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CLERK, U.S. DISTRICT COURT  
APR 25 2005  
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

15 FEDERAL TRADE COMMISSION,  
16 Plaintiff,  
17 v.  
18 Del Sol LLC, also d/b/a Del  
19 Sol Educational,  
20 and  
21 Fernando Lopez Gonzalez,  
22 Defendants.  
23

CV05 3013 GAF (RCX)  
No. CV

[PROPOSED]  
TEMPORARY RESTRAINING  
ORDER WITH AN ASSET  
FREEZE, AN ACCOUNTING,  
LIMITED EXPEDITED  
DISCOVERY, IMMEDIATE  
ACCESS AND OTHER  
EQUITABLE RELIEF, AND  
ORDER FOR DEFENDANTS TO  
SHOW CAUSE WHY A  
PRELIMINARY INJUNCTION  
SHOULD NOT ISSUE

24  
25 Plaintiff Federal Trade Commission ("FTC") has filed a  
26 Complaint seeking a permanent injunction and other relief,  
27 pursuant to Sections 13(b) and 19 of the Federal Trade Commission  
28 Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the

1 Telemarketing and Consumer Fraud and Abuse Prevention Act  
 2 ("Telemarketing Act"), 15 U.S.C. § 6101 et seq., and has moved ex  
 3 parte for a temporary restraining order with an asset freeze, an  
 4 accounting, limited expedited discovery, and other equitable  
 5 relief, pursuant to Rule 65(b) of the Federal Rules of Civil  
 6 Procedure, and an order to show cause why a preliminary  
 7 injunction should not be issued. This Court has considered the  
 8 pleadings, declarations, memoranda, and other exhibits filed in  
 9 support of the FTC's ex parte application, and now being advised  
 10 in the premises, finds that:

11 1. This Court has jurisdiction over the subject matter of  
 12 this case, there is good cause to believe it will have  
 13 jurisdiction over all the parties hereto, and venue in this  
 14 district is proper;

15 2. There is good cause to believe that Defendants have  
 16 engaged and are likely to continue to engage in acts or practices  
 17 that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and  
 18 the Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310, and  
 19 that the FTC is therefore likely to prevail on the merits of this  
 20 action;

21 3. There is good cause to believe that immediate and  
 22 irreparable harm will result from Defendants' ongoing violations  
 23 of Section 5(a) of the FTC Act and the TSR unless Defendants are  
 24 restrained and enjoined by order of this Court;

25 4. There is good cause to believe that immediate and  
 26 irreparable damage to the Court's ability to grant effective  
 27 final relief in the form of consumer redress and disgorgement  
 28 will occur from the transfer, dissipation or concealment by

1 Defendants of their assets or business records unless Defendants  
 2 are immediately restrained and enjoined by order of this Court,  
 3 and that in accordance with Fed. R. Civ. P. 65(b) and Local Rule  
 4 7-19.2, the interest of justice requires that the FTC's  
 5 application be heard ex parte without prior notice to Defendants.  
 6 Therefore, there is good cause for relieving the FTC of the duty  
 7 to provide Defendants with prior notice of the FTC's ex parte  
 8 application;

9       5. Good cause exists for ordering Defendants to provide an  
 10 accounting of their business and individual assets and sworn  
 11 financial statements as set forth herein. Good cause exists for  
 12 granting immediate access to Defendants' business premises and  
 13 for permitting the FTC to take expedited discovery as to the  
 14 existence and location of assets and the location of documents  
 15 reflecting Defendants' business transactions;

16       6. Weighing the equities and considering the FTC's  
 17 likelihood of ultimate success, a temporary restraining order  
 18 with an asset freeze, accounting, expedited discovery as to the  
 19 existence and location of assets and documents, immediate access,  
 20 and other equitable relief is in the public interest; and

21       7. No security is required of any agency of the United  
 22 States for issuance of a restraining order. Fed. R. Civ. P.  
 23 65(c).

