

The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

JOHN STEFANCHIK, individually and as an
officer and director of Beringer Corporation, *et*
al.,

Defendants.

Case No. CV04-1852RSM

**STIPULATED SUPPLEMENTAL
FINAL ORDER TO MODIFY FINAL
JUDGMENT AND ORDER
PURSUANT TO FED. R. CIV. P. 60(b)**

Plaintiff, the Federal Trade Commission ("Commission" or "FTC"), pursuant to Federal Rule of Civil Procedure 60(b), and defendants John Stefanchik and Beringer Corporation ("Defendants"), by and through their attorneys, submit this Stipulated Supplemental Final Order to Modify Final Judgment and Order Pursuant to Fed. R. Civ. P. 60(b) ("Stipulated Supplemental Order") for approval by this Court in order to resolve the FTC's monetary claims against the Defendants arising from the Final Judgment and Order entered against Defendants on April 3, 2007.

Being fully advised in the premises and acting upon stipulation of the parties to enter this Stipulated Supplemental Order, the Court finds and orders:

FINDINGS

1. This Court entered a Final Judgment and Order For Permanent Injunction and Other Equitable Relief ("Final Order") against Defendants on April 3, 2007. This Court has

1 jurisdiction under Paragraph X of the Final Order, which provides that the Court retains
2 jurisdiction of this matter for purposes of construction, modification, and enforcement of the
3 Final Order.

4 2. In the Final Order, the Court found that uncontroverted evidence established that
5 Defendants violated Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a), and
6 Sections 310.3(a)(2)(iii) and 310.3(a)(4) of the Telemarketing Sales Rule ("TSR"), 16 C.F.R.
7 §§310.3(a)(2)(iii) and 310.3(a)(4).

8 3. Under Paragraph IV.A of the Final Order, the Court entered judgment for
9 equitable monetary relief against Defendants, jointly and severally, and in favor of the FTC in
10 the amount of \$17,775,369.00, to be paid within ten days of entry of the Final Order. Paragraph
11 IV.C of the Final Order provides that, in the event Defendants fail to pay the Commission the
12 judgment amount, interest computed at the rate prescribed under 28 U.S.C. § 1691, as amended,
13 shall immediately begin to accrue on the unpaid balance.

14 4. The Ninth Circuit Court of Appeals subsequently affirmed this Court's judgment
15 against Defendants and in favor of the Commission. *FTC v. Stefanchik*, 559 F.3d 924 (9th Cir.
16 2009). None of the parties filed a further appeal of that decision and the order is final.

17 5. Defendants have not paid any amount of the judgment to the Commission and,
18 consequently, owe the Commission, jointly and severally, the entire judgment amount of
19 \$17,775,369.00, plus the interest accrued. On or about May 7, 2007, the Commission filed a
20 judgment lien against the real property where John Stefanchik resided at the time of judgment:
21 9022 North Mercer Way, Mercer Island, Washington.

22 6. Warwick Properties LLC ("Warwick"), among other things, holds title to the real
23 property located at 9022 North Mercer Way, Mercer Island, Washington (the "Property"). On or
24 about October 6, 2008, Warwick filed a petition for relief in the U.S. Bankruptcy Court for the
25 Western District of Washington, under Chapter 11 of Title 11 of the U.S. Bankruptcy Code.
26 Defendant John Stefanchik's wife, Heidi Fogg, is the manager of Warwick. To pursue its
27 judgment lien against the Property, the FTC filed a secured claim in the Warwick bankruptcy
28 case, and Warwick stated that it intends to dispute the Commission's claim.

1 7. In addition to filing a secured claim, on December 11, 2009, the Commission
2 filed an adversary proceeding, naming Warwick, John Stefanchik and Heidi Fogg as defendants
3 (the "Adversary Proceeding"). *FTC v. Warwick Properties LLC, et al.*, Adversary No. 09-01584
4 (Bankr. W.D. Wash.). In the Adversary Proceeding, the Commission made various claims
5 against John Stefanchik, Heidi Fogg and Warwick, including a reverse veil-piercing claim
6 alleging that Warwick is a sham or the alter ego of John Stefanchik.

7 8. On or about May 10, 2010, the bankruptcy court confirmed Warwick's Fourth
8 Amended Plan of Reorganization (the "Plan"). Warwick's Plan provides for the sale of the
9 Property and for the distribution of the proceeds of the sale to its creditors. Starting in June
10 2010, the marketing and sale of the Property will be conducted by one of the banks holding a
11 secured claim on the Property.

12 9. The Defendants, Heidi Fogg, and Warwick, along with the FTC, have agreed to
13 resolve the claims in the Adversary Proceeding and a potential dispute over the proof of claim
14 the FTC filed in the Warwick Bankruptcy Case, as reflected in the attached stipulated orders
15 **(Exhibits A and B)**.

16 10. In addition, Heidi Fogg and Warwick have agreed to be bound by the terms of
17 this Stipulated Supplemental Order and stipulate and agree to entry of this Stipulated
18 Supplemental Order to settle and resolve the Commission's monetary claim against Defendants.

19 11. Except as modified by this Stipulated Supplemental Order, the Final Order
20 entered on April 3, 2007, shall remain in full force and effect unless otherwise ordered by this
21 Court.

22 12. The parties agree that the effective date of this agreement is defined as the date on
23 which this Court's order approving the Stipulated Supplemental Order becomes final and is not
24 subject to appeal. If this Stipulated Supplemental Order is not approved by this Court, then the
25 parties also agree that this Stipulated Supplemental Order will automatically terminate and be of
26 no further force and effect.

27 13. Entry of this Stipulated Supplemental Order is in the public interest.
28

14. The Defendants, Heidi Fogg, and Warwick further waive all rights to appeal or otherwise challenge or contest the validity of this Stipulated Supplemental Order.

DEFINITIONS

1. **"Adversary Proceeding"** means the adversary proceeding the Commission filed on December 11, 2009 in the Warwick Bankruptcy Case, naming Warwick, John Stefanchik, and Heidi Fogg as defendants. *FTC v. Warwick Properties LLC, et al.*, Adversary No. 09-01584 (Bankr. W.D. Wash.).

2. **"Bankruptcy Court"** means the U.S. Bankruptcy Court for the Western District of Washington, which presides over the Warwick Bankruptcy Case.

3. **"Defendants"** means John Stefanchik, individually and as an officer and director of Beringer Corporation, and Beringer Corporation, formerly d.b.a. The Stefanchik Organization, as well as its successors and assigns, whether acting directly or through any corporation, subsidiary, division, or other device.

4. **"Heidi Fogg"** means Heidi Fogg and/or Heidi Stefanchik, by any name, individually and as an officer and manager of Warwick.

5. **"Monetary Judgment"** means the entire judgment amount of \$17,775,369.00, plus the interest from April 3, 2007 forward at the rate prescribed under 28 U.S.C. § 1961, as amended, that Defendants, jointly and severally, owe to the Commission under the Final Order.

6. **"Property"** means the real property described in the King County real property records as "Lot 21, Sunnybank" with a street address of 9022 North Mercer Way, Mercer Island, Washington.

7. **"Warwick"** means Warwick Properties LLC, as well as its successors and assigns, whether acting directly or through any corporation, subsidiary, division, or other device.

8. **"Warwick Bankruptcy Case"** means the Chapter 11 bankruptcy case filed by Warwick Properties, LLC, in the U.S. Bankruptcy Court for the Western District of Washington, Case No. 08-16620.

ORDER

I. MONETARY JUDGMENT

IT IS HEREBY ORDERED that:

A. Defendants, Fogg, and Warwick agree to partially satisfy the Monetary Judgment in accordance with the terms and conditions in Subsections B through D of this Section. Upon satisfaction of *all* terms and conditions in Subsections B through D, the Monetary Judgment shall be suspended against Defendants, but remains subject to reinstatement under Section II.

B. Within ten (10) days of the date of entry of this Order, Defendants and Heidi Fogg, in accordance with the directions provided by the Commission, shall pay to the Commission, by wire transfer, certified check, or money order, nine hundred thousand dollars (\$900,000.00). In addition, Defendants and Heidi Fogg agree to transfer to the Commission all of their (singular, collective and/or joint) legal and equitable rights, title and/or interest(s) in the funds described in the attached **Exhibit C**.

C. Within five (5) days from the date of the closing on the sale of the Property pursuant to the Warwick Bankruptcy Case, John Stefanchik and Heidi Fogg shall fully cooperate with James G. Murphy Co. ("JGM") to take such steps as JGM may require to take full possession of the personal property described in the attached **Exhibit D**, and, to enter into an agreement with JGM to dispose of said property. Until John Stefanchik and Heidi Fogg surrender possession of the personal property described in the attached **Exhibit D** to JGM, they shall maintain and take no action to diminish the value of said property. As soon as is reasonably possible after taking possession of said personal property, JGM shall, in accordance with the agreement between JGM, John Stefanchik, and Heidi Fogg, liquidate the personal property. After all of said personal property has been liquidated, JGM shall account for the net proceeds derived therefrom, and transfer all such net proceeds to the Commission in accordance with instructions provided by the Commission.

D. The Defendants, Heidi Fogg, and Warwick shall have stipulated to, and the Bankruptcy Court shall have entered, an order in the Bankruptcy Case authorizing Warwick to enter into: a) this Stipulated Supplemental Order; b) the Claim Order (as defined below); and, the

Judgment and Order (as defined below), which order shall have become final and non-appealable. In addition, the Bankruptcy Court shall have entered orders: a) allowing the Commission's claim as a secured claim under 11 U.S.C. §§ 502 and 506 in the Warwick Bankruptcy Case, and as reflected in the attached order allowing claim (**Exhibit A**, the "Claim Order"); and b) resolving the parties' claims in the Adversary Proceeding, as reflected in the Judgment and Order (attached hereto as **Exhibit B**), both of which orders shall have become final and non-appealable.

E. Defendants, Heidi Fogg, and Warwick agree that they will not, whether acting directly or through any corporation, partnership, limited liability company, division, subsidiary, trade name, or other entity or device, submit to any federal or state tax authority any tax return, amended tax return, or other official document that takes a deduction for, or seeks a tax refund or any other tax benefit for, the payments that are to be made pursuant to Subsections I.B and I.C of this Stipulated Supplemental Order.

F. To ensure compliance with Subsection I.E of this Stipulated Supplemental Order: (i) Defendants, Heidi Fogg, and Warwick each shall deliver to the Commission copies of all of their respective signed and completed federal and state income tax returns, and all amended returns (if any), including all related forms, schedules, statements, and attachments, that they file for each year in which payments are made pursuant to Subsections I.B and I.C of this Stipulated Supplemental Order. The aforementioned deliveries shall be made to the Commission within ten (10) days after each such return and amended return (if any), is officially filed with the Internal Revenue Service or a state tax authority; and (ii) for each year in which any part of the payments described in Subsections I.B and I.C of this Stipulated Supplemental Order are made, the Defendants, Heidi Fogg, and Warwick each shall, within thirty (30) days after their respective final date for filing an amended federal tax return for that year, sign and submit to the Internal Revenue Service ("IRS") IRS Form 4506, along with a payment to the IRS of the Form 4506 fee, directing the IRS to send to the Regional Director, FTC Northwest Region, 915 Second Avenue, Suite 2896, Seattle, WA 98174 copies of their respective original tax return and all amended tax returns (if any) that they filed with the IRS for that year.

1 G. All money paid to the Commission pursuant to this Order shall be deposited into a
2 fund administered by the Commission or its representatives to be used for equitable relief,
3 including consumer redress and any attendant expenses for the administration of any redress
4 fund. If direct redress to consumers is wholly or partially impracticable or money remains after
5 redress is completed, the Commission may apply any remaining money for such other equitable
6 relief (including consumer information remedies) as it determines to be reasonably related to
7 Defendants' practices alleged in the Complaint. Any monies not used for such equitable relief
8 shall be deposited to the U.S. Treasury as disgorgement. Defendants, Heidi Fogg, and Warwick
9 shall have no right to challenge any actions the Commission or its representatives may take
10 pursuant to this Section.

11 H. In accordance with 31 U.S.C. § 7701, Defendants, Heidi Fogg, and Warwick are
12 hereby required, unless they have done so already, to furnish to the Commission each of their
13 taxpayer identifying numbers (social security numbers or employer identification numbers),
14 which shall be used for purposes of collecting and reporting on any delinquent amount arising
15 out of their relationship with the government;

16 I. Defendants, Heidi Fogg, and Warwick relinquish all dominion, control, and title
17 to the funds paid to the fullest extent permitted by law. Defendants, Heidi Fogg, and Warwick
18 shall make no claim to, or demand return of, the funds, directly or indirectly, through counsel or
19 otherwise; and

20 J. Defendants and Heidi Fogg agree that the facts alleged in the Complaint filed in
21 this action shall be taken as true without further proof in any bankruptcy case or subsequent civil
22 litigation pursued by the Commission to enforce its rights to any payment or money judgment
23 pursuant to this Stipulated Supplemental Order, including, but not limited to, a
24 nondischargeability complaint in any bankruptcy case. Defendants and Heidi Fogg further
25 stipulate and agree that the facts alleged in the Complaint establish all elements necessary to
26 sustain an action pursuant to, and that this Stipulated Supplemental Order and the Final Order
27 shall have collateral estoppel effect for purposes of, Section 523(a)(2)(A) of the Bankruptcy
28 Code, 11 U.S.C. § 523(a)(2)(A). In addition, Defendants and Heidi Fogg agree that if any of

1 them file a petition for relief or a petition for relief is filed against them (jointly or separately)
 2 under 11 U.S.C. § 101, *et seq.*, and the payment to the Commission under Subsection B above is
 3 subsequently recovered or avoided by the debtor, trustee, or a creditor, the Monetary Judgment
 4 shall not be suspended as described in Subsection A above and the Commission will hold an
 5 allowed, unsecured claim in the bankruptcy case in the amount of the Monetary Judgment, plus
 6 interest from April 3, 2007 at the rate prescribed under 28 U.S.C. § 1961, as amended.

