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 DISTRICT OF NEVADA

11
12 **UNITED STATES DISTRICT COURT**
13 **DISTRICT OF NEVADA** CV-S-04-0712-RCJ-RJJ

14
15 **FEDERAL TRADE COMMISSION,**

16 Plaintiff,

17 v.

18 3RD UNION CARD SERVICES INC.,
 19 doing business as
 20 PHARMACYCARDS.COM,
 21 a Delaware Corporation; HELMCREST,
 LTD., a company incorporated under the
 laws of Cyprus, doing business as
 Pharmacycards.com;

22 DAVID GRAHAM TURNER, and
 23 STEVE PEARSON, individually and as
 officers of the above companies,

24 Defendants.

**TEMPORARY RESTRAINING
 ORDER WITH ASSET
 FREEZE AND OTHER
 EQUITABLE RELIEF AND
 ORDER TO SHOW CAUSE
 WHY A PRELIMINARY
 INJUNCTION SHOULD NOT
 ISSUE**

[PROPOSED]

25 Plaintiff, Federal Trade Commission ("Commission" or "FTC"), having filed its
 26 Complaint for a permanent injunction and other relief in this matter, pursuant to Section
 27 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), charging
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1 that defendants engaged in unfair acts or practices in violation of Section 5 of the FTC
2 Act, 15 U.S.C. § 45, and having moved for a Temporary Restraining Order and other
3 equitable relief pursuant to Rule 65 of the Federal Rules of Civil Procedure, Fed. R. Civ.
4 P. 65, and the Court having considered the Complaint, declarations, exhibits,
5 memoranda, and arguments of the parties finds that:

6 **FINDINGS**

7 1. This Court has jurisdiction of the subject matter of this case and there is
8 good cause to believe that it will have jurisdiction over all parties pursuant to 15 U.S.C.
9 §§ 45(a) and 53(b), and 28 U.S.C. §§ 1331, 1337(a), and 1345;

10 2. Venue is proper as to all parties in the District of Nevada pursuant to
11 15 U.S.C. §53(b) and 28 U.S.C. § 1391(b), (c), and (d);

12 3. The activities of defendants are in or affecting commerce, as defined in
13 Section 4 of the FTC Act, 15 U.S.C. § 44;

14 4. The Complaint states a claim upon which relief may be granted against
15 defendants under 15 U.S.C. §§ 45(a) and 53(b);

16 5. There is good cause to believe that defendants have engaged and are likely
17 to engage in acts and practices that violate Section 5(a) of the FTC Act, 15 U.S.C.
18 § 45(a), in connection with debiting consumers' bank accounts without authorization and
19 that the Commission is therefore likely to prevail on the merits of this action;

20 6. There is good cause to believe that, unless defendants are immediately
21 restrained and enjoined by Order of this Court, consumer injury and irreparable damage
22 to the Court's ability to grant effective final relief will occur from defendants' debiting of
23 consumers' bank accounts without authorization;

24 7. Weighing the equities and considering the Commission's likelihood of
25 ultimate success, a Temporary Restraining Order related to defendants' debiting of
26 consumers' bank accounts without authorization is in the public interest; and

27 8. No security is required of any agency of the United States for issuance of a
28 Temporary Restraining Order. Fed. R. Civ. P. 65(c).

1 **ORDER**

2 **DEFINITIONS**

3 For purposes of this Temporary Restraining Order, the following definitions shall
4 apply:

5 1. "ACH network" means the electronic funds transfer system, governed by
6 the National Automated Clearing House Association Rules, that provides for the
7 interbank clearing of credit and debit entries to accounts at financial institutions.

8 2. "Express verifiable authorization" means a) express written authorization
9 by a customer, including the customer's signature and date of authorization; or b)
10 express oral authorization that is audio-recorded and evidences clearly the customer's
11 authorization of payment for the goods or services that are the subject of the transaction;
12 the number of debits, charges, or payments; the date the debits, charges, or payments will
13 be submitted for payment; the amount of the debits, charges, or payments; the customer's
14 name; the customer's billing information, including the account used to collect payment;
15 the telephone number for customer inquiry that is answered during normal business
16 hours; and the date of the customer's oral authorization.

17 **I.**

18 **CONDUCT PROHIBITION**

19 **IT IS THEREFORE ORDERED** that defendants, and each of them, and their
20 successors, assigns, officers, agents, servants, employees, attorneys, joint venturers, and
21 those persons in active concert or participation with them who receive actual notice of
22 this Order by personal service or otherwise, whether acting directly or through any
23 corporation, subsidiary, division, or other device, are hereby restrained and enjoined
24 from charging or debiting or causing to be charged or debited a consumer's credit card,
25 debit card, or bank account without obtaining that consumer's express verifiable
26 authorization.