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 25 //  
 26 //  
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IT IS THEREFORE ORDERED AS FOLLOWS:

DEFINITIONS

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

A. "Assets" mean any legal or equitable interest in, right to, or claim to, any real and personal property, including but not limited to chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail or other deliveries, inventory, checks, notes, accounts, credits, receivables, funds, monies, and all cash, wherever located, and shall include both existing assets and assets acquired after the date of entry of this Order.

B. "Defendants" mean Del Sol LLC, also doing business as Del Sol Educational, and Fernando Lopez Gonzalez, and each of them, by whatever names each might be known, and any entity through which they do business, unless specified otherwise.

C. "Document(s)" or "record(s)" means:

1. The original or a true copy of any written, typed, printed, electronically stored, transcribed, taped, recorded, filmed, punched, or graphic matter or other data compilations of any kind, including, but not limited to, letters, e-mail or other correspondence, messages, memoranda, interoffice communications, notes, reports, summaries, manuals, optical and magnetic tapes or discs, tabulations, books, records, checks, invoices, work papers, journals, ledgers, statements, returns, reports, schedules, or files; and

2. Any information stored on: any desktop personal computer ("PC") and workstations, laptops, notebooks, and other

1 portable computers, whether assigned to individuals or in pools  
 2 of computers available for shared use; home computers used for  
 3 work-related purposes; backup disks and tapes, archive disks and  
 4 tapes, and other forms of offline storage, whether stored onsite  
 5 with the computer used to generate them, stored offsite in  
 6 another company facility or stored offsite by a third-party, such  
 7 as in a disaster recovery center; and computers and related  
 8 offline storage used by Defendants' participating associates,  
 9 which may include persons who are not employees of the Defendants  
 10 or who do not work on Defendants' premises.

11 D. "Financial institution" means any bank, savings and  
 12 loan institution, credit union, or any financial depository of  
 13 any kind, including but not limited to any brokerage house,  
 14 trustee, broker-dealer, escrow agent, title company, commodity  
 15 trading company, precious metal dealer, commercial check cashing  
 16 facility, or any entity or person that holds, controls, or  
 17 maintains custody of any account or asset of any Defendant.

18 E. "Telemarketing" means the advertising, offering for  
 19 sale, or sale of any good or service by use of one or more  
 20 telephones, either exclusively or in conjunction with the use of  
 21 other marketing techniques.

22 I. ORDER PROHIBITING CERTAIN CONDUCT

23 IT IS HEREBY ORDERED that

24 A. Defendants, and their officers, agents, servants,  
 25 employees, and attorneys, and those persons in active concert or  
 26 participation with them who receive actual notice of this Order  
 27 by personal service or otherwise, are hereby restrained and  
 28 enjoined from making, or assisting others in making, directly or

1 by implication, any false or misleading oral or written statement  
2 or representation in connection with the advertising, marketing,  
3 promotion, offering, or distribution of a prize promotion,  
4 including but not limited to:

5 1. Misrepresenting, directly or by implication, that  
6 any person has won a prize;

7 2. Misrepresenting, directly or by implication, that  
8 any person must purchase certain merchandise to obtain a prize or  
9 participate in a prize promotion; and

10 3. Misrepresenting, directly or by implication, the  
11 identity, nature, central characteristics, or value of any prize,  
12 purported prize, or any other goods or merchandise.

13 B. Defendants and their officers, agents, servants,  
14 employees, and attorneys, and those persons in active concert or  
15 participation with them who receive actual notice of this Order  
16 by personal service or otherwise, are hereby restrained and  
17 enjoined from violating or assisting others in violating any  
18 provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310, in  
19 connection with the advertising, marketing, promotion, offering,  
20 or distribution of a prize promotion through telemarketing.

