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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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FEDERAL TRADE COMMISSION,

Plaintiff,

-against-

03-CV-8511 (DAB)

EPIXTAR CORPORATION, LIBERTY ONLINE  
SERVICES INC., NATIONAL ONLINE SERVICES,  
INC., B2B ADVANTAGE INC., a/k/a SBA  
ONLINE, INC.,

-and-

WILLIAM DOUGLAS RHODES, individually and as  
an officer and director of the corporate defendants,

Defendants.

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**STIPULATED PRELIMINARY INJUNCTION**

WHEREAS, Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), having filed its complaint for a permanent injunction and other relief in this matter, pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b;

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and the Court having granted Plaintiff's *ex parte* motion for a Temporary Restraining Order pursuant to Rule 65 of the Federal Rules of Civil Procedure on October 29, 2003 and appointed a Temporary Receiver;

WHEREAS, Plaintiff and Defendants have agreed to the entry of this Stipulated Preliminary Injunction without trial or adjudication of any issue of fact or law. Although Defendants agree to the entry of this Order, Defendants expressly deny all of the allegations set forth in the Complaint other than the jurisdictional facts set forth in the Complaint and the findings of this Court set forth below.

**NOW, THEREFORE**, Plaintiff and Defendants have requested the Court to enter this Order, it is hereby **ORDERED ADJUDGED AND DECREED** as follows:

#### **FINDINGS**

1. This Court has jurisdiction of the subject matter of this case, and there is good cause to believe it has jurisdiction over all parties.
2. Plaintiff asserts that there is good cause to believe that Defendant Epixtar Corporation, and its subsidiaries Defendants Liberty Online Services Inc., National Online Services, Inc., B2B Advantage Inc., f/k/a SBA Online, Inc. and William Douglas Rhodes have engaged and are likely to engage in acts and practices that violate Section 5 (a) of the FTC Act, 15 U.S.C. and § 45(a), and further asserts that the Commission is therefore likely to prevail on the merits of this action.
3. The entry of this Order, as set forth below, is in the public interest.
4. Plaintiff asserts that no security is required of any agency of the United States for issuance of a preliminary injunction. Fed. R. Civ. P. 65.

5. By this stipulation, Defendants waive their right to a Preliminary Injunction hearing before this Court.

6. This Order does not constitute and shall not be interpreted to constitute an admission by Defendants that they have engaged in violations of any law or regulations, including the Federal Trade Commission Act.

### DEFINITIONS

1. **“Defendants”** means Epixtar Corporation, Liberty Online Services, Inc., National Online Services, Inc., B2B Advantage, Inc., f/k/a SBA Online, Inc., and William Douglas Rhodes, by whatever names each might be known, as well as their successors, assigns, officers, agents, directors, servants, employees, salespersons, independent contractors, corporations, subsidiaries, affiliates, divisions, sales entities, related entities including Ameripages, Inc., a/k/a Amerilinc, Inc., and all other persons or entities in active concert or participation with them, only to the extent such entities or persons are engaged in the sale of ISP Services and who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division or other device, including, but not limited to, fictitious business names.

*Provided, however,* that the term “Defendants” shall not include Savoncalling.com, LLC., a bankrupt subsidiary of Defendant Epixtar Corporation maintaining a leasehold at 11900 Biscayne Boulevard, Miami, the address of the corporate defendants named in this action;

2. **“ISP Defendants”** means Liberty Online Services, Inc., National Online Services, Inc., B2B Advantage, Inc., f/k/a SBA Online, Inc., and each of them, by whatever names each might be known, as well as their successors, assigns, officers, agents, directors, servants, employees, salespersons, independent contractors, corporations, subsidiaries, affiliates, divisions, sales

entities, related entities including Ameripages, Inc., a/k/a AmeriLinc, Inc., and all other persons or entities in active concert or participation with them only to the extent they engage in the sale of ISP Services, and who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division or other device, including, but not limited to, fictitious business names. *Provided, however,* that the term “ISP Defendants” shall not include Savoncalling.com, LLC., a debtor in bankruptcy and subsidiary of defendant Epixtar Corporation with a leasehold interest in 11900 Biscayne Boulevard, Miami, the address of the corporate defendants named in this action.

