

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

FEDERAL TRADE COMMISSION,	:	CIVIL ACTION NO. 10-538 (MLC)
	:	
Plaintiff,	:	<b>ORDER AND FINAL JUDGMENT</b>
	:	
v.	:	
	:	
PREFERRED PLATINUM SERVICES	:	
NETWORK, LLC, et al.,	:	
	:	
Defendants.	:	
_____	:	

For the reasons stated in the Court's Opinion, dated December 22, 2010, **IT IS** on this 22nd day of December, 2010, **ORDERED** that the plaintiff's motion for judgment by entry of default (dkt. entry no. 39) is **GRANTED**; and

**IT IS FURTHER ORDERED** that for purposes of this Order, the following definitions shall apply:

1. **"Asset"** means any legal or equitable interest in, right to, or claim to, any real and personal property, including, but not limited to, "goods," "instruments," "equipment," "fixtures," "general intangibles," "inventory," "checks," "notes" (as these terms are defined in the Uniform Commercial Code), and all chattel, leaseholds, contracts, mail or other deliveries, shares of stock, lists of consumer names, accounts, credits, premises, receivables, funds, reserve funds, and cash, wherever located.
2. **"Assisting others"** includes, but is not limited to:
  - (1) performing customer service functions, including, but not limited to, receiving or responding to consumer complaints;
  - (2) formulating or providing, or arranging for the formulation or provision of, any marketing material;
  - (3) providing names of, or assisting in the generation of lists of, potential customers;
  - (4) performing marketing or billing services of any kind;
  - (5) processing credit and debit card payments; or
  - (6) acting or serving as an owner, officer, director, manager, or principal of any entity.

3. **"Business Defendant"** means Preferred Platinum Services Network, LLC, also doing business as the Home Based Associate Program, the Postcard Processing Program, and PPSN, LLC, and its successors and assigns.
4. **"Defendants"** means the Individual Defendants and the Business Defendant, individually, collectively, or in any combination.
5. **"Document"** is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts, Internet sites, webpages, websites, electronic correspondence, including e-mail and instant messages, photographs, audio and video recordings, contracts, accounting data, advertisements (including, but not limited to, advertisements placed on the World Wide Web), FTP Logs, Server Access Logs, USENET Newsgroup postings, World Wide Web pages, 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, computer records, and other data compilations from which information can be obtained and translated. A draft or non-identical copy is a separate document within the meaning of the term.
6. **"FTC"** or **"Commission"** means Federal Trade Commission.
7. **"Individual Defendant(s)"** means Rosalie Florie and/or Philip D. Pestrichello, individually, collectively, or in any combination.
8. **"Person"** means a natural person, organization, or other legal entity, including a corporation, partnership, proprietorship, association, cooperative, or any other group or combination acting as an entity.
9. **"Work-at-Home Opportunity"** means any good, service, plan, or program that is represented, expressly or by implication, to assist an individual in any manner to earn money while working from home or from locations other than the business premises of the Defendant(s).
10. The words **"and"** and **"or"** shall be understood to have both conjunctive and disjunctive meanings.

**I. BAN ON MARKETING OR SELLING WORK-AT-HOME OPPORTUNITIES**

**IT IS FURTHER ORDERED** that Individual Defendants, whether acting directly or through any other person, corporation, partnership, subsidiary, division, agent, or other device, are permanently restrained and enjoined from:

- A.** Advertising, marketing, promoting, offering for sale, or selling any Work-at-Home Opportunity; and
- B.** Assisting others engaged in advertising, marketing, promoting, offering for sale or selling any Work-at-Home Opportunity.

**II. PROHIBITED REPRESENTATIONS RELATING TO ANY GOODS OR SERVICES**

**IT IS FURTHER ORDERED** that Defendants and their officers, agents, servants, employees, and all persons in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, partnership, subsidiary, division, agent, or other device, in connection with the advertising, marketing, promotion, offering for sale or sale of any good, service, plan, or program, are hereby permanently restrained and enjoined from misrepresenting, or assisting others in misrepresenting, expressly or by implication, any material fact, including, but not limited to:

- A.** That consumers are likely to make a substantial amount of money by enrolling in any plan or program;
- B.** That Defendants will pay consumers a specific sum per postcard processed;

- C. The total costs to purchase, receive, or use, and the quantity of, the good, service, plan, or program;
- D. Any material restriction, limitation, or condition to purchase, receive, or use the good, service, plan, or program;
- E. Any material aspect of the nature or terms of any refund, cancellation, exchange, or repurchase policy, including, but not limited to, the likelihood of a consumer obtaining a full or partial refund, or the circumstances in which a full or partial refund will be granted to the consumer; and
- F. Any material aspect of the performance, efficacy, nature or other characteristic of the good, service, plan, or program.

