

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

In the Matter of

**MONTGOMERY WARD CREDIT CORPORATION, a corporation, and
GENERAL ELECTRIC CAPITAL CORPORATION, a corporation.**

FILE NO. 972-3188

AGREEMENT CONTAINING CONSENT ORDER

The Federal Trade Commission has conducted an investigation of certain acts and practices of Montgomery Ward Credit Corporation, a corporation, and General Electric Capital Corporation, a corporation, ("proposed respondents"). Proposed respondents, having been represented by counsel, are willing to enter into an agreement containing a consent order resolving the allegations contained in the attached draft complaint. Therefore,

IT IS HEREBY AGREED by and among Montgomery Ward Credit Corporation and General Electric Capital Corporation, by their duly authorized officers, and counsel for the Federal Trade Commission that:

- 1.a. Proposed respondent Montgomery Ward Credit Corporation is a Delaware corporation with its principal office or place of business at 4246 South Riverboat Road, Taylorsville, Utah 84123.
- 1.b. Proposed respondent General Electric Capital Corporation is a New York corporation with its principal executive office or place of business at 260 Long Ridge Road, Stamford, Connecticut 06927.
2. Proposed respondents admit all the jurisdictional facts set forth in the draft complaint.
3. Proposed respondents waive:
 - a. Any further procedural steps;
 - b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and
 - c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.
4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of sixty (60) days and information about it publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondents, in which event it will take such

action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true.

6. The Commission reserves the right to file an action for consumer redress pursuant to Section 19 of the Federal Trade Commission Act, 15 U.S.C. § 57b, based on the order issued in this proceeding. Proposed respondents hereby waive their right to assert a defense based on the statute of limitations (as provided by 15 U.S.C. § 57b(d)) on account of the running of time from the date that this order is signed by respondents, in any action brought by the Commission pursuant to Section 19 of the Federal Trade Commission Act. This waiver shall expire one year following the proposed respondents' fulfillment of their obligations to make payments to affected consumers, as that term is used in the settlement agreement reached among proposed respondents and the Attorneys General of various states and class action lawsuits, pending on the date that proposed respondents sign this order, that resolves challenges to conduct similar to that challenged by the Commission in this proceeding. However, the Commission will not bring any action against proposed respondents pursuant to Section 19 of the Federal Trade Commission Act provided that, by September 30, 1999, proposed respondents make available to consumers payments consisting of either cash refunds or reductions in credit balances, including interest and additional cash payments, of not less than \$60 million, not including attorney fees, administrative costs, and any payments to the states themselves. The Commission reserves the right to pursue any legal remedy that it may have available, including an action pursuant to Section 19, in the event that the Commission believes that proposed respondents have failed to fulfill their obligations to make payments to affected consumers, as that term is used in the settlement agreement reached among proposed respondents and the Attorneys General of various states and class action lawsuits, pending on the date that proposed respondents sign this order, that resolves challenges to conduct similar to that challenged by the Commission in this proceeding. The Commission reserves the right to seek to intervene in the actions referenced above for the purpose of opposing any settlement that the Commission does not deem to be in the public interest (except the Commission will not object to the amount of any such settlement, so long as the aggregate amount of such settlements, as described above, is not less than \$60 million). Proposed respondents reserve the right to oppose any attempt by the Commission to intervene in any class action lawsuit or other legal action and the right to oppose any other legal remedy that the Commission may pursue, including an action pursuant to Section 19 of the Federal Trade Commission Act, 15 U.S.C. § 57b.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery of the complaint and

the decision and order to proposed respondents by any means specified in Section 4.4 of the Commission's Rules shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order. No agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

8. Proposed respondents have read the draft complaint and consent order. They understand that they may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

ORDER

DEFINITIONS

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

1. Unless otherwise specified, "respondents" shall mean Montgomery Ward Credit Corporation, a corporation, General Electric Capital Corporation, a corporation, their successors and assigns, and their officers, agents, representatives, and employees.
2. "Debt" shall mean any obligation or alleged obligation of a consumer to pay money arising out of an extension of open-end credit under a plan to finance the purchase of goods or services, such goods or services not including real estate or motor vehicles.
3. "Debtor" shall mean any person who owes or is claimed to owe a Debt.
4. "Reaffirmation Agreement" shall mean any written agreement between a respondent and a Debtor who has filed a petition under Chapter 7 of the Bankruptcy Code, the consideration for which, in whole or in part, is based on all or a part of any dischargeable prepetition Debt incurred by a Debtor.
5. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

I.

IT IS ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the collection of any Debt, shall not:

A. Misrepresent, expressly or by implication, to Debtors who have filed petitions for bankruptcy protection under the United States Bankruptcy Code that Reaffirmation Agreements have been or will be filed in bankruptcy court;

B. Misrepresent, expressly or by implication, to Debtors who have filed petitions for bankruptcy protection under the United States Bankruptcy Code that any Reaffirmation Agreement is legally binding on the consumer; or

C. Collect any Debt (including any interest, fee, charge, or expense incidental to the principal obligation) that has been legally discharged in bankruptcy proceedings and that respondents are not permitted by law to collect.

II.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, shall not make any material misrepresentation, expressly or by implication, in the collection of any Debt subject to a pending bankruptcy proceeding.

III.

IT IS FURTHER ORDERED that respondents, for five (5) years after the date of issuance of this order, shall maintain and upon request make available to the Federal Trade Commission business records demonstrating their compliance with the terms and provisions of this order, including but not limited to all Reaffirmation Agreements in connection with Debt and records sufficient to show that such Reaffirmation Agreements were filed in bankruptcy courts and were subsequently approved by bankruptcy courts as part of the underlying bankruptcy proceedings, if required by the United States Bankruptcy Code.

IV.

IT IS FURTHER ORDERED that respondents, for five (5) years after the date of issuance of this order, shall deliver a copy of this order to all current and future officers, directors, managerial employees, and bankruptcy court representatives having responsibilities for the collection of any Debt subject to a pending bankruptcy proceeding ("Covered Persons"), and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondents shall, for five (5) years after each such statement acknowledging receipt of the order is signed and dated, maintain and upon request make available to the Federal Trade Commission for inspection and copying such statements. Respondents shall deliver this order to current Covered Persons within thirty (30) days after the date of service of this order, and to future Covered Persons before any new Covered Person makes contact with a respondent's customer or a respondent's customer's attorney for the collection of any Debt subject to a pending bankruptcy proceeding.

V.

IT IS FURTHER ORDERED that respondents shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) in each case that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondents learn less than thirty (30) days prior to the date such action is to take place, respondents shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

VI.

IT IS FURTHER ORDERED that respondents shall provide notification of all proposed settlement terms relating to allegations made by the Attorneys General of various states, any other legal actions by government entities not cited herein, and all class action lawsuits against respondents or any of their predecessors or affiliates, pending on the date that proposed respondents sign this order, that challenge conduct similar to that challenged by the Commission in this proceeding, to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, in writing, at least ten (10) days before any such proposed settlement is submitted to a court for final approval.

VII.

IT IS FURTHER ORDERED that respondents shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

VIII.

This order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondents did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Signed this day of , 19

MONTGOMERY WARD CREDIT CORPORATION

By:

GENERAL ELECTRIC CAPITAL CORPORATION

By:

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APPROVED:

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