

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

FEDERAL TRADE COMMISSION,
COMMONWEALTH OF VIRGINIA
EX REL. JERRY W. KILGORE,
ATTORNEY GENERAL OF VIRGINIA,
STATE OF NORTH CAROLINA
EX REL. ROY COOPER,
ATTORNEY GENERAL OF
NORTH CAROLINA and
STATE OF WISCONSIN,
EX REL. JAMES E. DOYLE,
ATTORNEY GENERAL OF
WISCONSIN,

Plaintiffs,

v.

THE TUNGSTEN GROUP, INC.,
a corporation, also doing business as American
Savings Discount Club, also doing business as Auto
Services Discount Club, also doing business as
ASDC, also doing business as TTG Financial;
THE TUNGSTEN GROUP II, INC.,
a corporation, also doing business as American
Savings Discount Club, also doing business as
ASDC;
ROBERT J. DEMELLWEEK,
individually, and as an officer of the Tungsten Group
and the Tungsten Group II; and
DAVID VINCENT JENSEN,
individually, and as an officer of the Tungsten Group
II,

Defendants.

Case No. 2:01 CV 773

**STIPULATED FINAL ORDER
AND PERMANENT
INJUNCTION**

Plaintiffs — the Federal Trade Commission (“Commission”), the Commonwealth of Virginia *ex rel.* Jerry W. Kilgore, Attorney General of Virginia, the State of North Carolina *ex rel.* Roy Cooper, Attorney General of North Carolina, and the State of Wisconsin *ex rel.* James E. Doyle, Attorney General of Wisconsin — filed on October 15, 2001, a Complaint for a permanent injunction and other relief, including consumer redress, pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b) and 57b, the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101 *et seq.*, the Virginia Consumer Protection Act, Va. Code § 59.1-196 *et seq.*, the Virginia Home Solicitation Sales Act, Va. Code § 59.1-21.1 *et seq.*, the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1 *et seq.*, the North Carolina Telephonic Seller Registration and Bonding Act, N.C. Gen. Stat. § 66-260 *et seq.*, and the Wisconsin Fraudulent Representations Act, Wis. Stat. § 100.18(1) *et seq.*

Also on October 15, 2001, the Court entered, *ex parte*, a temporary restraining order and an order to show cause why a preliminary injunction should not be granted. Plaintiffs and Defendants — The Tungsten Group, Inc., The Tungsten Group II, Inc., Robert J. Demellweek, and David Vincent Jensen — signed a stipulated preliminary injunction which this Court entered on December 4, 2001. The Court also entered a Memorandum Order the same day. Plaintiffs and Defendants now enter into this Stipulated Final Order and Permanent Injunction.

1. Plaintiffs allege that Defendants have violated Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), the Federal Trade Commission’s Trade Regulation Rule entitled “Telemarketing Sales Rule,” 16 C.F.R. Part 310, the Telemarketing Act, 15 U.S.C. § 6101 *et seq.*, the Virginia Consumer Protection Act, Va. Code § 59.1-196 *et seq.*, the Virginia Home Solicitation Sales Act, Va. Code § 59.1-21.1 *et seq.*, the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1 *et seq.*, the North Carolina Telephonic Seller Registration and Bonding Act, N.C. Gen. Stat. § 66-260 *et seq.*, and the Wisconsin Fraudulent Representations Act, Wis. Stat. § 100.18(1) *et seq.*

2. This Court has jurisdiction over the subject matter of this case and of the parties to this action under 28 U.S.C. §§ 1331, 1337(a), 1345, and 1367, and 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), 6103(a), and 6105(b). Venue in the Eastern District of Virginia is proper under 28 U.S.C. §§ 1391(b), (c), and (d), and 15 U.S.C. §§ 53(b) and 6103(e).

3. Plaintiffs have the authority to seek the relief they have requested.

4. The Complaint states a claim upon which injunctive relief may be granted against Defendants 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. §§ 6103, 6105, the Virginia Consumer Protection Act, Va. Code §§ 59.1-200 and 59.1-203, the Virginia Home Solicitation Sales Act, Va. Code § 59.1-21.7:1, the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-14, the North Carolina Telephonic Seller Registration and Bonding Act, N.C. Gen. Stat. § 66-266, and the Wisconsin Fraudulent Representations Act, Wis. Stat. § 100.18(11)(d).

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

6. By stipulating and consenting to the entry of this Stipulated Final Order and Permanent Injunction, Defendants do not admit any of the allegations in the Complaint, except those contained in Paragraphs 1 through 6 therein. Likewise, by executing this Order, Plaintiffs do not admit that any defense to the Complaint is valid. This Order does not constitute a finding by the Court that Defendants engaged in violation of any law or regulation.

