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12 UNITED STATES DISTRICT COURT
13 DISTRICT OF NEVADA

14 FEDERAL TRADE COMMISSION,

15 Plaintiff,

16 v.

17 INFUSION MEDIA, INC.,
18 a corporation, also
19 d/b/a Google Money Tree,
20 Google Pro,
21 Internet Income Pro, and
22 Google Treasure Chest;

21 WEST COAST INTERNET MEDIA, INC.,
22 a corporation, also
23 d/b/a Google Money Tree,
24 Google Pro,
25 Internet Income Pro, and
26 Google Treasure Chest;

24 TWO WARNINGS, LLC,
25 a limited liability company;

26 TWO PART INVESTMENTS, LLC,
27 a limited liability company;

Civil Action No.

AMENDED

**EX PARTE TEMPORARY
RESTRAINING ORDER
WITH ASSET FREEZE,
APPOINTMENT OF
TEMPORARY RECEIVER,
AND OTHER EQUITABLE
RELIEF, AND ORDER TO
SHOW CAUSE WHY A
PRELIMINARY
INJUNCTION SHOULD NOT
ISSUE**

[FILED UNDER SEAL]

1 PLATINUM TELESERVICES, INC.,
 2 a corporation;

3 JONATHAN EBORN,
 4 individually and as an officer of
 5 Infusion Media, Inc.,
 6 Two Warnings, LLC,
 7 Two Part Investments, LLC, and
 8 West Coast Internet Media, Inc.;

9 STEPHANIE BURNSIDE,
 10 individually and as an officer of
 11 Two Warnings, LLC,
 12 Two Part Investments, LLC, and
 13 West Coast Internet Media, Inc.;

14 MICHAEL McLAIN MILLER,
 15 individually and as an officer of
 16 Infusion Media, Inc.,
 17 Two Warnings, LLC, and
 18 Two Part Investments, LLC; and

19 TONY NORTON,
 20 individually and as an officer of
 21 Platinum Teleservices, Inc.

22 Defendants.

23 Plaintiff, the Federal Trade Commission (“FTC”), has filed its Complaint for
 24 Injunction and Other Equitable Relief pursuant to Sections 13(b) of the Federal Trade
 25 Commission Act, 15 U.S.C. §§ 53(b), and applied for a temporary restraining order with
 26 asset freeze and other equitable relief and for an order to show cause why a preliminary
 27 injunction should not issue pursuant to Rule 65(b) of the Federal Rules of Civil
 Procedure, Fed. R. Civ. P. 65(b).

FINDINGS OF FACT

The Court, having considered the Complaint, *ex parte* application for temporary
 restraining order, declarations and exhibits, and memorandum of points and authorities
 filed in support thereof, and being otherwise advised, it appears to the satisfaction of the
 Court that:

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

4 2. There is good cause to believe that Defendants Infusion Media, Inc., d/b/a/
5 Google Money Tree, Google Pro, Internet Income Pro, and Google Treasure Chest; West
6 Coast Internet Media, Inc., d/b/a/ Google Money Tree, Google Pro, Internet Income Pro,
7 and Google Treasure Chest; Two Warnings, LLC; Two Part Investments, LLC; Platinum
8 Teleservices, Inc.; Jonathan Eborn; Stephanie Burnside; Michael McLain Miller; and
9 Tony Norton (collectively "Defendants") have engaged in and are likely to engage in
10 acts and practices that violate Section 5(a) of the Federal Trade Commission Act, 15
11 U.S.C. § 45(a); Section 907(a) of the Electronic Fund Transfer Act, 15 U.S.C. §1693e(a)
12 ("EFTA"); and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10 (b) ("Regulation
13 E"), and the Commission is therefore likely to prevail on the merits of this action.

14 3. There is good cause to believe that immediate and irreparable harm will
15 result from Defendants' ongoing violations of the FTC Act, the EFTA, and Regulation E
16 unless Defendants are restrained and enjoined by Order of this Court.

