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2			
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6			
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10	Attorneys for Plaintiff		
12			
12	IN THE UNITED STATES DISTRICT COURT		
13	FOR THE DISTRICT OF ARIZONA		
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15	FEDERAL TRADE COMMISSION,)) CIV-96-2374-PHX-ROS	
17	Plaintiff,)) STIPULATION TO FINAL JUDGMENT	
18	V.) AND ORDER FOR PERMANENT) INJUNCTION WITH RESPECT TO	
19	ROBERT J. MAYNARD, JR.,) DEFENDANT ROBERT J. MAYNARD, JR.	
20	an individual,)	
21	BRIAN W. CUTRIGHT, an individual,))	
22	MARK F. GUIMOND, an individual,)	
23))	
24	NCF CORP., a corporation, and)	
25	HAL Z. LEDERMAN,)	
26	individually and as an officer of NCF Corp.,	/) \	
27	Defendants.	<i>)</i>)	
28)	

1 Plaintiff Federal Trade Commission ("Commission") has filed herein a Complaint for a 2 permanent injunction and other equitable relief pursuant to Section 13(b) of the Federal Trade 3 Commission Act ("FTC Act"), 15 U.S.C. § 53(b), charging defendants Robert J. Maynard, Jr. 4 ("Maynard"), Brian W. Cutright, Mark F. Guimond, NCF Corp., and Hal Z. Lederman with 5 violations of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45. Plaintiff Commission and defendant Maynard, having been represented by the attorneys whose names appear hereafter, have 6 7 agreed to entry of a Stipulated Final Judgment and Order for Permanent Injunction ("Final 8 Judgment" or "Order") by the Court to resolve all matters as to defendant Maynard in dispute in 9 this action. Plaintiff Commission and defendant Maynard have consented to entry of this Order 10 without trial or adjudication of any issue of law or fact herein.

NOW THEREFORE, defendant Maynard and plaintiff Commission hereby stipulate to a Final Judgment and Order for Permanent Injunction with the terms set forth below:

FINDINGS

This is an action by the Commission instituted under Sections 5 and 13(b) of the
 FTC Act. The Complaint seeks permanent injunctive relief against defendant Maynard for alleged
 unfair or deceptive acts or practices by the defendants in connection with the sale of credit
 improvement services advertised in an infomercial and the collection of fees by depositing drafts
 drawn on consumers' checking accounts.

20 2. This Court has jurisdiction of the subject matter of this case and over defendant21 Maynard. Venue in the District of Arizona is proper.

3. The Complaint states a claim upon which relief may be granted against defendant
Maynard under Sections 5 and 13(b) of the FTC Act.

4. The Commission has the authority under Section 13(b) of the Act to seek the reliefit has requested.

26 5. The alleged activities of defendant Maynard are in or affecting commerce, as
27 defined in 15 U.S.C. § 44.

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6. Defendant Maynard, without admitting the allegations set forth in the Complaint,
 agrees to entry of this final Order under Section 13(b) of the FTC Act.

3 7. Defendant Maynard has waived all rights to seek judicial review or otherwise
4 challenge or contest the validity of this final Order.

8. A voluntary bankruptcy petition filed by any or all defendants in this action does
not automatically stay this action, which is the "commencement or continuation of an action or
proceeding by a governmental unit to enforce such governmental unit's police or regulatory
power," 11 U.S.C. § 362(b)(4), *Federal Trade Commission v. R.A. Walker & Assocs., Inc.*, 37
B.R. 608, 610 (D.D.C. 1983).

9. A voluntary bankruptcy petition filed by any or all defendants does not divest this
 Court of jurisdiction to enter this final judgment against defendant Maynard.

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Entry of this Order is in the public interest.

13 11 Defendant Maynard waives all claims under the Equal Access to Justice Act, 28
14 U.S.C. § 2412, *amended by* PL 104-121, 110 Stat. 847, 863-64 (1996).

DEFINITIONS

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

17 1. "Credit Report" or "Profile" means any written, oral or other communication of
 information by a consumer reporting agency bearing on a person's creditworthiness, credit
 standing, credit capacity, character, general reputation, personal characteristics or mode of living
 that is used or expected to be used or collected in whole or in part for the purpose of establishing
 the person's eligibility for credit.