3. “**Assets**” means all real and personal property of any Defendant, or held for the benefit of any Defendant, including but not limited to “goods,” “instruments,” “equipment,” “fixtures,” “general intangibles,” “inventory,” “checks,” or “notes,” (as these terms are defined in the Uniform Commercial Code), lines of credit and all cash, wherever located.

4. “**Document**” is equal in scope and synonymous in meaning 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 any other data compilations from which 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.

5. “**Free-to-pay conversion**” shall be defined as set forth Section 310.2(o) of the Commission’s Telemarketing Sales Rule (“TSR”), 16 C.F.R. part 310, as amended as of March 31, 2003, and as may be amended subsequently.

6. **“ISP Services”** means offering Internet access and/or websites alone or in combination with other Internet related services through the use of a “Free-to-pay conversion” or “Negative-option feature”.
7. **“Line subscriber”** means an individual who or entity which has arranged with a local exchange carrier (“LEC”) to obtain local telephone service provided through an assigned telephone number, and to be billed for such service on a monthly (or other periodic) basis, or person who confirms that he or she is authorized to incur charges on behalf of the Line subscriber.
8. **“Negative-option feature”** shall be defined as set forth in section 310.2(t) of the TSR, as amended as of March 31, 2003, and as may be amended subsequently.

## **ORDER**

### **I. PROHIBITED MISREPRESENTATIONS**

**IT IS THEREFORE ORDERED** that in connection with the advertising, promotion, offering, or sale of any ISP Services by telephone, on or through the Internet, the World Wide Web, any web site, or otherwise in commerce, Defendants are hereby preliminarily restrained and enjoined from:

**A.** Making, directly or through an intermediary, expressly or by implication, orally or in writing, any misrepresentation of material fact, including, but not limited to, falsely representing that a consumer will receive a free trial membership without risk or obligation;

**B.** Failing to disclose or to disclose adequately, orally or in writing, to the consumer any Free-to-pay conversion or Negative-option feature, including, but not limited to:

1. That a consumer who fails to contact the Defendants within a specified period of time and cancel is automatically enrolled as one of the Defendants' customers;
2. That the consumer's telephone bill would be charged a fee unless the consumer cancels during the specified period of time; and
3. The prescribed manner in which the consumer must cancel, and other specific steps the consumer must take to avoid the charges; the exact duration of the trial period; and the time period in which the charges will be submitted for payment.

## **II. PROHIBITED BILLING PRACTICES**

**IT IS FURTHER ORDERED** that the Defendants are preliminarily restrained and enjoined from billing or receiving money, or assisting others in billing or receiving money, from consumers for ISP Services without first obtaining their express informed consent which shall include, but not be limited to:

- A. Obtaining from or confirming with the consumer or line subscriber the telephone number or account number to be charged;
- B. Obtaining from the consumer or line subscriber his or her express agreement to receive the ISP services, and to be charged using the aforesaid telephone number or account number; and
- C. Making and maintaining an audio or digital recording of the sales portion and verification portion of the telephone call with the Line subscriber, whether or not the telemarketing transaction and its verification are conducted by the same telemarketer or seller.

