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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10
11 SECURITIES AND EXCHANGE
COMMISSION,

12 Plaintiff,

13 v.

14 LOUIS V. SCHOOLER and FIRST
15 FINANCIAL PLANNING CORPORATION
d/b/a WESTERN FINANCIAL PLANNING
16 CORPORATION,

17 Defendants.

Case No. 12CV2164-LAB

**RECEIVER'S SECOND REPORT AND
PROPOSAL REGARDING THE ASSETS
OF WESTERN AND LOUIS SCHOOLER**

Ctrm.: 9

Judge: Hon. Larry Alan Burns

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1 Pursuant to the Court's October 5, 2012 Preliminary Injunction Order, Thomas C. Hebrank
2 ("Receiver"), Court-appointed receiver for First Financial Planning Corporation d/b/a Western
3 Financial Planning Corporation ("Western"), and its subsidiaries and affiliates (collectively, the
4 "Receivership Entities"), submits this Second Report and Proposal Regarding the Assets of
5 Defendants Western and Louis Schooler. This Report and Proposal includes the Receiver's
6 (a) evaluation of Western and recommendation that it remain in receivership, (b) proposal for the
7 monitorship, and (c) second report on the Receiver's activities, including his recommendations for
8 the receivership moving forward.

9 I. INTRODUCTION

10 In its Preliminary Injunction Order, the Court converted the TRO to a Preliminary
11 Injunction based on its preliminary finding that the General Partnership ("GP") interests sold by
12 Western and Louis Schooler are unregistered securities. The Securities and Exchange
13 Commission ("Commission") was instructed to submit a Preliminary Injunction Order within
14 5 days. With regard to the asset freeze, the Court instructed the Receiver to meet and confer with
15 the parties and file a proposal for transitioning into a monitor role over the assets of Western and
16 Mr. Schooler.

17 Mr. Schooler then requested that the Receiver's proposal be submitted before the
18 Commission's Preliminary Injunction Order. The parties met and conferred and agreed on a
19 proposed Scheduling Order, which was approved by the Court on October 11, 2012. Pursuant to
20 the Scheduling Order, the Receiver's proposal is due October 18, 2012, and the Commission's
21 Preliminary Injunction Order is due 7 days from when the Court adopts or modifies the Receiver's
22 proposal.

23 II. RECEIVER'S EVALUATION OF WESTERN

24 After careful consideration of the facts and circumstances surrounding Western and the
25 GPs, the Receiver believes it is in the best interests of all parties, and especially the investors in
26 the GPs, for Western to remain in receivership and for the monitorship to be limited to
27 Mr. Schooler's personal assets.
28

1 Western has been in a dire financial situation for a long time and is unable to pay its bills
2 without steady infusions of capital from Mr. Schooler. Between January 5 and September 5, 2012,
3 Mr. Schooler transferred a total of \$1,064,000 to Western simply so the company could pay its
4 bills. While Western's financial condition alone is cause for concern, the concern is heightened
5 substantially by the fact that Western's financial condition directly impacts the value of GP assets
6 and prospects for recovery by the GP investors. If Western falters and does not pay its bills, the
7 GP investors stand to lose substantial sums.

8 Western and entities it controls are the borrowers on approximately \$4.3 million in loans
9 secured by properties owned by the GPs. If these loans are not kept current, enforcement actions
10 taken by the lenders could adversely affect investors. It may be necessary to negotiate
11 forbearances and/or loan modifications with lenders. Lenders will not negotiate such agreements
12 with anyone other than the borrower. Therefore, the Receiver's ability to protect the interests of
13 the GPs will be very limited if he is not in control of Western.

14 Western is also the managing member of P51, LLC ("P51"). When it was first formed,
15 P51 held title to an entire piece of real property located in Washoe County, Nevada. Western
16 formed four GPs to acquire interests in the property. The first two GPs were sold out, closed, and
17 each received an undivided 25% interest in the property from P51.

18 At the time the Receiver was appointed, Western was in the process of selling interests in
19 F-86 Partners, the third GP set up to take an interest in the Washoe County property. Although F-
20 86 Partners has not yet closed, people have already invested in F-86 Partners. Company records
21 indicate that investors have transferred more than \$780,000 in cash to F-86 Partners. As discussed
22 in the Receiver's First Report, the majority of funds received from investors flow through the GPs
23 to Western. Receiver's First Report, Docket No. 27, p. 7 & Ex. C. Currently, only \$66,066.00
24 remains in the F-86 Partners account and only \$3,416 remains in the P51 account. As discussed
25 below, the small amount of cash in Western's account at the time the Receiver was appointed has
26 been completely depleted. Therefore, it appears that the majority of cash raised from F-86
27 Partners investors has been spent by Western. The F-86 Partners interest in the property, however,
28 remains under P51, which is controlled by Western. It is critical that the F-86 Partners property

1 interest be protected for its investors. The Receiver will be unable to do so if he is not in control
2 of Western and P51.

3 Other than capital infusions from Mr. Schooler, the only income Western has is payments
4 from investors who borrowed money from Western to make their investments in the GPs. Many
5 of these investors have stopped payments to Western in light of the Commission's allegations and
6 the Receiver's appointment. Pursuant to the Court's October 5, 2012 Preliminary Injunction Order,
7 notice of the Receiver's appointment over the GPs based on a preliminary finding of unregistered
8 securities was sent to investors.¹ It is expected that most investors, if not all, will cease payments
9 to Western now that the Receiver has been appointed over the GPs on a permanent basis. As a
10 result, the financial crisis at Western is only going to get worse.

11 Although Mr. Schooler has stated that he intends to continue to fund Western, there is no
12 mechanism in place to compel him to make payments required to keep loans current or to
13 negotiate with lenders. The better approach is to keep Western under the protection of the
14 receivership and the injunction prohibiting litigation against Receivership Entities. TRO, Docket
15 No. 10, Part XII. The same litigation injunction should be included in the Preliminary Injunction
16 Order. The receivership and litigation injunction will allow the Receiver to evaluate each
17 property, the status of each loan and mortgage, discuss the situation with the applicable lenders,
18 and make a recommendation to the Court regarding the disposition of each property.

