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

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

DIRECT FINANCIAL MANAGEMENT INC.,
Ontario Corporation No. 2130181, an Ontario,
Canada, corporation,

2194673 ONTARIO INC., an Ontario, Canada,
corporation, d/b/a THE ELITE FINANCIAL
GROUP,

F&F PAYMENT PROCESSING INC., a
New York corporation,

BAJADA MANAGEMENT GROUP INC.,
a New York corporation,

DAVID D. RICHARDS, individually and as
an officer and/or director of DIRECT
FINANCIAL MANAGEMENT INC.,

BAIRD B. FISHER, individually and as
an officer and/or director of F&F PAYMENT
PROCESSING INC. and BAJADA
MANAGEMENT GROUP INC.,

JACQUELINE M. FISHER, individually,

and

JOSEPH B. FOLEY, individually,

Defendants.

Case No. 10 C 7194

Judge Joan H. Lefkow

Magistrate Judge Maria Valdez

ORDER FOR FINAL DEFAULT
JUDGMENT AND PERMANENT
INJUNCTION AGAINST
DEFENDANTS DIRECT FINANCIAL
MANAGEMENT INC., 2194673
ONTARIO INC., DAVID D.
RICHARDS, AND JOSEPH B.
FOLEY

Plaintiff Federal Trade Commission (“FTC” or “Commission”) commenced this action by filing its Complaint for Permanent Injunction and Other Equitable Relief (“Complaint”), 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. §§ 6101-6108, to secure temporary, preliminary, and permanent injunctive relief, rescission or reformation of contracts, restitution, disgorgement of ill-gotten gains, and other equitable relief for Defendants’ acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and in violation of the FTC’s Trade Regulation Rule entitled “Telemarketing Sales Rule” (“TSR”), 16 C.F.R. Part 310.

The FTC, having filed its Application for Entry of Order for Final Default Judgment and Permanent Injunction Against Defendants Direct Financial Management Inc., 2194673 Ontario Inc., David D. Richards, and Joseph B. Foley (“Defaulting Defendants”), and this Court having considered the submissions of the parties, and having granted the FTC’s Application,

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED
as follows:

FINDINGS

1. This is an action by the Commission instituted under Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, the Telemarketing Act, 15 U.S.C. §§ 6101-6108, and the TSR, 16 C.F.R. Part 310. Pursuant to these statutes and regulations, the Commission has the authority to seek the relief contained herein.

2. The Commission’s Complaint states a claim upon which relief may be granted under Sections 5(a), 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 53(b), and 57b, the Telemarketing Act, 15 U.S.C. §§ 6101-6108, and the TSR, 16 C.F.R. Part 310.

3. This Court has jurisdiction over the subject matter of this case and personal jurisdiction over the Defaulting Defendants.

4. Venue in the United States District Court for the Northern District of Illinois is proper pursuant to 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b), ©, and (d).

5. The activities of Defaulting Defendants are “in or affecting commerce” as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

6. Defendants are “sellers” or “telemarketers” engaged in “telemarketing,” as those terms are defined in the TSR, 16 C.F.R. § 310.2(aa), (cc), and (dd).

7. Defaulting Defendant Direct Financial Management Inc. was properly served with the Summons and Complaint on November 15, 2010.

8. Defaulting Defendant 2194673 Ontario Inc. was properly served with the Summons and Complaint on November 15, 2010.

9. Defaulting Defendant David D. Richards was properly served with the Summons and Complaint on November 15, 2010.

10. Defaulting Defendant Joseph B. Foley was properly served with the Summons and Complaint on November 28, 2010.

11. Defaulting Defendants have not appeared in this case and have failed to plead or otherwise defend, or to file any response, answer, or pleading.

12. On January 13, 2011, default was entered against Defaulting Defendants for failing to appear, to plead or otherwise defend, or to file any response, answer or pleading pursuant to Fed. R. Civ. P. 55.

