

WILLIAM BLUMENTHAL
General Counsel
CHARLES A. HARWOOD
Regional Director

MARY T. BENFIELD
Wash. State Bar No.18835
mbenfield@ftc.gov
DAVID M. HORN
Wash. State Bar No. 13514
dhorn@ftc.gov
Federal Trade Commission
915 Second Ave., Suite 2896
Seattle, WA 98174
Telephone: (206) 220-6350
Facsimile: (206) 220-6366
Attorneys for Plaintiff
Federal Trade Commission



Certified to be a true and correct copy of original
Dated 30 April 2007
By Sheryl S. McConnell, Clerk
Deputy

**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON**

FEDERAL TRADE COMMISSION,

Civ. No. 07-0533 BR

Plaintiff,

v.

MERCHANT PROCESSING, INC.;
VEQUITY FINANCIAL GROUP, INC.;
DIRECT MERCHANT PROCESSING,
INC.; and AARON LEE RIAN,

**STIPULATED PRELIMINARY
INJUNCTION AND ORDER FOR
OTHER EQUITABLE RELIEF**

Defendants.

Plaintiff, Federal Trade Commission ("Commission" or "FTC"), pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), filed a Complaint for injunctive and other relief, including consumer redress, and applied for a temporary restraining

order and an order to show cause why a preliminary injunction should not issue pursuant to Rule 65 of the Federal Rules of Civil Procedure. The Commission's Complaint alleges that defendants' deceptive acts and practices violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a). On April 11, 2007, this Court granted Plaintiff's *ex parte* application and entered a Temporary Restraining Order ("TRO") with an order to show cause why a preliminary injunction should not issue against Defendants Merchant Processing, Inc. ("MPI"), Direct Merchant Processing, Inc. ("DMP"), Vequity Financial Group, Inc. ("Vequity"), and Aaron Lee Rian (hereinafter "defendants"). All defendants were served with the Summons, Complaint, TRO, and other related papers filed in this action. At the request of the parties, this Court extended the TRO until April 30, 2007, and a hearing has been scheduled on that date.

The Commission and defendants acting by and through counsel, now stipulate to entry of this Stipulated Preliminary Injunction ("Stipulated Order") to remain in effect until the final resolution of this matter.

NOW, THEREFORE, the Commission and defendants having requested the Court to enter this Stipulated Preliminary Injunction, it is **ORDERED, ADJUDGED, AND DECREED** as follows:

1. This Court has jurisdiction of the subject matter of this case and there is good cause to believe it will have jurisdiction over all parties hereto;
2. Venue in the District of Oregon is proper;
3. Entry of this Stipulated Order is in the public interest;
4. This Order does not constitute, and shall not be interpreted to constitute, either an

admission by defendants of any of plaintiff's allegations or a finding by the Court that defendants have engaged in any violations of the FTC Act or any other laws; and

5. Any change made or directed to be made by the Receiver (as defined below) with regard to the operation of any of the Receivership Defendants (as defined below) or with regard to any written agreements used by any of the Receivership Defendants shall not by itself constitute a determination that any of the defendants have engaged in any violation of the FTC Act or any other laws. This provision does not preclude any party to this action from introducing evidence of any such change or the reasons why the Receiver made the change or directed the change to be made. Notwithstanding anything to the contrary herein, all future proceedings in this action remain subject to the Federal Rules of Evidence, including but not limited to FRE 407, and applicable case law.

ORDER

Definitions

1. **"Assets"** means any legal or equitable interest in, right to, or claim to, any real or personal property including, but not limited to, chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail or other deliveries, inventory, checks, notes, accounts, credits, receivables (as those terms are defined in the Uniform Commercial Code), and all cash, wherever located.

2. **"Card processing goods or services"** means goods or services relating to the acceptance, authorization, settlement, or payment for credit or debit card-related sales.

3. **"Clearly and conspicuously"** means:

- i. if presented in writing, the information shall be in a type size and location sufficient for an ordinary consumer to read and comprehend it, and shall be disclosed in a manner that would be easily recognizable and understandable in language and syntax to an ordinary consumer. If the information is contained in a multi-page print document, the disclosure shall appear on the first page.
- ii. if presented orally, the information shall be disclosed in a volume, cadence and syntax sufficient for an ordinary consumer to hear and comprehend.
- iii. nothing contrary to any information disclosed shall be imparted at or near the time of the disclosure. Further, a subsequent disclosure made orally or in writing only limits or qualifies a prior disclosure and cannot cure a false claim.

4. **"Consumer"** means an actual or potential purchaser, customer, licensee, or lessee, regardless of whether that person is a corporation, limited liability corporation, partnership, association, other business entity, or natural person, and regardless of whether the purchase is made for business purposes or for personal or household purposes.

5. **"Defendants"** means Merchant Processing, Inc.; Vequity Financial Group, Inc.; Direct Merchant Processing, Inc.; and Aaron Lee Rian, 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, attorneys, corporations, subsidiaries, affiliates, all other persons or entities directly or indirectly under their control or under common control with

them, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any 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 includes writings, drawings, graphs, charts, photographs, audio and video recordings, 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. **"Financial institution"** means any bank, savings and loan institution, credit union or any financial depository of any kind, including but not limited to any brokerage house, trustee, broker-dealer, escrow agent, title company, commodity trading company, precious metal dealer, commercial check cashing facility, or any entity or person that holds, controls, or maintains custody of any account or asset of any Defendant.

