

UNDER SEAL

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

FEDERAL TRADE COMMISSION,	)
	)
Plaintiff,	)
	)
v.	)
	)
CAPITAL ACQUISITIONS & MANAGEMENT	)
CORP., a corporation,	)
	)
ARM FINANCIAL SERVICES, INC., a corporation,	)
	)
CAPITAL PROPERTIES HOLDINGS, INC.,	)
a corporation,	)
	)
CARIBBEAN ASSET MANAGEMENT, LTD.,	)
a corporation,	)
	)
REESE WAUGH,	)
	)
JEROME KUEBLER,	)
	)
ERIC WOLDOFF,	)
	)
GEORGE OTHON, and	)
	)
JEFFREY GARRINGTON,	)
	)
Defendants.	)

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DEC 9 2004

RONALD A. GUZMAN, JUDGE  
UNITED STATES DISTRICT COURT

Civil Action No.

04C 7781

JUDGE GUZMAN

MS No. 121

~~(PROPOSED)~~

TEMPORARY RESTRAINING ORDER WITH ASSET FREEZE AND OTHER RELIEF

Plaintiff, Federal Trade Commission ("FTC" or "Commission"), having filed its Complaint for Injunctive and Other Relief in this matter, pursuant to section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), and Section 814(a) of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692l(a), and having moved for an ex parte

Temporary Restraining Order and other relief pursuant to Rule 65 of the Federal Rules of Civil Procedure, and the Court having considered the Complaint, declarations, exhibits, and memorandum of law filed in support thereof, and being advised in the premises, finds that:

1. This Court has jurisdiction over the subject matter of this case and there is good cause to believe it will have jurisdiction over all parties thereto.
2. Venue lies properly with this Court.
3. There is good cause to believe that Plaintiff will ultimately succeed in establishing that Defendants Capital Acquisitions and Management Corporation; RM Financial Services, Inc.; Capital Properties Holdings, Inc.; Caribbean Asset Management, Ltd.; Reese Waugh; Jerome Kuebler; Eric Woldoff; George Othon; and Jeffrey Garrington have engaged in and are likely to engage in the future in acts and practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FDCPA, 15 U.S.C. § 1692, and that Plaintiff therefore is likely to prevail on the merits of this action.
4. There is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief for consumers in the form of restitution will occur from the sale, transfer, or other disposition or concealment by Defendants of their assets or corporate records unless Defendants are immediately restrained and enjoined by Order of this Court, and thus there is good cause for relieving Plaintiff of the duty to provide Defendants with prior notice of Plaintiff's motion.
5. Weighing the equities and considering Plaintiff's likelihood of ultimate success, a Temporary Restraining Order with asset freeze and other equitable relief is in the public interest.
6. Plaintiff is not required to post any security, pursuant to Fed. R. Civ. P. 65(c), which provides that no security is required of any agency of the United States for issuance of a

restraining order.

## ORDER

### DEFINITIONS

For the purposes of this Temporary Restraining Order (the "Order"), the following definitions shall apply:

1. "Plaintiff" means the Federal Trade Commission.
2. "Defendant" or "Defendants" means Capital Acquisitions and Management Corp.; RM Financial Services, Inc.; Capital Properties Holdings, Inc.; Caribbean Asset Management, Ltd; Reese Waugh, individually and as an officer or director of the corporate defendants; Jerome Kuebler, individually and as an officer or director of the corporate defendants; Eric Woldoff, individually and as an officer or director of the corporate defendants; George Othon, individually and as an officer or director of the corporate defendants; and Jeffrey Garrington, individually and as an officer or director of the corporate defendants; and any subsidiaries, affiliates, and any fictitious business entities or business names created or used by these entities; or any of them.
3. "Receivership Defendant" means each of Capital Acquisitions and Management Corp., RM Financial Services, Inc., Capital Properties Holdings, Inc., and Caribbean Asset Management, Ltd.
4. "Asset" or "Assets" means any legal or equitable interest in, right to, or claim to any real or personal property, including but not limited to "cash," "funds," "money," "goods," "instruments," "equipment," "fixtures," "general intangibles," "inventory," "checks" or "notes" (as these terms are defined in the Uniform

Commercial Code), lines of credit, chattel, leaseholds, contracts, mail or other deliveries, shares of stock, lists of consumer names, accounts, credits, premises, receivables, funds, and all cash, wherever located. "Asset" or "Assets" shall include any "Asset" or "Assets" existing at the effective date of this Order and any and all "Asset" or "Assets" acquired by Defendants after the effective date of this Order.

