profitable locations in a purchaser's geographic area."

©) False or Misleading Statements Regarding Assistance to Consumers

Ameritel violated Permanent Injunction ¶I.B.7, which prohibits misrepresentations of "the assistance that will be provided purchasers." Ameritel promised post-sale

assistance to the potential buyer. Donkersloot (PCX 6 ¶¶4-5); Landwehr (PCX 10 ¶7); Fleming (PCX 12 ¶5 and p.29). Ameritel did not provide post-sale assistance. Landwehr (PCX 10 ¶26); Donkersloot (PCX 6 ¶¶12,14,17); Fleming (PCX 12 ¶11).

(d) False or Misleading Statements Regarding Third-Party References

Ameritel also violated Permanent Injunction ¶I.B.4, which prohibits misleading statements about the independence or authenticity of third-party references. Ameritel touted its "partnership" with AT&T via letters supposedly signed by AT&T employee Gerald Stahl. See Courtney (PCX 5 p.52); Donkersloot (PCX 6 p.30); Kruckeberg (PCX 8 p.8); Fleming (PCX 12 p.18). AT&T, however, fired Mr. Stahl because of his dealings with Ameritel. Kruckeberg (PCX 8 ¶16). Further, potential purchasers were told to call Joe Bailey as someone who purchased phones from Ameritel. Kruckeberg (PCX 8 ¶7). Bailey, however, is an installer who worked with Ameritel. *Id.* at ¶10. Thus, Ameritel violated Permanent Injunction ¶I.B.4.

(2) Franchise Rule

Ameritel made earnings claims without a reasonable basis, in violation of the Franchise Rule and Permanent Injunction ¶II.D. (PCX 2 p.8). The Franchise Rule requires that "in immediate conjunction" with any representation that suggests a specific level of potential sales, income, or profit, the seller "shall disclose in a clear and conspicuous manner" that the material providing the reasonable basis for the suggested sales, income or profit is available to the prospective purchaser. 16 C.F.R. 436.1(b). As stated above, Ameritel's employees told consumers to write for themselves the "minimum" coin deposits and profits that they could expect from each phone each month. The only document provided by Ameritel referring to the profitability of payphones was the bogus Raymond

James report. Courtney (PCX 5 pp.39-42); Donkersloot (PCX 6 pp.43-46). Thus, Ameritel violated section 436.1(b) of the Franchise Rule and thereby violated Permanent Injunction ¶III.D.

Ameritel violated paragraph II.E. of the Permanent Injunction. In that provision, Ameritel was prohibited from violating any provision of the Franchise Rule other than those set forth in II.A-D of the Permanent Injunction. One provision of the Franchise Rule makes it illegal "to make any claim or representation which is contradictory to the information required to be disclosed" to the prospective purchaser. *Id.* at § 436.1(f). Ameritel states in its Product Purchase Agreement "that the Purchaser is not relying upon any verbal or written representations other than as specifically set forth in the agreement," and "Seller does not guarantee or represent that the Equipment, when installed, will produce any minimum amount of earnings, all of which are outside the Seller's control." Product Purchase Agreement (PCX 5 p.33); (PCX 6 p.25); (PCX 10 p.47). This contradictory information violates § 436.1(f) of the Franchise Rule and thus violates Permanent Injunction ¶III.E. See, e.g., *FTC v. Minuteman Press*, 53 F. Supp. 2d 248, 262 (E.D.N.Y. 1998).

(3) Monitoring Compliance and Submitting Reports

Ameritel failed "to take reasonable steps sufficient to monitor and ensure that all employees and independent contractors engaged in sales" comply with Permanent Injunction ¶¶I and II. (PCX 2 p.17). Ameritel misrepresented to the FTC that it prohibited its employees from making earnings claims without substantiation. Compliance Report (PCX 3 p.3). Ameritel therefore violated paragraph VIII of the Permanent Injunction.

Further, Ameritel failed to fulfill the reporting requirements of the Preliminary

Injunction. On January 10, 2003, attorney Peter G. Gruber wrote to the Florida Department of Agriculture and Consumer Services stating that his client Ameritel "has determined that it is in its best interests to permanently and voluntarily cease all further activities in connection with the sale of business opportunities" and that the company "will not further engage in the sale of any new business opportunities." *Kukreja* (PCX 15 p.5). On or about January 31, 2003, Provident Bank received a fax form with the business name "Public Telephone Corp." which read, "I Kimberly Matalon as the owner and responsible party of Ameritel inc. [sic] Am Requesting to change our Banking information." Aldridge (PCX 17 p.275). The form included a blank check for PTC's checking account at Union Bank of Florida. *Id.* On February 20, 2003, Kimberly Matalon stated in a document filed in United States District Court that Ameritel "is no longer a going concern," and thus it would not defend against allegations that Ameritel had defrauded a consumer in connection with its sale of a payphone business opportunity. *Kukreja* (PCX 15 p.1). Neither Ms. Matalon nor anyone else notified the FTC that Ameritel was no longer a going concern, in violation of the Preliminary Injunction provision that required Ameritel to notify the Commission in writing of "[a]ny proposed change in the structure of the Corporate Defendant" and "any other change in that entity, including a change in the corporate name or address" Permanent Injunction ¶VIII.A.3. (PCX 2 p.14).