8. **"Individual Defendant "** means Aaron Lee Rian, whether acting directly or through any successor, assign, agent, employee, entity, corporation, subsidiary, division, or other device, unless specified otherwise.

9. **"Merchant"** means a person, corporation, or any other entity that acts as a consumer by purchasing, leasing, or renting card processing goods or services. "Merchants" means any of the merchants, individually, collectively, or in any combination.

10. **"Named Defendants"** means Merchant Processing, Inc.; Vequity Financial

Group, Inc.; Direct Merchant Processing, Inc.; and Aaron Lee Rian, and each of them, by whatever names each might be known.

11. **"Person"** means any individual, group, unincorporated association, limited or general partnership, corporation or other business entity.

12. **"Receivership Defendants"** means Merchant Processing, Inc.; Vequity Financial Group, Inc.; and Direct Merchant Processing, Inc., Oregon corporations, and their affiliates and subsidiaries, and any other corporations or businesses under the control of any of them, including but not limited to Bad Boy Enterprises, Inc., d.b.a. Atlantic Hound; Bad Boy Racing, LLC; Bad Boy Investments, LLC; and Rian Racing, Inc.

13. **"Receiver"** means Michael A. Grassmueck, the Receiver appointed in this matter on April 11, 2007, and continued herein. The term "Receiver" also includes any deputy receivers as may be named by the Receiver.

CONDUCT PROHIBITIONS

I.

Prohibition Against Misrepresentations

IT IS THEREFORE ORDERED that, in connection with advertising, promotion, offering for sale, or sale of card processing goods or services, Defendants are hereby preliminarily restrained and enjoined from making or assisting others in making, directly or by implication, orally or in writing, any misrepresentation of material fact, including but not limited to misrepresenting that:

A. Merchants who purchase the card processing goods or services offered by Defendants will save money each month on their card processing expenses; and

STIPULATED PRELIMINARY INJUNCTION

B. Defendants will purchase the remainder of the existing card processing equipment leases of merchants who purchase the card processing goods or services offered by Defendants.

II.

Prohibition Against Failing to Disclose All Material Facts Relating to Fees

IT IS FURTHER ORDERED that, in connection with the advertising, promotion, offering for sale, or sale of card processing goods or services, if Defendants represent directly or by implication that merchants will be charged any particular percentage or fee, then Defendants are hereby preliminarily restrained and enjoined from failing to disclose, clearly and conspicuously, in the same communication, all material facts relating to fees, including but not limited to the amounts of all discount rates, processing surcharges, cancellation fees, and other fees merchants will be required to pay. This provision is not triggered merely by the Defendants' making a non-committal oral suggestion that savings might be possible, so long as Defendants do not cite particular rates or ranges of rates or state affirmatively that Defendants' rates are lower or better or that customers will save money.

III.

Prohibition Against Unilaterally Altering Material Contract Terms or Failing to Disclose Material Terms

IT IS FURTHER ORDERED that, in connection with the advertising, promotion, offering for sale, or sale of card processing goods or services, Defendants are hereby preliminarily restrained and enjoined from altering or adding to, or assisting others in altering or adding to, documents signed by a merchant relating to card processing goods or services, thereby producing changes to material terms including, but not limited to, terms related to rates, surcharges, fees, and expenses, without the express consent of the merchant; or from concealing or failing to disclose

clearly and conspicuously to a merchant, or assisting others in concealing or failing to disclose clearly and conspicuously to a merchant, any purported terms of a contract; or from presenting to a merchant, claiming a merchant is bound by, or attempting to enforce against a merchant any written documents that contradict the oral representations made by Defendants to the merchant about the terms and conditions of the merchant's purchase or lease of card processing goods or services from Defendants; or from affixing a merchant's signature or initials onto documents that the merchant has not in fact signed or initialed.

ASSET PROVISIONS

IV. Asset Freeze

IT IS FURTHER ORDERED that:

- A. Each Defendant is hereby preliminarily restrained and enjoined from:
1. Transferring, liquidating, converting, encumbering, pledging, loaning, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, granting a lien or security interest or other interest in, or otherwise disposing of any funds, real or personal property, accounts, contracts, consumer lists (including lists of consumer names, telephone numbers, addresses, or account numbers, or other consumer data), shares of stock, or other assets, or any interest therein, wherever located, that are: (1) owned or controlled by any Defendant, in whole or in part; (2) in the actual or constructive possession of any Defendant; or (3) owned, controlled by, or in the actual or constructive possession of any corporation, partnership,

or other entity directly or indirectly owned, managed, or controlled by any Defendant, including, but not limited to any assets held by or for, or subject to access by, any Defendant, at any bank or savings and loan institution, or with any broker-dealer, escrow agent, title company, commodity trading company, precious metals dealer, or other financial institution or depository of any kind;

2. Opening or causing to be opened any safe deposit boxes titled in the name of any Defendant, or subject to access by any of them;
3. Incurring charges or cash advances on any credit card issued in the name, singly or jointly, of any Defendant; and
4. Incurring liens or other encumbrances on real property, personal property or other assets in the name, singly or jointly, of any Defendant.

B. Notwithstanding the above, the Individual Defendant may, by further order of the Court or by written agreement of the Commission, pay from his personal funds reasonable, usual, ordinary, and necessary living expenses and attorney's fees.