7 **II. RIGHT TO REOPEN**

8 **IT IS FURTHER ORDERED** that:

9 A. By agreeing to this Stipulated Supplemental Order, Defendants, Heidi Fogg, and
 10 Warwick reaffirm and attest to the truthfulness, accuracy, and completeness of the financial
 11 statements that each of them prepared and transmitted to the Commission, including the
 12 following: (1) completed individual financial statement for John Stefanchik and Heidi Fogg
 13 (executed on May 25, 2010); (2) completed Corporate Financial Statements for Beringer
 14 Corporation (executed on May 21, 2010) and Warwick Properties, LLC (executed on June 25,
 15 2010); (3) true and correct copies of individual 2007 and 2008 tax returns for John Stefanchik
 16 and Heidi Fogg, which were previously filed with the Internal Revenue Service ("IRS"); (4) a
 17 complete list of John Stefanchik's and Heidi Fogg's personal property, including furnishings,
 18 jewelry, and art, which has a potential sale value of, or for which they paid, \$2,500.00 or more
 19 per item (lists provided by letters to the FTC dated June 14, 2010, and July 2, 2010, and by
 20 electronic mail from Sims Weymuller to Nadine Samter, dated June 22, 2010); and (5)
 21 Declaration of John Stefanchik executed July 19, 2010, and the Exhibits attached thereto
 22 (hereafter, collectively referred to as "Financial Statements"). The Commission's agreement to
 23 this Stipulated Supplemental Order is expressly premised upon the truthfulness, accuracy, and
 24 completeness of the Financial Statements, which contain material information upon which the
 25 Commission relied in negotiating and agreeing to the terms of this Stipulated Supplemental
 26 Order;

1 B. Defendants, Heidi Fogg, and Warwick certify that they have each individually
2 and jointly disclosed all assets in which any of them holds any beneficial, remainder, or actual
3 interest, whether partial or whole, including, but not limited to any jointly held assets.

4 C. If, upon motion by the FTC, this Court finds that any or all of Defendants, Heidi
5 Fogg or Warwick has failed to disclose any material asset, or misrepresented the value of any
6 asset, or made any other misrepresentation in, or omission from, the Financial Statements, then
7 as to Defendants, any suspension of the Monetary Judgment (in the amount of \$17,775,369.00,
8 plus interest), less amounts already paid, shall be lifted, the Monetary Judgment shall become
9 immediately due, and interest computed pursuant to 28 U.S.C. § 1961, as amended, shall
10 continue to accrue on the unpaid balance. *Provided, however*, that in all other respects, this
11 Stipulated Supplemental Order shall remain in full force and effect unless otherwise ordered by
12 this Court; and

13 D. Proceedings instituted under this Section are in addition to, and not in lieu of, any
14 other civil or criminal remedies as may be provided by law, including any other proceedings the
15 Commission may initiate to enforce this Stipulated Supplemental Order.

16 **III. ACKNOWLEDGMENT OF RECEIPT OF**
17 **STIPULATED SUPPLEMENTAL ORDER**

18 **IT IS FURTHER ORDERED** that within five (5) business days of receipt of this
19 Stipulated Supplemental Order as entered by the Court, Defendants, Heidi Fogg, and Warwick
20 must submit to the Commission a truthful sworn statement acknowledging receipt of this
21 Stipulated Supplemental Order.

22 **IV. CONTINUED JURISDICTION**

23 **IT IS FURTHER ORDERED** that this Court will retain jurisdiction of this matter for all
24 purposes.

25 **SO ORDERED**, this 22 day of February 2011.

26 

27 **RICARDO S. MARTINEZ**
28 **UNITED STATES DISTRICT JUDGE**

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3 Attorney for Plaintiff

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11
12

13 JOHN STEFANCHIK, individually and as
14 an officer of Beringer Corporation
15
16

17 HEIDI FOGG
18 individually and as an officer, manager, or
19 principal of Warwick, LLC
20
21


22 SIMS WEYMULLER, WSBA # 33026
23 Attorney for John Stefanchik, Beringer Corp.,
24 and Heidi Fogg
25
26

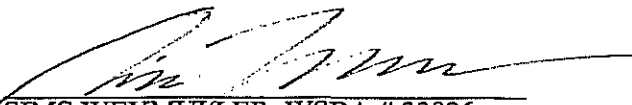
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10 
11 JOHN STEFANCHIK, individually and as
12 an officer of Beringer Corporation

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15 individually and as an officer, manager, or
16 principal of Warwick, LLC

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The Honorable Marc L. Barreca
Chapter 11

Exhibit A

UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF WASHINGTON

In Re:

Warwick Properties LLC,

Debtor-in-possession.

Case No. 08-16620

ORDER ALLOWING SECURED CLAIM OF FEDERAL TRADE COMMISSION

Plaintiff Federal Trade Commission ("FTC" or "the Commission"), and debtor Warwick Properties LLC ("Warwick"), by and through their attorneys, have agreed to entry of this Order allowing the secured claim of the FTC (the "Order") in this case.

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334. This Adversary Proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

2. Venue in the Western District of Washington is proper under 28 U.S.C. § 1409(a).

THE PARTIES

3. The FTC is an independent agency of the United States government created by statute. 15 U.S.C. §§ 41-58. The FTC is charged, *inter alia*, with enforcement of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The Commission also enforces the Telemarketing Sales Rule, 16 C.F.R. Part 310, as amended, which prohibits deceptive or abusive telemarketing acts or practices.

4. The Commission is authorized to initiate federal district court proceedings to enjoin violations of the FTC Act and the Telemarketing Sales Rule, and to secure such equitable relief as may be appropriate in each case, including restitution for injured consumers. 15 U.S.C. §§ 53(b), 57b, 6102(c), and 6105(b).

5. The FTC is a creditor with a secured claim against the Debtor as a result of a judgment the Commission obtained against Stefanchik, and others, in the United States District Court for the Western District of Washington in the case *Federal Trade Commission v. Stefanchik, et al.*, Case No. 2:04-cv-01852-RSM (W.D. Wash.) (the “Stefanchik Case”).

6. Warwick Properties LLC is a chapter 11 Debtor in this case.

7. Heidi Fogg is the manager of the Debtor and the spouse of Stefanchik. Fogg currently resides at: 9022 North Mercer Way, Mercer Island, Washington 98040.

8. John Stefanchik is the spouse of Fogg and a defendant in the Stefanchik Case. Stefanchik currently resides at: 9022 North Mercer Way, Mercer Island, Washington 98040.

FINDINGS

9. On August 24, 2004, the Commission filed a complaint in the United States District Court for the Western District of Washington (the “District Court”) against Stefanchik, a corporation he organized, Beringer Corporation (“Beringer”), and several other defendants. *Federal Trade Comm’n v. Stefanchik, et al.*, Case No. 2:04-cv-01852-RSM (W.D. Wash.). All defendants except Stefanchik and Beringer entered into stipulated judgments to resolve the FTC’s claims against them.

10. On April 3, 2007, the FTC obtained a judgment against Stefanchik and Beringer in the amount of \$17,775,369. Stefanchik and Beringer subsequently appealed the District Court's ruling.

11. The Ninth Circuit Court of Appeals affirmed the District Court's judgment against Defendants. *FTC v. Stefanchik*, 559 F.3d 924 (9th Cir. 2009). None of the parties filed a further appeal of that decision and the order is final. The full amount of the judgment awarded to the Commission, \$17,775,379 plus interest, remains outstanding as of August 11, 2010.

1 12. On May 7, 2007, while the appeal was pending, and shortly after the District
2 Court's ruling, the Commission filed a judgment lien on the home where Stefanchik resided at
3 the time of the judgment: 9022 North Mercer Way, Mercer Island, Washington (the "Mercer
4 Island Property"). The Mercer Island Property is currently titled in the name of Warwick.
5 Accordingly, the Commission filed a secured claim in Warwick's bankruptcy case. In addition,
6 the Commission filed an adversary proceeding against Warwick, Stefanchik and Heidi Fogg
7 (collectively, "Defendants") in December 2009 and asserted various claims against them,
8 including a reverse veil-piercing claim in which the Commission alleged that Warwick is a sham
9 or the alter-ego of John Stefanchik.

10 13. On or about May 10, 2010, this Court confirmed Warwick's Fourth Amended
11 Plan of Reorganization (the "Plan"). Warwick's Plan provides for the sale of the Property and
12 for the distribution of the proceeds of the sale to its creditors.

13 14. As part of the resolution of all claims among the Defendants and the FTC, the
14 parties have agreed to consensually resolve the claims the Commission asserted in the adversary
15 proceeding. In addition, the parties have agreed to resolve all claims related to the
16 Commission's proof of claim filed in this case, as reflected in this Order.

17 15. This Order represents a fair and equitable compromise of the claims at issue in
18 this case, and it is a critical part of the parties' overall resolution of claims among the
19 Commission and Defendants in the Stefanchik Case. *See* Exhibit A (Stipulated Supplemental
20 Order).

21 16. The Defendants further waive all rights to appeal or otherwise challenge or
22 contest the validity of this Order. If, however, an appeal of this Order is filed by an interested
23 party, Defendants agree to fully cooperate and assist the FTC in defending against such an
24 appeal and/or in prosecuting any claims that may arise as a result of such an appeal. Defendants
25 waive any rights to attorneys' fees that might otherwise arise in the course of defending this
26 Order on appeal.

1 **DEFINITIONS**

2 1. **"Defendants"** means John Stefanchik, individually and as an officer and director
3 of Beringer Corporation, formerly d.b.a. The Stefanchik Organization, as well as its successors
4 and assigns, whether acting directly or through any corporation, subsidiary, division, or other
5 device.

6 2. **"Fogg"** means defendant Heidi Fogg and/or Heidi Stefanchik, by any name,
7 individually and as an officer and manager of Warwick.

8 3. **"Monetary Judgment"** means the entire judgment amount of \$17,775,369.00,
9 plus the interest from April 3, 2007 forward at the rate prescribed under 28 U.S.C. § 1961, as
10 amended, that Defendants, jointly and severally, owe to the Commission in *Federal Trade*
11 *Commission v. Stefanchik, et al.*, Case No. 2:04-cv-01852-RSM (W.D. Wash.).

12 4. **"Property"** means the real property described in the King County real property
13 records as "Lot 21, Sunnybank", whose street address is 9022 North Mercer Way, Mercer Island,
14 Washington.

15 5. **"Stefanchik"** means defendant John Stefanchik.

16 6. **"Stefanchik Case"** means the enforcement action the Commission filed against
17 Stefanchik, and others, in the United States District Court for the Western District of
18 Washington: *Federal Trade Commission v. Stefanchik, et al.*, Case No. 2:04-cv-01852-RSM
19 (W.D. Wash.).

20 7. **"Warwick"** means Warwick Properties LLC, as well as its successors and
21 assigns, whether acting directly or through any corporation, subsidiary, division, or other device.

22 **ORDER**

23 **IT IS HEREBY ORDERED** that:

24 A. Warwick stipulates to the Commission's claim as a secured claim under 11
25 U.S.C. §§ 502 & 506 in this case in the amount of Seventeen Million, Seven Hundred and
26 Seventy-Five Thousand, Three Hundred and Sixty-Nine Dollars (\$17,775,369.00), plus interest,
27 but less any amount paid to the Commission in the Stefanchik Case (the "Claim"). Accordingly,
28

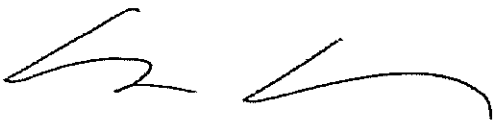
1 by entry of this Order, the Court allows the Commission's Claim as a secured claim under 11
2 U.S.C. §§ 502 & 506 in this case.

3 B. In addition, the FTC's Claim in this case, which was classified as a Class Seven
4 Claim under Warwick's Fourth Amended Plan of Reorganization, will be paid after payment of
5 Classes One through Four and Class Ten, and only to the extent Class One claims are allowed
6 claims which have been approved by the Bankruptcy Court. Fogg and Warwick further agree
7 that any Class One claim that Fogg may or will submit to this Court for approval will not exceed
8 \$1,000. In addition, Stefanchik agrees not to file any claims in this case on behalf of himself,
9 Fogg or any other entities managed, directed or controlled by either or both of them.

10 C. If: a) the Property is sold to a person or entity other than one in which any or all
11 of the Defendants, Fogg, Warwick, and/or any successors, heirs, assigns or entities related to or
12 controlled by any or all of the Defendants, Fogg and/or Warwick retain an interest, and sufficient
13 proceeds from the sale exist to pay the Commission's Claim (in part or in full) under the
14 Warwick Fourth Amended Plan of Reorganization; and b) the Defendants, Fogg and Warwick
15 otherwise satisfy the terms of this Stipulated Supplemental Order, then the Commission will
16 release its lien on the Property. If, however, the purchaser of the Property (in whole or in part) is
17 a person or entity in which any or all of the Defendants, Fogg, Warwick, and/or any successors,
18 heirs, assigns or entities related to or controlled by any or all of the Defendants, Fogg and/or
19 Warwick retain an interest, the Commission will retain its lien on the Property until the
20 Monetary Judgment is satisfied.

21 **IT IS FURTHER ORDERED** that this Court will retain jurisdiction of this matter for
22 all purposes.

23
24 Dated: January __, 2011


25
26 Marc Barreca
27 United States Bankruptcy Judge
28 (Dated as of Entered on Docket date above)

1 Respectfully submitted by:
2 FEDERAL TRADE COMMISSION

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Counsel for Warwick Properties LLC

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

JOHN STEFANCHIK, individually and as an
officer and director of Beringer Corporation, *et*
al.,

Defendants.

Case No. CV04-1852RSM

**STIPULATED SUPPLEMENTAL
FINAL ORDER TO MODIFY FINAL
JUDGMENT AND ORDER
PURSUANT TO FED. R. CIV. P. 60(b)**

Plaintiff, the Federal Trade Commission ("Commission" or "FTC"), pursuant to Federal Rule of Civil Procedure 60(b), and defendants John Stefanchik and Beringer Corporation ("Defendants"), by and through their attorneys, submit this Stipulated Supplemental Final Order to Modify Final Judgment and Order Pursuant to Fed. R. Civ. P. 60(b) ("Stipulated Supplemental Order") for approval by this Court in order to resolve the FTC's monetary claims against the Defendants arising from the Final Judgment and Order entered against Defendants on April 3, 2007.

