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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

FEDERAL TRADE COMMISSION,

Plaintiff,

Case No. 8:08-cv-914-T-27 MSS

v.

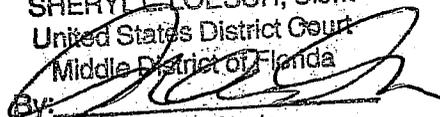
INTEGRITY FINANCIAL ENTERPRISES,
LLC, a limited liability company, also d/b/a
INFINITE FINANCIAL and
NATIONAL BENEFIT EXCHANGE,

FILED UNDER SEAL

NATIONAL BENEFIT EXCHANGE, INC.,
a corporation, and

I certify the foregoing to be a true
and correct copy of the original.
SHERYL L. LOESCH, Clerk
United States District Court
Middle District of Florida

ROBERT JAMES FISCHBACH, individually
and as an officer of INTEGRITY FINANCIAL
ENTERPRISES, LLC and NATIONAL BENEFIT
EXCHANGE, INC.,

By: 
Deputy Clerk

Defendants.

TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE

In this action filed by the Federal Trade Commission ("FTC" or "Commission"), seeking permanent injunctive and other relief pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), the FTC has moved for an *ex parte* Temporary Restraining Order pursuant to Rule 65, Fed.R.Civ.P. Having considered the pleadings, declarations, exhibits, and memorandum of law filed in support of the motion, based on the pleadings, declarations and evidentiary submissions filed in support of the requested relief, the Court finds and concludes:

1. This Court has subject matter jurisdiction.

2. Defendants Integrity Financial Enterprises, LLC, doing business as Infinite Financial and as National Benefit Exchange, National Benefit Exchange, Inc., and Robert James Fischbach have engaged in and are likely to engage in acts and practices which violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the Telemarketing Sales Rule. There is a substantial likelihood that the Commission will prevail on the merits.
3. Defendants have, and in the absence of a restraining order will continue to cold-call consumers and offer them a guaranteed or pre-approved general-purpose credit card, such as a MasterCard or Visa, in exchange for an advance fee of \$200 to \$300. Instead of the promised general-purpose credit card, consumers receive a catalogue card that is good only for the purchase of merchandise from the Defendants' catalogues or websites. Defendants often tell consumers that they can cancel or change their order and avoid the debiting of their bank accounts, and imply that consumer's cancellation requests will be honored. Defendants, however, fail to honor the cancellation requests and often debit consumers' bank accounts nonetheless. This conduct violates Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and Sections 310.3(a)(2)(iii) and (iv), and 310.4(a)(4) of the Telemarketing Sales Rule, 16 C.F.R. §§ 310.3(a)(2)(iii) and (iv), 310.4(a)(4).
4. There is no legitimate aspect to Defendants' business. Consumers pay hundreds of dollars and receive nothing of value. Defendants have ignored consumers' attempts to cancel and avoid debiting and/or receive refunds, and thus, consumers

have been irreparably harmed for \$200 - \$300 each. Consumers will continue to be harmed absent the issuance of an *ex parte* temporary restraining order.

5. Immediate and irreparable damage to the FTC's ability to secure effective final relief for consumers in the form of monetary redress will occur, from the sale, transfer, or other disposition or concealment by the Defendants of assets or records, during the pendency of this action unless Defendants are restrained and enjoined by court order. Accordingly, there is good cause for an asset freeze and immediate access to Defendants' business premises, and for relieving Plaintiff of the duty to provide Defendants with prior notice of Plaintiff's motion, in order to preserve the status quo pending a hearing on preliminary injunctive relief, and to ensure the possibility of consumer redress and other effective relief.
6. Balancing the equities and considering Plaintiff's likelihood of success on the merits, Plaintiff's Motion for *Ex Parte* Temporary Restraining Order with Asset Freeze and Other Equitable Relief and an Order to Show Cause Why a Preliminary Injunction Should Not Issue is in the public interest.
7. No security is required of any agency of the United States for issuance of a restraining order. Fed. R. Civ. P. 65(c).
8. For purposes of this restraining order, "Defendants" shall include the named Defendants, their successors, assigns, officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, corporations, subsidiaries, affiliates, divisions, sales entities, related entities, 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, including, but not limited to, fictitious business names.