V.

Retention of Assets and Documents by Financial Institutions and Other Third Parties

IT IS FURTHER ORDERED that, effective immediately upon notification of this Order by letter from Plaintiff, delivered by any means including facsimile transmission, any bank, savings and loan institution, credit union, financial institution, brokerage house, escrow agent, money market or mutual fund, title company, commodity trading company, common carrier,

STIPULATED PRELIMINARY INJUNCTION

storage company, trustee, commercial mail receiving agency, mail holding or forwarding company, or any other person, partnership, corporation, legal or business entity, or person that holds, controls or maintains custody of any account or asset belonging to, or titled in the name of, any Named Defendant or belonging to, or titled in the name of, any corporation, partnership or other entity directly or indirectly owned, managed or controlled by, in whole or in part, any Named Defendant, or to which they are a signatory, or which is held on behalf of, or for the benefit of, any Named Defendant, individually or jointly, or that has held, controlled or maintained custody of any such account or asset at any time since January 1, 2003, shall:

A. Prohibit Named Defendants and their agents, servants, employees, attorneys, and all persons or entities directly or indirectly under their control, or in common control with them, from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling, or otherwise disposing of any such account or asset except:

1. As directed by further order of the Court; or
2. By written agreement of the Commission;

B. Maintain the status quo of any such account or asset and not withdraw, remove, assign, transfer, pledge, encumber, disburse, dissipate, convert, sell, or otherwise dispose of any such account or asset except:

1. As directed by further order of the Court; or
2. By written agreement of the Commission;

C. Deny Named Defendants and their agents, servants, employees, attorneys, and all persons or entities directly or indirectly under their control, or in common control with them, unless accompanied by counsel for the Federal Trade Commission, access to any safe deposit box

that is:

1. Titled in the name of any Named Defendant or their affiliates or subsidiaries, either individually or jointly; or
2. Otherwise subject to access by any Named Defendant or their affiliates or subsidiaries;

D. Provide counsel for the Commission, within five business days of receiving a copy of this Order, a sworn statement setting forth:

1. The identification number of each such account or asset belonging to or titled in the name of any Named Defendant or to which any Named Defendant is a signatory, or which is held on behalf of, or for the benefit of, any Named Defendant;
2. The balance of each such account, or a description of the nature and value of such asset as of the time this Order is served, and, if any asset has been removed or transferred within the last 90 days, the date removed or transferred, the total funds removed or transferred, 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 titled in the name, individually or jointly, of any Named Defendant or is otherwise subject to access by any Defendant; and

E. Upon the Commission's request, promptly provide the Commission with copies of all records or other documentation pertaining to such account or asset including, without limitation, originals or copies of account applications, account statements, signature cards, checks,

STIPULATED PRELIMINARY INJUNCTION

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.

RECEIVERSHIP PROVISIONS

VI.

Continuation of Receiver

IT IS FURTHER ORDERED that Michael A. Grassmueck shall continue as Receiver for the Receivership Defendants, with the full power of an equity receiver. The Receiver shall be the agent of this Court and solely the agent of this Court in acting as Receiver under this Order. The Receiver shall be accountable directly to this Court. The Receiver shall comply with all Rules of this Court governing receivers.

VII.

Access to Receivership Defendants' Business Premises

IT IS FURTHER ORDERED that the Receiver and his representatives and agents shall continue to have immediate access to any business premises of the Receivership Defendants, and immediate access to any other location where the Receivership Defendants have conducted business and where property or business records are likely to be located. Such locations specifically include, but are not limited to, the offices and facilities of one or more of the Receivership Defendants at 1600 NW Compton Drive, #357, Beaverton, Oregon 97006. The purpose of access shall be to implement and carry out the Receiver's duties set forth in Paragraph VIII, and to inspect and inventory all of the Receivership Defendants' property, assets and documents and inspect and copy any documents relevant to this action. The Receiver and those specifically designated by the Receiver shall have the right to remove the above-listed documents from those premises in order that they may be inspected, inventoried, and copied. The

Receiver shall allow the Commission's representatives, agents, and assistants, as well as Named Defendants or their representatives, reasonable access to the premises of the Receivership Defendants. The purpose of this access shall be to inspect and copy any and all books, records, accounts, and other property, including computer data, owned by or in the possession of the Receivership Defendants; provided that the Commission may not make public any trade secret or any commercial or financial information that is marked privileged or confidential unless it first provides the Defendants the opportunity to seek a protective order with regard to the information.

VIII. Receivership Duties

IT IS FURTHER ORDERED that the Receiver is directed and authorized to accomplish the following:

A. Assume full control of the Receivership Defendants by removing, as the Receiver deems necessary or advisable, any director, officer, independent contractor, employee or agent of the Receivership Defendants, including any Defendant, from control of, management of, or participation in, the affairs of the Receivership Defendants;