19 With the company collapsing financially and facing serious charges by the Commission, it
20 is likely that lenders, investors and other creditors will bring actions against Western. Three
21 pending lawsuits involving Western have been stayed by the litigation injunction, and as a result,
22 Western has avoided incurring further legal expenses to defend these actions. Western's very
23 limited resources should not be consumed by defending these and other lawsuits from creditors.
24 The same applies to a potential bankruptcy filing, whether done voluntarily by Western or
25 involuntarily by Western's creditors. A bankruptcy case would consume Western's resources,

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28 ¹ Counsel for Mr. Schooler and the Commission were provided with a copy of the letter sent to
investors before it was mailed. Neither party had any objections to the form of letter.

1 complicate the administration of the receivership, and create unnecessary jurisdictional and
2 procedural issues. The litigation injunction will prevent this unnecessary waste of resources.

3 Additionally, based on the Court's preliminary finding that Western sold unregistered
4 securities, Western may have claims against its officers and directors (including Mr. Schooler),
5 and outside professionals. There may be insurance coverage that applies to these potential claims.
6 The Receiver is in the best position to evaluate any such claims and pursue them on behalf of
7 Western for the benefit of investors.

8 Continuing to include Western in the receivership does not prejudice anyone. Western
9 does not do any business unrelated to the GPs. Mr. Schooler has acknowledged that investors'
10 receipt of notice of the receivership will effectively end Western's "business existence."
11 Emergency Motion to Vacate TRO, Docket No. 14, p. 17. Western has been surviving solely on
12 capital infusions from Mr. Schooler.² At this point, the focus should be on protecting and
13 maximizing the value of Western's remaining assets, as well as the GPs' assets, for the benefit of
14 investors. The best way to accomplish that is through the receivership.

15 Accordingly, the Receiver encourages the Court to keep Western under the protection and
16 control of the Court and the Receiver in accordance with the Court's prior orders. As described
17 above, investors stand to be substantially harmed if Western is removed from the receivership.
18 While Western may ultimately fail and default on loans, the receivership and litigation injunction
19 provide protection, and the Receiver is in the best position to preserve Western's remaining value.

20 **III. MR. SCHOOLER'S PERSONAL ASSETS**

21 With regard to Mr. Schooler's personal assets, the Receiver proposes that he be appointed
22 Monitor to oversee Mr. Schooler's personal expenses and transactions. As instructed by the Court,
23 the Receiver makes this proposal with guidance from *FTC v. Millennium Telecard, Inc.*,
24 2011 WL 2745963 (D.N.J. 2011). A copy of the *Millenium Telecard* order appointing the monitor
25 is attached hereto as Exhibit A. However, as discussed further in Section VI below, to the extent
26

27 ² Historically, when Western was selling a large volume of GP interests, most of the cash
28 received from investors flowed through the GPs to Western and was used to fund Western's
operations. Western's inability to sell sufficient GP interests to fund its operations appears to
have started sometime prior to January 2012.

1 the Court decides not to continue the receivership over Western, the Receiver respectfully suggests
2 that the monitorship should be more restrictive than that imposed in *Millenium Telecard*.

3 Specifically, the Receiver proposes that (a) Mr. Schooler submit a budget of his monthly
4 expenses, (b) the budget be reviewed to confirm the expenses are reasonable and necessary,
5 (c) transactions (including sales, transfers, and purchases) outside the budget, and between
6 \$10,000 and \$25,000 in value, require authorization from the Monitor, in his business judgment,
7 and (d) transactions greater than \$25,000 in value require authorization from the Court.
8 Transactions not in the budget, but less than \$10,000 in value can be completed by Mr. Schooler
9 without pre-authorization, but shall be reported to the Monitor at the end of each month.

10 Each Friday, Mr. Schooler should be required to provide the Monitor with a list of
11 payments he intends to make the following week so the Monitor can confirm the payments are
12 consistent with the Court-approved budget. Approval of transactions between \$10,000 and
13 \$25,000 in value should be requested from the Monitor at least a week in advance, and all
14 documentation relating to the transaction should be provided with the request. Court-approval of
15 transactions greater than \$25,000 in value should be sought by Mr. Schooler by noticed motion.

16 The Monitor should be authorized to engage and employ persons to assist in carrying out
17 his duties and responsibilities, including the law firm of Allen Matkins Leck Gamble Mallory &
18 Natsis to assist as Monitor's counsel. Mr. Schooler should have the primary obligation to pay the
19 fees and costs of the Monitor and his professionals, upon approval by the Court. To the extent
20 Mr. Schooler cannot or does not pay such fees and costs, the Monitor and his professionals shall
21 be paid from cash in GP accounts, and the GPs shall be entitled to recover from Mr. Schooler all
22 amounts paid for work done by the Monitor and his professionals.

23 Finally, Mr. Schooler should indemnify and hold harmless the Monitor and his
24 professionals, agents, employees, consultants and attorneys from and against all actions, liabilities,
25 damages, losses, costs and expenses, including, but not limited to, reasonable attorneys' fees and
26 costs (as such amounts are incurred), arising from Monitor work performed pursuant to the Court's
27 orders. To the extent Mr. Schooler cannot or does not indemnify the Monitor and his
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1 professionals, such indemnification shall be provided by the GPs, and the GPs shall be entitled to
2 recover from Mr. Schooler all amounts paid to indemnify the Monitor and his professionals.

3 Mr. Schooler has requested that his personal financial information not be publicly filed.
4 The Receiver has no objection to the budget and other statements reflecting his personal financial
5 information being filed under seal.