5. "Document" or "Documents" means any materials listed in Federal Rule of Civil Procedure 34(a) and includes writings, drawings, graphs, charts, photographs, audio or video recordings, computer records, and any other data compilations from which information can be obtained and translated into reasonably usable form through detection devices. A draft or non-identical copy of a Document is a separate Document within the meaning of the term.
6. "Consumer" means any person.
7. "Debt collection activities" means any activity the principal purpose of which is to collect or attempt to collect, directly or indirectly, debts owed or asserted to be owed, or due.

#### **I. CEASE AND DESIST**

**IT IS THEREFORE ORDERED** that Defendants and their officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, corporations, subsidiaries, affiliates, shareholders, successors, and assigns, and all other persons or entities in concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, in connection with debt collection activities are hereby restrained and enjoined from violating any

provision of the FTC Act or FDCPA, including, but not limited to:

- A. making, or assisting in the making of, expressly or by implication, orally or in any writing, any false or misleading statement or representation of material fact, including, but not limited to, any false or misleading representation:
  - 1. that if the consumer does not pay the Defendants, the Defendants can and will take actions that will have a significant adverse effect on the consumer's credit report;
  - 2. that the consumer can be arrested or imprisoned for failing to pay the Defendants;
  - 3. that the consumer has a legal obligation to pay the Defendants; or
  - 4. that if the consumer does not pay the Defendants, the Defendants can or will take formal legal action against the consumer, such as filing suit, seizing or attaching property, or garnishing wages;
  
- B. communicating with a consumer without the consumer's express prior consent given directly to the Defendants or the express permission of a court of competent jurisdiction:
  - 1. at times or places that the Defendants knew or should have known to be inconvenient to the consumer, including but not limited to communicating with the consumer at the consumer's place of employment when the Defendants knew or should have known that it is inconvenient for the consumer to receive such communications; or
  - 2. at the consumer's place of employment when the Defendants knew or had reason to know that the consumer's employer prohibited the consumer

from receiving such communications;

- C. communicating with third parties for purposes other than acquiring location information about a consumer, without having obtained directly the express prior consent of the consumer or the express permission of a court of competent jurisdiction, and when not reasonably necessary to effectuate a post judgment judicial remedy;
- D. communicating with a consumer after the consumer has notified the Defendants in writing that the consumer refuses to pay a debt or that the consumer wishes the Defendants to cease further communication with the consumer;
- E. engaging in conduct the natural consequence of which is to harass, oppress, or abuse a person, including, but not limited to:
  - 1. using obscene or profane language or language the natural consequence of which is to abuse the hearer; or
  - 2. causing a telephone to ring or engaging a person in telephone conversation repeatedly or continuously with the intent to annoy, abuse, or harass a person at the number called;
- F. using false, deceptive, or misleading representations or means, including, but not limited to:
  - 1. falsely representing the character, amount, or legal status of any debt;
  - 2. falsely representing or implying that an individual is an attorney or that a communication is from an attorney;
  - 3. falsely representing or implying that nonpayment of a debt will result in the arrest or imprisonment of a person or the seizure, garnishment, or

- attachment of a person's property or wages, when such action is not lawful or when the Defendants have no intention of taking such action;
- 4 threatening to take action that the Defendants do not intend to take, such as filing a lawsuit;
5. threatening to communicate with any person credit information that the Defendants know or should have known to be false; or
6. using false representations or deceptive means to collect or attempt to collect a debt or to obtain information concerning a consumer;
- G. when a consumer has notified the Defendants in writing within the thirty day period pursuant to Section 809(a) of the FDCPA, 15 U.S.C. § 1692g(a), that the debt, or any portion thereof, is disputed, continuing to attempt to collect the debt before the verification of the debt is provided to the consumer.

## **II. MAINTAIN RECORDS**

**IT IS FURTHER ORDERED** that Defendants and their officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, corporations, subsidiaries, affiliates, shareholders, successors, assigns, and all other persons or entities in concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, are hereby restrained and enjoined from:

- A. Failing to create and maintain books, records, accounts, bank statements, current accountants' reports, general ledgers, general journals, cash receipt ledgers, source documents, documents indicating title to real or personal property, and any other data which in reasonable detail fairly, accurately, and completely reflect the incomes, disbursements, transactions and uses

of Defendants' Assets;

B. Destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of in any manner, directly or indirectly, any books, records, tapes, disks, contracts, accounting data, handwritten notes, checks (fronts and backs), correspondence, forms, manuals, electronically stored data, banking records, consumer or debtor lists or files, mailing lists, telemarketer lists, invoices, telephone records, receipt books, postal receipts, ledgers, payroll records, or other Documents of any kind, including information stored in computer-maintained form (such as electronic mail), in their possession, custody, or control.