7. The Court entered a Temporary Restraining Order in this matter on October 15, 2001, and entered Stipulated Orders extending and modifying the Temporary Restraining Order on October 25, October 31, November 6, and November 8, 2001.

8. On December 4, 2001, the Court entered a stipulated preliminary injunction and a Memorandum Order.

9. This action and the relief ordered herein are in addition to, and not in lieu of, other remedies as may be provided by law, including both civil and criminal remedies.

10. The parties agree that this Order shall be construed as solely remedial in nature, and shall not be construed as the payment of any fine, penalty, punitive assessment, or forfeiture.

11. The parties waive all rights to seek judicial review of, or otherwise challenge or contest the validity of, this Order or the temporary or preliminary orders entered in this proceeding. Defendants also waive any claim that they may have held under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the date of the entry of this Stipulated Final Order and Permanent Injunction. Defendants further waive and release any claim they may have against the Plaintiffs, the Receiver, or their employees, agents, or representatives. The Plaintiffs waive and release all civil consumer protection and trade practices claims they may have against Robert J. Demellweek and David

Vincent Jensen arising from the allegations in the Complaint in this action. The Receiver, on behalf of herself and the Receivership estate, waives and releases all claims she may have against Robert J. Demellweek and David Vincent Jensen and their attorneys.

12. Defendants consent freely and without coercion to entry of this Stipulated Final Order and Permanent Injunction in the interest of settling this litigation, and acknowledge that they understand the provisions of this Order and are prepared to abide by its terms. At all times, Defendants have been represented by counsel, including during the negotiations that led to this Order.

13. Any voluntary bankruptcy petition filed by any Defendant does not automatically stay this action, which the Court finds is the “commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit’s police or regulatory power,” as set forth in 11 U.S.C. § 362(b)(4).

14. Any voluntary bankruptcy petition filed by any Defendant does not divest this Court of

responding to customer complaints; (2) formulating or providing, or arranging for the formulation or provision of, any telephone sales script or any other marketing material; (3) providing names of, or assisting in the generation of, potential customers; or (4) performing marketing services of any kind.

6. “Consumer good or service” means any good or service purchased, leased, or rented primarily for personal, household, or family purposes.

7. “Customer” includes any individual, group, unincorporated association, limited or general partnership, corporation or other business entity.

8. “Credit-related” includes loans or other extensions of credit, arranging or obtaining loans or other extensions of credit, or providing advice or assistance with respect to obtaining loans or other extensions of credit.

9. “Document” is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a). A draft or non-identical copy is a separate document within the meaning of the term.

10. “Person” or 8.

A. **IT IS FURTHER ORDERED** that the individual Defendants are hereby permanently restrained and enjoined from receiving any remuneration of any kind whatsoever from, engaging or participating in, or assisting others who are engaging or participating in, any business activity involving the telephone solicitation of credit-related products or services, including, but not limited to, (i) initiating or receiving credit-related telephone solicitations; (ii) managing others who initiate or receive credit-related telephone solicitations; (iii) operating an enterprise that initiates or receives credit-related telephone solicitations; (iv) owning or serving as an officer or director of an enterprise that initiates or receives credit-related telephone solicitations; (v) otherwise working as an employee or independent contractor with a unit or division of an enterprise that initiates or receives credit-related telephone solicitations; or (vi) serving as a paid or compensated consultant to any person, partnership, or business entity engaged in credit-related telephone solicitation activity.

B. **IT IS FURTHER ORDERED** that, notwithstanding the provisions of Subpart A, above, the individual Defendants are hereby restrained and enjoined for a period of three (3) years following entry of this order from receiving any remuneration of any kind whatsoever from, engaging or participating in, or assisting others who are engaging or participating in, any business activity involving telephone solicitations of any kind, including, but not limited to, (i) initiating or receiving telephone solicitations; (ii) managing others who initiate or receive telephone solicitations; (iii) operating an enterprise that initiates or receives telephone solicitations; (iv) owning or serving as an officer or director of an enterprise that initiates or receives telephone solicitations; (v) otherwise working as an employee or independent contractor with a unit or division of an enterprise that initiates or receives telephone solicitations; or (vi) serving as a paid or

compensated consultant to any person, partnership, or business entity engaged in telephone solicitation activity.

C.

admitted to do business in each of the states in which the individual Defendant does business and that holds a Federal Certificate of Authority As Acceptable Surety On Federal Bond and Reinsuring. Such performance bond shall be in favor of: (1) each Plaintiff, for the benefit of any customer injured as a result of any violation of Section 5 of the FTC Act, the Telemarketing Sales Rule, or the provisions of this Order committed by an individual Defendant, his agents, or any persons acting in concert with him; and (2) any customer so injured.