B. Roy B. Goodman's Violations of the Permanent Injunction

As president of Ameritel, Goodman was responsible for Ameritel's actions. Officers of a business entity can be held in contempt for failing to cause their corporation to comply with a court's order. *American Airlines v. Allied Pilots' Assn.*, 53 F. Supp. 2d 909, 941

(N.D. Tex. 1999) (*citing Wilson v. United States*, 221 U.S. 361, 376-77 (1911); *Connolly v. J.T. Ventures*, 851 F.2d 930, 935 (7th Cir. 1988)). Further, because Roy Goodman continued to receive payments from Ameritel even after he agreed to "divest" himself of Ameritel in November 2001, he is responsible for Ameritel's violations after that date and can be held in contempt for them.

On December 16, 2002, Nathan Matalon and Goodman formed American Payphone Distributors, L.L.C. ("American Payphone"). Laird (PCX 14 ¶6, pp.27-29); Aldridge (PCX 17 pp.690-92). Matalon and Goodman are the signers on American Payphone's checking account. (PCX 21 p.26) (account signature card). Roy Goodman did not notify the FTC of his affiliation with American Payphone. See M.Goodman (PCX 3 p.1 ¶5). Goodman therefore violated Permanent Injunction ¶VII.A.2, which requires notification of any changes in employment status. (PCX 2 p.14).

Roy Goodman violated paragraph VII.A.3 of the Permanent Injunction when he failed to notify the FTC that Ms. Matalon had become the president of Ameritel. That provision of the order required him, for a period of seven years, to notify the Commission in writing of "[a]ny proposed change in the structure of the Corporate Defendant" and "any other change in that entity" (PCX 2 p.14).

IV. Aiding and Abetting Defendants' Violations

The Eleventh Circuit has stated, "Nonparties that actively aid and abet a party in violating a court order may be held in contempt of court." *United States v. Barnette*, 129 F.3d 1179, 1182 n.5 (11th Cir. 1997) (citations omitted). Respondents argue that Kaus, the Matalons, PTC, Jakina, and American Payphone did not actively aid and abet Ameritel

and Goodman in violating the Permanent Injunction. Based on the facts set forth below, the Court disagrees.

A. Ways in which Lenora Kaus Aided and Abetted Defendants' Violations of the Permanent Injunction

As a Senior Sales Manager for Ameritel, Kaus aided and abetted the company in making misleading representations about the income, profit, or sales volume that a purchaser is likely to achieve in violation of Permanent Injunction ¶I.B.1. She told a prospective purchaser to write down the income and expenses he could likely expect from purchasing Ameritel's payphones. Courtney (PCX 5 ¶6). Those who purchased from Ameritel made nowhere near the promised "minimum" \$300 per phone monthly profit after expenses. See Courtney (PCX 5 ¶18); Donkersloot (PCX 6 ¶¶12,16,18,19); Landwehr (PCX 10 ¶28). Kaus thus violated Permanent Injunction ¶I.B.1.

Kaus violated paragraph II.D of the Permanent Injunction by making earnings claims without a reasonable basis. She told a prospective purchaser to write down the "minimum" profits he could expect from purchasing Ameritel's payphones and then distributed the false Raymond James report as the basis for those claims. See Courtney (PCX 5 pp.10, 39-42). Kaus also distributed the Product Purchase Agreement, which contradicts the earnings claims she made in violation of the Franchise Rule, 16 C.F.R. § 436.1(f), and Permanent Injunction, ¶II.E. Courtney (PCX 5 p.33.)

Kaus held herself out as President of PTC. She is therefore in contempt for failing to ensure that PTC complied with the Permanent Injunction. *American Airlines*, 53 F. Supp. at 941 (citing *Wilson v. United States*, 221 U.S. 361, 376-77 (1911); *Connolly v. J.T. Ventures*, 851 F.2d 930, 935 (7th Cir. 1988)). PTC's violations for which Ms. Kaus is thus

responsible are set forth in Part IV.D., *infra*.

B. Ways in which Kimberly Matalon Aided and Abetted Violations of the Permanent Injunction

On November 26, 2001, Roy Goodman signed amended articles for Ameritel indicating Kimberly Matalon was elected Ameritel's President, Secretary, Treasurer and sole Director. Aldridge (PCX 17 p.678). Matalon is responsible for Ameritel's violations of the Permanent Injunction while she held these positions. See *American Airlines*, 53 F. Supp. at 941 (citing *Wilson v. United States*, 221 U.S. 361, 376-77 (1911); *Connolly v. J.T. Ventures*, 851 F.2d 930, 935 (7th Cir. 1988)).