13. Plaintiff is not required to serve its Application for Entry of Order for Final Default Judgment and Permanent Injunction on Defaulting Defendants because they are in default for failing to appear. Fed. R. Civ. P. 5(a)(2), 55(b)(2).

14. The factual allegations in the Complaint are deemed true for purposes of this Order for Final Default Judgment and Permanent Injunction. Based on these facts, the Court finds that Defaulting Defendants falsely represented that they would:

- a. substantially lower consumers' credit card interest rates in all or virtually all instances;
- b. save consumers thousands of dollars in a short time in all or virtually all instances as a result of lowered credit card interest rates;
- c. enable consumers to pay off their debts much faster, typically three to five times faster, in all or virtually all instances, as a result of lowered credit card interest rates; and
- d. provide full refunds if consumers did not save thousands of dollars in a short time as a result of lowered credit card interest rates,

in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the TSR, 16 C.F.R.

§§ 310.3(a)(2)(iii) and 310.3(a)(2)(iv), as alleged in Counts One, Two, and Three of the Complaint.

15. The Court further finds that Defaulting Defendants, in numerous instances, in connection with telemarketing:

- a. engaged, or caused a telemarketer to engage, in initiating an outbound telephone call to a person's telephone number on the National Do Not Call

Registry, in violation of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B), as alleged in Count Four of the Complaint;

- b. abandoned, or caused a telemarketer to abandon, an outbound telephone call by failing to connect the call to a sales representative within two (2) seconds of the completed greeting of the person answering the call, in violation of the TSR, 16 C.F.R. § 310.4(b)(1)(iv), as alleged in Count Five of the Complaint;
- c. made or caused telemarketers to make outbound telephone calls in which the telemarketer failed to disclose promptly and in a clear and conspicuous manner to the person receiving the call (i) the identity of the seller, (ii) that the purpose of the call is to sell goods or services, or (iii) the nature of the goods or services, in violation of the TSR, 16 C.F.R. § 310.4(d), as alleged in Count Six of the Complaint;
- d. on or after December 1, 2008, initiated, or caused a telemarketer to initiate, outbound telephone calls delivering prerecorded messages that do not promptly disclose the identity of the seller, that the purpose of the call is to sell goods or services, or the nature of the goods or services, in violation of the TSR, 16 C.F.R. § 310.4(b)(1)(v)(B)(ii), as alleged in Count Seven of the Complaint; and
- e. on or after September 1, 2009, initiated outbound telephone calls delivering prerecorded messages to induce the purchase of goods or services when the persons to whom these telephone calls were made had not expressly agreed, in writing, to authorize the seller to place

prerecorded calls to such person in violation of the TSR, 16 C.F.R.

§ 310.4(b)(1)(v)(A), as alleged in Count Eight of the Complaint.

16. It is proper in this case to enter a permanent injunction to prevent a recurrence of Defaulting Defendants' violations of the FTC Act, 15 U.S.C. § 45(a), and the TSR, 16 C.F.R. Part 310, and to enter equitable monetary relief against Defaulting Defendants for the amount of consumer injury caused by their unlawful practices.

17. Defendants' net sales (total sales minus refunds, returns, and chargebacks) were thirteen million, one hundred one thousand, six hundred ninety-five United States Dollars (\$13,101,695 (USD)) from the unlawful conduct alleged in the Complaint.

18. Plaintiff is therefore entitled to equitable monetary relief against Defendants in the amount of thirteen million, one hundred one thousand, six hundred ninety-five United States Dollars (\$13,101,695 (USD)), the amount of consumer injury caused by Defendants' unlawful practices alleged in the Complaint.

19. Defaulting Defendants; and Defendants F&F Payment Processing Inc., Bajada Management Group Inc., Baird B. Fisher, and Jacqueline M. Fisher are jointly and severally liable for the payment of thirteen million, one hundred one thousand, six hundred ninety-five United States Dollars (\$13,101,695 (USD)).