21 **II. ASSET FREEZE**

22 **IT IS FURTHER ORDERED** that Defendants, and their officers,  
23 agents, servants, employees, and attorneys, and those persons in  
24 active concert or participation with them who receive actual  
25 notice of this Order by personal service, facsimile, or  
26 otherwise, including any financial institution, are hereby  
27 temporarily restrained and enjoined from directly or indirectly:

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1           A.    Selling, liquidating, assigning, transferring,  
 2 converting, loaning, encumbering, pledging, concealing,  
 3 dissipating, spending, withdrawing, or otherwise disposing of any  
 4 funds, real or personal property, or other assets or any interest  
 5 therein, wherever located, including any assets outside the  
 6 territorial United States, which are:

7                   1.    in the actual or constructive possession of  
 8 Defendants;

9                   2.    owned or controlled by, or held, in whole or in  
 10 part for the benefit of, or subject to access by, or belong to  
 11 Defendants; or

12                   3.    in the actual or constructive possession of, or  
 13 owned or controlled by, or subject to access by, or belong to,  
 14 any corporation, partnership, trust or other entity directly or  
 15 indirectly under the control of Defendants;

16           B.    Opening or causing to be opened any safe deposit boxes  
 17 titled in the name, singly or jointly, of Defendants, or subject  
 18 to access by Defendants;

19           C.    Incurring charges on any credit card issued in the  
 20 name, singly or jointly, of Defendants; and

21           D.    Transferring any funds or other assets subject to this  
 22 Order for attorneys' fees or living expenses, except from  
 23 accounts or other assets identified by prior written notice to  
 24 the FTC and with prior approval by the Court; provided that no  
 25 attorneys' fees or living expenses, other than those set forth in  
 26 Subsection E of this Section II, and only in accordance with the  
 27 procedures set forth in Subsection E of this Section II, shall be  
 28 paid from funds or other assets subject to this Order until the

1 financial statements required by Section IV are provided to  
2 counsel for the FTC.

3 E. Notwithstanding the above, Defendant Fernando Lopez  
4 Gonzalez may pay from his personal funds reasonable, usual,  
5 ordinary, and necessary living expenses and attorney's fees, not  
6 to exceed \$1,000, prior to the submission of the financial  
7 statements required by Section IV. No such expenses, however,  
8 shall be paid from funds subject to this Order except from cash  
9 on the person of Defendant, or from an account designated by  
10 prior written notice to counsel for the FTC.

11 F. The funds, property and assets affected by this  
12 Paragraph shall include both existing assets and assets acquired  
13 after the effective date of this Order, including without  
14 limitation, those acquired by loan or gift. Defendants shall  
15 hold all assets, including without limitation, payments, loans,  
16 and gifts, received after service of this Order.

17 **III. RETENTION OF ASSETS AND DOCUMENTS BY THIRD PARTIES**

18 **IT IS FURTHER ORDERED** that, pending determination of the  
19 FTC's request for a preliminary injunction, any financial  
20 institution, or any person or other entity served with a copy of  
21 this Order, or who otherwise has actual knowledge of this Order,  
22 shall:

23 A. Hold and retain within such financial institution's,  
24 person's or other entity's control, and prohibit the withdrawal,  
25 removal, assignment, transfer, pledge, hypothecation,  
26 encumbrance, disbursement, dissipation, conversion, sale,  
27 liquidation, or other disposal of any funds, documents, property,  
28 //

1 or other assets held by or under such financial institution's,  
2 person's or other entity's control:

3 1. on behalf of, or for the benefit of, Defendants or  
4 any other party subject to Section II above;

5 2. in any account maintained in the name of, or  
6 subject to withdrawal by, Defendants or any other party subject  
7 to Section II above; or

8 3. that are subject to access or use by, or under the  
9 signatory power of, Defendants or any other party subject to  
10 Section II above;

11 B. Deny access to any safe deposit boxes that are either:

12 1. titled in the name, singly or jointly, of  
13 Defendants or other party subject to Section II above; or

14 2. subject to access by Defendants or other party  
15 subject to Section II above;