22 2. "Credit Improvement Service(s)" means any service to improve a person's credit
23 report or profile by removing adverse information appearing therein, changing the rating of such
24 information from negative to positive, or otherwise enhancing said credit profile in return for the
25 payment of money.

3. "Credit Bureau" or "Consumer Reporting Agency" means any person which, for
monetary fees, dues, or on a cooperative basis, regularly engages in whole or in part in the
practice of assembling or evaluating consumer credit information or other information on

consumers for the purpose of furnishing consumer reports to third parties, and which uses any
 means or facility of interstate commerce for the purpose of preparing or furnishing consumer
 reports.

4 4. "Obsolete," when used to describe credit history information, means any
 5 information that a consumer reporting agency may not report under Section 605 of the Fair Credit
 6 Reporting Act, 15 U.S.C. § 1681c, due to its age.

7 5. "Material" means likely to affect a person's choice of, or conduct regarding, goods
8 or services.

9 6. "Telemarketing" means the advertising, offering for sale, or sale of any good or
10 service to any person by means of telephone sales presentations, either exclusively or in
11 conjunction with the use of other advertising.

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<u>ORDER</u>

PROHIBITED BUSINESS ACTIVITIES

I.

15 IT IS THEREFORE ORDERED that defendant Maynard, directly or through any
16 corporation, subsidiary, division, or other device, is hereby restrained and enjoined from
17 advertising, promoting, offering for sale, selling, performing or distributing any product or service
18 relating to credit improvement services.

II.

IT IS FURTHER ORDERED that defendant Maynard and his representatives, agents,
 servants and employees, and all other persons or other entities in active concert or participation
 with any one or more of them who receive actual notice of this Order by personal service or
 otherwise, directly or through any corporation, subsidiary, division, or other device, in connection
 with the advertising, promotion, offering for sale, sale, or distribution of any product or service, in
 or affecting commerce, as commerce is defined in the FTC Act, are hereby restrained and enjoined
 from:

A. Misrepresenting the purpose of requesting or obtaining information from any
consumer regarding any checking, charge or credit account of the consumer; and

B. Obtaining or submitting for payment a check, draft, or other form of negotiable
paper drawn on, or causing, assisting, or arranging for an electronic funds transfer to be made
from, a person's checking, savings, share, or similar account, without that person's express
verifiable authorization. Such authorization shall be deemed verifiable if any of the means set
forth in Section 310.3(a)(3) of the Commission's Telemarketing Sales Rule, 16 C.F.R.
§ 310.3(a)(3), are employed. A copy of the Telemarketing Sales Rule is attached hereto as
Attachment 1 and incorporated herein as if fully set forth verbatim.

III.

9 IT IS FURTHER ORDERED that defendant Maynard and his representatives, agents,
10 servants and employees, and all other persons or other entities in active concert or participation
11 with any one or more of them, who receive actual notice of this Order by personal service or
12 otherwise, directly or through any corporation, subsidiary, division, or other device, in connection
13 with the advertising, promotion, offering for sale, sale, or distribution of any product or service, in
14 or affecting commerce, as commerce is defined in the FTC Act, are hereby restrained and enjoined
15 from creating, producing, selling, or disseminating:

A. Any commercial or other advertisement for any such product or service that
misrepresents, directly or by implication, that it is an independent program and not a paid
advertisement; and

B. Any commercial or other advertisement for any such product or service longer than fifteen (15) minutes in length that does not display visually, in a clear and prominent manner and for a length of time sufficient for an ordinary consumer to read, within the first thirty (30) seconds of the commercial and immediately before each presentation of ordering instructions for the product or service, the following disclosure:

"THE PROGRAM YOU ARE WATCHING IS A PAID ADVERTISEMENT FOR [THE PRODUCT OR SERVICE]."

PROVIDED THAT, for the purposes of this provision, the oral or visual presentation of a telephone number or address for viewers to contact to place an order for the product or service

shall be deemed a presentation of ordering instructions so as to require the display of the disclosure provided herein.

