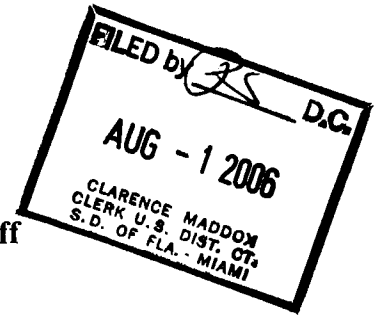


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 06-20168 - CIV

U.S. District Judge Altonaga / U.S. Magistrate Judge Turnoff



FEDERAL TRADE COMMISSION,

Plaintiff

v.

REMOTE RESPONSE CORPORATION,  
et. al.,

Defendants.

**DEFAULT JUDGMENT AND ORDER FOR PERMANENT INJUNCTION  
AS TO DEFENDANT INSTANT WAY CORPORATION**

THIS MATTER is before the Court upon the motion of Plaintiff Federal Trade Commission ("Commission" or "FTC") for Entry of Default Judgment and Permanent Injunction and Other Equitable Relief Against Defendant Instant Way Corporation ("Defendant Instant Way or Defendant"). The Court has carefully reviewed the Motion, all affidavits and exhibits in support thereof, the entire Court file and is otherwise fully advised in the premises.

**PROCEDURAL HISTORY**

On January 23, 2006, the Commission filed this action, pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, against Remote Response Corporation (also doing business as Amerikash, Global-Amerikash, Instant Way, and Amerikhealth) ("Remote Response"), Alberto M. Salama ("Alberto Salama"), Defendant Instant

*Handwritten initials:*  
Iny  
TB

Way, and German Espitia (“Espitia”). On June 5, 2006, the Commission filed its First Amended Complaint naming Samuel M. Salama (“Samuel Salama”), Elias M. Salama (“Elias Salama”) and Joseph Bensabat (“Bensabat”) as additional defendants. The First Amended Complaint alleges that Remote Response, Instant Way, Alberto Salama, Elias Salama, Samuel Salama, Joseph Bensabat and German Espitia (collectively “Defendants”) violated Section 5 of the FTC Act, 15 U.S.C. § 45(a), the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101 *et seq.*, the Electronic Fund Transfer Act (“EFTA”), 15 U.S.C. §§ 1693-1693r and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b) (“Regulation E”).

On March 1, 2006, Defendants Instant Way and Espitia, which until June 22, 2006 were represented by Ceasar Mestre, Jr., Esq. (“Mestre”), filed a joint answer. On May 11, 2006, the Court granted attorney Mestre’s motion to withdraw as counsel for Espitia, but denied his motion to withdraw as counsel for Instant Way. The Court ordered Instant Way to file a notice of substitution of counsel by May 26, 2006, and further provided that if Instant Way failed to secure substitute counsel, counsel Mestre could renew his request to withdraw. The Court cautioned Instant Way that proceeding without counsel could result in default judgment being entered against it.<sup>1</sup> With Instant Way having failed to secure substitute counsel, on June 22, 2006, the Court granted Mestre’s renewed motion to withdraw and ordered Instant Way to file a notice of substitution of counsel by July 10, 2006. The Court further instructed the Commission to file a motion for default judgment against Instant Way by no later than July 17, 2006 in the event

---

<sup>1</sup> The Court granted Mestre’s motion to withdraw as counsel for German Espitia and ordered Defendant Espitia to file a notice of substitute counsel or a notice of intent to appear pro se by May 26, 2006 or risk sanctions.

Instant Way failed to comply with the Court's order.<sup>2</sup> Instant Way failed to file a notice of substitution of counsel by July 10<sup>th</sup> in accordance with the Court's order and on July 17, 2006 the Commission sought entry by the Clerk of default.

Pursuant to the Motion and Memorandum of the Plaintiff Federal Trade Commission for a Default Judgment Against Defendant Instant Way Corporation and the Affidavit of Counsel filed in support thereof, the following final judgment and permanent injunction is hereby entered.

#### **FINDINGS**

1. This Court has jurisdiction of the subject matter of this case and over all parties hereto.
2. Venue in the Southern District of Florida is proper under 28 U.S.C. § 1391(b) and (c) and 15 U.S.C. § 53(b).
3. The alleged actions of Defendant Instant Way are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
4. The allegations of the Complaint state a claim upon which relief can be granted against Defendant Instant Way under Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C. § § 45(a) and 53(b), under the Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310, under Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a) and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b).