16 provided that, immediate access shall be granted to Plaintiff FTC  
17 for the purpose of determining the contents of such safe deposit  
18 boxes; and

19 C. Provide to counsel for the FTC, within three (3)  
20 calendar days, a statement setting forth:

21 1. the identification of each account or asset titled  
22 in the name, individually or jointly, or held on behalf of, or  
23 for the benefit of, Defendants or other party subject to Section  
24 II above, whether in whole or in part;

25 2. the balance of each such account, or a description  
26 of the nature and value of such asset;

27 3. the identification of any safe deposit box that is  
28 either titled in the name of, individually or jointly, or is

1 otherwise subject to access or control by, Defendants or other  
2 party subject to Section II above, whether in whole or in part;  
3 and

4 4. if the account, safe deposit box, or other asset  
5 has been closed or removed, the date closed or removed and the  
6 balance on said date.

7 D. The accounts subject to this Section include existing  
8 assets and assets deposited after the effective date of this  
9 Order. This Section shall not prohibit transfers in accordance  
10 with any provision of this Order, or any further order of the  
11 Court.

12 E. The FTC is granted leave, pursuant to Fed. R. Civ. P.  
13 45, to subpoena documents immediately from any such financial  
14 institution, account custodian, other entity or person,  
15 concerning the nature, location, status, and extent of  
16 Defendants' assets, and compliance with this Order, and such  
17 financial institution, account custodian, other entity or person  
18 shall respond to such subpoena within five (5) business days  
19 after service. For purposes of this subsection, the FTC may  
20 serve any such subpoena by facsimile, overnight courier, or e-  
21 mail (Adobe Acrobat .pdf files only).

#### 22 IV. FINANCIAL STATEMENTS AND ACCOUNTING

23 **IT IS FURTHER ORDERED** that, within five (5) business days  
24 following the service of this Order, each Defendant shall provide  
25 to counsel for the FTC:

26 A. A completed financial statement accurate as of the date  
27 of service of this Order upon Defendants and signed under penalty  
28 of perjury. Unless otherwise agreed upon with FTC counsel,

1 Defendant Fernando Lopez Gonzalez shall include all financial  
 2 information as requested in the Department of Treasury - Internal  
 3 Revenue Service Collection Information Statement for Individuals  
 4 (Form 433-A) located on the Internet at  
 5 <<http://www.irs.gov/pub/irs-pdf/f433a.pdf>> and Defendant Del Sol  
 6 LLC shall include all information as requested in the  
 7 corresponding Collection Information Statement for Businesses  
 8 (Form 433-B) located on the Internet at  
 9 <<http://www.irs.gov/pub/irs-pdf/f433b.pdf>>;

10 B. A completed statement, verified under oath, of all  
 11 payments, transfers, or assignment of funds, assets, or property  
 12 worth \$1,000 or more since January 1, 2003. Such statement shall  
 13 include (a) the amount transferred or assigned; (b) the name of  
 14 each transferee or assignee; (c) the date of the assignment or  
 15 transfer; and (d) the type and amount of consideration paid to  
 16 each Defendant. Each statement shall specify the name and  
 17 address of each financial institution and brokerage firm at which  
 18 Defendants have accounts or safe deposit boxes. Said statements  
 19 shall include assets held in foreign as well as domestic  
 20 accounts; and

21 C. For all prizes, purported prizes, and merchandise  
 22 advertised, marketed, promoted, offered for sale, distributed, or  
 23 sold by Defendants, a detailed accounting, verified under oath,  
 24 of:

25 1. all gross revenues obtained from the sale or  
 26 distribution of each such product (broken down by month and year)  
 27 from January 1, 2003 through the date of the issuance of this  
 28 Order;

1           2.    all net profits obtained from the sale or  
2 distribution of each such product (broken down by month and year)  
3 from January 1, 2003 through the date of the issuance of this  
4 Order;

5           3.    the total amount of each such product sold or  
6 distributed (broken down by month and year); and

7           4.    the full names, addresses, and telephone numbers  
8 of all purchasers or recipients of each such product, and the  
9 amount paid by each.