I. CONDUCT PROHIBITIONS

IT IS HEREBY ORDERED that in connection with the advertising, promotion, offering, or sale of any product, service, or program by telephone, on or through the Internet, the World Wide Web, any website, or otherwise in commerce, the Defendants are temporarily restrained and enjoined from:

- A. Making, or assisting in the making of, expressly or by implication, orally or in writing, any statement or representation of material fact that is false or misleading, including but not limited to, any misrepresentation that:
 - 1. After paying a fee, consumers are likely or guaranteed to receive a general-purpose credit card, such as a MasterCard or Visa;
 - 2. Consumers may cancel or change their order and avoid the debiting of their bank accounts; and
 - 3. Consumers' cancellation requests will be honored;
- B. Misrepresenting, expressly or by implication, any fact material to a consumer's decision to purchase any product, program, or service;
- C. Violating any provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310, including but not limited to:

1. Misrepresenting that a card is a general-purpose credit card, such as a MasterCard or Visa, rather than a card that can only be used to purchase items from Defendants' catalogue or website;
 2. Misrepresenting that:
 - a. consumers may cancel or change their order and avoid the debiting of their bank accounts; and
 - b. that consumers' cancellation requests will be honored; and
 3. Requesting or receiving payment of any fee in advance of obtaining an extension of credit when Defendants have guaranteed or represented a high likelihood of success in obtaining such extension of credit; and
- D. Assisting others who violate any provision of Subparagraphs A through C of this Paragraph.

II. ASSET FREEZE

IT IS FURTHER ORDERED that the Defendants are hereby temporarily restrained and enjoined from:

- A. Transferring, liquidating, converting, encumbering, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, pledging, loaning, granting a lien or security interest or other interest in, or otherwise disposing of any funds, credit instruments, real or personal property, accounts, contracts, lists of consumer names, shares of stock, or other assets, wherever located, including outside the United States, that are:

1. Owned or controlled by any Defendant, in whole or in part, including but not limited to any assets held by, for, or in the name of the Defendants at any bank or savings and loan institution, or with any broker-dealer, escrow agent, title company, commodity trading company, precious metal dealer, or other financial institution, depository of any kind, or business entity, including but not limited to, Bank of America;
 2. In the actual or constructive possession of any Defendant; or
 3. Owned, controlled by, or in the actual or constructive possession of any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by or under common control with any Defendant.
- B. Opening or causing to be opened any safe deposit boxes, titled, singly or jointly, in the name of any defendant, or subject to access by any Defendant;
- C. Cashing any checks or depositing any payments received from customers of Defendants;
- D. Incurring charges on any credit card issued in the name, singly or jointly of any Defendant;
- E. Obtaining a personal or secured loan; and
- F. Incurring liens or other encumbrances on real property, personal property or other assets of any Defendant or in the name of any Defendant, singly or jointly.

The assets affected by this Paragraph include existing assets and assets acquired after the effective date of this Order.

Notwithstanding the provisions of this Paragraph, Defendants may, after obtaining leave of court, make transfers upon proper showing and after notice to counsel for the Commission.

III. CUSTOMER LISTS

IT IS FURTHER ORDERED that the Defendants are hereby temporarily restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, social security number, credit card number, debit card number, bank account number, e-mail address, or other identifying information of any person who paid any money to any Defendant, at any time prior to entry of this Order, in connection with the telemarketing, advertising, promoting, offering for sale, and selling of any advance-fee credit card goods or services. Provided, however, that the Defendants may disclose such identifying information to a law enforcement agency or as required by any law, regulation, or court order. The Defendants are also hereby temporarily restrained and enjoined from making any use of their own customer lists in any business, whether or not related to the present action.

IV. RETENTION OF ASSETS AND RECORDS HELD BY THIRD PARTIES

IT IS FURTHER ORDERED that, pending determination of the Commission's request for a Preliminary Injunction, any financial or brokerage institution, business entity, or person served with a copy of this Order, that holds, controls or maintains custody of any account or asset of any Defendant, or has held, controlled or maintained custody of any such account or asset at any time since January 2005 shall:

- A. Prohibit Defendants from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling, or otherwise

disposing of any such account or asset except as directed by further order of the Court;

B. Deny Defendants access to any safety deposit box, that is:

4. Titled in the name of any of the Defendants, either individually or jointly;
or

5. Otherwise subject to access by any of the Defendants, either individually or jointly;

C. Provide counsel for the FTC, within five (5) business days of receiving a copy of this Order, with a sworn statement setting forth:

1. The identification number and description of each such account or asset titled in the name, individually or jointly, of the Defendants, or held on behalf of, or for the benefit of, any Defendant;

2. The balance of each such account, or a description of the nature and value of such asset, as of the close of business on the day on which this Order is served, and, if the account or other asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other asset was remitted;

6. The identification of any safe deposit box that is either titled in the name, individually or jointly, of the Defendants, or otherwise subject to access by any Defendant; and

- D. Upon the request of the counsel for the FTC, within forty-eight (48) hours, provide counsel for the FTC with copies of all records or other documentation pertaining to any account or asset of any Defendant, including, but not limited, to originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs.

**V. DUTIES OF THIRD PARTIES PROCESSING
PAYMENTS FOR DEFENDANTS**

IT IS FURTHER ORDERED that any automated clearing house, network transaction processor, business entity or person providing any services or assistance in processing Defendants' customer payments, including, but not limited to, payments made by bank account debits or checks, for any of the Defendants, that receives actual notice of this Order by personal service or otherwise, is hereby restrained and enjoined from providing any assistance in the processing of any payments made by consumers to any of the Defendants and from collecting any fees or charges in connection with providing such assistance.

**VI. REPATRIATION OF ASSETS AND DOCUMENTS LOCATED
IN FOREIGN COUNTRIES**

IT IS FURTHER ORDERED that the Defendants shall:

- A. Within forty-eight (48) hours following the service of this Order, take such steps as are necessary to transfer to the territory of the United States of America all documents and assets that are located outside of such territory and are held by or

for the benefit of the Defendants or are under their direct or indirect control, jointly, severally, or individually;

- B. Within forty-eight (48) hours following the service of this Order, provide counsel for the Commission with a full accounting of all documents and assets that are located outside of such territory and are held by or for the benefit of the Defendants or are under their direct or indirect control, whether jointly, severally, or individually;
- C. Hold and retain all documents and assets transferred pursuant to Subparagraph A above, and prevent any transfer, disposition, or dissipation whatsoever of any such assets or funds; and
- D. Provide counsel for the Commission with access to records and documents of the Defendants held by financial institutions outside the territorial United States of America, by signing and delivering to Plaintiff a Consent of Release of Financial Records provided by the Commission within forty-eight (48) hours of service of this Order.

VII. INTERFERENCE WITH REPATRIATION

IT IS FURTHER ORDERED that Defendants are temporarily restrained and enjoined from taking any action, directly or indirectly, which may result in the encumbrance or dissipation of Defendants' foreign assets or in the hindrance of the repatriation required by Paragraph VI of this Order, including but not limited to:

- A. Sending any statement, letter, facsimile, e-mail or wire transmission, telephoning or engaging in any other act, directly or indirectly, that results in a determination by a foreign trustee or other entity that a “duress” event has occurred under the terms of a foreign trust agreement until such time that all assets have been fully repatriated pursuant to Paragraph VI of this Order; and
- B. Notifying any trustee, protector or other agent of any foreign trust or other related entities of either the existence of this Order, or the fact that repatriation is required pursuant to a Court Order, until such time that all assets have been fully repatriated pursuant to Paragraph VI of this Order.

**VIII. IMMEDIATE ACCESS TO DEFENDANTS’ BUSINESS PREMISES AND
BREAK ORDER**

IT IS FURTHER ORDERED that Defendants shall permit the Commission’s representatives immediate access to Defendants’ business premises at **300 South Duncan Avenue, Clearwater, Florida**. In the event Defendants fail or refuse to permit access, the Commission is authorized, with the assistance and supervision of the United States Marshal and any state or local law enforcement agency, to break any locks preventing access to the premises, in order to accomplish access as authorized herein. Plaintiff shall replace any locks broken and secure the premises after accomplishing the purposes of access, as authorized herein.

The purpose of this access shall be solely to inspect and copy materials relevant to this action and to inventory the assets and documents of Defendants including, but not limited to:

- A. Documents evidencing, referring to, or relating to each Defendant's financial status, including but not limited to, the nature or location of any bank account, safe deposit box, or any other asset of any Defendant;
- B. Documents evidencing, referring to, or relating to the telemarketing, advertising, promoting, offering for sale, and selling of advance-fee credit cards services and other services to any consumer and any correspondence, transaction, or other communication by or between any consumer or prospective consumer and any Defendant or any of their representatives, employees, agents, or officers; and
- C. Documents evidencing, or referring to, any correspondence, action, or other communication by or between any law enforcement agency, consumer group, or Better Business Bureau and any Defendant or any of their representatives, employees, agents, or officers.