Kimberly Matalon violated paragraph VII.A.3 of the Permanent Injunction, which requires notification of any change in Ameritel. (PCX 2 p.14). First, she failed to notify the FTC that she had become the president of Ameritel. Second, she violated this provision when she and failed to inform the FTC that (1) "Ameritel is no longer a going concern" and (2) Ameritel had changed its name to PTC. *Kukreja* (PCX 15 p.1); Aldridge (PCX 17 p.275).

Further, while she listed herself as president and sole director of Ameritel, she failed to take reasonable steps to ensure that Ameritel's employees were complying with Permanent Injunction ¶¶I and II, which she had acknowledged receiving. Compliance Report (PCX 3 p.12). Kimberly Matalon thereby violated Permanent Injunction ¶VIII.

C. Ways in which Nathan Matalon Aided and Abetted Violations of the Permanent Injunction

Nathan Matalon was "National Operations Manager" and a sales representative of Ameritel. Fleming (PCX 12 p.29); Landwehr (PCX 10 p.26). In this capacity, he handled

customers' liaisons with the locating companies, including negotiating the location price. Landwehr (PCX 10 ¶¶18, 20). In one instance during which he handled the negotiations, the locating company presented the consumer with a contract requiring a 25% payment of monthly receipts to the property owner, even though the consumer had been promised it would be no more than 10%. Landwehr (PCX 10 ¶25). Matalon therefore violated paragraph I.B.6's prohibition against Defendants' successors making misleading statements about the "availability or existence of profitable locations in a purchaser's geographic area."

Nathan Matalon also handled complaints about Ameritel's business practices, including complaints about the lack of post-sale assistance. Fleming (PCX 12 ¶11). As National Operations Manager, he failed to correct those misrepresentations.

Mr. Matalon was often paid by Ameritel, on consecutive checks, an amount equal to Roy Goodman. Aldridge (PCX 17 pp.537, 574, 591, 635-36, 638, 645-46). He is therefore responsible for Ameritel's violation's of the order. See *Connolly v. J.T. Ventures*, 851 F.2d 930, 935 (7th Cir. 1988) ("[A] command to the corporation is in effect a command to those who are officially responsible for the conduct of its affairs.") (quoting *Wilson v. United States*, 221 U.S. 361, 376-77 (1911)).

For PTC, Mr. Matalon responded to inquiries by state regulators, even though such inquiries were directed to PTC President Kaus. Van Dyck (PCX 23). When AT&T counsel contacted PTC regarding PTC's false claims of affiliation with AT&T, a PTC employee told the counsel that Nathan Matalon "was the new president of PTC." Laird (PCX 14 ¶22). Matalon is therefore responsible for PTC's violation's of the order. See *Connolly v. J.T. Ventures*, 851 F.2d at 935.

D. Public Telephone Corporation's Violations of the Permanent Injunction

The Court finds that (1) PTC is Ameritel's successor, and (2) PTC violated the Permanent Injunction.

(1) PTC Is Ameritel's Successor

The Court finds that PTC is the successor to Ameritel based on the following: (a) PTC uses Ameritel's merchant account to charge consumers' credit cards, (b) PTC uses nearly identical sales materials and sales pitches as Ameritel did, (c) Roy Goodman, Lenora Kaus, Kimberly Matalon, and Nathan Matalon send and receive shipments from PTC's address using PTC's FedEx account, and (d) PTC employs many of the same people as Ameritel.

(a) PTC's Bank Account

On or about January 31, 2003, Provident Bank received a fax form with the business name "Public Telephone Corp.," which read, "I Kimberly Matalon as the owner and responsible party of Ameritel inc. [sic] Am Requesting to change our Banking information." Aldridge (PCX 17 p.275). The form included a blank check for PTC's checking account at Union Bank of Florida. *Id.*

(b) PTC's Sales Pitch and Materials

In 2003, FTC and state law enforcement investigators posing as consumers made telephone calls to PTC. During one of these calls, a PTC employee stated that PTC was a direct partner with AT&T. Loomis (PCX 4 ¶4). She stated that PTC had been in business for over 18 years and had a very good reputation in the pay phone business. *Id.*

PTC employees claimed that the pay phones would yield a \$300 minimum net profit.

Vera (PCX 18 p.14). PTC employees stated that the locating companies PTC works with guarantee the \$300 per month minimum net profit per phone, and that the phones will be placed in areas that are already monitored to ensure these profits. Vera (PCX 18 p.14); Aldridge (PCX 17 p.14). Following initial calls to PTC, its employees sent documents, including the same phony Raymond James document previously used by Ameritel, touting the payphones as a good investment. Laird (PCX 14 pp.59-61); Aldridge (PCX 17 pp.92-95); Vera (PCX 18 pp.126-29).

PTC's Product Purchase Agreement states in fine print "that the Purchaser is not relying upon any verbal or written representations other than as specifically set forth in the agreement," and "Seller does not guarantee or represent that the Equipment, when installed, will produce any minimum amount of earnings, all of which are outside the Seller's control." Product Purchase Agreement (PCX 14 p.46); (PCX 17 p.97); (PCX 18 p.159).