**D.** Sending at least 14-days prior to the initial billing, a Billing Notice, labeled appropriately on the outside of the envelope in clear and conspicuous terms, which billing notice advises the customer in clear and conspicuous terms, of the date of billing, the name of the person who authorized the billing, the amount of the billing, and a toll-free number to call to cancel the service to avoid billing;

*Provided, however,* that the ISP Defendants shall be permitted to resume billing their customers existing of the date hereof so long as a notice is sent within 30 days of the date of entry of this Order to customer, reminding the customer of their subscription to the service and informing the customer in a clear and conspicuous manner of the amount of the charge, that it will be billed on their LEC phone bill on a monthly basis, and that they have the right to cancel if they so desire by calling a specified toll-free number, and

*Provided, further,* that cancellation and refund requests from such customers are honored in accordance with Section III. E and F below; such notice shall be labeled appropriately on the outside of the envelope in clear and conspicuous terms.

### **III. REQUIRED PRACTICES**

**IT IS FURTHER ORDERED** that the Defendants, in connection with the advertising, promotion, offering, or sale of any ISP services by telephone, and to the extent applicable through the Internet, the World Wide Web, any Web site, or otherwise in commerce, shall:

**A.** Use only telemarketers and telemarketing materials, including but not limited to, sales scripts, customer service scripts, and pamphlets, that clearly and conspicuously inform consumers: (1) that they will be billed for the service unless they call a specified toll-free number to cancel before the trial period ends and (2) when such trial period begins;

**B.** Use non-commissioned personnel to randomly monitor telemarketing sales calls to assure compliance with the telemarketing sales materials and the provisions of this Order, and to reject sales that fail to comply with the provisions of this Order;

**C.** Tape the sales portion and verification portion of each telemarketing call to ensure that the consumer was properly informed of the Negative-option feature and of all other material terms of the sale, and expressly agreed to be charged using the specified phone number;

**D.** Engage a non-commissioned independent company to review all verification recordings to confirm that the customer consented to the ISP service and was informed that the customer will be billed for the service after the free trial period, unless they call to cancel;

**E.** Permit any consumer who wishes to cancel to do so; and

**F.** Provide a satisfactory refund to any customer who reasonably claims to have been billed: 1) without authorizing the service or 2) without having been informed that they would be billed unless they contacted the company to cancel, to the extent that such customer has not previously received the requested refund or credit from the LEC or billing aggregator.

*Provided, however,* that if there is a disparity between the amount of refund sought by the customer and the amount of the refund offered, such disparity shall be submitted to the Monitor provided for in Section XI, for her reasonable resolution of the final appropriate refund due to the customer, if any, which shall be binding on Defendants. *Provided, further,* that refund requests from any prior customer of the ISP Defendants who has been billed and canceled shall be paid first from the funds of the escrow account established by the Monitor as set forth in Section IV. F. of this Order.

#### **IV. MONETARY PROVISIONS**

A. The current funds of Epixtar BPO Services Corp. located at Wachovia Bank, NA (account no. 2000016606014) and the funds Epixtar IT Enabled Services Corp., located at HSBC Bank Phillipines (account no. 072035405066) are currently in dispute as to whether or not they were properly subject to the Ex Parte Temporary Restraining Order. The parties hereby agree to attempt to resolve this dispute. If they are unable to do so, the matter shall be submitted to the Court for its determination. Pending such resolution, it is further ordered that Defendants shall not withdraw or otherwise encumber the aforementioned accounts; and

B. **IT IS FURTHER ORDERED** that the funds held at Bank of America (account no. 3758002964), maintained by the Temporary Receiver appointed by the Court on October 29, 2003, shall be held in an interest bearing account to be maintained by the Monitor.

*Provided, however,* the asset freeze as to:

1. the funds previously held in the account of Epixtar Management Corp., located at Wachovia Bank (account # 2000015174644); and
2. the sum of One Hundred Fifty-Four Thousand, Five Hundred Thirty Dollars and Fifty-Six Cents (\$154,534.560) from the Temporary Receiver's fiduciary account;

is hereby lifted and these funds shall be released and returned to Epixtar Management Corp. immediately upon the Temporary Receiver/Monitor or her designee, receiving notice of the Court's approval of this Stipulated Preliminary Injunction. Defendants are further instructed to provide the Temporary Receiver with all bank information required to effectuate a transfer of such funds; and

C. **IT IS FURTHER ORDERED** that, Defendant William Rhodes is hereby preliminarily restrained and enjoined, pending further order of this Court from selling,

exercising, encumbering, or disposing of any Epixtar Corp. stock options issued in his name or withdrawing funds or borrowing against his IRA account held at H&R Block in Plano, Texas.

