

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

9163-7710 QUEBEC, INC., also d/b/a
Enterprise Who's Who and PCM Collections;
and RODOLFO GARCIA RODRIGUEZ, JR.,
individually and as an officer of 9163-7710
Quebec, Inc.,

Defendants.

Case No.

08-2161(GAG)

CLERK'S OFFICE
U.S. DISTRICT COURT
SAN JUAN, P.R.

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**EX PARTE TEMPORARY RESTRAINING ORDER WITH AN ASSET
FREEZE, AN ACCOUNTING, LIMITED EXPEDITED DISCOVERY, AND OTHER
EQUITABLE RELIEF AND ORDER FOR DEFENDANTS TO SHOW CAUSE WHY
A PRELIMINARY INJUNCTION SHOULD NOT ISSUE**

Plaintiff Federal Trade Commission (“FTC”), has filed a Complaint seeking a permanent injunction and other relief pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), and an *ex parte* motion for a temporary restraining order with an asset freeze, an accounting, expedited discovery, other equitable relief, and an order to show cause why a preliminary injunction should not be issued pursuant to Rule 65(b) of the Federal Rules of Civil Procedure. This Court has considered the pleadings and exhibits filed in support of the FTC’s motion, and now being advised in the premises, finds that:

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

2. There is good cause to believe that Defendants’ course of conduct constitutes a real and substantial connection between Defendants and the United States and the District of Puerto Rico;

3. There is good cause to believe that Defendants are engaged in commerce, as defined by the FTC Act, and that they are likely to continue to engage in acts or practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), specifically, that they misrepresent that they have a preexisting relationship with consumers, that consumers have agreed to purchase Defendants’ services, and that consumers owe money for Defendants’ services. The FTC is therefore likely to prevail on the merits of this action;

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

5. There is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief in the form of monetary restitution will occur from the transfer, dissipation, or concealment by Defendants of their assets or business records unless Defendants are immediately restrained and enjoined;

6. As contemplated by the Federal Rules of Civil Procedure, Rule 65(b), and as detailed in the affidavit of Plaintiff's counsel, there is good cause to believe that immediate and irreparable damage will result if Defendants receive prior notice of this action. Accordingly, it is in the interest of justice that this order issue *ex parte*;

7. Weighing the equities and considering the FTC's likelihood of ultimate success, a temporary restraining order with an asset freeze, accounting, expedited discovery, and other equitable relief, is in the public interest; and

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


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IT IS THEREFORE ORDERED AS FOLLOWS:

DEFINITIONS

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

A. "Defendants" means 9163-7710 Quebec, Inc., doing business under the names Enterprise Who's Who and PCM Collections, and Rodolfo Garcia Rodriguez, and each of them, individually and jointly, as well as their successors and assigns.

B. "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, 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 portable computers, whether assigned to individuals or in pools of computers available for shared use; and home computers used for work-related purposes; backup disks and tapes, archive disks and tapes, and other forms of offline storage, whether stored onsite with the computer used to generate them, stored offsite in another company facility or stored offsite by a third party, such as in a disaster recovery center; and computers and related offline storage used by Defendants' participating

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associates, which may include persons who are not employees of the company or who do not work on company premises.

C. "Assets" means 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.

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

ORDER PROHIBITING CERTAIN CONDUCT

I. **IT IS HEREBY ORDERED** that Defendants and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, and each of them, are hereby restrained and enjoined from:

A. Making, or assisting others in making, expressly or by implication, any false or misleading oral or written statement or representation in connection with the advertising,

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offering for sale, or sale of Internet business listings or web page hosting services, including but not limited to:

1. Misrepresenting, expressly or by implication, that defendants are in any way affiliated with a local "*Páginas Amarillas*," or "*Yellow Pages*," or that Defendants are the local "phone company," or "*telefónica*," and
2. Misrepresenting that Defendants have pre-existing relationships with consumers;

B. Representing, expressly or by implication, that consumers have agreed to purchase services from Defendants if Defendants do not have verifiable consent in the form of a written and signed contract, or a taped acceptance, which includes Defendants' statements disclosing the total cost, describing all services being offered, and identifying the seller as well as the customer's statements indicating the customer's clearly articulated acceptance; and

C. Billing or attempting to bill consumers if Defendants do not have verifiable consent in the form of a written and signed contract, or a taped acceptance, which includes Defendants' statements disclosing the total cost, describing all services being offered, and identifying the seller as well as the customer's statements indicating the customer's clearly articulated acceptance.

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ASSET FREEZE

II. **IT IS FURTHER ORDERED** that Defendants and their officers, agents, servants, employees, attorneys, and all persons or entities directly or indirectly under the control of any of them, and all other persons or entities acting in concert or participation with any of them who are served with a copy of this Order by personal service, facsimile, e-mail, publication, or otherwise, are hereby temporarily restrained and enjoined from directly or indirectly:

A. Selling, liquidating, assigning, transferring, converting, loaning, encumbering, pledging, concealing, dissipating, spending, withdrawing, granting a lien or security interest in, or otherwise disposing of any of Defendants' assets or any interest therein, wherever located, including outside the territorial United States, which are:

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1. in the actual or constructive possession of any Defendant;
 2. owned or controlled, in whole or in part, by any Defendant;
 3. subject to access by any Defendant, or any corporation, partnership, trust, or other entity directly or indirectly owned, managed or controlled by any Defendant;
 4. held by an agent of any Defendant as a retainer for the agent's provision of services to any Defendant, or as an equitable interest in or collateral of corporate Defendant;
 5. held for the benefit of any entity directly or indirectly owned, managed, or controlled by any Defendant; or

6. owned, controlled by, or in the possession of any entity on behalf of any Defendant, at any bank, broker, dealer, escrow agent, title company, commodity trading company, precious metal dealer, or other financial institution of any kind;

B. Opening or causing to be opened any safe deposit boxes titled in the name of any Defendant, or subject to access by any Defendant;

C. Incurring charges on any credit card, debit card, or check card issued in the name, individually or jointly, of any Defendant;

D. Cashing any check made payable to any Defendant;

E. Incurring liens or encumbrances on real or personal property, or other assets of any Defendant;

F. Obtaining a personal or secured loan on behalf of any Defendant.

Notwithstanding the above, Defendant Rodriguez may pay from his personal funds reasonable, usual, ordinary, and necessary living expenses and attorney's fees, not to exceed one thousand dollars (\$1,000) prior to the submission of the financial statements required by Section III. No such expenses, however, shall be paid from funds subject to this Order except from cash on the person of Defendant Rodriguez, or from an account designated by prior written notice to counsel for the FTC.

PROVIDED that the funds, property and assets affected by this Paragraph shall include both existing assets and assets acquired after the effective date of this Order if they are related to the activity alleged in the Complaint, including, without limitation, assets

acquired by loan or gift. Defendants shall preserve and hold all such assets, including, without limitation, payments, loans, and gifts, received after service of this Order.

FINANCIAL STATEMENTS AND ACCOUNTING

III. IT IS FURTHER ORDERED that, within five (5) business days following the service of this Order, Defendants shall provide counsel for the FTC:

A. A completed financial statement accurate as of the date of service of this Order upon Defendants on the forms attached to this Order as **Attachments A and B**;

B. For all products or services marketed, promoted, offered for sale, distributed, or sold by Defendants, a detailed accounting, verified under oath, of:

1. all gross revenues obtained from the sale of each such product or service (broken down by month) from inception of sales through the date of the issuance of this Order;

2. the total amount of each such product or service sold; and

3. the full names, addresses, and telephone numbers of all purchasers of each such product or service; and

C. A completed and signed **Consent To Release Financial Records** form, **Attachment C**, permitting Defendants' banks and financial institutions to make records available to Plaintiff upon request. The release shall be returned to Plaintiff within three (3) business days after service of this Temporary Restraining Order.

RETENTION OF ASSETS AND DOCUMENTS BY THIRD PARTIES

IV. IT IS FURTHER ORDERED that, pending determination of the FTC's request for a preliminary injunction, any financial institution, or any person or other entity served with a copy 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, gifting, removal, or other disposal of any funds, documents, property, or other assets held:

1. on behalf of, or for the benefit of, any Defendant;
2. in any account maintained in the name of, or subject to withdrawal by, any Defendant;
3. that are subject to access or use by, or under the signatory power of, any Defendant or its disclosed employee or agent;

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

1. titled in the name, individually or jointly, of any Defendant; or
2. subject to access by any Defendant or other disclosed employee or agent;

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

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1. the identification of each account or asset titled in the name, individually or jointly, or held on behalf of, or for the benefit of, any Defendant, in whole or in part;

2. the balance of each such account, or a description of the nature and value of such asset as of the date this Temporary Restraining Order is received;

3. the identification of any safe deposit box that is either titled in the name of, individually or jointly, or is otherwise subject to access or control by, any Defendant or its disclosed employee or agent, whether in whole or in part; and

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

D. Allow Commission representatives immediate access to inspect and copy all records of any Defendant, and all documents relating to any account, safe deposit box, or other asset of any Defendant. Alternatively, any person or company covered by this Part IV may arrange to deliver to the Commission copies of any record that it seeks for a charge not to exceed fifteen cents (15¢) per page copied.

PROVIDED, HOWEVER, that nothing in this Order shall prohibit any reversal of bank charges that occur in the ordinary course of business as required by any applicable banking laws or regulations.

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FOREIGN ASSETS

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

A. Take such steps as are necessary to repatriate to the territory of the United States of America all assets and records held by or for the benefit of any Defendant, or under the direct or indirect control of any Defendant, individually or jointly, that were transferred outside of the territory of the United States from within the territory of the United States;

B. Thereafter, hold and retain any such assets and records within their control and otherwise prevent any transfer, disposition, destruction, or dissipation whatsoever of any such assets and records; and

C. Provide the Commission with access to all records of accounts or assets held by or for the benefit of any Defendant, or under the direct or indirect control of any Defendant, individually or jointly, that are held by financial institutions located outside the territorial United States. Access shall be provided by signing the Consent to Release Financial Records, **Attachment C**. At the discretion of the Plaintiff, notarization of the Consent also may be required.

EXPEDITED DISCOVERY

VI. **IT IS FURTHER ORDERED** that:

A. In anticipation of a preliminary injunction hearing in this matter, and in lieu of the time periods, notice provisions, and other requirement of Rules 26, 30, 33, 34, 36 and

45, the parties are granted leave to conduct discovery at any time after service of this Order, which discovery shall be limited to the nature and location of Defendants' assets and documents, and customer complaints sent to Defendants. The parties may depose witnesses upon notice of three (3) business days. The Commission may require that all responses to subpoenas *duces tecum* be served within five (5) calendar days of the service of such discovery. In addition, and in lieu of the time periods, notice provisions, and other requirements of Rules 26, 30, 33, 34, 36 and 45, the parties shall respond to interrogatories, requests for production of documents, or requests for admissions, within five (5) calendar days after service of the interrogatories or requests. Deposition transcripts that have not been signed by a witness may be used at the Preliminary Injunction hearing;

 B. The limitations and conditions set forth in Rules 30(a)(2)(B) and 31(a)(2)(B) of the Federal Rules of Civil Procedure regarding subsequent depositions of an individual shall not apply to depositions taken pursuant to this Part VI. Any such depositions shall not be counted toward any limit on the number of depositions under the Federal Rules of Civil Procedure or the local rules of procedure for the United States District Court for the District of Puerto Rico, including those set forth in Rules 30(a)(2)(A) and 31(a)(2)(A) of the Federal Rules of Civil Procedure. Any interrogatories served pursuant to this Part VI shall not be counted toward any limit on the number of interrogatories under the Federal Rules of Civil Procedure or the local rules of procedure for the District Court for the District of Puerto Rico, including that limit set forth in Rule 33(a) of the Federal Rules of Civil Procedure; and

C. Service of discovery, including subpoenas pursuant to this Part VI, may be accomplished by any of the following means: facsimile transmission, international courier service, electronic mail, or by hand.

RECORD KEEPING PROVISIONS

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

A. Destroying, erasing, mutilating, concealing, altering, transferring or otherwise disposing of, in any manner, directly or indirectly, contracts, agreements, customer files, customer lists, customer addresses and telephone numbers, correspondence, advertisements, brochures, sales material, training material, sales presentations, documents evidencing or referring to Defendants' services, products, data, computer tapes, disks, or other computerized records, books, written or printed records, handwritten notes, telephone logs, "verification" or "compliance" tapes or other audio or video tape recordings, receipt books, invoices, postal receipts, 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, including electronically stored materials, that relate to the business practices or business or personal

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finances of Defendants or other entity directly or indirectly under the control of Defendants;
and

B. Failing to create and maintain books, records, and accounts that, in reasonable detail, accurately, fairly, and completely reflect the incomes, assets, disbursements, transactions and use of monies by Defendants, or any other entity owned, managed or controlled by any Defendant.