REDRESS

IV.

IT IS FURTHER ORDERED that, subject to compliance with Section V of this Order, defendant Maynard shall not be required to pay consumer redress or disgorgement.

V.

8 **IT IS FURTHER ORDERED** that within three (3) business days after entry of this Order, defendant Maynard shall submit to the Commission a truthful sworn statement, in the form shown on Exhibit 1 to this Order, that shall reaffirm and attest to the truth, accuracy and completeness of the sworn Financial Statement of Individual Defendant executed by defendant Maynard on November 14, 1996, and previously submitted to the Commission.

VI.

14 **IT IS FURTHER ORDERED** that the Court's approval of this Order is expressly 15 premised upon the financial condition of defendant Maynard, as represented by him in the sworn 16 Financial Statement of Individual Defendant, as referenced in Paragraph V, which contains 17 material information relied upon by the Commission in negotiating and agreeing to the terms of 18 this Order. If, upon motion by the Commission, this Court finds that defendant Maynard failed to 19 file the sworn statement required by Paragraph V or filed a Financial Statement of Individual 20 Defendant that materially failed to disclose any asset, materially misrepresented the value of any 21 asset, or made any other material misrepresentation in or omission from his Financial Statement of 22 Individual Defendant, the Commission may request that this Order be reopened to allow the 23 Commission to modify the monetary liability of defendant Maynard; provided, however, that in all 24 other respects this Order shall remain in full force and effect unless otherwise ordered by the 25 Court, and, provided further, that proceedings instituted under this Paragraph are in addition to 26 and not in lieu of any other civil or criminal remedies as may be provided by law, including any 27 other proceedings the Commission may initiate to enforce this Order.

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Solely for purposes of this Paragraph, defendant Maynard waives any right to contest any of the allegations in the Commission's complaint.

RECORDKEEPING

VII.

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, defendant Maynard, in connection with any and every business entity of which he is a majority owner, or which he otherwise manages or controls, and which engages in telemarketing, is hereby restrained and enjoined from failing to create, and from failing to retain for a period of five (5) years following the date of such creation, unless otherwise specified:

A. Books, records and accounts which, in reasonable detail, accurately and fairly
reflect the cost of goods or services sold, and the income, disbursements, transactions and use of
funds;

B. Records accurately reflecting: the name, address and phone number of each person
that such business entity employs in any capacity, 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. Defendant Maynard shall retain such records for
any terminated employee for a period of two (2) years following the date of termination;

18 C. Records containing the names, addresses, phone numbers and dollar amounts paid,
19 for all consumers to whom such business entity has sold, invoiced or shipped any goods or
20 services, or from whom any of the business entities accepted money or other items of value;

D. Records that reflect, for every consumer complaint or refund request, whether
received directly or indirectly through any third party:

1. The consumer's name, address, telephone number and the dollar amount
paid by the consumer;

25 2. The written complaint, if any , and the date of the complaint or refund26 request;

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3. The basis of the complaint, including the name of any salesperson
 complained against, and the nature and result of any investigation conducted as to the validity of
 any complaint;

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Each response and the date of the response;

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Any final resolution and the date of the resolution; and

6 6. In the event of a denial of a refund request, the reason for such denial, or if
7 the complaint was cured, the basis for determining that the complaint has been cured;

E. Videotape copies and transcripts of all infomercials;

9 F. Records reflecting the date, time and station of each broadcast of each infomercial,
10 or if the defendant has not directly or indirectly purchased the airtime for the broadcast, the name
11 and address of the company making each such purchase of airtime;

12 G. Copies of all sales scripts, training packets, advertisements, or other marketing
13 materials utilized. Defendant shall retain such marketing materials for a period of two (2) years
14 after their last use; and

H. All contracts, agreements or correspondence with any sales company, supplier,
mailinghouse, printer, information provider, customer lead provider, telephone company or
telephone service common carrier (including telephone bills), advertisers or promoters of goods
and services, except where related to routine purchases of office supplies or equipment.

PROVIDED THAT the records and other information defendant Maynard is required to
maintain hereunder may be, to the extent possible, in the form of computerized records including
data recorded in user-accessible computerized data bases, and that defendant Maynard will make
such records available for inspection by a duly authorized representative of the Commission
following reasonable notice.