### **III. MONETARY RELIEF**

**IT IS FURTHER ADJUDGED** that **JUDGMENT IS HEREBY ENTERED** in favor of the Commission and against Defendants, jointly and severally, in the amount of One Million, Three Hundred Eighty-Six Thousand, Six Hundred Twenty-Five Dollars (\$1,386,625), as equitable monetary relief for consumer injury; and

**IT IS FURTHER ORDERED** that this monetary judgment shall become immediately due and payable upon entry of this Order, and interest computed at the rate prescribed under 28 U.S.C. § 1961(a), as amended, shall immediately begin to accrue on the unpaid balance; and

**IT IS FURTHER ORDERED** that all funds paid pursuant to this Order shall be deposited into a fund administered by the Commission or its agents to be used for equitable relief, including, but not limited to, redress to consumers, and any

attendant expenses for the administration of such equitable relief; in the event that direct redress to consumers is wholly or partially impracticable or funds remain after the redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendants' practices alleged in the Complaint; and

**IT IS FURTHER ORDERED** that any funds not used for such equitable relief shall be deposited to the United States Treasury as disgorgement; and

**IT IS FURTHER ORDERED** that Defendants shall have no right to challenge the Commission's choice of remedies in this Order, and Defendants shall have no right to contest the manner of distribution chosen by the Commission; and

**IT IS FURTHER ORDERED** that no portion of any payment under the Judgment herein shall be deemed a payment of any fine, penalty, or punitive assessment; and

**IT IS FURTHER ORDERED** that Defendants relinquish all dominion, control, and title to the funds paid to the fullest extent permitted by law; Defendants shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise; and

**IT IS FURTHER ORDERED** that the facts as alleged in the Complaint shall be taken as true, without further proof, in any

subsequent civil litigation by or on behalf of the Commission, including in a proceeding to enforce its rights to any payment or money judgment pursuant to this Order, such as a nondischargeability complaint in any bankruptcy case; and

**IT IS FURTHER ORDERED** that, in accordance with 31 U.S.C. § 7701, Defendants are hereby required, unless they have done so already, to furnish to the Commission their taxpayer identifying numbers and/or social security numbers, which shall be used for the purposes of collecting and reporting on any delinquent amount arising out of Defendants' relationship with the government.

#### **IV. CONSUMER INFORMATION**

**IT IS FURTHER ORDERED** that Defendants, and their officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, are permanently restrained and enjoined from:

- A.** Disclosing, using, or benefitting from customer information, including the name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account), of any person which any Defendant obtained prior to entry of this Order in connection with the marketing and sale of Work-at-Home Opportunities; and
- B.** Failing to dispose of such customer information in all forms in their possession, custody, or control within thirty (30) days after entry of this Order. Disposal shall be by means that protect against unauthorized access to the customer information, such as by burning, pulverizing, or shredding any papers, and by erasing or

destroying any electronic media, to ensure that the customer information cannot practicably be read or reconstructed; **PROVIDED, HOWEVER,** that customer information need not be disposed of, and may be disclosed, to the extent requested by a government agency or required by a law, regulation, or court order.

**V. LIFTING OF ASSET FREEZE**

**IT IS FURTHER ORDERED** that the freeze of Defendants' assets set forth in the Preliminary Injunction, entered by this Court on February 16, 2010, shall be lifted to the extent necessary to turn over Defendants' assets as required by Section III of this Order, and upon completion of the turn-over, shall be lifted permanently.

**VI. CLOSING OF BUSINESS DEFENDANTS' MAIL BOXES**

**IT IS FURTHER ORDERED** that, to the extent the FTC has not done so already, it may terminate any contract or agreement for a post office box or a commercial mail receiving agency box where any Defendant received mail on behalf of the Business Defendant, and direct that the mail be returned to sender unopened. Where the FTC has recovered mail sent to those mail boxes during the pendency of this lawsuit pursuant to the terms of the Preliminary Injunction entered on February 16, 2010, the FTC shall return to the sender all funds sent to the Defendants' mail boxes by consumers seeking to participate in Defendants' Work-at-Home Opportunity after the filing of this lawsuit on February 1, 2010, if the FTC has not done so already.

**VII. TURNOVER OF ASSETS HELD BY THIRD PARTIES**

**IT IS FURTHER ORDERED** that, to partially satisfy the monetary judgment set forth in Section III above, any law firm, financial or brokerage institution, escrow agent, title company, commodity trading company, automated clearing house, payment processor, business entity, or Person served with a copy of this Order, that holds, controls or maintains custody of any account or asset of, on behalf of, or for the benefit of Defendants, or has held, controlled, or maintained custody of any account or asset of, on behalf of, or for the benefit of Defendants, including, but not limited to:

1. TD Bank; and
2. JP Morgan Chase Bank, N.A.

shall turn over such asset or funds to the Commission, in accordance with instructions provided by a representative of the Commission, within ten (10) business days of receiving notice of this Order by any means, including but not limited to by facsimile. To the extent any third party has assessed or deducted any fees or penalties against the accounts in which the frozen funds were maintained, those amounts shall be restored to the accounts in their entirety before the funds are turned over to the Commission in accordance with this Section; **PROVIDED, HOWEVER,** that any bank account that was opened prior to June 2007 as a UTMA custodial account in the name of any minor child shall



be exempted from this provision; and **PROVIDED FURTHER**, that any direct deposit of child support payments ordered by any court of competent jurisdiction that was deposited after the effectuation of the asset freeze contained in the TRO into an account owned or controlled by, or maintained for the benefit of Defendant Florie shall also be exempted from this provision.

**VIII. COMPLIANCE MONITORING**

**IT IS FURTHER ORDERED** that, for the purpose of monitoring and investigating compliance with any provision of this Order:

- A.** Within ten (10) days of receipt of written notice from a representative of the Commission, Defendants each shall submit additional written reports, which are true and accurate and sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and provide entry during normal business hours to any business location in each Defendant's possession or direct or indirect control to inspect the business operation;
- B.** In addition, the Commission is authorized to use all other lawful means, including but not limited to:
  - 1.** obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, 45 and 69;
  - 2.** having its representatives pose as consumers and suppliers to Defendants, their employees, or any other entity managed or controlled in whole or in part by any Defendant, without the necessity of identification or prior notice; and
- C.** Defendants each shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or

employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present; **PROVIDED, HOWEVER,** that nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

#### **IX. COMPLIANCE REPORTING**

**IT IS FURTHER ORDERED** that, in order that compliance with the provisions of this Order may be monitored:

- A.** For a period of five (5) years from the date of entry of this Order,
  - 1.** Each Individual Defendant shall notify the Commission of the following:
    - a)** Any changes in such Defendant's residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;
    - b)** Any changes in such Defendant's employment status (including self-employment), and any change in such Defendant's ownership in any business entity within ten (10) days of the date of such change. Such notice shall include the name and address of each business that such Defendant is affiliated with, employed by, creates or forms, or performs services for; a detailed description of the nature of the business; and a detailed description of such Defendant's duties and responsibilities in connection with the business or employment; and
    - c)** Any changes in such Defendant's name or use of any aliases or fictitious names within ten (10) days of the date of such change;

2. Defendants shall notify the Commission of any changes in structure of any Business Defendant or any business entity that any Defendant directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Order, including but not limited to: incorporation or other organization; a dissolution, assignment, sale, merger, or other action; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; or a change in the business name or address, at least thirty (30) days prior to such change, **PROVIDED THAT**, with respect to any such change in the business entity about which a Defendant learns less than thirty (30) days prior to the date such action is to take place, such Defendant shall notify the Commission as soon as is practicable after obtaining such knowledge.