*Provided, however,* that Rhodes shall be permitted to trade the securities in the account.

**D. IT IS FURTHER ORDERED** that the corporate Defendants shall only transfer, convert, encumber, sell, disburse, assign, spend, withdraw, or otherwise dispose of any funds, property, accounts, contracts, shares of stock, or other assets, wherever located, that are owned or controlled by the corporate Defendants, in whole or in part, for, or under the name of the corporate Defendants at any bank or savings and loan institution, or with any broker-dealer, escrow agent, title company, commodity trading company, precious metal dealer, or other financial institution, depository of any kind, or business entity, only in the ordinary course of business of the corporate Defendants.

*Provided, further,* that the corporate Defendants shall give Plaintiff three business days notice prior to transferring, converting, encumbering, selling, disbursing, assigning, spending, or withdrawing assets under this Section in excess of two hundred fifty thousand (\$250,000) dollars. Notice shall be given to the Plaintiff by e-mail or facsimile addressed to both Barbara Anthony, Regional Director, ([banthony@ftc.gov](mailto:banthony@ftc.gov)) and Carole A. Paynter, Senior Attorney, ([cpaynter@ftc.gov](mailto:cpaynter@ftc.gov)).

Notwithstanding anything to the contrary, this Order shall not affect the assets or the proceeds thereof acquired by the Defendants after the date of entry of this Stipulated Preliminary Injunction.

**E. IT IS FURTHER ORDERED** that the ISP Defendants and Defendant Epixtar Corporation in connection with the rendering of ISP Services by Epixtar Corporation, are hereby preliminarily restrained and enjoined from creating, operating, or exercising any control over any

business entity including any partnership, limited partnership, joint venture, sole proprietorship or corporation, without first providing counsel for the Commission with a written statement disclosing: (1) the name of the business entity; (2) the address and telephone number of the business entity; (3) the names of the business entity's officers, directors, principals and managers; and (4) a detailed description of the business entity's intended activities.

**F. ESCROW ACCOUNT**

The existing cash assets of the ISP Defendants, Epixtar Corporation, and Epixtar Account Services Corp., previously held at Wachovia Bank, NA, and heretofore transferred to the Temporary Receiver's fiduciary account shall be transferred to an escrow account established and maintained by the Monitor appointed in Section XI below, and shall continue to be held in such escrow account by the Monitor for use in paying for such fees and expenses of the Temporary Receiver as are approved by the Court, and for the payment of customer refunds as provided for in Section III. F. herein. *Provided, however,* that the cash balance of the previously transferred funds of Epixtar Management Corp. held at Wachovia Bank, N.A. shall be released and returned to Epixtar Management Corp.

## **V. RETENTION OF RECORDS HELD BY THIRD PARTIES**

**IT IS FURTHER ORDERED** that any financial or brokerage institution, business entity, or person served with a copy of this Order, that holds, controls, or maintains custody of any account or asset of any Defendant, or has held, controlled or maintained custody of any such account or asset at any time since January 1, 2000, shall:

**A.** Provide counsel for the Commission, within five (5) days of receiving a copy of this Order, a sworn statement setting forth:

1. The identification number and description of each such account or asset titled in the name, individually or jointly, of the Defendants, or held on behalf of, or for the benefit of, any Defendant;
2. The balance of each such account, or a description of the nature and value of such asset as of the close of business on the day on which this Order is served, and, if the account or other asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other asset was remitted; and
3. The identification of any safe deposit box that is either titled in the name, individually or jointly, of any Defendant, or otherwise subject to access by any Defendant; and

**B.** Upon the request of the Commission, promptly provide the Commission with copies of all records or other documentation pertaining to such account or asset of any Defendant, including but not limited to originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all

other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs. Any such financial institution, account custodian, or other aforementioned entity shall arrange for Plaintiff to obtain copies of any such records which Plaintiff seeks, *provided* that such institution or custodian may charge a reasonable fee not to exceed fifteen cents (15¢) per page copied.