20. Defaulting Defendants are likely to continue to engage in the deceptive acts or practices alleged in the Complaint unless they are permanently enjoined from engaging in such acts and practices.

21. This Order is in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law.

22. Entry of this Order is in the public interest.

DEFINITIONS

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

1. **“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, “goods,” “instruments,” “equipment,” “fixtures,” “general intangibles,” “inventory,” “checks,” or “notes” (as these terms are defined in the Uniform Commercial Code), lines of credit, chattels, leaseholds, contracts, mail or other deliveries, shares of stock, lists of consumer names, accounts, credits, premises, receivables, funds, and all cash, wherever located.

2. **“Assisting others”** includes, but is not limited to: (a) performing customer service functions, including, but not limited to, receiving or responding to consumer complaints; (b) formulating or providing, or arranging for the formulation or provision of, any sales script or other marketing material; © providing names of, or assisting in the generation of, potential customers; (d) performing or providing marketing or billing services of any kind; (e) acting as an officer or director of a business entity; or (f) providing telemarketing services.

3. **“Caller identification service”** means a service that allows a telephone subscriber to have the telephone number, and, where available, name of the calling party transmitted contemporaneously with the telephone call, and displayed on a device in or connected to the subscriber’s telephone.

4. **“Corporate Defendants”** means Direct Financial Management Inc., also known as Ontario Corporation No. 2130181; 2194673 Ontario Inc., also doing business as The Elite Financial Group; F&F Payment Processing Inc.; and Bajada Management Group Inc., and each of them, by whatever other names each may be known, and any subsidiaries, successors, assigns,

and any fictitious business entities or business names created or used by these entities, or any of them.

5. **“Individual Defendants”** means David D. Richards, Baird B. Fisher, Jacqueline M. Fisher, and Joseph B. Foley, and each of them, by whatever other names each may be known.

6. **“Defendants”** means all of the Individual Defendants and the Corporate Defendants, individually, collectively, or in any combination.

7. **“Defaulting Defendants”** means Defendants Direct Financial Management Inc., 2194673 Ontario Inc., David D. Richards, and Joseph B. Foley, and each of them, by whatever other names each may be known, and any subsidiaries, successors, assigns, and any fictitious business entities or business names created or used by these entities, or any of them.

8. **“Defaulting Individual Defendants”** means Defendants David D. Richards and Joseph B. Foley, and each of them, by whatever other names each may be known.

9. **“Defaulting Corporate Defendants”** means Defendants Direct Financial Management Inc. and 2194673 Ontario Inc., and each of them, by whatever other names each may be known, and any subsidiaries, successors, assigns, and any fictitious business entities or business names created or used by these entities, or any of them.

10. **“Debt Relief Service”** means any product or service represented, directly or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of the debt between a consumer and one or more unsecured creditors or debt collectors, including, but not limited to, a reduction in the balance, interest rate, or fees owed by a consumer to an unsecured creditor or debt collector.

11. **“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.

12. **“Established business relationship”** means a relationship between the seller and a person based on: (a) the person’s purchase, rental, or lease of the seller’s goods or services or a financial transaction between the person and seller, within the eighteen (18) months immediately preceding the date of the telemarketing call; or (b) the person’s inquiry or application regarding a product or service offered by the seller, within the three (3) months immediately preceding the date of a telemarketing call.

13. **“Financial Institution”** means any bank, savings and loan institution, credit union, or any financial depository of any kind, including, but not limited to, any brokerage house, trustee, broker-dealer, escrow agent, title company, commodity trading company, or precious metal dealer.

14. **“Financial related product or service”** means any product or service represented, directly or by implication, to: (a) provide any consumer, arrange for any consumer to receive, or assist any consumer in receiving, credit, debit, or stored value cards; (b) improve, or arrange to improve, any consumer’s credit record, credit history, or credit rating; © provide advice or assistance to any consumer with regard to any activity or service the purpose of which is to improve a consumer’s credit record, credit history, or credit rating; (d) provide any consumer, arrange for any consumer to receive, or assist any consumer in receiving, a loan or other extension of credit; or (e) provide any consumer, arrange for any consumer to receive, or assist any consumer in receiving any service represented, expressly or by implication, to

renegotiate, settle, or in any way alter the terms of payment or other terms of the debt between a consumer and one or more secured creditors, servicers, or debt collectors.

