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7 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 FEDERAL TRADE COMMISSION,

10 Plaintiff,

11 v.

12 FARPOINT SERVICES INT'L., LTD.,
13 GARRISON CORPORATION, INC.,
14 AMERICAN CARD SERVICES, S.A.,
15 HYPERION LLC, CONSOLIDATED GROUP
OF COMPANIES LLC, ROBERTA GALWAY
aka ROBIN GALWAY and ROBIN ARCAND,
and PHILIP ARCAND,

16 Defendants.

Case No. C01-1593P

**STIPULATED PERMANENT
INJUNCTION AND
FINAL JUDGMENT**

17
18 Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), has filed a complaint for a permanent
19 injunction and other relief pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"),
20 15 U.S.C. ' ' 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act
21 (Telemarketing Act), 15 U.S.C. ' 6101 *et seq.*, naming as defendants Farpoint Services Int'l., Ltd., Garrison
22 Corporation, Inc., American Card Services, S.A., Hyperion LLC, Consolidated Group of Companies LLC,
23 Roberta Galway aka Robin Galway and Robin Arcand, and Philip Arcand, and alleging violations of the
24 Telemarketing Sales Rule, 16 C.F.R. Part 310 ("TSR").

25 Defendants and the Commission, have agreed to entry of this Stipulated Permanent Injunction by this
26 Court in order to resolve all matters in dispute between them in this action. Defendants have consented to the
27 entry of this Order without trial or adjudication of any issue of law or fact herein, and this Order shall not
28 constitute an admission of liability by defendants nor constitute evidence of liability against defendants in any

FEDERAL TRADE COMMISSION
915 Second Ave., Su. 2896
Seattle, Washington 98174
(206) 220-6350

1 matter relating to the facts alleged in the Commission's Complaint. **NOW, THEREFORE**, these defendants
2 and the Commission having requested the Court to enter this Order, **IT IS HEREBY ORDERED,**
3 **ADJUDGED, AND DECREED** as follows:

4 **FINDINGS**

- 5 1. This Court has jurisdiction of the subject matter of this action and the parties consenting hereto.
- 6 2. Venue is proper as to all parties in the Western District of Washington.
- 7 3. The activities of defendants are in or affecting commerce, as defined in Section 4 of the FTC Act,
8 15 U.S.C. ' 44.
- 9 4. The complaint states a claim upon which relief may be granted against defendants under
10 Sections 5(a), 13(b) and 19 of the FTC Act, 15 U.S.C. ' ' 45(a), 53(b) and 57b, The Telemarketing and
11 Consumer Fraud and Abuse Prevention Act, 15 U.S.C. ' 6101 *et seq.*, and the Telemarketing Sales Rule
12 ("TSR") 16 C.F.R. Part 310.
- 13 5. Entry of this Order is in the public interest.
- 14 6. These defendants have waived all rights to seek judicial review or otherwise challenge or contest
15 the validity of this Order, and further waive and release any claim defendants may have against the Commission,
16 its employees and agents.

17 **DEFINITIONS**

- 18 1. "Defendants" means Farpoint Services Int'l., Ltd., Garrison Corporation, Inc., American Card
19 Services, S.A., Hyperion LLC, Consolidated Group of Companies LLC, Roberta Galway aka Robin Galway
20 and Robin Arcand, and Philip Arcand, their agents, servants, employees, attorneys, and those persons in active
21 concert or participation with them who receive actual notice of this order by personal service or otherwise.
- 22 2. "Telemarketing" means a plan, program, or campaign that is conducted to induce the purchase
23 of goods or services by use of one or more telephones.
- 24 3. "Credit Card Protection" means the advertisement, promotion, offering for sale, or sale through
25 telemarketing of any product or service to protect, indemnify, or reimburse the holder of a credit or debit account
26 against unauthorized use or charges.
- 27 4. "Credit Card Laundering" means, except as expressly permitted by the applicable credit card
28 system:
 - a. Presenting to or depositing into, or causing another to present to or deposit into, the

1 credit card system for payment, a credit card sales draft generated by a telemarketing
2 transaction that is not the result of a telemarketing credit card transaction between the
3 cardholder and the defendants;

- 4 b. Employing, soliciting, or otherwise causing a merchant, or an employee, representative,
5 or agent of the merchant, to present to or deposit into the credit card system for payment,
6 a credit card sales draft generated by a telemarketing transaction that is not the result of
7 a telemarketing credit card transaction between the cardholder and the merchant; or
8 c. Obtaining access to the credit card system through the use of a business relationship or
9 an affiliation with a merchant, when such access is not authorized by the merchant
10 agreement or the applicable credit card system.