## **VI. RECORDS LOCATED IN FOREIGN COUNTRIES**

**IT IS FURTHER ORDERED** that the ISP Defendants and Defendant Epixtar Corporation, in connection with the rendering of ISP Services by Epixtar Corporation, shall provide counsel for the Commission and the Monitor with access to records and documents of the Defendants held by financial institutions or any other person or business outside the territory of the United States of America, by identifying any and all such documents and or assets, the location of all such documents and or assets, and by signing and delivering to Plaintiff Commission the Consent to Release of Financial Records attached hereto as Attachment A within ten (10) days of service of this Order.

## **VII. FINANCIAL REPORTS**

**IT IS FURTHER ORDERED** that unless previously provided, the corporate Defendants shall each, within ten (10) days after service of this Order, prepare and deliver to counsel for the Commission:

**A.** Completed financial statements on the forms attached to this Order as Attachment B for each corporate Defendant. The financial statements shall be accurate as of the date of entry of this Order; and

**B.** All current accountants' reports; all federal tax returns filed since January 1, 2000; documents indicating title to real or personal property and other indicia of ownership that are

now in any of the corporate Defendants' actual or constructive possession, as such may be requested by Plaintiff

**VIII. IDENTIFYING INFORMATION RELATING TO ACCOUNTANTS FINANCIAL PLANNERS, INVESTMENT ADVISORS, STOCK BROKERS AND OTHERS**

**IT IS FURTHER ORDERED** that the ISP Defendants, within ten (10) days after service of this Order, shall provide counsel for the Commission: (1) the name, address and telephone number for each accountant, financial planner, investment advisor, stock broker or other individual, corporation or partnership whom they hired for financial advice or services, including but not limited to preparation of tax returns and investment advice, since January 1, 2000; and (2) the name, address and telephone number for each accountant, financial planner, investment advisor, stockbroker or other individual, corporation or partnership who was hired on behalf of the ISP Defendants since January 1, 2000.

**IX. RECORD KEEPING/BUSINESS OPERATIONS**

**IT IS FURTHER ORDERED** that the ISP Defendants and Defendant Epixtar Corporation, in connection with the rendering of ISP Services by Epixtar Corporation, are hereby preliminarily restrained and enjoined from:

**A.** Failing to create and maintain documents that, in reasonable detail, accurately, fairly, and completely reflect their incomes, disbursements, transactions, and use of money;

**B.** Destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any contracts, accounting data, correspondence, advertisements, computer tapes, discs, or other computerized records, books, telephone logs, telephone scripts, receipt books, ledgers, canceled checks and check registers, bank statements, appointment books, copies of federal, state or local business income or property

tax returns, and other documents or records of any kind that relate to the business practices or finances of the above corporate Defendants.

**X. DISTRIBUTION OF ORDER BY DEFENDANTS**

**IT IS FURTHER ORDERED** that the Defendant Epixtar Corporation shall promptly provide a copy of this Order to each affiliate, subsidiary, division, sales entity, successor, assign, officer, director, and person employed in a managerial capacity, as well as any independent contractor, and representative of the Defendants, including Savoncalling.com, LLC providing services for the sales, verification or customer care services subject to this Order; and shall, within ten (10) days from the date of service of this Order, provide counsel for the Commission with a sworn statement that Defendant Epixtar Corporation has complied with this provision of the Order, which statement shall include the names and addresses of each such person or entity who received a copy of the Order; and

*Provided further*, that Defendant Epixtar Corporation shall require all its telemarketing employees to review a copy of this Order to ensure that they conduct their duties consistently with this Order and shall within thirty (30) days from the date of service of this Order, provide counsel for the Commission with a statement indicating the name of the telemarketing employee, the date such employee reviewed the Order and the employee's signature certifying that the Order was reviewed.

