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Federal Trade Commission
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16 **IN THE UNITED STATES DISTRICT COURT**
17 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

18 _____)
19 FEDERAL TRADE COMMISSION,)

20 Plaintiff,)

21 v.)

22 SHARED NETWORK SERVICES, LLC)
a Limited Liability Company, sometimes doing)
23 business as Shared Network Services and)
sometimes doing business as 1st Page; and)

24 PETER WESTBROOK, an individual, sometimes)
doing business as Shared Network Services)
25 and sometimes doing business as 1st Page,)

26 Defendants.)
27 _____)
28

Civil No. S-99-1087-WBS JFM
Judge Shubb

STIPULATION AND ORDER
FOR PRELIMINARY
INJUNCTION

1 **WHEREAS** this matter comes before the Court on plaintiff Federal Trade Commission's
2 ("Commission") complaint for an injunction and other equitable relief, and its ex parte application
3 pursuant to Fed. R. Civ. P. 65(b) for a Temporary Restraining Order ("TRO") with Asset Freeze,
4 and Order to Show Cause Why a Preliminary Injunction Should Not Issue. The TRO with Asset
5 Freeze and Order to Show Cause having been granted ex parte and the Complaint and summons
6 having been served on defendants;

7 **WHEREAS** plaintiff has alleged that:

8 1. This Court has jurisdiction of the subject matter of this case, and over all named
9 parties;

10 2. There is substantial likelihood that the Commission will ultimately succeed in
11 establishing that defendants have engaged in and are likely to continue to engage in acts and
12 practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and, therefore, the
13 Commission is likely to prevail on the merits of this action;

14 3. That irreparable harm will occur if a preliminary injunction is not issued; and

15 4. Weighing the equities and considering the Commission's likelihood of ultimate
16 success in its causes of action, this Preliminary Injunction is in the public interest;

17 **WHEREAS** the parties agree to the entry of this Order containing a preliminary
18 injunction, security, and other ancillary relief; and

19 **WHEREAS** the defendants, by agreeing and stipulating to this Order, make no admission
20 or denial as to the truth of plaintiff's allegations,

21 **IT IS AGREED TO AND STIPULATED BY** the undersigned parties, and their
22 attorneys of record as follows:

23
24 **ORDER**

25 **Definitions**

26 A. "Material" means likely to affect a person's choice of, or conduct regarding, goods
27 or services;

1 B. "Document" is synonymous in meaning and equal in scope to the usage of the term
2 in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts,
3 photographs, audio and video recordings, computer records, and other data compilations from
4 which information can be obtained and translated, if necessary, through detection devices into
5 reasonably usable form. A draft or non-identical copy is a separate document within the meaning
6 of the term.

7 C. "Defendants" mean Shared Network Services, LLC, sometimes doing business as
8 Shared Network Services, SNS or 1st Page, and Peter Westbrook, sometimes doing business as
9 Shared Network Services, SNS or 1st Page, and each of their successors, assigns, officers, agents,
10 telemarketers, servants, employees, subsidiaries or affiliates, and those persons in active concert
11 or participation with them who receive actual notice of this Order by personal service or
12 otherwise, whether acting directly or through any entity, corporation, subsidiary, division, or
13 other device, unless specified otherwise.

14 D. "First Page" means that business entity doing business as Shared Network
15 Services, LLC, Shared Network Services, SNS, or 1st Page, its subsidiaries or its affiliates.

16 E. "Telemarketers" means any business entities or individuals selling or soliciting any
17 product or service on behalf of defendants, including, but not limited to the following entities:
18 Signal2, 519 W. Carson, Carson, CA 90745; Premier Marketing 2, 3511 Camino Del Rio, San
19 Diego, CA 92107; J & S Worldwide, 3540 Wilshire Blvd., Los Angeles, CA 90010; Advance
20 Communications, 2201 W. Broadway, Anaheim, CA 92804; Diamond Telemarketing Express,
21 9109 Village Glen Dr., San Diego, CA 92123; Telestar Marketing, 328 S. Central Ave., Medford,
22 OR 97501; M&M Marketing, 5013 San Vicente, Los Angeles, CA 90019; Creative Marketing,
23 599 Canal St., Lawrence, MA; and Tele-Cam Inc., 9515 E. Fowler Ave., Thonotosassa,
24 FL 33592.

25 F. A "website" is a set of electronic documents, usually a home page and subordinate
26 pages, readily viewable on computer by anyone with access to the Internet, standard software,
27 and knowledge of the website's location or address.

1 G. A “web page” is an electronic document readily viewable on computer by anyone
2 with access to the Internet, standard software, and knowledge of the website's location or
3 address.

4 E. “Free” means that there is no cost or obligation whatsoever.
5

6 **I.**

7 **PROHIBITED BUSINESS ACTIVITIES**

8 **INJUNCTION AGAINST MISREPRESENTATIONS**

9 **IT IS THEREFORE ORDERED** that, in connection with the advertising, promotion,
10 offering for sale, sale or provision of any goods or services relating to Internet web site services,
11 Internet web page services, Internet advertising services, or any other Internet services,
12 defendants are hereby restrained and enjoined from making or assisting in the making of, expressly
13 or by implication, directly or indirectly, orally or in writing, any false or misleading statement or
14 representation of material fact, including but limited to representations that:

15 A. Defendants will not charge consumers before the end of a free trial period for web
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1 **II.**

2 **LIFTING OF ASSET FREEZE AND SUBSTITUTION OF OTHER SECURITY**

3 **IT IS FURTHER ORDERED** that the asset freeze imposed by this Court under its TRO
4 is hereby lifted as to defendants, and in substitution therefor, defendants shall give plaintiff FTC a
5 perfected security interest in defendants' computer equipment, which interest shall be filed in
6 accordance with the laws of California by Friday, June 11, 1999. Defendants shall not sell, lease,
7 transfer, or otherwise encumber such equipment during the pendency of this matter. Defendants
8 shall maintain such equipment in good working order and shall use due diligence in ensuring that
9 such equipment is kept safe and intact. Should defendants fail to comply with any part of this
10 provision, upon notice by plaintiff, and without further Order of this Court, the Asset Freeze shall
11 be reinstated against defendants under the same terms and conditions contained in the TRO.