C. Creating, operating, or exercising any control over any new business entity including any partnership, sole proprietorship, corporation, or other business entity without first providing Plaintiff a written statement disclosing (1) the name of the business entity, (2) the address and telephone number of the business entity, (3) the names of the business entity's officers, directors, principals, managers, and employees, and (4) a detailed description of the business entity's intended activities.

### **III. ASSET FREEZE**

**IT IS FURTHER ORDERED** that Defendants and their officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, corporations, subsidiaries, affiliates, shareholders, successors, assigns, and all other persons or entities in concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, except as provided in section D below, are hereby restrained and enjoined until further ordered by this Court from:

A. Transferring, liquidating, converting, encumbering, pledging, loaning, selling



concealing, dissipating, disbursing, assigning, spending, withdrawing, granting a lien or security interest or other interest in, or otherwise disposing of any Assets, or any interest therein, wherever located, that are (1) owned, controlled, or held by or for the benefit of, in whole or in part, any Defendant; or (2) in the actual or constructive possession of any Defendant, including but not limited to any Assets held in any account at any bank or savings and loan institution, or any credit card processing agent or agent providing electronic funds transfer services or automated clearing house processing, customer service agent, commercial mail receiving agency, mail holding or forwarding company, credit union, IRA custodian, money market, mutual fund, storage company, trustee, broker-dealer, escrow agent, title company, commodity trading company, precious metal dealer, or any other financial institution or depository of any kind, either within or outside the United States;

B. Opening or causing to be opened any safe deposit boxes, commercial mail boxes, or storage facilities titled in the name of (or held for the benefit of) any Defendant, or subject to access by any Defendant or under the control of any Defendant, without providing Plaintiff and Receiver prior notice and an opportunity to inspect the contents in order to determine that they contain no Assets covered by this Section;

C. Incurring charges or cash advances on any credit card issued in the name, singly or jointly, of any Defendant;

D. Notwithstanding the asset freeze provisions of Subsections III. A-C above, Defendants Reese Waugh, Jerome Kuebler, Eric Woldoff, George Othon, and Jeffrey Garrington may, upon compliance with Section V of this Order, pay usual, ordinary, and necessary living expenses not to exceed \$1000 subject to written agreement with Plaintiff;

E. Transferring any funds or other Assets subject to this Order for attorneys' fees or

living expenses, except from accounts or other Assets identified by prior written notice to Plaintiff and Receiver and prior approval by the Court. Provided further, that no attorneys' fees requested by any Defendant shall be paid from Assets subject to this Order unless and until the Defendant requesting such funds has completed a sworn financial statement as required by Section V of this Order, and submitted such statement to the Court and served such statement upon counsel for Plaintiff and Receiver.

#### **IV. DUTIES OF THIRD PARTIES**

**IT IS FURTHER ORDERED** that any and each of the entities identified in Section III. A above that maintain(s) or has custody or control of any account or other Asset of any Defendant, or that at any time since January 1, 2001, has maintained or had custody of any such account or Asset, and which is provided with a copy of this Order, or otherwise has actual or constructive knowledge of this Order, shall:

A. Hold and retain within its control and prohibit the withdrawal, removal, assignment, transfer, pledge, hypothecation, encumbrance, disbursement, dissipation, conversion, sale, liquidation, or other disposal of any of the Assets or other property held by, under its control, or on behalf of any Defendant in any account maintained in the name of, or for the benefit or use of, any Defendant in whole or in part, except as directed by further order of this Court or by written agreement of Plaintiff and the parties claiming an interest in such account or Asset;

B. Deny Defendants access to any safe deposit boxes, commercial mail boxes, or storage facilities that are either titled in the name, individually or jointly, of any Defendant, or otherwise subject to access by any Defendant;

C. Within four (4) business days of the date of notice of this Order, provide to

counsel for Plaintiff a statement setting forth:

1. the identification of each account or Asset titled in the name, individually or jointly, of any Defendant, or to which any Defendant is a signatory, or which is held on behalf of, or for the benefit or use of, any Defendant;

2. the balance of each such account, or a description and appraisal of the value of such Asset, as of the close of business on the day on which notice of this Order is received, and, if the account or other Asset has been closed or removed, or more than \$1,000 withdrawn or transferred from it within the last ninety (90) days, the date of the closure or removal of funds, the total funds removed or transferred, and the name and account number of the person or entity to whom such account, funds, or other Asset was remitted; and

3. the identification of any safe deposit box, commercial mail box, or storage facility that is either titled in the name individually or jointly of any Defendant or is otherwise subject to access or control by any Defendant.

D. Allow representatives of Plaintiff immediate access to inspect and copy, or upon Plaintiff's request, within four (4) business days of said request, provide Plaintiff's representatives with copies of any records or other Documents pertaining to any such account or Asset, including but not limited to originals or copies of account applications, corporate resolutions, account statements, signature cards, checks, drafts, deposit tickets, transfers from or to the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit logs.

