

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

**FEDERAL TRADE COMMISSION;**

**Plaintiff,**

**v.**

**J. WILLIAM ENTERPRISES, LLC, a Florida  
limited liability company, also d/b/a PRO  
TIMESHARE RESALES;**

**PRO TIMESHARE RESALES OF FLAGLER  
BEACH LLC, a Florida limited liability  
company;**

**JESS KINMONT, individually and as an owner,  
officer, and/or manager of the above-mentioned  
entities;**

**and**

**JOHN P. WENZ, JR., individually and as an  
owner, officer, and/or manager of the above-  
mentioned entities;**

**Defendants.**

**Case No. 6:16-cv-2123-Orl-31DCI**

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

Plaintiff, Federal Trade Commission (“FTC”), commenced this action by filing a complaint seeking a permanent injunction and other equitable relief (“Complaint”) (Doc. 2), against Defendants J. William Enterprises, LLC, d/b/a Pro Timeshare Resales (“JWE”); Pro

Timeshare Resales of Flagler Beach, LLC (“PTR of Flagler Beach”), Jess Kinmont (“Kinmont”) and John P. Wenz, Jr. (“Wenz”), and by filing an *ex parte* motion for temporary restraining order; asset freeze, appointment of a receiver, immediate access, and order to show cause why a preliminary injunction should not issue (“*ex parte* TRO Motion”) (Doc. 3). The Court then granted Plaintiff’s *ex parte* TRO Motion (Doc. 10).

Upon stipulation by Plaintiff and Defendants, the Court enters this Preliminary Injunction Order as to Defendants JWE, PTR of Flagler Beach, Kinmont and Wenz.

### **I. FINDINGS OF FACT**

This Court has considered the Complaint (Doc. 2), *ex parte* TRO Motion (Doc. 3), the memorandum of law filed in support (*id.*), Defendants’ response to the Court’s order to show cause why a preliminary injunction should not issue (Doc. 29), the Defendants’ Motion for Modification of Temporary Restraining Order to Provide Relief from Asset Freeze (Doc. 28), First Interim Report of the Temporary Receiver (Doc. 45), and all attached declarations, and exhibits submitted in support of the foregoing, and the testimony and evidence at the hearing on the order to show cause why a preliminary injunction should not issue held on December 21–22, 2016, finds that:

- A. This Court has jurisdiction over the subject matter of this case, and there is good cause to believe it will have jurisdiction over the parties;
- B. This Court is a proper venue for this case;
- C. There is good cause to believe that Defendants have engaged in, and are likely to continue to engage in, acts or practices that violate Section 5(a) of the FTC Act, 15 U.S.C.

§ 45(a), and the FTC's Trade Regulation Rule entitled "Telemarketing Sales Rule" ("TSR"), 16 C.F.R. Part 310, and that Plaintiff is therefore likely to succeed on the merits of this action;

D. There is good cause to believe that this preliminary injunction order is in the public interest, and no private interest of Defendants outweighs the public interest; and

E. There is good cause to believe that continuation of a freeze of Defendants' assets and the appointment of a receiver over Defendants JWE and PTR of Flagler Beach is necessary to preserve the Court's ability to grant complete relief at the conclusion of this action, and to prevent the dissipation of assets and destruction of evidence.

F. This Order does not constitute and shall not be interpreted to constitute an admission by Defendants, or a finding that Defendants have engaged in violations of any law or regulations

### DEFINITIONS

For purposes of this Preliminary Injunction Order ("Order"), the following definitions shall apply:

1. **"Asset"** or **"assets"** means any legal or equitable interest in, right to, or claim to any real or personal property, including, but not limited to, "goods," "instruments," "equipment," "fixtures," "general intangibles," "inventory," "checks," or "notes," (as these terms are defined in the Uniform Commercial Code), lines of credit, chattels, leaseholds, contracts, mail or other deliveries, shares of stock, lists of consumer names, accounts, credits, premises, receivables, funds, and all cash, wherever located.