---

<sup>2</sup> By its order of June 22, 2006, the Court also ordered Espitia to file a notice of substitution of counsel or notice of intent to appear pro se by July 10, 2006, and further instructed the Commission to file a motion for default judgment against Espitia by no later than July 17, 2006 in the event he failed to comply with the Court's order.

5. Defendant Instant Way is a corporation which is unrepresented by counsel.

6. Defendant Instant Way stipulated to the entry of the first Stipulated Preliminary Injunction entered by the Court on February 15, 2006.

7. It is proper in this case to issue a permanent injunction restraining and enjoining Defendant Instant Way from engaging in, assisting others in, receiving any remuneration of any kind whatsoever from, holding any ownership interest in, or serving as an employee, independent contractor, officer, director, member, partner, trustee or general manager of, any business entity engaged, in whole or in part, in telemarketing or in the marketing, advertising, promoting, offering for sale, sale or purported sale of any advance fee credit card, credit card, debit card, stored value card, ATM card, phone card, travel or gas voucher, vacation package discount, or health discount plan.

8. It is also proper in this case to issue a permanent injunction restraining and enjoining Defendant Instant Way from making, or assisting others in making, any false or misleading representation, expressly or by implication, of any material fact; causing or assisting others in causing consumers' bank accounts to be electronically debited or credit or debit card accounts to be charged from debiting or assisting others in debiting consumer's bank accounts on a recurring basis without obtaining the consumer's written and signed or similarly authenticated authorization for preauthorized electronic fund transfers from their accounts, as prohibited by the EFTA and Regulation E, including but not limited to Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a); Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b).

9. It is proper in this case to enter a monetary judgment against defendant to redress consumer injury which resulted from violations of the FTC Act by defendant. The proper measure of consumer injury is the amount of money paid by consumers that resulted from these violations. Redress to consumers is warranted because Defendant's misrepresentations are of a type generally relied upon by consumers and no consumer received what was promised. Defendant is liable for the full amount of redress to consumers for the sales completed, even though it may exceed its unjust enrichment.

10. Defendant Instant Way was unjustly enriched, and consumers throughout the United States have suffered injury as a result of its unlawful acts or practices in the amount of total sales to consumers of \$4,163,558.35.

11. This order is remedial in nature and shall not be construed as the payment of a fine, penalty, punitive assessment, or forfeiture.

12. The entry of this Order, as set forth below, is in the public interest, and there being no just reason for delay, the Clerk of the Court is directed to enter final judgment immediately.

#### **DEFINITIONS**

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

1. "Advance fee credit card" means a credit card offered for sale in exchange for a fee or similar payment by the purchaser prior to issuance of a credit card or account.

2. "Assets" means any legal or equitable interest in, right to, or claim to, any real and personal property, including, but not limited to, chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, premises, mail or other deliveries, shares of stock, lists of

consumer names, inventory, checks, notes, accounts, credits, receivables, funds, and all cash, wherever located.

3. “ATM card” means a card used in an automated teller machine (ATM) which may access a credit or a debit account to obtain funds, complete banking inquiries, and fund transfers between accounts.

4. “Consumer” means a purchaser, customer, subscriber, or natural person.

5. “Credit card” means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

6. “Debit card” means any card that allows the consumer to access a checking or savings account electronically for the purpose of obtaining money, property, labor, or services.

7. “Defendants” means Remote Response (also doing business as Amerikash, Global-Amerikash, Instant Way, and Amerikhealth), Instant Way, Alberto Salama, Samuel Salama, Elias Salama, Joseph Bensabat, and German Espitia, each of them, by whatever names each might be known, as well as their successors and assigns.

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

9. “Electronic fund transfer” means the transfer of funds, other than a transaction originated by a check, draft, or similar paper instrument, which is initiated through an electronic terminal,

telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, direct deposits or withdrawals of funds, and transfers initiated by telephone. Such term does not include--

- A Any check guarantee or authorization service which does not directly result in a debit or credit to a consumer's account;
- B Any transfer of funds, other than those processed by automated clearinghouse, made by a financial institution on behalf of a consumer by means of a service that transfers funds held at either Federal Reserve banks or other depository institutions and which is not designed primarily to transfer funds on behalf of a consumer;
- C Any transaction the primary purpose of which is the purchase or sale of securities or commodities through a broker-dealer registered with or regulated by the Securities and Exchange Commission;
- D Any automatic transfer from a savings account to a demand deposit account pursuant to an agreement between a consumer and a financial institution for the purpose of covering an overdraft or maintaining an agreed upon minimum balance in the consumer's demand deposit account; or
- E Any transfer of funds which is initiated by a telephone conversation between a consumer and an officer or employee of a financial institution which is not pursuant to a prearranged plan and under which periodic or recurring transfers are not contemplated;

as determined under regulations of the Board of Governors of the Federal Reserve System.