## **XI. APPOINTMENT OF MONITOR**

**IT IS FURTHER ORDERED** that Angela Tese-Milner, the former Temporary Receiver in this action, is hereby appointed as Monitor in this action with directions and authority to accomplish the following with respect to the ISP Defendants and Defendant Epixtar Corporation only in connection with its rendering of ISP services:

**A.** Monitor all activities, assets, and financial transactions of these defendants past, present, and future including but not limited to:

1. Reviewing all financial information and monitoring all future financial information, including but not limited to revenues and expenditures;
2. Reviewing all information pertaining to the corporate Defendants' business activities, including but not limited to all advertising, marketing, telemarketing, billing, collection, customer service, the making and maintaining of audio or digital recordings under this Order, and provision of services; and
3. Monitoring the corporate Defendants and ensuring that they are in compliance with this Order.

**B.** The Monitor shall have access to all information that the Monitor reasonably deems necessary to carry out her duties pursuant to this Order, to the same extent as these corporate Defendants themselves are allowed by right, contract, or practice, including but not limited to:

1. Access to all documents pertaining to the corporate Defendants' business activities and finances wherever located and in whomever's custody or control;

2. Access to all property or premises in possession of, owned by, or under the control of the corporate Defendants, wherever located;
3. The right to interview any current or former employee;
4. The right to interview any current or former officer, independent contractor, subcontractor, advertising agency, vendor, agent, service bureau, or other entity involved in the provision of any services to or on behalf of the corporate Defendants;
5. Monitor and observe any officer, independent contractor, subcontractor, advertising agency, vendor, agent, service bureau of the corporate Defendants; and
6. Access to all documents of any officer, independent contractor, employee or agent of the corporate Defendants.

C. The Monitor shall provide access to all documents or other material to which she has access pursuant to this Section to any party upon request. Furthermore, the Monitor shall have the right to copy and maintain any such information.

D. Defendants, and each of them, and their successors, assigns, officers, agents, servants, employees, subsidiaries or affiliates, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, or other device, are enjoined and restrained from interfering in any way with the functions and duties of the Monitor and shall take no action, directly or indirectly, to hinder or obstruct the Monitor in the conduct of her duties. Defendants are ordered and directed to assist and participate with the Monitor in carrying out her duties.

**E.** The Monitor shall make periodic reports, observations, and recommendations to this Court, upon reasonable notice to the parties, and seek guidance and instruction from this Court, if the Monitor deems it necessary. The Monitor shall prepare and submit a Report to this Court and to the parties, not less than 30 (thirty) days after issuance of this Order, describing the Monitor's activities in connection with carrying out the Monitor's duties and responsibilities under this Order and any other information the Monitor believes is relevant to the Court.

**F.** The Monitor shall have the power to enter into such agreements in connection with the performance of her duties, including, but not limited to the retention and employment of investigators, attorneys, accountants, and technical specialists of the Monitor's choosing, including, without limitation, members and employees of the Monitor's firm, to assist, advise, and represent the Monitor. To the extent feasible, the Monitor is encouraged to utilize persons at firms in the Miami Florida area.

**G.** The Monitor and all personnel hired by the Monitor as herein authorized, including counsel to the Monitor and accountants, shall be entitled to reasonable compensation for the performance of duties pursuant to this Order and for reasonable actual out-of-pocket expenses incurred by them, to be paid by the Defendants and not by the Commission or from any funds in Section IV. A 1. and 2. above. The Monitor shall provide the parties with bi-weekly statements of fees and expenditures. The Monitor shall file with the Court, and serve on the parties, periodic accountings and requests for the payment of such reasonable compensation. The Monitor shall not increase the Monitor's fee rate billed without prior approval of the Court.