10                           **V.    REPATRIATION OF FOREIGN ASSETS**

11 **IT IS FURTHER ORDERED** that, within five (5) business days  
12 following the service of this Order, Defendants shall:

13           A.    Provide the FTC with a full accounting of all assets,  
14 accounts or documents outside of the territory of the United  
15 States which are held either: (1) by Defendants; (2) for their  
16 benefit; (3) in trust by or for Defendants, individually or  
17 jointly; or (4) under their direct or indirect control,  
18 individually or jointly;

19           B.    Transfer to a financial institution or other entity  
20 within the territory of the United States all assets, accounts or  
21 documents in foreign countries held either: (1) by Defendants;  
22 (2) for their benefit; (3) in trust by or for them, individually  
23 or jointly; or (4) under their direct or indirect control,  
24 individually or jointly;

25           C.    The same business day as any repatriation under  
26 Subparagraph A above: (1) notify counsel for the Commission of  
27 the name and location of the financial institution or other  
28 entity that is the recipient of such funds, documents or assets;

1 and (2) serve this Order on any such financial institution or  
2 other entity;

3 D. Hold and retain all repatriated assets, accounts or  
4 documents and prevent any transfer, disposition, or dissipation  
5 whatsoever of any such assets or documents except as allowed by  
6 Section II of this Order; and

7 E. Provide the FTC access to Defendants' records and  
8 documents held by financial institutions outside the territorial  
9 United States, by signing the Consent to Release of Financial  
10 Records, which shall be provided by FTC counsel.

11 **VI. NONINTERFERENCE WITH REPATRIATION**

12 **IT IS FURTHER ORDERED** that Defendants, and their officers,  
13 agents, servants, employees, and attorneys, and those persons in  
14 active concert or participation with them who receive actual  
15 notice of the Order by personal service or otherwise, are hereby  
16 temporarily restrained and enjoined from taking any action,  
17 directly or indirectly, which may result in the encumbrance or  
18 dissipation of foreign assets, or in the hindrance of the  
19 repatriation required by the preceding Section of this Order,  
20 including, but not limited to:

21 A. Sending any statement, letter, facsimile, e-mail or  
22 wire transmission, or telephoning or engaging in any other act,  
23 directly or indirectly, that results in a determination by a  
24 foreign trustee or other entity that a "duress" event has  
25 occurred under the terms of a foreign trust agreement until such  
26 time that all assets have been fully repatriated pursuant to  
27 Section V of this Order; and

28 //

1 B. Notifying any trustee, protector or other agent of any  
2 foreign trust or other related entities of either the existence  
3 of this Order, or of the fact that repatriation is required  
4 pursuant to a court order, until such time that all assets have  
5 been fully repatriated pursuant to Section V of this Order.

6 **VII. EXPEDITED DISCOVERY**

7 **IT IS FURTHER ORDERED** that the FTC is granted leave to  
8 conduct certain expedited discovery, and that, commencing with  
9 the time and date of this Order, in lieu of the time periods,  
10 notice provisions, and other requirements of Rules 26, 30, 34,  
11 and 45 of the Federal Rules of Civil Procedure, the FTC is  
12 granted leave to:

13 A. Take the deposition, on three (3) calendar days'  
14 notice, of any person or entity, whether or not a party, for the  
15 purpose of discovering (1) the nature, location, status and  
16 extent of assets of Defendants or their affiliates or  
17 subsidiaries; (2) the nature and location of documents reflecting  
18 the business transactions of Defendants or their affiliates or  
19 subsidiaries; (3) the whereabouts of Defendants; and (4)  
20 compliance with this Order. Depositions may be taken from Monday  
21 through Saturday. The limitations and conditions set forth in  
22 Fed. R. Civ. P. 30(a)(2)(B) and 31(a)(2)(B) regarding subsequent  
23 depositions shall not apply to depositions taken pursuant to this  
24 Section. Any such depositions taken pursuant to this Section  
25 shall not be counted toward the ten deposition limit set forth in  
26 Fed. R. Civ. P. 30(a)(2)(A) and 31(a)(2)(A). Any deposition taken  
27 pursuant to this subsection that has not been reviewed and signed