10. "Free-to-pay conversion" means, in an offer or agreement to sell or provide any goods or services, a provision under which a customer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if he or she does not take affirmative action to cancel before the end of that period.

11. "Health discount plan" means any plan that for payment of a membership fee provides to consumers a list of health care providers or sellers of health related products who offer discounts to members of the plan.

12. "Person" means any individual, group, unincorporated association, limited liability company, limited or general partnership, corporation, or other business entity.

13. "Plaintiff" means the Federal Trade Commission.

14. "Preauthorized electronic fund transfer" means an electronic fund transfer authorized in advance to recur at substantially regular intervals.

15. "Receiver" means Gerald B. Wald, Esq. of Murai, Wald, Biondo, Moreno & Brochin, Two Alhambra Plaza, Penthouse 1B, Coral Gables, Florida 33134, appointed by this Court as Permanent Receiver for Remote Response and/or Jane W. Moscovitz, Esq. of Moscovitz, Moscovitz & Magolnick, Mellon Financial Center, 1111 Brickell Avenue, Suite 2050, Miami, Florida 33131, appointed by this Court as Permanent Receiver for Instant Way.

16. "Receivership Defendants" means Remote Response (also doing business as Amerikash, Global-Amerikash, and Instant Way) and Instant Way, their successors and assigns.



17. “Stored value card” means any prepaid card that is funded by the consumer in advance of use and may be used up to the amount funded by the consumer, less any applicable fees, for the purpose of obtaining property, labor, or services.

18. “Telemarketing” means any plan, program or campaign (whether or not covered by the TSR) that is conducted to induce the purchase of goods or services or charitable contribution by means of the use of one or more telephones.

19. “Upselling” means soliciting the purchase of goods or services following an initial transaction during a single telephone call. The upsell is a separate telemarketing transaction, not a continuation of the initial transaction.

#### **PERMANENT BAN**

##### **I.**

##### **IT IS THEREFORE ORDERED** that:

A. Defendant Instant Way, whether acting directly or indirectly, or through any corporation, limited liability company, partnership, subsidiary, division, trust or other device, is hereby permanently restrained and enjoined from engaging in, assisting others in, receiving any remuneration of any kind whatsoever from, holding any ownership interest in, or serving as an employee, independent contractor, officer, director, member, partner, trustee or general manager of, any business entity engaged, in whole or in part, in telemarketing;

B. Defendant Instant Way, whether acting directly or indirectly, or through any corporation, limited liability company, partnership, subsidiary, division, trust or other device, is hereby permanently restrained and enjoined from engaging in, assisting others in, receiving any remuneration of any kind whatsoever from, or holding any ownership interest in, or serving as an

employee, independent contractor, officer, director, member, partner, trustee or general manager of, any business entity engaged, in whole or in part, and by any means whatsoever, in the marketing, advertising, promoting, offering for sale, sale or purported sale of any advance fee credit card, credit card, debit card, stored value card, ATM card, phone card, travel or gas voucher, vacation package discount, or health discount plan or assisting others in the same, and

C. Nothing in this Order shall be read as an exception to this Paragraph I.

### **PROHIBITED BUSINESS PRACTICES**

#### **II.**

**IT IS FURTHER ORDERED** that in connection with the advertising, promotion, offering, or sale of products or services, Defendant Instant Way, and its successors, assigns, officers, directors, members, agents, attorneys, servants, employees, salespersons, independent contractors and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or indirectly, or through any corporation, limited liability company, partnership, subsidiary, division, trust or other device, is hereby permanently restrained and enjoined from making, or assisting others in making, any false or misleading representation, expressly or by implication, of any material fact, including, but not limited to, that:

- A. Consumers will receive specified products or services;
- B. Consumers will receive any specified products or services at no charge;
- C. The products or services consumers purchase or receive can be used in a specified manner or will bear certain material characteristics;
- D. Any offer of a product or service as part of a free-to-pay conversion:

1. Allows consumers a free-trial period during which they may use the product or service without charge;
  2. Timely provides consumers the product or service, or information necessary to use the product or service, prior to the expiration of the offered free-trial period;
  3. Can be cancelled during the time period and in the manner prescribed;
  4. Will not result in charges for the product or service if cancelled by the consumer during the time period and in the manner prescribed.
- E. Any offer of a product or service on a free-to-pay conversion basis may be declined by the consumer and the consumer will not be charged.