3. The bond required pursuant to this Subpart D is in addition to, and not in lieu of, any other bond required by any other federal, state, or local law, or by any other court order not entered in this action, except that, to the extent allowed by law, the bond required pursuant to this Subpart D may satisfy any performance bond required by any other federal, state or local law where such law requires a performance bond for the amount of five hundred thousand dollars (\$500,000) or less.
4. At least ten business days before an individual Defendant commences receiving any remuneration of any kind whatsoever from, engaging or participating in, or assisting others who are engaging or participating in, any business activity involving either non-credit-related telephone solicitations or the offer or sale of credit-related products or services via means other than by telephone solicitation, the Defendant shall provide the bond required by this Subpart D to the Plaintiffs at the addresses specified in **tab0that holds a Federal Cs b292t Sut D is in6hatNo TD -0.4194 7**

PROVIDED, however, that this **Section II** shall not prohibit the individual Defendants from working for any person that engages or participates in telephone solicitations under the following conditions:

1. The individual Defendants perform work unrelated to the telephone solicitation activity of the person and are not, directly or indirectly, receiving remuneration for, engaging or participating in, or supervising, advising, training, or consulting for those engaging or participating in, telephone solicitations;
2. The individual Defendants perform their work for the person at a different facility from that in which the telephone solicitation activity of the person is conducted; for purposes of this provision, work at a different “facility” means the individual Defendants must work in a different building from the telephone solicitation activity or, if the person has only one building, the individual Defendants must work on a different floor from the telephone solicitation activity, or, if the person has only one floor, the individual Defendants must work in a different room from the telephone solicitation activity;
3. The individual Defendants are not officers or directors of the person;
4. The individual Defendants are not, and have no option or other interest to become, directly or indirectly, a shareholder, partner, or other owner of more than five percent (5%) of the person;
5. The individual Defendants have notified Plaintiffs of their association with the person, including their job title and the name, business address, and business telephone number of the person; and
6. The person does not make telephone solicitations on behalf of other persons.

Any individual Defendant who is uncertain about how this Section and its proviso apply in a specific situation may apply to the Court for clarification or guidance.

III.

PROHIBITED MISREPRESENTATIONS AND MANDATORY COMPLIANCE

A. **IT IS FURTHER ORDERED** that in connection with the offering for sale or sale of any good or service, Defendants are hereby permanently restrained and enjoined from making, or assisting

others in the making of, any express or implied representation of material fact that is false or misleading, including, but not limited to:

1. any misrepresentation that, after paying a fee, a customer will, or is highly likely to, receive a loan or other extension of credit;
2. any misrepresentation that a customer has been pre-approved for a loan or other extension of credit;
3. any misrepresentation that a monthly membership fee is the monthly loan repayment amount;
4. any misrepresentation that any customer payments are refundable.

B. **IT IS FURTHER ORDERED** that in connection with the offering for sale or sale of any good or service, Defendants are hereby permanently restrained and enjoined from violating, or assisting others in violating, any provision of the Telemarketing Sales Rule, 16 CFR Part 310, including, but not limited to, the following violations:

1. requesting or receiving payment of a fee or consideration in advance of obtaining or arranging a loan or other extension of credit for customers when Defendants have guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit for such customers;
2. misrepresenting, directly or by implication, that after paying Defendants a fee, customers will, or are highly likely to, receive a loan or other extension of credit;
3. misrepresenting, directly or by implication, that a customer has been pre-approved for a loan or other extension of credit;
4. misrepresenting, directly or by implication, that a monthly membership fee is the monthly loan repayment amount;
5. misrepresenting, directly or by implication, that any customer payments are refundable.

A copy of the Telemarketing Sales Rule is appended to this Order as **Appendix A** and is incorporated herein as if fully rewritten. In the event that the Telemarketing Sales Rule is amended by the Commission in a manner which would create a new or different standard applicable to Defendants' obligations under this Order,

F. **IT IS FURTHER ORDERED** that each individual Defendant, in connection with any and every business entity of which he is a majority owner, or which he otherwise manages or controls and where the business is engaged in the sale or marketing of any consumer good or service, is hereby permanently restrained and enjoined from:

1. 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 II, III, and IV** of this Order. Such steps shall include adequate monitoring of sales presentations or other calls with customers, 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 customer complaints; and (3) ascertaining the number and nature of customer complaints regarding transactions in which each employee or independent contractor is involved;
2. Failing promptly to investigate fully any customer complaint received by any business to which this Section applies; and
3. Failing to take corrective action with respect to any salesperson whom Defendant determines is not complying with this Order, which may include training, **IT Tc 052**that each injection with

IT IS FURTHER ORDERED that Defendants are permanently restrained and enjoined from selling, renting, leasing, transferring or otherwise disclosing the name, address, telephone number, credit card number, bank account number, e-mail address, or other identifying information of any person who paid any money to the Receivership Defendants at any time, in connection with the offering for sale or sale of any good or service; **PROVIDED, however,** that any Defendant may disclose such identifying information to Defendant's counsel as may be needed to defend a civil or criminal action, a law enforcement agency or as required by any law, regulation or court order, and shall disclose such identifying information to the Plaintiffs pursuant to this Order.