Being fully advised in the premises and acting upon stipulation of the parties to enter this Stipulated Supplemental Order, the Court finds and orders:

FINDINGS

1. This Court entered a Final Judgment and Order For Permanent Injunction and Other Equitable Relief ("Final Order") against Defendants on April 3, 2007. This Court has

1 jurisdiction under Paragraph X of the Final Order, which provides that the Court retains
2 jurisdiction of this matter for purposes of construction, modification, and enforcement of the
3 Final Order.

4 2. In the Final Order, the Court found that uncontroverted evidence established that
5 Defendants violated Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a), and
6 Sections 310.3(a)(2)(iii) and 310.3(a)(4) of the Telemarketing Sales Rule ("TSR"), 16 C.F.R.
7 §§310.3(a)(2)(iii) and 310.3(a)(4).

8 3. Under Paragraph IV.A of the Final Order, the Court entered judgment for
9 equitable monetary relief against Defendants, jointly and severally, and in favor of the FTC in
10 the amount of \$17,775,369.00, to be paid within ten days of entry of the Final Order. Paragraph
11 IV.C of the Final Order provides that, in the event Defendants fail to pay the Commission the
12 judgment amount, interest computed at the rate prescribed under 28 U.S.C. § 1691, as amended,
13 shall immediately begin to accrue on the unpaid balance.

14 4. The Ninth Circuit Court of Appeals subsequently affirmed this Court's judgment
15 against Defendants and in favor of the Commission. *FTC v. Stefanchik*, 559 F.3d 924 (9th Cir.
16 2009). None of the parties filed a further appeal of that decision and the order is final.

17 5. Defendants have not paid any amount of the judgment to the Commission and,
18 consequently, owe the Commission, jointly and severally, the entire judgment amount of
19 \$17,775,369.00, plus the interest accrued. On or about May 7, 2007, the Commission filed a
20 judgment lien against the real property where John Stefanchik resided at the time of judgment:
21 9022 North Mercer Way, Mercer Island, Washington.

22 6. Warwick Properties LLC ("Warwick"), among other things, holds title to the real
23 property located at 9022 North Mercer Way, Mercer Island, Washington (the "Property"). On or
24 about October 6, 2008, Warwick filed a petition for relief in the U.S. Bankruptcy Court for the
25 Western District of Washington, under Chapter 11 of Title 11 of the U.S. Bankruptcy Code.
26 Defendant John Stefanchik's wife, Heidi Fogg, is the manager and owner of Warwick. To
27 pursue its judgment lien against the Property, the FTC filed a secured claim in the Warwick
28 bankruptcy case, and Warwick stated that it intends to dispute the Commission's claim.

1 7. In addition to filing a secured claim, on December 11, 2009, the Commission
2 filed an adversary proceeding, naming Warwick, John Stefanchik and Heidi Fogg as defendants
3 (the "Adversary Proceeding"). *FTC v. Warwick Properties LLC, et al.*, Adversary No. 09-01584
4 (Bankr. W.D. Wash.). In the Adversary Proceeding, the Commission made various claims
5 against John Stefanchik, Heidi Fogg and Warwick, including a reverse veil-piercing claim
6 alleging that Warwick is a sham or the alter-ego of John Stefanchik.

7 8. On or about May 10, 2010, the bankruptcy court confirmed Warwick's Fourth
8 Amended Plan of Reorganization (the "Plan"). Warwick's Plan provides for the sale of the
9 Property and for the distribution of the proceeds of the sale to its creditors. Starting in June
10 2010, the marketing and sale of the Property will be conducted by one of the banks holding a
11 secured claim on the Property, or its agents.

12 9. The Defendants, Heidi Fogg, and Warwick, along with the FTC, have agreed to
13 resolve the claims in the Adversary Proceeding and a potential dispute over the proof of claim
14 the FTC filed in the Warwick Bankruptcy Case, as reflected in the attached stipulated orders
15 (Exhibits A and B).

16 10. In addition, Heidi Fogg and Warwick have agreed to be bound by the terms of
17 this Stipulated Supplemental Order and stipulate and agree to entry of this Stipulated
18 Supplemental Order to settle and resolve the Commission's monetary claim against Defendants.

19 11. Except as modified by this Stipulated Supplemental Order, the Final Order
20 entered on April 3, 2007, shall remain in full force and effect unless otherwise ordered by this
21 Court.

22 12. The parties agree that the effective date of this agreement is defined as the date on
23 which this Court's order approving the Stipulated Supplemental Order becomes final and is not
24 subject to appeal. If this Stipulated Supplemental Order is not approved by this Court, then the
25 parties also agree that this Stipulated Supplemental Order will automatically terminate and be of
26 no further force and effect.

27 13. Entry of this Stipulated Supplemental Order is in the public interest.
28

14. The Defendants, Heidi Fogg, and Warwick further waive all rights to appeal or otherwise challenge or contest the validity of this Stipulated Supplemental Order.

DEFINITIONS

1. "Adversary Proceeding" means the adversary proceeding the Commission filed on December 11, 2009 in the Warwick Bankruptcy Case, naming Warwick, John Stefanchik, and Heidi Fogg as defendants. *FTC v. Warwick Properties LLC, et al.*, Adversary No. 09-01584 (Bankr. W.D. Wash.).

2. "Bankruptcy Court" means the U.S. Bankruptcy Court for the Western District of Washington, which presides over the Warwick Bankruptcy Case.

3. "Defendants" means John Stefanchik, individually and as an officer and director of Beringer Corporation, and Beringer Corporation, formerly d.b.a. The Stefanchik Organization, as well as its successors and assigns, whether acting directly or through any corporation, subsidiary, division, or other device.

4. "Heidi Fogg" means Heidi Fogg and/or Heidi Stefanchik, by any name, individually and as an officer and manager of Warwick.

5. "Monetary Judgment" means the entire judgment amount of \$17,775,369.00, plus the interest from April 3, 2007 forward at the rate prescribed under 28 U.S.C. § 1961, as amended, that Defendants, jointly and severally, owe to the Commission under the Final Order.

6. "Property" means the real property described in the King County real property records as "Lot 21, Sunnybank" with a street address of 9022 North Mercer Way, Mercer Island, Washington.

7. "Warwick" means Warwick Properties LLC, as well as its successors and assigns, whether acting directly or through any corporation, subsidiary, division, or other device.

8. "Warwick Bankruptcy Case" means the Chapter 11 bankruptcy case filed by Warwick Properties, LLC, in the U.S. Bankruptcy Court for the Western District of Washington, Case No. 08-16620.

ORDER

I. MONETARY JUDGMENT

IT IS HEREBY ORDERED that:

A. Defendants, Fogg, and Warwick agree to partially satisfy the Monetary Judgment in accordance with the terms and conditions in Subsections B through D of this Section. Upon satisfaction of *all* terms and conditions in Subsections B through D, the Monetary Judgment shall be suspended against Defendants, but remains subject to reinstatement under Section II.

B. Within ten (10) days of the date of entry of this Order, Defendants and Heidi Fogg, in accordance with the directions provided by the Commission, shall pay to the Commission, by wire transfer, certified check, or money order, nine hundred thousand dollars (\$900,000.00). In addition, Defendants and Heidi Fogg agree to transfer to the Commission all of their (singular, collective and/or joint) legal and equitable rights, title and/or interest(s) in the funds described in the attached Exhibit C.

C. Within five (5) days from the date of the closing on the sale of the Property pursuant to the Warwick Bankruptcy Case, John Stefanchik and Heidi Fogg shall fully cooperate with James G. Murphy, Co. ("JGM") to take such steps as JGM may require to take full possession of the personal property described in the attached Exhibit D, and, to enter into an agreement with JGM to dispose of said property. Until John Stefanchik and Heidi Fogg surrender possession of the personal property described in the attached Exhibit D to JGM, they shall maintain and take no action to diminish the value of said property. As soon as is reasonably possible after taking possession of said personal property, JGM shall, in accordance with the agreement between JGM, John Stefanchik, and Heidi Fogg, liquidate the personal property. After all of said personal property has been liquidated, JGM shall account for the net proceeds derived therefrom, and transfer all such net proceeds to the Commission in accordance with instructions provided by the Commission.

D. The Defendants, Heidi Fogg, and Warwick shall have stipulated to, and the Bankruptcy Court shall have entered, an order in the Bankruptcy Case authorizing Warwick to enter into: a) this Stipulated Supplemental Order; b) the Claim Order (as defined below); and the

1 Judgment and Order (as defined below), which order shall have become final and non-
2 appealable. In addition, the Bankruptcy Court shall have entered orders: a) allowing the
3 Commission's claim as a secured claim under 11 U.S.C. §§ 502 and 506 in the Warwick
4 Bankruptcy Case, and as reflected in the attached order allowing claim (Exhibit A, the "Claim
5 Order"); and b) resolving the parties claims in the Adversary Proceeding, as reflected in the
6 Judgment and Order (attached hereto as Exhibit B), both of which orders shall have become
7 final and non-appealable.

8 E. Defendants, Heidi Fogg, and Warwick, agree that they will not, whether acting
9 directly or through any corporation, partnership, limited liability company, division, subsidiary,
10 trade name, or other entity or device, submit to any federal or state tax authority any tax return,
11 amended tax return, or other official document that takes a deduction for, or seeks a tax refund or
12 any other tax benefit for, the payments that are to be made pursuant to Subsections I.B and I.C of
13 this Stipulated Supplemental Order.

14 F. To ensure compliance with Subsection I.E of this Stipulated Supplemental Order:
15 (i) Defendants, Heidi Fogg, and Warwick each shall deliver to the Commission copies of all of
16 their respective signed and completed federal and state income tax returns, and all amended
17 returns (if any), including all related forms, schedules, statements, and attachments, that they file
18 for each year in which payments are made pursuant to Subsections I.B and I.C of this Stipulated
19 Supplemental Order. The aforementioned deliveries shall be made to the Commission within ten
20 (10) days after each such return and amended return (if any), is officially filed with the Internal
21 Revenue Service or a state tax authority; and (ii) for each year in which any part of the payments
22 described in Subsections I.B and I.C of this Stipulated Supplemental Order are made, the
23 Defendants, Heidi Fogg, and Warwick each shall, within thirty (30) days after their respective
24 final date for filing an amended federal tax return for that year, sign and submit to the Internal
25 Revenue Service ("IRS") IRS Form 4506, along with a payment to the IRS of the Form 4506
26 fee, directing the IRS to send to The Regional Director, FTC Northwest Region, 915 Second
27 Avenue, Suite 2896, Seattle, WA 98174 copies of their respective original tax return and all
28 amended tax returns (if any) that they filed with the IRS for that year.

1 G. All funds paid to the Commission pursuant to this Stipulated Supplemental Order
2 shall be deposited into a fund administered by the Commission or its designated agent to be used
3 for equitable relief, including, but not limited to, consumer restitution and any attendant
4 expenses for the administration of any restitution fund. Defendants shall cooperate in
5 identifying and locating consumers entitled to restitution under this Stipulated Supplemental
6 Order. In the event that direct restitution to consumers is wholly or partially impracticable or
7 funds remain after restitution is completed, the Commission may apply any remaining funds for
8 such other equitable relief (including consumer information remedies) as it determines to be
9 reasonably related to the Defendants' practices alleged in the Complaint. Any funds not used for
10 such equitable relief shall be deposited to the Treasury as disgorgement. Defendants, Heidi
11 Fogg, and Warwick shall be notified as to how the funds are disbursed but shall have no right to
12 challenge the Commission's choice of remedies under this Section of this Stipulated
13 Supplemental Order.

14 H. In accordance with 31 U.S.C. § 7701, Defendants, Heidi Fogg, and Warwick are
15 hereby required, unless they have done so already, to furnish to the Commission each of their
16 taxpayer identifying numbers (social security numbers or employer identification numbers),
17 which shall be used for purposes of collecting and reporting on any delinquent amount arising
18 out of their relationship with the government;

19 I. Defendants, Heidi Fogg, and Warwick relinquish all dominion, control, and title
20 to the funds paid to the fullest extent permitted by law. Defendants, Heidi Fogg, and Warwick
21 shall make no claim to, or demand return of, the funds, directly or indirectly, through counsel or
22 otherwise; and

23 J. Defendants and Heidi Fogg agree that the facts alleged in the Complaint filed in
24 this action shall be taken as true without further proof in any bankruptcy case or subsequent civil
25 litigation pursued by the Commission to enforce its rights to any payment or money judgment
26 pursuant to this Stipulated Supplemental Order, including, but not limited to, a
27 nondischargeability complaint in any bankruptcy case. Defendants and Heidi Fogg further
28 stipulate and agree that the facts alleged in the Complaint establish all elements necessary to

1 sustain an action pursuant to, and that this Stipulated Supplemental Order and the Final Order
2 shall have collateral estoppel effect for purposes of, Section 523(a)(2)(A) of the Bankruptcy
3 Code, 11 U.S.C. § 523(a)(2)(A). In addition, Defendants and Heidi Fogg agree that if any of
4 them file a petition for relief or a petition for relief is filed against them (jointly or separately)
5 under 11 U.S.C. § 101, *et seq.*, and the payment to the Commission under Subsection B above is
6 subsequently recovered or avoided by the debtor, trustee, or a creditor, the Monetary Judgment
7 shall not be suspended as described in Subsection A above and the Commission will hold an
8 allowed, unsecured claim in the bankruptcy case in the amount of the Monetary Judgment, plus
9 interest from April 3, 2007 at the rate prescribed under 28 U.S.C. § 1961, as amended.