17 4. There is good cause to believe that immediate and irreparable damage to
18 the Court's ability to grant effective final relief for consumers in the form of monetary
19 restitution will occur from the sale, transfer, or other disposition or concealment by
20 Defendants of assets or records if Defendants are provided with advance notice of this
21 Order, and that therefore in accordance with Fed. R. Civ. P. 65(b), the interests of justice
22 require that this order be granted without prior notice to Defendants. There is thus good
23 cause for relieving the Commission of the duty to provide Defendants with prior notice
24 of the Commission's application.

25 5. Good cause exists for (a) the appointment of a Temporary Receiver over
26 Corporate Defendants, Infusion Media, Inc., West Coast Internet Media, Inc., Two
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1 Warnings, LLC, Two Part Investments, LLC, and Platinum Teleservices, Inc.; (b) the
2 freezing of Defendants' assets; and (c) ancillary relief.

3 6. Weighing the equities and considering the Commission's likelihood of
4 ultimate success, a Temporary Restraining Order ("Order") with an asset freeze, the
5 appointment of a Temporary Receiver, and other equitable relief is in the public interest.
6 No security is required of any agency of the United States for issuance of a restraining
7 order. Fed. R. Civ. P. 65(c).

8 **DEFINITIONS**

9 For the purpose of this Order, the following definitions shall apply:

10 1. "Assets" means any legal or equitable interest in, right to, or claim to, any
11 real, personal, or intellectual property of any Corporate Defendant or Individual
12 Defendant, or held for the benefit of any Corporate Defendant or Individual Defendant,
13 wherever located, including, but not limited to, chattel, goods, instruments, equipment,
14 fixtures, general intangibles, effects, leaseholds, contracts, mail or other deliveries,
15 shares of stock, inventory, checks, notes, accounts, credits, receivables (as those terms
16 are defined in the Uniform Commercial Code), cash, and trusts, including but not limited
17 to any other trust held for the benefit of any Corporate Defendant or Individual
18 Defendant.

19 2. "Charge" means any amount charged or debited to a consumer's credit
20 card, debit card, checking, savings, share or similar financial account, or collected from a
21 consumer by any other method.

22 3. "Clearly and Conspicuously" means that:

- 23 a. with regard to print advertisements, solicitations, or other
24 promotional material, the disclosure shall be in a type size and
25 location sufficiently noticeable for an ordinary consumer to read
26 and comprehend it, in print that contrasts with the background
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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 windows or hyperlinks to other electronic pages to display Material information.

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

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

6. "Defendants" means all of the Individual Defendants and the Corporate Defendants, individually, collectively, or in any combination.

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

8. "Individual Defendants" means Jonathan Eborn, Stephanie Burnside, Michael McLain Miller, and Tony Norton.

1 division, affiliate, or other device, are **hereby temporarily restrained and enjoined**
2 from:

3 A. Failing to disclose, clearly and conspicuously, before consumers provide
4 any billing information or incur a Charge:

- 5 1. all products and services that are part of the sales offer, including
6 but not limited to any Continuity Program and goods and services
7 provided by third parties;
- 8 2. all Charge(s) for all products and services that are part of the sales
9 offer, including but not limited to any Continuity Program and
10 goods and services provided by third parties;
- 11 3. That consumers are enrolled in a Continuity Program, if that is the
12 case, and the specific steps consumers must follow to cancel
13 enrollment in the Continuity Program to avoid incurring any
14 Charge; and
- 15 4. Any Negative Option feature of any product or service.

16 B. Misrepresenting, in any manner, expressly or by implication any Material
17 term regarding any of Defendants' products or services, including, but not limited
18 to:

- 19 1. the amount of money the Defendants will Charge consumers;
- 20 2. the products or services included in the sales offer; and
- 21 3. In conjunction with any Continuity Program:
 - 22 a. that consumers are signing up for a Continuity
23 Program;
 - 24 b. the length of the trial period;
 - 25 c. that consumers who do not take affirmative action to
26 cancel the Continuity Program within the trial period

will incur a Charge by Defendants;

- d. the Charge(s) that Defendants impose on consumers who do not cancel within the trial period, and the date(s) the Charge(s) will be submitted for payment;
- e. the specific steps consumers must take to avoid the Charge(s) or to cancel the Continuity Program;
- f. that Defendants will honor consumers' requests to cancel their participation in Defendants' Continuity Programs; and
- g. that consumers will be able to cancel their participation in Defendants' Continuity Program easily;

C. Failing to disclose, or to disclose adequately all material terms regarding Defendants' refund policy.

D. Failing to honor a request that Defendants receive to cancel any sale or transaction involving enrollment in a Continuity Program, and to provide a refund in accordance with Defendants' disclosed guarantee, refund, or return policy.