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1 by the deponent may be used by any party for purposes of the  
2 preliminary injunction hearing; and

3 B. Demand the production of documents, on five (5)  
4 calendar days' notice, from any person or entity, whether or not  
5 a party, relating to (1) the nature, location, status and extent  
6 of assets of Defendants or their affiliates or subsidiaries; (2)  
7 the nature and location of documents reflecting the business  
8 transactions of Defendants or their affiliates or subsidiaries;  
9 (3) the whereabouts of Defendants; and (4) compliance with this  
10 Order. Provided that twenty-four (24) hours' notice shall be  
11 deemed sufficient for the production of any such documents that  
12 are maintained or stored as electronic data. Provided, further,  
13 that the authority to request documents pursuant to this  
14 subsection is in addition to the requirement to produce documents  
15 pursuant to Section VIII of this Order.

16 C. Service of discovery upon a party, taken pursuant to  
17 this Section, shall be sufficient if made by facsimile, by hand  
18 or overnight delivery, or by e-mail (Adobe Acrobat .pdf files  
19 only).

#### 20 VIII. IMMEDIATE PRODUCTION OF DOCUMENTS

21 IT IS FURTHER ORDERED that:

22 A. Defendants shall, immediately upon request by the FTC,  
23 produce at Defendants' place of business located at 1578-G West  
24 San Bernardino Road, Covina, California, and any other business  
25 premises used by any Defendant, all documents and records  
26 contained therein that refer or relate to (1) any prize promotion  
27 or merchandise advertised, marketed, promoted, offered for sale,  
28 distributed or sold by Defendants; (2) any business relationship

1 between Defendants and any other business entity; (3) Defendants'  
2 financial status, including but not limited to, the nature or  
3 location of any bank account, safe deposit box, or other asset of  
4 Defendants; (4) any transaction, correspondence or other  
5 communication by or between any consumer and Defendants or any of  
6 their representatives, employees, agents, officers, servants, or  
7 assistants; and (5) any action, correspondence or other  
8 communication by or between any law enforcement agency, consumer  
9 group, or Better Business Bureau and Defendants or their  
10 representatives, employees, agents, officers, servants, or  
11 assistants.

12 B. Defendants and any other person served with a copy of  
13 this Order shall permit the FTC's employees, agents, and  
14 assistants immediate access to Defendants' business premises and  
15 storage facilities (other than those located in a residence),  
16 whether owned, controlled or used by any Defendant in whole or in  
17 part. The purpose of this access shall be to inspect, copy and  
18 inventory documents referring or relating to (1) any prize  
19 promotion, or merchandise advertised, marketed, promoted, offered  
20 for sale, distributed or sold by Defendants; (2) any business  
21 relationship between Defendants and any other business entity;  
22 (3) Defendants' financial status, including but not limited to,  
23 the nature or location of any bank account, safe deposit box, or  
24 other asset of Defendants; (4) any transaction, correspondence or  
25 other communication by or between any consumer and Defendants or  
26 any of their representatives, employees, agents, officers,  
27 servants, or assistants; and (5) any action, correspondence or  
28 other communication by or between any law enforcement agency,

1 consumer group, or Better Business Bureau and Defendants or their  
 2 representatives, employees, agents, officers, servants, or  
 3 assistants. Defendants shall provide FTC employees, agents and  
 4 assistants with any necessary means of access to these documents,  
 5 including but not limited to keys and lock combinations, computer  
 6 access codes, and storage access information. Defendants are  
 7 hereby enjoined and restrained from interfering with the FTC's  
 8 right of access described herein.

