

The FTC has now moved this Court for summary judgment against defendants Check Investors, Inc., Check Enforcement, Inc., Jaredco, Inc., Barry Sussman, and Charles Hutchins ("Defendants") pursuant to Federal Rule of Civil Procedure 56. Defendants have cross-moved for summary judgment.

A hearing was held on January 24, 2005. The Court, having considered the arguments, memoranda and exhibits filed in support of and in opposition to this motion, and all other pleadings and files in this action, as well as the oral arguments of the parties, and now being fully advised in the premises, and for the reasons set forth in this Court's Opinion of even date herewith, hereby grants the FTC's motion for summary judgment and denies the Defendants' cross-motion.

Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to issue injunctive and other relief against violations of the FTC Act and, in the exercise of its equitable jurisdiction, to award redress and restitution to remedy the injury to consumers, order disgorgement of profits resulting from Defendants' unlawful acts or practices, and issue other ancillary equitable relief.

This Court is persuaded that the danger of future violations by Defendants justifies the issuance of injunctive relief. Specifically, it is proper in this case to issue a permanent injunction that: (a) prohibits Defendants from engaging in debt

collection activities; (b) prohibits Defendants from making, in connection with the collection or attempted collection of any debt, certain misrepresentations; and (c) provides such other ancillary relief as is necessary to assist the FTC and the Court in monitoring Defendants' compliance with such a permanent injunction.

It is proper in this case to enter a monetary judgment against Defendants, jointly and severally, to redress consumer injury resulting from violations of Section 5(a) of the FTC Act and the FDCPA by Defendants. The FTC is entitled to judgment against Defendants, jointly and severally, in the amount of \$10,204,445, the net consumer injury caused by them, even though this amount may exceed their unjust enrichment.

This action and the relief awarded herein are in addition to, and not in lieu of, other remedies as may be provided by law, including both civil and criminal remedies. Pursuant to Federal Rule of Civil Procedure 65(d), the provisions of this Order are binding upon each Defendant, their successors and assigns, and their officers, agents, servants, employees and attorneys, and upon those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise. Entry of this Order is in the public interest.

IT IS, THEREFORE, ON THIS 15th DAY OF JULY, 2005,

ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

DEFINITIONS

(1.) For the purposes of this Order, the following definitions shall apply:

A. "Consumer" means any natural person obligated or allegedly obligated to pay any debt.

B. "Creditor" means any person or entity who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person or entity to the extent such person or entity receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt.

C. "Debt" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment, including, but not limited to, overdue obligations (such as medical bills that were originally payable in full within a certain time period), dishonored checks that were tendered in payment for goods or services acquired or used

D. "Debt collector" means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Notwithstanding the exclusion provided by clause (F) of the last sentence of this paragraph, the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts. The term does not include (A) any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor; (B) any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so related or affiliated and if the principal business of such person is not the collection of debts; (C) any officer or employee of the United States or any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties; (D) any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt; (E) any nonprofit organization which, at the request of consumers, performs bona fide consumer

(2.) Defendants are permanently restrained and enjoined from engaging in debt collection activities or assisting others engaged in debt collection activities. Nothing in this Order shall be read as an exception to this Section 2.

(3.) In connection with the collection or attempted collection of any debt, Defendants and any person or entity through which they do business, and their successors, assigns, officers, agents, servants, employees, attorneys, and those other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby permanently restrained and enjoined from:

A. Violating the FDCPA, 15 U.S.C. § 1692 et seq., including but not limited to:

i. Violating Section 805(b) of the FDCPA, 15 U.S.C. § 1692c(b), by communicating with third parties for purposes other than acquiring location information about a consumer, without having obtained directly the prior consent of the consumer or the express permission of a court of competent jurisdiction, and when not reasonably necessary to effectuate a post judgment judicial remedy;

ii. Violating Section 806 of the FDCPA, 15 U.S.C. § 1692d, by engaging in conduct the natural consequence of which is to harass, oppress, or abuse a person, including, but not limited to (a) using obscene or profane language or language the

natural consequence of which is to abuse the hearer, in violation of section 806(2) of the FDCPA, 15 U.S.C. § 1692d(2); and (b) causing a telephone to ring or engaging a person in telephone conversation repeatedly or continuously with the intent to annoy, abuse, or harass a person at the number called, in violation of section 806(5) of the FDCPA, 15 U.S.C. § 1692d(5);

iii. Violating Section 807 of the FDCPA, 15 U.S.C. § 1692e, by using false, deceptive, or misleading representations or means, including, but not limited to (a) falsely representing the character, amount, or legal status of a debt, or any services rendered or compensation which may be lawfully received by a debt collector for collection of a debt, in violation of sections 807(2)(A) and (B) of the FDCPA, 15 U.S.C. §§ 1692e(2)(A) and (B); (b) falsely representing or implying that an individual is an attorney or that a communication is from an attorney, in violation of section 807(3) of the FDCPA, 15 U.S.C. § 1692e(3); (c) falsely representing or implying that nonpayment of a debt will result in the arrest or imprisonment of a person or seizure, garnishment, or attachment of a person's property or wages, when such action is not lawful or when the party has no intention of taking such action, in violation of section 807(4) of the FDCPA, 15 U.S.C. § 1692e(4); (d) threatening to take action that the party does not intend to take, such as filing a lawsuit, in violation of section 807(5) of the FDCPA, 15 U.S.C. § 1692(5);

(e) falsely representing or implying that a consumer committed a crime or other conduct in order to disgrace the consumer, in violation of section 807(7), 15 U.S.C. § 1692e(7); and (f) using

nonpayment of a debt or alleged debt will result in a consumer's arrest or imprisonment, or seizure, garnishment, or attachment of a consumer's property or wages;

E. Misrepresenting, directly or by implication, that any person intends to take legal action against a consumer;

F. Misrepresenting, directly or by implication, that a consumer has committed a crime by issuing a dishonored check;

G. Misrepresenting, directly or by implication, any other fact material to a consumer's decision to pay a debt or alleged debt; and

H. Assisting others who violate any provision of this Section 3.

RESTRICTIONS ON THE SALE OF CONSUMER DEBT ACCOUNTS

4. Defendants and any person or entity through which they do business, and their successors, assigns, officers, agents, servants, employees, attorneys, and all those other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are permanently restrained and enjoined from hereafter selling, renting, leasing, or otherwise transferring accounts or claims arising from debts owed or purportedly owed by consumers to Defendants or their affiliates.

MONETARY RELIEF

5. Judgment is hereby entered against Defendants, jointly

and severally, in the amount of TEN MILLION TWO HUNDRED FOUR THOUSAND FOUR HUNDRED FORTY FIVE DOLLARS (\$10,204,445, with post-judgment interest at the legal rate, for equitable monetary relief, including but not limited to consumer redress, and for paying any attendant expenses of administering any redress fund. The monetary judgment set forth in this Section 5 is enforceable against any asset owned jointly by, on behalf of, for the benefit of, or in trust by or for, any Defendant, whether held as tenants in common, joint tenants with or without the right of survivorship, tenants by the entirety, and/or community property.

6. Any funds or assets received by the FTC pursuant to this Section 5 above shall be deposited into a fund administered by the FTC or its agent to be used for equitable relief, including but not limited to consumer redress and any attendant expenses for the administration of any redress funds. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the FTC may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendants' practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the U.S. Treasury as equitable disgorgement. Defendants shall have no right to challenge the FTC's choice of remedies or the manner of distribution.

7. Defendants shall make available to the FTC all computer files and information in their possession, control, or custody, for each Eligible Consumer, including as available: the Eligible Consumer's name, most recent known address and telephone number; the date and amount of payment made by the Eligible Consumer, the face value of the dishonored check or other debt purportedly owed by the Eligible Consumer, and the date and amount of any refunds, as shown in Defendants' records. For purposes of Section 5 above, "Eligible Consumer" shall mean every consumer who has made a payment to any Defendant.

8. The judgment entered pursuant to Section 5 above is equitable monetary relief, solely remedial in nature, and not a fine, penalty, punitive assessment or forfeiture.

9. Defendants are hereby required, in accordance with 31 U.S.C. § 7701, to furnish to the FTC their tax identification numbers, which shall be used for purposes of collecting and reporting on any delinquent amount arising out of this Order.

TURNOVER OF FROZEN ASSETS

10. In order partially to satisfy the monetary judgment set forth in Section 5 of this Order, any financial or brokerage institution, escrow agent, title company, commodity trading company, business entity, or person, whether located within the United States or outside the United States, that holds, controls or maintains accounts or assets of, on behalf of, or for the

benefit of, any Defendant shall turn over such account or asset to the FTC within five (5) business days of receiving notice of this Order by any means, including but not limited to via facsimile. In particular:

(a)

(c) HSBC shall, within five (5) business days of receiving notice of this Order by any means, including but not limited to via facsimile, transfer to the FTC or its designated agent all assets held in account number 028715870, in the name of Goldmanco;

(d) RBC Dain Rauscher shall, within five (5) business days of receiving notice of this Order by any means, including but not limited to via facsimile, liquidate all holdings in account number 12F5-3707-9661, in the name of Goldmanco, and transfer the proceeds of such liquidation to the FTC or its designated agent; and

(e) Wells Fargo Bank shall, within five (5) business days of receiving notice of this Order by any means, including but not limited to via facsimile, transfer to the FTC or its designated agent all assets held in account numbers 8313588439, in the name of Check Investors, and 8313874888, in the name of Check Investors.

11. In order to partially satisfy the monetary judgment set forth in Section 5 of this Order, Defendants shall, within five (5) business days of the date of entry of this Order, transfer to the FTC or its designated agent (i) 200 \$20 gold coins purchased from National Gold Exchange, (ii) 20 1 oz. Austrian Philharmonic gold coins purchased from National Gold Exchange, (iii) one \$5 Indian Head gold coin (1911-D MS64) purchased from National Gold

Exchange, (iv) one \$10 Liberty Head gold coin (1876-CC MS63) purchased from National Gold Exchange, (v) one \$2.5 Liberty Head gold coin (1880 MS66) purchased from National Gold Exchange, (vi) 115 1 oz. Krugerrand gold coins purchased from Kitco, Inc., (vii) ten 1 oz. gold bars purchased from Kitco, Inc., (viii) ten Kilo Nugget (Kangaroo) coins (represented by Perth Mint certificates) purchased from Kitco, Inc., and (ix) one 400 oz. gold bar purchased from Kitco, Inc.

12. In order partially to satisfy the monetary judgment set forth in Section 5 of this Order, each Defendant shall provide an accounting of, and turn over to the FTC, within fifteen (15) business days following the entry of this Order, all assets, real and personal, where ever located within the United States held either: (a) by such Defendant, (b) for such Defendant's benefit, or (c) under such Defendant's direct or indirect control, jointly or singly, including, but not limited to, all assets placed in trust by, for, for the benefit of, on account of, or on behalf of any Defendant.

13. In order partially to satisfy the monetary judgment set forth in Section 5 of this Order, each Defendant shall provide an accounting of, and repatriate and turn over to the FTC, within fifteen (15) business days following the entry of this Order, all assets, real and personal, where ever located in foreign countries held either: (a) by such Defendant, (b) for such

Defendant's benefit, or (c) under such Defendant's direct or indirect control, jointly or singly, including, but not limited to, all assets placed in trust by, for, for the benefit of, on account of, or on behalf of any Defendant.