**H.** The Monitor and any party may, at any time, upon proper notice to the parties apply to this Court for further instructions or for additional authority as may be needed, or to discontinue the use of the monitor.

**I. No bond shall be required in connection with the appointment of the Monitor.**

The Monitor, those assisting her and/or her professionals shall not be personally liable for any loss or damage incurred by reason of any act performed or omitted by any Defendant. The Monitor shall be held harmless for any act or omission by any Defendant that occurs during the Monitor's performance of her duties and responsibilities thereunder.

*Provided, however,* the Monitor is appointed by the Court to serve only as a monitor, not as a receiver, and does not assume any rights, duties, functions or responsibilities with regard to the use, operation, management, repair, replacement, protection, or improvement of the corporate Defendants' real or personal property.

*Provided, however,* that nothing in this Section shall be interpreted to waive any Defendant's valid claim of attorney-client privilege, subject to the Court's determination upon *in camera* inspection, upon the request of the Monitor or Plaintiff.

**XII. WITHDRAWAL OF TEMPORARY RECEIVER**

**IT IS FURTHER ORDERED** that upon the Temporary Receiver's transfer of the funds referenced in Section IV. B. above, the Temporary Receiver, together with the attorneys and accountants retained by her, are hereby deemed to have withdrawn from their respective appointments and representations pursuant to Section XII of the Ex Parte Temporary Restraining Order entered by the Court on October 29, 2003, and are immediately released and discharged from any liabilities, duties, responsibilities, or obligations that they otherwise might have in connection with the corporate defendants, and any affiliates or subsidiaries of said defendants. Defendants retain their right to object to the Temporary Receiver's report, submitted to the Court and served on the parties on November 20, 2003.

**XIII. CONSUMER CREDIT REPORTS**

**IT IS FURTHER ORDERED** that the Commission may obtain credit reports concerning any Defendant pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(1), and that upon written request, any credit reporting agency from which such reports are requested shall provide them to the Commission.

**XIV. STATUS OF TRO/DURATION OF PRELIMINARY INJUNCTION**

**IT IS FURTHER ORDERED** that the provisions of this Stipulated Preliminary Injunction supercede and replace the *Ex Parte Temporary Restraining Order* issues by the Court on October 29, 2003. The asset freeze set forth in Section IV of the TRO is hereby dissolved. The Stipulated Preliminary Injunction granted herein shall remain in full force and effect until further order of the Court.

**XV. BANKRUPTCY PETITIONS**

**IT IS FURTHER ORDERED** that Defendants are hereby prohibited from filing, or causing to be filed, a petition for relief under the United States Bankruptcy Code, 11 U.S.C. § 101 et seq., without prior written permission from this Court.

**XVI. STATUS OF DEFENDANT EPIXTAR CORPORATION**

**IT IS FURTHER ORDERED** that Defendant Epixtar Corporation is a publically traded company that in the ordinary course of business engages in the sale of debt and equity securities, and acquires and spins off subsidiary and affiliate companies and nothing contained herein is intended to limit those activities except with respect to its ISP subsidiaries.

**XVII. SIGNATURES**

**IT IS FURTHER ORDERED** The parties hereby consent to the terms and conditions of the Order as set forth above and consent to the entry thereof. This Order may be executed in

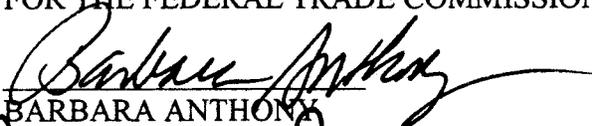
multiple counterparts or on separate signature pages. Facsimile signatures shall be deemed acceptable.