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II.

RECORDKEEPING AND REPORTING

IT IS FURTHER ORDERED that defendants, and their officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, joint venturers, corporations, subsidiaries, affiliates, successors, and assigns, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, are hereby restrained and enjoined from:

- A. Failing to maintain books, records, accounts, bank statements, current accountants' reports, general ledgers, general journals, cash receipt ledgers and source documents, documents indicating title to real or personal property, and any other data that, in reasonable detail, accurately, fairly and completely reflect the incomes, disbursements, and transactions of the defendants' businesses and the uses of the defendants' assets; and
- B. Destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any books, records, tapes, disks, contracts, accounting data, handwritten notes, checks (fronts and backs), correspondence, forms, advertisements, brochures, manuals, telemarketing scripts, sales presentations, electronically stored data, banking records, customer lists, customer files, mailing lists, telemarketer lists, invoices, telephone records, receipt books, postal receipts, ledgers, payroll records, or other documents of any kind, including information stored in computer-maintained form (such as electronic mail), in their possession, custody or control.
- C. Creating, operating, or exercising any control over any new business entity, including any partnership, joint venture, sole proprietorship or corporation, without first providing Plaintiff with a written statement disclosing: (1) the

1 name of the business entity; (2) the address and telephone number of the
2 business entity; (3) the names of the business entity's officers, directors,
3 principals, managers, and employees; and (4) a detailed description of the
4 business entity's intended activities.

5 **III.**

6 **ASSET FREEZE**

7 **IT IS FURTHER ORDERED** that, except as stipulated by the parties or as
8 directed by further order of the Court, defendants and their successors and assigns,
9 whether acting directly or through any entity, joint venture, corporation, subsidiary,
10 division or other device, and all persons in active concert or participation with them who
11 receive actual notice of this Order by personal service or otherwise, are hereby
12 temporarily restrained and enjoined from transferring, converting, encumbering, selling,
13 concealing, dissipating, disbursing, assigning, spending, withdrawing or otherwise
14 disposing of any funds, real or personal property, accounts, contracts, membership or
15 mailing (including "Email") lists, shares of stock or other assets, or any interest therein,
16 wherever located, that are (a) owned or controlled by any defendant, in whole or in part;
17 (b) in the actual or constructive possession of any defendant, or (c) owned, controlled by
18 or in the actual or constructive possession of any corporation, joint venture, partnership
19 or other entity, directly or indirectly owned, managed, controlled by or under common
20 control with any defendant, including, but not limited to, any assets held by or for
21 defendants at any bank, savings and loan institution, credit card processing or electronic
22 funds transfer agent, or demand draft processing agent, automated clearing house
23 processing agent, customer service agent, broker-dealer, escrow agent, title company,
24 commodity trading company, list manager, mailing house, precious metal dealer or other
25 financial institution or depository of any kind. The assets affected by this section shall
26 include both existing assets and assets acquired after issuance of this Order, and
27 defendants shall hold and account for these assets and all payments received by them,
28 including, but not limited to, borrowed funds or property and gifts.

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IV.

DUTIES OF THIRD PARTIES

IT IS FURTHER ORDERED that any person, specifically including each of the entities named in Section III above, maintaining or having custody or control of any account or other asset of any defendant, or that at any time since October 1, 2003, has maintained or had custody of any such asset, and which is provided with a copy of this Order, or otherwise has actual or constructive knowledge of this Order, shall:

- A. Hold and retain within its control and prohibit the withdrawal, removal, assignment, transfer, pledge, hypothecation, encumbrance, disbursement, dissipation, conversion, sale, liquidation or other disposal of any of the assets or other property held by, under its control, or on behalf of any defendant in any account maintained in the name of, or for the benefit or use of, any defendant, in whole or in part, except as directed by further order of this Court, or by written agreement of Plaintiff and the parties claiming an interest in such account or asset;
- B. Deny defendants access to any safe deposit boxes, commercial mail boxes or storage facilities that are either titled in the name, individually or jointly, of any defendant, or otherwise subject to access by any defendant; and
- C. Within four (4) business days of the date of notice of this Order, provide to counsel for Plaintiff a statement setting forth:
 - 1. The identification of each account or asset titled in the name, individually or jointly, of any defendant, or to which any defendant is a signatory, or which is held on behalf of, or for the benefit or use of, any defendant;
 - 2. The balance of each such account, or a description and appraisal of the value of such asset, as of the close of business on the day on which notice of this Order is received, and, if the account or other asset has been closed or removed, or more than \$1,000 withdrawn

1 or transferred from it within the last ninety (90) days, the date of the
2 closure or removal of funds, the total funds removed or transferred,
3 and the name and account number of the person or entity to whom
4 such account, funds, or other asset was remitted; and

5 3. The identification of any safe deposit box, commercial mail box, or
6 storage facility that is either titled in the name individually or
7 jointly, of any defendant, or is otherwise subject to access or control
8 by any defendant.