II.

PROHIBITED REPRESENTATIONS

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

- A. Making, in any manner, expressly or by implication, any false or unsubstantiated representation about income, earnings, or profits that consumers

1 who order Defendants' products or services, are likely to earn; and

2 B. Falsely representing, expressly or by implication, that Defendants are
3 affiliated with any business entity, including but not limited to, Google, Inc.

4 **III.**

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

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

10 A. failing to obtain written authorization for preauthorized Electronic
11 Fund Transfers from a consumer's account before initiating any
12 Preauthorized Electronic Fund Transfer, as required by Section 907(a) of
13 EFTA, 15 U.S.C. § 1693e(a) and Section 205.10(b) of Regulation E, 12
14 C.F.R. § 205.10(b), as more fully set out in Section 205.10 of the Federal
15 Reserve Board's Official Staff Commentary to Regulation E, 12 C.F.R. §
16 205, Supp. I, including providing a copy of the written authorization to the
17 consumer; and

18 B. In connection with any consumer who is enrolled into any Continuity
19 Program subsequent to the date of this Order and who uses a debit card or
20 other means of electronic funds transfer, failing to maintain procedures
21 reasonably adapted to avoid an unintentional failure to obtain written
22 authorization for a Preauthorized Electronic Fund Transfer, as required in
23 Section 205.10 of the Federal Reserve Board's Official Staff Commentary
24 to Regulation E, 12 C.F.R. § 205, Supp. I.

25 **IV.**
26 **ASSET FREEZE**

27 **IT IS FURTHER ORDERED** that Defendants and their Representatives are

1 hereby temporarily restrained and enjoined from:

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

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

19 C. Incurring charges or cash advances on any credit card issued in the name,
20 singly or jointly, of any Corporate Defendant;

21 D. Obtaining a personal or secured loan encumbering the assets of any
22 Defendant; and

23 E. Incurring liens or other encumbrances on real property, personal property
24 or other assets titled in the name, singly or jointly, of any Defendant.

25 The assets affected by this Section IV shall include: (1) all assets of any
26 Defendant as of the time of issuance of this Order; and (2) assets obtained after the time

1 of issuance of this Order if the assets are derived from the conduct alleged in the
2 Commission's Complaint.

3 **V.**

4 **DUTIES OF ASSET HOLDERS**

5 **IT IS FURTHER ORDERED** that, pending determination of the Commission's
6 request for a preliminary injunction, any financial or brokerage institution, business
7 entity, or person served with a copy of this Order that holds, controls or maintains
8 custody of any account, safe deposit box, or other asset of any Defendant or has
9 maintained any such account, safe deposit box, or other asset of any Defendant at any
10 time since September 1, 2008, shall:

- 11 A. Hold and retain within its control and prohibit the withdrawal, removal,
12 assignment, transfer, pledge, encumbrance, disbursement, dissipation,
13 conversion, sale, or other disposal of any such asset, except by further
14 order of the Court;
- 15 B. Deny any person, except the Receiver acting pursuant to Section XII of
16 this Order, access to any safe deposit box that is titled in the name of,
17 individually or jointly, or otherwise subject to access by, any Defendant;
- 18 C. Provide the Commission's counsel, within five (5) business days of
19 receiving a copy of this Order, a sworn statement setting forth:
 - 20 1. The identification number of each such account or asset titled in the
21 name, individually or jointly, of any Defendant, or held on behalf
22 of, or for the benefit of any Defendant;
 - 23 2. The balance of each such account, or a description of the nature and
24 value of such asset as of the close of business on the day on which
25 this Order is served, and, if the account or other asset has been
26 closed or removed, the date closed or removed, the total funds
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1 removed in order to close the account, and the name of the person
2 or entity to whom such account or other asset was remitted; and
3 3. The identification of any safe deposit box that is titled in the name
4 of, individually or jointly, or otherwise subject to access by, any
5 Defendant; and

6 D. Upon request by the Commission, promptly provide the Commission with
7 copies of all records or other documentation pertaining to each such
8 account or asset, including, but not limited to, originals or copies of
9 account applications, account statements, signature cards, checks, drafts,
10 deposit tickets, transfers to and from the accounts, all other debit and credit
11 instruments or slips, currency transaction reports, 1099 forms, and safe
12 deposit box logs.

13 **VI.**

14 **PRESERVATION OF RECORDS**

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

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

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

24 **VII.**

25 **FINANCIAL DISCLOSURES**

26 **IT IS FURTHER ORDERED** that each Defendant, within five (5) days of
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1 service of this Order, shall prepare and deliver to counsel for the Commission and to the
2 Receiver completed financial statements on the forms attached to this Order as
3 Attachment A (Financial Statement of Individual Defendant) for themselves
4 individually, and Attachment B (Financial Statement of Corporate Defendant) for each
5 business entity under which they conduct business or of which they are an officer, and
6 for each trust for which any Defendant is a trustee. The financial statements shall be
7 accurate as of the date of entry of this Order. Each Defendant shall include in the
8 financial statements a full accounting of all funds and assets, whether located inside or
9 outside of the United States, that are: (a) titled in the name of such Defendant, jointly,
10 severally, or individually; (b) held by any person or entity for the benefit of such
11 Defendant; or (c) under the direct or indirect control of such Defendant.

12 **VIII.**

13 **CONSUMER CREDIT REPORTS**

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

17 **IX.**

18 **FOREIGN ASSET REPATRIATION**

19 **IT IS FURTHER ORDERED** that within five (5) days following the service of
20 this Order, each Defendant shall:

- 21 A. Provide the Commission and the Receiver with a full accounting of all
22 funds, documents, and assets outside of the United States which are: (1)
23 titled in the name, individually or jointly, of any Defendant; or (2) held by
24 any person or entity for the benefit of any Defendant; or (3) under the
25 direct or indirect control, whether jointly or singly, of any Defendant;
- 26 B. Transfer to the territory of the United States and deliver to the Receiver all
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1 funds, documents, and assets located in foreign countries which are: (1)
2 titled in the name individually or jointly of any Defendant; or (2) held by
3 any person or entity, for the benefit of any Defendant; or (3) under the
4 direct or indirect control of any Defendant, whether jointly or singly;

5 C. Provide the Commission access to all records of accounts or assets of any
6 Defendant held by financial institutions located outside the territorial
7 United States by signing the Consent to Release of Financial Records
8 appended to this Order as Attachment C.

9 **X.**

10 **INTERFERENCE WITH REPATRIATION**

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

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

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26 **XI.**

1 of law alleged in the Complaint in this matter, without prior Court
2 approval;

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

26 D. Conserve, hold, and manage all assets of the Receivership Defendants, and
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1 perform all acts necessary or advisable to preserve the value of those assets
2 in order to prevent any irreparable loss, damage, or injury to consumers or
3 creditors of the Receivership Defendants, including, but not limited to,
4 obtaining an accounting of the assets and preventing the unauthorized
5 transfer, withdrawal, or misapplication of assets;

6 E. Enter into contracts and purchase insurance as advisable or necessary;

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

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

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

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

26 J. Suspend business operations of the Receivership Defendants if in the
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1 judgment of the Receiver such operations cannot be continued legally and
2 profitably;

3 K. Institute, compromise, adjust, appear in, intervene in, or become party to
4 such actions or proceedings in state, federal or foreign courts or arbitration
5 proceedings as the Receiver deems necessary and advisable to preserve or
6 recover the assets of the Receivership Defendants, or that the Receiver
7 deems necessary and advisable to carry out the Receiver's mandate under
8 this Order, including but not limited to, actions challenging fraudulent or
9 voidable transfers;