PTC employees also stated, "The phones in the area now are averaging \$250 a month in coin revenue alone. And you can verify that in the Raymond James report we provided in the package there." Aldridge (PCX 17 p.128).

PTC also promised post-sale assistance by PTC to the potential buyer. Vera (PCX 18 p.38).

©) Same Federal Express Account

Roy Goodman, Lenora Kaus, Kimberly Matalon, and Nathan Matalon each send and receive shipments using PTC's FedEx account. Laird (PCX 14 ¶¶23 and pp.109, 114-116, 119, 122, 127, 128, 135, 141, 144, 146, 148, 160, 166, 168, 173, 179-85, 193, 195, 200, 204-5, 207-8, 212, 222, 224, 228, 238, 246); Aldridge (PCX 17 ¶¶14 and Attachment J).

(d) Same Employees and Corporations Involved

Lenora Kaus, Kimberley Matalon, and Nathan Matalon are heavily involved with PTC. PTC's prospectus provides, "Lenora Kaus is the President, Secretary, and Director of PUBLIC TELEPHONE CORPORATION." Aldridge (PCX 17 p.68). The Prospectus also states, "From 2001 to 2002 Ms. Kaus worked for Ameritel Payphone Distributors, Inc., where she performed services as a Senior Sales Manager." *Id.* During 2003, PTC paid Kaus via checks on PTC's account at Union Bank, signed by Lenora Kaus. Aldridge (PCX 17 pp.286, 290, 301, 306, 310, 316, 328-9, 332, 334, 336, 339, 341, 347-9, 352-3, 366, 372, 392, 396). During 2003, PTC paid Kimberly Matalon via checks on PTC's account at Union Bank of Florida, signed by Kaus. Aldridge (PCX 17 pp.284, 287-88, 290-1, 297, 300, 304, 308, 314, 325, 331, 335, 341, 345, 351, 363). PTC paid Kimberly Matalon an identical salary as Ameritel paid her. *Compare* PCX 17 pp.284, 287, 290 (PTC checks for \$576.00 paid to Kimberly Matalon) *with* PCX 17 pp.626, 635, 642, 658 (Ameritel checks for \$576.00 paid to Kimberly Matalon). Nathan Matalon, in March and May 2003, responded verbally on behalf of PTC regarding inquiries made by the State of Maine. Van Dyck (PCX 23 ¶¶4,7). During these inquiries, he refused to disclose his position or relationship to PTC. *Id.* During 2003, PTC paid to "cash" checks on PTC's account at Union Bank of Florida, signed by Kaus. Aldridge (PCX 17 pp.335-36, 343-44, 349-50, 362, 369). These checks were endorsed by Nathan Matalon. *Id.*

Jakina Consulting and American Payphone are also closely connected to PTC. During 2003, PTC paid Jakina via checks on PTC's account at Union Bank of Florida, signed by Kaus. Aldridge (PCX 17 pp.367, 375, 377, 393). During 2003, PTC paid American Payphone via checks on PTC's account at Union Bank of Florida, signed by

Kaus. Aldridge (PCX 17 pp.298, 313, 327, 329, 367, 369, 371, 375, 393).

(2) PTC's Violations of the Permanent Injunction

PTC offered a business venture that violated the Permanent Injunction's provisions relating to (a) false or misleading statements, (b) the Franchise Rule, and ©) monitoring compliance.

(a) False or Misleading Statements

(1) False or Misleading Statements Regarding Income, Profit, or Sales Volume

PTC made misleading representations about the income, profit, or sales volume that a purchaser is likely to achieve. Defendants' successors who do so are in violation of Permanent Injunction, ¶I.B.1. PTC used several tactics to make it appear likely that potential buyers will see a \$300 per phone monthly profit. These tactics include oral representations that the net profit calculation is a "minimum" and that the locations where the phones would be placed were previously monitored to ensure the likely profits. Vera (PCX 18 pp.10, 14); Laird (PCX 14 ¶14); Aldridge (PCX 17 p.14). PTC also used the phony report on the viability of the pay telephone industry to make the represented profits seem likely. Laird (PCX 14 pp.59-61); Aldridge (PCX 17 pp.92-95); Vera (PCX 18 pp.126-29).

PTC made misleading representations that consumers who purchased their payphone business venture would earn in excess of \$200 per month in coin deposits alone, in violation of Permanent Injunction ¶I.A.1. PTC distributed the fake Raymond James report as corroboration for these expected profits. Vera (PCX 18 p.83).

(2) False or Misleading Statements Regarding Profitable Locations

PTC violated the Permanent Injunction prohibition against Defendants' successors'

misrepresentations of the "amount of competition within, or a purchaser's territorial rights to, any geographic territory." Permanent Injunction (PCX 2 p.7, ¶I.B.5). PTC orally offered "exclusive" territories during sales calls. Aldridge (PCX 17 p.24); Loomis (PCX 4 ¶16). PTC's prospectus, however, states that purchasers are "not limited in the geographic area in which they may sell." (PCX 17 p.72); (PCX 18 p.152). Therefore, PTC did not assign exclusive territories, and its oral representations to the contrary violate Permanent Injunction ¶I.B.5.