9 D. The assets and accounts affected by this Section shall include both existing
10 assets and assets acquired after the effective date of this Order.

11 **V.**

12 **COMPLETE AND FILE FINANCIAL STATEMENT**

13 **IT IS FURTHER ORDERED** that, within ten days after service of this Order,
14 each defendant named in the caption of this Order shall file with this Court and serve
15 upon counsel for Plaintiff a completed financial statement on the forms served with this
16 Order. The financial statements shall be accurate as of the date of the entry of this Order
17 and shall be verified under oath. Defendants shall attach to these completed financial
18 statements copies of all income and property tax returns filed with any jurisdiction, with
19 attachments and schedules, as called for by the instructions to the financial statements.

20 **VI.**

21 **CONSENT TO RELEASE OF FINANCIAL RECORDS**

22 **IT IS FURTHER ORDERED** that defendants shall, within three (3) business
23 days following service of this Order, provide Plaintiff access to defendants' records and
24 documents, related to defendants' charging or debiting of a consumer's credit card, debit
25 card, or bank account without authorization, held by financial institutions or other
26 entities outside the territorial United States, by signing and delivering to Plaintiff's
27 counsel the Consent to Release of Financial Records attached to this Order as
28 Attachment A.

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VII.

MODIFIED RULE 26 DISCOVERY

IT IS FURTHER ORDERED that Plaintiff is hereby exempted from the timing limitations of Fed. R. Civ. P. 26(d) and is granted leave to seek discovery from any source prior to the parties having met and conferred as required by Fed. R. Civ. P. 26(f).

VIII.

**SHOW CAUSE WHY A PRELIMINARY INJUNCTION
SHOULD NOT ISSUE**

IT IS FURTHER ORDERED that each defendant shall appear before this Court on the 7TH day of June, 2004, at 10:00 a.m. at the United States Courthouse, Courtroom 70, District of Nevada, to show cause, if any there be, why this Court should not enter a preliminary injunction, pending final ruling on the complaint, against said defendants enjoining them from further violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), continuing the freeze of their assets, and imposing such additional relief as may be appropriate.

IX.

**SERVICE OF ANSWERING AFFIDAVITS, MEMORANDA, AND OTHER
EVIDENCE**

IT IS FURTHER ORDERED that, if defendants file any answering affidavits, pleadings, and legal memoranda prior to the hearing on Plaintiff's request for a preliminary injunction, defendants shall serve such answering affidavits, pleadings, and legal memoranda on counsel for Plaintiff not less than four business days prior to said hearing. Defendants shall serve copies of all such materials on Plaintiff by personal service, overnight delivery, or facsimile to Tracy S. Thorleifson, Federal Trade Commission, 915 Second Avenue, Suite 2896, Seattle, Washington 98174, facsimile (206) 220-6366.

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X.

WITNESS LIST

IT IS FURTHER ORDERED that if any party to this action intends to present the testimony of any witness at the hearing on a preliminary injunction in this matter, both parties shall, at least seventy-two (72) hours prior to the scheduled date and time of hearing, serve on counsel for the other party by personal service or facsimile either (1) a statement of the name and address of any such witness and a summary of the witness's expected testimony, or (2) the witness's affidavit or declaration revealing the substance of such witness's expected testimony.

XI.

NOTICE OF THIS ORDER

IT IS FURTHER ORDERED that copies of this Order may be distributed by first class mail, overnight delivery, facsimile, electronic mail, or personally, by agents or employees of Plaintiff, upon any credit card processing agent or agent providing electronic funds transfer, debit draft, or ACH processing services, customer service agent, commercial mail receiving agency, mail holding or forwarding company, bank, savings and loan institution, credit union, financial institution, accountant, brokerage house, escrow agent, IRA custodian, money market or mutual fund, title company, commodity futures merchant, commodity trading company, common carrier, list manager, storage company, trustee, or any other person, partnership, joint venture, corporation, or legal entity that may be in possession of any documents, records, assets, property, or property right of any named defendant, and any other person, partnership, corporation, or legal entity that may be subject to any provision of this Order. Service upon any branch or office of any financial institution or entity shall effect service upon the entire financial institution or entity.

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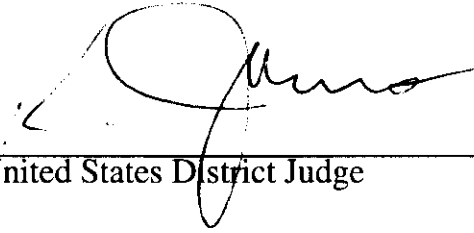
XII.