#### **V. COMPLETION AND FILING OF FINANCIAL STATEMENT**

**IT IS FURTHER ORDERED** that within seventy-two (72) hours after entry of this Order each Defendant named in the caption of this Order shall serve upon counsel for Plaintiff a

completed financial statement on the forms served with this Order. The financial statements shall be accurate as of the date of entry of this Order and shall be verified under oath.

Defendants shall attach to these completed financial statements copies of all local, state, provincial, and federal income and property tax returns for the three tax years prior to the date of this Order, with attachments and schedules, as called for by the instructions to the financial statements.

## **VI. TEMPORARY RECEIVER**

### **A. APPOINTMENT OF TEMPORARY RECEIVER**

**IT IS FURTHER ORDERED** that LePetomane XII, Inc. not individually but solely in its representative capacity as Receiver, by and through its President, Jay A. Steinberg not individually but solely in his representative capacity as President of the Receiver, is appointed Temporary Equity Receiver ("Receiver") for the Receivership Defendants and any of their affiliates, subsidiaries, divisions, or operations, wherever located, with the full power of an equity receiver. The Receiver shall be the agent of this Court and solely the agent of this Court in acting as Receiver under this Order. The Receiver shall be accountable directly to this Court and shall comply with all Local Rules of this Court governing receivers.

### **B. RECEIVERSHIP DUTIES**

**IT IS FURTHER ORDERED** that the Receiver is directed, authorized, and empowered to:

1. Assume full control of the Receivership Defendants by removing, as the Receiver deems necessary or advisable, any director, officer, employee, independent contractor, shareholder, or agent of the Receivership Defendants, including any Defendant, from control or management of, or participation in, the affairs of the Receivership Defendants.

2. Take exclusive custody, control, and possession of all Documents and Assets of the Receivership Defendants, wherever situated. The Receiver shall have full power to divert mail and to sue for, collect, receive, take in possession, hold, and manage all Assets of the Receivership Defendants and other persons or entities whose interests are now held by or under the direction, possession, custody, or control of the Receivership Defendants. Provided, however, that the Receiver shall not attempt to collect any amount from a consumer if the Receiver believes the consumer was a victim of the unfair or deceptive acts or practices enumerated in Section I of this Order.

3. Take all steps necessary to secure the business premises of the Receivership Defendants and to file lis pendens notices on the Receivership Properties both real and personal, including but not limited to, all such premises located at 304 N. Main Street, Rockford, Illinois 61101; 1343 Canton Road, Marietta, Georgia; and 854 Algonquin Road, Schaumburg, Illinois 60173 ("Receivership Properties"). Such steps may include but are not limited to the following, as the Receiver deems necessary or advisable:

- (a) serving and filing this Order,
- (b) completing a written inventory of all Receivership Assets,
- (c) obtaining pertinent information from all employees and other agents of the Receivership Defendants, including but not limited to the name, home address, social security number, job description, method of compensation, and all accrued and unpaid commissions and compensation of each such employee or agent,
- (d) videotaping all portions of the Receivership Properties,
- (e) securing the Receivership Properties by changing the locks and disconnecting any computer modems or other means of access to the computer(s) or other

records maintained at the Receivership Properties, or

(f) requiring any persons present on the Receivership Properties at the time this Order is served to leave the premises, to provide the Receiver with proof of identity, or to demonstrate to the satisfaction of the Receiver that such persons are not removing from the Receivership Properties, documents, records or Assets of the Receivership Defendants.

4. Conserve, hold, and manage all Receivership Assets, and perform all acts necessary or advisable to preserve the value of the Receivership Assets, in order to prevent or reduce the risk of any irreparable loss, damage or injury to consumers or creditors of the Receivership Defendants, including but not limited to obtaining an accounting of the Receivership Assets and preventing transfer, withdrawal, or misapplication of Receivership Assets, and including the authority to liquidate or close out any open securities or commodity futures positions of the Receivership Defendants.

5. Enter into contracts and purchase insurance as necessary or advisable.

6. Prevent the inequitable distribution of Receivership Assets and determine, adjust, or protect the interests of consumers and creditors who have transacted business with the Receivership Defendants.

7. Manage and administer the business of the Receivership Defendants until further order of this Court by performing all incidental acts that the Receiver deems necessary or advisable, which includes the hiring or dismissing of any employees, independent contractors, or agents.

8. Choose, engage, and employ attorneys, accountants, appraisers, and other agents or technical specialists as the Receiver deems necessary or advisable in the performance of the duties and responsibilities authorized by this Order.