These misrepresentations of exclusive areas, combined with misrepresentations that payphones would be placed in locations already monitored to confirm their profit levels, are promises of the availability or existence of profitable locations in the buyer's area. PTC's sales agents based their claims of these profitable locations on the bogus Raymond James report. See Vera (PCX 18 p.83). Thus, these misrepresentations violate the Permanent Injunction's prohibition against making misleading statements about the "availability or existence of profitable locations." (PCX 2 p.6, ¶I.B.6).

(3) False or Misleading Statements Regarding Third-Party References

Respondents also violated Permanent Injunction ¶I.B.4, which prohibits Defendants' successors from making misleading statements about the independence or authenticity of third-party references. PTC touts its "partnership" with AT&T. See Laird (PCX 14 ¶¶7, 12); Loomis (PCX 4 ¶4); Aldridge (PCX 17 p.12); Vera (PCX 18 p.15). Respondents even provide potential buyers with letters purporting to be from AT&T employees. Laird (PCX 14 p.81). These representations are false. See Laird (PCX 14 ¶¶9, 21, pp.103-4) ("[AT&T] can find no record that AT&T has any partnership or other special relationship with Public Telephone Corporation, nor any evidence that AT&T has authorized PTC to use AT&T's

name or any of its logos, service marks or trade names.”). Further, undercover investigators were told to call Barry Aldoroty as someone who purchased phones from PTC. Aldridge (PCX 17 pp.139-40); Vera (PCX 18 pp.86-87). Aldoroty, however, worked with Ameritel. See Fleming (PCX 12 p.17); Aldridge (PCX 17 p.59). Thus, PTC violated Permanent Injunction ¶I.B.4.

(b) Franchise Rule

PTC made earnings claims without a reasonable basis in violation of the Franchise Rule and the Permanent Injunction, ¶II.D. The Franchise Rule requires that “in immediate conjunction” with any representation that suggests a specific level of potential sales, income, or profit, the seller “shall disclose in a clear and conspicuous manner” that the material providing the reasonable basis for the suggested sales, income or profit is available to the prospective purchaser. 16 C.F.R. 436.1(b). As stated above, PTC’s and Ameritel’s employees told consumers to write for themselves the “minimum” or “conservative” coin deposits and profits that they could expect from each phone each month. The transcripts of calls taped by FTC investigators show that the phony Raymond James report was PTC’s basis for these projections. Aldridge (PCX 17 p.139); Vera (PCX 18 pp.43, 83-84). Thus, PTC violated section 436.1(b) of the Franchise Rule and thereby violated Permanent Injunction ¶II.D.

PTC violated paragraph II.E. of the Permanent Injunction, which prohibits Defendants’ successors from violating Section 436.1(f) of the Franchise Rule. This Section makes it illegal “to make any claim or representation which is contradictory to the information required to be disclosed” to the prospective purchaser. PTC states in its Product Purchase Agreement “that the Purchaser is not relying upon any verbal or written

representations other than as specifically set forth in the agreement," and "Seller does not guarantee or represent that the Equipment, when installed, will produce any minimum amount of earnings, all of which are outside the Seller's control." Product Purchase Agreement (PCX 14 p.46); (PCX 17 p.97); (PCX 18 p.159). This contradictory information violates § 436.1(f) of the Franchise Rule and thus violates Permanent Injunction ¶¶II. E.

©) Monitoring Compliance

PTC's failure "to take reasonable steps sufficient to monitor and ensure that all employees and independent contractors engaged in sales" comply with Permanent Injunction ¶¶I and II is a violation of paragraph VIII of the Permanent Injunction. (PCX 2 p.17).

E. Jakina and American Payphone's Violations of the Permanent Injunction

PTC, Jakina, and American Payphone are a common enterprise. Accordingly, Jakina and American Payphone can be held in contempt for PTC's violations of the Permanent Injunction.

(1) Common Enterprise

In addition to involving the same principals, PTC, Jakina, and American Payphone share the same address and bank account.

Jakina and American Payphone's address is the same as PTC's. On July 17, 2001, Kimberly Matalon formed Jakina Consulting Corp. Aldridge (PCX 17 pp.699-702). On July 21, 2003, Jakina filed a report, signed by Nathan Matalon, listing its address as 13899 Biscayne Blvd, Penthouse, North Miami Beach FL 33181. Aldridge (PCX 17 p.697). On December 16, 2002, Nathan Matalon and Roy Goodman formed American Payphone Distributors, L.L.C. Laird (PCX 14 ¶6, pp.27-29); Aldridge (PCX 17 pp.690-92). Matalon

and Goodman are the signers on American Payphone's checking account. Aldridge (PCX 21 p.26) (account signature card). On April 28, 2003, American Payphone filed a report, signed by Nathan Matalon, listing its address as 13899 Biscayne Blvd, PH6, North Miami Beach 33181. Laird (PCX 14 p.30); Aldridge (PCX 17 p.693).