2. **"Billing information"** means any data that enables any person to access a customer's or donor's account, such as a credit card, checking, savings, share or

similar account, utility bill, mortgage loan account, or debit card.

3. **“Corporate Defendants” or “Receivership Defendants”** means J. William Enterprises, LLC, d/b/a Pro Timeshare Resales; Pro Timeshare Resales of Flagler Beach, LLC, as well as any subsidiaries, and each of them by whatever names each might be known.

4. **“Defendants”** means the Individual Defendants and the Corporate Defendants, individually, collectively, or in any combination.

5. **“Document” or “documents”** means any materials listed in Fed. R. Civ. P. 34(a), and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data or data compilations, stored in any medium, from which information can be obtained either directly or, if necessary, after translation into a reasonably usable form through detection devices. A draft or non-identical copy is a separate “document” within the meaning of this term.

6. **“Financial institution”** means any bank, savings and loan institution, credit union, or any financial depository of any kind, including, but not limited to, any brokerage house, trustee, broker-dealer, escrow agent, title company, commodity trading company, or precious metal dealer.

7. **“Individual Defendants”** means Jess Kinmont and John P. Wenz, Jr., and by whatever other names they may be known.

8. **“Person”** means a natural person, an organization or other legal entity, including a corporation, partnership, sole proprietorship, limited liability company, association, cooperative, or any other group or combination acting as an entity.

9. **“Plaintiff”** mean the Federal Trade Commission (“Commission” or “FTC”).

10. “**Telemarketing**” means any plan, program, or campaign (whether or not covered by the TSR, 16 C.F.R. Part 310) that is conducted to induce the purchase of goods or services or a charitable contribution by use of one or more telephones.

### **I. PROHIBITED BUSINESS ACTIVITIES**

**IT IS THEREFORE ORDERED** that Defendants, and their officers, agents, employees, attorneys, and all other Persons who are in active concert or participation with any of them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or indirectly, in connection with the telemarketing, advertising, marketing, promoting, offering for sale, or sale of any timeshare resale or rental services, are hereby restrained and enjoined from:

A. Misrepresenting, or assisting others in misrepresenting, directly or indirectly, expressly or by implication, that Defendants have a buyer or renter for a consumer’s timeshare property who will pay a specified price or that Defendants will quickly sell or rent a consumer’s timeshare; and

B. Violating, or assisting others in violating, the following provisions of TSR:

1. Section 310.3(a)(4) of the TSR, 16 C.F.R. §310.3(a)(4), by making any false or misleading statement to induce any person to pay for goods or services;

2. Section 310.4(b)(1)(iii)(B) of the TSR, 16 C.F.R. §310.4(b)(1)(iii)(B), by engaging in, or causing others to engage in, initiating an outbound telephone call to a Person’s telephone number on the National Do Not Call Registry in connection with Telemarketing; and

3. Section 310.8 of the TSR, 16 C.F.R. §310.8, by initiating or causing

others to initiate, in connection with Telemarketing, an outbound call to a telephone number in a given area code when Defendants have not, either directly or through another Person, paid the required annual fee for access to the telephone numbers within that area code that are included in the National Do Not Call Registry.

## **II. ASSET FREEZE**

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

A. Transferring, liquidating, converting, encumbering, pledging, loaning, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, granting a lien or security interest or other interest in, or otherwise disposing of any Assets, or any interest therein, wherever located, including outside the United States, that are:

1. owned or controlled, directly or indirectly, by any Defendant(s) in whole or in part, or held, in whole or in part, for the benefit of any Defendant(s);
2. in the actual or constructive possession of any Defendant(s);
3. owned, controlled by, or in the actual or constructive possession of any corporation, partnership or other entity directly or indirectly owned, managed or controlled by, or under common control with any Defendant(s), and any Assets held by, for, or under the name of any Defendant(s) at any bank of savings and loan institution, or with any broker-dealer, escrow agent, title company, commodity trading company, payment processing company, precious metal dealer, or other financial institution or depository of any kind;