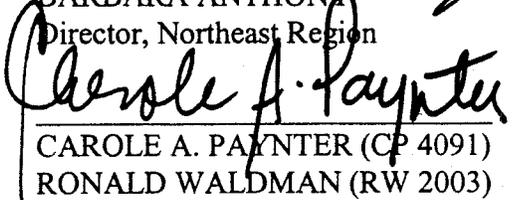
**XVIII. RETENTION OF JURISDICTION**

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

STIPULATED AND AGREED TO:

FOR THE FEDERAL TRADE COMMISSION:

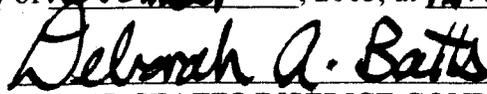
  
BARBARA ANTHONY  
Director, Northeast Region

  
CAROLE A. PAYNTER (CP 4091)  
RONALD WALDMAN (RW 2003)  
ANN F. WEINTRAUB (AW3080)  
Federal Trade Commission, Northeast Region  
1 Bowling Green, Suite 318  
New York, NY 10004  
(212) 607-2813  
(212) 607-2822 (facsimile)

FOR THE DEFENDANTS:

SHELDON LUSTIGMAN (SL6045)  
ANDREW LUSTIGMAN (AL8209)  
The Lustigman Law Firm, P.C.  
149 Madison Avenue  
New York, NY 10016-6713  
(212) 683-9180  
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PAUL J. CURRAN (PC9851)  
AARON STIEFEL (AF6343)  
Kaye Scholer  
425 Park Avenue  
New York, NY 10022  
(212) 836-8000  
(212) 836-8689 (facsimile)

SO ORDERED, this 21<sup>ST</sup> day of November, 2003, at 12:03 pm  
  
UNITED STATES DISTRICT COURT JUDGE

multiple counterparts or on separate signature pages. Facsimile signatures shall be deemed acceptable.

**XVIII. RETENTION OF JURISDICTION**

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

STIPULATED AND AGREED TO:

FOR THE FEDERAL TRADE COMMISSION:

\_\_\_\_\_  
BARBARA ANTHONY  
Director, Northeast Region

\_\_\_\_\_  
CAROLE A. PAYNTER (CP 4091)  
RONALD WALDMAN (RW 2003)  
ANN F. WEINTRAUB (AW3080)  
Federal Trade Commission, Northeast Region  
1 Bowling Green, Suite 318  
New York, NY 10004  
(212) 607-2813  
(212) 607-2822 (facsimile)

FOR THE DEFENDANTS:

\_\_\_\_\_  
SHELDON LUSTIGMAN (SL6045)  
ANDREW LUSTIGMAN (AL8209)  
The Lustigman Law Firm, P.C.  
149 Madison Avenue  
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(212) 683-9180  
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\_\_\_\_\_  
PAUL J. CURRAN (PC9851)  
AARON STIEFEL (AF6343)  
Kaye Scholer  
425 Park Avenue  
New York, NY 10022  
(212) 836-8000  
(212) 836-8689 (facsimile)

SO ORDERED, this 21<sup>st</sup> day of November, 2003, at 12:00 p.m.

Retten  
UNITED STATES DISTRICT COURT JUDGE  
Retten

multiple counterparts or on separate signature pages. Facsimile signatures shall be deemed acceptable.

**XVIII. RETENTION OF JURISDICTION**

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

STIPULATED AND AGREED TO:

FOR THE FEDERAL TRADE COMMISSION:

BARBARA ANTHONY  
Director, Northeast Region

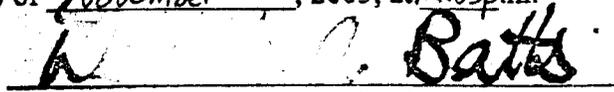
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SO ORDERED, this 21<sup>ST</sup> day of November, 2003, at 12:03p.m.

  
UNITED STATES DISTRICT COURT JUDGE