The three corporations share the same bank account. During 2003, PTC paid Jakina via checks on PTC's account at Union Bank of Florida, signed by Kaus. Aldridge (PCX 17 pp.367, 375, 377, 393). During 2003, PTC paid American Payphone via checks on PTC's account at Union Bank of Florida, signed by Kaus. Aldridge (PCX 17 pp.298, 313, 327, 329, 367, 369, 371, 375, 393). During 2003, American Payphone paid Roy Goodman via checks on American Payphone's account at Union Bank. Aldridge (PCX 21 pp.30, 44-45, 56).

(2) Violations of the Permanent Injunction

An entity can be held in contempt if it has notice and is either "the alter ego of, or has an identity of interest with" a party or "aids and abets a party's violation of the order." *FTC v. Gill*, 183 F. Supp. 2d. 1171, 1184 (C.D. Cal. 2001) (citing *Peterson v. Highland Music, Inc.*, 140 F.3d 1313, 1323-24 (9th Cir. 1988)). Jakina and American Payphone are one in the same with others shown to be violating the Permanent Injunction. They share office space with PTC, the successor to Ameritel, and they are conduits of money to Roy Goodman and the Matalons, who have been shown to commit their own violations of the order.

VI. Civil Contempt Factors

In civil contempt proceedings, the moving party must show civil contempt by clear

and convincing evidence. *Chairs v. Burgess*, 143 F.3d 1432, 1436 (11th Cir. 1998). This clear and convincing proof must demonstrate that (1) the allegedly violated order was valid and lawful; (2) the order was clear, definite and unambiguous; and (3) the alleged violator had the ability to comply with the order. *McGregor v. Chierico*, 206 F.3d at 1383(citation omitted). The FTC showed all three of these factors with respect to each Respondent. Accordingly, the Court concludes that Respondents shall be held in contempt for violating the Permanent Injunction.

(1) The Order Was Valid and Lawful

The parties agree that the Court's Permanent Injunction, a stipulated consent decree, is valid and lawful.

(2) The Order Was Clear, Definite, and Unambiguous

The parties also agree that the Permanent Injunction is clear, definite and unambiguous.

(3) Alleged Contemnor Had Ability to Comply with Order

Ameritel and Goodman agreed to the terms of the Permanent Injunction, with the advice of counsel. They submitted a compliance report, signed by Roy Goodman on August 25, 2001, under oath. (PCX 3). Submitting a report that complied with the Order shows that Ameritel and Goodman had the ability to comply with the Order. As explained in Part II, *supra*, Respondents Kaus, the Matalons, PTC, Jakina, and American Payphone had notice of the Order and, therefore, had the ability to comply with it.

Thus, each Respondent had the ability to comply with the Order.

B. The Respondents' Defenses Cannot Prevail

At the show cause hearing held on September 10, 2003, Respondents argued that the FTC relied only on circumstantial evidence in the proceeding. Circumstantial evidence can be used to demonstrate clear and convincing evidence. See *United States v. Roberts*, 858 F.2d 698 (11th Cir. 1988) (stating that government met the clear and convincing burden with an uncontroverted declaration); see, e.g., *Korecky v. Commissioner of Internal Revenue*, 781 F.2d 1566 (11th Cir. 1986) (meeting clear and convincing evidence burden in a fraud case by establishing a course of conduct and making reasonable inferences therein).

The Respondents at the show cause hearing did not demonstrate "all reasonable efforts to comply" or explain adequately their failure to comply with the Permanent Injunction. See *Chairs v. Burgess*, 143 F.3d 1432, 1436 (11th Cir. 1998) (quoting *Citronelle-Mobile Gathering, Inc. v. Watkins*, 943 F.2d 1297, 1301 (11th Cir. 1991)). After they were ordered, on August 29, 2003, to show cause why they should not be held in contempt, Respondents instead invoked their individual Fifth Amendment privilege against self-incrimination. Such an invocation of the privilege in the context of a contempt proceeding "has never been thought to be in itself a substitute for evidence that would assist in meeting a burden of production." *United States v. Rylander*, 460 U.S. 752, 758 (1983); see also *United States v. Kowalik*, 809 F.Supp 1571, 1579 (S.D. Fla. 1992) ("The burden of production plainly was placed on the respondent, not the government, and he could not simply waive the flag of the Fifth Amendment rather than adduce proof in support of that burden."). Further, the Fifth Amendment does not forbid adverse inferences against

parties to civil actions when they refuse to testify in response to probative evidence offered against them. *Baxter v. Palmigiano*, 425 U.S. 308, 319 (1976).

The FTC has proved each of the elements of contempt by clear and convincing evidence, and accordingly, the burden to explain their failure to comply fell upon Respondents. Respondents failed to meet this burden. Accordingly, they are held in civil contempt.

VII. Civil Contempt Remedies

District Courts are afforded wide discretion in fashioning an equitable remedy for civil contempt. *McGregor v. Chierico*, 206 F.3d 1378, 1385 fn.5 (11th Cir. 2000) (citation omitted). As set forth below, appropriate remedies for civil contempt include (1) the appointment of a temporary receiver, and (2) redressing consumer injury.