B. Opening or causing to be opened any safe deposit boxes titled in the name of

any Defendant(s), or subject to access by any Defendant(s);

C. Incurring charges or cash advances on any credit card, debit card, or checking card issued in the name, singly or jointly, of any Defendant(s);

D. Obtaining a personal or secured loan;

E. Incurring liens or other encumbrances on real property, personal property, or other Assets in the name, singly or jointly, of any Defendant(s); and

F. Cashing any checks or depositing any money or orders or cash consumers, clients, or customers of any Defendant(s).

The Assets affected by this Section shall include: (1) all Assets of Defendants as of the time this Order is entered; and (2) Assets obtained after the time this Order is entered that are derived, directly or indirectly, from the Corporate Defendants' sale of, or services connected to, timeshares. This Section does not prohibit transfers to the Receiver, as specifically required in Section XIV (Delivery of Receivership Property), nor does it prohibit the repatriation of foreign Assets, as specifically required in Section XVI (Repatriation of Foreign Assets and Documents) of this Order

### **III. DUTIES OF THIRD PARTY ASSET HOLDERS**

**IT IS FURTHER ORDERED** that any financial or brokerage institution or depository, escrow agent, title company, commodity trading company, trust, entity, person that holds, controls, or maintains custody of any account or asset owned or controlled, directly or indirectly, by any Defendant, or held, controlled, or maintained any account or asset of, or on behalf of, any Defendant, upon service with a copy of this Order, shall:

A. Hold and retain within its control and prohibit the withdrawal, removal,

assignment, transfer, pledge, hypothecation, encumbrance, disbursement, dissipation, conversion, sale, liquidation, or other disposal of any of the Assets, funds, Documents, or other property held by or under its control, on behalf of any Defendant, or for the benefit or use of any Defendant, in whole or in part, except:

1. As directed by further order of the Court;
2. As directed in writing by the Receiver (regarding an asset belonging to, for the use or benefit of, under the control of, or subject to access by the Receivership Defendants); or
3. By written stipulation of the Plaintiff and Defendants.

B. Deny Defendants access to any safe deposit boxes, commercial mail boxes or storage facilities that are titled in the name, individually or jointly, of any Defendant, or otherwise subject to access by any Defendant;

C. Provide to counsel for the Plaintiff, within five (5) business days of notice of this Order, if not previously provided, a sworn statement setting forth:

1. The identification of each account or Asset titled in the name, individually or jointly, of any Defendant, or to which any Defendant is a signatory, or which is held on behalf of, or for the benefit or use of, any Defendant, or subject to any Defendant's control, including all trust accounts on behalf of any Defendant or subject to any Defendant's control;
2. The balance of each such account, or a description and appraisal of the value of each such Asset, as of the close of business on the day on which notice of this Order is received, and, if the account or Asset has been closed or removed, or

more than \$1000 withdrawn or transferred from it within the last ninety (90) days, the date of the closure or removal of funds, the total funds removed or transferred, and the name and account number of the Person or entity to whom such account, funds, or other Asset was remitted; and

3. The identification and location of any safe deposit box, commercial mailbox, or storage facility that is either titled in the name, individually or jointly, of any Defendant, or is otherwise subject to access or control by any Defendant. If the safe deposit box, commercial mailbox, or storage facility has been closed within the last ninety (90) days, the date closed and the balance on said date;

D. Within five (5) days of a request by Plaintiff, provide Plaintiff with copies of any records or other Documents pertaining to each such account or Asset, including, but not limited to, originals or copies of account applications, corporate resolutions, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs;

E. Plaintiff may properly serve this Order on any financial or brokerage institution, business entity or person that holds, controls or maintains custody of any account or Asset of any Defendant or has held, controlled or maintained custody of any account or Asset of any Defendant at any time since November 1, 2011, by U.S. first class mail, overnight delivery, facsimile, electronic mail, or personally by agents or employees of Plaintiff, by agents or employees of the Receiver, by any law enforcement agency, or by private process server.

