

1 TRACY S. THORLEIFSON
2 MARY T. BENFIELD
3 Federal Trade Commission
4 915 Second Avenue, Suite 2896
5 Seattle, WA 98174
6 Phone: (206) 220-6350
7 Facsimile: (206) 220-6366

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5 BLAINE T. WELSH
6 Assistant United States Attorney
7 Bar No. 4790
8 333 Las Vegas Blvd, South, Suite
9 Las Vegas, NV 89101
10 Phone (702) 388-6336
11 Facsimile: (702) 388-6787

12 Attorneys for Plaintiff
13 Federal Trade Commission

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COUNSEL/PARTIES OF RECORD	
5000 JUL 19 2005	
CLERK U.S. DISTRICT COURT DISTRICT OF NEVADA	
BY: _____	DEPUTY

11 UNITED STATES DISTRICT COURT
12 DISTRICT OF NEVADA

13 FEDERAL TRADE COMMISSION,

14 Plaintiff,

15 v.

16 3RD UNION CARD SERVICES INC.,
17 doing business as
18 PHARMACYCARDS.COM,
19 a Delaware Corporation,
20 DAVID GRAHAM TURNER,
21 individually and doing business as
22 HELMCREST, LTD., and
23 PHARMACYCARDS.COM, and as an
24 officer or director of 3RD UNION CARD
25 SERVICES,
26

27 Defendants.

CV-S-04-0712-RCJ-RJJ

**(PROPOSED) ORDER
REGARDING CLAIMS
AGAINST FROZEN FUNDS
HELD BY THIRD PARTIES
ON BEHALF OF
DEFENDANTS**

28 Plaintiff, Federal Trade Commission ("FTC" or "Commission"), filed a motion for
default judgment, seeking injunctive relief, including monetary equitable relief, against

1 defendants in the above-captioned case (collectively the “Pharmacycards defendants”).
2 The FTC’s complaint alleged that the Pharmacycards defendants debited consumers’
3 checking accounts \$139 each, without the consumers’ knowledge or approval, in
4 violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a). According to the FTC, more
5 than \$5 million was taken from consumer checking accounts in this scheme. To preserve
6 the possibility of redress, this Court ordered that all Pharmacycards assets be frozen. The
7 Pharmacycards defendants never answered the complaint, and entry of default was
8 entered against Third Union Card Services on October 27, 2004, and against the
9 individual defendants, Steve Pearson and David Graham Turner on February 2, 2005.

10 In connection with its motion for default judgment, the FTC requested that third
11 parties holding funds on behalf of the Pharmacycards defendants be ordered to pay those
12 funds to the FTC to be used for consumer redress. The Pharmacycards defendants used
13 third party payment processors to access consumers’ checking accounts; it is these third
14 party processors or entities associated with them who hold or have claim to
15 Pharmacycards’ funds. According to the FTC, these include:

- 16 (1) Wells Fargo Bank, holding Pharmacycards funds in an account titled in the
17 name of payment processor InterBill, in the amount of \$659,628;
- 18 (2) Electronic Funds Transfer Corporation holding Pharmacycards funds in the
19 amount of \$85,365;
- 20 (3) Alliance Payment Technologies, Inc., holding Pharmacycards funds in the
21 amount of \$23,693; and
- 22 (4) Matthew G. Jackson, sole director of Helcrest USA, LLC, holding
23 Pharmacycards funds diverted without authorization from payment
24 processor Fission Group, in the amount of \$175,000.

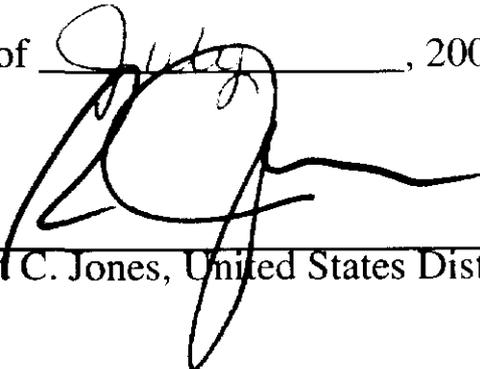
25 The FTC argues that the funds held by these third parties are properly held in constructive
26 trust on behalf of the Pharmacycards’ victims and that, pursuant to the constructive trust,
27

1 this Court has the authority to order that the funds be paid to the FTC so that injured
2 consumers may be redressed.

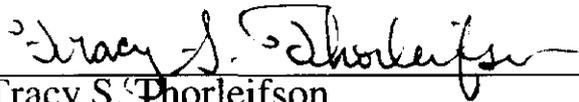
3 The Court now directs that any party having a claim against funds held on behalf
4 of Pharmacycards, specifically including those funds enumerated above, file said claim
5 with this Court and serve it on the FTC. The claim shall state the amount sought and the
6 reasons therefor. All such claims should be filed no later than July 29, 2005. Following
7 the filing of any such claims, the FTC shall file its opposition, if any, no later than August
8 12, 2005. Claimants shall respond to the FTC's opposition no later than August 29, 2005.
9 The FTC may reply to any opposition no later than September 9, 2005.

10 The FTC is directed to serve a copy of this Order on any third party it knows to be
11 holding funds on behalf of the Pharmacycards defendants.

12
13 **SO ORDERED**, this 15th day of July, 2005.

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15
16 
Robert C. Jones, United States District Judge

17 Presented by:

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19 

20 Tracy S. Thorleifson
21 Mary T. Benfield
Attorneys For Plaintiff
Federal Trade Commission

22 Date: July 8, 2005
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1 **CERTIFICATE OF SERVICE**

2 I, Gerald Fondow, am a citizen of the United States, over the age of eighteen years.
3 I am an employee of the Federal Trade Commission. My business address is 915 Second
4 Avenue, Suite 2896, Seattle, WA 98174. On October 27, 2004 and February 2, 2005, the
5 clerk entered default against the named defendants, so I did not attempt service on them.

6 On 8 July, 2005, I served copies of the foregoing document by
7 sending it, by facsimile and first class mail, to:

- 8 1. Susan E. Flint, Managing Counsel, Wells Fargo Bank, Law Department,
9 MAC: N9305-176, 1700 Wells Fargo Center, 6th and Marquette Avenue,
10 Minneapolis, MN 55479, (612) 667-5098 (facsimile);
- 11 2. Local Counsel for Wells Fargo, Kent F. Larsen, Smith Larsen & Wixom,
12 Hills Center Business Park, 1935 Village Center Circle, Las Vegas, NV
13 89134, (702) 252-5002, (702) 252-5006 (facsimile);
- 14 3. Counsel for InterBill, Ltd., and Thomas Wells: Lawrence Semenza,
15 Semenza Law Firm, 3027 East Sunset Road, # 106, Las Vegas, NV
16 89120-2758, (702) 263-3539 (facsimile);
- 17 4. John F. Haussner, C.F.O, Electronic Funds Transfer Corporation, 245 Saw
18 Mill River Road, Suite 105, Hawthorne, NY (914) 747-3222 (facsimile);
- 19 5. Paul G. Hook, Alliance Payment Technologies, Inc., 302 S. Milliken
20 Avenue, Suite G-1, Ontario, CA 91761, (909) 974-0110 (facsimile); and
- 21 6. Counsel for Matt Jackson: Paul N. Jacobs, Jacobs & Dodds, 881 Dover
22 Drive, Suite 285, Newport Beach, CA 92663-5962, (949) 645-7305
23 (facsimile).

24 I declare under penalty of perjury that the foregoing is true and correct.

25 Executed this 8th day of July 2005.

26
27 Gerald Fondow
28 Gerald Fondow