A. Appointment of a Temporary Receiver

The appointment of a temporary receiver to maintain the status quo is a well-established equitable remedy available to the Commission in civil law enforcement proceedings, including those for contempt. See, e.g., *FTC v. U.S. Oil & Gas*, 748 F.2d at 1434; *FTC v. American Nat'l Cellular*, 810 F.2d 1511, 1514 (9th Cir. 1987); *FTC v. Gill*, 183 F. Supp. 2d 1171 (C.D. Cal 2001). Fraud and mismanagement, even absent evidence of insolvency, is sufficient to support appointment of a temporary receiver. *SEC v. First Financial Group of Texas*, 645 F.2d 429, 438 (5th Cir. 1981).⁴ In *Gill*, the Court appointed a Receiver because the alleged contemnors "failed to show that [their corporation] engages

⁴See *Bonner v. Pritchard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (adopting as binding precedent all former Fifth Circuit decisions issued prior to close of business on Sept. 30, 1981).

in any nonprohibited legitimate business practices." 183 F. Supp. 2d at 1186. The same is true here; neither the individual Respondents nor a single witness on behalf of any of the corporate respondents showed that Ameritel, PTC, Jakina, or American Payphone conducted any nonprohibited legitimate business.

In *SEC v. First Financial*, appointment of a receiver was upheld on evidence of (a) systematic misrepresentations and omissions to obtain money, (b) the nature of the assets (cash and checks) capable of being concealed or dissipated, and (c) the defendants' repeated abuse of discovery. 645 F.2d at 438-39. Here, the Respondents have misrepresented the profit potential of their payphone business opportunity, their assets appear to be liquid, and they have engaged in an even greater abuse of the judicial process than those in *First Financial* – they have repeatedly violated a court-ordered injunction.

Applying these principles, it is necessary to appoint a Receiver to review financial records of Respondents, including bank records and computer records, to determine the amount of income Respondents received or generated from the sale of business ventures and franchises between March 28, 2001 and September 10, 2003, and file and serve a report to the Court detailing the Receiver's determination and reasons. *Gill*, 183 F. Supp. 2d at 1190. The Court can then order as compensation for the contempt the amount of gross sales for those dates. *Id.* at 1186.

(2) Consumer Redress

In civil contempt, proper sanctions include redressing consumer injury. *McGregor v. Chierico*, 206 F.3d 1378,1387 (11th Cir. 2000); *Popular Bank of Florida v. Banco*

Popular de Puerto Rico, 180 F.R.D. 461, 465 (S.D. Fla. 1998). An appropriate contempt remedy is ordered restitution to consumers in the "amount of gross sales" when the alleged contemnors have produced no evidence to rebut the presumption that such is the correct amount of redress. *McGregor v. Chierico*, 206 F.3d at 1388-89. The parties agree that since May 2002, Ameritel and PTC's checking accounts at Union Bank have received over \$2.7 million in deposits. Aldridge (PCX 17 pp. 398-400, 411-14, 440-3, 476-80, 522-5, 561-5, 592-5, 618-22, 649-51, 662).

Individuals are liable for consumer redress if they participated directly in the deceptive practices or possessed the authority to control them. *FTC v. Wilcox*, 926 F. Supp 1091, 1104 (S.D. Fla. 1995) (citation omitted). Lenora Kaus and Nathan Matalon participated directly in the practices that violated the Permanent Injunction. (See Courtney PCX 5; Landwehr PCX 10). Kimberly Matalon and Roy Goodman, as well as Kaus and Nathan Matalon, had the authority to control the companies. "Authority to control the company can be evidenced by active involvement in business affairs and making corporate policy, including assuming the duties of a corporate officer." *Wilcox*, 926 F. Supp. at 1104 (quotation omitted). At various times, Roy Goodman and Kimberly Matalon were listed as the president and sole officer / director of Ameritel. Lenora Kaus was listed as the president of PTC. It is clear from PTC dealings with state regulators that Nathan Matalon was acting actively involved in the business affairs of PTC, and he was the National Operations Manager of Ameritel. Each of these individuals is therefore liable for the \$2.7 million consumer redress necessary to be paid to purge the contempt. Accordingly, the request for \$2.7 million in damages is GRANTED, and the Temporary Receiver shall propose a plan to the Court regarding the manner in which the \$2.7 million shall be

distributed among the defrauded consumers.

Accordingly, it is hereby **ORDERED** and **ADJUDGED**:

1. Respondents are hereby held in civil contempt for violating the Court's Order entering the Preliminary Injunction for the reasons stated herein.