6 **IV. PROPOSED PRELIMINARY INJUNCTION ORDER**

7 Accordingly, the Receiver recommends and proposes that the Securities and Exchange
8 Commission be instructed to submit a Preliminary Injunction Order consistent with the TRO in all
9 material respects, other than as follows:

- 10 (a) The Receiver is appointed on a permanent basis;
11 (b) The asset freeze regarding Mr. Schooler's personal assets is lifted;
12 (c) Thomas Hebrank is appointed as Monitor over Mr. Schooler's personal assets on the
13 terms and conditions described in Section III above; and
14 (d) Mr. Schooler is instructed to submit a budget of his monthly expenses within 5 days of
15 entry of the order, and the Commission and the Receiver shall have 3 days from filing of the
16 budget to respond thereto.

17 **V. MEET AND CONFER**

18 Pursuant to the Court's instructions, the Receiver met and conferred with the Commission
19 and Mr. Schooler regarding his proposal. The Receiver circulated a draft of this Second Report
20 and Proposal to the parties' respective counsel on October 16, 2012. Counsel for the Commission
21 stated that the Commission supports the Receiver's proposal. Counsel for Mr. Schooler stated that
22 Mr. Schooler opposes it.

23 **VI. ALTERNATE FORM OF ORDER**

24 If the Court is inclined to remove Western from the receivership, the Receiver proposes
25 that the Preliminary Injunction Order submitted by the Commission provide that the Monitor's role
26 over Western include close oversight over its accounts and financial transactions, and that if any of
27 the loans secured by GP properties are not kept current, Western immediately be restored to the
28 receivership.

1 Like Mr. Schooler, Western should be instructed to submit a budget of monthly income
2 and expenses, and the budget should be reviewed by the Court to verify that the expenses are
3 reasonable and necessary. Each Friday, Western should be required to provide the Monitor with a
4 list of checks it intends to write the following week so the Monitor can review the list and confirm
5 that the checks are consistent with the Court-approved budget. Any transactions outside the
6 Court-approved budget, and between than \$2,500 and \$25,000 in value, should require prior
7 authorization from the Monitor, in his business Judgment. Transactions outside the Court-
8 approved budget and greater than \$25,000 in value should require prior approval from the Court.
9 Transactions outside the Court-approved budget and less than \$2,500 in value should not require
10 pre-approval, but should be reported to the Monitor at the end of each month.

11 In addition, the Receiver (in his role as Monitor over Western) should be empowered to:

12 1) have full and complete access to all books and records of Western;

13 2) have full and complete ability to interview Western and all of its principals, officers,
14 directors, employees and agents, and to immediately require all such persons to cooperate fully
15 with the Receiver, including, but not limited to, providing all documents requested by the
16 Receiver;

17 3) investigate and determine the existence, title and location of assets purchased with funds
18 raised from investors;

19 4) report his findings to the Court at regular intervals; and

20 5) engage and employ persons to assist in carrying out his duties and responsibilities,
21 including the law firm of Allen Matkins Leck Gamble Mallory & Natsis to assist as Monitor's
22 counsel.

23 Western and Mr. Schooler should have the primary obligation to pay the fees and costs of
24 the Monitor and his professionals, upon approval by the Court. To the extent Western and
25 Mr. Schooler cannot or do not pay such fees and costs, the Monitor and his professionals shall be
26 paid from cash in GP accounts, and the GPs shall be entitled to recover from Western and
27 Mr. Schooler all amounts paid for work done by the Monitor and his professionals.
28

1 Finally, Western and Mr. Schooler should indemnify and hold harmless the Monitor and
2 his professionals, agents, employees, consultants and attorneys from and against all actions,
3 liabilities, damages, losses, costs and expenses, including, but not limited to, reasonable attorneys'
4 fees and costs (as such amounts are incurred), arising from Monitor work performed pursuant to
5 the Court's orders. To the extent Western and Mr. Schooler cannot or do not indemnify the
6 Monitor and his professionals, such indemnification shall be provided by the GPs, and the GPs
7 shall be entitled to recover from Western and Mr. Schooler all amounts paid to indemnify the
8 Monitor and his professionals.

9 In conversations with the Receiver and the Commission, Mr. Schooler's counsel has
10 proposed that, at the end of each month, the Monitor be given a list of checks and wires paid
11 during that month, and that advance notice only be given for expenses (not sales, purchases, or
12 other transactions) greater than \$50,000. The Receiver submits that, under the facts and
13 circumstances of this case, including the financial condition of Western, its lack of income, and
14 the substantial harm posed to investors' interests, this proposal does not sufficiently protect
15 investors. As discussed above, Western's cash has been completely depleted, the company is
16 surviving week to week and is entirely dependent on cash infusions from Mr. Schooler, and the
17 investors' property interests are at risk.

18 Mr. Schooler has cited and the Court has referenced the *FTC v. Millenium Telecard Inc.*,
19 2011 WL 2745963 (D.N.J. 2011) decision in its October 5, 2012 Preliminary Injunction Order. In
20 *Millenium Telecard*, the Federal Trade Commission brought an action against a group of
21 companies for deceptive marketing in connection with the sale of pre-paid calling cards.
22 Millenium Telecard and its affiliated companies, however, had ongoing business, substantial sales
23 and cash flow, and a chance to operate profitably. *Id.*, Docket No. 43. Accordingly, the court
24 approved a somewhat loose form of monitor order that required almost no pre-approval of
25 company expenditures.

26 Here, unlike *Millenium Telecard*, Western has no ongoing business, sales or cash flow.
27 Mr. Schooler has acknowledged that Western is at, or very soon will be at, the end of its "business
28 existence." Furthermore, the Court has found, on a preliminary basis, that Western has sold

1 unregistered securities to investors. Those investors' interests are now at risk. Accordingly, the
2 Receiver believes that the *Millenium Telecard* example should not be followed here. Under the
3 facts and circumstances of this case, if the Court is inclined to remove Western from the
4 receivership, the Receiver submits that there should be real oversight over Western's assets and
5 use of cash, and that significant sums of money should not be allowed to leave the company
6 without pre-authorization from the Monitor or the Court.