15. “**Material**” means likely to affect a person’s choice of, or conduct regarding, goods or services.

16. “**National Do Not Call Registry**” means the National Do Not Call Registry, which is the “do-not-call” registry maintained by the Federal Trade Commission pursuant to 16 C.F.R. § 310.4(b)(1)(iii)(B).

17. “**Outbound telephone call**” means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution.

18. “**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.

19. “**Plaintiff**” means the Federal Trade Commission (“Commission” or “FTC”).

20. “**Representatives**” means Defaulting Defendants’ officers, agents, servants, employees, and attorneys, and other persons in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise.

21. “**Seller**” means any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration, whether or not such person is under the jurisdiction of the FTC.

22. “**Telemarketer**” means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor.

23. “**Telemarketing**” means a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more

telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog which: contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term "further solicitation" does not include providing the customer with information about, or attempting to sell, any other item included in the same catalog which prompted the customer's call or in a substantially similar catalog.

ORDER

I. PERMANENT BAN ON DELIVERING PRERECORDED MESSAGES

IT IS THEREFORE ORDERED that Defaulting Defendants, whether acting directly or through any person, business entity, trust, corporation, partnership, limited liability company, subsidiary, division, or other device, or any of them, are hereby permanently restrained and enjoined from initiating outbound telephone calls delivering prerecorded messages.

II. PERMANENT BAN ON MARKETING DEBT RELIEF SERVICES

IT IS FURTHER ORDERED that Defaulting Defendants, whether acting directly or through any person, business entity, trust, corporation, partnership, limited liability company, subsidiary, division, or other device, or any of them, are hereby permanently restrained and enjoined from engaging in, participating in, or assisting others in the marketing, telemarketing, advertising, promotion, offering for sale, or sale of Debt Relief Services.

**III. PROHIBITED PRACTICES RELATING TO
FINANCIAL RELATED PRODUCTS OR SERVICES**

IT IS FURTHER ORDERED that Defaulting Defendants and their Representatives, whether acting directly or through any person, business entity, trust, corporation, partnership, limited liability company, subsidiary, division, or other device, or any of them, in connection with the advertising, marketing, promotion, offering for sale or sale of any financial related product or service, are hereby permanently restrained and enjoined from misrepresenting, or assisting others in misrepresenting, expressly or by implication, any material fact, including, but not limited to:

A. Any person's ability to improve or otherwise affect a consumer's credit record, credit history, or credit rating or ability to obtain credit;

B. That any person can improve substantially any consumer's credit record, credit history, or credit rating by permanently removing negative information from the consumer's credit record, credit history, or credit rating, even where such information is accurate and not obsolete;

C. That any person can obtain a modification of any loan or mortgage or postpone or cancel the foreclosure of any property by renegotiating, settling, or in any other way altering the terms of payment or other terms of the debt between a consumer and one or more secured creditors, servicers, or debt collectors; or

D. That a consumer will receive legal representation.

IV. PROHIBITED PRACTICES RELATING TO ANY GOODS OR SERVICES

IT IS FURTHER ORDERED that Defaulting Defendants and their Representatives, whether acting directly or through any person, business entity, trust, corporation, partnership, limited liability company, subsidiary, division, or other device, or any of them, in connection with the advertising, marketing, promotion, offering for sale or sale of any good, service, plan, or program, are hereby permanently restrained and enjoined from:

A. Misrepresenting, or assisting others in misrepresenting, expressly or by implication, any material fact, including, but not limited to:

1. Any material aspect of the nature or terms of any refund, cancellation, exchange, or repurchase policy, including, but not limited to, the likelihood of a consumer obtaining a full or partial refund, or the circumstances in which a full or partial refund will be granted to the consumer;