2. The FTC's request for the appointment of a temporary receiver is **GRANTED**. **David R. Chase** is appointed as Receiver, with the full power of an equity receiver, for the Corporate Respondents, and of all the funds, properties, premises, accounts and other assets directly or indirectly owned, beneficially or otherwise, by the Corporate Respondents. "Assets" means all real and personal property of Respondents, or held for the benefit of Respondents, 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 customer names, or other assets, or any interest therein, wherever located. The Receiver has directions and authority to accomplish the following:

- a. Take full control of the Corporate Respondents, 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. 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, or held for the benefit of, the Corporate Respondents, wherever situated, the income and profits therefrom, and all sums of money

now or hereafter due or owing to the Corporate Respondents, 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 Respondents;

- c. 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 consumers;
- d. Within fourteen (14) days of the date of entry of this Order, review financial records of Corporate Respondents, including bank records and computer records, to determine the amount of income Respondents received or generated from the sale of business ventures and franchises between March 28, 2001 and September 10, 2003 and file with the Court and serve upon counsel for the Commission and Respondents a report to the Court detailing the Receiver's determination and the basis thereof. Respondents and the Commission shall have five (5) court days thereafter to file any objections or response; failure to file any objections within five court days shall be deemed consent to the amount as determined in the Receiver's report. After review of the Receiver's report and all objections and responses and a hearing on

the issue, the Court shall enter an order with a final determination as to the amount of damages that Respondents shall be required to pay.

- 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 Respondents;
- 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 Respondents, 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 Respondents, that the Receiver deems necessary and advisable to preserve the properties of the Corporate Respondents, or that the Receiver deems necessary and advisable to carry out the Receiver's mandate under this Order;
- g. Obtain, by service of this Order, documents immediately from any financial or brokerage institution, escrow agent, title company, commodity trading company, business entity, trust, or person concerning the nature, location,

status, and extent of the Corporate Respondents' assets. Any such request by the Receiver seeking documents of the Corporate Respondents' subsidiaries, affiliates, divisions, successors, and assigns shall be accompanied by a letter signed by the Receiver, including the name of such subsidiary, affiliate, division, successor, or assign.

- h. Report to this Court in sixty (60) days, describing the receivership's activities including, but not limited to, Corporate Respondents' assets (and the location of those assets), and the Corporate Respondents' relationships with other corporate entities.
- i. For the purposes of this Order, delivery of documents or property to the Receiver shall be effected upon delivery to the receiver at 13899 Biscayne Boulevard, Suite 400, North Miami, Florida or at such other address by written direction of the Receiver.

3. Receiver and his representatives and agents shall have immediate access to any business premises of the Corporate Respondents, and immediate access to any other location where the Corporate Respondents 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 Respondents: 13899 Biscayne Boulevard, Suites 400 and PH6, North Miami, Florida. 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, and to inspect and inventory all of the Corporate Respondents' property, assets and documents and inspect

and copy any documents relevant to this action. The Receiver 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.

4. If any property, business records, documents, or computer files relating to the Corporate Respondents are located in the personal residence of Respondents or any other person served with this Order, then such Respondent 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 Respondents' property or assets, or are relevant to this action; and
- B. Produce to the Receiver all computers, computer passwords, and data in whatever form, used by such Respondent or person or any of such Respondent's agents, employees, officers, servants or those persons in active concert with him or her, in activities relating to the Corporate Respondents.

5. 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 Respondents. The Receiver shall file with the Court and serve on counsel for the Respondents and the Commission periodic requests for the payment of such reasonable compensation, with the first such request due sixty (60) days after the date of this Order. The Receiver shall not increase his fee rate billed to the Respondents without prior approval of the Court.

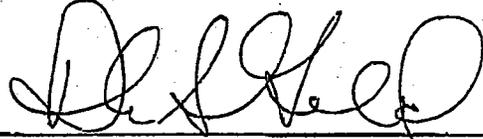
6. The Commission may use the funds collected by the Receiver pursuant to this Section for equitable monetary relief, including, but not limited to, consumer redress and for paying any attendant expenses of administering any redress fund.

7. The Receiver may petition to the court to freeze other assets of Respondents to the extent the Receiver finds that these other assets contain proceeds from violations of the Permanent Injunction.

8. The FTC's request for \$2.7 million in damages is GRANTED. The Temporary Receiver shall submit a proposal to the Court within sixty (60) days regarding the manner in which the \$2.7 million shall be distributed among the defrauded consumers.

9. Cove & Associates, attorneys for Respondents, shall forthwith provide a copy of this Order to each Respondent and obtain from each a signed, notarized Acknowledgment of Receipt attached to a copy of this Order. Each Acknowledgment of Receipt shall, as soon as possible, be filed in this matter and a copy of each served upon the Associate Director, Division of Marketing Practices, Federal Trade Commission, 600 Pennsylvania Ave., N.W., Room 238, Washington, DC 20580.

DONE AND ORDERED in chambers at Miami, Florida, this 5 day of October,
2003.



THE HONORABLE ALAN S. GOLD
UNITED STATES DISTRICT JUDGE

Copies furnished (via Telefax):
U.S. Magistrate Judge Simonton
Peter Lamberton, Esq. (202) 326-3395
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580
Andrew N. Cove, Esq. (954) 921-1621
3801 Hollywood Blvd., #100
Hollywood, FL 33021