7 **VII. RECEIVER'S SECOND REPORT AND RECOMMENDATIONS**

8 Since the Receiver filed his Initial Report on September 14, 2012, his primary focus has
9 been on protecting and preserving the assets of Western and the GPs. He has taken control of the
10 Receivership Entities' office premises, bank accounts, books and records, and accounting systems.
11 He has interviewed employees, reviewed financial statements, and analyzed the financial
12 condition of Western and the GPs.

13 The small amount of cash in Western's accounts at the time of the Receiver's appointment
14 has been completely depleted. Western and the entities it controls owe about \$126,000 per month
15 on loans secured by GP properties. Prior to the filing of this case, Western collected
16 approximately \$107,000 per month in loan payments from investors. As noted above, some
17 investors have stopped making loan payments. The Receiver anticipates that most of the
18 remaining payments will cease now that investors have been given notice.

19 Western also incurs about \$100,000 per month in other operating expenses, which the
20 Receiver recommends be significantly reduced. If Western remains in receivership, the Receiver
21 will reduce the payroll, office and other expenses, and seek Court approval to generate cash by
22 selling gold coins owned by Western with an estimated value of \$50,000, and potentially
23 liquidating and collecting on other Western assets.

24 Western's books also reflect loans in the amount of approximately \$1 million made to a
25 related entity called LinMar Properties and its affiliates ("LinMar"). LinMar has office space in
26 the same building as Western. The Receiver recommends that the loans to LinMar be analyzed,
27 and, if appropriate, collection efforts commenced.

28

1 The Receiver has also asked Mr. Schooler to produce corporate documents for
2 WFP Securities Corporation ("WFP Securities") so he can confirm its ownership and relationship
3 to Western. The Receiver's understanding is that WFP Securities is owned by Mr. Schooler and
4 his brother, John Schooler, and that the company has ceased operating. As discussed in the
5 Receiver's First Report (pp. 9-10), WFP Securities and Western are involved in two active civil
6 lawsuits, one pending in this district before Judge Houston and one pending in the Ninth Circuit
7 Court of Appeals. Due to the litigation injunction, these cases, at least as they pertain to Western,
8 have been stayed and Western is no longer incurring legal expenses to defend them. Mr. Schooler
9 has not yet produced the requested corporate documents for WFP Securities.

10 **A. Notice to Investors**

11 Pursuant to the Court's October 5, 2012 Preliminary Injunction Order, notice of the
12 Receiver's appointment over the GPs based on a preliminary finding of unregistered securities was
13 sent to investors. Counsel for Mr. Schooler and the Commission were provided with a copy of the
14 letter sent to investors before it was mailed. Neither party had any objections to the form of letter.
15 The letter directs investors to the Receiver's website, www.ethreadvisors.com (see the "SEC Case
16 Docs" tab), for information and future updates regarding the case and the receivership. The
17 Receiver recommends that the website be used as a cost-effective means of disseminating
18 information to investors.

19 **B. Recommendations for Receivership**

20 The Receiver's efforts to investigate and analyze the Receivership Entities' assets and
21 liabilities, transactions with investors, and other matters bearing on their financial condition are
22 ongoing. The Receiver makes the following recommendations in connection with the
23 performance of his duties:

24 **1. Asset Evaluation**

25 The Receiver recommends that over the next 90 days, the real property assets of the
26 Receivership Entities be evaluated. The Receivership Entities own approximately 22 properties
27 located in California, Nevada, Arizona, and New Mexico. The Receiver will obtain an appraisal
28 for each property from a licensed appraiser. The Receiver will also determine the status of each

1 loan secured by the properties. Once his evaluation is complete, the Receiver will make
2 recommendations to the Court and seek approval of a plan to maximize the cash recovery from the
3 properties.

4 As discussed above, the Receivership Entities' non-real property assets should also be
5 analyzed. The Receiver will seek authorization to sell the gold coins owned by Western, and will
6 begin to evaluate potential claims against third parties and the sources of recovery for such claims.

7 2. Forensic Accounting Analysis

8 According to the Commission, the Receivership Entities raised approximately \$50 million
9 from investors. The Receiver recommends that a forensic accounting analysis be conducted to
10 determine what the funds raised from investors were used for. As discussed in the Receiver's
11 Initial Report, on average, approximately \$8,000 of every \$10,000 raised from investors went to
12 Western. Receiver's Initial Report, Docket No. 27, pp. 7-8. It will be important both for the
13 Court's determination of the merits of the case and for the Receiver's efforts to maximize the
14 recovery for investors to know where the funds transferred to Western went.

15 3. Reporting

16 The Receiver will file further reports on his activities and findings as directed by the Court.
17 In the Receiver's experience, filing reports on a quarterly basis strikes a good balance between
18 (a) keeping the Court and interested parties informed about the Receiver's activities, and
19 (b) minimizing administrative expenses. Accordingly, the Receiver proposes that his next report
20 be filed in January, covering his activities in October, November and December. The Receiver's
21 evaluation of the real properties and forensic accounting analysis should be completed by that
22 time.

23 4. Claims Review and Distribution Plan

24 As the receivership progresses, the Receiver will evaluate the appropriate method for
25 receiving and analyzing investor claims, as well as the most equitable and efficient manner of
26 distributing assets of the receivership estate to those with valid claims. At the appropriate time,
27 the Receiver will seek Court approval of procedures for determining claims and a plan of
28 distribution.

VIII. CONCLUSION

Based on the Receiver's investigation as described above, the Receiver recommends that the receivership continue pursuant to the TRO, Preliminary Injunction Order, and supplemental orders of the Court, and Mr. Schooler's personal assets be monitored as described above. The Receiver requests approval of this Second Report and his recommendations discussed above.