11 **ORDER**

12 **I.**

13 **BAN**

14 **IT IS THEREFORE ORDERED** that defendants are permanently restrained and enjoined from
15 engaging in, whether directly or indirectly, receiving any remuneration or benefit of any kind from, holding any
16 ownership interest, share, stock in, or from serving as an officer, director, trustee of, consultant or advisor to, any
17 entity engaged, in whole or in part, in credit card protection, or credit card laundering. **II.**

18 **PROHIBITED PRACTICES**

19 **IT IS FURTHER ORDERED** that defendants, in connection with the sale of any product or service,
20 are hereby restrained and enjoined from:

- 21 A. Misrepresenting expressly or by implication that defendants are affiliated with, or are calling from
22 or on behalf of, Visa, MasterCard, or a credit card issuing institution;
- 23 B. Misrepresenting expressly or by implication that if consumers do not purchase defendants=
24 services, consumers will be held fully liable for any unauthorized charges made to their credit card accounts;
- 25 C. Misrepresenting expressly or by implication any fact material to a consumer=s decision to
26 purchase a good or service; and
- 27 D. Failing to comply with the TSR, 16 C.F.R. Part 310, as attached hereto as Attachment A, or as
28 subsequently amended, including but not limited to, by:
1. Requesting or receiving payment of any fee or consideration from any person in advance

1 of that person obtaining a loan or other extension of credit while guaranteeing or
2 representing a high likelihood of success in obtaining or arranging a loan or other
3 extension of credit for a person, as prohibited by the

4 TSR, 16 C.F.R. ' 310.4(a)(4);

- 5 2. Misrepresenting any material restriction, limitation, or condition to purchase, receive, or
6 use goods or services that are the subject of a sales offer, or any material aspect of the
7 performance, efficacy, nature, or central characteristics of any goods or services that are
8 the subject of a sales offer, as prohibited by the Telemarketing Sales Rule, 16 C.F.R.
9 ' 310.3(a)(2)(ii)-(iii);
- 10 3. Failing to disclose in a clear and conspicuous manner, all material restrictions, limitations,
11 or conditions to purchase, receive, or use any good or service that is the subject of a
12 sales offer before the customer pays for the goods or services offered, as prohibited by
13 the Telemarketing Sales Rule, 16 C.F.R. ' 310.3(a)(1)(ii);
- 14 4. Making a false or misleading statement to induce any person to pay for goods or
15 services, as prohibited by the Telemarketing Sales Rule, 16 C.F.R. ' 310.3(a)(4);
- 16 5. Providing substantial assistance or support to any seller or telemarketer knowing or
17 consciously avoiding knowing that the seller or telemarketer is engaged in any act or
18 practice that violates the Telemarketing Sales Rule, 16 C.F.R. ' ' 310.3(a) or (c), or
19 ' 310.4.

20 **III.**

21 **DISCLOSURE OF CUSTOMER LISTS**

22 **IT IS FURTHER ORDERED** that defendants are permanently restrained and enjoined from selling,
23 renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, credit card number,
24 bank account number, e-mail address, or other identifying information of any person who paid any money to any
25 defendant, at any time prior to entry of this order, in connection with telemarketing credit card protection and
26 debt consolidation or with credit card laundering. Provided, however, that defendants may disclose such
27 identifying information to a law enforcement agency or as required by any law, regulation, or court order.

28 **IV.**

CONSUMER REDRESS

IT IS FURTHER ORDERED that:

1 A. Defendants are jointly and severally liable to the Commission for monetary equitable relief in the
2 amount of \$3.3 million. Provided, however, that this judgment shall be suspended upon defendants=paying in lieu
3 of judgment \$436,000. Defendants shall make the required payment in lieu of judgment of \$436,000 in U.S.
4 currency as follows:

- 5 1. Within ten (10) days of the date of entry of this Order defendants shall pay
6 \$100,000.00.
- 7 2. Within one hundred-ninety (190) days after the date of entry of this Order defendants
8 shall commence paying the balance of the payment in lieu of the judgment amount in
9 monthly installments of \$5,000 plus accrued interest computed at the rate prescribed
10 under statute, 28 U.S.C. ' 1961. Each payment subsequent to the first payment shall
11 be made by the last business day of each successive following month until the balance is
12 paid in full. The monthly payments by defendants shall be secured by the property
13 located at 9605 Verlaine Court, Las Vegas, Nevada. Defendants shall execute a Trust
14 Deed in favor of the FTC for this property. PROVIDED THAT if defendants lose their
15 property located at 9605 Verlaine Court, Las Vegas, Nevada, as a result of pending
16 private litigation with Compass Bank, (Compass Bank v. William Powell et al.,
17 CV-01-J-1330-S So. Dist. Alabama; Compass Bank v. Certain Real Property
18 Located at 9605 Verlaine Court, Las Vegas et al., A436587, Clark County, Nevada)
19 the payment in lieu of judgment amount shall be reduced by \$144,000.