Defendants shall provide the Commission with all necessary means of access to these materials, including, without limitation, keys, lock combinations, and computer access codes. The Commission may remove such materials from the Defendants' business premises so they may be inspected, inventoried, and copied, so long as all such documents are returned in the same condition as when they were taken, and returned to the offices from which they were taken within five (5) business days of completing said inventory and copying. In no event shall such materials be retained longer than ten (10) business days. The Commission's representatives may photograph and videotape the interior and exterior of the premises to which they are permitted access by the Order and all other documents and items found on such premises.

IT IS FURTHER ORDERED that the Commission's representatives shall be accompanied by law enforcement, including but not limited to the United States Marshal Service, in accessing Defendants' business premises and implementing the provisions of this Paragraph in order to keep the peace and maintain the security of the Commission's representatives. No person shall interfere with the Commission's access or inspection of the Defendants' business premises as authorized herein.

IX. FINANCIAL REPORTS

IT IS FURTHER ORDERED that Defendants shall, within forty eight (48) hours of service of this Order, produce and deliver to counsel for the Commission:

- A. All current accountants' reports; all federal tax returns filed since January 1, 2005; documents indicating title to real or personal property; and other indicia of ownership that are now in any of the Defendants' actual or constructive possession; and
- B. A listing of all computer passwords, entry codes and combinations to locks necessary to gain or to secure access to any assets or documents of the Defendants, including, but not limited to, their means of communication, accounts, computer systems, or other property, located at their business premises, 300 South Duncan Avenue, Clearwater, Florida.

X. IDENTIFYING INFORMATION RELATING TO ACCOUNTANTS, FINANCIAL PLANNERS, INVESTMENT ADVISORS, STOCK BROKERS, AND OTHERS

IT IS FURTHER ORDERED that Defendants, within forty-eight (48) hours after service of this Order, shall provide counsel for the Commission with: (1) the name, address and telephone number for each accountant, financial planner, investment advisor, stock broker or other individual, corporation or partnership whom they hire for personal advice or services, including but not limited to preparation of tax returns and investment advice, since January 1, 2005, and (2) the name, address and telephone number for each accountant, financial planner, investment advisor, stockbroker or other individual, corporation or partnership who was hired on behalf of the Defendants since January 1, 2005.

XI. RECORD KEEPING/BUSINESS OPERATIONS

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

- A. Failing to create and maintain documents that, in reasonable detail, accurately, fairly, and completely reflect their incomes, disbursements, transactions, and use of money;
- B. Destroying, erasing, secreting, defacing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any contracts, accounting data, correspondence, advertisements, computer tapes, discs, or other computerized records, books, written or printed records, handwritten notes, telephone logs, telephone scripts, receipt books, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, copies of federal, state or local business or personal income

or property tax returns, and other documents or records of any kind that relate to the business practices or business or personal finances of the Defendants;

- C. Transferring, receiving, altering, selling, encumbering, pledging, assigning, liquidating, or otherwise disposing of any assets owned, controlled, or in the possession or custody of, or in which an interest is held or claimed by, the Defendants; and
- D. Creating, operating, or exercising any control over any business entity, including any partnership, limited partnership, joint venture, sole proprietorship or corporation, without first providing counsel for the Commission with a written statement disclosing: (1) the name of the business entity; (2) the address and telephone number of the business entity; (3) the names of the business entity's officers, directors, principals, managers and employees; and (4) a detailed description of the business entity's intended activities.

XII. DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that Defendants shall immediately provide a copy of this Order to each affiliate, subsidiary, division, sales entity, successor, assign, officer, director, employee, independent contractor, agent, attorney, and representative of Defendants and shall, within five (5) calendar days from the date of entry of this Order, provide counsel for the Commission a sworn statement that each Defendant has complied with this provision, which statement shall include the names and addresses of each person or entity who received a copy of the Order.