JURISDICTION

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

Dated: 5/25, 2004

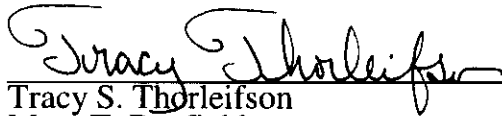
11:00 a.m.



United States District Judge

PRESENTED BY:

WILLIAM E. KOVACIC
General Counsel



Tracy S. Thorleifson

Mary T. Benfield
Federal Trade Commission
915 Second Avenue, Suite 2896
Seattle, WA 98174
(206) 220-6350
(206) 220-6366 (fax)

Attorneys for Plaintiff
FEDERAL TRADE COMMISSION

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ATTACHMENT A
CONSENT TO RELEASE OF FINANCIAL RECORDS

I, _____, of _____,
do hereby direct any bank, savings and loan association, credit union, depository
institution, finance company, commercial lending company, credit card processor, credit
card processing entity, electronic funds transfer processing agent, automated
clearinghouse processing agent, demand draft processing agent, brokerage house, escrow
agent, money market or mutual fund, title company, commodity trading company,
trustee, or person that holds, controls or maintains custody of assets, wherever located
that are owned or controlled by me or at which I have an account of any kind, or at
which a corporation or other entity has a bank account of any kind upon which I am
authorized to draw, and its officers, employees and agents, to disclose all information
and deliver copies of all documents of every nature in your possession or control which
relate to the said accounts to any attorney of the Federal Trade Commission, and to give
evidence relevant thereto, in the matter of *Federal Trade Commission v. 3rd Union Card
Services, Inc., et al.*, Civ. No. _____, now pending in the United States
District Court for the District of Nevada, and this shall be irrevocable authority for so
doing.

This direction is intended to apply to the laws of countries other than the United
States of America which restrict or prohibit the disclosure of bank or other financial
information without the consent of the holder of the account, and shall be construed as
consent with respect thereto, and the same shall apply to any of the accounts for which I
may be a relevant principal.

Dated: _____, 2004

Signature: _____

1 Certificate of Service

2
3 I hereby certify that on May 24, 2004, I placed a true and correct copy of the
4 foregoing document in registered mail addressed to defendants HelmCrest Ltd., David
5 Graham Turner and Steve Pearson at their business address, 377 Edgware Road,
6 Paddington, London W2 1BT, United Kingdom.

7
8 I further certify that I sent a true and correct copy of the foregoing document by
9 facsimile transmission to the following facsimile numbers used by defendants in their
10 business: (309) 420-6645; (700) 580-0570; (775) 206-2608; (775) 599-3547; 011-44-
11 871-733- 5265; 011-44-871-433-8245; and 011-44-700-580-0570.

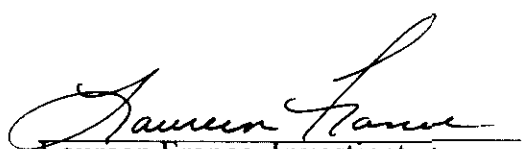
12
13 I further certify that I emailed a true and correct copy of the foregoing document
14 to the following email addresses used by defendants in their business:
15 ccorder@ziplip.com, pharmacycards@ziplip.com, david@pharmacycard.com,
16 mailman@pharmacycard.com, bpowork@speedpost.net, pharmacycards@mailforce.net,
17 outsource@fastmail.us, wheresmymoney@ziplip.com, quickbiznow@hotmail.com,
18 carmai@ziplip.com, aynsostinsoft@ziplip.com, and cashgenerator@fastmail.us.

19
20 Finally, I certify that on Tuesday, May 25, 2004, upon receipt of the Court-issued
21 summons in this case, I will provide a true and correct copy of the foregoing document
22 to the following process servers in an attempt to effect service on the defendant(s):.

- 23
24 • On HelmCrest Ltd., by providing a true and correct copy to the Law Firm of
25 Lellos P. Demetriades, The Chanteclair House, 2, Sophoulis Street, 9th floor,
26 1096 Nicosia, Cyprus.

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- On 3rd Union Card Services, Inc., by providing a true and correct copy to Kim Ryan, National Legal Process Servers, Inc., 2008 Pennsylvania Avenue, #207, Wilmington, DE 19806.
- On David G. Turner and Steven Pearson by providing a true and correct copy to Roger Mann, Finlays Bureau of Investigation, FBI House, 54 Church Road, London SE19 2EU, United Kingdom.


Laureen France, Investigator
Federal Trade Commission
915 Second Avenue, Suite 2896
Seattle, WA 98174
(206) 220-6350