**III.**

**IT IS FURTHER ORDERED** that in connection with the advertising, promotion, offering, or sale of products or services as part of a free-to-pay conversion, Defendant Instant Way, and its successors, assigns, officers, directors, members, agents, attorneys, servants, employees, salespersons, independent contractors and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or indirectly, or through any corporation, limited liability company, partnership, subsidiary, division, trust or other device, is hereby permanently restrained and enjoined from causing or assisting others in causing consumers' bank accounts to be electronically debited or credit or debit card accounts to be charged:

- A. After consumers decline or reject Defendant's offer or agreement to sell such product or service;

- B. Prior to receipt by consumers of any product, service or information about such product or service represented to be received by consumers before billing;
- C. Prior to expiration of any stated free-trial period;
- D. After consumers have cancelled, and
- E. After Defendant acts, directly or indirectly, to inhibit or thwart consumers' ability to cancel.

### **PROHIBITION AGAINST EFTA VIOLATIONS**

#### **IV.**

**IT IS FURTHER ORDERED** that in connection with the sale of any good or service to consumers, Defendant Instant Way and its successors, assigns, officers, directors, members, agents, attorneys, servants, employees, salespersons, independent contractors and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or indirectly, or through any corporation, limited liability company, partnership, subsidiary, division, trust or other device, is hereby permanently restrained and enjoined from debiting or assisting others in debiting consumer's bank accounts on a recurring basis without obtaining the consumer's written and signed or similarly authenticated authorization for preauthorized electronic fund transfers from their accounts, as prohibited by the EFTA and Regulation E, including but not limited to Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a); Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b), or as they may hereafter be amended.

## CUSTOMER LISTS

### V.

**IT IS FURTHER ORDERED** that Defendant Instant Way and its successors, assigns, officers, directors, members, agents, attorneys, servants, employees, salespersons, independent contractors and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or indirectly, or through any corporation, limited liability company, partnership, subsidiary, division, trust or other device, is hereby permanently restrained and enjoined from:

A. Selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, credit card number, debit card number, bank account number, e-mail address, or other identifying information of any customer who paid any money to any Defendant, at any time prior to entry of this Order, in connection with the telemarketing, advertising, promoting, offering for sale, and sale of advance-fee credit cards, credit cards, debit cards, ATM cards, stored value cards, discount health cards, phone cards, travel or gas vouchers, or vacation package discounts, and

B. Making any use of customer lists referenced in this Paragraph in any business, whether or not related to the present action,

*Provided, however,* that Defendant Instant Way may disclose such identifying information to a law enforcement agency or as required by any law, regulation, or court order.

**MONETARY RELIEF**

**VI.**

**IT IS FURTHER ORDERED** that:

A. Judgment in the amount of \$4,163,558.35, which is the amount paid by approximately 30,674 consumers identified by Defendants for the Amerikash Master Card, other incentive items and discount health plan, is hereby entered against Defendant Instant Way, jointly and severally;

B. Defendant Instant Way shall have no right, title and interest to any assets frozen pursuant to the Preliminary Injunction entered by the Court on February 15, 2006. Such assets, including those held by the Instant Way Receiver, shall be transferred directly to the Commission pursuant to Paragraphs VIII and X of this Order as necessary to satisfy the judgment;

C. To the extent that the amount of frozen assets is insufficient to satisfy the judgment in full, there being no just reason for delay, the remaining portion of the judgment shall be immediately due and payable. Interest shall be computed at the rate prescribed under 28 U.S.C. § 1969, as amended, which shall be due from the date of entry of this Order, and the Commission shall be permitted to execute upon the judgment immediately and engage in discovery in aid of execution;

D. Notwithstanding any other provision of this Order, in any subsequent proceedings to enforce payment, including but not limited to a non-dischargeability complaint filed in a bankruptcy proceeding, Defendant Instant Way shall have no right to contest any of the allegations set forth in the Complaint filed in this matter, including but not limited to the \$4,163,558.35 judgment referenced above, less any amounts paid to the Commission;

E. Defendant Instant Way shall have no right to litigate the issue of monetary relief.

All money paid pursuant to this Order shall be irrevocably paid to the Commission;

F. All funds paid pursuant to this Paragraph shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including but not limited to, consumer redress and any attendant expenses for the administration of any redress fund. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress (including consumer information/education remedies) the Commission may apply any remaining funds for such other equitable relief as it in its sole discretion determines to be reasonably related to the Defendants' practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the United States Treasury as disgorgement.