2. That any person is affiliated with, endorsed or approved by, or otherwise connected to any other person; government entity; public, non-profit, or other non-commercial program; or any other program;

3. The total costs to purchase, receive, or use, or the quantity of, the good or service;

4. Any material restriction, limitation, or condition on purchasing, receiving, or using the good or service; and

5. Any material aspect of the performance, efficacy, nature, or characteristics of the good or service; and

B. Engaging in, causing other persons to engage in, or assisting other persons to engage in, violations of the TSR, including, but not limited to:

1. Misrepresenting, expressly or by implication, any material fact, including, but not limited to:
 - a. Any material aspect of the performance, efficacy, nature, or central characteristics of the good or service; or
 - b. Any material aspect of the nature or terms of any refund, cancellation, exchange, or repurchase policy for the good or service;
2. Initiating any outbound telephone call to any person at a telephone number on the National Do Not Call Registry unless the seller proves that:
 - a. The seller has obtained the express agreement, in writing, of such person to place calls to that person. Such written agreement shall clearly evidence such person's authorization that calls made by or on behalf of a specific party may be placed to that person, and shall include the telephone number to which the calls may be placed and the signature of that person; or
 - b. The seller has an established business relationship with such person and that person has not previously stated that he or she does not wish to receive outbound telephone calls made by or on behalf of the seller;
3. Initiating any outbound telephone call to a person when that person has previously stated that he or she does not wish to receive outbound telephone calls made by or on behalf of either a seller whose goods or services are being offered, or a charitable organization for which a charitable contribution is being solicited;
4. Abandoning, or causing others to abandon, any outbound telephone call to a person by failing to connect the call to a live operator within two seconds of the person's

completed greeting, unless Defaulting Defendants or their Representatives prove that the following four conditions are met:

a. Defaulting Defendants and their Representatives employ technology that ensures abandonment of no more than three percent of all calls answered by a person, measured over the duration of a single calling campaign, if less than thirty days, or separately over each successive 30-day period or portion thereof that the campaign continues;

b. Defaulting Defendants and their Representatives, for each telemarketing call placed, allow the telephone to ring for at least fifteen seconds or four rings before disconnecting an unanswered call;

c. Whenever a live operator is not available to speak with the person answering the call within two seconds after the person's completed greeting, Defaulting Defendants or their Representatives promptly play a recorded message that states the name and telephone number of the seller on whose behalf the call was placed; and

d. Defaulting Defendants or their Representatives retain records, in accordance with 16 C.F.R. § 310.5(b)-(d), establishing compliance with the preceding three conditions;

5. Failing to transmit or to cause to be transmitted to any caller identification service in use by a recipient of a telemarketing call:

a. The telephone number of the telemarketer making the call, or the telephone number for customer service of the seller on whose behalf the call is made, and,

b. When made available by the telemarketer's carrier, the name of the telemarketer or seller to any caller identification service in use by a recipient of a telemarketing call; and

6. Failing to disclose truthfully, promptly and in a clear and conspicuous manner the identity of the seller, that the purpose of the call is to sell goods or services, and the nature of the goods or services.

Provided, *however*, that if the Commission promulgates any rule that modifies or supersedes the TSR, in whole or part, Defaulting Defendants shall comply fully and completely with all applicable requirements thereof, on and after the effective date of any such rule.