20 B. In the event of a default in payment that has not been cured within thirty (30) days from the date
21 of the default, the full judgment amount of \$3.3 million shall become due and payable immediately to the
22 Commission.

23 C. All funds paid and collected pursuant to this Paragraph constitute equitable relief solely remedial
24 in nature for purposes of redress and are not a fine, penalty, punitive assessment, or forfeiture. All amounts paid
25 and collected shall be deposited into a fund administered by the Commission or its agent to be used for equitable
26 relief, including but not limited to consumer redress and any attendant expenses for the administration of any
27 redress fund. In the event that direct redress to consumers is wholly or partially impracticable or funds remain
28 after redress is completed, the Commission may apply any remaining funds for such other equitable relief

1 (including consumer information remedies) as it determines to be reasonably related to the defendants' practices
2 alleged in the complaint. Any funds not used for such equitable relief shall be deposited in the United States
3 Treasury as disgorgement. Defendants shall have no right challenge the Commission's choice of remedies under
4 this Paragraph.

5 D. By signing this Order, defendants agree that they have relinquished all dominion, control and title
6 to all of the money transferred to the Commission, and agree that all legal and equitable title to said monies is
7 vested in the Commission, for use according to the terms of this Order. In the event of bankruptcy, defendants
8 agree to acknowledge and verify in an appropriate manner to the bankruptcy court or to any other authority, and
9 hereby also acknowledge and verify, that the money transferred to the Commission is not part of any debtor's
10 estate, nor does any debtor's estate have any claim or interest therein.

11 E. **In accordance with 31 U. S. C. ' 7701, defendants are hereby**
12 **required to furnish to the Commission their respective taxpayer**
13 **identifying numbers (social insurance numbers or employer**
14 **identification numbers) which shall be used for purposes of collecting**
15 **and reporting on any delinquent amount arising out of the defendants'**
16 **relationship with the government.**

17 **V.**

18 **RIGHT TO REOPEN**

19 **IT IS FURTHER ORDERED** that, by agreeing to this Order, defendants reaffirm and attest to the
20 truthfulness, accuracy, and completeness, to the best of defendants' knowledge, of the Financial Disclosure
21 Forms transmitted to the FTC on February 1, 2002. Plaintiff's agreement to this Order is expressly premised
22 upon the truthfulness, accuracy, and completeness of defendants' financial condition as represented in the
23 Financial Disclosure Forms referenced above, which contain material information upon which plaintiff relied in
24 negotiating and agreeing to the terms of this Order, including the monetary redress provided for by this Order.
25 If, upon motion by plaintiff, this Court finds that defendants failed to disclose any material asset, or materially
26 misrepresented the value of any asset, or made any other material misrepresentation in or omission from the
27 Financial Disclosure Forms, the Court shall enter judgment against defendants, in favor of the Commission, in the
28 amount of \$3.3 million, and the entire amount of the judgment shall become immediately due and payable, less
any payment already made. *Provided, however,* that in all other respects, this Order shall remain in full force

1 and effect unless otherwise ordered by this Court; and provided further that proceedings instituted under this
2 Paragraph are in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law,
3 including any other proceedings plaintiff may initiate to enforce this Order. For the purposes of this Paragraph,
4 defendants waive any right to contest any of the allegations in the complaint filed in this matter in any subsequent
5 litigation filed by the Commission to enforce its rights pursuant to this Order, including but not limited to a
6 non-dischargeability complaint in any bankruptcy proceeding.

7 **VI.**

8 **DISSOLUTION OF ASSET FREEZE**

9 **IT IS FURTHER ORDERED** that upon entry of this Stipulated Permanent Injunction, the freeze
10 against all assets ordered by the Court on October 9, 2001, and extended thereafter, shall be lifted as to Farpoint
11 Services Intl., Ltd., Garrison Corporation, Inc., American Card Services, S.A., Hyperion LLC, Consolidated
12 Group of Companies LLC, Roberta Galway aka Robin Galway and Robin Arcand, and Philip Arcand.