Dated: October 18, 2012

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

By: /s/ Ted Fates

TED FATES
Attorneys for Court-appointed Temporary
Receiver
THOMAS C. HEBRANK

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EXHIBIT A

EXHIBIT A

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1. This Court has jurisdiction over the subject matter of this case, and there is good cause to believe it will have jurisdiction over all parties hereto and that venue in this district is proper;

2. As more fully explained in the Court's July 11, 2011 Opinion [D.E. 39], there is good cause to believe that defendants Millennium Telecard, Inc., Millenium Tele Card, LLC, Coleccion Latina, Inc., Telecard Center USA, Inc. (collectively, "Corporate Defendants"), and Fadi Salim have engaged in and are likely to engage in acts and practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), by deceptively marketing prepaid telephone calling cards, and the FTC is therefore likely to prevail on the merits of this action;

3. The Court has found good cause to continue the "Conduct Prohibitions" set forth in this Court's May 2, 2011 TRO but believes it appropriate to modify the portions of the TRO that directed an asset freeze and the appointment of a temporary Receiver; ;

4. The Court has also found good cause to conclude that a plan of transition can be created by which the Receiver's role can be converted into the role of a monitor and by which the Court's goals – of (1) preserving all available assets; (2) ensuring the continued operation of the Millennium companies in a manner that is profitable and compliant with the law, (3) reintegrating Defendant Salim into the day-to-day operation and management of the Millennium companies and (4) providing

Defendant Salim with some access to his personal assets – can be achieved and maintained, with all necessary safeguards in place, during the pendency of this litigation;

5. A preliminary injunction, the appointment of a Monitor, and other equitable relief is in the public interest; and

6. The FTC is an independent agency of the United States of America and no security is required of any agency of the United States for the issuance of a preliminary injunction. Fed. R. Civ. P. 65(c).

DEFINITIONS

For the purpose of this preliminary injunction (“Order”), the following definitions shall apply:

1. “Asset” means any legal or equitable interest in, right to, or claim to, any real, personal, or intellectual property including, but not limited to, chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, contracts, mail or other deliveries, shares or stock, securities, inventory, checks, notes, accounts, credits, receivables (as those terms are defined in the Uniform Commercial Code), cash, trusts, including but not limited to asset protection trusts, and reserve funds or other accounts associated with any payments processed on behalf of any

Defendant, including, but not limited to, such reserve funds held by a payment processor, credit card processor, or bank.

2. **“Assisting others”** includes knowingly providing any of the following goods or services to another entity: (1) performing customer service functions, including, but not limited to, charging consumers for products or services, or receiving or responding to consumer complaints; (2) formulating or providing, or arranging for the formulation or provision of, any promotional material; (3) providing names of, or assisting in the generation of, potential customers; or (4) performing promotional or marketing services of any kind, including but not limited to, creating, hosting, or maintaining websites, or recruiting affiliates; or (5) processing credit and debit card payments.

3. **“Clear and prominent”** shall mean as follows:

- A. In a print advertisement, promotional material (including all Point-of-Sale Materials), or instructional manual, the disclosure shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.

- B. In an advertisement communicated through an electronic medium (including, but not limited to, television, video, radio, and

interactive media such as the Internet and online services), the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement. *Provided, however*, that in any advertisement presented solely through video or audio means, the disclosure may be made through the same means in which the relevant claim is presented. The audio disclosure shall be delivered in a volume, speed, and cadence sufficient for an ordinary consumer to hear and comprehend it. The video disclosure shall appear on the screen in a type, size and location, as well as for a duration sufficient for an ordinary consumer to read and comprehend it in a print that contrasts with the background against which it appears. In addition to the foregoing, in interactive media the disclosure shall also be unavoidable and shall be presented prior to the consumer incurring any financial obligation.

C. On the Prepaid Calling Card and its packaging, the disclosure shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.

D. The disclosure shall be in understandable language and syntax.

Nothing contrary to, inconsistent with, or in mitigation of the

disclosure shall be used in any advertisement, promotional material, Prepaid Calling Card, or its packaging.

4. **"Corporate Defendants"** means Millennium Telecard, Inc., Millenium Tele Card, LLC, Coleccion Latina, Inc., Telecard Center USA, Inc.; and their affiliates, assigns, subsidiaries, or successors.
5. **"Defendants"** means, individually, collectively or in any combination:
(a) each Corporate Defendant; and (b) Individual Defendant Fadi Salim.
Furthermore, any person insofar as he or she is acting in the capacity of an officer, agent, servant, employee or attorney of any Corporate Defendant or Individual Defendant, and any person or entity in active concert or participation with any of the foregoing who receives actual notice of this Order by personal service or otherwise, is bound to comply with this Order, *see* Fed.R.Civ.P. 65(d), whether these persons or entities are acting directly or through a trust, corporation, subsidiary, division, or other device.
6. **"Document"** is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and encompasses both paper documents and electronically stored information, including: writings, drawings, graphs, charts, Internet sites, Web pages, Web sites, electronic correspondence, including e-mail, instant messages and text

messages, photographs, audio and video recordings, contracts, accounting data, advertisements (including, but not limited to, advertisements placed on the World Wide Web), FTP Logs, Server Access Logs, USENET Newsgroup postings, World Wide Web pages, books, written or printed records, handwritten notes, telephone logs, telephone scripts, receipt books, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, computer records, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

7. **"Individual Defendant"** means Fadi Salim.
8. **"Material"** means any information or fact that is likely to affect a consumer's choice of, or conduct regarding, a product or service.
9. **"Person"** means a natural person, organization, or other legal entity, including a corporation, partnership, proprietorship, association, cooperative, government or governmental subdivision or agency, or any other group or combination acting as an entity.