9. Make such payments and distributions as may be necessary or advisable for the carrying out of the responsibilities and authority conferred by this Order. The Receiver shall apply to this Court for prior approval of any payment, debt, or obligation incurred by the Receivership Defendants prior to the date of entry of this Order, except for such payments that the Receiver deems necessary or advisable to secure the Receivership Assets of the Receivership Defendants, such as rental payments.

10. Determine and implement the manner in which the Receivership Defendants will comply with and prevent violations of this Order and all other applicable laws.

11. Institute, defend, compromise, adjust, appear in, intervene in, or become party to, or otherwise dispose of any or all actions or proceedings in state, federal, or foreign courts that the Receiver determines to be necessary or advisable in order to preserve or recover Assets of the Receivership Defendants or to carry out the Receiver's mandate under this Order, including but not limited to actions against the Receivership Defendants that the Receiver deems necessary and advisable to preserve the Assets of the Receivership Defendants.

12. Continue and conduct the business of the Receivership Defendants in such manner and to the extent as the Receiver may in good faith deem to be necessary or appropriate to operate the business profitably and lawfully, if at all. Provided, however, that the continuation and conduct of the business shall be conditioned on the Receiver's good-faith determination that the business can be lawfully operated at a profit.

13. Issue subpoenas to obtain Documents and records pertaining to the receivership, and conduct discovery in this action on behalf of the receivership estate.

14. Obtain information within the custody or control of any person or entity to enable the Receiver to identify accounts, properties, assets or employees of the Receivership

Defendants or otherwise use the service of any local, state or federal law enforcement agency, as permitted by law.

15. Open one or more bank accounts within the Northern District of Illinois as designated depositories for funds of the Receivership Defendants. The Receiver shall deposit all funds of the Receivership Defendants in such a designated account and shall make all payments and disbursements from the receivership estate from such an account.

16. Maintain accurate records of all receipts and expenditures that the Receiver makes.

17. Cooperate with reasonable requests for information or assistance from any state or federal law enforcement agency.

### **C. COOPERATION WITH THE RECEIVER**

#### **IT IS FURTHER ORDERED that:**

1. Defendants, and their officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, corporations, subsidiaries, affiliates, shareholders, successors, and assigns, and all other persons or entities in concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, shall fully cooperate with and assist the Receiver. This cooperation and assistance shall include, but not be limited to:

a. Providing any information to the Receiver that the Receiver deems necessary to exercising the authority and discharging the responsibilities of the Receiver under this Order;

b. Providing any password required to access any computer,



electronic file, or telephonic data in any medium; or

- c. Advising all persons who owe money to the Receivership

Defendants that all debts should be paid directly to the Receiver.

2. Defendants, and their officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, corporations, subsidiaries, affiliates, shareholders, successors, and assigns, and all other persons or entities in concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other devise, or any of them, are hereby restrained and enjoined from directly or indirectly:

- a. Transacting any of the business of the Receivership Defendants;

- b. Destroying, secreting, defacing, transferring, or otherwise altering or disposing of any Documents of the Receivership Defendants, including, but not limited to, books, records, accounts, writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations, electronically-stored records, or any other records of any kind or nature;

- c. Transferring, receiving, altering, selling, encumbering, pledging, assigning, liquidating, or otherwise disposing of any Assets owned, controlled, or in the possession or custody of, or in which an interest is held or claimed by, the Receivership Defendants, or the Receiver;

- d. Excusing debts owed to the Receivership Defendants;

- e. Failing to notify the Receiver of any Asset, including accounts, of the Receivership Defendants held in any name other than the name of the Receivership Defendants, or by any person or entity other than the Receivership Defendants, or failing to

provide any assistance or information requested by the Receiver in connection with obtaining possession, custody, or control of such Assets;

f. Doing any act or refraining from any act whatsoever to interfere with the Receiver's taking custody, control, possession, or managing of the Assets or Documents subject to this receivership; or to harass or interfere with the Receiver in any way; or to interfere with the Receiver in any way; or to interfere in any manner with the exclusive jurisdiction of this Court over the Assets or Documents of the Receivership Defendants; or to refuse to cooperate with the Receiver or the Receiver's duly authorized agents in the exercise of their duties or authority under any Order of this Court; or

g. Filing, or causing to be filed, any petition on behalf of any of the Receivership Defendants for relief under the United States Bankruptcy Code, 11 U.S.C. § 101 et seq., without prior permission from this Court.