Defendants shall have no right to challenge the Commission's choice of remedies under this Paragraph;

G. Defendant Instant Way shall also furnish to the Commission, in accordance with 31 U.S.C. § 7701, its taxpayer identification number, which shall be used for purposes of collecting and reporting on any delinquent amount arising out of Defendant's relationship with the government; and

H. Any proceedings instituted under this Paragraph are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings the Commission may initiate to enforce this Order.

**LIFTING OF THE ASSET FREEZE**

**VII.**

**IT IS FURTHER ORDERED** that upon transfer of the frozen assets referenced in Paragraph VI, the freeze of the assets of Defendant Instant Way pursuant to the Preliminary Injunction Order entered by this Court on February 15, 2006, shall be lifted.

**COMPLETION OF RECEIVERSHIP**

**VIII.**

**IT IS FURTHER ORDERED** that Jane W. Moscovitz, Esq., the Permanent Receiver for Defendant Instant Way, is hereby appointed Receiver for Receivership Defendant Instant Way for the purpose of effectuating this Order. In acting as Receiver under this Order, the Receiver shall be the agent of this Court and shall be accountable directly to this Court. In carrying out these duties, the Receiver is authorized and directed with respect to the Receivership Defendant Instant Way to:

A Take all steps necessary or advisable to locate and liquidate all assets of the Receivership Defendant, cancel the Receivership Defendant's contracts, collect on amounts owed to the Receivership Defendant, and take such other steps as may be necessary to terminate and dissolve the Receivership Defendant efficiently;

B Provide the Commission, upon request, with any business records of the Receivership Defendant including records that:

1. Identify customers from whom the Receivership Defendant collected fees



(regardless of whether the fees were identified as enrollment, set-up, recurring or other fees), including the most recent known address, telephone number, Social Security number, and the amount of any fees paid by such customers; or

2. Identify customers who received refunds from the Receivership Defendant and the amount of the refund;

B. Continue to exercise full control of the Receivership Defendant and continue to collect, marshal, and take custody, control and possession of all the funds, property, premises, accounts, documents, mail and other assets of, or in the possession or under the control of, the Receivership Defendant, wherever situated, the income and profits derived therefrom, and all sums of money now or hereafter due or owing to the Receivership Defendant, with full power to collect, receive and take possession of all goods, chattels, rights, credits, monies, effects, lands, leases, books and records, limited partnership records, work papers, and records of accounts, including computer-maintained information, contracts, financial records, monies on hand in banks and other financial institutions, and other papers and documents of other individuals, partnerships or corporations whose interests are now held by or under the direction, possession, custody or control of the Receivership Defendant;

C. Dispose of, or arrange for the disposal of, the records of the Receivership Defendant no later than six months after the Court's approval of the Receiver's final report, except that:

1. To the extent that such records are reasonably available, the Receiver shall arrange for records sufficient to ascertain the funds that an individual consumer paid to the

Receivership Defendant, and any payments that the Receivership Defendant made on behalf of individual consumers, to be retained for a minimum of one year from the entry of this Order; and

2. If state or local law regulating consumer debt services requires the retention of particular records for a specified period, the Receiver shall arrange for such records to be disposed of after the specified period has expired. To safeguard the privacy of consumers, records containing personal financial information shall be shredded, incinerated, or otherwise disposed of in a secure manner. For records that must be retained, the Receiver may elect to retain records in their original form, or to retain photographic or electronic copies;

D. Continue to perform all acts necessary or advisable to complete an accounting of the assets, and prevent unauthorized transfer, withdrawal, or misapplication of assets;

E. Make payments and disbursements from the Receivership estate that are necessary or advisable for carrying out the directions of, or exercising the authority granted by, this Order. The Receiver shall apply to the Court, on prior notice to the Commission, for prior approval of any payment of any debt or obligation incurred by the Receivership Defendant prior to the date of entry of the TRO in this action, except payments that the Receiver deems necessary or advisable to secure and liquidate assets of the Receivership Defendant, such as rental payments or payment of liens;

F. Enter into contracts and purchase insurance as advisable or necessary;

G. Open one or more bank accounts as designated depositories for funds of the Receivership Defendant, and make all payments and disbursements from the Receivership estate from such an account. The Receiver shall serve copies of monthly account statements on all parties;

H. Continue to maintain accurate records of all receipts and expenditures made as Receiver and provide them to the Commission; and

I. Continue to cooperate with reasonable requests for information or assistance from any state or federal law enforcement agency.