- 10. "PIN"** means a unique personal identification number assigned to a Prepaid Calling Card, which must be entered by the user to access the value of the Prepaid Calling Card.
- 11. "Plaintiff" or "Commission" or "FTC"** means the Federal Trade Commission.
- 12. "Point-of-Sale Material"** means any poster, sign, bulletin, advertisement, "take one" card, hang-tag, tear-away, or other promotional material that is displayed at a location where a Prepaid Calling Card is sold; such locations include, but are not limited to, stores, kiosks, and vending machines, as well as online points of sale.
- 13. "Prepaid Calling Card"** means a card or other means that can be used to make one or more telephone calls that is or are paid for prior to placing the telephone call.
- 14. "Monitor"** means the monitor appointed in Section III of this Order and any deputy monitors that shall be named by the monitor.
- 15. "Representatives"** means Defendants' officers, agents, servants, employees, and attorneys other than litigation counsel in this matter, and any other person or entity in active concert or participation with them who receives actual notice of this Order by personal service or otherwise.

16. "Talk Minutes" means the number of calling minutes actually delivered by a Prepaid Calling Card to a particular destination.

CONDUCT PROHIBITIONS

I.

IT IS HEREBY ORDERED that, in connection with the advertising, distributing, marketing, promotion, offering for sale, or sale of Prepaid Calling Cards, Defendants and their Representatives, whether acting directly or through any entity, corporation, subsidiary, division, director, manager, member, affiliate, independent contractor, accountant, financial advisor, distributor, or other device, are hereby preliminarily restrained and enjoined from making, or assisting others in making, any material misrepresentation, either expressly or by implication, including, but not limited to, a misrepresentation concerning the Talk Minutes and/or applicable per minute rates.

II.

IT IS FURTHER ORDERED that, in connection with the advertising, distributing, marketing, promotion, offering for sale, or sale of Prepaid Calling Cards, Defendants and their Representatives, whether acting directly or through any entity, corporation, subsidiary, division, director, manager, member, affiliate, independent contractor, accountant, financial advisor, distributor, or other device, are hereby preliminarily restrained and enjoined from failing to make clear

and prominent disclosure of all material limitations in any advertisement, promotional material, instructional manual, packaging, or Prepaid Calling Card if such advertisement, promotional material, instructional manual, packaging, or Prepaid Calling Card contains any express or implied representation regarding (i) the specific value (*e.g.*, \$2) of a Prepaid Calling Card, (ii) the Talk Minutes and/or applicable per minute rates, or (iii) any fee or charge or the absence thereof (*e.g.*, "No Connection Fees"). Such material limitations include, but are not limited to, the following, if applicable:

- A. The existence and amount of all fees or charges of any type, including, but not limited to, maintenance fees, weekly fees, monthly fees, connection fees, hang-up fees, payphone fees, cell phone fees, access number fees, and when and under what circumstances such fees or charges will apply when using a Prepaid Calling Card;
- B. That the number of advertised Talk Minutes and/or per minute rates are only available on a single call;
- C. Any limit on the period of time during which the number of advertised Talk Minutes and/or per minute rates are available; and
- D. When a Prepaid Calling Card expires.

All disclosures required by this Section to be made in any advertisement, promotional material, instructional manual, packaging, or Prepaid Calling Card shall be made in the same language as that principally used in such advertisement, promotional material, instructional manual, packaging, or Prepaid Calling Card.

III.

APPOINTMENT OF MONITOR

IT IS FURTHER ORDERED that Nicholas R. Amato, Esq. is appointed as Monitor for the Defendants. The Monitor shall be the agent of this Court, and solely the agent of this Court, in acting under this Order. The Monitor shall be accountable directly to this Court.

IV.

MONITOR'S DUTIES AND AUTHORITY

IT IS FURTHER ORDERED that the Monitor shall have the following duties and authority:

- A. Monitor the Defendants' compliance with this Order by requiring Defendants to provide weekly test results of a random sampling of ten (10) cards to determine the call minutes provided and requiring such other and further information as the Monitor deems appropriate, including a comparison to the rate deck, if the calling card samples suggest further inquiry is warranted;:

- B. Monitor Defendants' corporate records and financial transactions by:
- i. Reviewing Defendants' Quickbook entries on a weekly basis, with an accountant's assistance as the Monitor deems appropriate, including a weekly site visit by the accountant to review cash flow activities;
 - ii. Reviewing a weekly list of checks and wires executed by Defendants. Defendants shall provide the Monitor with the corresponding invoices for each check and wire transfer and the Monitor shall have the right to request additional information relating to checks and wires as he deems appropriate;
- C. The Monitor shall ensure that the expenses incurred by the Defendants as set forth herein are in compliance with any business plan proposed by the accounting firm hired by the Monitor. To the extent that the FTC or Defendants disagree with the business plan itself, either party shall have the right to raise the issue with the Court by way of Motion to amend this Preliminary Injunction;
- D. The Monitor shall have the right and ability to approve payment of salary to Fadi Salim of up to \$4,000.00 per week as the company's financial circumstances warrant;
- E. The Monitor's approval shall be necessary to institute or settle any litigation other than the instant litigation and the Monitor shall be

involved in any significant strategic decisions relating to any such litigation;

- F. The Monitor shall have immediate, unfettered access to all information or documents the Monitor deems necessary to carry out the Monitor's duties pursuant to this Order, to the same extent as the Corporate Defendants themselves are allowed by right, contract, or practice, including but not limited to:
- i. Access to all documents pertaining to the Corporate Defendants' business activities and finances wherever located and in whomever's custody or control;
 - ii. Access to all property or premises in possession of, owned by, or under the control of the Corporate Defendants, wherever located;
 - iii. The right to interview any current or former employee of the Corporate Defendants;
 - iv. The right to interview any current or former officer, manager, independent contractor, subcontractor, financial institution, vendor, telecommunications provider, agent, service bureau, or other entity involved in the provision of any services from, to, or on behalf of the Corporate Defendants; and

v. Access to all documents of any officer, manager, independent contractor, employee, or agent of the Corporate Defendants; and

G. The Monitor is authorized to choose, engage, and employ attorneys, investigators, accountants, appraisers, and other independent contractors and technical specialists, as the Monitor deems advisable or necessary in the performance of duties and responsibilities under the authority granted by this Order.