The Assets affected by this Section shall include: (1) all Assets of Defendants as of the time this Order is entered; and (2) Assets obtained after the time this Order is entered that are derived, directly or indirectly, from the Corporate Defendants' sale of, or services connected to, timeshares. This Section does not prohibit transfers to the Receiver, as specifically required in Section XIV (Delivery of Receivership Property), nor does it prohibit the repatriation of foreign Assets, as specifically required in Section XVI (Repatriation of Foreign Assets and Documents) of this Order

#### **IV. FINANCIAL STATEMENTS AND INFORMATION**

**IT IS FURTHER ORDERED** that each Defendant shall serve upon counsel for Plaintiff, within five (5) days of service of this Order, if not previously provided:

A. A completed financial statement, accurate as of the date of entry of this Order, for each Individual Defendants in the form provided as Attachment A, "Financial Statement of Individual Defendant," and for the Corporate Defendants, in the form provided as Attachment B, "Financial Statement of Corporate Defendant." The financial statements shall be accurate as of the date of entry of this Order and verified under oath. Defendants shall attach to these completed financial statements copies of all local, state, provincial, and federal income and property tax returns, along with other attachments and schedules as called for by the instructions to the financial statements; and

B. The name, address and telephone number of each accountant, financial planner, investment advisor, stock broker or other individual, corporation, or partnership whom they have used for financial, business or tax advice or services, since November 1, 2011.

**V. PROHIBITION ON DISCLOSING CUSTOMER INFORMATION**

**IT IS FURTHER ORDERED** that Defendants, and their officers, agents, employees, attorneys, and all other Persons who are in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or indirectly, are hereby restrained and enjoined from:

A. Selling, renting, leasing, transferring, or otherwise disclosing the name, address, birth date, telephone number, email address, Social Security number, credit card number, bank account number, or other financial or identifying personal information of any person from whom or about whom any Defendant obtained such information in connection with the sale or offering for sale of timeshare resale or rental services;

B. Benefitting from or using the name, address, birth date, telephone number, email address, Social Security number, credit card number, bank account number, or other financial or identifying personal information of any person from whom or about whom any Defendant obtained such information in connection with activities alleged in the Complaint.

*Provided however,* that Defendants may disclose such financial or identifying personal information to their attorneys, to a law enforcement agency, or as required by any law, regulation, or court order.

**VI. MAINTAIN RECORDS AND REPORT NEW BUSINESS ACTIVITY**

**IT IS FURTHER ORDERED** that Defendants, and their officers, agents, employees, attorneys, and all other Persons who are in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, whether

acting directly or indirectly, are hereby restrained and enjoined from:

A. Failing to create and maintain books, records, accounts, bank statements, accountants' reports, general ledgers, general journals, cash receipt ledgers, cash disbursement ledgers and source documents, documents indicating title to real or personal property, and any other data which, in reasonable detail, accurately, fairly, and completely reflect the incomes, disbursements, transactions, dispositions, and uses of the Defendants' Assets;

B. Destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any Documents, including electronically stored information, that relate in any way to the business practices or business or personal finances of Defendants; to the business practices or finances of entities directly or indirectly under the control of Defendants; or to the business practices or finances of entities directly or indirectly under common control with any other Defendant; and

C. Creating, operating, or exercising any control over any business entity, whether newly formed or previously inactive, including any partnership, limited partnership, joint venture, sole proprietorship, or corporation, without first providing Plaintiff with a written statement disclosing: (1) the name of the business entity; (2) the address and telephone number of the business entity; (3) the names of the business entity's officers, directors, principals, managers, and employees; and (4) a detailed description of the business entity's intended activities.

## VII. APPOINTMENT OF PERMANENT RECEIVER

**IT IS FURTHER ORDERED** that Brian McDowell is appointed as permanent receiver (“Receiver” or “Permanent Receiver”) for Defendants JWE, and PTR Resales of Flagler Beach, and any of their affiliates, subsidiaries, divisions, or sales operations, wherever located (“Receivership Defendants”), with the full power of an equity receiver.