B. Take exclusive custody, control, and possession of all assets and documents of, or in the possession, custody or under the control of the Receivership Defendants, wherever situated. The Receiver shall be deemed to be the authorized responsible person to act on behalf of the Receivership Defendants and, without further order of the Court, shall have the full power and authority to take all corporate actions necessary to operate the business in the normal course; provided, however, that extraordinary acts, including but not limited to, the filing of a petition for bankruptcy as the authorized responsible person as to each of the Receivership Defendants,

dissolution of the Receivership Defendants, and sale of the Receivership Defendants shall require prior notice to the Individual Defendant and Court approval, unless exigent circumstances dictate that such action occur prior to court approval. The Receiver shall have full power to divert mail and to sue for, collect, receive, take in possession, hold, and manage all assets and documents of the Receivership Defendants and other persons or entities whose interests are now held by or under the direction, possession, custody or control of the Receivership Defendants; provided, however, that the Receiver shall seek further authority from the Court, after providing notice to the Plaintiff, before taking collection action on any past due debt from a consumer if the Receiver believes the debt was induced by unfair or deceptive practices, including without limitation those identified by the FTC in this matter whether in the Complaint or in subsequent filings;

C. Continue to take all steps necessary to secure the business premises of the Receivership Defendants including, but not limited to, all such premises located at 1600 NW Compton Drive, # 357, Beaverton, Oregon 97006. Such steps may include, but are not limited to, the following as the Receiver deems necessary or advisable: (1) serving this Order on any person or entity; (2) completing a written inventory of receivership assets; (3) obtaining pertinent information from all employees and other agents of the Receivership Defendants including, but not limited to, the name, home address, social security number, job description, method of compensation, and all accrued and unpaid commissions and compensation of each such employee or agent; (4) video taping all portions of the business premises; (5) changing the locks and disconnecting any computer modems or other means of access to the computer or other records maintained at the business premises; (6) requiring any persons present on the business premises at the time this Order is served to leave the premises, to provide the Receiver with proof of

STIPULATED PRELIMINARY INJUNCTION

identification, or to demonstrate to the satisfaction of the Receiver that such persons are not removing from the premises documents or assets of the Receivership Defendants; and (7) notwithstanding any other provision of this Order, the Receiver shall determine what constitutes reasonable access by other persons or entities to the business premises of the Receivership Defendants;

D. Investigate, conserve, hold, and manage all receivership assets, and perform all acts necessary or advisable to preserve the value of those assets in an effort to prevent any irreparable loss, damage or injury to consumers or to creditors of the Receivership Defendants including, but not limited to, obtaining an accounting of the assets, and preventing transfer, withdrawal or misapplication of assets;

E. Enter into contracts and purchase insurance for the Receivership Defendants as advisable or necessary;

F. Prevent the inequitable distribution of assets and determine, adjust, and protect the interests of consumers and creditors who have transacted business with the Receivership Defendants;

G. Manage and administer the business of the Receivership Defendants until further order of this Court by performing all incidental acts that the Receiver deems to be advisable or necessary, which include retaining, hiring, or dismissing any employees, independent contractors, or agents;

H. Choose, engage, and employ attorneys, accountants, appraisers, and other independent contractors and technical specialists (collectively, "Professionals"), as the Receiver deems advisable or necessary in the performance of duties and responsibilities under the authority

granted by this Order, which Professionals shall apply to the Court for payment of fees and costs along with the Receiver and be paid from the assets of the receivership estate;

I. Make payments and disbursements from the receivership estate that are necessary or advisable for carrying out the directions of, or exercising the authority granted by, this Order;

J. Determine and implement the manner in which the Receivership Defendants will comply with, and prevent violations of, this Order and all other applicable laws including, but not limited to, revising sales materials and implementing monitoring procedures;

K. Institute, compromise, adjust, defend, appear in, intervene in, or become party to such actions or proceedings in state, federal or foreign courts that the Receiver deems necessary and advisable to preserve or recover the assets of the Receivership Defendants or that the Receiver deems necessary and advisable to carry out the Receiver's mandate under this Order, including but not limited to, the filing of a petition for bankruptcy;

L. Defend, compromise, adjust or otherwise dispose of any or all actions or proceedings instituted in the past or in the future against the Receiver in his role as receiver, or against the Receivership Defendants that the Receiver deems necessary and advisable to preserve the assets of the Receivership Defendants, or that the Receiver deems necessary and advisable to carry out the Receiver's mandate under this Order, all notwithstanding the Stay of Actions set forth in Paragraph XIII of this Order;

M. Continue and conduct the business of the Receivership Defendants in such manner, to such extent, and for such duration as the Receiver may in good faith deem to be necessary and advisable to operate the business profitably and lawfully, if at all; provided, however, that the continuation and conduct of the business shall be conditioned upon the Receiver's good faith

STIPULATED PRELIMINARY INJUNCTION

determination that the business can be lawfully operated for the benefit of the receivership estate using the assets of the receivership estate and without resort to any unfair or deceptive practices including without limitation those alleged by the FTC in this matter whether in the Complaint or in subsequent filings; and taking into account, among other things, that the fees and costs of the Receiver and the Professionals must be paid as senior priority administrative expenses of the receivership estate;

N. Conduct investigations and issue subpoenas to obtain documents and records pertaining to or in aid of the receivership, and conduct discovery in this action on behalf of the receivership estate;

O. Open one or more bank accounts at a bank designated by the Receiver and consented to by the FTC as a depository for funds of the Receivership Defendants. The Receiver shall deposit all funds of the Receivership Defendants in such a designated account and shall make all payments and disbursements from the receivership estate from such an account;