**V.
PROHIBITION ON TRANSFERRING BUSINESS INFORMATION**

IT IS FURTHER ORDERED that Defendants are hereby permanently restrained and enjoined from transferring or in any other way providing to any person (other than a federal, state, or local law enforcement agency, Defendant's counsel as may be needed to defend a civil or criminal action, or pursuant to a court order), directly or indirectly, any trade secrets or knowledge, whether recorded or otherwise, or any books, records, tapes, disks, accounting data, manuals, electronically stored data, banking records, invoices, telephone records, ledgers, payroll records, or other documents of any kind, including information stored in computer-maintained form, in the possession, custody, or control of a Defendant that are in any way related to a Receivership Defendant.

**VI.
SUSPENDED JUDGMENT**

IT IS FURTHER ORDERED that judgment is hereby entered against Defendants, jointly and severally, in the amount of forty million dollars (\$40,000,000); **PROVIDED, however**, that this monetary judgment shall be suspended as to the individual Defendants until further order of the Court, **and PROVIDED further** that this monetary judgment and its suspension shall be subject to the conditions set forth in **Sections VII through IX** of this Order.

VII. MONETARY RELIEF

A. **IT IS FURTHER ORDERED** that Defendants, jointly and severally, shall pay to the Plaintiffs as equitable monetary relief, costs, and attorneys fees, including but not limited to consumer redress and disgorgement and expenses of administering any redress fund, the funds and assets as set forth herein. Decisions by the parties as to the funds and assets the Defendants are to pay were based on financial disclosure statements provided by the Defendants (see **Section IX**, below), and the terms of this **Section VII** are subject to **Section IX**, below. Payment by the Defendants shall be made as follows: (a) by following the procedures set forth in Subpart B below concerning the sale of the properties identified in that Subpart; (b) by transferring to the Receivership estate the assets set forth on **Appendix B** no later than ten (10) business days after the entry of this Order (resulting in the individual Defendants retaining the assets set forth on **Appendix C**); and (c) by the Receiver liquidating all assets in the Receivership estate and transferring the resulting funds (after all costs of liquidation and administration of the Receivership estate, including all Receiver's fees and expenses allowed by the Court) to the Plaintiffs. All transfers from the Receivership estate shall be completed within five (5) business days after all assets have been liquidated and all costs of the Receivership estate have been set by the Court. All transfers of funds from the

Receivership estate required by this Section shall be by certified check or cashier's check delivered to the Director, East Central Region, Federal Trade Commission, 1111 Superior Avenue, Suite 200, Cleveland, Ohio, 44114, or to a bank account identified by counsel for Plaintiffs.

B. Notwithstanding the requirements of Subpart A above:

1. Defendant David Vincent Jensen shall have ninety (90) days from the date this Order is entered to sell the property at 1524 Taylor Point Drive. Upon the sale of the property within this time, which sale shall be approved by the Plaintiffs and Defendant David Vincent Jensen, the first nine thousand five hundred eighty-nine dollars and thirty-three cents (\$9,589.33) of proceeds, after payment of all encumbrances and sales costs, shall be paid to the Receivership estate. Of the remaining proceeds, up to forty-three thousand dollars (\$43,000) shall be paid to Adele Jensen, free and clear of any asset freeze in this case, subject to the provisos below. All excess funds over forty-three thousand dollars (\$43,000) shall be paid to the Receivership estate;
2. If the property at 1524 Taylor Point Drive does not sell within ninety (90) days from the date this Order is entered, Defendant David Vincent Jensen shall, within ninety-five (95) days from the date this Order is entered, transfer the property to the Receivership estate. Upon sale of the property by the Receiver, the first nine thousand five hundred eighty-nine dollars and thirty-three cents (\$9,589.33) of proceeds, after payment of all encumbrances and sales costs, shall be paid to the Receivership estate. Of the remaining proceeds, up to forty-three thousand dollars (\$43,000) shall be paid to Adele Jensen, free and clear of any asset freeze in this case, subject to the provisos below. All excess funds over forty-three thousand dollars (\$43,000) shall be paid to the Receivership estate;
3. The Receiver shall arrange the sale of the 1615 Graybark Drive property, which shall be transferred to the Receivership estate pursuant to Subpart A(b), above. If the sale of the 1524 Taylor Point Drive property yields less than forty-three thousand dollars (\$43,000) for Adele Jensen, proceeds from the sale of the 1615 Graybark Drive property, after payment of all encumbrances and sales costs, shall be paid to Adele Jensen, free and clear of any asset freeze in this case, sufficient to give her no more than forty-three thousand dollars (\$43,000), subject to the provisos below. All excess funds shall be paid to the Receivership estate;
4. Nothing shall prohibit Defendant David Vincent Jensen from transferring the Taylor Point Drive property to the Receivership estate at any time during the ninety-five (95) day period described above;

(\$43,000); all such excess funds shall be paid to the Receivership estate; and **PROVIDED FURTHER**, that each Defendant's obligation to transfer any parcel of real estate under this Subpart shall be suspended until such time as Plaintiffs or the Receiver provide that Defendant with an appropriate deed transferring title to that parcel, complete except for execution.