9 C. For those documents and records maintained or stored at  
 10 Defendants' business premises and storage facilities, where such  
 11 business premises or storage facilities are located in a  
 12 residence, Defendants shall, upon request by the FTC, produce  
 13 within forty-eight (48) hours to the FTC (by personal service,  
 14 overnight courier, facsimile, or e-mail, as set forth in Section  
 15 XVI), all documents and records contained therein that refer or  
 16 relate to (1) any prize promotion or merchandise advertised,  
 17 marketed, promoted, offered for sale, distributed or sold by  
 18 Defendants; (2) any business relationship between Defendants and  
 19 any other business entity; (3) Defendants' financial status,  
 20 including but not limited to, the nature or location of any bank  
 21 account, safe deposit box, or other asset of Defendants; (4) any  
 22 transaction, correspondence or other communication by or between  
 23 any consumer and Defendants or any of their representatives,  
 24 employees, agents, officers, servants, or assistants; and (5) any  
 25 action, correspondence or other communication by or between any  
 26 law enforcement agency, consumer group, or Better Business Bureau  
 27 and Defendants or their representatives, employees, agents,  
 28 officers, servants, or assistants.

1 D. The FTC shall be allowed to remove all such documents  
2 produced pursuant to this Section for a period not to exceed  
3 seventy-two (72) hours for the purposes of copying such  
4 documents.

5 E. Defendants shall be precluded from using in any further  
6 proceeding in this case, directly or indirectly, any document  
7 within Defendants' possession, custody, or control at the time of  
8 service of this Order that is not produced pursuant to this  
9 Section VIII.

10 **IX. RECORD KEEPING PROVISIONS**

11 **IT IS FURTHER ORDERED** that Defendants, and their officers,  
12 agents, servants, employees, and attorneys, and those persons in  
13 active concert or participation with them who receive actual  
14 notice of this Order by personal service or otherwise, are hereby  
15 enjoined from:

16 A. Destroying, erasing, mutilating, concealing, altering,  
17 transferring or otherwise disposing of, in any manner, directly  
18 or indirectly, contracts, agreements, customer files, customer  
19 lists, customer addresses and telephone numbers, correspondence,  
20 advertisements, brochures, sales material, training material,  
21 sales presentations, documents evidencing or referring to  
22 Defendants' products, data, computer tapes, disks, or other  
23 computerized records, books, written or printed records,  
24 handwritten notes, telephone logs, "verification" or "compliance"  
25 tapes or other audio or video tape recordings, receipt books,  
26 invoices, postal receipts, ledgers, personal and business  
27 canceled checks and check registers, bank statements, appointment  
28 books, copies of federal, state or local business or personal

1 income or property tax returns, and any other documents or  
2 records of any kind, including electronically-stored materials,  
3 that relate to the business practices or business or personal  
4 finances of Defendants or any other entity directly or indirectly  
5 under the control of Defendants; and

6 B. Failing to create and maintain books, records, and  
7 accounts which, in reasonable detail, accurately, fairly, and  
8 completely reflect the incomes, assets, disbursements,  
9 transactions and use of monies by Defendants or any other entity  
10 directly or indirectly under the control of Defendants.

11 **X. COMPLIANCE MONITORING**

12 **IT IS FURTHER ORDERED** that, for purposes of monitoring  
13 compliance with any provision of this Order, the FTC is  
14 authorized to pose as customers or potential customers of  
15 Defendants, their employees, or any other entity managed or  
16 controlled in whole or in part by any of them without the  
17 necessity of identification or prior notice.

18 **XI. NOTICE TO EMPLOYEES, AFFILIATES, AND AGENTS**

19 **IT IS FURTHER ORDERED** that Defendants shall immediately  
20 provide a copy of this Order to each of their corporate entities,  
21 subsidiaries, affiliates, directors, officers, employees, agents,  
22 and independent contractors. Within ten (10) calendar days  
23 following service of this Order by the FTC, Defendants shall  
24 provide the FTC with an affidavit identifying the names, titles,  
25 addresses, and telephone numbers of the persons and entities that  
26 Defendants have served with a copy of this Order in compliance  
27 with this provision.