### **COMPENSATION OF RECEIVER**

#### **IX.**

**IT IS FURTHER ORDERED** that the Receiver for Receivership Defendant Instant Way and all personnel hired by the Receiver, including counsel to the Receiver and accountants, are entitled to reasonable compensation for the performance of duties pursuant to this Order and for the cost of actual out-of-pocket expenses incurred by them, from the assets now held by, in the possession or control of, or which may be received by, the Receivership for the Receivership Defendant. The Receiver must not increase the hourly rates used as the basis for such fee applications without prior approval of the Court, upon prior notice to the Commission.

### **RECEIVERS' FINAL REPORTS, DISBURSEMENTS OF ASSETS OF THE RECEIVERSHIP DEFENDANTS, AND TERMINATION OF THE RECEIVERSHIPS**

#### **X.**

**IT IS FURTHER ORDERED** that:

A. No later than sixty (60) days from the date of the entry of this Order, the Receiver for Receivership Defendant Instant Way shall file and serve on the parties a report (the "Final Report") to the Court that details the steps taken to dissolve the Receivership estate. The Final Report must include an accounting of the Receivership estate's finances and total assets and a description of what other actions, if any, must be taken to wind-up the Receivership. Promptly

thereafter, but no later than thirty (30) days after submission of the Final Report, the Receiver shall file an application for payment of compensation and expenses. The Receiver's final application for fees shall be served on all parties through counsel. The Commission may object within fifteen (15) days of receipt, but the Receivership Defendant shall have no right to object. If subsequent actions (such as the completion of tax returns or further actions to recover funds for the Receivership) are appropriate, the Receiver shall file an additional report or reports (the "Supplemental Reports") describing the subsequent actions and a subsequent application for the payment of fees and expenses related to the subsequent acts;

B. The Court will review the Final Report and any objections to the report and will issue an order directing that the Receiver:

1. Pay the reasonable costs and expenses of administering the Receivership, including compensation of the Receiver and the Receiver's personnel authorized by Paragraph IX of this Order or other orders of this Court, and the actual out-of-pocket costs incurred by the Receiver in carrying-out his duties; and

2. To the extent that funds remain, pay all remaining funds to the Commission or its designated agent to reduce the monetary judgment set forth in Paragraph VI of this Order; and

C. With Court approval, the Receiver may hold back funds to be transferred to the Commission pursuant to Paragraph VI, for a specified period as a reserve to cover additional fees and costs related to actions to be addressed in a Supplemental Report. If the Receiver does not make a supplemental application for fees and expenses within the specified period, or if funds remain in the reserve fund after the payments of fees and expenses approved by the Court in

response to such a supplemental application, all funds remaining in the reserve fund will be paid to the Commission.

D. Upon completion of the tasks in Paragraphs VIII and this Paragraph and submission of the Receiver's final application or upon the Court's Order for Final Payment, whichever is later, the Receiver shall be discharged and the Receivership shall terminate.

### **COOPERATION WITH THE RECEIVERS**

#### **XI.**

**IT IS FURTHER ORDERED** that:

A. Defendant Instant Way and all other persons or entities served with a copy of this Order shall fully cooperate with and assist the Receivers in taking possession, custody, or control of the assets of the Receivership Defendants. This cooperation and assistance shall include, but not be limited to, providing information to the Receivers that the Receivers deem necessary in order to exercise the authority and discharge the responsibilities of the Receivers under this Order and the first Stipulated Preliminary Injunction entered by the Court on February 15, 2006; providing any password required to access any computer, electronic file, or telephonic data in any medium; and advising all persons who owe money to the Receivership Defendants that all debts should be paid directly to the Receivers;