The Receiver is directed and authorized to accomplish the following:

- A. Assume full control of the Receivership Defendant by removing, as the Receiver deems necessary or advisable, any director, officer, independent contractor, employee, or agent of the Receivership Defendants, including the Individual Defendants, from control of, management of, or participation in, the affairs of the Receivership Defendants;
- B. Take exclusive custody, control, and possession of all Assets, Documents, and electronically stored information 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 possession, hold, and manage all Assets and Documents of the Receivership Defendants and other persons or entities whose interests are now held by or under the direction, possession, custody, or control of the Receivership Defendants. *Provided, however,* that the Receiver shall not attempt to collect any amount from a consumer if the Receiver believes the consumer was a victim of unfair or deceptive acts or practices in the sale or offering for sale of timeshare resale or rental services, without prior Court approval;
- C. Use any means necessary to take possession of and to secure each and

every business premises of the Receivership Defendants. Such steps may include, but are not limited to, any of the following, as the Receiver deems necessary or advisable: (1) serving this Order; (2) completing a written inventory of all receivership Assets; (3) obtaining pertinent information from all employees and other agents of the Receivership Defendants, including, but not limited to, the name, home address, Social Security number, job description, passwords or access codes, method of compensation, and all accrued and unpaid commissions and compensation of each such employee or agent; (4) photographing and video taping any or all portions of the location; (5) securing the location by changing the locks and disconnecting any computer modems, servers, network access, or other means of access to the computer or other records maintained at that location; and (6) requiring any persons present on the premises at the time this Order is served to leave the premises, to provide the Receiver with proof of identification, and to demonstrate to the satisfaction of the Receiver that such persons are not removing from the premises Documents or Assets of the Receivership Defendants;

D. Conserve, hold, and manage all Assets of the Receivership Defendants and perform all acts necessary or advisable to preserve the value of those Assets in order to prevent any irreparable loss, damage, or injury to consumers or creditors of the Receivership Defendants, including, but not limited to, obtaining an accounting of the assets and preventing unauthorized transfer, withdrawal, or misapplication of Assets, and including the authority to liquidate or close out any open securities or commodities futures positions of the Receivership Defendants;

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

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

G. Manage and administer the business of the Receivership Defendants until further order of this Court by performing all incidental acts that the Receiver deems to be advisable or necessary;

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

I. Determine and implement the manner in which the Receivership Defendants will comply with, and prevent violations of, this Order and all other applicable laws

J. Institute, compromise, adjust, appear in, intervene in, or become party to such actions or proceedings in state, federal, or foreign courts that the Receiver deems necessary and advisable to preserve or recover the Assets of the Receivership Defendants or that the Receiver deems necessary and advisable to carry out the Receiver's mandate under this Order;

K. Defend, compromise, adjust, or otherwise dispose of any or all actions or proceedings instituted against the Receiver in his role as Receiver, or against the Receivership Defendants, as the Receiver deems necessary and advisable to preserve the

Assets of the Receivership Defendants, or as the Receiver deems necessary and advisable to carry out the Receiver's mandate under this Order;

L. Continue to conduct the business of the Receivership Defendants in such manner, to such extent, and for such duration as the Receiver may in good faith deem to be necessary or appropriate to operate the businesses profitably and lawfully, if at all; provided that the continuation and conduct of the business shall be conditioned upon the Receiver's good faith determination that the business can be lawfully operated at a profit using the Assets of the receivership estate;

M. Issue subpoenas to obtain Documents and records pertaining to the receivership, and conduct discovery in this action on behalf of the receivership estate;

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

O. Maintain accurate records of all receipts and expenditures made as Receiver;

P. Cooperate with reasonable requests for information or assistance from any state or federal law enforcement agency, including Plaintiff; and

Q. File reports with the Court on a timely basis.

R. Take necessary steps to ensure the payment of any outstanding claim for wages and to compensate Receivership Defendants' employees through December 14, 2016,

who were employees as of that date.