V. MONETARY JUDGMENT

IT IS FURTHER ORDERED that:

A. Judgment is hereby entered in favor of the Commission, and against Defaulting Defendants, jointly and severally, for equitable monetary relief, including, but not limited to, consumer redress, in the amount of thirteen million, one hundred one thousand, six hundred ninety-five United States Dollars (\$13,101,695 USD), the total amount of consumer injury caused by the activities alleged in the Commission's Complaint;

B. Upon entry of this Order, this monetary judgment, less any amounts already paid, shall become immediately due and payable by Defaulting Defendants, and interest, computed pursuant to 28 U.S.C. § 1961(a), as amended, immediately shall begin to accrue upon the unpaid balance;

C. All payments under this Section shall be made by wire transfer in accord with directions provided by the Commission, or as otherwise agreed to by the Commission; and

D. All funds paid pursuant to this Section 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 such equitable relief fund. If the Commission determines, in its sole discretion, that 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 to the Treasury as disgorgement. Defaulting Defendants shall have no right to challenge the Commission's choice of remedies under this Section. This judgment for equitable monetary relief is solely remedial in nature and is not a fine, penalty, punitive assessment, or forfeiture.

VI. CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Defaulting Defendants and their Representatives are permanently restrained and enjoined from:

A. Disclosing, using, or benefitting from customer information, including the name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account), of any person which any Defendant obtained prior to entry of this Order in connection with the marketing of any Debt Relief Service or telemarketing call delivering a prerecorded message; and

B. Failing to dispose of such customer information in all forms in their possession, custody, or control within thirty (30) days after entry of this Order. Disposal shall be by means that protect against unauthorized access to the customer information, such as by burning, pulverizing, or shredding any papers, and by erasing or destroying any electronic media, to ensure that the customer information cannot practicably be read or reconstructed. *Provided, however,* that customer information need not be disposed of, and may be disclosed, to the extent requested by a government agency or required by a law, regulation, or court order.

VII. PROHIBITION ON COLLECTING ON ACCOUNTS

IT IS FURTHER ORDERED that Defaulting Defendants and their Representatives, whether acting directly, or through any trust, corporation, subsidiary, division, or other device, or any of them, are hereby permanently restrained and enjoined from attempting to collect, collecting, or assigning any right to collect payment from any consumer who purchased or agreed to purchase any Defendant's Debt Relief Service.

VIII. TURNOVER OF ASSETS HELD BY THIRD PARTIES

IT IS FURTHER ORDERED that, in order to partially satisfy the monetary judgments set forth in Section V above, any financial or brokerage institution, escrow agent, title company, commodity trading company, automated clearing house, network transaction processor, payment processor, business entity, or person that holds, controls, or maintains custody of any account or asset of any Defaulting Corporate Defendant, or any account, asset or reserve held on behalf of, or for the current or future benefit of, any Defaulting Corporate Defendant, shall, if they have not already done so, turn over such account or asset to the Commission, by wire transfer pursuant to directions provided by the Commission, or as otherwise agreed to in writing by the Commission, within ten (10) business days of receiving notice of this Order by any means, including, but not limited to, via facsimile.

IX. MONITORING COMPLIANCE OF SALES PERSONNEL

IT IS FURTHER ORDERED that, in connection with any business: (1) where a Defaulting Defendant is the majority owner of the business or directly or indirectly controls the business, and (2) where the business is engaged in, or is assisting others engaged in, the advertising, marketing, promotion, offering for sale, sale, or provision of any product or service, such Defaulting Defendant and that Defendant's Representatives, whether acting directly or

through any person, business entity, trust, corporation, partnership, limited liability company, subsidiary, division, or other device, or any of them, are hereby permanently restrained and enjoined from:

A. Failing to take reasonable steps sufficient to monitor and ensure that all employees and independent contractors engaged in sales or other customer service functions comply with Sections I-IV of this Order. These steps shall include adequate monitoring of sales presentations and telephone calls with consumers, and shall also include, at a minimum, the following:

1. Listening to the oral representations made by persons engaged in sales or other customer service functions;
2. Establishing a procedure for receiving and responding to consumer complaints; and
3. Ascertaining the number and nature of consumer complaints regarding transactions in which each employee or independent contractor is involved;

B. Failing promptly to investigate fully any consumer complaint received by any business to which this Section applies; and

C. Failing to take adequate corrective action with respect to any employee or independent contractor whom such Defendant determines is not complying with this Order. This corrective action may include training, disciplining, and/or terminating such employee or independent contractor.