XIII. CONSUMER CREDIT REPORTS

IT IS FURTHER ORDERED that the Commission may obtain credit reports of Defendant Robert James Fischbach pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(1), and that upon written request, any credit reporting agency from which such reports are requested shall provide them to the Commission. The Commission is prohibited from disseminating any such credit reports.

XIV. USE OF ALIASES

IT IS FURTHER ORDERED that Defendants are hereby enjoined from using any fictitious, false, or assumed title or name, other than their own proper name, or otherwise misrepresenting their true identities in the course of business dealings or in publicly filed documents.

XV. SERVICE OF PLEADINGS

IT IS FURTHER ORDERED that:

- A. Defendants shall file their response to the Order to Show Cause Why a Preliminary Injunction Should Not Issue, including all declarations, exhibits, memoranda, and other evidence, not less than seventy-two (72) hours before the hearing. Defendants shall serve copies on counsel for the Commission, by hand delivery, facsimile transmission, or overnight delivery service to the attention of counsel for the Commission, Ann F. Weintraub at Federal Trade Commission, Northeast Regional Office, 1 Bowling Green, Suite 318, New York, NY 10004 (facsimile transmission to (212) 607-2822).

Provided, however, that if Defendants choose to serve counsel for the Commission via overnight delivery, the documents shall be delivered so that they are received by counsel for the Commission at least seventy-two (72) hours before the hearing.

- B. The Commission shall file and serve on Defendants, or their counsel if represented, by hand, by facsimile transmission, or by overnight delivery service, any supplemental memoranda, declarations, materials, or other evidence not less than forty-eight (48) hours prior to the hearing on the Order to Show Cause Why a Preliminary Injunction Should Not Issue.

Provided, however, if the Commission serves any Defendant or their counsel via overnight delivery, the documents shall be delivered so that they are received at least forty-eight (48) hours before the hearing. Consumer declarations previously filed as exhibits in support of this Order comply with the disclosure requirements of this Paragraph.

- C. Service of process on each Defendant shall be in accordance with the Federal Rules of Civil Procedure. Pursuant to Rule 4(c)(2), copies of this Order and the initial pleadings and papers filed in this matter, including the Complaint and summonses, may be served by employees and agents of the Commission, by employees of any state or other federal law enforcement agency, including but not limited to the United States Marshal's Office and the Federal Bureau of Investigation, and by agents of any process servers retained by the Commission,

upon any office of the Defendants, any financial or brokerage institution, or any person or entity that may be in possession of any assets, property, or property rights of the Defendants, and any other person or entity entitled to or directed to be served by this Order..

- D. The issuance of a preliminary injunction shall be determined on the pleadings, declarations, memoranda, and other exhibits filed by the parties and on oral argument, without testimony.

**XVI. SERVICE OF TEMPORARY RESTRAINING ORDER
AND PLEADINGS ON DEFENDANTS**

IT IS FURTHER ORDERED that a copy of this Temporary Restraining Order shall be served on each Defendant together with all pleadings filed in support of Plaintiff's Motion for *Ex Parte* Temporary Restraining Order, and a copy posted in the interior of Defendants' business premises as described herein.

XVII. DURATION OF TEMPORARY RESTRAINING ORDER

IT IS FURTHER ORDERED that this Temporary Restraining Order shall expire on May 29, 2008, at 12:15 P.M., unless within such time, the Order, for good cause shown, is extended for an additional period not to exceed ten (10) days, or unless it is further extended pursuant to Rule 65.

**XVIII. ORDER TO SHOW CAUSE RE:
PRELIMINARY INJUNCTION**

IT IS FURTHER ORDERED, pursuant to Rule 65(b), that each Defendant shall appear before this Court on **Thursday, May 29, 2008 at 10:00A.M.**, at the Sam Gibbons United States

Courthouse, **801 North Florida Avenue, Tampa, Florida, 33602, Courtroom 13B**, and show cause, if there is any, why this Court should not enter a preliminary injunction pending final determination of the merits of the Complaint filed in this cause, enjoining Defendants from further violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), the Telemarketing Act, 15 U.S.C. §6101 *et seq.*, and the Telemarketing Sales Rule, 16 C.F.R. Part 310, continuing the freeze of their assets, and imposing such additional relief as may be appropriate.

DONE AND ORDERED in chambers, this 14th day of May, 2008, at 12:15 P.M.



JAMES D. WHITTEMORE
United States District Judge