12
13 **III.**

14 **TAPE-RECORDING OF CONSUMER CALLS**

15 **IT IS FURTHER ORDERED** that, in the event defendants, their agents, or
16 telemarketers, tape-record any conversation with a consumer to verify or confirm that a consumer
17 is agreeing to purchase defendants' goods or services, defendants are restrained and enjoined
18 from accepting or processing such purchases unless the tape-recording meets the following
19 criteria:

20 A. After obtaining permission from the consumer to tape-record the conversation, the
21 tape-recording shall reflect the entirety of the conversation;

22 B. The tape recording must clearly reflect the consumer's agreement to tape-record
23 the call; and

24 C. The tape recording must include clear, conspicuous, and understandable
25 disclosures of all material terms of the purchase, and that the consumer has expressly agreed to
26 the material terms. The material terms disclosed in the tape-recorded conversation shall be
27 consistent with any material terms previously disclosed to the consumer. Material terms include,
28 but are not limited to:

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1 Order, and to inspect and copy all books, records, accounts, and other property of 1st Page,
2 wherever located.

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4 **VI.**

5 **RECORD KEEPING PROVISIONS**

6 **IT IS FURTHER ORDERED** that defendants are hereby restrained and enjoined from:

7 A. Destroying, erasing, mutilating, concealing, altering, transferring, or otherwise
8 disposing of, in any manner, any: books; records; "verification" or other audio or video tape
9 recordings; computer tapes, discs or other computerized records; accounting data; personal and
10 business checks (fronts and backs); correspondence; forms; advertisements; brochures; manuals;
11 banking records; customer lists; customer files; invoices; telephone records; ledgers; payroll
12 records; scripts; postal receipts; appointment books; state or federal income tax returns; or other
13 documents of any kind in their possession, custody, or control; and

14 B. Failing to make and keep books, records, bank statements, documents indicating
15 title to real or personal property, and any other data which, in reasonable detail, accurately and
16 fairly reflect the transactions and dispositions of the assets of defendants.

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18 **VII.**

19 **DISTRIBUTION OF ORDER BY DEFENDANTS**

20 **IT IS FURTHER ORDERED** that defendants shall immediately provide a copy of this
21 Order to each affiliate, subsidiary, division, sales entity, telemarketer, successor, assign, officer,
22 director, employee, independent contractor, agent, attorney, and representative of any defendant,
23 and shall, within ten (10) days from the date of entry of this Order, provide the Commission with
24 a sworn statement that defendants have complied with this provision of the Order, which
25 statement shall include the names and addresses of each such person or entity who received a
26 copy of the Order.

1 **VIII.**

2 **SERVICE OF ORDER**

3 **IT IS FURTHER ORDERED** that copies of this Order may be served by any means,
4 including facsimile transmission, upon any financial institution or other entity or person that may
5 have possession, custody, or control of any documents or assets of defendants, or that may be
6 subject to any provision of this Order.

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8 **IX.**

9 **CORRESPONDENCE WITH PLAINTIFF**

10 **IT IS FURTHER ORDERED** that for the purposes of this Order, all correspondence
11 and pleadings to the Commission shall be addressed to both:

12 Jerome M. Steiner, Jr.	Stephen L. Cohen
13 Federal Trade Commission	Federal Trade Commission
901 Market Street, Room 570	600 Pa Ave., NW
San Francisco, CA 94103	Washington, DC 20580
(415) 356-5282 (voice)	(202) 326-3222 (voice)
(415) 356-5284 (facsimile)	(202) 326-3395 (facsimile)

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16 **X.**

17 **RIGHT TO SEEK MODIFICATION**

18 **IT IS FURTHER ORDERED** that nothing in this Order shall limit defendants' right to
19 apply to the Court for modification of any provision of the Order.
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21 **XI.**

22 **RETENTION OF JURISDICTION**

23 **IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for all
24 purposes.
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1 The parties, by their signature or by the signature of their counsel, hereby stipulate and
2 agree to the entry of this Order:

3
4 **FOR DEFENDANTS**

5
6 _____
7 Peter Westbrook, Individually and as
8 President of Shared Network Services, LLC

9 **FOR THE FEDERAL TRADE COMMISSION**

10
11 _____
12 Stephen L. Cohen
13 Jerome M. Steiner, Jr.
14 Attorneys for Plaintiff
15 Federal Trade Commission
16 600 Pennsylvania Ave., N.W.
17 Washington, D.C. 20580
18 202-326-3222

19 **SO ORDERED**, this ____ day of _____, 1999, at ____m.

20 _____
21 THE HONORABLE WILLIAM B. SHUBB
22 UNITED STATES DISTRICT JUDGE
23 EASTERN DISTRICT OF CALIFORNIA
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