B. Upon service of a copy of this Order, all entities that hold assets of or records related to Receivership Defendant Instant Way shall cooperate with all reasonable requests of the Receivers relating to implementation of this Order and the first Stipulated Preliminary Injunction entered by the Court on February 15, 2006, including transferring funds at the Receivers' direction and producing records related to the assets and sales of Receivership Defendant Instant

Way. The entities obligated to cooperate with the Receivers under this provision include, but are not limited to, banks, broker-dealers, savings and loans, escrow agents, title companies, commodity trading companies, precious metals dealers and other financial institutions and depositories of any kind, and all third-party billing agents, local exchange carriers, common carriers, and other telecommunications companies, that have transacted business with the Receivership Defendants;

C. Unless directed by the Receiver, Receivership Defendant Instant Way is hereby restrained and enjoined from directly or indirectly:

1. Interfering with the Receivers managing, or taking custody, control, or possession of, the assets or documents subject to this Receiverships;
2. Transacting any of the business of the Receivership Defendants;
3. Transferring, receiving, altering, selling, encumbering, pledging, assigning, liquidating, or otherwise disposing of any assets owned, controlled, or in the possession or custody of, or in which an interest is held or claimed by, the Receivership Defendants or the Receivers, and
4. Refusing to cooperate with the Receivers or the Receivers' duly authorized agents in the exercise of their duties or authority under any order of this Court.

#### **COOPERATION WITH FTC COUNSEL**

#### **XII.**

**IT IS FURTHER ORDERED** that Defendant Instant Way shall, in connection with this action or any subsequent investigations related to or associated with the transactions or the occurrences that are the subject of the FTC's First Amended Complaint, cooperate in good faith

with the FTC and appear at such places and times as the FTC shall reasonably request, after written notice, for interviews, conferences, pretrial discovery, review of documents, and for such other matters as may be reasonably requested by the FTC. If requested in writing by the FTC, Wilson shall appear and provide truthful testimony in any trial, deposition, or other proceeding related to or associated with the transactions or the occurrences that are the subject of the Complaint, without the service of a subpoena.

**ACKNOWLEDGMENT OF RECEIPT OF ORDER**

**XIII.**

**IT IS FURTHER ORDERED** that, Defendant Instant Way, within five (5) business days of receipt of this Order as entered by the Court, shall submit to the Commission a truthful, sworn statement, acknowledging receipt of this Order. Entry of this Order in the docket by the Court will constitute actual notice to Defendant Instant Way of the terms and conditions of the Order.

**DISTRIBUTION OF ORDER BY DEFENDANT**

**XIV.**

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

A. Defendant Instant Way shall deliver a copy of this Order to each of its respective principals, officers, directors, and managers. Defendant Instant Way also must deliver copies of this Order to each of its respective employees, agents, and representatives who engage in conduct related to the subject matter of the Order. For current personnel, delivery shall be within (5) days

of service of this Order upon Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities.

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

### **COMPLIANCE REPORTING BY DEFENDANT**

#### **XV.**

**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 Defendant Instant Way shall notify the Commission in writing of the following:

1. Any changes in mailing addresses and telephone numbers of the Defendant, within ten (10) days of the date of such change;
2. Any change in employment status of the Defendant, as defined in this Paragraph, and any change in the ownership interest of the Defendant in any business entity, within ten (10) days of such change. Such notice shall include the name and address of each business that Defendant is affiliated with, employed by, or performs services for, a statement of the nature of the business, and a statement of the Defendant's duties and responsibilities in connection with the business or employment;
3. Any changes in the Defendant's name or use of any aliases or fictitious names, and



4. Any changes in the structure of Instant Way or any business entity that it directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided that*, with respect to any proposed change in the business entity about which the Defendant learns less than thirty (30) days prior to the date such action is to take place, the Defendant shall notify the Commission as soon as is practicable after obtaining such knowledge;

B. One hundred eighty (180) days after the date of this Order, and each year thereafter on the same date, through and including 2011, Defendant shall each provide a complete and accurate written report to the Commission, sworn to under penalty of perjury, setting forth in detail the manner and form in which Defendant has complied and is complying with this Order. This report shall include, but not be limited to:

1. The Defendant's then-current mailing addresses and telephone number of the Defendant;
2. The business addresses and telephone number of any employer or business of Defendant, a description of all business activities of each such employer or business, and the Defendant's responsibilities for each such employer or business;

3. A statement of each Defendant's then-current business income and expenses, including a copy of the Defendant's income tax returns with returns for any corporations owned, controlled or operated by the Defendant or on the Defendant's behalf;