13 **VII.**

14 **MONITORING COMPLIANCE OF SALES PERSONNEL**

15 **IF IS FURTHER ORDERED** that defendants, in connection with any business where (1) either
16 defendant is the majority owner of the business or directly or indirectly controls the business and where (2) the
17 business is engaged in telemarketing to U.S. residents, contracts with others to telemarket to U.S. residents, or
18 assists others who telemarket to U.S. residents, is hereby permanently restrained and enjoined from:

19 A. Failing to take reasonable steps sufficient to monitor and ensure that all employees and
20 independent contractors engaged in sales or other customer service functions comply with Paragraphs I. II of this
21 Order. Such steps shall include adequate monitoring of sales presentations or other calls with customers, and
22 shall also include, at a minimum, the following: (1) listening to the oral representations made by persons engaged
23 in sales or other customer service functions; (2) establishing a procedure for receiving and responding to
24 consumer complaints; and (3) ascertaining the number and nature of consumer complaints regarding transactions
25 in which each employee or independent contractor is involved;

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

28 C. Failing to take corrective action with respect to any sales person whom defendants determine is
not complying with this Order, which may include training, disciplining, and/or terminating such sales person.

VIII.

RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this Order, defendants, in connection with any business where (1) any defendant is the majority owner of the business or directly or indirectly controls the business and (2) the business is engaged in telemarketing to U.S. residents, contracts with others to telemarket to U.S. residents, or assists others who telemarket to U.S. residents, 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, 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. Complaint 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.

IX.

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, defendants shall notify the Commission of the following:

1. Any changes in either individual defendants= residence, mailing addresses, telephone numbers, within ten (10) days of the date of such change;
2. Any change in either individual defendants= employment status, including self-employment, within ten (10) days of such change. Such notice shall include the name and

1 address of each business that defendant is affiliated with or employed by, a statement of the
2 nature of the products sold by the business, and a statement of defendant's duties and
3 responsibilities in connection with the business or employment; and

4 3. Any proposed change in the corporate structure of any business entity that is owned or
5 controlled by Philip Arcand or Roberta Galway, such as creation, incorporation, dissolution,
6 assignment, sale, creation or dissolution of subsidiaries, or any other change that may affect
7 compliance obligations arising out of this Order, thirty (30) days prior to the effective date of any
8 proposed change;

9 B. One hundred eighty (180) days after the date of entry of this Order, defendants Philip Arcand
10 and Roberta Galway shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth
11 in detail the manner and form in which they have complied and are complying with this Order. This report shall
12 include but not be limited to:

- 13 1. Defendants' then current residence address and telephone number;
- 14 2. Defendants' then current employment, including self-employment, business addresses
15 and telephone numbers, a description of the business activities of each such employer,
16 and defendant's title and responsibilities for each employer;
- 17 3. A copy of each acknowledgment of receipt of this Order obtained by defendants
18 pursuant to Paragraph XII;
- 19 4. A statement describing the manner in which defendants have complied and are
20 complying with the provisions of Paragraphs II, VII and VIII and XII.

21 C. Upon written request by a representative of the Commission, defendant shall submit additional
22 written reports (under oath, if requested) and produce documents on fifteen (15) days' notice with respect to any
23 conduct subject to this Order;

24 D. For the purposes of this Order, defendant shall, unless otherwise directed by the Commission's
25 authorized representatives, mail all written notifications to the Commission to:

26 Regional Director
27 Federal Trade Commission
28 915 2nd Avenue, Room 2896
Seattle, WA 98174

E. For the purposes of this Paragraph, "employment" includes the performance of services as an

1 employee, consultant, or independent contractor; and "employers" include any individual or entity for whom
2 defendants Philip Arcand or Roberta Galway performs services as an employee, consultant, or independent
3 contractor.

4 F. For purposes of the compliance reporting required by this Paragraph, the Commission is
5 authorized to communicate directly with defendants Philip Arcand and Roberta Galway.