DISTRIBUTION OF ORDER

VIII.

IT IS FURTHER ORDERED that defendant Maynard, in connection with any and every
business entity of which he is a majority owner, or which he otherwise manages or controls,
distribute a copy of this Order to all present or future officers, agents, representatives, supervisors

and managers and all other persons or other entities in active concert or participation with them
 having sales, advertising, or policy responsibilities with respect to the subject matter of this Order,
 and that defendant Maynard secure from each such person a signed statement acknowledging
 receipt of said Order.

MONITORING

IX.

IT IS FURTHER ORDERED that defendant Maynard promptly notify the Regional Director of the Los Angeles Regional Office of the Commission in writing of the discontinuance of his present business or employment. In addition, for a period of five (5) years from the date of entry of this Order, he shall promptly notify the Commission of each affiliation with a new business or employment. Each such notice shall include the defendant's new business address and a statement of the nature of the business or employment in which the defendant is newly engaged as well as a description of the defendant's duties and responsibilities in connection with the business or employment.

Х.

IT IS FURTHER ORDERED that defendant Maynard shall, within sixty (60) days following the date of entry of this Order, file with the Regional Director of the Los Angeles Regional Office of the Commission a report, in writing, setting forth in detail the manner and form in which he has complied with this Order.

INDEPENDENCE OF OBLIGATIONS

XI.

IT IS FURTHER ORDERED that the expiration of any requirements imposed by this Order shall not affect any other obligation arising under this Order.

ATTORNEYS FEES

XII.

IT IS FURTHER ORDERED that each party to this Consent Judgment and Order bear its own costs and attorney fees incurred in connection with this action; *provided, however,* in the event plaintiff or the United States initiates proceedings to enforce the provisions of this Consent

1	Judgment and Order and provided further the Court determines that the defendant has violated
2	any term or provision of this Consent Judgment and Order, the defendant shall pay the costs and
3	attorney fees incurred by plaintiff or the United States in connection with proceedings to enforce
4	this Consent Judgment and Order.
5	CONTINUING JURISDICTION
6	XIII.
7	IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all
8	purposes.
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1	ENTRY BY CLERK		
2	XIV.		
3	There being no just reason for delay, the Clerk of the Court is hereby directed to enter this		
4	Order.		
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6	The undersigned parties hereby stipulate and agree to entry of a Final Judgment and Order		
7	for Permanent Injunction with the foregoing terms, which shall constitute a final order in this		
8	action.		
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10	SIGNED AND STIPULATED BY:		
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12	Dated:, 1997		
13	Attorney for Plaintiff Federal Trade Commission		
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15	, 1997		
16	Attorney for Plaintiff Federal Trade Commission		
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18	, 1997 Robert J. Maynard, Jr. Defendant		
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20	APPROVED AS TO FORM AND CONTENT:		
21	, 1997		
22	Lee A. Rau REED SMITH SHAW & McCLAY		
23	8251 Greensboro Drive, Suite 1100 McLean, VA 22102		
24	(703) 734-4609 Attorney for Defendant Maynard		
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1	EXHIBIT 1		
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8	IN THE UNITED STATES DISTRICT COURT		
9	FOR THE DISTRICT OF ARIZONA		
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11	FEDERAL TRADE COMMISSION,) CIV-96-2374-PHX-ROS		
12	Plaintiff,		
13	v.) DECLARATION OF		
14) DEFENDANT ROBERT J. MAYNARD, JR.		
15 16	ROBERT J. MAYNARD, JR.,) an individual, et al.)		
10	Defendants.		
 17 18 19 20 21 22 23 24 25 26 27 28) I, Robert J. Maynard, Jr., hereby state that the information contained in the financial statement I signed on November 14, 1996 and provided shortly thereafter to the Federal Trade Commission was true, accurate and complete at such time. A true and correct copy of the aforementioned financial statement is attached hereto as Appendix A. I declare under penalty of perjury that the foregoing is true and correct. Executed on this day of, 199 (Signature)		
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