4. A statement describing the manner in which each Defendant has complied and is complying with Paragraphs I - IV of this Order, and

5. A copy of each acknowledgment of receipt of this Order obtained by the Defendant pursuant to Paragraph XIV of this Order;

C. For purposes of this Order, Defendant shall, unless otherwise directed by a representative of the Commission, identify all written notifications to the Commission as being in reference to *FTC v. Remote Response Corp.*, United States District Court, Southern District of Florida, Miami Division, Case No. 06-20168 CIV, and mail them to:

Associate Director  
Bureau of Consumer Protection  
Division of Enforcement  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.,  
Room NJ 2122  
Washington, D.C. 20580

D. For purposes of this Paragraph, "employment" includes the performance of services as an employee, consultant, or independent contractor; and "employers" includes any individual or entity for whom the Defendant performs services as an employee, consultant, or independent contractor, and

E. For purposes of the compliance reporting required by this Paragraph, the Commission is authorized to communicate directly with each Defendant, in writing, with a copy to counsel of record.

## RECORD KEEPING PROVISIONS

### XVI.

**IT IS FURTHER ORDERED** that, for a period of eight (8) years from the date of entry of this Order, Defendant Instant Way, in connection with any business that it directly or indirectly manages, controls or has a majority ownership interest in, and its agents, employees, officers, corporations successors and assigns, and those persons in active concert or participation with it who receive actual notice of this Order by personal service, facsimile, or otherwise, 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 number, dollar amounts paid, quantity of items or services purchased and description of items or services purchased to the extent such information is obtained in the ordinary course of business;

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

E. Copies of all sales scripts, training materials, advertisements, or other marketing materials, including e-mail and Internet websites or web pages, regarding any good, service, company or website disseminated by the Defendant to any person, and

F. All records and documents necessary to demonstrate full compliance with each provision of this Order, including but not limited to copies of acknowledgments of receipt of this Order, required by Paragraph XIV of this Order and all reports submitted to the Commission pursuant to Paragraphs XIII and XV of this Order.

**ACCESS TO BUSINESS PREMISES**

**XVII.**

**IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry of this Order, for the purposes of determining or securing compliance with its provisions, Defendant Instant Way and its agents, employees, officers, corporations, successors, and assigns, and those persons or entities in active concert or participation with it who receive actual notice of this Order by personal service, facsimile, or otherwise, shall permit representatives of the Commission, within three (3) business days of receipt of written notice from the Commission, access during normal business hours to any office or facility storing documents of any business that the Defendant directly or indirectly manages, controls or has a majority interest in. In providing such access, the Defendant shall permit representatives of the Commission to inspect and copy all documents relevant to any matter contained in this Order and shall permit representatives of the Commission to remove such documents for a period not to exceed ten (10) business days so that the documents may be inspected, inventoried, and copied.

**COMMISSION'S AUTHORITY TO MONITOR AND INVESTIGATE**

**XVIII.**

**IT IS FURTHER ORDERED** that, for the purpose of monitoring and investigating in connection with any provision of this Order:

A. Within ten (10) days of receipt of written notice from a representative of the Commission, Defendant Instant Way shall submit additional complete and accurate written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in Defendant's possession or direct or indirect control to inspect the business operation;

B. In addition, the Commission is authorized to monitor compliance with this Order by all other lawful means, including but not limited to the following:

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

2. Posing as consumers and suppliers to Instant Way and Defendant's employees, or any other entity managed or controlled in whole or in part by and of the Defendant, without the necessity of identification or prior notice, and

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

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

§ 45(a)(1)).

#### **FEEES AND COSTS**

**XIX.**

**IT IS FURTHER ORDERED** that each party to this Order shall bear its own costs and attorneys' fees incurred in connection with this action.

**SEVERABILITY**

**XX.**

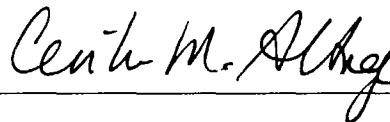
**IT IS FURTHER ORDERED** that the provisions of this Order are separate and severable from one another. If any provision is stayed or determined to be invalid, the remaining provisions shall remain in full force and effect.

**RETENTION OF JURISDICTION**

**XXI.**

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

**SO ORDERED**, this 1 day of Aug., 2006, at 3:00 p.m.



United States District Judge