14. For a period of ten (10) years from the date of entry of this Order, Defendants, in connection with any business where any such defendant is the majority owner or otherwise controls the business, and their agents, employees, officers, corporations, successors, and assigns, and those persons and entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from failing to create and retain the following records:

A. Normal and ordinary accounting records as required by generally accepted accounting standards that reflect profit and loss, assets and liabilities, and the disbursement of revenues;

B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable, to the extent such information is obtained in the ordinary course of business;

C. Customer files containing the names, addresses, phone

numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;

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

E. Copies of all sales scripts, training materials, advertisements, or other marketing materials; and

F. All records and documents necessary to demonstrate full compliance with each provision of this Order, including but not limited to, copies of acknowledgments of receipt of this Order, required by Section 17 of this Order, and all reports submitted to the FTC pursuant to Section 16 of this Order.

15. For the purpose of monitoring and investigating compliance with any provision of this Order,

A. Within ten (10) days of receipt of written notice from a representative of the FTC, Defendants each shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in such defendant's possession or direct or indirect control to inspect the business operation, provided that Defendants, after attempting to resolve a dispute without court

action and for good cause shown, may file a motion with the Court seeking an order including one or more of the protections set forth in Federal Rule of Civil Procedure 26(c);

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

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

ii. posing as consumers and suppliers to: Defendants, their employees, or any other entity managed or controlled in whole or in part by Defendants, without the necessity of identification or prior notice;

Provided that nothing in this Order shall limit the FTC's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

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

16. In order that compliance with the provisions of this Order may be monitored:

A. For a period of ten (10) years from the date of entry of this Order,

i. Defendants Barry Sussman and Charles Hutchins each shall notify the FTC of the following:

a. Any changes in his residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;

b. Any changes in his employment status (including self-employment) within ten (10) days of the date of such change. Such notice shall include the name and address of each business that he is affiliated with, employed by, creates or forms, or performs services for; a statement of the nature of the business; and a statement of his duties and responsibilities in connection with the business or employment;

c. Any changes in his name or use of any aliases or fictitious names; and

ii. Defendants Check Investors, Inc., Check Enforcement, Inc., Jaredco, Inc., Barry Sussman, and Charles Hutchins, shall notify the FTC of any changes in the corporate structure of defendants Check Investors, Inc., Check Enforcement, Inc., or Jaredco, Inc., or in any business entity that Barry Sussman or Charles Hutchins directly or indirectly controls, or

representatives, mail all written notifications to the FTC to:

Associate Director for Financial Practices
Federal Trade Commission
600 Pennsylvania Avenue, NW, Room NJ-3158
Washington, DC 20580

principals, officers, directors, and managers of that business. Defendant Barry Sussman must also deliver copies of this Order to all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the Order. For current personnel, delivery shall be within (5) days of service of this Order upon Defendant Barry Sussman. For new personnel, delivery shall occur prior to them assuming their responsibilities.

C. For any business where Defendant Barry Sussman is not a controlling person of a business but otherwise engages in conduct related to the subject matter of this Order, he must deliver a copy of this Order to all principals and managers of such business before engaging in such conduct.

D. For any business that defendant Charles Hutchins controls, directly or indirectly, or in which he a majority ownership interest, he shall deliver a copy of this Order to all principals, officers, directors, and managers of that business. Defendant Charles Hutchins must also deliver copies of this Order to all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the Order. For current personnel, delivery shall be within (5) days of service of this Order upon Defendant Charles Hutchins. For new personnel, delivery shall occur prior to them assuming their responsibilities.

E. For any business where Defendant Charles Hutchins is not a controlling person of a business but otherwise engages in conduct related to the subject matter of this Order, he must deliver a copy of this Order to all principals and managers of such business before engaging in such conduct.

F. Defendants each must secure a signed and dated statement acknowledging receipt of the Order, within thirty (30) days of delivery, from all persons receiving a copy of the Order pursuant to this Section 17.

ACKNOWLEDGMENT OF RECEIPT OF ORDER

18. Within five (5) business days after entry of this Order, Defendants each shall submit to the FTC a truthful sworn statement that shall acknowledge receipt of this Order.

RETENTION OF JURISDICTION

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