#### **D. DELIVERY OF RECEIVERSHIP PROPERTY**

**IT IS FURTHER ORDERED** that:

1. Immediately upon service of this Order upon them, or within such period as may be permitted by the Receiver, Defendants or any other person or entity shall transfer or deliver possession, custody, and control of the following to the Receiver:

- a. All Assets of the Receivership Defendants;
- b. All Documents of the Receivership Defendants, including, but not limited to, books and records of accounts, all financial and accounting records, balance sheets, income statements, bank records (including monthly statements, canceled checks, records of wire transfers, and check registers), client lists, title documents and other papers;
- c. All Assets belonging to members of the public now held by the

Receivership Defendants; and

d. All keys, codes and passwords necessary to gain or to secure access to any Assets or Documents of the Receivership Defendants, including, but not limited to, access to their business premises, means of communication, accounts, computer systems, mail boxes, or other property.

2. In the event any person or entity fails to deliver or transfer any Asset or otherwise fails to comply with any provision of this Section, the Receiver may file ex parte an Affidavit of Non-Compliance regarding the failure. Upon filing of the affidavit, the Court may authorize, without additional process or demand, Writs of Possession or Sequestration or other equitable writs requested by the Receiver. The writs shall authorize and direct the United States Marshal or any sheriff or deputy sheriff of any county, or any other federal or state law enforcement officer, to seize the Asset, Document, or other thing and to deliver it to the Receiver.

#### **E. TRANSFER OF FUNDS TO THE RECEIVER**

**IT IS FURTHER ORDERED** that, upon service of a copy of this Order, all banks, savings and loan associations, credit unions, depository institutions, finance companies, commercial lending companies, credit card processing agent or agent providing electronic funds transfer services or automated clearing house processing, brokerage houses, escrow agents, money market or mutual funds, title companies, commodity futures merchant, commodity trading companies, precious metal dealers, trustees, or other financial institutions or depositories of any kind, shall cooperate with all reasonable requests of the Receiver relating to implementation of this Order, including transferring funds at his direction and producing records related to the Receivership Assets.

## **F. STAY OF ACTIONS**

**IT IS FURTHER ORDERED** that:

1. Except by leave of this Court, during pendency of the receivership ordered herein, Defendants and all other persons and entities be and hereby are stayed from taking any action to establish or enforce any claim, right, or interest for, against, on behalf of, in, or in the name of, the Receivership Defendants, any of their subsidiaries, affiliates, partnerships, Assets, Documents, or the Receiver or the Receiver's duly authorized agents acting in their capacities as such, including, but not limited to, the following actions:

- a. Commencing, prosecuting, continuing, entering, or enforcing any suit or proceeding, except that such actions may be filed to toll any applicable statute of limitations;
- b. Accelerating the due date of any obligation or claimed obligation; filing, perfecting or enforcing any lien; taking or attempting to take possession, custody, or control of any Asset; attempting to foreclose, forfeit, alter, or terminate any interest in any Asset, whether such acts are part of a judicial proceeding, are acts of self-help, or otherwise, or setoff of any debt owing to the Receivership Defendants that arose before the date of this Order against any claim against the Receivership Defendants;
- c. Executing, issuing, serving, or causing the execution, issuance or service of, any legal process, including, but not limited to, attachments, garnishments, subpoenas, writs of replevin, writs of execution, or any other form of process whether specified in this Order or not; or
- d. Doing any act or thing whatsoever to interfere with the Receiver taking custody, control, possession, or management of the Assets or Documents subject to this

receivership, or to harass or interfere with the Receiver in any way, or to interfere in any manner with the exclusive jurisdiction of this Court over the Assets or Documents of the Receivership Defendants.

2. This Order does not stay:

a. The commencement or continuation of a criminal action or proceeding;

b. The commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power;

c. The enforcement of a judgment, other than a money judgment, obtained in an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power;

d. The commencement of any action by the Secretary of the United States Department of Housing and Urban Development to foreclose a mortgage or deed of trust in any case in which the mortgage or deed of trust held by the Secretary is insured or was formerly insured under the National Housing Act and covers property, or combinations of property, consisting of five or more living units; or

e. The issuance to the Receivership Defendants of a notice of tax deficiency.

3. Except as otherwise provided in this Order, all persons and entities in need of documentation from the Receiver shall in all instances first attempt to secure such information by submitting a formal written request to the Receiver, and, if such request has not been responded to within thirty (30) days of receipt by the Receiver, any such person or entity may thereafter seek an Order of this Court with regard to the relief requested.