C. Defendants acknowledge and agree that all money paid pursuant to this Order is irrevocably paid for purposes of settlement between the Plaintiffs and Defendants of the claims in this action.

D. Defendants acknowledge and agree that they will execute any and all documents necessary to transfer their frozen assets to the Receivership estate within five (5) business days of a Plaintiff's request to do so. Individual Defendants represent and warrant that they will be able to obtain the necessary signatures from any third parties needed to transfer any assets to the Receivership estate, including but not limited to signatures from third parties needed to transfer real estate to the Receivership estate.

E. Defendants' obligations to pay attorneys fees and costs as provided in **Section XIX**

IX.
RIGHT TO REOPEN WITH SUM CERTAIN

IT IS FURTHER ORDERED that,

A. Plaintiffs' agreement to, and the Court's approval of, this Final Order is expressly premised upon the truthfulness, accuracy, and completeness of the corporate financial statements previously provided and on the individual financial statements received by Plaintiffs on July 9, 2002. Each Defendants' financial statement contains material information upon which Plaintiffs relied in negotiating and agreeing to this Final Order. If Plaintiffs should have evidence that the above-referenced financial statements and information failed to disclose any material asset, materially misrepresented the value of any asset, or made any other material misrepresentation or omission, any Plaintiff may move that the Court reopen this Final Order for the sole purpose of allowing Plaintiffs to modify the monetary liability of that Defendant. If the Court finds that Defendants The Tungsten Group, Inc., The Tungsten Group II, Inc., Robert J. Demellweek, or David Vincent Jensen, individually or in combination with other Defendants, failed to disclose any material asset, the value of which is in excess of one thousand dollars (\$1,000), materially misrepresented the value of any asset, or made any other material misrepresentation or omission in the above-referenced financial statements and information, the Court shall enter a judgment against that Defendant in favor of Plaintiffs for the value of the asset in question, **PROVIDED** that should the Court find that a Defendant intentionally failed to disclose any material asset, or intentionally made any other material misrepresentation or omission in the above-referenced financial statements and information, the Court shall reinstate the judgment against that Defendant or those Defendants, in favor of Plaintiffs, in the amount of forty million dollars (\$40,000,000), which shall become immediately due and payable, less any amounts previously paid. In determining whether the act by the Defendant was an intentional act, the Court shall deem the act to be a

material, intentional act if the value of the asset is in excess of twenty-five thousand dollars (\$25,000). Should this judgment be modified as to the monetary liability of any Defendant, this Final Order, in all other respects, shall remain in full force.

B. Defendants authorize Plaintiffs and the Receiver to verify all information provided on Defendants' corporate and individual financial statements with all appropriate third parties, including, but not limited to, financial institutions and credit reporting bureaus; and

C. Proceedings instituted under this Section are in addition to, and not in lieu of, any and all other proceedings and remedies as may be provided by law, including any other proceedings Plaintiffs may initiate to enforce this Final Order. Solely for the purposes of reopening under this Section, Defendants waive any right to contest any of the allegations set forth in the complaint filed in this matter.

X.
LIFT OF ASSET FREEZE

IT IS FURTHER ORDERED that the freeze of each Defendant's assets, imposed in the Stipulated Preliminary Injunction entered in this proceeding, shall be lifted upon that Defendant's compliance with the asset transfer provisions of

XI.
RECEIVERSHIP

IT IS FURTHER ORDERED that the Receivership imposed in the Stipulated Preliminary Injunction entered in this proceeding shall be continued until such time as the Receiver has taken the necessary steps to wind down the businesses of the Receivership Defendants. Steps taken by the Receiver to wind down the business shall include canceling the Receivership Defendants' contracts, liquidating the Receivership Defendants' assets, collecting on amounts owed to the Receivership Defendants, and taking such other steps as may be necessary to terminate the Receivership Defendants efficiently. Except as to any matter arising under **Section IX**, once Defendants' obligations under this Order are satisfied, the Receiver shall not collect any debts owed by Robert J. Demellweek or David Vincent Jensen to the Receivership Defendants or assert any claims against Robert J. Demellweek or David Vincent Jensen on behalf of the Receivership Defendants. The individual Defendants renounce any and all claims to any funds transferred to the Receivership estate, and all such funds shall be treated as Receivership funds subject to the provisions of this Section. The Receiver is directed to provide a report to the Court which details the steps taken to dissolve the Receivership estate. The report shall include an inventory of the Receivership estate and an accounting of the Receivership estate's finances. Upon completion of the requirements of this Section, the Receiver shall move that this Court order termination of this Receivership. At such time, the Receiver shall make a final request for payment of compensation for the performance of duties pursuant to this Section, as well as the Temporary Restraining Order and the Preliminary Injunction entered in this proceeding and the cost of actual out-of-pocket expenses incurred. Once the Receiver has been compensated in an amount approved by the Court, the Receiver shall transfer all remaining funds of the

