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13 **UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**  
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15 FEDERAL TRADE COMMISSION,  
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17 Plaintiff,

18 v.

19 INFUSION MEDIA, INC., *et al.*,  
20

21 Defendants.

Civil Action No. 2:09-cv-01112-  
RCJ-LRL

**STIPULATION TO ENTRY  
OF PRELIMINARY  
INJUNCTION WITH ASSET  
FREEZE, APPOINTMENT OF  
RECEIVER, AND OTHER  
EQUITABLE RELIEF**

22 Plaintiff Federal Trade Commission (the "Commission") and defendants Infusion  
23 Media, Inc.; West Coast Internet Media, Inc.; Two Warnings, LLC; Two Part  
24 Investments, LLC; Platinum Teleservices, Inc., Jonathan Eborn; Stephanie Burnside;  
25 Michael McLain Miller; and Tony Norton, hereby stipulate to the entry of the attached  
26 Stipulated Preliminary Injunction with Asset Freeze, Appointment of Receiver, and Other  
27 Equitable Relief, annexed hereto as Exhibit A. The parties also agree that this Stipulation

1 may be executed in counterparts.

2 The parties respectfully request that the Court enter the attached Stipulated  
3 Preliminary Injunction forthwith, and that the Court cancel the hearing to show cause why  
4 a preliminary injunction should not issue calendared for Monday, August 24, 2009.

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Respectfully submitted,

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August 21, 2009



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COUNSEL FOR PLAINTIFF  
FEDERAL TRADE COMMISSION

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Approved as to form and content:

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COUNSEL FOR DEFENDANTS

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 21, 2009, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all parties in the manner specified:

**Via Email and United States Postal Service First Class Mail**

Matthew R. Lewis  
D. Zachary Wiseman  
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*Counsel for Defendants*

Robert G. Wing  
Prince Yeates  
175 East 400 South  
Salt Lake City, Utah 84111

*Court-Appointed Receiver for  
Corporate Defendants*

/s/Daniel Hanks

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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

INFUSION MEDIA, INC., *et al.*,

Defendants.

**Civil Action No. 2:09-cv-01112-  
RCJ-LRL**

**STIPULATED  
PRELIMINARY  
INJUNCTION WITH ASSET  
FREEZE, APPOINTMENT OF  
RECEIVER, AND OTHER  
EQUITABLE RELIEF**

THIS MATTER comes before the Court upon the stipulation of Plaintiff Federal Trade Commission (“FTC” or the “Commission”) and Defendants Infusion Media, Inc., West Coast Internet Media, Inc., Two Warnings, LLC, Two Part Investments, LLC, Platinum Teleservices, Inc., Jonathan Eborn, Stephanie Burnside, Michael McLain Miller, and Tony Norton for the entry of a preliminary injunction.

WHEREAS, the FTC has filed its Complaint for Permanent Injunction and Other Equitable Relief, and the Complaint and summons have been served on Defendants;

WHEREAS, on June 23, 2009, the Court, having considered the Complaint, the Commission’s *ex parte* motion for a temporary restraining order, declarations, exhibits, and the memorandum of points and authorities filed in support thereof, issued a temporary restraining order (“TRO”) against all Defendants;

WHEREAS the Commission has alleged that:

1. This Court has jurisdiction of the subject matter of this case and over all named parties;

2. There is a substantial likelihood that the Commission will ultimately succeed in establishing that Defendants have engaged in acts and practices that violate Section 5(a) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45(a), as well as Section 917(c) of the Electronic Fund Transfer Act, 15 U.S.C. § 1693o(c), and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b), and, therefore, the

1 Commission is likely to prevail on the merits of this action;

2 3. Immediate and irreparable harm will result from Defendants' ongoing  
3 violations of the FTC Act, the EFTA, and Regulation E unless Defendants are restrained  
4 and enjoined by Order of this Court;

5 4. This Court's ability to grant effective final relief for consumers would be  
6 immediately and irreparably harmed unless the Defendants are enjoined from selling,  
7 transferring, or otherwise disposing of or concealing their assets;

8 5. Good cause exists for (a) the continued appointment of the Receiver;  
9 (b) the freezing of the Defendants' assets; and (c) ancillary relief;

10 6. Weighing the equities and considering the Commission's likelihood of  
11 ultimate success in its causes of action, this Preliminary Injunction is in the public  
12 interest;

13 WHEREAS the Defendants, by agreeing to this Order, make no admission as to  
14 the truth of Plaintiff's allegations recited above, in the TRO, or in the Complaint, or as to  
15 the relief that should be granted in this action;

16 WHEREAS the parties, by agreeing to this Order, do not waive their rights as  
17 provided under the Federal Rules of Civil Procedure and the Local Rules of this Court to  
18 subsequently seek modification or extinguishment of this Order;

19 WHEREAS the parties, by their undersigned attorneys, agree to the entry of this  
20 Order for Preliminary Injunction, which shall remain in effect until this Court's  
21 determination of the merits of this action or until otherwise modified; and

22 WHEREAS Plaintiff FTC is an independent agency of the United States of  
23 America and no security is required of any agency of the United States for the issuance  
24 of a preliminary injunction, *see* Fed. R. Civ. P. 65(c);

25 IT IS AGREED TO by the undersigned parties and their attorneys of record as  
26 follows:

**DEFINITIONS**

For the purpose of this 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 of any Corporate Defendant or Individual Defendant, or held for the benefit of any Corporate Defendant or Individual Defendant, wherever located, including, but not limited to, chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, contracts, mail or other deliveries, shares of stock, inventory, checks, notes, accounts, credits, receivables (as those terms are defined in the Uniform Commercial Code), cash, and 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. “Charge” means any amount charged or debited to a consumer’s credit card, debit card, checking, savings, share or similar financial account, or collected from a consumer by any other method.