10 L. Defend, compromise, adjust, or otherwise dispose of any or all actions or
11 proceedings instituted in the past or in the future against the Receiver in his
12 role as Receiver, or against the Receivership Defendants, as the Receiver
13 deems necessary and advisable to preserve the assets of the Receivership
14 Defendants, or as the Receiver deems necessary and advisable to carry out
15 the Receiver's mandate under this Order;

16 M. Issue subpoenas to obtain documents and records pertaining to the
17 Receivership, and conduct discovery in this action on behalf of the
18 Receivership estate;

19 N. Open one or more bank accounts as designated depositories for funds of
20 the Receivership Defendants. The Receiver shall deposit all funds of the
21 Receivership Defendants in such a designated account and shall make all
22 payments and disbursements from the Receivership estate from such an
23 account. The Receiver shall serve copies of monthly account statements
24 on all parties;

25 O. Maintain accurate records of all receipts and expenditures incurred as
26 Receiver; and
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1 P. Cooperate with reasonable requests for information or assistance from any
2 state or federal law enforcement agency.

3 **XIII.**

4 **TRANSFER OF RECEIVERSHIP PROPERTY TO RECEIVER**

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

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

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

8 **XIV.**

9 **PROVISION OF INFORMATION TO RECEIVER**

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

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

20 **XV.**

21 **COOPERATION WITH THE RECEIVER**

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

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13 **XVI.**

14 **INTERFERENCE WITH THE RECEIVER**

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

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

XVII.

STAY OF ACTIONS AGAINST RECEIVERSHIP DEFENDANTS

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

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

Provided that, this Order does not stay: (i) the commencement or continuation of a

1 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 **XVIII.**

7 **COMPENSATION OF RECEIVER**

8 **IT IS FURTHER ORDERED** that the Receiver and all personnel hired by the
9 Receiver as herein authorized, including counsel to the Receiver and accountants, are
10 entitled to reasonable compensation for the performance of duties pursuant to this Order
11 and for the cost of actual out-of-pocket expenses incurred by them, from the assets now
12 held by, in the possession or control of, or which may be received by, the Receivership
13 Defendants. The Receiver shall file with the Court and serve on the parties periodic
14 requests for the payment of such reasonable compensation, with the first such request
15 filed no more than sixty (60) days after the date of entry of this Order. The Receiver
16 shall not increase the hourly rates used as the bases for such fee applications without
17 prior approval of the Court.

18 **XIX.**

19 **RECEIVER'S BOND**

20 **IT IS FURTHER ORDERED** that the Receiver shall file with the Clerk of this
21 Court a bond in the sum of \$ 25,000.00 with sureties to be approved by the
22 Court, conditioned that the Receiver will well and truly perform the duties of the office
23 and abide by and perform all acts the Court directs. 28 U.S.C. § 754.

24 **XX.**

25 **ACCESS TO BUSINESS OFFICES AND RECORDS**

26 **IT IS FURTHER ORDERED** that, in order to allow the Commission and the
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1 Receiver to preserve assets and evidence relevant to this action, and to expedite
2 discovery, Plaintiff and Receiver, and their representatives, agents, and assistants, shall
3 have immediate access to the business premises of the Receivership Defendants. Such
4 locations include, but are not limited to **405 East 12450 South, Draper, Utah, 84020**.
5 The Commission and the Receiver, and their representatives, agents, and assistants, are
6 authorized to employ the assistance of the U.S. Marshal's office and other law
7 enforcement officers as they deem necessary to effect service and to implement
8 peacefully the provisions of this Order. The Commission and the Receiver, and their
9 representatives, agents, and assistants, are authorized to remove documents from the
10 Receivership Defendants' premises in order that they may be inspected, inventoried, and
11 copied for the purpose of preserving discoverable material in connection with this action.

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13 Furthermore, the Receiver shall allow the Defendants reasonable access to the
14 premises and business records of the Receivership Defendants within his possession for
15 the purpose of inspecting and copying materials relevant to this action. The Receiver
16 shall have the discretion to determine the time, manner, and reasonable conditions of
17 such access.

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20 **XXI.**

21 **EXPEDITED DISCOVERY**

22 **IT IS FURTHER ORDERED** that, in anticipation of the preliminary injunction
23 hearing in this matter, the Commission and the Receiver are authorized to conduct
24 expedited discovery concerning Defendants' assets and the location of business records
25 in accordance with the following provisions:

26 A. The Commission and the Receiver may take the depositions of parties and
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1 non-parties. Forty-eight hours (48) notice shall be sufficient notice for
2 such depositions;

3 B. The Commission and the Receiver may serve upon parties requests for
4 production of documents or inspection that require production or
5 inspection within five (5) calendar days of service, and may serve
6 subpoenas upon non-parties that direct production or inspection within five
7 (5) calendar days of service;

8 C. The Commission and the Receiver may serve deposition notices and other
9 discovery requests upon the parties to this action by facsimile or overnight
10 courier, and depositions may be taken by telephone or other remote
11 electronic means; and

12 D. Any discovery taken pursuant to this Order is in addition to, and is not
13 subject to, the presumptive limits on discovery set forth in the Federal
14 Rules of Civil Procedure and Local Rules of this Court. If a Defendant
15 fails to appear for a properly noticed deposition or fails to comply with a
16 request for production or inspection, that Defendant may be prohibited
17 from introducing evidence at the hearing on the Commission’s request for
18 a preliminary injunction.

19 **XXII.**

20 **SERVICE BY FACSIMILE AUTHORIZED**

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

1 **XXIII.**

2 **DEFENDANTS' DUTY TO DISTRIBUTE ORDER**

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

15 **XXIV.**

16 **DURATION OF TEMPORARY RESTRAINING ORDER**

17 **IT IS FURTHER ORDERED** that the Temporary Restraining Order granted
18 herein shall expire ten (10) days from the date of entry noted below unless, within such
19 time, the Order is extended for an additional period not to exceed ten (10) days for good
20 cause shown, or unless, as to any Defendant, such Defendant consents to an extension
21 for a longer period.

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24 **XXV.**

25 **ORDER TO SHOW CAUSE REGARDING**
26 **PRELIMINARY INJUNCTION**

1 motion filed with the Court and served on counsel for the other parties at least three (3)
2 days prior to the preliminary injunction hearing in this matter. Such motion shall set
3 forth the name, address, and telephone number of each proposed witness, a detailed
4 summary or affidavit revealing the substance of each proposed witness's expected
5 testimony, and an explanation of why the taking of live testimony would be helpful to
6 this Court. Any papers opposing a timely motion to present live testimony or to present
7 live testimony in response to another party's timely motion to present live testimony shall
8 be filed with this Court and served on the other parties at least two (2) days prior to the
9 preliminary injunction hearing in this matter, provided that service shall be performed by
10 personal or overnight delivery, facsimile or electronic mail, and documents shall be
11 delivered so that they shall be received by the other parties no later than 4:00 p.m.
12 (Pacific Daylight Time) on the appropriate dates provided in this Section.

13 **XXVII.**

14 **SERVICE UPON PLAINTIFF**

15 **IT IS FURTHER ORDERED** that Defendants shall serve all pleadings,
16 memoranda, correspondence, affidavits, declarations, or other documents related to this
17 Order or Plaintiff's motion for a preliminary injunction by facsimile transmission to
18 (202) 326-3395, by hand delivery to the offices of the Federal Trade Commission, at 600
19 Pennsylvania Avenue, NW, Room H-286, Washington, DC 20580, and addressed to the
20 attention of Daniel O. Hanks, or by overnight shipment through a third-party commercial
21 carrier for delivery at this address.

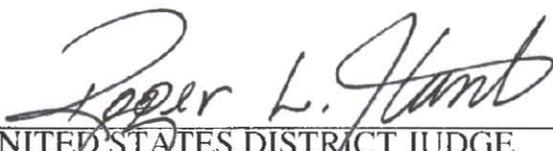
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XXVIII.

RETENTION OF JURISDICTION

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

IT IS SO ORDERED.


UNITED STATES DISTRICT JUDGE
DATED: June 23, 2009