X. 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, Defaulting Defendants each shall submit additional written reports, which are true and accurate and sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and provide entry during normal business hours to any business location in each Defaulting Defendant's possession or direct or indirect control to inspect the business operation;

B. In addition, the Commission is authorized to use all other lawful means, including, but not limited to:

1. obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, 45 and 69;

2. having its representatives pose as consumers and suppliers to Defaulting Defendants, their employees, or any other entity managed or controlled in whole or in part by any Defaulting Defendant, without the necessity of identification or prior notice; and

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

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

deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

XI. COMPLIANCE REPORTING

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

- A. For a period of five (5) years from the date of entry of this Order:
1. Defendants David D. Richards and Joseph B. Foley each shall notify the Commission of the following:
 - a. Any changes in such Defendant's residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;
 - b. Any changes in such Defendant's employment status (including self-employment), and any change in such Defendant's ownership in any business entity, within ten (10) days of the date of such change. Such notice shall include the name and address of each business that such Defendant is affiliated with, employed by, creates or forms, or performs services for; a detailed description of the nature of the business; and a detailed description of such Defendant's duties and responsibilities in connection with the business or employment; and
 - c. Any changes in such Defendant's name or use of any aliases or fictitious names within ten (10) days of the date of such change;
 2. Defaulting Defendants shall notify the Commission of any changes in structure of any Corporate Defendant or any business entity that any Defaulting Defendant directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Order, including, but not limited to: incorporation or other organization; a dissolution, assignment, sale, merger, or other action; the creation or dissolution

of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; or a change in the business name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any such change in the business entity about which a Defaulting Defendant learns less than thirty (30) days prior to the date such action is to take place, such Defaulting Defendant shall notify the Commission as soon as is practicable after obtaining such knowledge;

B. One hundred eighty (180) days after the date of entry of this Order and annually thereafter for a period of five (5) years, Defaulting Defendants each shall provide a written report to the FTC, which is true and accurate and sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this Order.

This report shall include, but not be limited to:

1. For Defendants David D. Richards and Joseph B. Foley:
 - a. Such Defendant's then-current residence address, mailing addresses, and telephone numbers;
 - b. Such Defendant's then-current employment status (including self-employment), including the name, addresses, and telephone numbers of each business that such Defendant is affiliated with, employed by, or performs services for; a detailed description of the nature of the business; and a detailed description of such Defendant's duties and responsibilities in connection with the business or employment; and
 - c. Any other changes required to be reported under Subsection A of this Section;
2. For all Defaulting Defendants:
 - a. A copy of each acknowledgment of receipt of this Order, obtained pursuant to the Section titled "Distribution of Order;" and

b. Any other changes required to be reported under Subsection A of this Section;

C. Each Defaulting Defendant shall notify the Commission of the filing of a bankruptcy petition by such Defendant within fifteen (15) days of filing.

D. For the purposes of this Order, Defaulting Defendants shall, unless otherwise directed by the Commission's authorized representatives, send by overnight courier (other than the U.S. Postal Service) all reports and notifications to the Commission that are required by this Order to:

Associate Director for Enforcement
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
Re: *FTC v. Direct Financial Management Inc., et al.*, No. 10 C 7194 (N.D. Ill.)

Provided that, in lieu of overnight courier, Defaulting Defendants may send such reports or notifications by first-class mail, but only if Defaulting Defendants contemporaneously send an electronic version of such report or notification to the Commission at: DEBrief@ftc.gov; and

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

XII. RECORD KEEPING PROVISIONS

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

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

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

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

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

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

F. All records and documents necessary to demonstrate full compliance with each provision of this Order, including, but not limited to, copies of acknowledgments of receipt of this Order required by the Sections titled "Distribution of Order" and "Acknowledgment of Receipt of Order" and all reports submitted to the FTC pursuant to the Section titled "Compliance Reporting."