3. “Clearly and Conspicuously” means that:

- a. with regard to print advertisements, solicitations, or other promotional material, 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; and in multi-page promotional materials, the disclosure shall appear on the cover or first page; and
- b. with regard to Internet advertisements, solicitations, or other promotional material, the disclosure shall be made next to any advertised price or cost (including free), and where consumers’ financial account information is required, without the use of pop-up

1 windows or hyperlinks to other electronic pages to display Material  
2 information.

3 4. “Continuity Program” means any plan, arrangement, or system under  
4 which a consumer is periodically charged for products or services, including but not  
5 limited to access to a “member only” website, without prior notification by the seller  
6 before each charge, regardless of any trial or approval period allowing the consumer to  
7 cancel the program.

8 5. “Corporate Defendants” means Infusion Media, Inc., West Coast Internet  
9 Media, Inc., Two Warnings, LLC, Two Part Investments, LLC, and Platinum  
10 Teleservices, Inc., and their successors, affiliates or subsidiaries.

11 6. “Defendants” means all of the Individual Defendants and the Corporate  
12 Defendants, individually, collectively, or in any combination.

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

19 8. “Individual Defendants” means Jonathan Eborn, Stephanie Burnside,  
20 Michael McLain Miller, and Tony Norton.

21 9. “Material” means likely to affect a person’s choice of, or conduct  
22 regarding, goods or services.

23 10 “Negative Option feature” means, in an offer or agreement to sell  
24 or provide any goods or services, a provision under which the customer’s silence or  
25 failure to take an affirmative action to reject goods or services or to cancel the agreement  
26 is interpreted by the seller as acceptance of the offer.

1 11. "Order" means this Stipulated Preliminary Injunction.

2 12. "Person" means a natural person, organization, or other legal entity,  
3 including a corporation, partnership, proprietorship, association, cooperative,  
4 government or governmental subdivision or agency, or any other group or combination  
5 acting as an entity.

6 13. "Plaintiff" means the Federal Trade Commission.

7 14. "Preauthorized Electronic Fund Transfer," as defined by the Electronic  
8 Fund Transfer Act, 15 U.S.C. § 1693a(9), means an electronic fund transfer authorized  
9 in advance to recur at substantially regular intervals.

10 15. "Receiver" means the permanent receiver appointed in Section XI of this  
11 Order and any deputy receivers that shall be named by the permanent receiver.

12 16. "Receivership Defendants" means the Corporate Defendants.

13 17. "Representatives" means Defendants' successors, assigns, officers, agents,  
14 servants, employees, or attorneys, and any person or entity in active concert or  
15 participation with them who receives actual notice of this Order by personal service or  
16 otherwise.

17 18. "TRO" means the Temporary Restraining Order entered by the Court in  
18 this action on June 23, 2009, amended on June 24, 2009, and subsequently extended by  
19 the Court.

20 **I.**

21 **PROHIBITED BUSINESS ACTIVITIES**

22 **IT IS THEREFORE ORDERED** that, in connection with any product or service  
23 that is advertised, marketed, promoted, offered for sale, or sold by Defendants and their  
24 Representatives, whether directly or through any entity, corporation, subsidiary, division,  
25 affiliate, or other device, the Defendants and their Representatives are **hereby**  
26 **restrained and enjoined** from:

- 1           A.     Failing to disclose, Clearly and Conspicuously, before consumers provide  
2           any billing information or incur a Charge:
- 3           1.     all products and services that are part of the sales offer, including  
4           but not limited to (i) any Continuity Program and (ii) goods and  
5           services provided by third parties;
- 6           2.     all Charge(s) for all products and services that are part of the sales  
7           offer, including but not limited to (i) any Continuity Program and  
8           (ii) goods and services provided by third parties;
- 9           3.     that consumers are being enrolled in or will be enrolled in a  
10          Continuity Program, if that is the case, and the specific steps  
11          consumers must follow to cancel enrollment in the Continuity  
12          Program to avoid incurring any Charge; and
- 13          4.     any Negative Option feature of any product or service.
- 14          B.     Misrepresenting, in any manner, expressly or by implication, any Material  
15          term regarding any such product or service, including, but not limited to:
- 16          1.     the amount of any Charges(s);
- 17          2.     the products or services included in the sales offer; and
- 18          3.     in conjunction with any Continuity Program:
- 19              a.     that consumers are signing up for a Continuity Program;
- 20              b.     the length of any trial period;
- 21              c.     that consumers who do not take affirmative action to cancel  
22              the Continuity Program within the trial period (if the  
23              Continuity Program includes a trial period) will incur a  
24              Charge;
- 25              d.     the Charge(s) that will be imposed on consumers in  
26              connection with the Continuity Program, and the date(s) the  
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1 Charge(s) will be submitted for payment;