B. One hundred eighty (180) days after the date of entry of this Order and annually thereafter for a period of five (5) years, Defendants each shall provide a written report to the FTC, which is true and accurate and sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this Order. This report shall include, but not be limited to:

1. For each Individual Defendant:

- a) such Defendant's then-current residence address, mailing addresses, and telephone numbers;
- b) such Defendant's then-current employment status (including self-employment), including the name, addresses, and telephone numbers of each business that such Defendant is affiliated with, employed by, or performs services for; a detailed description of the nature of the business; and a detailed description of such Defendant's duties and

responsibilities in connection with the business or employment; and

- c) Any other changes required to be reported under Subsection A of this Section.

2. For all Defendants:

- a) A copy of each acknowledgment of receipt of this Order, obtained pursuant to the Section titled "Distribution of Order;"
- b) Any other changes required to be reported under Subsection A of this Section.

- C. Each Defendant shall notify the Commission of the filing of a bankruptcy petition by such Defendant within fifteen (15) days of filing.
- D. For the purposes of this Order, Defendants shall, unless otherwise directed by the Commission's authorized representatives, send by overnight courier (not the U.S. Postal Service) all reports and notifications to the Commission that are required by this Order to:

Associate Director for Enforcement Bureau of  
Consumer Protection  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580  
RE: FTC v. Preferred Platinum Services Network,  
LLC et al.  
No. 10-cv-538-MLC-LHG (D.N.J. Feb. 1, 2010)

**PROVIDED THAT**, in lieu of overnight courier, Defendants may send such reports or notifications by first-class mail, but only if Defendants contemporaneously send an electronic version of such report or notification to the Commission at [Debrief@ftc.gov](mailto:Debrief@ftc.gov).

- E. For purposes of the compliance reporting and monitoring required by this Order, the Commission is authorized to communicate directly with each Defendant.

**X. RECORDKEEPING**

**IT IS FURTHER ORDERED** that, for a period of eight (8) years from the date of entry of this Order, Business Defendant and Individual Defendants for any business for which they, individually or collectively, are the majority owner or directly or indirectly control, are hereby restrained and enjoined from failing to create and retain the following records:

- A.** Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
- B.** Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;
- C.** Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;
- D.** Complaints and refund requests (whether received directly or indirectly, such as through a third party,) and any responses to those complaints or requests;
- E.** Copies of all sales scripts, training materials, advertisements, or other marketing materials; and
- F.** All records and documents necessary to demonstrate full compliance with each provision of this Order, including but not limited to, copies of acknowledgments of receipt of this Order required by the Sections titled "Distribution of Order" and "Acknowledgment of Receipt of Order" and all reports submitted to the FTC pursuant to the Section titled "Compliance Reporting."

**XI. DISTRIBUTION OF ORDER**

**IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry of this Order, Defendants shall deliver copies of the Order as directed below:

- A. Business Defendant:** Each Business Defendant must deliver a copy of this Order to (1) all of its principals, officers, directors, and managers; (2) all of its employees, agents, and representatives who engage in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting." For current personnel, delivery shall be within five (5) days of service of this Order upon such Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities. For any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting," delivery shall be at least ten (10) days prior to the change in structure.
- B. Individual Defendant as control person:** For any business that an Individual Defendant controls, directly or indirectly, or in which such Defendant has a majority ownership interest, such Defendant must deliver a copy of this Order to (1) all principals, officers, directors, and managers of that business; (2) all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting." For current personnel, delivery shall be within five (5) days of service of this Order upon such Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities. For any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting," delivery shall be at least ten (10) days prior to the change in structure.

- C. Individual Defendant as employee or non-control person:**  
For any business where an Individual Defendant is not a controlling person of a business but otherwise engages in conduct related to the subject matter of this Order, such Defendant must deliver a copy of this Order to all principals and managers of such business before engaging in such conduct.
- D.** Defendants must secure a signed and dated statement acknowledging receipt of the Order, within thirty (30) days of delivery, from all persons receiving a copy of the Order pursuant to this Section.

**XII. ACKNOWLEDGMENT OF RECEIPT OF ORDER**

**IT IS FURTHER ORDERED** that each Defendant, within five (5) business days of receipt of this Order as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Order.

**XIII. RETENTION OF JURISDICTION**

**IT IS FURTHER ORDERED** that the Clerk of the Court designate the action as **CLOSED**, but this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

s/ Mary L. Cooper  
**MARY L. COOPER**  
United States District Judge