XIII. DISTRIBUTION OF ORDER

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

A. Defaulting Corporate Defendants: Each of the Defaulting Corporate Defendants must deliver a copy of this Order to (1) all of its principals, officers, directors, and managers; (2)

all of its employees, agents, and representatives who engage in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting." For current personnel, delivery shall be within five (5) days of service of this Order upon such Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities. For any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting," delivery shall be at least ten (10) days prior to the change in structure;

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

C. Defaulting Defendant David D. Richards or Joseph B. Foley as employee or non-control person: For any business where Defendant David D. Richards or Joseph B. Foley is not a controlling person of a business but otherwise engages in conduct related to the subject matter

of this Order, such Defendant must deliver a copy of this Order to all principals and managers of such business before engaging in such conduct; and

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

XIV. ACKNOWLEDGMENT OF RECEIPT OF ORDER

IT IS FURTHER ORDERED that each Defaulting 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, in the form shown on **Attachment A** to this Order, acknowledging receipt of this Order.

XV. 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.

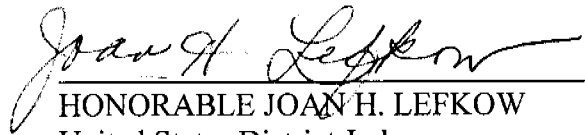
XVI. RETENTION OF JURISDICTION

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

JUDGMENT IS THEREFORE ENTERED in favor of the Plaintiff and against Defaulting Defendants, pursuant to all the terms and conditions recited above.

IT IS SO ORDERED.

Dated: FEB 16 2012, 2012


HONORABLE JOAN H. LEFKOW
United States District Judge

ATTACHMENT A

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

_____)	
FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	
)	Case No. 10 C 7194
v.)	
)	Judge Joan H. Lefkow
DIRECT FINANCIAL MANAGEMENT INC.,)	
et al.,)	Magistrate Judge Maria Valdez
)	
Defendants.)	
_____)	

**AFFIDAVIT ATTESTING TO RECEIPT OF ORDER FOR
FINAL DEFAULT JUDGMENT AND PERMANENT INJUNCTION**

I, _____, being duly sworn, hereby state and affirm as follows:

1. My name is _____. I am a citizen of _____ and am over the age of eighteen. I have personal knowledge of the facts set forth in this affidavit.

2. I am a Defendant in *FTC v. Direct Financial Management Inc., et al.*, Case No. 10 C 7194 (United States District Court for the Northern District of Illinois). [I am also an officer of Direct Financial Management Inc. and 2194673 Ontario Inc., Defendants in *FTC v. Direct Financial Management Inc.*]

3. My current employer is _____.
My current business address is _____.

My current business telephone number is _____. My current residential address is _____. My current residential telephone number is _____.

4. The current business address of Defendant _____ is _____. The current business telephone number of Defendant _____ is _____.

5. On _____ [Date], I received a copy of the Order for Final Default Judgment and Permanent Injunction Against Defendants Direct Financial Management Inc., 2194673 Ontario Inc., David D. Richards, and Joseph B. Foley, which was signed by the Honorable Joan H. Lefkow and entered by the Court on _____ [Date of Entry of the Order]. A true and correct copy of the Order I received is appended to this Affidavit.

6. On _____ [Date], Direct Financial Management Inc. and 2194673 Ontario Inc. received a copy of the Order for Final Default Judgment and Permanent Injunction Against Defendants Direct Financial Management Inc., 2194673 Ontario Inc., David D. Richards, and Joseph B. Foley, which was signed by the Honorable Joan H. Lefkow and entered by the Court on _____ [Date of Entry of the Order]. A true and correct copy of the Order it received is appended to this Affidavit.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on _____ [Date], at _____ [City, State or Province, and Country].

Defendant Name
[individually and as an officer of Direct
Financial Management Inc. and 2194673
Ontario Inc.]

State of _____, City of _____

Subscribed and sworn to before me
this ____ day of _____, 2012.

Notary Public
My Commission Expires: