

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

FINANCIAL ADVISORS & ASSOCIATES
INC., and

JAMES SWEET,

Defendants.

Case No. 8:08-CV-907-T-
26TBM

STIPULATED FINAL
JUDGMENT AND ORDER
FOR PERMANENT
INJUNCTION

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), has filed its Complaint for permanent injunction and other relief pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. §§ 6101 *et seq.*, charging Defendants Financial Advisors & Associates Inc. and James Sweet with violating Section 5 of the FTC Act, 15 U.S.C. § 45, and the FTC's Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310.

Plaintiff FTC and Defendants Financial Advisors & Associates Inc. and James Sweet have agreed to the entry of this Stipulated Final Judgment and Order for Permanent Injunction ("Order") by this Court to resolve all matters of dispute between them in this action.

NOW, THEREFORE, Plaintiff Federal Trade Commission and Defendants Financial Advisors & Associates Inc. and James Sweet having requested the Court to enter this Order,

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter and the parties.
2. Venue is proper as to all parties in the Middle District of Florida.
3. The activities of Defendants are or were in or affecting commerce, as defined in the FTC Act, 15 U.S.C. § 44.
4. The Complaint states a claim upon which relief may be granted against Defendants under §§ 5(a)(1), 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45(a)(1), 53(b), and 57b; and under the TSR, 16 C.F.R. Part 310.
5. Defendants have waived any and all rights that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412, *amended by* Pub. L. 104-121, 110 Stat. 847, 863-64 (1996).
6. This Order is in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law.
7. Plaintiff and Defendants waive all rights to seek appellate review or otherwise challenge or contest the validity of this Order. Defendants further waive and release any claim they may have against the Commission, its employees, agents, and representatives.
8. Entry of this Order is in the public interest.
9. This Order is for settlement purposes only, and does not constitute and shall not be interpreted to constitute an admission by Defendants or a finding that the law has been violated as alleged in the Complaint, or that the facts alleged in the Complaint, other than jurisdictional facts, are true.

ORDER

DEFINITIONS

1. **“Defendant” or “Defendants”** means Financial Advisors & Associates Inc., doing business as Freedom Financial or MyUnsecuredCreditCard.com, James Sweet, and by whatever other names each may be known, and any subsidiaries, affiliates, and any fictitious business entities or business names created or used by these entities, or any of them.
2. **“Document” or “Documents”** means any materials listed in Federal Rule of Civil Procedure 34(a) and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, into reasonably usable form through detection devices. A draft or nonidentical copy is a separate Document within the meaning of the term.
3. **“Material”** means likely to affect a person’s choice of, or conduct regarding, goods or services.
4. **“Person”** means a natural person, an organization or other legal entity, including a corporation, partnership, sole proprietorship, limited liability company, association, cooperative, or any other group or combination acting as an entity.
5. **“Representatives”** means Defendants’ officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, corporations, subsidiaries, affiliates, successors, and assigns, and those persons in active 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.

I.

PROHIBITED BUSINESS ACTIVITIES

IT IS THEREFORE ORDERED that in connection with the advertising, promoting, offering for sale, or sale of any product or service, Defendants, and their Representatives are hereby permanently restrained and enjoined from:

A. Misrepresenting, or assisting others in misrepresenting, expressly or by implication, that:

1. After a consumer pays a fee, Defendants will or are likely to provide the consumer with a general-purpose credit card, such as a MasterCard or Visa; or
2. Defendants report consumers' credit histories to credit bureaus;

B. Making or assisting others in making, expressly or by implication, any false or misleading statement or representation of Material fact in connection with any offer of any good or service, including, but not limited to:

1. The total cost to purchase, receive, or use, and the quantity of, any goods or services that are subject to the sales offer;
2. Any Material restrictions, limitations, or conditions to purchase, receive, or use the goods or services; or
3. Any Material aspect of the nature or terms of a refund, cancellation, exchange, or repurchase policy for the goods or services;

C. Failing to disclose, or disclose adequately, Material terms and conditions of any offer of any good or service, including, but not limited to, any and all fees and expenses associated with any credit card offer; and

D. Violating, or assisting others in violating, any provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310, including, but not limited to:

1. Section 310.3(a)(1)(i) of the TSR, 16 C.F.R. § 310.3(a)(1)(i), by failing to disclose truthfully, in a clear and conspicuous manner, before a consumer pays for the goods or services offered, the total cost to purchase, receive, or use the goods or services that are the subject of any sales offer, including, but not limited to, any “maintenance fee” and any requirement that consumers pay a portion of any purchase in cash;
2. Section 310.3(a)(2)(iii) of the TSR, 16 C.F.R. § 310.3(a)(2)(iii), by misrepresenting, directly or by implication, Material aspects of the performance, efficacy, nature, or central characteristics of any product or service Defendants sell, including, but not limited to, any false claim that a credit card is a general-purpose credit card;
3. Section 310.3(a)(3) of the TSR, 16 CFR § 310.3(a)(3), by causing billing information to be submitted for payment, or collecting or attempting to collect payment for goods or services or a charitable contribution, directly or indirectly, without the customer’s or donor’s express verifiable authorization;
4. Section 310.3(a)(4) of the TSR, 16 C.F.R. § 310.3(a)(4), by making false or misleading statements to induce a person to pay for goods or services, including, but not limited to, statements that Defendants report consumers’ credit histories to major credit bureaus;
5. Section 310.4(a)(4) of the TSR, 16 C.F.R. § 310.4(a)(4), by requesting or

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receiving payment of a fee or consideration in advance of consumers obtaining a credit card when the Defendants have guaranteed or represented a high likelihood of success in obtaining or arranging the acquisition of a credit card for such consumers;

6. Section 310.4(a)(6), 16 CFR § 310.4(a)(6), by causing billing information to be submitted for payment, directly or indirectly, without the express informed consent of the customer or donor;
7. Section 310.4(b)(1)(iii)(B) of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B), by engaging in or causing others to engage in initiating an outbound telephone call to a person's telephone number on the National Do Not Call Registry; and
8. Section 310.8 of the TSR, 16 C.F.R. § 310.8, by failing to pay the required annual fee for access to the telephone numbers within that area code that are included in the National Do Not Call Registry.

II.

PROHIBITION ON SELLING OF CUSTOMER LISTS

IT IS FURTHER ORDERED that Defendants and their Representatives are permanently restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, credit or debit card number, bank account number, e-mail address, or other identifying information of any person who paid any money to any Defendant, at any time prior to entry of this Order, in connection with Defendants' advertising, marketing, promoting, offering for sale, selling, and distribution of advance fee credit cards, or any other service or product.

Provided, however, that Defendants may disclose such identifying information to a law enforcement agency or as required by any law, regulation, or court order. *Provided, further,* that Defendants shall turn over any electronic customer lists in their possession, custody, or control to the Commission for purposes of effectuating consumer redress.

III.

CONSUMER REDRESS

IT IS FURTHER ORDERED that Judgment is entered against Defendants in the amount of Three Million Six Hundred Forty Seven Thousand Seven Hundred and Seventy Eight Dollars, (\$3,647,778). Based on the sworn representations in the financial statements of Defendants, full payment for the foregoing amount is suspended except as follows:

A. The financial institutions identified on Attachment A to this Order shall transfer, except for an amount equal to \$66,225.05, the balances of the accounts (which are approximately \$1,000,000) identified on Attachment A to the Commission by wire transfer to the FTC in accordance with instructions provided by counsel for the FTC;

B. The financial institution identified on Attachment A as holding an account ending in 1236 shall transfer the amount of \$54,000 to Robert Eckard & Associates, P.A. in accordance with instructions provided by The Law Office of Robert Eckard & Associates;

C. The financial institution identified on Attachment A as holding an account ending in 1236 shall transfer the amount of \$12,225.05 to Defendant Sweet for the express purpose of making payment to the Internal Revenue Service as follows:

1. Within five (5) days after receipt of such funds, Defendant Sweet shall pay the following amounts to the IRS to wholly or partially satisfy his 2006 and 2007 federal tax liabilities:

- a. \$6,954 for 2007; and
 - b. \$5,271.05 for 2006;
2. Within fifteen (15) days of the tax payments, Defendant Sweet shall provide written proof to the Commission of the payments, including copies of cancelled checks and as-filed copies of the 2006 and 2007 federal tax returns. Any portion of Defendant Sweet's federal tax liability not satisfied by the payments made pursuant to sub-paragraph 1 of this Part shall be the sole responsibility of Defendant Sweet. In the event the federal tax liability of Defendant Sweet is less than the amounts set forth in sub-paragraph 1 of this Part, Defendant Sweet shall pay the difference to the Commission;
3. Defendants agree that they will not, whether acting directly or through any corporation, partnership, subsidiary, division, trade name, device, or other entity, submit to any federal or state tax authority any return, amended return, or other official document that takes a deduction for, or seeks a tax refund or other favorable tax treatment for, any payments by one or more of the Defendants pursuant to Part III of this Order; *provided, however*, that Defendants may, if permitted by law, deduct from any applicable state or federal return the cost of attorneys' fees arising from this matter. Defendants further agree they will not seek a refund of any kind for federal taxes or penalties paid for tax years 2006 or 2007. However, if Defendants otherwise obtain a refund of any federal taxes or penalties paid for tax years 2006 or 2007, Defendants shall promptly pay the

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Commission the amount of such refund, together with any interest

Defendants have earned in connection with any such refund;

D. Within sixty (60) days of service of this Order, Defendant Sweet shall sell his 2003 Mercedes SL 500, VIN # WDBSK75F63F010458, for no less than fair-market value, or an amount approved by counsel for Plaintiff, to a disinterested third-party buyer. If Defendant Sweet is unable to sell the aforementioned vehicle during this time period, he shall tender the vehicle to a national used-car retailer for immediate sale. Defendant Sweet shall remit the proceeds of the sale, less any costs for advertising and insurance, to the Commission in accordance with the wire instructions contained in Paragraph A of this Part, and provide a copy of the bill of sale and evidence of the advertising and insurance costs to the Commission in accordance with the notification instructions contained in Part VI, Paragraph C;

E. Any funds paid pursuant to this Part shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including, but not limited to, consumer redress and any attendant expenses for the administration of any redress fund. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendants' practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited in the United States Treasury as disgorgement. Defendants shall have no right to challenge the Commission's choice of remedies under this Part;

F. The Commission's agreement to this Order is expressly premised upon the truthfulness, accuracy, and completeness of Defendants' sworn financial statements and supporting documents submitted to the Commission, as well as all subsequent addenda thereto,

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all of which Defendants stipulate are truthful, accurate, and complete. Defendants and the Commission stipulate that these financial disclosures provide the basis for the assets listed in Attachment A to this Order and include material information upon which the Commission relied in negotiating and agreeing to this Order. Defendants and the Commission stipulate that the Commission has relied on the truthfulness, accuracy, and completeness of these financial disclosures in agreeing to the terms of this Order and that the Commission would not have entered into this Order but for the truthfulness, accuracy, and completeness of these financial disclosures;

G. If, upon motion by the Commission, this Court finds that Defendants have failed to disclose any material asset or materially misstated the value of any asset in the financial statement or related documents described above, or have made any other material misstatement or omission in the financial statements or related documents described above, then this Order shall be reopened and suspension of the judgment shall be lifted for the purpose of requiring payment of monetary relief in the amount of Three Million Six Hundred Forty Seven Thousand Seven Hundred and Seventy Eight Dollars, (\$3,647,778), less the sum of any amounts paid to the Commission pursuant to Paragraphs A and D of this Part. *Provided, however,* that in all other respects this Order shall remain in full force and effect, unless otherwise ordered by the Court;

H. Upon such reinstatement of the monetary judgement, the Court shall make an express determination that the monetary judgment shall be immediately due and payable. The Commission shall be entitled to interest on the judgment, computed from the day of entry of this Order, at the rate prescribed by 18 U.S.C. § 1961, as amended, on any outstanding amounts not paid. The Commission shall be permitted to execute on the judgment immediately after the suspension is lifted and engage in discovery in aid of execution;

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I. Except as otherwise stated herein, Defendants relinquish all dominion, control, and title to the funds paid into the account established pursuant to this Order. Defendants shall make no claim to or demand for the return of funds, directly or indirectly, through counsel or otherwise; and in the event of bankruptcy of any such defendant, Defendants acknowledge that the funds are not part of the debtor's estate, nor does the estate have any claim or interest therein;

J. Defendants agree that the facts as alleged in the Complaint filed in this action shall be taken as true for the purpose of a nondischargeability complaint in any bankruptcy proceeding; and

K. Proceedings instituted under this Part are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings the Commission may initiate to enforce this Order.

IV.

LIFTING OF ASSET FREEZE

IT IS FURTHER ORDERED that the freeze against the assets of the Defendants pursuant to Paragraph V of the Preliminary Injunction Order entered by this Court on June 13, 2008, shall be lifted for the sole purpose of transferring funds pursuant to Paragraphs A and B of Part III of this Order, and shall be dissolved upon transfer of all such funds.

V.

COMPLIANCE MONITORING

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

A. Within ten (10) days of receipt of written notice from a representative of the Commission, Defendants each shall submit additional written reports, sworn to under penalty of

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perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in such Defendants' possession or direct or indirect control to inspect the business operation;

B. In addition, the Commission is authorized to monitor compliance with this Order by all other lawful means, including but not limited to the following:

1. Obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;
2. Posing as consumers and suppliers to Defendants, Defendants' employees, or any other entity managed or controlled in whole or in part by Defendants, without the necessity of identification or prior notice; and

C. Defendants shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present.

Provided, however, that nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49 and 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

VI.

COMPLIANCE REPORTING BY DEFENDANTS

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

- A. For a period of five (5) years from the date of entry of this Order:
1. Defendant James Sweet shall notify the Commission of the following:
 - a. Any changes in his residence, mailing addresses, and telephone numbers within ten (10) days of the date of such change;
 - b. Any changes in his employment status (including self-employment), and any change in his ownership in any business entity, within ten (10) days of the date of such change. Such notice shall include the name and address of each business that he is affiliated with, employed by, creates or forms, or performs services for; a statement of the nature of the business; and a statement of his duties and responsibilities in connection with the business or employment; and
 - c. Any changes in his name or use of any aliases or fictitious names; and
 2. Defendants shall notify the Commission of any changes in corporate structure 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 entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any proposed change in the corporation about which Defendants learn less than thirty

(30) days prior to the date such action is to take place, Defendants shall notify the Commission as soon as is practicable after obtaining such knowledge;

B. One hundred eighty (180) days after the date of entry of this Order, Defendants each shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this Order.

This report shall include, but not be limited to:

1. For Defendant James Sweet:
 - a. His then-current residence address, mailing addresses, and telephone numbers;
 - b. His then-current employment and business addresses and telephone numbers, a description of the business activities of each such employer or business, and his title and responsibilities for each such employer or business; and
 - c. Any other changes required to be reported under subparagraph A of this Section; and
2. For all Defendants:
 - a. A copy of each acknowledgment of receipt of this Order, obtained pursuant to Part IX of this Order; and
 - b. Any changes required to be reported pursuant to subsection A of this Part;

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C. For the purposes of this Order, Defendants shall, unless otherwise directed in writing by the Commission's authorized representatives, mail all written notifications to the Commission to:

Associate Director for the
Division of Enforcement
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
Re: United States v. Financial Advisors & Associates Inc.
Case No. 8:08-CV-907-T-26TBM;

D. For purposes of the compliance reporting and monitoring required by this Order, representatives of the Commission are authorized to communicate directly with Defendants.

VII.

RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this Order, Defendants and their agents, employees, officers, corporations, successors, and assigns, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from failing to create and retain the following records in connection with any credit-related business in which any Defendant is the majority owner or otherwise controls the business:

A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;

B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;

C. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;

D. Complaints and refund requests (whether received directly, indirectly or through any third party) and any responses to those complaints or requests; and

E. Copies of all sales scripts, training materials, advertisements, or other marketing materials;

F. Records demonstrating reasonable policies and procedures to process and handle customer inquiries and complaints; and

G. All records and documents necessary to demonstrate full compliance with each provision of this Order, including but not limited to, copies of acknowledgments of receipt of this Order required by Part VIII, and all reports submitted to the FTC pursuant to Part VI of this Order.

VIII.

DISTRIBUTION OF ORDER BY DEFENDANTS

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

A. Defendant Financial Advisors & Associates must deliver a copy of this Order to all of its principals, officers, directors, and managers. Defendant Financial Advisors & Associates also must deliver copies of this Order to all of its employees, agents, and representatives who engage in conduct related to the subject matter of this Order. For current personnel, delivery shall be within (5) days of service of this Order upon Defendants. For new personnel, delivery shall occur prior to them assuming their responsibilities;

B. For any business that Defendant James Sweet controls, directly or indirectly, or in which Defendant James Sweet has a majority ownership interest, Defendant James Sweet must deliver a copy of this Order to all principals, officers, directors, and managers of that business. Defendant James Sweet must also deliver copies of this Order to all employees, agents, and representatives of that business who engage in conduct related to the subject matter of this Order. For current personnel, delivery shall be within (5) days of service of this Order upon Defendants. For new personnel, delivery shall occur prior to them assuming their responsibilities;

C. For any business where Defendant James Sweet is not a controlling person of a business but otherwise engages in conduct related to the subject matter of this Order, Defendant James Sweet must deliver a copy of this Order to all principals and managers of such business before engaging in such conduct; and

D. Defendants must secure a signed and dated statement acknowledging receipt of this Order, within thirty (30) days of delivery, from all persons receiving a copy of this Order pursuant to this Part.

IX.

ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS

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

X.

COOPERATION WITH FTC COUNSEL

IT IS FURTHER ORDERED that Defendant Sweet shall, in connection with this action or any subsequent investigations related to or associated with the transactions or the occurrences that are the subject of the FTC's Complaint, cooperate in good faith with the FTC and appear at such places and times as the FTC shall reasonably request, after written notice, for interviews, conferences, pretrial discovery, review of documents, and for such other matters as may be reasonably requested by the FTC. If requested in writing by the FTC, Defendant Sweet shall appear and provide truthful testimony in any trial, deposition, or other proceeding related to or associated with the transactions or the occurrences that are the subject of the Complaint, without the service of a subpoena.

XI.

FEES AND COSTS

IT IS FURTHER ORDERED that each party to this Order hereby agrees to bear its own costs and attorneys' fees incurred in connection with this action.

XII.

SEVERABILITY

IT IS FURTHER ORDERED that the provisions of this Order are separate and severable from one another. If any provision is stayed or determined to be invalid, the remaining provisions shall remain in full force and effect.

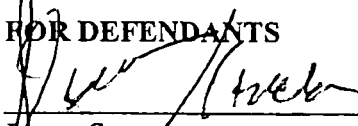
XIII.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification and enforcement of this Order.

The parties, and their respective counsel, hereby consent to the terms and conditions of the Order as set forth above and consent to the entry thereof.

FOR DEFENDANTS

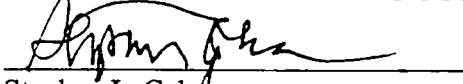


James Sweet,
Individually and as President of Financial Advisors & Associates Inc.

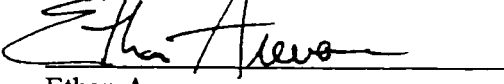
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Robert Eckard
Counsel for Defendants
LAW OFFICE OF ROBERT ECKARD & ASSOCIATES, P.A.
3110 Alternate US 19 North, Suite A
Palm Harbor, FL 34683
Telephone (727) 772-1941; Facsimile (727)771-7940

FOR THE FEDERAL TRADE COMMISSION



Stephen L. Cohen



Ethan Arenson
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580
202-326-3222; 326-2204 (phone); 202-326-3261 (fax)

IT IS SO ORDERED, this 9 day of September, 2008.


United States District Judge

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ATTACHMENT A

Compass Bank	Account ending in 0965
Washington Mutual Bank	Account ending in 472-7
First State Bank	Account ending in 8930 Account ending in 0928
Third Federal Savings & Loan	Account ending in 4721 Account ending in 4792 Account ending in 4874 Account ending in 6766 Account ending in 1236 Account ending in 1908
Fifth Third Bank	Account ending in 2560 Account ending in 2120
Countrywide Bank	Account ending in 9497 Account ending in 4489
Interinvest National Bank	Account ending in 8744 Account ending in 9031 Account ending in 9510 Account ending in 2446
BB&T	Account ending in 7995 Account ending in 0817 Account ending in 5697
McDill Credit Union	Account ending in 1470