H. In exercising the above authority and duties, the Monitor may communicate ex parte with the Court or a party.

V.

COOPERATION WITH THE MONITOR

IT IS FURTHER ORDERED that Defendants and all other persons or entities served with a copy of this Order shall fully cooperate with and assist the Monitor. This cooperation and assistance shall include, but not be limited to, providing information to the Monitor that the Monitor deems necessary in order to discharge the responsibilities of the Monitor under this Order; and providing any password required to access any computer, electronic file, or telephone data in any medium. Defendants are hereby restrained and enjoined from directly or indirectly:

- A. Destroying, secreting, defacing, transferring, or otherwise altering or disposing of any of Defendants' documents; or
- B. Failing to provide any assistance or information requested by the Monitor in connection with the performance of the Monitor's duties under this Order.

VI.

REPORTING TO THE MONITOR

IT IS FURTHER ORDERED that Defendants are hereby restrained and enjoined from creating, operating, or exercising any control over any business entity, including any partnership, limited partnership, joint venture, sole proprietorship, limited liability company, or corporation, without first providing the Monitor 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, managers, and employees; and (4) a detailed description of the business entity's intended activities.

VII.

COMPENSATION OF MONITOR

IT IS FURTHER ORDERED that the Monitor and all personnel hired by the Monitor, including counsel to the Monitor 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 of the Corporate Defendants. On or before the 15th of every month, the Monitor shall file with the Court and serve on the parties a request for the payment of such reasonable compensation.

VIII.

ASSET MONITORING AND PRESERVATION

IT IS FURTHER ORDERED that except as set forth herein, Defendants and their Representatives, whether acting directly or through any entity, corporation, subsidiary, division, director, manager, member, affiliate, independent contractor, accountant, financial advisor, or other device, are hereby preliminarily restrained and enjoined from:

A. Transferring, liquidating, converting, encumbering, pledging, loaning, selling, concealing, dissipating, disbursing, assigning, relinquishing, spending, withdrawing, granting a lien or security interest in, or otherwise disposing of any funds, real or personal property, accounts, contracts, shares of stock, lists of consumer names, or other assets, wherever located, including outside the United States, that are:

- i. owned or controlled, in whole or in part by any Defendant;
- ii. held for the benefit of, directly or indirectly, any Defendant, in whole or in part;

- iii. in the actual or constructive possession of any Defendant;
- iv. held by an agent of any Defendant as a retainer for the agent's provision of services to Defendants;
- v. owned or controlled by, or in the actual or constructive possession of or otherwise held for the benefit of, any corporation, partnership, asset protection trust, or other entity that is directly or indirectly owned, managed, controlled by any of the Defendants, or of which any Defendant is an officer, director, member, or manager. This includes, but is not limited to, any assets held by, for, or subject to access by, any of the 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 or depository of any kind; or
- vi. held in any account for which any Defendant is an authorized signer.

B. Opening or causing to be opened, unless accompanied by counsel for the Commission, any safe deposit boxes titled in the name of any Defendant, either individually or jointly, or subject to access by any Defendant;

C. Obtaining a personal or secured loan encumbering the assets of any Defendant, or subject to access by any Defendant;

D. Incurring liens or other encumbrances on real property, personal property, or other assets in the name, singly or jointly, of any Defendant or of any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by any Defendant; or

E. Incurring charges or cash advances on any credit or bank card issued in the name, individually or jointly, of any Defendant, or any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by any Defendant or of which any Defendant is an officer, director, member, or manager. This includes, but is not limited to, any corporate bank or credit card account for which any Defendant is an authorized signor.

F. Notwithstanding the foregoing, Defendants shall have the right to pay from corporate assets any corporate debts and obligations in the ordinary course of business, which payments shall be listed on the weekly list of checks and wires to be provided by Defendants to the Monitor, except that Defendants shall provide the Monitor with forty eight (48) hours' notice of any expense exceeding \$50,000.00;

G. Notwithstanding the foregoing, with reasonable written notice to the FTC, the Monitor may direct the transfer of a reasonable amount of Fadi Salim's frozen personal assets to Fadi Salim for personal expenses. In determining the reasonableness of such a transfer, the Monitor must consider the specific substantiated claims of need by Salim and the Court's goal of preserving all

available assets. The following expenses shall be presumed reasonable and shall not require written notice to the FTC before a transfer is made, though Defendants shall have the right to request payment of other expenses as they arise:

- i. \$7,500 per month for personal expenditures. To the extent that Mr. Salim begins to draw a salary from the company, the amount paid from the frozen personal assets for personal expenditures shall be reduced by an equivalent amount;
- ii. The mortgage payments and property taxes that are due for the real estate owned by Mr. Salim, including 48 Continental Circle, Totowa, New Jersey, 535 Lexington Avenue, Clifton, New Jersey; 635 Lexington Avenue, Clifton, New Jersey, 594 Lexington Avenue, Clifton, New Jersey and 590 Lexington Avenue, Clifton, New Jersey. All of the aforesaid properties, which were previously temporarily transferred to the Receivership Estate to enable the Receiver to pay the mortgage on said properties, shall be removed from the Receivership Estate and returned to Defendants but still subject to the asset freeze.
- iii. Reasonable legal fees incurred by Defendants in connection with this litigation. Legal fees incurred by the Corporate Defendants are to be paid out of the company's accounts, to the extent

reasonably feasible, before being paid out of Defendant Salim's personal assets;

- iv. All other assets that were transferred to the Receivership Estate shall be returned to Defendants but shall remain subject to the asset freeze set forth herein except as set forth herein.

H. The Monitor and Fadi Salim may jointly direct the transfer of a reasonable amount of Fadi Salim's frozen personal assets to an account controlled by the Monitor for the purpose of ensuring the continued operation of Corporate Defendants in a manner that is profitable and compliant with the law. Such a transfer shall only be permitted for the purpose of adequately capitalizing Corporate Defendants' business operations in compliance with all other provisions of this Order.

IT IS FURTHER ORDERED that the assets affected by this Section shall include assets (a) existing as of the date this Order was entered, or (b) acquired by any Defendant following entry of this Order, if such assets are derived from the conduct alleged in the Commission's Complaint.

IX.

DUTIES OF ASSET HOLDERS IN PRESERVING ASSETS

IT IS FURTHER ORDERED that any financial or brokerage institution, credit card processing company, payment processor, merchant bank, acquiring

bank, business entity, or person who receives actual notice of this Order (by personal service or otherwise) that (a) holds, controls, or maintains custody of any account or asset of any Defendant, (b) holds, controls, or maintains custody of any asset associated with credit or debit card charges made on behalf of any Defendant, including but not limited to, reserve funds held by payment processors, or (c) has held, controlled, or maintained custody of any such account or asset at any time since the date of entry of this Order shall:

A. Hold and retain within its control and prohibit the withdrawal, removal, assignment, transfer, pledge, encumbrance, disbursement, dissipation, relinquishing, conversion, sale, or other disposal of any such asset except by further order of this Court or at the direction of the Monitor;

B. Deny any person—except the Monitor acting pursuant to Section VIII of this Order—access to any safe deposit box that is:

i. titled in the name of any Defendant, either individually or jointly;

or

ii. otherwise subject to access by any Defendant;

C. Upon the request of the FTC, promptly provide the FTC with copies of all records or other documentation pertaining to such account or asset, 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,

including wire transfers and wire transfer instructions, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs.

X.

MONITORING OF FOREIGN ASSETS AND DOCUMENTS

IT IS FURTHER ORDERED that within one (1) day following the entry of this Order, each Defendant shall, unless already provided pursuant to the TRO entered in this matter:

A. Provide the Monitor and the Commission with a full accounting of all funds, documents, and assets outside of the United States which are: (1) titled in the name, individually or jointly, of any Defendant; or (2) held by any person or entity for the benefit of any Defendant; or (3) under the direct or indirect control, whether jointly or singly, of any Defendant;

B. Provide the Monitor and the Commission access to all records of accounts or assets of any Defendant held by financial institutions located outside the territorial United States by signing any necessary documentation, including the Consent to Release of Financial Records appended to this Order as Attachment C.

XI.

PRESERVATION OF RECORDS

IT IS FURTHER ORDERED that Defendants and their Representatives, whether acting directly or through any entity, corporation, subsidiary, division, director, manager, member, affiliate, independent contractor, accountant, financial advisor, or other device, are hereby preliminarily restrained and enjoined from:

A. destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, documents that relate to the business, business practices, assets, or business or personal finances of any Defendant; and

B. failing to create and maintain documents that, in reasonable detail, accurately, fairly, and completely reflect Defendants' incomes, disbursements, transactions, and use of money.

XII.

**PROHIBITION ON RELEASE OF CUSTOMER INFORMATION
OR CUSTOMER LISTS**

IT IS FURTHER ORDERED that Defendants and their Representatives, whether acting directly or through any entity, corporation, subsidiary, division, director, manager, member, affiliate, independent contractor, accountant, financial advisor, or other device, are hereby preliminarily 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 money to the Defendants for products or services, or who was contacted or is on a list to be contacted by the Defendants; provided that the Defendants may disclose such identifying information to a law enforcement agency or as required by any law, regulation, or court order.

XIII.

STAY OF ACTIONS AGAINST CORPORATE DEFENDANTS

IT IS FURTHER ORDERED that, except by leave of this Court, during the pendency of this action, Defendants, their Representatives, corporations, subsidiaries, divisions, or affiliates, and all investors, creditors, stockholders, lessors, customers and other persons seeking to establish or enforce any claim, right, or interest against or on behalf of Defendants, and all others acting for or on behalf of such persons, are hereby enjoined from taking action that would interfere with the exclusive jurisdiction of this Court over the assets or documents of the Corporate Defendants, including, but not limited to:

- A. Petitioning, or assisting in the filing of a petition, that would cause any Corporate Defendant to be placed in bankruptcy;
- B. Commencing, prosecuting, or continuing a judicial, administrative, or other action or proceeding against the Corporate Defendants, including the

issuance or employment of process against the Corporate Defendants, except that such actions may be commenced if necessary to toll any applicable statute of limitations;

C. Filing or enforcing any lien on any asset of the Corporate Defendants, taking or attempting to take possession, custody, or control of any asset of the Corporate Defendants; or attempting to foreclose, forfeit, alter, or terminate any interest in any asset of the Corporate Defendants, whether such acts are part of a judicial proceeding, are acts of self-help, or otherwise; or

D. Initiating any other process or proceeding that would interfere with the Monitor managing or taking custody, control, or possession of the assets or documents described in this Order.

Provided that, this Order does not stay: (i) the commencement or continuation of a criminal action or proceeding; (ii) the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power; or (iii) the enforcement of a judgment, other than a money judgment, obtained in an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power.

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XIV.

DURATION OF PRELIMINARY INJUNCTION

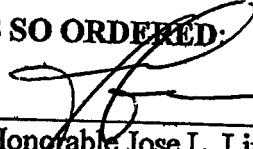
IT IS FURTHER ORDERED that this Order shall remain in full force and effect pending trial on the merits unless sooner modified or dissolved.

XV.

RETENTION OF JURISDICTION

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

IT IS SO ORDERED:



The Honorable Jose L. Linares
UNITED STATES DISTRICT JUDGE
DATED: 8/16/11