P. Maintain accurate records of all receipts and expenditures that he or she makes as Receiver; and

Q. Cooperate with reasonable requests for information or assistance from any state or federal law enforcement agency.

IX. Cooperation With The Receiver

IT IS FURTHER ORDERED that the Defendants and all other persons or entities served with a copy of this Order shall fully cooperate with and assist the Receiver. This cooperation and assistance shall include, but not be limited to, providing any information to the Receiver that the

Receiver requests as he deems necessary to exercising the authority and discharging the responsibilities of the Receiver under this Order; providing any password required to access any computer, electronic account, or digital file or telephonic data in any medium; turning over all accounts, files, and records including those in possession or control of attorneys or accountants; and advising all persons who contact a Defendant or other person or entity and who owe money to the Receivership Defendants that all debts should be paid directly to the Receiver. Defendants are hereby preliminarily restrained and enjoined from directly or indirectly:

A. Transacting any of the business of the Receivership Defendants;

B. Destroying, secreting, defacing, transferring, or otherwise altering or disposing of any documents of the Receivership Defendants including, but not limited to, books, records, accounts, writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations, electronically-stored records, or any other papers of any kind or nature;

C. Transferring, receiving, altering, selling, encumbering, pledging, assigning, liquidating, or otherwise disposing of any assets owned, controlled, or in the possession or custody of, or in which an interest is held or claimed by, the Receivership Defendants or the Receiver;

D. Drawing on any existing line of credit available to Receivership Defendants;

E. Excusing debts owed to the Receivership Defendants;

F. Failing to notify the Receiver of any asset, including accounts, of the Receivership

Defendants held in any name other than the name of any of the Receivership Defendants, or by any person or entity other than the Receivership Defendants, or failing to provide any assistance

STIPULATED PRELIMINARY INJUNCTION

or information requested by the Receiver in connection with obtaining possession, custody or control of such assets;

G. Doing any act that would, or failing to do any act which failure would, interfere with the Receiver's taking custody, control, possession, or management of the assets or documents subject to this receivership; or to harass or interfere with the Receiver in any way; or to interfere in any manner with the exclusive jurisdiction of this Court over the assets or documents of the Receivership Defendants; or to refuse to cooperate with the Receiver or the Receiver's duly authorized agents in the exercise of their duties or authority under any Order of this Court; and

H. Filing, or causing to be filed, any petition on behalf of the Receivership Defendants for relief under the United States Bankruptcy Code, 11 U.S.C. §§ 101-1330 (2002), without prior permission from this Court.

X.

Delivery of Receivership Property

IT IS FURTHER ORDERED that:

A. Immediately upon service of this Order upon them, or within such period as may be permitted by the Receiver, to the extent they have not done so already, Defendants or any other person or entity shall transfer or deliver possession, custody, and control of the following to the Receiver:

1. All assets of the Receivership Defendants, including, without limitation, bank accounts, web sites, buildings or office space owned, leased, rented, or otherwise occupied by the Receivership Defendants;
2. All documents of the Receivership Defendants, including, but not limited

to, books and records of accounts, legal files (whether held by Defendants or their counsel) all financial and accounting records, balance sheets, income statements, bank records (including monthly statements, canceled checks, records of wire transfers, and check registers), client lists, title documents, and other papers;

3. All of the Receivership Defendants' accounting records, tax records, and tax returns controlled by, or in the possession of, any bookkeeper, accountant, enrolled agent, licensed tax preparer or certified public accountant;
4. All loan applications made by or on behalf of Receivership Defendants and supporting documents held by any type of lender including, but not limited to, banks, savings and loans, thrifts or credit unions;
5. All assets belonging to members of the public now held by the Receivership Defendants; and
6. All keys and codes necessary to gain or secure access to any assets or documents of the Receivership Defendants including, but not limited to, access to their business premises, means of communication, accounts, computer systems or other property;

B. In the event any person or entity fails to deliver or transfer any asset or otherwise fails to comply with any provision of this Paragraph, the Receiver may, subject to the Local Rules of the U.S. District Court for the District of Oregon, file ex parte an Affidavit of Non-Compliance regarding the failure. Upon filing of the affidavit, the Court may authorize, without additional

STIPULATED PRELIMINARY INJUNCTION

process or demand, Writs of Possession or Sequestration or other equitable writs requested by the Receiver. The writs shall authorize and direct the United States Marshal or any sheriff or deputy sheriff of any county, or any other federal or state law enforcement officer, to seize the asset, document or other thing and to deliver it to the Receiver.

XI.
Transfer of Funds to the Receiver

IT IS FURTHER ORDERED that, upon service of a copy of this Order, all banks, broker-dealers, savings and loans, escrow agents, title companies, leasing companies, landlords, ISOs, credit and debit card processing companies, insurance agents, insurance companies, commodity trading companies or any other person, including relatives, business associates or friends of the Named Defendants, or their subsidiaries or affiliates, holding assets of the Receivership Defendants or in trust for Receivership Defendants shall cooperate with all reasonable requests of the Receiver relating to implementation of this Order, including freezing and transferring funds at his direction and producing records related to the assets of the Receivership Defendants.

XII.
Collection of Receivership Defendants' Mail

IT IS FURTHER ORDERED that:

A. The Individual Defendant is hereby preliminarily restrained and enjoined from opening mail addressed to any of the Receivership Defendants, including but not limited to such mail at the following addresses:

14845 SW Murray Scholls Drive, Suite 110, PMB 108, Beaverton, Oregon 97007;

17575 SW Tualatin Valley Highway, Beaverton, Oregon 97006;

STIPULATED PRELIMINARY INJUNCTION

9020 Washington Square Road, Suite 520, Tigard, Oregon 97223; *MTB B 82*
P.O. Box 5087, Beaverton, Oregon 97006; *1600 NW Compton Drive, #357,*
Beaverton, Oregon 97006;
and any address used by the Individual Defendant;

- B. The Receiver is authorized to open all such mail addressed to any Receivership Defendant.
- C. Any funds enclosed in any mail shall be maintained and accounted for by the Receiver until further order by the Court.
- D. The Individual Defendant who receives such mail addressed to any Receivership Defendant shall promptly deliver it to the Receiver.
- E. The Receiver shall forward all U.S. mail that he receives on behalf of the Receivership Defendant that is addressed solely to the Individual Defendant unopened to counsel for the Individual Defendant. Counsel shall review such mail and confirm that it relates solely to the Individual Defendant's personal or financial affairs. If counsel determines that it relates in part or solely to the affairs of the Receivership Defendants, a copy of such mail shall be provided to the Receiver. If counsel determines that the mail relates solely to the personal or financial affairs of the Individual Defendant then such mail shall be turned over to the Individual Defendant.

XIII.
Stay of Actions

IT IS FURTHER ORDERED that:

- A. Except by leave of this Court, during pendency of the receivership ordered herein, Named Defendants and all other persons and entities aside from the Receiver are hereby stayed

from taking any action to establish or enforce any claim, right, or interest for, against, on behalf of, in, or in the name of, the Receivership Defendants, any of their partnerships, assets, documents, or the Receiver or the Receiver's duly authorized agents acting in their capacities as such, including, but not limited to, the following actions:

1. Commencing, prosecuting, continuing, entering, or enforcing any suit or proceeding, except that such actions may be filed to toll any applicable statute of limitations;
2. Accelerating the due date of any obligation or claimed obligation; filing or enforcing any lien; taking or attempting to take possession, custody or control of any asset; attempting to foreclose, forfeit, alter or terminate any interest in any asset, whether such acts are part of a judicial proceeding or are acts of self-help or otherwise;
3. Executing, issuing, serving or causing the execution, issuance or service of, any legal process including, but not limited to, attachments, garnishments, subpoenas, writs of replevin, writs of execution, or any other form of process whether specified in this Order or not; and
4. Doing any act or thing whatsoever to interfere with the Receiver taking custody, control, possession, or management of the assets or documents subject to this receivership, or to harass or interfere with the Receiver in any way, or to interfere in any manner with the exclusive jurisdiction of this Court over the assets or documents of the Receivership Defendants;

B. This Paragraph does not stay:

STIPULATED PRELIMINARY INJUNCTION

1. The commencement or continuation of a criminal action or proceeding;
 2. The commencement, continuation, or defense of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power, including without limitation this action or any other action brought by the Federal Trade Commission;
 3. 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;
 4. The issuance to the Receivership Defendants of a notice of tax deficiency;
- and

C. Except as otherwise provided in this Order, all persons and entities in need of documentation from the Receiver shall in all instances first attempt to secure such information by submitting a formal written request to the Receiver, and, if such request has not been responded to within 30 days of receipt by the Receiver, any such person or entity may thereafter seek an Order of this Court with regard to the relief requested.

XIV. Notice to Merchants

IT IS FURTHER ORDERED that, in connection with card processing goods or services, the Receiver shall send or cause to be sent to the existing merchant customers of the Receivership Defendants a Notice to Merchants within 20 days of entry of this Order. The content and form of the Notice shall be agreed upon by all parties prior to sending. If the parties are not able to agree, they may seek approval of the Court for the content of the Notice.

XV.
Customer Communications

IT IS FURTHER ORDERED that, in connection with card processing goods or services:

A. The Receiver shall designate a person or persons responsible for customer communication at the Receivership Defendants' business and shall provide to the parties every two weeks a detailed confidential report regarding all such customer communications, including the name, address, and telephone number of each customer who contacted the Receivership Defendants, the nature of the communication, whether the communication involved issues relating to the allegations in the FTC's Complaint, and, if so, whether and how the issues were resolved;

B. The Receiver shall use his best efforts to obtain from Global Payments Direct, Inc. ("Global Direct") on a monthly basis, a list of all of the Receivership Defendants' current merchants whose credit card payments are being processed by Global Direct, and a list of all merchants whose accounts were cancelled as of April 11, 2007.

XVI.
Compensation of Receiver

IT IS FURTHER ORDERED that the Receiver and his Professionals and all personnel hired by the Receiver as herein authorized, including counsel to the Receiver and accountants, are entitled to reasonable compensation for the performance of duties pursuant to this Order and for the cost of actual out-of-pocket expenses incurred by them, which compensation shall be derived exclusively from the assets now held by, or in the possession or control of, or which may be received by the Receivership Defendants or which are otherwise recovered by the Receiver. The Receiver and Professionals shall file with the Court and serve on the parties statements on a monthly basis, which shall include a description of all services provided and expenses incurred,

STIPULATED PRELIMINARY INJUNCTION

with the first such statement filed no later than 30 days after the date of this Order. If no objection to the fees and expenses in the statements is filed with the Court by any party within 14 days of service of the statements, then the Receiver shall be authorized to pay such statements on an interim basis, with final approval thereof to be reserved until the closing of the case. The Receiver shall not increase the hourly rates used as the bases for such fee applications without prior approval of the Court.

XVII.
Receiver's Bond/Liability

IT IS FURTHER ORDERED that no bond shall be required in connection with the appointment of the Receiver. Except for an act of willful misconduct or gross negligence, the Receiver and the Professionals shall not be liable for any loss or damage incurred by any of the Defendants, their officers, agents, servants, employees and attorneys or any other person, by reason of any act performed or omitted to be performed by the Receiver and the Professionals in connection with the discharge of his duties and responsibilities.

XVIII.
Receiver's Reports

The Receiver shall file with the Court an Initial Report regarding his findings and recommendations within 60 days of entry of this Order, and shall file Supplementary Reports every six months thereafter until termination of the Receivership; provided, however, that in each case, the Receiver shall provide copies of the Report to the parties no less than ten (10) days prior to filing in order to give the parties an opportunity to seek a protective order with regard to the Report.

DEFENDANTS' REPORTING AND RELATED OBLIGATIONS

XIX.

Financial Reports and Accounting

IT IS FURTHER ORDERED that, to the extent that they have not done so already:

A. The Individual Defendant shall, within ten (10) calendar days of entry of this Order, prepare and deliver to counsel for the Commission a completed financial statement on the form captioned "Financial Statement of Individual Defendant," which was attached to the TRO as Attachment A;

B. Unless otherwise agreed upon with Counsel for the Commission and the Receiver, Defendant Aaron Lee Rian shall prepare and deliver to counsel for the Commission a completed financial statement on the form captioned "Financial Statement of Corporate Defendant," which was attached to the TRO as Attachment B:

1. Within thirty (30) calendar days following entry of this Order for MPI, Vequity, and DMP; and
2. Within twenty (20) calendar days following entry of this Order for each affiliate and subsidiary of any of the corporate defendants, and any other corporation or business under the control of any of them, including but not limited to Bad Boy Enterprises, Inc., d.b.a. Atlantic Hound; Bad Boy Racing, LLC; Bad Boy Investments, LLC; and Rian Racing, Inc.

The financial statements shall be accurate as of the date and time of entry of this Order;

C. The Individual Defendant shall, within twenty (20) calendar days following entry of this Order, prepare and deliver to counsel for the Commission a completed statement, verified

under oath:

1. Specifying the name and address of each financial institution and brokerage firm at which the Individual Defendant has accounts or safe deposit boxes. Said statements shall include assets held in foreign as well as domestic accounts; and
2. Listing all persons who have received payments, transfers, or assignment of funds, assets, or property which total at least \$5,000 per transaction from the Individual Defendant since January 1, 2003. This list shall specify:
 - (a) the amount(s) transferred or assigned; (b) the name of each transferee or assignee; (c) the date of the assignment or transfer; and (d) the type and amount of consideration paid to the Individual Defendant; and

D. The Named Defendants shall each provide the Commission access to records and documents pertaining to Named Defendants that are held by financial institutions outside the territory of the United States by signing the "Consent to Release of Financial Records," which was attached to the TRO as Attachment C.

XX.

Reasonable and Necessary Living Expenses and Attorneys Fees for Individual Defendant

IT IS FURTHER ORDERED that:

A. The Aaron Rian Trust is hereby created for the duration of this action to pay the reasonable and necessary living expenses and attorneys fees of Defendant Aaron Rian out of Defendant Rian's personal assets that were frozen by order of this Court. ~~The Court appoints~~ *A person agreed to by*
MTB 82 B
the parties shall ~~to~~ serve as Trustee without bond. The Trustee shall create a trust

STIPULATED PRELIMINARY INJUNCTION

account at a depository institution of his or her choosing, which account shall consist solely of the funds of the Aaron Rian Trust.

B. The sum of \$180,000.00 (ONE HUNDRED EIGHTY THOUSAND DOLLARS) shall be transferred by the Bank of America from Bank of America accounts agreed upon by the FTC and the Individual Defendant to the account of the Trust, as soon as the Trustee notifies the Bank of America what account to deposit the funds into, and any other person named on the frozen account has executed a release of such funds. The Court finds that this amount will be sufficient to pay the mortgages on Defendant Rian's real properties and his reasonable and necessary living expenses for approximately six months and reasonable attorneys fees, as set forth below.

C. Proceeds from the sale of any asset owned by the Individual Defendant shall also be deposited into the Aaron Rian Trust, provided that such sale shall not be made without written agreement of the Commission or pursuant to further order of the Court.

D. Defendant Rian shall take immediate steps to ensure that any and all rents on all real properties owned by him personally are paid directly to the Trustee, effective immediately. The Trustee shall receive the rents and deposit them into the account of the Trust. Defendant Rian shall also forward any mortgage, property tax, and utility bills on these properties to the Trustee. The Trustee shall use the funds in the Trust account to make payments for mortgages, property taxes, and utilities for Defendant Aaron Rian's real properties as they come due.