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**XV. SERVICE OF PLEADINGS; EVIDENCE, WITNESS LISTS**

**IT IS FURTHER ORDERED** that

A. Defendants shall file any answering affidavits, pleadings, or legal memoranda with the Court and serve the same on counsel for the FTC no later than three (3) business days prior to the preliminary injunction hearing in this matter. The FTC may file responsive or supplemental pleadings, materials, affidavits, or memoranda with the Court and serve the same on counsel for Defendants no later than one (1) business day prior to the preliminary injunction hearing in this matter. Provided that service shall be performed by personal or overnight delivery, by facsimile, or by e-mail (Adobe Acrobat .pdf files only) and documents shall be delivered so that they shall be received by the other parties no later than 4 p.m. (EDT) on the appropriate dates listed in this subsection.

B. The question of whether this Court should enter a preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure enjoining Defendant during the pendency of this action shall be resolved, pursuant to Local Rule 7-6, on the pleadings, declarations, exhibits, and memoranda filed by and oral argument of the parties. Live testimony shall be heard only on further order of this Court on motion filed with the Court and served on counsel for the parties at least 72 hours prior to the preliminary injunction hearing in this matter. Such motion shall set forth the name, address, and telephone number of each proposed witness, a detailed summary or affidavit revealing the substance of each proposed witness's expected testimony, and an explanation of why the taking of live testimony would be helpful

1 to this Court. Any papers opposing a timely motion to present  
 2 live testimony or to present live testimony in response to live  
 3 testimony to be presented by another party shall be filed with  
 4 this Court and served on the other parties at least two (2)  
 5 business days prior to the preliminary injunction hearing in this  
 6 matter. Provided that service shall be performed by personal or  
 7 overnight delivery, by facsimile, or by e-mail (Adobe Acrobat  
 8 .pdf files only) and documents shall be delivered so that they  
 9 shall be received by the other parties no later than 4 p.m. (EDT)  
 10 on the appropriate dates listed in this subsection.

11 **XVI. CORRESPONDENCE WITH PLAINTIFF**

12 **IT IS FURTHER ORDERED** that, for the purposes of this Order,  
 13 all service on and correspondence to the FTC shall be addressed  
 14 to: Faye Chen Barnouw, Federal Trade Commission, 10877 Wilshire  
 15 Boulevard, Suite 700, Los Angeles, CA 90024; facsimile (310) 824-  
 16 4380; e-mail fbarnouw@ftc.gov (Adobe Acrobat .pdf files only).  
 17 If service or correspondence is made by facsimile or e-mail, it  
 18 shall also be served in the same manner on Victor DeFrancis:  
 19 facsimile (202 326-2558; e-mail vdefrancis@ftc.gov.

20 **XVII. SERVICE OF THIS ORDER**

21 **IT IS FURTHER ORDERED** that copies of this Order may be  
 22 served by facsimile transmission, e-mail transmission, personal  
 23 or overnight delivery, or U.S. Mail, by agents and employees of  
 24 the FTC or any state or federal law enforcement agency or by  
 25 private process server, on (1) Defendants, (2) any financial  
 26 institution, entity or person that holds, controls, or maintains  
 27 custody of any account or asset of Defendants, or has held,  
 28 controlled or maintained custody of any account or asset of

1 Defendants, or (3) any other person or entity that may be subject  
2 to any provision of this Order.

3 **XVIII. RETENTION OF JURISDICTION**

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

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7 SO ORDERED, this 25 day of April, 2005 at 3:30 p.m.  
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9 **GARY ALLEN FEES**  
10 **UNITED STATES DISTRICT JUDGE**

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