10 II. RIGHT TO REOPEN

11 IT IS FURTHER ORDERED that:

12 A. By agreeing to this Stipulated Supplemental Order, Defendants, Heidi Fogg, and
13 Warwick reaffirm and attest to the truthfulness, accuracy, and completeness of the financial
14 statements that each of them prepared and transmitted to the Commission, including the
15 following: (1) completed individual financial statement for John Stefanchik and Heidi Fogg
16 (executed on May 25, 2010); (2) completed Corporate Financial Statements for Beringer
17 Corporation (executed on May 21, 2010) and Warwick Properties, LLC (executed on June 25,
18 2010); (3) true and correct copies of individual 2007 and 2008 tax returns for John Stefanchik
19 and Heidi Fogg, which were previously filed with the Internal Revenue Service ("IRS"); (4) a
20 complete list of John Stefanchik's and Heidi Fogg's personal property, including furnishings,
21 jewelry, and art, which has a potential sale value of, or for which they paid, \$2,500.00 or more
22 per item (lists provided by letters to the FTC dated June 14, 2010, and July 2, 2010, and by
23 electronic mail from Sims Weymuller to Nadine Samter, dated June 22, 2010); and (5)
24 Declaration of John Stefanchik (executed on July ___, 2010), and the Exhibits attached thereto
25 (hereafter, collectively referred to as "Financial Statements"). The Commission's agreement to
26 this Stipulated Supplemental Order is expressly premised upon the truthfulness, accuracy, and
27 completeness of the Financial Statements, which contain material information upon which the
28

1 Commission relied in negotiating and agreeing to the terms of this Stipulated Supplemental
2 Order;

3 B. Defendants, Heidi Fogg, and Warwick certify that they have each individually
4 and jointly disclosed all assets in which any of them holds any beneficial, remainder, or actual
5 interest, whether partial or whole, including, but not limited to any jointly held assets.

6 C. If, upon motion by the FTC, this Court finds that any or all of Defendants, Heidi
7 Fogg or Warwick has failed to disclose any material asset, or misrepresented the value of any
8 asset, or made any other misrepresentation in, or omission from, the Financial Statements, then
9 as to Defendants, any suspension of the Monetary Judgment (in the amount of \$17,775,369.00,
10 plus interest), less amounts already paid, shall be lifted, the Monetary Judgment shall become
11 immediately due, and interest computed pursuant to 28 U.S.C. § 1961, as amended, shall
12 continue to accrue on the unpaid balance. *Provided, however*, that in all other respects, this
13 Stipulated Supplemental Order shall remain in full force and effect unless otherwise ordered by
14 this Court; and

15 D. Proceedings instituted under this Section are in addition to, and not in lieu of, any
16 other civil or criminal remedies as may be provided by law, including any other proceedings the
17 Commission may initiate to enforce this Stipulated Supplemental Order.

18 **III. ACKNOWLEDGMENT OF RECEIPT OF**
19 **STIPULATED SUPPLEMENTAL ORDER**

20 **IT IS FURTHER ORDERED** that within five (5) business days of receipt of this
21 Stipulated Supplemental Order as entered by the Court, Defendants, Heidi Fogg, and Warwick
22 must submit to the Commission a truthful sworn statement acknowledging receipt of this
23 Stipulated Supplemental Order.

24 **IV. CONTINUED JURISDICTION**

25 **IT IS FURTHER ORDERED** that this Court will retain jurisdiction of this matter for all
26 purposes.

27 **SO ORDERED**, this _____ day of _____, 2010, at _____.

The Honorable Ricardo S. Martinez
United States District Judge

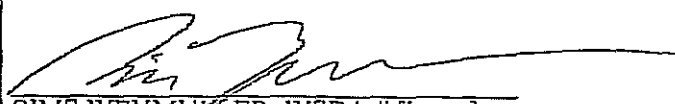
NADINE S. SAMTER, WSBA # 23881
Attorney for Plaintiff

Federal Trade Commission
915 Second Avenue, Suite 2896
Seattle, Washington 98174
(206) 220-6350
Fax: (206) 220-6366
Email: nsamter@ftc.gov



JOHN STEFANCHIK, individually and as
an officer of Beringer Corporation

HEIDI FOGG
individually and as an officer, manager, or
principal of Warwick, LLC



SIMS WEYMULLER, WSBA # [insert]
Attorney for John Stefanchik, Beringer Corp.,
and Heidi Fogg

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2505 Second Avenue, Suite 500
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The Honorable Ricardo S. Martinez
United States District Judge

NADINE S. SAMTER, WSBA # 23881
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JOHN STEFANCHIK, individually and as
an officer of Boringer Corporation

HEIDI FOGG
individually and as an officer, manager, or
principal of Warwick, LLC

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Stipulated Supplemental Final Order To Modify Final Judgment & Order - Page 10

Exhibit A to Order Allowing FTC Claim

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CERTIFICATE OF SERVICE

I hereby certify that on _____, 2010, I served the foregoing STIPULATED SUPPLEMENTAL FINAL ORDER TO MODIFY FINAL JUDGMENT AND ORDER PURSUANT TO FED. R. CIV. P. 60(b), and the Exhibits attached thereto, by electronic mail and by first-class United States mail to the following:

SIMS WEYMULLER, WSBA # [insert]
Johnson Flora, PLLC
2505 Second Avenue, Suite 500
Seattle, WA 98121
(206) 386-5566
Fax: (206) 682-0675
Email: www.johnsonflora.com
Attorney for John Stefanchik, Beringer Corp.,
and Heidi Fogg

MICHAEL ROSENBERGER, WSBA # [insert]
Gordon Tilden Thomas & Cordell, LLP
1001 Fourth Avenue, Suite 400
Seattle, WA 98154-1007
(206) 467-6477
Fax: (206) 467-6292
Email: mrosenberger@gordontilden.com

Dated: _____, 2010

s/Nadine Samter
Nadine Samter

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

In Re:

Warwick Properties LLC,

Debtor-in-possession.

Case No. 08-16620

**ORDER ALLOWING SECURED
CLAIM OF FEDERAL TRADE
COMMISSION**

Plaintiff Federal Trade Commission ("FTC" or "the Commission"), and debtor Warwick Properties LLC ("Warwick"), by and through their attorneys, have agreed to entry of this Order allowing the secured claim of the FTC (the "Order") in this case.

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334. This Adversary Proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

2. Venue in the Western District of Washington is proper under 28 U.S.C. § 1409(a).

THE PARTIES

3. The FTC is an independent agency of the United States government created by statute. 15 U.S.C. §§ 41-58. The FTC is charged, *inter alia*, with enforcement of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The Commission also enforces the Telemarketing Sales Rule, 16 C.F.R. Part 310, as amended, which prohibits deceptive or abusive telemarketing acts or practices.

Judgment and Order- Page 1

FEDERAL TRADE COMMISSION
600 Pennsylvania Ave., NW, Suite NJ-2122
Washington, D.C. 20580
(202) 326-3304

Stipulated Supp. Order to Modify - Ex. A

Exhibit A to Order Allowing FTC Claim

Page 13

4. The Commission is authorized to initiate federal district court proceedings to enjoin violations of the FTC Act and the Telemarketing Sales Rule, and to secure such equitable relief as may be appropriate in each case, including restitution for injured consumers. 15 U.S.C. §§ 53(b), 57b, 6102(c), and 6105(b).

5. The FTC is a creditor with a secured claim against the Debtor as a result of a judgment the Commission obtained against Stefanchik, and others, in the United States District Court for the Western District of Washington in the case *Federal Trade Commission v. Stefanchik, et al.*, Case No. 2:04-cv-01852-RSM (W.D. Wash.) (the "Stefanchik Case").

6. Warwick Properties LLC is a chapter 11 Debtor in this case.

7. Heidi Fogg is the manager of the Debtor and the spouse of Stefanchik. Fogg currently resides at: 9022 North Mercer Way, Mercer Island, Washington 98040.

8. John Stefanchik is the spouse of Fogg and a defendant in the Stefanchik Case. Stefanchik currently resides at: 9022 North Mercer Way, Mercer Island, Washington 98040.

FINDINGS

9. On August 24, 2004, the Commission filed a complaint in the United States District Court for the Western District of Washington (the "District Court") against Stefanchik, a corporation he organized, Beringer Corporation ("Beringer"), and several other defendants. *Federal Trade Comm'n v. Stefanchik, et al.*, Case No. 2:04-cv-01852-RSM (W.D. Wash.). All defendants except Stefanchik and Beringer entered into stipulated judgments to resolve the FTC's claims against them.

10. On April 3, 2007, the FTC obtained a judgment against Stefanchik and Beringer in the amount of \$17,775,369. Stefanchik and Beringer subsequently appealed the District Court's ruling.

11. The Ninth Circuit Court of Appeals affirmed the District Court's judgment against Defendants. *FTC v. Stefanchik*, 559 F.3d 924 (9th Cir. 2009). None of the parties filed a further

Judgment and Order- Page 2

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1 appeal of that decision and the order is final. The full amount of the judgment awarded to the
2 Commission, \$17,775,379 plus interest, remains outstanding as of July ___, 2010.

3 12. On May 7, 2007, while the appeal was pending, and shortly after the District
4 Court's ruling, the Commission filed a judgment lien on the home where Stefanchik resided at
5 the time of the judgment: 9022 North Mercer Way, Mercer Island, Washington (the "Mercer
6 Island Property"). The Mercer Island Property is currently titled in the name of Warwick.
7 Accordingly, the Commission filed a secured claim in Warwick's bankruptcy case. In addition,
8 the Commission filed an adversary proceeding against Warwick, Stefanchik and Heidi Fogg
9 (collectively, "Defendants") in December 2009 and asserted various claims against them,
10 including a reverse veil-piercing claim in which the Commission alleged that Warwick is a sham
11 or the alter-ego of John Stefanchik.

12 13. On or about May 10, 2010, this Court confirmed Warwick's Fourth Amended
13 Plan of Reorganization (the "Plan"). Warwick's Plan provides for the sale of the Property and
14 for the distribution of the proceeds of the sale to its creditors.

15 14. As part of the resolution of all claims among the Defendants and the FTC, the
16 parties have agreed to consensually resolve the claims the Commission asserted in the adversary
17 proceeding. In addition, the parties have agreed to resolve all claims related to the Commission's
18 proof of claim filed in this case, as reflected in this Order.

19 15. This Order represents a fair and equitable compromise of the claims at issue in
20 this case, and it is a critical part of the parties' overall resolution of claims among the
21 Commission and Defendants in the Stefanchik Case. See Exhibit A (Stipulated Supplemental
22 Order).

23 16. The Defendants further waive all rights to appeal or otherwise challenge or
24 contest the validity of this Order. If, however, an appeal of this Order is filed by an interested
25 party, Defendants agree to fully cooperate and assist the FTC in defending against such an appeal
26 and/or in prosecuting any claims that may arise as a result of such an appeal. Defendants waive
27

28 Judgment and Order- Page 3

FEDERAL TRADE COMMISSION
600 Pennsylvania Ave., NW, Suite NJ-2122
Washington, D.C. 20580
(202) 326-3304

1 any rights to attorneys' fees that might otherwise arise in the course of defending this Order on
2 appeal.

3 **DEFINITIONS**

4 1. **"Defendants"** means John Stefanchik, individually and as an officer and director
5 of Beringer Corporation, formerly d.b.a. The Stefanchik Organization, as well as its successors
6 and assigns, whether acting directly or through any corporation, subsidiary, division, or other
7 device.

8 2. **"Fogg"** means defendant Heidi Fogg and/or Heidi Stefanchik, by any name,
9 individually and as an officer and manager of Warwick.

10 3. **"Monetary Judgment"** means the entire judgment amount of \$17,775,369.00,
11 plus the interest from April 3, 2007 forward at the rate prescribed under 28 U.S.C. § 1961, as
12 amended, that Defendants, jointly and severally, owe to the Commission in *Federal Trade*
13 *Commission v. Stefanchik, et al.*, Case No. 2:04-cv-01852-RSM (W.D. Wash.).

14 4. **"Property"** means the real property described in the King County real property
15 records as "Lot 21, Sunnybank", whose street address is 9022 North Mercer Way, Mercer Island,
16 Washington.

17 5. **"Stefanchik"** means defendant John Stefanchik.

18 6. **"Stefanchik Case"** means the enforcement action the Commission filed against
19 Stefanchik, and others, in the United States District Court for the Western District of
20 Washington: *Federal Trade Commission v. Stefanchik, et al.*, Case No. 2:04-cv-01852-RSM
21 (W.D. Wash.).

22 7. **"Warwick"** means Warwick Properties LLC, as well as its successors and
23 assigns, whether acting directly or through any corporation, subsidiary, division, or other device.

ORDER

IT IS HEREBY ORDERED that:

A. Warwick stipulates to the Commission's claim as a secured claim under 11 U.S.C. §§ 502 & 506 in this case in the amount of Seventeen Million, Seven Hundred and Seventy-Five Thousand, Three Hundred and Sixty-Nine Dollars (\$17,775,369.00), plus interest, but less any amount paid to the Commission in the Stefanchik Case (the "Claim"). Accordingly, by entry of this Order, the Court allows the Commission's Claim as a secured claim under 11 U.S.C. §§ 502 & 506 in this case.

B. In addition, the FTC's Claim in this case, which was classified as a Class Seven Claim under Warwick's Fourth Amended Plan of Reorganization, will be paid after payment of Classes One through ~~Three~~ ^{Four and Class Ten} and only to the extent Class One claims are allowed claims which have been approved by the Bankruptcy Court. Fogg and Warwick further agree that any Class One claim that Fogg may or will submit to this Court for approval will not exceed \$1,000. In addition, Stefanchik agrees not to file any claims in this case on behalf of himself, Fogg or any other entities managed, directed or controlled by either or both of them.

C. If: a) the Property is sold to a person or entity other than one in which any or all of the Defendants, Fogg, Warwick, and/or any successors, heirs, assigns or entities related to or controlled by any or all of the Defendants, Fogg and/or Warwick retain an interest, and sufficient proceeds from the sale exist to pay the Commission's Claim (in part or in full) under the Warwick Fourth Amended Plan of Reorganization; and b) the Defendants, Fogg and Warwick otherwise satisfy the terms of this Stipulated Supplemental Order, then the Commission will release its lien on the Property. If, however, the purchaser of the Property (in whole or in part) is a person or entity in which any or all of the Defendants, Fogg, Warwick, and/or any successors, heirs, assigns or entities related to or controlled by any or all of the Defendants, Fogg and/or Warwick retain an interest, the Commission will retain its lien on the Property until the Monetary Judgment is satisfied.

Judgment and Order- Page 5

FEDERAL TRADE COMMISSION
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(202) 326-3304

Exhibit A to Order Allowing FTC Claim
Page 17

1 IT IS FURTHER ORDERED that this Court will retain jurisdiction of this matter for all
2 purposes.

3 Dated: July __, 2010

Respectfully submitted by:
FEDERAL TRADE COMMISSION

4
5 /s/ Kimberly L. Nelson

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22 *Counsel for Defendants, Warwick Properties,
Heidi Fogg and John Stefanchik*

23
24
25
26
27 Judgment and Order- Page 6

28 FEDERAL TRADE COMMISSION
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Washington, D.C. 20580
(202) 326-3304

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

In Re:

Warwick Properties LLC,

Debtor-in-possession.

Case No. 08-16620

Federal Trade Commission,

Plaintiff,

Adversary Proceeding No. 09-01584-TTG

v.

JUDGMENT AND ORDER

Warwick Properties LLC,
Heidi Fogg, and John Stefanchik,

Defendants.

Plaintiff Federal Trade Commission ("FTC" or "the Commission"), and defendants Warwick Properties LLC, Heidi Fogg and John Stefanchik (collectively "Defendants"), by and through their attorneys, have agreed to entry of this Judgment and Order by this Court in order to resolve the FTC's claims against the Defendants.

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334. This Adversary Proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

2. Venue in the Western District of Washington is proper under 28 U.S.C. § 1409(a).

Judgment and Order- Page 1

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Stipulated Supp. Order to Modify - Ex. B

Exhibit A to Order Allowing FTC Claim

3. This Adversary Proceeding relates to *In re Warwick Properties LLC*, Chapter 11 Case No. 08-16620 (Bankr. W.D. Wash.), now pending in this Court (the “Bankruptcy Case”). The FTC is a creditor with a secured claim against the Debtor as a result of a judgment the Commission obtained against Stefanchik, and others, in the United States District Court for the Western District of Washington in the case *Federal Trade Commission v. Stefanchik, et al.*, Case No. 2:04-cv-01852-RSM (W.D. Wash.) (the “Stefanchik Case”).

THE PARTIES

4. . . The FTC is an independent agency of the United States government created by statute. 15 U.S.C. §§ 41-58. The FTC is charged, *inter alia*, with enforcement of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The Commission also enforces the Telemarketing Sales Rule, 16 C.F.R. Part 310, as amended, which prohibits deceptive or abusive telemarketing acts or practices.

5. The Commission is authorized to initiate federal district court proceedings to enjoin violations of the FTC Act and the Telemarketing Sales Rule, and to secure such equitable relief as may be appropriate in each case, including restitution for injured consumers. 15 U.S.C. §§ 53(b), 57b, 6102(c), and 6105(b).

6. Warwick Properties LLC is a chapter 11 Debtor in the Bankruptcy Case.

7. Heidi Fogg is the manager of the Debtor and the spouse of Stefanchik. Fogg currently resides at: 9022 North Mercer Way, Mercer Island, Washington 98040.

8. John Stefanchik is the spouse of Fogg and a defendant in the Stefanchik Case. Stefanchik currently resides at: 9022 North Mercer Way, Mercer Island, Washington 98040.

FINDINGS

9. On August 24, 2004, the Commission filed a complaint in the United States District Court for the Western District of Washington (the "District Court") against Stefanchik, a corporation he organized, Beringer Corporation ("Beringer"), and several other defendants. *Federal Trade Comm'n v. Stefanchik, et al.*, Case No. 2:04-cv-01852-RSM (W.D. Wash.). All

Judgment and Order- Page 2

FEDERAL TRADE COMMISSION
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1 defendants except Stefanchik and Beringer entered into stipulated judgments to resolve the
2 FTC's claims against them.

3 10. On April 3, 2007, the FTC obtained a judgment against Stefanchik and Beringer,
4 jointly and severally, in the amount of \$17,775,369. Stefanchik and Beringer subsequently
5 appealed the District Court's ruling.

6 11. In March 2009, the U.S. Court of Appeals for the Ninth Circuit affirmed the
7 Commission's judgment against Stefanchik and Beringer as to both liability and monetary relief.
8 *See Federal Trade Comm'n v. Stefanchik*, 559 F.3d 924 (9th Cir. 2009).

9 12. The full amount of the judgment awarded to the Commission, \$17,775,379 plus
10 interest (the "Judgment"), remains outstanding as of July __, 2010.

11 13. On May 7, 2007, while the appeal was pending, and shortly after the District
12 Court's ruling, the Commission filed a judgment lien on the home where Stefanchik resided at
13 the time of the judgment: 9022 North Mercer Way, Mercer Island, Washington (the "Mercer
14 Island Property").

15 14. The Mercer Island Property is currently titled in the name of Warwick.
16 Accordingly, the Commission filed a secured claim in Warwick's Bankruptcy Case.

17 15. In addition, the Commission asserted various claims against Defendants in this
18 adversary proceeding, including a reverse veil-piercing claim in which the Commission alleged
19 that Warwick is a sham or the alter-ego of John Stefanchik and/or Heidi Fogg.

20 16. The parties to the adversary proceeding have agreed to consensually resolve the
21 FTC's claims in this case. Further, the parties have agreed to resolve all claims related to the
22 Commission's proof of claim filed in the Bankruptcy Case.

23 17. This Judgment and Order represents a fair and equitable compromise of the claims
24 at issue in this adversary proceeding, and it is a critical part of the parties' resolution of claims
25 among the Commission and Defendants in the Stefanchik Case. *See* Exhibit A (Stipulated
26 Supplemental Order).

27
28 Judgment and Order- Page 3

FEDERAL TRADE COMMISSION
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1 18. The Defendants further waive all rights to appeal or otherwise challenge or
2 contest the validity of this Order. If, however, an appeal of this Order is filed by an interested
3 party, Defendants agree to fully cooperate and assist the FTC in defending against such an appeal
4 and/or in prosecuting any claims that may arise as a result of such an appeal. Defendants waive
5 any rights to attorneys' fees that might otherwise arise in the course of defending this Order on
6 appeal.

7 **ORDER**

8 **IT IS HEREBY ORDERED** that:

9 A. The debtor, Warwick, has authority to enter into and execute this Judgment and
10 Order under 11 U.S.C. § 1107 and Bankruptcy Rule 9019; and

11 B. Judgment is entered in favor of the Commission and against Defendants.
12 Accordingly, defendant Warwick is liable, jointly and severally, along with defendant Stefanchik
13 on the Judgment awarded in favor of the Commission in the Stefanchik Case, plus interest from
14 April 3, 2007 at the rate prescribed under 28 U.S.C. § 1961, as amended.

15 **IT IS FURTHER ORDERED** that this Court will retain jurisdiction of this matter for all
16 purposes.

17 Dated: July __, 2010

Respectfully submitted by:
FEDERAL TRADE COMMISSION

18
19 /s/ Kimberly L. Nelson
20 Michael P. Mora, III. Bar No. 6199875
21 Kimberly L. Nelson, VA Bar No. 47224
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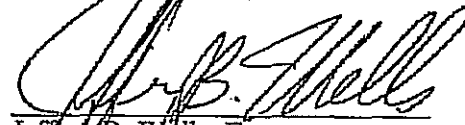
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Federal Trade Commission
915 Second Avenue, Suite 2896

Judgment and Order- Page 4

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17 *Counsel for Defendants, Warwick Properties, Heidi*
18 *Fogg and John Stefanchik*

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27 Judgment and Order- Page 5
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FEDERAL TRADE COMMISSION
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EXHIBIT C

All funds, assets, or other items of value that John Stefanchik, Heidi Fogg, or any corporation or entity that either controls now, or may at any date in the future, receive or have any right to receive as a result of transactions described in Exhibit C to the sworn Financial Statement signed by John Stefanchik and Heidi Fogg on May 25, 2010, and submitted to the Federal Trade Commission. The transactions described in Exhibit C to that sworn Financial Statement relate to transfers of funds from corporations controlled by John Stefanchik, including, but not limited to, North American Verification, Inc., Beringer Corporation, F/S Trust, and Jordan, LLC, to corporations and individuals, including, but not limited to, Paragon Dynamics, Inc., Silver Oak Services, James Fontano, and Jay Swob.

EXHIBIT D
List of Personal Property to be Sold at Auction

<u>Item</u>	<u>Est. Resale Value</u>
Square Table with 4 Stools	\$1000.00
Chaise Longue	\$1066.67
Area Rug (Living Room)	\$1000.00
Area Rug (Dining Room)	\$3166.67
Area Rug (Bedroom)	\$3166.67
Pool/Billiards Table	\$1500.00
Adam Shaw painting (54"x 50")	\$6000.00
Adam Shaw painting (64" x 70")	\$9000.00
Calder Print	\$6000.00

Jewelry

Mikimoto Pearl Necklace (18" strand)
Tahitian Pearl Earrings
Cabochon Ruby Ring
Perionite Ring
Pearl and gold necklace
gold tennis bracelet
two Raymond Weil watches

The Honorable Marc L. Barreca
Chapter 11

Exhibit B

UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF WASHINGTON

In Re:

Warwick Properties LLC,

Debtor-in-possession.

Case No. 08-16620

Federal Trade Commission,

Plaintiff,

v.

Warwick Properties LLC,
Heidi Fogg, and John Stefanchik,

Defendants.

Adversary Proceeding No. 09-01584-TTG

JUDGMENT AND ORDER

Plaintiff Federal Trade Commission ("FTC" or "the Commission"), and defendants Warwick Properties LLC, Heidi Fogg and John Stefanchik (collectively "Defendants"), by and through their attorneys, have agreed to entry of this Judgment and Order by this Court in order to resolve the FTC's claims against the Defendants.

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334. This Adversary Proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

Judgment and Order- Page 1

FEDERAL TRADE COMMISSION
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2. Venue in the Western District of Washington is proper under 28 U.S.C. § 1409(a).

3. This Adversary Proceeding relates to *In re Warwick Properties LLC*, Chapter 11 Case No. 08-16620 (Bankr. W.D. Wash.), now pending in this Court (the "Bankruptcy Case"). The FTC is a creditor with a secured claim against the Debtor as a result of a judgment the Commission obtained against Stefanchik, and others, in the United States District Court for the Western District of Washington in the case *Federal Trade Commission v. Stefanchik, et al.*, Case No. 2:04-cv-01852-RSM (W.D. Wash.) (the "Stefanchik Case").

THE PARTIES

4. The FTC is an independent agency of the United States government created by statute. 15 U.S.C. §§ 41-58. The FTC is charged, *inter alia*, with enforcement of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The Commission also enforces the Telemarketing Sales Rule, 16 C.F.R. Part 310, as amended, which prohibits deceptive or abusive telemarketing acts or practices.

5. The Commission is authorized to initiate federal district court proceedings to enjoin violations of the FTC Act and the Telemarketing Sales Rule, and to secure such equitable relief as may be appropriate in each case, including restitution for injured consumers. 15 U.S.C. §§ 53(b), 57b, 6102(c), and 6105(b).

6. Warwick Properties LLC is a chapter 11 Debtor in the Bankruptcy Case.

7. Heidi Fogg is the manager of the Debtor and the spouse of Stefanchik. Fogg currently resides at: 9022 North Mercer Way, Mercer Island, Washington 98040.

8. John Stefanchik is the spouse of Fogg and a defendant in the Stefanchik Case. Stefanchik currently resides at: 9022 North Mercer Way, Mercer Island, Washington 98040.

FINDINGS

9. On August 24, 2004, the Commission filed a complaint in the United States District Court for the Western District of Washington (the "District Court") against Stefanchik, a

1 corporation he organized, Beringer Corporation ("Beringer"), and several other defendants.
2 *Federal Trade Comm'n v. Stefanchik, et al.*, Case No. 2:04-cv-01852-RSM (W.D. Wash.). All
3 defendants except Stefanchik and Beringer entered into stipulated judgments to resolve the
4 FTC's claims against them.

5 10. On April 3, 2007, the FTC obtained a judgment against Stefanchik and Beringer,
6 jointly and severally, in the amount of \$17,775,369. Stefanchik and Beringer subsequently
7 appealed the District Court's ruling.

8 11. In March 2009, the U.S. Court of Appeals for the Ninth Circuit affirmed the
9 Commission's judgment against Stefanchik and Beringer as to both liability and monetary relief.
10 *See Federal Trade Comm'n v. Stefanchik*, 559 F.3d 924 (9th Cir. 2009).

11 12. The full amount of the judgment awarded to the Commission, \$17,775,379 plus
12 interest (the "Judgment"), remains outstanding as of July __, 2010.

13 13. On May 7, 2007, while the appeal was pending, and shortly after the District
14 Court's ruling, the Commission filed a judgment lien on the home where Stefanchik resided at
15 the time of the judgment: 9022 North Mercer Way, Mercer Island, Washington (the "Mercer
16 Island Property").

17 14. The Mercer Island Property is currently titled in the name of Warwick.
18 Accordingly, the Commission filed a secured claim in Warwick's Bankruptcy Case.

19 15. In addition, the Commission asserted various claims against Defendants in this
20 adversary proceeding, including a reverse veil-piercing claim in which the Commission alleged
21 that Warwick is a sham or the alter-ego of John Stefanchik and/or Heidi Fogg.

22 16. The parties to the adversary proceeding have agreed to consensually resolve the
23 FTC's claims in this case. Further, the parties have agreed to resolve all claims related to the
24 Commission's proof of claim filed in the Bankruptcy Case.

25 17. This Judgment and Order represents a fair and equitable compromise of the
26 claims at issue in this adversary proceeding, and it is a critical part of the parties' resolution of
27

1 claims among the Commission and Defendants in the Stefanchik Case. *See* Exhibit A
2 (Stipulated Supplemental Order).

3 18. The Defendants further waive all rights to appeal or otherwise challenge or
4 contest the validity of this Order. If, however, an appeal of this Order is filed by an interested
5 party, Defendants agree to fully cooperate and assist the FTC in defending against such an
6 appeal and/or in prosecuting any claims that may arise as a result of such an appeal. Defendants
7 waive any rights to attorneys' fees that might otherwise arise in the course of defending this
8 Order on appeal.

9 **ORDER**

10 **IT IS HEREBY ORDERED** that:

11 A. The debtor, Warwick, has authority to enter into and execute this Judgment and
12 Order under 11 U.S.C. § 1107 and Bankruptcy Rule 9019; and

13 B. Judgment is entered in favor of the Commission and against Defendants.
14 Accordingly, defendant Warwick is liable, jointly and severally, along with defendant Stefanchik
15 on the Judgment awarded in favor of the Commission in the Stefanchik Case, plus interest from
16 April 3, 2007 at the rate prescribed under 28 U.S.C. § 1961, as amended.

17 **IT IS FURTHER ORDERED** that this Court will retain jurisdiction of this matter for
18 all purposes.

19
20 Dated: January __, 2011

21 
22 Marc Barreca
23 United States Bankruptcy Judge
(Dated as of Entered on Docket date above)

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26
27
28 Judgment and Order- Page 4

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1 Respectfully submitted by:
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20 *Counsel for Plaintiff, Federal Trade Commission*

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*Counsel for Defendants, Warwick Properties, Heidi
Fogg and John Stefanchik*

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

JOHN STEFANCHIK, individually and as an
officer and director of Beringer Corporation, *et*
al.,

Defendants.

Case No. CV04-1852RSM

**STIPULATED SUPPLEMENTAL
FINAL ORDER TO MODIFY FINAL
JUDGMENT AND ORDER
PURSUANT TO FED. R. CIV. P. 60(b)**

Plaintiff, the Federal Trade Commission ("Commission" or "FTC"), pursuant to Federal Rule of Civil Procedure 60(b), and defendants John Stefanchik and Beringer Corporation ("Defendants"), by and through their attorneys, submit this Stipulated Supplemental Final Order to Modify Final Judgment and Order Pursuant to Fed. R. Civ. P. 60(b) ("Stipulated Supplemental Order") for approval by this Court in order to resolve the FTC's monetary claims against the Defendants arising from the Final Judgment and Order entered against Defendants on April 3, 2007.

Being fully advised in the premises and acting upon stipulation of the parties to enter this Stipulated Supplemental Order, the Court finds and orders:

FINDINGS

1. This Court entered a Final Judgment and Order For Permanent Injunction and Other Equitable Relief ("Final Order") against Defendants on April 3, 2007. This Court has

1 jurisdiction under Paragraph X of the Final Order, which provides that the Court retains
2 jurisdiction of this matter for purposes of construction, modification, and enforcement of the
3 Final Order.

4 2. In the Final Order, the Court found that uncontroverted evidence established that
5 Defendants violated Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a), and
6 Sections 310.3(a)(2)(iii) and 310.3(a)(4) of the Telemarketing Sales Rule ("TSR"), 16 C.F.R.
7 §§310.3(a)(2)(iii) and 310.3(a)(4).

8 3. Under Paragraph IV.A of the Final Order, the Court entered judgment for
9 equitable monetary relief against Defendants, jointly and severally, and in favor of the FTC in
10 the amount of \$17,775,369.00, to be paid within ten days of entry of the Final Order. Paragraph
11 IV.C of the Final Order provides that, in the event Defendants fail to pay the Commission the
12 judgment amount, interest computed at the rate prescribed under 28 U.S.C. § 1691, as amended,
13 shall immediately begin to accrue on the unpaid balance.

14 4. The Ninth Circuit Court of Appeals subsequently affirmed this Court's judgment
15 against Defendants and in favor of the Commission. *FTC v. Stefanchik*, 559 F.3d 924 (9th Cir.
16 2009). None of the parties filed a further appeal of that decision and the order is final.

17 5. Defendants have not paid any amount of the judgment to the Commission and,
18 consequently, owe the Commission, jointly and severally, the entire judgment amount of
19 \$17,775,369.00, plus the interest accrued. On or about May 7, 2007, the Commission filed a
20 judgment lien against the real property where John Stefanchik resided at the time of judgment:
21 9022 North Mercer Way, Mercer Island, Washington.

22 6. Warwick Properties LLC ("Warwick"), among other things, holds title to the real
23 property located at 9022 North Mercer Way, Mercer Island, Washington (the "Property"). On or
24 about October 6, 2008, Warwick filed a petition for relief in the U.S. Bankruptcy Court for the
25 Western District of Washington, under Chapter 11 of Title 11 of the U.S. Bankruptcy Code.
26 Defendant John Stefanchik's wife, Heidi Fogg, is the manager and owner of Warwick. To
27 pursue its judgment lien against the Property, the FTC filed a secured claim in the Warwick
28 bankruptcy case, and Warwick stated that it intends to dispute the Commission's claim.

1 7. In addition to filing a secured claim, on December 11, 2009, the Commission
2 filed an adversary proceeding, naming Warwick, John Stefanchik and Heidi Fogg as defendants
3 (the "Adversary Proceeding"). *FTC v. Warwick Properties LLC, et al.*, Adversary No. 09-01584
4 (Bankr. W.D. Wash.). In the Adversary Proceeding, the Commission made various claims
5 against John Stefanchik, Heidi Fogg and Warwick, including a reverse veil-piercing claim
6 alleging that Warwick is a sham or the alter-ego of John Stefanchik.

7 8. On or about May 10, 2010, the bankruptcy court confirmed Warwick's Fourth
8 Amended Plan of Reorganization (the "Plan"). Warwick's Plan provides for the sale of the
9 Property and for the distribution of the proceeds of the sale to its creditors. Starting in June
10 2010, the marketing and sale of the Property will be conducted by one of the banks holding a
11 secured claim on the Property, or its agents.

12 9. The Defendants, Heidi Fogg, and Warwick, along with the FTC, have agreed to
13 resolve the claims in the Adversary Proceeding and a potential dispute over the proof of claim
14 the FTC filed in the Warwick Bankruptcy Case, as reflected in the attached stipulated orders
15 (Exhibits A and B).

16 10. In addition, Heidi Fogg and Warwick have agreed to be bound by the terms of
17 this Stipulated Supplemental Order and stipulate and agree to entry of this Stipulated
18 Supplemental Order to settle and resolve the Commission's monetary claim against Defendants.

19 11. Except as modified by this Stipulated Supplemental Order, the Final Order
20 entered on April 3, 2007, shall remain in full force and effect unless otherwise ordered by this
21 Court.

22 12. The parties agree that the effective date of this agreement is defined as the date on
23 which this Court's order approving the Stipulated Supplemental Order becomes final and is not
24 subject to appeal. If this Stipulated Supplemental Order is not approved by this Court, then the
25 parties also agree that this Stipulated Supplemental Order will automatically terminate and be of
26 no further force and effect.

27 13. Entry of this Stipulated Supplemental Order is in the public interest.
28

14. The Defendants, Heidi Fogg, and Warwick further waive all rights to appeal or otherwise challenge or contest the validity of this Stipulated Supplemental Order.

DEFINITIONS

1. "Adversary Proceeding" means the adversary proceeding the Commission filed on December 11, 2009 in the Warwick Bankruptcy Case, naming Warwick, John Stefanchik, and Heidi Fogg as defendants. *FTC v. Warwick Properties LLC, et al.*, Adversary No. 09-01584 (Bankr. W.D. Wash.).

2. "Bankruptcy Court" means the U.S. Bankruptcy Court for the Western District of Washington, which presides over the Warwick Bankruptcy Case.

3. "Defendants" means John Stefanchik, individually and as an officer and director of Beringer Corporation, and Beringer Corporation, formerly d.b.a. The Stefanchik Organization, as well as its successors and assigns, whether acting directly or through any corporation, subsidiary, division, or other device.

4. "Heidi Fogg" means Heidi Fogg and/or Heidi Stefanchik, by any name, individually and as an officer and manager of Warwick.

5. "Monetary Judgment" means the entire judgment amount of \$17,775,369.00, plus the interest from April 3, 2007 forward at the rate prescribed under 28 U.S.C. § 1961, as amended, that Defendants, jointly and severally, owe to the Commission under the Final Order.

6. "Property" means the real property described in the King County real property records as "Lot 21, Sunnybank" with a street address of 9022 North Mercer Way, Mercer Island, Washington.

7. "Warwick" means Warwick Properties LLC, as well as its successors and assigns, whether acting directly or through any corporation, subsidiary, division, or other device.

8. "Warwick Bankruptcy Case" means the Chapter 11 bankruptcy case filed by Warwick Properties, LLC, in the U.S. Bankruptcy Court for the Western District of Washington, Case No. 08-16620.

ORDER

I. MONETARY JUDGMENT

IT IS HEREBY ORDERED that:

A. Defendants, Fogg, and Warwick agree to partially satisfy the Monetary Judgment in accordance with the terms and conditions in Subsections B through D of this Section. Upon satisfaction of *all* terms and conditions in Subsections B through D, the Monetary Judgment shall be suspended against Defendants, but remains subject to reinstatement under Section II.

B. Within ten (10) days of the date of entry of this Order, Defendants and Heidi Fogg, in accordance with the directions provided by the Commission, shall pay to the Commission, by wire transfer, certified check, or money order, nine hundred thousand dollars (\$900,000.00). In addition, Defendants and Heidi Fogg agree to transfer to the Commission all of their (singular, collective and/or joint) legal and equitable rights, title and/or interest(s) in the funds described in the attached **Exhibit C**.

C. Within five (5) days from the date of the closing on the sale of the Property pursuant to the Warwick Bankruptcy Case, John Stefanchik and Heidi Fogg shall fully cooperate with James G. Murphy, Co. ("JGM") to take such steps as JGM may require to take full possession of the personal property described in the attached **Exhibit D**, and, to enter into an agreement with JGM to dispose of said property. Until John Stefanchik and Heidi Fogg surrender possession of the personal property described in the attached **Exhibit D** to JGM, they shall maintain and take no action to diminish the value of said property. As soon as is reasonably possible after taking possession of said personal property, JGM shall, in accordance with the agreement between JGM, John Stefanchik, and Heidi Fogg, liquidate the personal property. After all of said personal property has been liquidated, JGM shall account for the net proceeds derived therefrom, and transfer all such net proceeds to the Commission in accordance with instructions provided by the Commission.

D. The Defendants, Heidi Fogg, and Warwick shall have stipulated to, and the Bankruptcy Court shall have entered, an order in the Bankruptcy Case authorizing Warwick to enter into: a) this Stipulated Supplemental Order; b) the Claim Order (as defined below); and the

1 Judgment and Order (as defined below), which order shall have become final and non-
2 appealable. In addition, the Bankruptcy Court shall have entered orders: a) allowing the
3 Commission's claim as a secured claim under 11 U.S.C. §§ 502 and 506 in the Warwick
4 Bankruptcy Case, and as reflected in the attached order allowing claim (Exhibit A, the "Claim
5 Order"); and b) resolving the parties' claims in the Adversary Proceeding, as reflected in the
6 Judgment and Order (attached hereto as Exhibit B), both of which orders shall have become
7 final and non-appealable.

8 E. Defendants, Heidi Fogg, and Warwick, agree that they will not, whether acting
9 directly or through any corporation, partnership, limited liability company, division, subsidiary,
10 trade name, or other entity or device, submit to any federal or state tax authority any tax return,
11 amended tax return, or other official document that takes a deduction for, or seeks a tax refund or
12 any other tax benefit for, the payments that are to be made pursuant to Subsections I.B and I.C of
13 this Stipulated Supplemental Order.

14 F. To ensure compliance with Subsection I.E of this Stipulated Supplemental Order:
15 (i) Defendants, Heidi Fogg, and Warwick each shall deliver to the Commission copies of all of
16 their respective signed and completed federal and state income tax returns, and all amended
17 returns (if any), including all related forms, schedules, statements, and attachments, that they file
18 for each year in which payments are made pursuant to Subsections I.B and I.C of this Stipulated
19 Supplemental Order. The aforementioned deliveries shall be made to the Commission within ten
20 (10) days after each such return and amended return (if any), is officially filed with the Internal
21 Revenue Service or a state tax authority; and (ii) for each year in which any part of the payments
22 described in Subsections I.B and I.C of this Stipulated Supplemental Order are made, the
23 Defendants, Heidi Fogg, and Warwick each shall, within thirty (30) days after their respective
24 final date for filing an amended federal tax return for that year, sign and submit to the Internal
25 Revenue Service ("IRS") IRS Form 4506, along with a payment to the IRS of the Form 4506
26 fee, directing the IRS to send to The Regional Director, FTC Northwest Region, 915 Second
27 Avenue, Suite 2896, Seattle, WA 98174 copies of their respective original tax return and all
28 amended tax returns (if any) that they filed with the IRS for that year.

1 G. All funds paid to the Commission pursuant to this Stipulated Supplemental Order
2 shall be deposited into a fund administered by the Commission or its designated agent to be used
3 for equitable relief, including, but not limited to, consumer restitution and any attendant
4 expenses for the administration of any restitution fund. Defendants shall cooperate in
5 identifying and locating consumers entitled to restitution under this Stipulated Supplemental
6 Order. In the event that direct restitution to consumers is wholly or partially impracticable or
7 funds remain after restitution is completed, the Commission may apply any remaining funds for
8 such other equitable relief (including consumer information remedies) as it determines to be
9 reasonably related to the Defendants' practices alleged in the Complaint. Any funds not used for
10 such equitable relief shall be deposited to the Treasury as disgorgement. Defendants, Heidi
11 Fogg, and Warwick shall be notified as to how the funds are disbursed but shall have no right to
12 challenge the Commission's choice of remedies under this Section of this Stipulated
13 Supplemental Order.