Corporate Defendants to Plaintiffs for consumer redress or disgorgement as provided for in **Section XII** of this Order.

XII.
USE OF CONSUMER REDRESS AND DISGORGEMENT FUNDS

IT IS FURTHER ORDERED that:

A. The Plaintiffs shall deposit all funds received from the individual Defendants and the Receiver pursuant to this Order in an interest-bearing account administered by the Plaintiffs or their agent.

B. All funds paid pursuant to this Section shall be used for equitable relief, including but not limited to consumer redress and any attendant expenses for the administration of any redress fund. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, Plaintiffs may apply any remaining funds to such other equitable relief (including consumer education remedies) as they determine to be reasonably related to the Defendants' practices alleged in the complaint. Any funds not used for such equitable relief shall be deposited as disgorgement to the United States Treasury, the Commonwealth of Virginia, and the States of North Carolina and Wisconsin in a manner agreed among the Plaintiffs. Any such funds paid to the Commonwealth of Virginia shall be deposited into the Commonwealth's Regulatory and Consumer Advocacy Revolving Trust Fund and shall be used for consumer protection, education or enforcement by the Virginia Attorney General in his sole discretion. Any such funds paid to the State of North Carolina shall be used for consumer protection, education or enforcement by the North Carolina Attorney General in his sole discretion. Any such funds paid to the State of Wisconsin shall be used for consumer protection, education or enforcement by the

Wisconsin Attorney General in his sole discretion. Defendants shall have no right to challenge the Plaintiffs' choice of remedies under this Section.

PROVIDED, however, that nothing in this Section shall affect Defendants' obligations to pay attorneys fees and costs as provided in **Section XIX**, below.

**XIII.
RECORD KEEPING PROVISIONS**

IT IS FURTHER ORDERED

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

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

1. Any change in that Defendant's residence, mailing address, and telephone number, within ten (10) days of the date of such change;
2. Any changes in that Defendant's employment status (including self-employment) within ten (10) days of such change. Such notice shall include the name and address of each business that he is affiliated with or employed by, a statement of the nature of the business, and a statement of his duties and responsibilities in connection with the business or employment; and
3. Any proposed change in the structure of any business entity owned or controlled by that Defendant, such as creation, incorporation, dissolution, assignment, sale, merger, creation, dissolution of subsidiaries, proposed filing of a bankruptcy petition, change in the corporate name or address, or any other change that may affect compliance obligations arising out of this Order, within ten (10) days of the effective date of any proposed change; **PROVIDED, however,** that, with respect to any proposed change in the corporation about which that Defendant learned less than thirty (30) days prior to the date such action is to take place, that Defendant shall notify Plaintiffs as soon as practical.

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

b. terms of the monetary-relief requirements of **Section VII**.

C. Upon written request by a representative of the Plaintiffs, Defendants shall submit additional written reports (under oath, if requested) and produce documents on thirty (30) days' notice with respect to any conduct subject to this Order;

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

Regional Director for the East Central Region
Federal Trade Commission
1111 Superior Avenue, Suite 200
Cleveland, Ohio 44114

Re: FTC, et al. v. The Tungsten Group, Inc., et al.

Antitrust and Consumer Litigation Section Chief
Office of the Attorney General of Virginia
900 East Main Street
Richmond, Virginia 23219

Re: FTC, et al. v. The Tungsten Group, Inc., et al.

State of North Carolina
Division Chief
Consumer Protection/
Antitrust Division
Office of the Attorney General
P.O. Box 629

Raleigh, North Carolina 26702-0629

Re: FTC, et al. v. The Tungsten Group, Inc., et al.

State of Wisconsin
Chief of the Consumer Protection Section
Wisconsin Department of Justice
P.O. Box 7857
Madison, Wisconsin 53707

Re: FTC, et al. v. The Tungsten Group, Inc., et al.

E. For the purposes of this Section, “employment” includes the performance of services as an employee, consultant, or independent contractor, and “employers” include any individual or entity for whom any Defendant performs services as an employee, consultant, or independent contractor;

F. Forensic reporting of this Section, Plaintiffs are authorized to

**XV.
ACCESS TO BUSINESS PREMISES**

IT IS FURTHER ORDERED 5) years from the date of entry of this

forensic with this Order, each individual

5) business days no receipt to written

A. Access during normal business hours to

shall permit representatives of the Plaintiffs to inspect and copy all documents

remove documents relevant to any matter contained in this Order for a period not to exceed three (3) business

B. To

responding to customer complaints or inquiries, and all sales personnel, and individuals designated as employees,

consultants, independent contractors or otherwise, of any business to which Subpart A of this Section applies, concerning matters relating to compliance with the terms of this Order. The person interviewed may have counsel present.

PROVIDED, however, that, upon application of any of the Plaintiffs and for good cause shown, the Court may enter an *ex parte* order granting immediate access to all premises at which individual Defendants conduct business or store documents, for the purposes of inspecting and copying all documents relevant to any matter contained in this Order.

XVI.
PLAINTIFFS' AUTHORITY TO MONITOR COMPLIANCE

IT IS FURTHER ORDERED that the Plaintiffs are authorized to monitor Defendants' compliance with this Order by all lawful means, including, but not limited to, the following:

A. Plaintiffs are authorized, without further leave of this Court, to obtain discovery from any person

compliance with this Order or Section 5 of the FTC Act, 15 U.S.C. § 45; nor shall anything in this Order limit the lawful use of compulsory process by the Commonwealth of Virginia, the State of North Carolina, or the State of Wisconsin pursuant to their applicable state laws.

**XVII.
ORDER DISTRIBUTION**

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Stipulated Final Order, individual Defendants shall immediately provide a copy of this Order to, and obtain a signed and dated acknowledgment of receipt of the same from, all officers, directors, managing agents, customer service personnel, and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, in any company or other business entity directly or indirectly owned, operated or controlled by the individual Defendant and where the business is engaged in the sale or marketing of any consumer good or service, and maintain for a period of three (3) years after creation, and upon reasonable notice, make available to representatives of Plaintiffs, the original signed and dated acknowledgments of the receipt of copies of this Order, as required by this Section.

**XVIII.
INDEPENDENCE OF OBLIGATIONS**

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

XIX.
COSTS AND ATTORNEYS FEES

IT IS FURTHER ORDERED that Defendants shall pay the costs and attorneys fees of Plaintiffs in the amount of one hundred thousand dollars (\$100,000). This obligation shall be paid out of the amount identified in **Section VII**, on Monetary Relief. Any such funds paid to the Commonwealth of Virginia shall be deposited into the Commonwealth's Regulatory and Consumer Advocacy Revolving Trust Fund and shall be used for consumer protection, education or enforcement by the Virginia Attorney General in his sole discretion. Any such funds paid to the State of North Carolina shall be used for consumer protection, education or enforcement by the North Carolina Attorney General in his sole discretion. Any such funds paid to the State of Wisconsin shall be used for consumer protection, education or enforcement by the Wisconsin Attorney General in his sole discretion.

XX.
RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes.

SO ORDERED, this _____ day of _____, 2002

RAYMOND A. JACKSON
United States District Judge

Stipulated and agreed to this _____ day of _____, 2002

ROBERT J. DEMELLWEEK

DAVID VINCENT JENSEN

ROBERT J. DEMELLWEEK
President, The Tungsten Group, Inc.

DAVID VINCENT JENSEN
President, The Tungsten Group II, Inc.

ANITA K. HENRY (VSB # 13127)
U.S. Attorney's Office
World Trade Center, Suite 8000
101 W. Main Street
Norfolk, Virginia 23510
Telephone: (757) 441-6331
Fax: (757) 441-6689
Local Counsel for Federal Trade Commission

NEIL S. LOWENSTEIN (VSB # 29845)
WILLIAM M. DOZIER (VSB # 17645)
Vandeventer Black, LLP
500 World Trade Center
Norfolk, Virginia 23510
Telephone: (757) 446-8600
Fax: (757) 446-8670
Local Counsel for Defendants

WILLIAM E. KOVACIC
Federal Trade Commission General Counsel

STEVEN W. BALSTER
JONATHAN L. KESSLER
JON MILLER STEIGER
Federal Trade Commission
Eaton Center
1111 Superior Avenue, Suite 200
Cleveland, Ohio 44114
Telephone: (216) 263-3455
Fax: (216) 263-3426

RICHARD J. CAPRIOLA
Weinstock & Scavo, P.C.
Suite 300
3405 Piedmont Rd NE
Atlanta, Georgia 30305-1774
Telephone: (404) 231-3999
Fax: (404) 231-1618
Counsel for Defendants