E. The Court further finds that, in addition to his housing, the following are reasonable and necessary monthly living expenses for Defendant Rian:

Automobile payments \$ 400.00

STIPULATED PRELIMINARY INJUNCTION

Page 29

Gasoline	\$ 200.00
Telephone	\$ 50.00
Food & Miscellaneous	<u>\$1,550.00</u>
Total	\$2,200.00

The Trustee shall disburse to Defendant Aaron Rian personally the above sum of \$2,200.00 (TWO THOUSAND TWO HUNDRED DOLLARS) on ^{or about MTB JS AS} April 30, 2007, and the same sum on the 30th day of each month thereafter during the pendency of this action, for reasonable and necessary living expenses exclusive of housing. The Court finds that Defendant Rian will require no additional housing expenses since he resides in one of the properties whose mortgage will be paid by the Trustee.

F. The Trustee shall also pay the Individual Defendant's reasonable attorneys fees, such fees to be paid upon letter agreement by the Commission or pursuant to further order of the Court.

G. The Trustee may also take a reasonable fee from the account of the Trust in an amount ~~no greater than \$ _____ per month~~ ^{agreed to by the parties MTB JS AS} and may pay bank fees as they come due.

H. Each month, the Trustee shall prepare a report of income, expenses, and remaining balance and transmit it to the FTC, which shall provide copies to all parties.

XXI.
Preservation of Records

IT IS FURTHER ORDERED that Defendants are hereby preliminarily restrained and enjoined from destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any documents that relate to the business

practices or business or personal finances of Named Defendants, or to the business practices or finances of entities directly or indirectly under the control, in whole or in part, of Named Defendants.

XXII.

Record Keeping/Business Operations

IT IS FURTHER ORDERED that Named Defendants 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, beginning as of 9:15 a.m. on April 12, 2007;
- B. Failing to make and keep books, records, accounts, bank statements, current accountants' reports, general ledgers, general journals, cash receipt ledgers, cash disbursement ledgers and source documents, documents indicating title to real or personal property, and any other data which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of Named Defendants, beginning as of 9:15 a.m. on April 12, 2007;
- C. Destroying, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, any books, records, tapes, discs, accounting data, checks (fronts and backs), correspondence, forms, advertisements, brochures, manuals, electronically stored data, banking records, customer lists, customer files, invoices, telephone records, ledgers, payroll records, or other documents of any kind, including information stored in computer-maintained form, in their possession, custody or control; and
- D. Creating, operating or exercising any control over any business entity, including

any partnership, limited partnership, joint venture, sole proprietorship or corporation, without first providing 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, managers, and employees; and (4) a detailed description of the business entity's intended activities.

XXIII.

Distribution of Order by Defendants or Receiver

IT IS FURTHER ORDERED that Named Defendants or the Receiver shall immediately provide a copy of this Order to each affiliate, partner, division, sales entity, successor, assign, managerial and supervisory employee, independent contractor, agent, payment processor, attorney, and representative of Named Defendants and shall, within ten days from the date of entry of this Order, serve upon counsel for the Commission a sworn statement that they have 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.

MISCELLANEOUS PROVISIONS

XXIV.

Service of Order

IT IS FURTHER ORDERED that copies of this Order may be served by any means, including facsimile transmission, upon any financial institution, or other entity or person that may have possession, custody, control or knowledge of any documents or assets of any Named Defendant or any other entity or person that may otherwise be subject to any provision of this Order. Service without Attachments shall effect service of the Order. Service upon any branch or office of any financial institution shall effect service upon the entire financial institution.

STIPULATED PRELIMINARY INJUNCTION

XXV.
Credit Reports

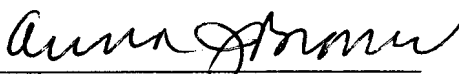
IT IS FURTHER ORDERED that pursuant to Section 604(a)(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(1), any consumer reporting agency served with this Order shall promptly furnish credit reports concerning Defendant Aaron Lee Rian to the FTC and the Receiver.

XXVI.
Retention of Jurisdiction

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

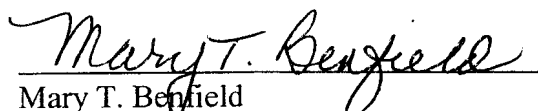
SO ORDERED.

Dated: April 30, 2007

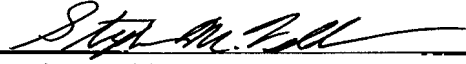


The Honorable Anna J. Brown
United States District Judge

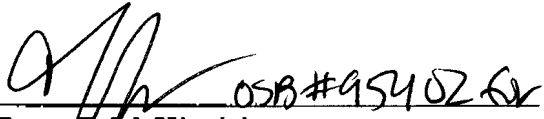
Presented by:



Mary T. Benfield
WSBA No. 18835
David M. Horn
WSBA No. 13514
Federal Trade Commission
915 Second Avenue, Suite 2896
Seattle, Washington 98174
(206) 220-6350
Attorneys for Plaintiff
FEDERAL TRADE COMMISSION



Stephen Feldman
OSB No. 93267
Perkins Coie
1120 N.W. Couch Street, 10th Floor
Portland, OR 97209
(503) 727-2058
Attorney for Defendant
AARON LEE RIAN

 OSB #95402 for

Peter C. McKittrick
OSB No. 852816
Farleigh Witt
121 S.W. Morrison, Suite 600
Portland, OR 97204
(503) 228-1044
Attorney for MICHAEL A. GRASSMUECK, Receiver, and
Defendants MERCHANT PROCESSING, INC.,
DIRECT MERCHANT PROCESSING, INC., and
VEQUITY FINANCIAL GROUP, INC.