**MAIL RECEIVED BY OR SENT FROM COMMERCIAL
MAIL RECEIVING AGENCIES**

 **VIII. IT IS FURTHER ORDERED** that all Commercial Mail Receiving Agencies (“CMRA”) where Defendants maintain accounts or receive mail, including those at 4320 Winfield Road, Warrenville, Illinois 60555, and 1111 Lincoln Road, 4th Floor, Miami Beach, Florida 33139, shall, until further Order of this Court:

A. Hold and secure all mail received for Enterprise Who’s Who, PCM Collections, 9163-7710 Quebec, Inc., and/or Rodolfo Garcia Rodriguez, Jr.; and

B. Immediately cease mailing letters, packages, or any other item for or on behalf of Enterprise Who’s Who, PCM Collections, 9163-7710 Quebec, Inc., or Rodolfo Garcia Rodriguez, Jr.

NOTICE TO EMPLOYEES AND AFFILIATES

IX. IT IS FURTHER ORDERED that Defendants shall immediately provide a copy of this Order to each of their corporations, subsidiaries, affiliates, participating associates,

agents, employees, attorneys, and assigns. Within ten (10) calendar days following service of this Order by the FTC, Defendants shall provide the FTC with an affidavit identifying the names, titles, addresses, and telephone numbers of the persons and entities that Defendants have served with a copy of this Order in compliance with this provision.

ORDER TO SHOW CAUSE

X. **IT IS FURTHER ORDERED**, pursuant to Fed. R. Civ. P. 65(b), that Defendants shall appear on the 16th day of October, 2008, at 5:00 p.m. at the United States Courthouse, Courtroom 5, Hato Rey, P.R., to show cause, if any there be, why this Court should not enter a preliminary injunction, pending final ruling on the complaint, against Defendants enjoining them from further violations of the FTC Act, continuing the freeze of their assets, and imposing such additional relief as may be appropriate.

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EXPIRATION OF THIS ORDER

XI. **IT IS FURTHER ORDERED** that the Temporary Restraining Order granted herein shall expire on 10/17/08, 2008, at 11:59 PM, unless within such time the Order, for good cause shown, is extended, or unless the Defendants consent that it should be extended for a longer period of time.

SERVICE OF PLEADINGS, EVIDENCE, AND WITNESS LISTS

XII. 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 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 business day prior to the preliminary injunction hearing in this matter. *Provided* that service shall be performed by personal or overnight delivery or by facsimile, 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 Defendants during the pendency of this action shall be resolved, pursuant to Local Rule 65.1, 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 (4) business days 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' expected testimony, and an explanation of why the

taking of live testimony would be helpful to this Court. Any papers opposing a timely motion to present live testimony or to present live testimony in response to live testimony to be presented by another party shall be filed with this Court and served on the other parties at least two business days prior to the preliminary injunction hearing in this matter. *Provided* that service shall be performed by personal or overnight delivery or by facsimile, 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.

CORRESPONDENCE WITH PLAINTIFF

XIII. IT IS FURTHER ORDERED that, for the purposes of this Order, all service on and correspondence to the FTC shall be addressed to: James A. Prunty, Federal Trade Commission, 601 New Jersey Avenue, NW, Room NJ-2122, Washington, DC 20001. Telephone: (202) 326-2438; Facsimile: (202) 326-2558. Any correspondence should be by facsimile, international mail courier, electronic mail, or by hand. Email may be addressed to: jprunty@ftc.gov.

SERVICE OF THIS ORDER

XIV. IT IS FURTHER ORDERED that copies of this Order may be served by facsimile transmission, email transmission, personal or overnight delivery, or by US Mail, by agents and employees of the FTC or any state or federal law enforcement agency or by private process server, on: (1) Defendants; (2) any financial institution, entity or person that holds, controls, or maintains custody of any account or asset of Defendants, or has held, controlled



or maintained custody of any account or asset of Defendants; or (3) any other person or entity that may be subject to any provision of this Order.

RETENTION OF JURISDICTION

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

pm. IT IS SO ORDERED, this 9th day of October, 2008, at 12:30


U.S.D.J.
UNITED STATES DISTRICT JUDGE