S. Disburse living expenses to Kinmont in the amount \$4,500 and to Wenz in the amount of \$5,250.

T. Disburse attorneys' fees to Attorney Gene Shipley in the amount of \$50,000.

**VIII. DEFENDANTS' OBLIGATION TO PROVIDE WAGE AND COMMISSION INFORMATION TO THE FTC**

**IT IS FURTHER ORDERED** that Defendants and their officers, agents, employees, attorneys, and all other Persons who are in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or indirectly, are hereby restrained and enjoined from failing to provide wage and commission information to the Federal Trade Commission no later than January 16, 2017, that substantiates the claims referenced in Section VII. R. of employees for wages and commissions, including, but not limited to, records showing the sales upon which the wages and commissions were earned and the identity of the customers who purchased services which resulted in wages or commissions being due.

**IX. COOPERATION WITH THE RECEIVER**

**IT IS FURTHER ORDERED** that

A. Defendants, and their officers, agents, employees, attorneys, and all other Persons who are in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or indirectly, shall fully cooperate with and assist the Receiver. This cooperation and assistance shall include, but not be limited to:

1. Providing any information to the Receiver that the Receiver deems necessary in order to exercise the authority and discharge the responsibilities of the Receiver under this Order;

2. Providing any password required to access any computer, electronic file, or telephonic data in any medium; and

3. Advising all Persons who owe money to the Receivership Defendants, except consumers, customers, or clients of Receivership Defendants' timeshare services, that all debts should be paid directly to the Receiver.

B. Defendants and their officers, agents, employees, attorneys, and all other Persons who are in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or indirectly, are hereby restrained and enjoined from:

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

2. Destroying, secreting, defacing, mutilating, concealing, altering, transferring, or otherwise disposing of any Document of the Receivership Defendants, including but not limited to books, records, tapes, discs, accounting data, checks (fronts and backs), correspondence, forms, advertisements, website designs and texts, telemarketing scripts or outlines, brochures, manuals, banking records, customer lists, customer files, customer payment histories, invoices, telephone records, ledgers, payroll records, or other Documents of any kind, including electronically stored information;

3. Transferring, receiving, altering, selling, encumbering, pledging,

assigning, liquidating, or otherwise disposing of any Asset owned, controlled, or in the possession or custody of, or in which an interest is held or claimed by, the Receivership Defendants, or the Receiver;

4. Excusing debts owed to the Receivership Defendants;

5. Failing to notify the Receiver of any Asset, including accounts, of the Receivership Defendants held in any name other than the name of the Receivership Defendants, or by any person or entity other than the Receivership Defendants, or failing to provide any assistance or information requested by the Receiver in connection with obtaining possession, custody, or control of such Assets;

6. Doing any act or refraining from any act whatsoever to interfere with the Receiver managing, or taking custody, control, or possession of, the Assets or Documents subject to this receivership; or to harass or interfere with the Receiver in any way; or to interfere in any manner with the exclusive jurisdiction of this Court over the Assets or Documents of the Receivership Defendants; or to refuse to cooperate with the Receiver or the Receiver's duly authorized agents in the exercise of their duties or authority under any order of this Court; or

7. Filing, or causing to be filed, any petition on behalf of the Receivership Defendants for relief under the United States Bankruptcy Code, 11 U.S.C. § 101 *et. seq.*, without prior permission from this Court.

#### **X. COMPENSATION OF RECEIVER**

**IT IS FURTHER ORDERED** that the Receiver is entitled to reasonable compensation for the performance of all duties pursuant to this Order, and for the cost of

actual out-of-pocket expenses incurred, solely from the Assets now held by, or in the possession or control of, or which may be received by the Receivership Defendants. The Receiver shall file with the Court, and serve on the parties, periodic requests for the payment of such compensation, with the first such request due prior to sixty (60) days after the date of this Order. The Receiver shall not increase the Receiver's hourly rate billed to the receivership estate without prior approval of the Court.