14 H. In accordance with 31 U.S.C. § 7701, Defendants, Heidi Fogg, and Warwick are
15 hereby required, unless they have done so already, to furnish to the Commission each of their
16 taxpayer identifying numbers (social security numbers or employer identification numbers),
17 which shall be used for purposes of collecting and reporting on any delinquent amount arising
18 out of their relationship with the government;

19 I. Defendants, Heidi Fogg, and Warwick relinquish all dominion, control, and title
20 to the funds paid to the fullest extent permitted by law. Defendants, Heidi Fogg, and Warwick
21 shall make no claim to, or demand return of, the funds, directly or indirectly, through counsel or
22 otherwise; and

23 J. Defendants and Heidi Fogg agree that the facts alleged in the Complaint filed in
24 this action shall be taken as true without further proof in any bankruptcy case or subsequent civil
25 litigation pursued by the Commission to enforce its rights to any payment or money judgment
26 pursuant to this Stipulated Supplemental Order, including, but not limited to, a
27 nondischargeability complaint in any bankruptcy case. Defendants and Heidi Fogg further
28 stipulate and agree that the facts alleged in the Complaint establish all elements necessary to

1 sustain an action pursuant to, and that this Stipulated Supplemental Order and the Final Order
2 shall have collateral estoppel effect for purposes of, Section 523(a)(2)(A) of the Bankruptcy
3 Code, 11 U.S.C. § 523(a)(2)(A). In addition, Defendants and Heidi Fogg agree that if any of
4 them file a petition for relief or a petition for relief is filed against them (jointly or separately)
5 under 11 U.S.C. § 101, *et seq.*, and the payment to the Commission under Subsection B above is
6 subsequently recovered or avoided by the debtor, trustee, or a creditor, the Monetary Judgment
7 shall not be suspended as described in Subsection A above and the Commission will hold an
8 allowed, unsecured claim in the bankruptcy case in the amount of the Monetary Judgment, plus
9 interest from April 3, 2007 at the rate prescribed under 28 U.S.C. § 1961, as amended.

10 II. RIGHT TO REOPEN

11 IT IS FURTHER ORDERED that:

12 A. By agreeing to this Stipulated Supplemental Order, Defendants, Heidi Fogg, and
13 Warwick reaffirm and attest to the truthfulness, accuracy, and completeness of the financial
14 statements that each of them prepared and transmitted to the Commission, including the
15 following: (1) completed individual financial statement for John Stefanchik and Heidi Fogg
16 (executed on May 25, 2010); (2) completed Corporate Financial Statements for Beringer
17 Corporation (executed on May 21, 2010) and Warwick Properties, LLC (executed on June 25,
18 2010); (3) true and correct copies of individual 2007 and 2008 tax returns for John Stefanchik
19 and Heidi Fogg, which were previously filed with the Internal Revenue Service ("IRS"); (4) a
20 complete list of John Stefanchik's and Heidi Fogg's personal property, including furnishings,
21 jewelry, and art, which has a potential sale value of, or for which they paid, \$2,500.00 or more
22 per item (lists provided by letters to the FTC dated June 14, 2010, and July 2, 2010, and by
23 electronic mail from Sims Weymuller to Nadine Samter, dated June 22, 2010); and (5)
24 Declaration of John Stefanchik (executed on July __, 2010), and the Exhibits attached thereto
25 (hereafter, collectively referred to as "Financial Statements"). The Commission's agreement to
26 this Stipulated Supplemental Order is expressly premised upon the truthfulness, accuracy, and
27 completeness of the Financial Statements, which contain material information upon which the
28

1 Commission relied in negotiating and agreeing to the terms of this Stipulated Supplemental
2 Order;

3 B. Defendants, Heidi Fogg, and Warwick certify that they have each individually
4 and jointly disclosed all assets in which any of them holds any beneficial, remainder, or actual
5 interest, whether partial or whole, including, but not limited to any jointly held assets.

6 C. If, upon motion by the FTC, this Court finds that any or all of Defendants, Heidi
7 Fogg or Warwick has failed to disclose any material asset, or misrepresented the value of any
8 asset, or made any other misrepresentation in, or omission from, the Financial Statements, then
9 as to Defendants, any suspension of the Monetary Judgment (in the amount of \$17,775,369.00,
10 plus interest), less amounts already paid, shall be lifted, the Monetary Judgment shall become
11 immediately due, and interest computed pursuant to 28 U.S.C. § 1961, as amended, shall
12 continue to accrue on the unpaid balance. *Provided, however*, that in all other respects, this
13 Stipulated Supplemental Order shall remain in full force and effect unless otherwise ordered by
14 this Court; and

15 D. Proceedings instituted under this Section are in addition to, and not in lieu of, any
16 other civil or criminal remedies as may be provided by law, including any other proceedings the
17 Commission may initiate to enforce this Stipulated Supplemental Order.

18 III. ACKNOWLEDGMENT OF RECEIPT OF 19 STIPULATED SUPPLEMENTAL ORDER

20 IT IS FURTHER ORDERED that within five (5) business days of receipt of this
21 Stipulated Supplemental Order as entered by the Court, Defendants, Heidi Fogg, and Warwick
22 must submit to the Commission a truthful sworn statement acknowledging receipt of this
23 Stipulated Supplemental Order.

24 IV. CONTINUED JURISDICTION

25 IT IS FURTHER ORDERED that this Court will retain jurisdiction of this matter for all
26 purposes.

27 SO ORDERED, this ____ day of _____, 2010, at _____.
28

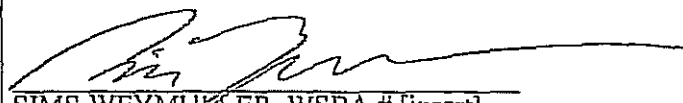
The Honorable Ricardo S. Martinez
United States District Judge

NADINE S. SAMTER, WSBA # 23881
Attorney for Plaintiff

Federal Trade Commission
915 Second Avenue, Suite 2896
Seattle, Washington 98174
(206) 220-6350
Fax: (206) 220-6366
Email: nsamter@ftc.gov


JOHN STEFANCHIK, individually and as
an officer of Beringer Corporation

HEIDI FOGG
individually and as an officer, manager, or
principal of Warwick, LLC


SIMS WEYMULLER, WSBA # [insert]
Attorney for John Stefanchik, Beringer Corp.,
and Heidi Fogg

Johnson Flora, PLLC
2505 Second Avenue, Suite 500
Seattle, WA 98121
(206) 386-5566
Fax: (206) 682-0675
Email: www.johnsonflora.com

The Honorable Ricardo S. Martinez
United States District Judge

NADINE S. SAMTER, WSBA # 23881
Attorney for Plaintiff

Federal Trade Commission
915 Second Avenue, Suite 2896
Seattle, Washington 98174
(206) 220-6350
Fax: (206) 220-6366
Email: nsamtor@ftc.gov

JOHN STEFANCHIK, individually and as
an officer of Boring Corporation

HEIDI FOGG
individually and as an officer, manager, or
principal of Warwick, LLC

SIMS WEYMUELLER, WSBA # [insert]
Attorney for John Stefanchik, Boring Corp.,
and Heidi Fogg

Johnson Flora, PLLC
2505 Second Avenue, Suite 500
Seattle, WA 98121
(206) 386-5566
Fax: (206) 682-0675
Email: www.johnsonflora.com

CERTIFICATE OF SERVICE

I hereby certify that on _____, 2010, I served the foregoing **STIPULATED SUPPLEMENTAL FINAL ORDER TO MODIFY FINAL JUDGMENT AND ORDER PURSUANT TO FED. R. CIV. P. 60(b)**, and the Exhibits attached thereto, by electronic mail and by first-class United States mail to the following:

SIMS WEYMULLER, WSBA # [insert]
Johnson Flora, PLLC
2505 Second Avenue, Suite 500
Seattle, WA 98121
(206) 386-5566
Fax: (206) 682-0675
Email: www.johnsonflora.com
Attorney for John Stefanchik, Bringer Corp.,
and Heidi Fogg

MICHAEL ROSENBERGER, WSBA # [insert]
Gordon Tilden Thomas & Cordell, LLP
1001 Fourth Avenue, Suite 400
Seattle, WA 98154-1007
(206) 467-6477
Fax: (206) 467-6292
Email: mrosenberger@gordontilden.com

Dated: _____, 2010

s/Nadine Samter
Nadine Samter

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

In Re:

Warwick Properties LLC,

Debtor-in-possession.

Case No. 08-16620

**ORDER ALLOWING SECURED
CLAIM OF FEDERAL TRADE
COMMISSION**

Plaintiff Federal Trade Commission ("FTC" or "the Commission"), and debtor Warwick Properties LLC ("Warwick"), by and through their attorneys, have agreed to entry of this Order allowing the secured claim of the FTC (the "Order") in this case.

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334. This Adversary Proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

2. Venue in the Western District of Washington is proper under 28 U.S.C. § 1409(a).

THE PARTIES

3. The FTC is an independent agency of the United States government created by statute. 15 U.S.C. §§ 41-58. The FTC is charged, *inter alia*, with enforcement of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The Commission also enforces the Telemarketing Sales Rule, 16 C.F.R. Part 310, as amended, which prohibits deceptive or abusive telemarketing acts or practices.

Judgment and Order- Page 1

FEDERAL TRADE COMMISSION
600 Pennsylvania Ave., NW, Suite NJ-2122
Washington, D.C. 20580
(202) 326-3304

Stipulated Supp. Order to Modify - Ex. A

1 4. The Commission is authorized to initiate federal district court proceedings to
2 enjoin violations of the FTC Act and the Telemarketing Sales Rule, and to secure such equitable
3 relief as may be appropriate in each case, including restitution for injured consumers. 15 U.S.C.
4 §§ 53(b), 57b, 6102(c), and 6105(b).

5 5. The FTC is a creditor with a secured claim against the Debtor as a result of a
6 judgment the Commission obtained against Stefanchik, and others, in the United States District
7 Court for the Western District of Washington in the case *Federal Trade Commission v.*
8 *Stefanchik, et al.*, Case No. 2:04-cv-01852-RSM (W.D. Wash.) (the "Stefanchik Case").

9 6. Warwick Properties LLC is a chapter 11 Debtor in this case.

10 7. Heidi Fogg is the manager of the Debtor and the spouse of Stefanchik. Fogg
11 currently resides at: 9022 North Mercer Way, Mercer Island, Washington 98040.

12 8. John Stefanchik is the spouse of Fogg and a defendant in the Stefanchik Case.
13 Stefanchik currently resides at: 9022 North Mercer Way, Mercer Island, Washington 98040.

14 FINDINGS

15 9. On August 24, 2004, the Commission filed a complaint in the United States
16 District Court for the Western District of Washington (the "District Court") against Stefanchik, a
17 corporation he organized, Beringer Corporation ("Beringer"), and several other defendants.
18 *Federal Trade Comm'n v. Stefanchik, et al.*, Case No. 2:04-cv-01852-RSM (W.D. Wash.). All
19 defendants except Stefanchik and Beringer entered into stipulated judgments to resolve the
20 FTC's claims against them.

21 10. On April 3, 2007, the FTC obtained a judgment against Stefanchik and Beringer
22 in the amount of \$17,775,369. Stefanchik and Beringer subsequently appealed the District
23 Court's ruling.

24 11. The Ninth Circuit Court of Appeals affirmed the District Court's judgment against
25 Defendants. *FTC v. Stefanchik*, 559 F.3d 924 (9th Cir. 2009). None of the parties filed a further
26
27

28 Judgment and Order- Page 2

FEDERAL TRADE COMMISSION
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Exhibit A to Judgment and Order

Page 14

1 appeal of that decision and the order is final. The full amount of the judgment awarded to the
2 Commission, \$17,775,379 plus interest, remains outstanding as of July ___, 2010.

3 12. On May 7, 2007, while the appeal was pending, and shortly after the District
4 Court's ruling, the Commission filed a judgment lien on the home where Stefanchik resided at
5 the time of the judgment: 9022 North Mercer Way, Mercer Island, Washington (the "Mercer
6 Island Property"). The Mercer Island Property is currently titled in the name of Warwick.
7 Accordingly, the Commission filed a secured claim in Warwick's bankruptcy case. In addition,
8 the Commission filed an adversary proceeding against Warwick, Stefanchik and Heidi Fogg
9 (collectively, "Defendants") in December 2009 and asserted various claims against them,
10 including a reverse veil-piercing claim in which the Commission alleged that Warwick is a sham
11 or the alter-ego of John Stefanchik.

12 13. On or about May 10, 2010, this Court confirmed Warwick's Fourth Amended
13 Plan of Reorganization (the "Plan"). Warwick's Plan provides for the sale of the Property and
14 for the distribution of the proceeds of the sale to its creditors.

15 14. As part of the resolution of all claims among the Defendants and the FTC, the
16 parties have agreed to consensually resolve the claims the Commission asserted in the adversary
17 proceeding. In addition, the parties have agreed to resolve all claims related to the Commission's
18 proof of claim filed in this case, as reflected in this Order.

19 15. This Order represents a fair and equitable compromise of the claims at issue in
20 this case, and it is a critical part of the parties' overall resolution of claims among the
21 Commission and Defendants in the Stefanchik Case. See Exhibit A (Stipulated Supplemental
22 Order).

23 16. The Defendants further waive all rights to appeal or otherwise challenge or
24 contest the validity of this Order. If, however, an appeal of this Order is filed by an interested
25 party, Defendants agree to fully cooperate and assist the FTC in defending against such an appeal
26 and/or in prosecuting any claims that may arise as a result of such an appeal. Defendants waive
27

28 Judgment and Order- Page 3

FEDERAL TRADE COMMISSION
600 Pennsylvania Ave., NW, Suite NJ-2122
Washington, D.C. 20580
(202) 326-3304

1 any rights to attorneys' fees that might otherwise arise in the course of defending this Order on
2 appeal.

3 DEFINITIONS

4 1. "Defendants" means John Stefanchik, individually and as an officer and director
5 of Beringer Corporation, formerly d.b.a. The Stefanchik Organization, as well as its successors
6 and assigns, whether acting directly or through any corporation, subsidiary, division, or other
7 device.

8 2. "Fogg" means defendant Heidi Fogg and/or Heidi Stefanchik, by any name,
9 individually and as an officer and manager of Warwick.

10 3. "Monetary Judgment" means the entire judgment amount of \$17,775,369.00,
11 plus the interest from April 3, 2007 forward at the rate prescribed under 28 U.S.C. § 1961, as
12 amended, that Defendants, jointly and severally, owe to the Commission in *Federal Trade*
13 *Commission v. Stefanchik, et al.*, Case No. 2:04-cv-01852-RSM (W.D. Wash.).

14 4. "Property" means the real property described in the King County real property
15 records as "Lot 21, Sunnybank", whose street address is 9022 North Mercer Way, Mercer Island,
16 Washington.

17 5. "Stefanchik" means defendant John Stefanchik.

18 6. "Stefanchik Case" means the enforcement action the Commission filed against
19 Stefanchik, and others, in the United States District Court for the Western District of
20 Washington: *Federal Trade Commission v. Stefanchik, et al.*, Case No. 2:04-cv-01852-RSM
21 (W.D. Wash.).

22 7. "Warwick" means Warwick Properties LLC, as well as its successors and
23 assigns, whether acting directly or through any corporation, subsidiary, division, or other device.

24
25
26
27 Judgment and Order- Page 4

FEDERAL TRADE COMMISSION
600 Pennsylvania Ave., NW, Suite NJ-2122
Washington, D.C. 20580
(202) 326-3304

ORDER

IT IS HEREBY ORDERED that:

A. Warwick stipulates to the Commission's claim as a secured claim under 11 U.S.C. §§ 502 & 506 in this case in the amount of Seventeen Million, Seven Hundred and Seventy-Five Thousand, Three Hundred and Sixty-Nine Dollars (\$17,775,369.00), plus interest, but less any amount paid to the Commission in the Stefanchik Case (the "Claim"). Accordingly, by entry of this Order, the Court allows the Commission's Claim as a secured claim under 11 U.S.C. §§ 502 & 506 in this case.

B. In addition, the FTC's Claim in this case, which was classified as a Class Seven Claim under Warwick's Fourth Amended Plan of Reorganization, will be paid after payment of Classes One through ~~Three~~ ^{Four and Class Ten} and only to the extent Class One claims are allowed claims which have been approved by the Bankruptcy Court. Fogg and Warwick further agree that any Class One claim that Fogg may or will submit to this Court for approval will not exceed \$1,000. In addition, Stefanchik agrees not to file any claims in this case on behalf of himself, Fogg or any other entities managed, directed or controlled by either or both of them.

C. If: a) the Property is sold to a person or entity other than one in which any or all of the Defendants, Fogg, Warwick, and/or any successors, heirs, assigns or entities related to or controlled by any or all of the Defendants, Fogg and/or Warwick retain an interest, and sufficient proceeds from the sale exist to pay the Commission's Claim (in part or in full) under the Warwick Fourth Amended Plan of Reorganization; and b) the Defendants, Fogg and Warwick otherwise satisfy the terms of this Stipulated Supplemental Order, then the Commission will release its lien on the Property. If, however, the purchaser of the Property (in whole or in part) is a person or entity in which any or all of the Defendants, Fogg, Warwick, and/or any successors, heirs, assigns or entities related to or controlled by any or all of the Defendants, Fogg and/or Warwick retain an interest, the Commission will retain its lien on the Property until the Monetary Judgment is satisfied.

Judgment and Order- Page 5

FEDERAL TRADE COMMISSION
600 Pennsylvania Ave., NW, Suite NJ-2122
Washington, D.C. 20580
(202) 326-3304

Exhibit A to Judgment and Order,

1 IT IS FURTHER ORDERED that this Court will retain jurisdiction of this matter for all
2 purposes.

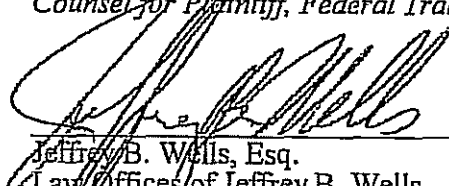
3 Dated: July __, 2010

Respectfully submitted by:
FEDERAL TRADE COMMISSION

4
5 /s/ Kimberly L. Nelson
6 Michael P. Mora, III, Bar No. 6199875
7 Kimberly L. Nelson, VA Bar No. 47224
8 Federal Trade Commission
9 600 Pennsylvania Ave., NW, Mail Stop M-8102B
10 Washington, D.C. 20580
11 Telephone: (202) 326-3304
12 Facsimile: (202) 326-2558
13 Mmora@ftc.gov
14 Knelson@ftc.gov

15 Nadine S. Samter, WSBA No. 23881
16 Federal Trade Commission
17 915 Second Avenue, Suite 2896
18 Seattle, Washington 98174
19 Telephone: (206) 220-6350
20 Facsimile: (206) 220-6366
21 Nsamter@ftc.gov

22 *Counsel for Plaintiff, Federal Trade Commission*

23
24 
25 Jeffrey B. Wells, Esq.
26 Law Offices of Jeffrey B. Wells
27 502 Logan Building
28 500 Union Street
Seattle, Washington 98101
Telephone: (206) 624-0088
Facsimile: (206) 624-0086
Jbwellaw@aol.com

*Counsel for Defendants, Warwick Properties,
Heidi Fogg and John Stefanchik*

Judgment and Order- Page 6

FEDERAL TRADE COMMISSION
600 Pennsylvania Ave., NW, Suite NJ-2122
Washington, D.C. 20580
(202) 326-3304

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

In Re:

Warwick Properties LLC,
Debtor-in-possession.

Case No. 08-16620

Federal Trade Commission,
Plaintiff,

Adversary Proceeding No. 09-01584-TTG

v.

Warwick Properties LLC,
Heidi Fogg, and John Stefanchik,
Defendants.

JUDGMENT AND ORDER

Plaintiff Federal Trade Commission ("FTC" or "the Commission"), and defendants Warwick Properties LLC, Heidi Fogg and John Stefanchik (collectively "Defendants"), by and through their attorneys, have agreed to entry of this Judgment and Order by this Court in order to resolve the FTC's claims against the Defendants.

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334. This Adversary Proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

2. Venue in the Western District of Washington is proper under 28 U.S.C. § 1409(a).

Judgment and Order- Page 1

FEDERAL TRADE COMMISSION
400 Pennsylvania Ave., NW, Suite NJ-2122
Washington, D.C. 20580
(202) 326-3304

Stipulated Supp. Order to Modify - Ex. B

Exhibit A to Judgment and Order
Page 19

1 3. This Adversary Proceeding relates to *In re Warwick Properties LLC*, Chapter 11
2 Case No. 08-16620 (Bankr. W.D. Wash.), now pending in this Court (the "Bankruptcy Case").
3 The FTC is a creditor with a secured claim against the Debtor as a result of a judgment the
4 Commission obtained against Stefanchik, and others, in the United States District Court for the
5 Western District of Washington in the case *Federal Trade Commission v. Stefanchik, et al.*, Case
6 No. 2:04-cv-01852-RSM (W.D. Wash.) (the "Stefanchik Case").

7 THE PARTIES

8 4. The FTC is an independent agency of the United States government created by
9 statute. 15 U.S.C. §§ 41-58. The FTC is charged, *inter alia*, with enforcement of Section 5(a) of
10 the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or
11 affecting commerce. The Commission also enforces the Telemarketing Sales Rule, 16 C.F.R.
12 Part 310, as amended, which prohibits deceptive or abusive telemarketing acts or practices.

13 5. The Commission is authorized to initiate federal district court proceedings to
14 enjoin violations of the FTC Act and the Telemarketing Sales Rule, and to secure such equitable
15 relief as may be appropriate in each case, including restitution for injured consumers. 15 U.S.C.
16 §§ 53(b), 57b, 6102(c), and 6105(b).

17 6. Warwick Properties LLC is a chapter 11 Debtor in the Bankruptcy Case.

18 7. Heidi Fogg is the manager of the Debtor and the spouse of Stefanchik. Fogg
19 currently resides at: 9022 North Mercer Way, Mercer Island, Washington 98040.

20 8. John Stefanchik is the spouse of Fogg and a defendant in the Stefanchik Case.
21 Stefanchik currently resides at: 9022 North Mercer Way, Mercer Island, Washington 98040.

22 FINDINGS

23 9. On August 24, 2004, the Commission filed a complaint in the United States
24 District Court for the Western District of Washington (the "District Court") against Stefanchik, a
25 corporation he organized, Beringer Corporation ("Beringer"), and several other defendants.
26 *Federal Trade Comm'n v. Stefanchik, et al.*, Case No. 2:04-cv-01852-RSM (W.D. Wash.). All

27 Judgment and Order- Page 2
28

FEDERAL TRADE COMMISSION
600 Pennsylvania Ave., NW, Suite NJ-2122
Washington, D.C. 20580
(202) 326-3304

1 defendants except Stefanchik and Beringer entered into stipulated judgments to resolve the
2 FTC's claims against them.

3 10. On April 3, 2007, the FTC obtained a judgment against Stefanchik and Beringer,
4 jointly and severally, in the amount of \$17,775,369. Stefanchik and Beringer subsequently
5 appealed the District Court's ruling.

6 11. In March 2009, the U.S. Court of Appeals for the Ninth Circuit affirmed the
7 Commission's judgment against Stefanchik and Beringer as to both liability and monetary relief.
8 *See Federal Trade Comm'n v. Stefanchik*, 559 F.3d 924 (9th Cir. 2009).

9 12. The full amount of the judgment awarded to the Commission, \$17,775,379 plus
10 interest (the "Judgment"), remains outstanding as of July __, 2010.

11 13. On May 7, 2007, while the appeal was pending, and shortly after the District
12 Court's ruling, the Commission filed a judgment lien on the home where Stefanchik resided at
13 the time of the judgment: 9022 North Mercer Way, Mercer Island, Washington (the "Mercer
14 Island Property").

15 14. The Mercer Island Property is currently titled in the name of Warwick.
16 Accordingly, the Commission filed a secured claim in Warwick's Bankruptcy Case.

17 15. In addition, the Commission asserted various claims against Defendants in this
18 adversary proceeding, including a reverse veil-piercing claim in which the Commission alleged
19 that Warwick is a sham or the alter-ego of John Stefanchik and/or Heidi Fogg.

20 16. The parties to the adversary proceeding have agreed to consensually resolve the
21 FTC's claims in this case. Further, the parties have agreed to resolve all claims related to the
22 Commission's proof of claim filed in the Bankruptcy Case.

23 17. This Judgment and Order represents a fair and equitable compromise of the claims
24 at issue in this adversary proceeding, and it is a critical part of the parties' resolution of claims
25 among the Commission and Defendants in the Stefanchik Case. *See Exhibit A (Stipulated*
26 *Supplemental Order).*

27 Judgment and Order- Page 3
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1 18. The Defendants further waive all rights to appeal or otherwise challenge or
2 contest the validity of this Order. If, however, an appeal of this Order is filed by an interested
3 party, Defendants agree to fully cooperate and assist the FTC in defending against such an appeal
4 and/or in prosecuting any claims that may arise as a result of such an appeal. Defendants waive
5 any rights to attorneys' fees that might otherwise arise in the course of defending this Order on
6 appeal.

7 **ORDER**

8 **IT IS HEREBY ORDERED** that:

9 A. The debtor, Warwick, has authority to enter into and execute this Judgment and
10 Order under 11 U.S.C. § 1107 and Bankruptcy Rule 9019; and

11 B. Judgment is entered in favor of the Commission and against Defendants.
12 Accordingly, defendant Warwick is liable, jointly and severally, along with defendant Stefanchik
13 on the Judgment awarded in favor of the Commission in the Stefanchik Case, plus interest from
14 April 3, 2007 at the rate prescribed under 28 U.S.C. § 1961, as amended.

15 **IT IS FURTHER ORDERED** that this Court will retain jurisdiction of this matter for all
16 purposes.

17 Dated: July __, 2010

Respectfully submitted by:
FEDERAL TRADE COMMISSION

18
19 /s/ Kimberly L. Nelson
20 Michael P. Mora, III. Bar No. 6199875
21 Kimberly L. Nelson, VA Bar No. 47224
22 Federal Trade Commission
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25 Telephone: (202) 326-3304
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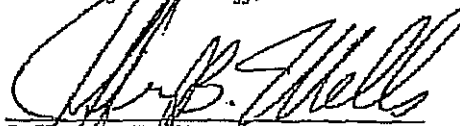
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16 *Fogg and John Stefanchik*

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Exhibit A to Judgment and Order

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EXHIBIT C

All funds, assets, or other items of value that John Stefanchik, Heidi Fogg, or any corporation or entity that either controls now, or may at any date in the future, receive or have any right to receive as a result of transactions described in Exhibit C to the sworn Financial Statement signed by John Stefanchik and Heidi Fogg on May 25, 2010, and submitted to the Federal Trade Commission. The transactions described in Exhibit C to that sworn Financial Statement relate to transfers of funds from corporations controlled by John Stefanchik, including, but not limited to, North American Verification, Inc., Beringer Corporation, F/S Trust, and Jordan, LLC, to corporations and individuals, including, but not limited to, Paragon Dynamics, Inc., Silver Oak Services, James Fontano, and Jay Swob.

EXHIBIT D
List of Personal Property to be Sold at Auction

<u>Item</u>	<u>Est. Resale Value</u>
Square Table with 4 Stools	\$1000.00
Chaise Longue	\$1066.67
Area Rug (Living Room)	\$1000.00
Area Rug (Dining Room)	\$3166.67
Area Rug (Bedroom)	\$3166.67
Pool/Billiards Table	\$1500.00
Adam Shaw painting (54"x 50")	\$6000.00
Adam Shaw painting (64" x 70")	\$9000.00
Calder Print	\$6000.00

Jewelry

Mikimoto Pearl Necklace (18" strand)
Tahitian Pearl Earrings
Cabochon Ruby Ring
Perionite Ring
Pearl and gold necklace
gold tennis bracelet
two Raymond Weil watches

Stipulated Supp. Order to Modify - Ex. D