COMMONWEALTH OF VIRGINIA *EX REL.*
JERRY W. KILGORE, ATTORNEY GENERAL
OF VIRGINIA

STATE OF NORTH CAROLINA *EX REL.* ROY
COOPER, ATTORNEY GENERAL OF NORTH
CAROLINA

RICHARD S. SCHWEIKER, JR (VSB # 34258)
Senior Assistant Attorney General
GREGORY C. FLEMING (VSB # 24819)
Assistant Attorney General
Antitrust and Consumer Litigation Section
Office of the Attorney General of Virginia
900 East Main Street
Richmond, Virginia 23219
Telephone: (804) 786-5643
Fax: (804) 786-0122
Counsel for Commonwealth of Virginia and Local
Counsel for State of North Carolina and State of
Wisconsin

DAVID N. KIRKMAN
Assistant Attorney General
Consumer Protection/
Antitrust Division
Office of the Attorney General
114 West Edenton Street
Raleigh, North Carolina 26702-0629
Telephone: (919) 716-6000
Fax: (919) 716-6050

STATE OF WISCONSIN *EX REL.* JAMES E.
DOYLE, ATTORNEY GENERAL OF
WISCONSIN

DONNA J. HALL, ESQUIRE
Receiver

JAMES D. JEFFRIES
Assistant Attorney General
Wisconsin Department of Justice
17 West Main Street
Post Office Box 7857
Madison, Wisconsin 53707-8901
Telephone: (608) 267-8901
Fax: (608) 267-2778

HARRIS B. WINSBERG
Troutman Sanders LLP
Bank of America Plaza, Suite 5200
600 Peachtree Street, N.E.
Atlanta, Georgia 30308-2216
Telephone: (404) 885-3348
Fax: (404) 962-6719

APPENDIX A

TELEMARKETING SALES RULE

APPENDIX B

**ASSETS TO BE TRANSFERRED TO THE RECEIVERSHIP ESTATE BY
ROBERT J. DEMELLWEEK AND DAVID VINCENT JENSEN**

I.

APPENDIX C

ASSETS TO BE KEPT BY ROBERT J. DEMELLWEEK AND DAVID VINCENT JENSEN

III. David Vincent Jensen:

A. Buick Rendevous automobile

B. 1973 Ford Maverick.

C. Proceeds, not to exceed \$43,000, from the sale of properties at 1524 Taylor Point Drive and 1615 Graybark Drive, after payments of sales costs and fees and of nine thousand five hundred eighty-nine dollars and thirty-three cents (\$9,589.33) to the Receivership, to be paid to Adele Jensen.

D. Bank Accounts

1. Certificate of Deposit with son Joseph Jensen, number 2066602935 at Wachovia Bank
2. Certificate of Deposit with daughter Darleen Jensen, number 2066602934, at Wachovia Bank
3. Certificate of Deposit with stepson Vincent Dicristo, number 2066602933 at Wachovia Bank
4. Savings account with stepson Vincent Dicristo, number 5304602153 at Wachovia Bank

E. Twenty-eight savings bonds in the names of Vincent Dicristo, Darleen Jensen, and Joseph Jensen with various maturity dates and total face value of approximately five thousand six hundred fifty dollars (\$5,650).

F. Personal property at 1524 Taylor Point Drive, Chesapeake, VA, as identified in Defendant David Vincent Jensen's financial disclosure form, received by Plaintiffs on July 9, 2002.

IV. Robert J. Demellweek:

A. Chevrolet Van automobile

B. House at 2817 Crossings Drive, Chesapeake, Virginia

C. Cash in the amount of seventy thousand dollars (\$70,000), to be retained as follows:

1. All funds in the Custodial Account for Dylan Demellweek, First Union Bank account 29483982

2. All funds in the Custodial Account for Cassandra Demellweek, First Union Bank account 4311964792
3. All funds in the Custodial Account for Andrew Demellweek, First Union Bank account 4312228466

APPENDIX D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

FEDERAL TRADE COMMISSION, *et al.*

Plaintiffs,

v.

THE TUNGSTEN GROUP, INC., *et al.*

Defendants.

Case No. 2:01 CV 773

AFFIDAVIT OF DEFENDANT

I, _____, being duly sworn, hereby states and affirms as follows:

1. My name is _____. My current residence address is _____
_____. I am a citizen of the United States 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, et al. v. The Tungsten Group, Inc., et al.* (United States District Court for the Eastern District of Virginia).

3. On _____, 2002, I received a copy of the Stipulated Final Order and Permanent Injunction, which was signed by the Honorable Judge Raymond Jackson and entered by the Court on _____, 2002. A true and correct copy of the Order I 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: _____, 2002

NAME

State of _____, City of _____

Subscribed and sworn to before me
this ____ day of _____, 2002.

Notary Public

My Commission Expires: _____

(This page was intentionally left blank)