6 **X.**

7 **ACCESS TO BUSINESS PREMISES**

8 **IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry of this Order,
9 for the purpose of further determining compliance with this Order, defendants shall permit representatives of the
10 Commission, within three (3) business days of receipt of written notice from the Commission:

11 A. Access during normal business hours to any office, or facility storing documents, of any business
12 located in the U.S., where any defendant is the majority owner of the business or directly or indirectly manages
13 or controls the business, and where the business is engaged directly or indirectly in telemarketing, including
14 assisting others engaged in telemarketing, or credit card processing. In providing such access, defendants shall
15 permit representatives of the Commission to inspect and copy all documents relevant to any matter contained in
16 this Order, and shall permit Commission representatives to remove documents relevant to any matter contained
17 in this Order for a period not to exceed five (5) business days so that the documents may be inspected,
18 inventoried, and copied; and In providing such access, defendants shall permit representatives of the
19 Commission to inspect and copy all documents relevant to any matter contained in this Order; and shall permit
20 Commission representatives to remove documents relevant to any matter contained in this Order for a period not
21 to exceed five (5) business days so that the documents may be inspected, inventoried, and copied; and

22 B. To interview the officers, directors, and employees, including all personnel involved in
23 responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees,
24 consultants, independent contractors or otherwise, of any business located in the U.S., where any defendant is
25 the majority owner of the business or directly or indirectly manages or controls the business, and the business
26 engages in performing any function in connection with the telemarketing of any product or service to U.S.
27 residents or assisting others engaged in these activities, concerning matters relating to compliance with the terms
28 of this Order. The person interviewed may have counsel present.

Provided that, upon application of the Commission and for good cause shown, the Court may enter an

1 *ex parte* order granting immediate access to defendants' business premises for the purposes of inspecting and
2 copying all documents relevant to any matter contained in this Order.

3 **XI.**

4 **COMMISSION'S AUTHORITY TO MONITOR COMPLIANCE**

5 **IT IS FURTHER ORDERED** that the Commission is authorized to monitor defendants' compliance
6 with this Order by all lawful means, including but not limited to the following means:

7 A. The Commission is authorized, without further leave of court, to obtain discovery from any
8 person in the manner provided by Chapter V of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 26 - 37,
9 including the use of compulsory process pursuant to Fed. R. Civ. P. 45, for the purpose of monitoring and
10 investigating defendants' compliance with any provision of this Order;

11 B. The Commission is authorized to use representatives posing as consumers and suppliers to
12 defendants, defendant's employees, or any other entity managed or controlled in whole or in part by defendants,
13 without the necessity of identification or prior notice;

14 C. Nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to
15 Sections 9 and 20 of the FTC Act, 15 U.S.C. ' ' 49, 57b-1, to investigate whether defendants have violated any
16 provision of this Order or Section 5 of the FTC Act, 15 U.S.C. ' 45.

17 **XII.**

18 **DISTRIBUTION OF ORDER BY DEFENDANTS**

19 **IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry of this Order,
20 defendants shall:

21 A. Provide a copy of this Order to, and obtain a signed and dated acknowledgment of receipt of
22 same from, each officer or director, each individual serving in a management capacity, all personnel involved in
23 responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees,
24 consultants, independent contractors or otherwise, immediately upon employing or retaining any such persons,
25 for any business where (1) any defendant is the majority owner of the business or directly or indirectly manages
26 or controls the business, and where (2) the business is engaged in telemarketing to U.S. residents, contracts with
27 others to telemarket to U.S. residents, or assists others who telemarket to U.S. residents;

28 B. Maintain for a period of three (3) years after creation, and upon reasonable notice, make
available to representatives of the Commission, the original signed and dated acknowledgments of the receipt of

copies of this Order, as required in Subsection A. of this Paragraph.

XIII.

ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that within five (5) business days after receipt of this Order as entered by the Court each defendant shall submit to the Commission a truthful sworn and notarized statement, in the form shown on Attachment A, that shall acknowledge receipt of this Order as entered.

XIV.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court will retain jurisdiction of this matter for the purpose of enabling any of the parties to this Order to apply to the Court at any time for such further orders or directives as may be necessary or appropriate for the interpretation or modification of this Order, for the enforcement of compliance therewith or the punishment of violations thereof.

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SO ORDERED, this _____ day of _____, 2002, at _____.

Honorable Marsha J. Pechman
United States District Judge

The parties, by their respective counsel, hereby consent to the terms and conditions of the Stipulated Permanent Injunction as set forth above and consent to entry thereof. Defendants waive any 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).

DATED: _____, 2002

PHILLIP ARCAND, individually and for American Card Services, S.A., Garrison Corporation, Inc., Hyperion LLC and Consolidated Group of Companies, LLC

DATED: _____, 2002

ROBERTA GALWAY, individually and for Farpoint Services Int'l.

DATED: _____, 2002

ELEANOR DURHAM
Attorney for Plaintiff
Federal Trade Commission

APPROVED AS TO FORM:

DATED: _____, 2002

BARRY LEVINSON
Law Offices of Barry Levinson
Attorneys for Defendants