#### **G. COMPENSATION OF RECEIVER**

**IT IS FURTHER ORDERED** that, pursuant to Local Rule 66.1, United States District Court, Northern District of Illinois, the Receiver and his attorneys and other agents shall be compensated for reasonable and necessary fees and expenses from the Assets of the Receivership Estate, upon application to the Court and after notice to Plaintiff and Defendants. The Temporary and/or Permanent Receiver's compensation shall be based on a percentage of the assets administered by the Temporary and/or Permanent Receiver. In order to compute this compensation, the percentages as set forth in 11 U.S.C. §326(a) shall be applied to the total assets administered. *Provided, however,* that the Receiver's compensation may be limited, in the Court's sole discretion, according to whatever other basis the Court determines is fair and reasonable, given the amount and complexity of the work to be done, and the amount of total assets available for payment.

#### **H. RECEIVER'S BOND**

**IT IS FURTHER ORDERED** that the Receiver shall file with the Clerk of the Court a preliminary Receiver's Bond in the sum of \$25,000 with sureties to be approved by the Court, conditioned that the Receiver will well and truly perform the duties of the office and abide by and perform all acts the Court directs.

Provided, however, that, by attempting to perform, or by performing, any act, action, duty or responsibility the Receiver takes in reasonable reliance on information or documents supplied to the Receiver or its counsel, including but not limited to taking possession of or liquidating assets that the Receiver and its counsel reasonably believe to be owned by the Receivership Defendants, pursuant to this Order or any prior or subsequent Order of this Court, or pursuant to any agreement approved by this Court or by the nature and character of the assets

in the Receivership Estate or pursuant to any applicable local, state or federal ordinance, law or statute, the Receiver and its officers, directors, shareholders and employees and its attorneys and agents shall neither assume nor shall be subject to any personal civil liability, sanction or penalty of any nature whatsoever except with respect to personal honesty and fidelity regarding the funds used pursuant to this or any prior or subsequent Order of this Court.

**I. ACCESS TO DEFENDANTS' BUSINESS PREMISES**

**IT IS FURTHER ORDERED** that Defendants and their officers, agents, directors, servants, employees, independent contractors, attorneys, corporations, subsidiaries, affiliates, shareholders, successors, assigns, and all other persons or entities in concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, and the Receiver shall allow the Commission's representatives, agents, and assistants, as well as the Defendants' representatives and Defendants themselves, reasonable access to the premises of the Receivership Defendants, including but not limited to the Receivership Properties, or any other premises where the Receivership Defendants conduct business. The purpose of this access shall be to inspect and copy any and all books, records, Documents, accounts, and other property owned by or in the possession of the Receivership Defendants or their agents. The Receiver shall have the discretion to determine the time, manner, and reasonable conditions of such access.

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

**IT IS FURTHER ORDERED** that Defendants and their officers, agents, directors, servants, employees, independent contractors, attorneys, corporations, subsidiaries, affiliates,

shareholders, successors, and assigns, and all other persons or entities in concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, shall:

A. Within three business days following service of this Order, provide Plaintiff with a full accounting of all Documents and Assets that are located outside of the territory of the United States of America and are held by or for any Defendant or are under any Defendant's direct or indirect control, jointly, severally, or individually, including the names and address of any foreign or domestic financial institution or other entity holding the Assets, along with the account numbers and balances;

B. Hold and retain all such Documents and Assets and prevent any transfer, disposition, or dissipation whatsoever of any such Documents or Assets; and

C. Within three business days following service of this Order, provide Plaintiff access to Defendants' records and Documents held by financial institutions or other entities outside the territorial United States, by signing and delivering to Plaintiff's counsel the Consent to Release of Financial Records attached to this Order as Attachment A.

### **VIII. EXPEDITED DISCOVERY**

**IT IS FURTHER ORDERED** that Plaintiff and Receiver is granted leave at any time after the service of this Order and pursuant to Federal Rules of Civil Procedure 30(a), 34, and 45 to (1) take the deposition of any person or entity for the purpose of discovering the nature, location, status, and extent of Defendants' Assets; the nature and location of Documents reflecting the business transactions of Defendants; the location of any premises where Defendants, directly or through any third party, conduct business; and the applicability of any



evidentiary privileges to this action; and to (2) demand the production of Documents from any person or entity relating to the nature, status, and extent of Defendants' Assets, the location of Documents reflecting the business transactions of Defendants, and the applicability of any evidentiary privileges to this action. Three days' notice shall be deemed sufficient for any such deposition, five days' notice shall be deemed sufficient for the production of any such Documents, and twenty-hour (24) hours' notice shall be deemed sufficient for the production of any such computer data. The provisions of this Section shall apply both to parties to this case and to non-parties.

The limitations and conditions set forth in Fed. R. Civ. P. 30(a)(2)(B) and 31(a)(2)(B) regarding subsequent depositions of an individual shall not apply to depositions taken pursuant to this Section. Any such depositions taken pursuant to this Section shall not be counted toward any limit on the number of depositions under the Federal Rules of Civil Procedure or the Local Rules of Civil Procedure for the United States District Court for the Northern District of Illinois, including those set forth in Fed. R. Civ. P. 30(a)(2)(A) and 31(a)(2)(A). Service of discovery upon a party, taken pursuant to this Section, shall be sufficient if made by facsimile or by overnight delivery.