2 e. the specific steps consumers must take to avoid the Charge(s)  
3 and to cancel the Continuity Program;

4 f. that consumers' requests to cancel their participation in the  
5 Continuity Program will be honored; and

6 g. that consumers will be able to easily cancel their  
7 participation in the Continuity Program;

8 C. Failing to disclose or to disclose adequately all Material terms regarding  
9 any refund policy.

10 D. Failing to honor a request to cancel any sale or transaction involving  
11 enrollment in a Continuity Program and to provide a refund in accordance  
12 with any disclosed guarantee, refund, or return policy.

13 **II.**

14 **PROHIBITED REPRESENTATIONS**

15 **IT IS FURTHER ORDERED** that, in connection with the advertising,  
16 marketing, promotion, offering for sale, or sale of any product or service, Defendants  
17 and their Representatives, whether acting directly or through any entity, corporation,  
18 subsidiary, division, affiliate or other device, are **hereby restrained and enjoined** from:

19 A. Making, in any manner, expressly or by implication, any Material false or  
20 unsubstantiated representation about such product or service, including but  
21 not limited to

22 1. False or unsubstantiated representations about income, earnings, or  
23 profits that consumers who order such product or service are likely  
24 to earn;

25 2. Falsely representing an affiliation with any business entity,  
26 including but not limited to Google Inc.

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**III.**

**ACTIVITIES PROHIBITED PURSUANT TO THE ELECTRONIC FUNDS  
TRANSFER ACT**

IT IS FURTHER ORDERED that Defendants and their Representatives, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, are **hereby restrained and enjoined** from:

- A. Failing to obtain written authorization for Preauthorized Electronic Fund Transfers from a consumer's account before initiating any Preauthorized Electronic Fund Transfer, as required by Section 907(a) of EFTA, 15 U.S.C. § 1693e(a), and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b), and as more fully set out in Section 205.10 of the Federal Reserve Board's Official Staff Commentary to Regulation E, 12 C.F.R. § 205, Supp. I, including providing a copy of the written authorization to the consumer; and
- B. In connection with any consumer who is enrolled into any Continuity Program subsequent to the date of this Order and who uses a debit card or other means of electronic funds transfer, failing to maintain procedures reasonably adapted to avoid an unintentional failure to obtain written authorization for a Preauthorized Electronic Fund Transfer, as required in Section 205.10 of the Federal Reserve Board's Official Staff Commentary to Regulation E, 12 C.F.R. § 205, Supp. I.

**IV.**

**ASSET FREEZE**

**IT IS FURTHER ORDERED** that Defendants and their Representatives are hereby restrained and enjoined from:

- A. Transferring, liquidating, converting, encumbering, pledging, loaning,

1 selling, concealing, dissipating, disbursing, assigning, spending, withdrawing,  
2 granting a lien or security interest or other interest in, or otherwise disposing of  
3 any funds, real or personal property, accounts, contracts, consumer lists, shares of  
4 stock, or other assets, or any interest therein, wherever located, whether within the  
5 United States or within a jurisdiction outside the United States, that are: (1)  
6 owned or controlled by any Defendant, in whole or in part; (2) held for the direct  
7 or indirect benefit of any Defendant; (3) in the actual or constructive possession  
8 of any Defendant; (4) owned, controlled by, or in the actual or constructive  
9 possession of or otherwise held for the benefit of any corporation, partnership,  
10 asset protection trust, or other entity directly or indirectly owned, managed, or  
11 controlled by any Defendant, or of which any Defendant is an Officer, Director,  
12 Member, or Manager, including but not limited to any assets held by, for, or  
13 subject to access by, any Defendant at any bank or savings and loan institution, or  
14 with any broker-dealer, escrow agent, title company, commodity trading  
15 company, precious metals dealer, or other financial institution or depository of  
16 any kind; or (5) held in any account for which any Defendant is an authorized  
17 signer.

18 B. Physically opening or causing to be opened any safe deposit boxes titled in  
19 the name of, or subject to access by, any Defendant;

20 C. Incurring charges or cash advances on any credit card issued in the name,  
21 singly or jointly, of any Corporate Defendant or any corporation, partnership, or  
22 other entity directly or indirectly owned, managed, or controlled by any  
23 Defendant, or of which any Defendant is an Officer, Director, Member, or  
24 Manager;

25 D. Obtaining a personal or secured loan encumbering the assets of any  
26 Defendant or any corporation, partnership, or other entity directly or indirectly  
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1 owned, managed, or controlled by any Defendant, or of which any Defendant is  
2 an Officer, Director, Member, or Manager; and

3 E. Incurring liens or other encumbrances on real property, personal property  
4 or other assets titled in the name, singly or jointly, of any Defendant or any  
5 corporation, partnership, or other entity directly or indirectly owned, managed, or  
6 controlled by any Defendant, or of which any Defendant is an Officer, Director,  
7 Member, or Manager.

8 The assets affected by this Section IV shall include: (1) all such assets as of the  
9 time of issuance of the TRO; and (2) assets obtained after the time of issuance of the  
10 TRO if such assets are derived from any activity that is prohibited by Sections I, II, or III  
11 of this Order.

## 12 V.

### 13 DUTIES OF ASSET HOLDERS

14 **IT IS FURTHER ORDERED** that any financial or brokerage institution, credit  
15 card processing company, payment processor, merchant bank, acquiring bank, business  
16 entity, or person served with a copy of this Order that (a) holds, controls, or maintains  
17 custody of any account, safe deposit box, or other asset of any Defendant or any  
18 corporation, partnership, or other entity directly or indirectly owned, managed, or  
19 controlled by any Defendant, or of which any Defendant is an Officer, Director,  
20 Member, or Manager, (b) holds, controls, or maintains custody of any asset associated  
21 with credit or debit card charges, including but not limited to reserve funds held by  
22 payment processors, made on behalf of any Defendant or any corporation, partnership, or  
23 other entity directly or indirectly owned, managed, or controlled by any Defendant, or of  
24 which any Defendant is an Officer, Director, Member, or Manager; or (c) has maintained  
25 at any time since September 1, 2008, any such account, safe deposit box, or other asset  
26 of any Defendant or any corporation, partnership, or other entity directly or indirectly

1 owned, managed, or controlled by any Defendant, or of which any Defendant is an  
2 Officer, Director, Member, or Manager, shall:

- 3       A.     Hold and retain within its control and prohibit the withdrawal, removal,  
4             assignment, transfer, pledge, encumbrance, disbursement, dissipation,  
5             conversion, sale, or other disposal of any such asset, except by further  
6             order of the Court;
- 7       B.     Deny any person, except the Receiver acting pursuant to Section XII of  
8             this Order, access to any safe deposit box that is titled in the name of,  
9             individually or jointly, or otherwise subject to access by, any Defendant;
- 10       C.    Provide the Commission's counsel, within five (5) business days of  
11            receiving a copy of this Order, a sworn statement setting forth:
- 12            1.     The identification number of each such account or asset;
- 13            2.     The balance of each such account, or a description of the nature and  
14                 value of such asset as of the close of business on the day on which  
15                 this Order is served, and, if the account or other asset has been  
16                 closed or removed, the date closed or removed, the total funds  
17                 removed in order to close the account, and the name of the person  
18                 or entity to whom such account or other asset was remitted; and
- 19            3.     The identification of any safe deposit box that is titled in the name  
20                 of, individually or jointly, or otherwise subject to access by, any  
21                 Defendant; and
- 22       D.    Upon request by the Commission, promptly provide the Commission with  
23             copies of all records or other documentation pertaining to each such  
24             account or asset, including, but not limited to, originals or copies of  
25             account applications, account statements, signature cards, checks, drafts,  
26             deposit tickets, transfers to and from the accounts, all other debit and credit  
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1 instruments or slips, currency transaction reports, 1099 forms, and safe  
2 deposit box logs.

3 **VI.**

4 **PRESERVATION OF RECORDS**

5 **IT IS FURTHER ORDERED** that Defendants and their Representatives,  
6 whether acting directly or through any entity, corporation, subsidiary, division, affiliate  
7 or other device, are hereby restrained and enjoined from:

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

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

15 **VII.**

16 **PROHIBITIONS AGAINST DISCLOSURE OF CUSTOMER INFORMATION**

17 **IT IS FURTHER ORDERED** that Defendants and their Representatives,  
18 whether acting directly or through any entity, corporation, subsidiary, division, affiliate  
19 or other device, are hereby restrained and enjoined from disclosing, using, or benefitting  
20 from customer information, including the name, address, telephone number, e-mail  
21 address, social security number, other identifying information, or any data that enables  
22 access to a customer's account (including a credit card, bank account, or other financial  
23 account), of any person that was obtained by any Defendant in connection with any  
24 activity that is prohibited by Sections I, II, or III of this Order. *Provided, however,* that  
25 customer information may be disclosed, to the extent requested by a government agency  
26 or required by a law, regulation, or court order.

1 **VIII.**

2 **FINANCIAL DISCLOSURES**

3 **IT IS FURTHER ORDERED** that Section VI of the TRO, requiring financial  
4 disclosures from all Defendants on the forms annexed to the TRO, shall remain in full  
5 force and effect with respect to all Defendants.

6 **IX.**

7 **CONSUMER CREDIT REPORTS**

8 **IT IS FURTHER ORDERED** that pursuant to Section 604(1) of the Fair Credit  
9 Reporting Act, 15 U.S.C. § 1681b(a)(1), any consumer reporting agency may furnish to  
10 the Commission a consumer report concerning any Defendant.

11 **X.**

12 **FOREIGN ASSET REPATRIATION**

13 **IT IS FURTHER ORDERED** that within five (5) days following the service of  
14 this Order, each Defendant shall, if they have not done so already in compliance with the  
15 TRO:

- 16 A. Provide the Commission and the Receiver with a full accounting of all  
17 funds, documents, and assets outside of the United States which are:  
18 (1) titled in the name, individually or jointly, of any Defendant; or (2) held  
19 by any person or entity for the benefit of any Defendant; or (3) under the  
20 direct or indirect control, whether jointly or singly, of any Defendant;
- 21 B. Transfer to the territory of the United States and deliver to the Receiver all  
22 funds, documents, and assets located in foreign countries which are:  
23 (1) titled in the name individually or jointly of any Defendant; or (2) held  
24 by any person or entity, for the benefit of any Defendant; or (3) under the  
25 direct or indirect control of any Defendant, whether jointly or singly;
- 26 C. Provide the Commission access to all records of accounts or assets of any  
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1 Defendant held by financial institutions located outside the territorial  
2 United States by signing the Consent to Release of Financial Records  
3 appended to the TRO as Attachment C.

4 **XI.**

5 **NONINTERFERENCE WITH REPATRIATION**

6 **IT IS FURTHER ORDERED** that Defendants and their Representatives are  
7 hereby restrained and enjoined from taking any action, directly or indirectly, which may  
8 result in the encumbrance or dissipation of foreign assets, or in the hindrance of the  
9 repatriation required by Section IX of this Order, including but not limited to:

- 10 A. Sending any statement, letter, fax, e-mail or wire transmission, telephoning  
11 or engaging in any other act, directly or indirectly, that results in a  
12 determination by a foreign trustee or other entity that a “duress” event has  
13 occurred under the terms of a foreign trust agreement until such time that  
14 all assets have been fully repatriated pursuant to Section IX of this Order;
- 15 B. Notifying any trustee, protector or other agent of any foreign trust or other  
16 related entities of either the existence of this Order, or of the fact that  
17 repatriation is required pursuant to a Court Order, until such time that all  
18 assets have been fully repatriated pursuant to Section IX of this Order.

19 **XII.**

20 **APPOINTMENT OF RECEIVER**

21 **IT IS FURTHER ORDERED** that Robert G. Wing, having been appointed  
22 temporary receiver by the TRO, shall continue to serve as Receiver for the Receivership  
23 Defendants. The Receiver shall be the agent of this Court, and solely the agent of this  
24 Court, in acting as Receiver under this Order. The Receiver shall be accountable directly  
25 to this Court.

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**XIII.**

**RECEIVER'S DUTIES**

**IT IS FURTHER ORDERED** that the Receiver is authorized and directed 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 any 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 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 under the direction, possession, custody, or control of, the Receivership Defendants. The Receiver shall assume control over the income and profits therefrom and all sums of money now or hereafter due or owing to the Receivership Defendants. *Provided, however,* that the Receiver shall not attempt to collect any amount from a consumer if the Receiver believes the consumer was a victim of the unfair or deceptive acts or practices or other violations of law alleged in the Complaint in this matter, without prior Court approval;
- C. Take all steps necessary to secure each location from which the Receivership Defendants operate their business. Such steps may include, but are not limited to, any of the following, as the Receiver deems

1 necessary or advisable: (1) serving this Order; (2) completing a written  
2 inventory of all Receivership assets; (3) obtaining pertinent information  
3 from all employees and other agents of the Receivership Defendants,  
4 including, but not limited to, the name, home address, Social Security  
5 Number, job description, passwords or access codes, method of  
6 compensation, and all accrued and unpaid commissions and compensation  
7 of each such employee or agent; (4) photographing and video taping any or  
8 all portions of the location; (5) securing the location by changing the locks  
9 and disconnecting any computer modems or other means of access to the  
10 computer or other records maintained at that location; and (6) requiring  
11 any persons present on the premises at the time this Order is served to  
12 leave the premises, to provide the Receiver with proof of identification, or  
13 to demonstrate to the satisfaction of the Receiver that such persons are not  
14 removing from the premises documents or assets of the Receivership  
15 Defendants. Law enforcement personnel, including, but not limited to,  
16 police or sheriffs, may assist the Receiver in implementing these  
17 provisions in order to keep the peace and maintain security. If requested  
18 by the Receiver, the United States Marshal will provide appropriate and  
19 necessary assistance to the Receiver to implement this Order and is  
20 authorized to use any necessary and reasonable force to do so;

21 D. Conserve, hold, and manage all assets of the Receivership Defendants, and  
22 perform all acts necessary or advisable to preserve the value of those assets  
23 in order to prevent any irreparable loss, damage, or injury to consumers or  
24 creditors of the Receivership Defendants, including but not limited to  
25 obtaining an accounting of the assets and preventing the unauthorized  
26 transfer, withdrawal, or misapplication of assets; liquidating assets to  
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1 preserve their value; vacating business premises; relocating records and  
2 tangible assets to a secure facility; and winding down the Receivership  
3 Defendants.

4 E. Enter into and cancel contracts and purchase insurance as advisable or  
5 necessary;

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

9 G. Manage and administer the business of the Receivership Defendants until  
10 further order of this Court by performing all incidental acts that the  
11 Receiver deems to be advisable or necessary, which includes but is not  
12 limited to retaining, hiring, or dismissing any employees, independent  
13 contractors, or agents;

14 H. Choose, engage, and employ attorneys, accountants, appraisers, and other  
15 independent contractors and technical specialists, as the Receiver deems  
16 advisable or necessary in the performance of duties and responsibilities  
17 under the authority granted by this Order;

18 I. Make payments and disbursements from the receivership estate that are  
19 necessary or advisable for carrying out the directions of, or exercising the  
20 authority granted by, this Order. The Receiver shall apply to the Court for  
21 prior approval of any payment of any debt or obligation incurred by the  
22 Receivership Defendants prior to the date of entry of this Order, except  
23 payments that the Receiver deems necessary or advisable to secure assets  
24 of the Receivership Defendants, such as rental payments;

25 J. Suspend business operations of the Receivership Defendants if in the  
26 judgment of the Receiver such operations cannot be continued legally and  
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- 1            profitably;
- 2            K.    Institute, compromise, adjust, appear in, intervene in, or become party to
- 3            such actions or proceedings in state, federal or foreign courts or arbitration
- 4            proceedings as the Receiver deems necessary and advisable to preserve or
- 5            recover the assets of the Receivership Defendants, or that the Receiver
- 6            deems necessary and advisable to carry out the Receiver's mandate under
- 7            this Order, including but not limited to, actions challenging fraudulent or
- 8            voidable transfers;
- 9            L.    Defend, compromise, adjust, or otherwise dispose of any or all actions or
- 10           proceedings instituted in the past or in the future against the Receiver in his
- 11           role as Receiver, or against the Receivership Defendants, as the Receiver
- 12           deems necessary and advisable to preserve the assets of the Receivership
- 13           Defendants, or as the Receiver deems necessary and advisable to carry out
- 14           the Receiver's mandate under this Order;
- 15           M.    Issue subpoenas to obtain documents and records pertaining to the
- 16           Receivership, and conduct discovery in this action on behalf of the
- 17           Receivership estate;
- 18           N.    Open one or more bank accounts as designated depositories for funds of
- 19           the Receivership Defendants. The Receiver shall deposit all funds of the
- 20           Receivership Defendants in such a designated account and shall make all
- 21           payments and disbursements from the Receivership estate from such an
- 22           account. The Receiver shall serve copies of monthly account statements
- 23           on all parties;
- 24           O.    Maintain accurate records of all receipts and expenditures incurred as
- 25           Receiver; and
- 26           P.    Cooperate with reasonable requests for information or assistance from any
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1 state or federal law enforcement agency.

2 **XIV.**

3 **TRANSFER OF RECEIVERSHIP PROPERTY TO RECEIVER**

4 **IT IS FURTHER ORDERED** that Defendants, their Representatives, and any  
5 other person or entity with possession, custody or control of property of or records  
6 relating to the Receivership Defendants shall upon notice of this Order by personal  
7 service or otherwise immediately notify the Receiver of, and, upon receiving a request  
8 from the Receiver, immediately transfer or deliver to the Receiver possession, custody,  
9 and control of, the following:

- 10 A. All assets of the Receivership Defendants;
- 11 B. All documents of the Receivership Defendants, including, but not limited  
12 to, books and records of accounts, all financial and accounting records,  
13 balance sheets, income statements, bank records (including monthly  
14 statements, canceled checks, records of wire transfers, and check registers),  
15 client lists, title documents and other papers;
- 16 C. All computers and data in whatever form used to conduct the business of  
17 the Receivership Defendants;
- 18 D. All assets belonging to other persons or entities whose interests are now  
19 under the direction, possession, custody, or control of, the Receivership  
20 Defendants; and
- 21 E. All keys, codes, and passwords necessary to gain or to secure access to any  
22 assets or documents of the Receivership Defendants, including, but not  
23 limited to, access to their business premises, means of communication,  
24 accounts, computer systems, or other property.

25 In the event that any person or entity fails to deliver or transfer any asset or  
26 otherwise fails to comply with any provision of this Section XIII, the Receiver may file  
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1 *ex parte* an Affidavit of Non-Compliance regarding the failure. Upon filing of the  
2 affidavit, the Court may authorize, without additional process or demand, Writs of  
3 Possession or Sequestration or other equitable writs requested by the Receiver. The  
4 writs shall authorize and direct the United States Marshal or any sheriff or deputy sheriff  
5 of any county, or any other federal or state law enforcement officer, to seize the asset,  
6 document, or other item covered by this Section XIII and to deliver it to the Receiver.

7 **XV.**

8 **PROVISION OF INFORMATION TO RECEIVER**

9 **IT IS FURTHER ORDERED** that Defendants shall provide to the Receiver,  
10 immediately upon request, the following:

- 11 A. A list of all assets and property, including accounts, of the Receivership  
12 Defendants that are held in any name other than the name of a  
13 Receivership Defendant, or by any person or entity other than a  
14 Receivership Defendant; and  
15 B. A list of all agents, employees, officers, servants or those persons in active  
16 concert and participation with the Individual Defendants and Receivership  
17 Defendants, who have been associated or done business with the  
18 Receivership Defendants.

19 **XVI.**

20 **COOPERATION WITH THE RECEIVER**

21 **IT IS FURTHER ORDERED** that Defendants, their Representatives, and all  
22 other persons or entities served with a copy of this Order shall fully cooperate with and  
23 assist the Receiver in taking and maintaining possession, custody, or control of the assets  
24 of the Receivership Defendants. This cooperation and assistance shall include, but not  
25 be limited to: providing information to the Receiver that the Receiver deems necessary  
26 in order to exercise the authority and discharge the responsibilities of the Receiver under  
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1 this Order; providing any password required to access any computer, electronic file, or  
2 telephonic data in any medium; advising all persons who owe money to the Receivership  
3 Defendants that all debts should be paid directly to the Receiver; and transferring funds  
4 at the Receiver's direction and producing records related to the assets and sales of the  
5 Receivership Defendants. The entities obligated to cooperate with the Receiver under  
6 this provision include, but are not limited to, banks, broker-dealers, savings and loans,  
7 escrow agents, title companies, commodity trading companies, precious metals dealers  
8 and other financial institutions and depositories of any kind, and all third-party billing  
9 agents (including but not limited to payment processors), common carriers, and other  
10 telecommunications companies, that have transacted business with the Receivership  
11 Defendants.

12 **XVII.**

13 **NONINTERFERENCE WITH THE RECEIVER**

14 **IT IS FURTHER ORDERED** that Defendants and their Representatives are  
15 hereby restrained and enjoined from directly or indirectly:

- 16 A. Interfering with the Receiver managing, or taking custody, control, or  
17 possession of, the assets or documents subject to this Receivership;  
18 B. Transacting any of the business of the Receivership Defendants;  
19 C. Transferring, receiving, altering, selling, encumbering, pledging, assigning,  
20 liquidating, or otherwise disposing of any assets owned, controlled, or in  
21 the possession or custody of, or in which an interest is held or claimed by,  
22 the Receivership Defendants, or the Receiver; and  
23 D. Refusing to cooperate with the Receiver or the Receiver's duly authorized  
24 agents in the exercise of their duties or authority under any order of this  
25 Court.  
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1 **XVIII.**

2 **STAY OF ACTIONS AGAINST RECEIVERSHIP DEFENDANTS**

3 **IT IS FURTHER ORDERED** that, except by leave of this Court, during  
4 pendency of the Receivership ordered herein, Defendants, their Representatives, and all  
5 investors, creditors, stockholders, lessors, customers and other persons seeking to  
6 establish or enforce any claim, right, or interest against or on behalf of Defendants, and  
7 all others acting for or on behalf of such persons, are hereby enjoined from taking action  
8 that would interfere with the exclusive jurisdiction of this Court over the assets or  
9 documents of the Receivership Defendants, including, but not limited to:

- 10 A. Petitioning, or assisting in the filing of a petition, that would cause any  
11 Receivership Defendant to be placed in bankruptcy;
- 12 B. Commencing, prosecuting, or continuing a judicial, administrative, or  
13 other action or proceeding against the Receivership Defendants, including  
14 the issuance or employment of process against the Receivership  
15 Defendants, *except* that such actions may be commenced if necessary to  
16 toll any applicable statute of limitations;
- 17 C. Filing or enforcing any lien on any asset of the Receivership Defendants,  
18 taking or attempting to take possession, custody, or control of any asset of  
19 the Receivership Defendants; or attempting to foreclose, forfeit, alter, or  
20 terminate any interest in any asset of the Receivership Defendants, whether  
21 such acts are part of a judicial proceeding, are acts of self-help, or  
22 otherwise;
- 23 D. Initiating any other process or proceeding that would interfere with the  
24 Receiver managing or taking custody, control, or possession of, the assets  
25 or documents subject to this receivership.

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

6 **XIX.**

7 **RECEIVER'S REPORTS**

8 **IT IS FURTHER ORDERED** that the Receiver shall report to this Court, no  
9 later than sixty (60) days after the date of entry of this Preliminary Injunction and each  
10 ninety (90) days thereafter, regarding: (1) the steps taken by the Receiver to implement  
11 the terms of this Order; (2) the value of all liquidated and unliquidated assets of the  
12 Receivership Defendants; (3) the sum of all liabilities of the Receivership Defendants;  
13 (4) the steps the Receiver intends to take in the future to (a) prevent any diminution in  
14 the value of the assets of the Receivership Defendants; (b) pursue receivership assets  
15 from third parties; and (c) adjust the liabilities of the Receivership Defendants, if  
16 appropriate; and (5) any matters which the Receiver believes should be brought to the  
17 Court's attention. *Provided, however,* if any of the required information would hinder  
18 the Receiver's ability to pursue receivership assets, the portions of the Receiver's report  
19 containing such information may be filed under seal and not served on the parties.

20 **XX.**

21 **COMPENSATION OF RECEIVER**

22 **IT IS FURTHER ORDERED** that the Receiver and all personnel hired by the  
23 Receiver as herein authorized, including counsel to the Receiver and accountants, are  
24 entitled to reasonable compensation for the performance of duties pursuant to this Order  
25 and for the cost of actual out-of-pocket expenses incurred by them, from the assets now  
26 held by, in the possession or control of, or which may be received by, the Receivership  
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1 Defendants. The Receiver shall file with the Court and serve on the parties periodic  
2 requests for the payment of such reasonable compensation, with the first such request  
3 filed no more than sixty (60) days after the date of entry of this Order and each  
4 subsequent request filed at intervals of no more than ninety (90) days, or upon any other  
5 schedule specified by the Court. The Receiver shall not increase the hourly rates used as  
6 the bases for such fee applications without prior approval of the Court.

7 **XXI.**

8 **RECEIVER'S BOND**

9 **IT IS FURTHER ORDERED** that the Receiver, to the extent not already done  
10 pursuant to the TRO, shall file with the Clerk of this Court a bond in the sum of  
11 \$25,000.00 with sureties to be approved by the Court, conditioned that the Receiver will  
12 well and truly perform the duties of the office and abide by and perform all acts the  
13 Court directs. 28 U.S.C. § 754.

14 **XXII.**

15 **ACCESS TO BUSINESS OFFICES AND RECORDS**

16 **IT IS FURTHER ORDERED** that the Receiver shall allow representatives of  
17 the Commission reasonable access to all business premises within the scope of this  
18 Order, including but not limited to (i) 405 East 12450 South, Draper, Utah, 84020, and  
19 (ii) 13961 Minuteman Drive, Suite 150, Draper, Utah, 84020, and to all premises where  
20 any of the Defendants' business records may be located. The Commission and the  
21 Receiver, and their representatives, agents, and assistants, are authorized to remove  
22 documents from such premises in order that they may be inspected, inventoried, and/or  
23 copied, following which they will be returned to the premises from which they were  
24 removed.

25 Furthermore, the Receiver shall allow Defendants reasonable access to the  
26 premises and business records of the Receivership Defendants within his possession for  
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1 the purpose of inspecting and copying materials relevant to this action. The Receiver  
2 shall have the discretion to determine the reasonable time, manner, and conditions of  
3 such access.

4 **XXIII.**

5 **BANKRUPTCY PETITIONS**

6 **IT IS FURTHER ORDERED** that, in light of the appointment of the Receiver,  
7 the Receivership Defendants are hereby prohibited from filing a petition for relief under  
8 the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.* without prior permission of  
9 this Court.

10 **XXIV.**

11 **EXPEDITED DISCOVERY**

12 **IT IS FURTHER ORDERED** that, pursuant to Rule 26(d) of the Federal Rules  
13 of Civil Procedure, discovery may commence at any time after the entry of this Order.

14 **XXV.**

15 **SERVICE BY FACSIMILE AUTHORIZED**

16 **IT IS FURTHER ORDERED** that copies of this Order may be served by any  
17 means, including facsimile transmission, upon any financial institution or other entity or  
18 person that may have possession, custody, or control of any documents or assets of any  
19 Defendant, or that may otherwise be subject to any provision of this Order. Service upon  
20 any branch or office of any financial institution shall effect service upon the entire  
21 financial institution.

22 **XXVI.**

23 **DEFENDANTS' DUTY TO DISTRIBUTE ORDER**

24 **IT IS FURTHER ORDERED** that Defendants shall immediately provide a copy  
25 of this Order to each of their affiliates, subsidiaries, divisions, sales entities, successors,  
26 assigns, officers, directors, employees, independent contractors, client companies,

1 agents, attorneys, spouses and representatives, and shall, within ten (10) days from the  
2 date of entry of this Order, provide the Commission with a sworn statement that:  
3 (A) confirms that Defendants have provided copies of the Order as required by this  
4 paragraph; and (B) lists the names and addresses of each entity or person to whom  
5 Defendants provided a copy of the Order. Furthermore, Defendants shall not take any  
6 action that would encourage officers, agents, directors, employees, salespersons,  
7 independent contractors, attorneys, subsidiaries, affiliates, successors, assigns or other  
8 persons or entities in active concert or participation with them to disregard this Order or  
9 believe that they are not bound by its provisions.

10 **XXVII.**

11 **ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS**

12 **IT IS FURTHER ORDERED** that each Individual Defendant, within five (5)  
13 business days of entry of this Order, must submit to the Plaintiff a truthful sworn  
14 statement acknowledging having received and read this Order.

15 **XXVIII.**

16 **CORRESPONDENCE WITH AND NOTICE TO PLAINTIFF**

17 **IT IS FURTHER ORDERED** that for purposes of this Order, all  
18 correspondence and pleadings to the Commission shall be addressed to:

19 Daniel O. Hanks  
20 Kathleen Benway  
21 Federal Trade Commission  
22 600 Pennsylvania Ave NW  
23 Mail Stop H-286  
24 Washington, DC 20580  
25 (202) 326-2472, 326-2024 [telephone]  
26 (202) 326-3395 [facsimile]  
27 dhanks@ftc.gov; kbenway@ftc.gov

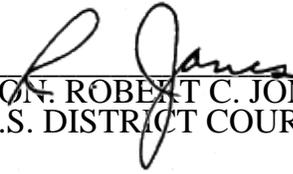
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**XXIX.**

**RETENTION OF JURISDICTION**

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

**IT IS SO ORDERED.**

  
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HON. ROBERT C. JONES  
U.S. DISTRICT COURT JUDGE

DATED: September 10, 2009