#### **IX. DISTRIBUTION OF ORDER BY DEFENDANTS**

**IT IS FURTHER ORDERED** that Defendants shall immediately provide a copy of this Order to each of their corporations, subsidiaries, affiliates, divisions, directors, officers, partners, shareholders, successors, assigns, employees, attorneys, agents, and independent contractors. Within five calendar days following service of this Order by Plaintiff, Defendants shall file with this Court and serve upon Plaintiff an affidavit identifying the names, titles, addresses, and telephone numbers of the persons and entities Defendants have served with a copy of this Order

in compliance with this provision.

**X. EXPIRATION DATE OF TEMPORARY RESTRAINING ORDER**

**IT IS FURTHER ORDERED** that the Temporary Restraining Order granted herein shall expire on December 13, 2004, at 11:59 p.m., unless within such time the Order, for good cause shown, is extended, or unless, as to any Defendant, the Defendant consents that it should be extended for a longer time.

**XI. DATE OF NEXT COURT PROCEEDING**

**IT IS FURTHER ORDERED** that each Defendant shall appear before this Court on the 13<sup>th</sup> day of December, 2004, at 6:30 a.m. at the United States Courthouse, Courtroom of the Hon. MS Nolan, Northern District of Illinois, to show cause, if any there be, why this Court should not enter a preliminary injunction pending final ruling on the Complaint against said Defendants enjoining them from further violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), continuing the freeze of their Assets, and imposing such additional relief as may be appropriate.

**XII. SERVICE OF ANSWERING AFFIDAVITS,  
MEMORANDA, AND OTHER EVIDENCE**

**IT IS FURTHER ORDERED** that if Defendants file any answering affidavits, pleadings, and/or legal memoranda prior to the hearing on Plaintiff's request for a preliminary injunction, Defendants shall deliver by personal service or other method agreed to in advance by the parties, such answering affidavits, pleadings, and legal memoranda on counsel for Plaintiff and counsel for the Receiver not less than four business days prior to said hearing.

**XIII. WITNESS LIST**

**IT IS FURTHER ORDERED** that if any party to this action intends to present the

testimony of any witness at the hearing on a preliminary injunction in this matter, that the party shall, at least seventy-two (72) hours prior to the scheduled date and time of hearing, serve on counsel for the other party by personal service or facsimile a statement of the name, address, and telephone number of any such witness, and either a summary of the witness' expected testimony or the witness's affidavit or declaration revealing the substance of the expected testimony.

#### **XIV. NOTICE OF THIS ORDER**

**IT IS FURTHER ORDERED** that copies of this Order may be distributed by first class mail, overnight delivery, facsimile, electronic mail, or personally, by agents or employees of Plaintiff or the Receiver, upon any credit card processing agent or agent providing electronic funds transfer services or automated clearing house processing, customer service agent, commercial mail receiving agency, mail holding or forwarding company, bank, savings and loan institution, credit union, financial institution, accountant, brokerage house, escrow agent, IRA custodian, money market or mutual fund, title company, commodity futures merchant, commodity trading company, common carrier, storage company, trustee, or any other person, partnership, corporation, or legal entity that may be in possession of any Documents, records, Assets, property, or property right of any named Defendant, and any Internet service provider or other person, partnership, corporation, or legal entity that may be subject to any provision of this Order. For purposes of notice on anyone in possession of Documents, records, Assets, property, or property rights, actual notice of this Order shall be deemed complete upon notification by any means, including, but not limited to, notice from distribution by facsimile transmission of the first page, Sections III, IV, VI.A-E, VII, X, XIV, and the final page of this Order, provided that such notice is followed within five business days by delivery of a complete copy of this Order. Service upon any branch or office of any financial institution or entity shall effect service upon

the entire financial institution or entity.

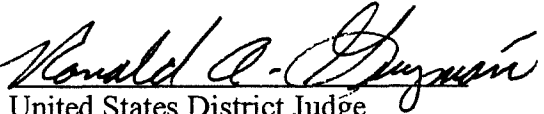
**XV. CONSUMER REPORTING AGENCIES**

**IT IS FURTHER ORDERED** that, pursuant to Section 604 of the Fair Credit Reporting Act, 15 U.S.C. § 1681b, any consumer reporting agency may furnish a consumer or credit report concerning any Defendant to Plaintiff or the Receiver.

**XVI. JURISDICTION**

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

Dated: 12/03/, 2004

  
United States District Judge