#### **XI. BOND**

**IT IS FURTHER ORDERED** that the Receiver shall continue a bond in the sum of \$10,000 with sureties, conditioned that the Receiver will well and truly perform the duties of the office and abide by and perform all acts as the Court directs.

#### **XII. IMMEDIATE ACCESS TO BUSINESS PREMISES AND DOCUMENTS**

**IT IS FURTHER ORDERED** that:

A. Defendants, and their officers, directors, agents, employees, attorneys, and all other Persons or entities directly or indirectly, in whole or in part, under their control, and all other persons in active concert or participation with them, who receive actual notice of this Order by personal service, facsimile, email, or otherwise, whether acting directly or through any corporation, subsidiary, division, or other entity, shall:

1. Immediately identify to Plaintiff's counsel and the Receiver:
  - a. All of Defendants' business premises;
  - b. Any non-residence premises where any Defendant conducts business or customer service operations;
  - c. Any non-residence premises where documents or electronically stored

information related to the business or customer service operations of any Defendant are hosted, stored, or otherwise maintained, including but not limited to the name and location of any electronic data hosts; and

- d. Any non-residence premises where assets belonging to any Defendant are stored or maintained;
2. Allow the Plaintiff and the Receiver, and their respective representatives, agents, attorneys, investigators, paralegals, contractors, or assistants immediate access to:
    - a. All of the Defendants' business premises, and such other business locations that are wholly or partially owned, rented, leased, or under the temporary or permanent control of any Defendant; and
    - b. Any documents located at any of the locations describes in this Section.
  3. Provide Plaintiff and the Receiver, and their respective representatives, agents, attorneys, investigators, paralegals, contractors, or assistants with any necessary means of access to, copying of, and forensic imaging of documents or electronically stored information, including, without limitation, the locations of Receivership Defendants' business premises, keys and combinations to business premises locks, computer and telephone, including mobile telephone access codes of all computers used to conduct Receivership Defendants' business, access to (including but not limited to execution of any documents necessary for access to and forensic imaging of) any data stored, hosted, or otherwise maintained by electronic data host, and storage area access information.

B. Plaintiff and the Receiver are authorized to employ the assistance of law enforcement officers, including, but not limited to, the Florida Department of Agriculture and Consumer Services, to effect service, to implement peacefully the provisions of this Order, and keep the peace. The Receiver shall allow Plaintiff and its representatives, agents, attorneys, investigators, paralegals, contractors, or assistants into the premises into the premises and facilities described in this Section to inspect, inventory, image, and copy Documents or electronically stored information relevant to any matter contained in this Order. Counsel for Plaintiff and the Receiver may exclude Defendants and their agents and employees from the business premises and facilities during the immediate access. No one shall interfere with the Plaintiff's or Receiver's inspection of the Defendants' premises or documents.

C. The Receiver and the Plaintiff shall have the right to remove any Documents related to Defendants' business practices from the premises in order that they may be inspected, inventoried, and copied. The materials so removed shall be returned within ten (10) business days of completing said inventory and copying. If any property, records, documents, or computer files relating to the Receivership Defendants' finances or business practices are located in the residences of the Individual Defendants or are otherwise in the custody or control of the Individual Defendants, then they shall produce them to the Receiver within ten (10) days of service of this Order. In order to prevent the destruction of computer data, upon service of this Order upon Defendants, any such computers shall be powered down (turned off) in the normal course for the operating systems used on such computers and shall not be powered up or used again until produced for copying and inspection, along with

any codes needed for access. The Plaintiff's and Receiver's representatives may also photograph or videotape the inside and outside of all premises to which they are permitted access by this Order, and all documents and other items found on such premises.

D. The Plaintiff's access to the Defendants' documents pursuant to this provision shall not provide grounds for any Defendant to object to any subsequent request for documents served by Plaintiff.

E. The Receiver shall have the discretion to determine the time, manner and reasonable conditions of such access.

### **XIII. DEFENDANTS' ACCESS TO PREMISES AND RECORDS**

**IT IS FURTHER ORDERED** that the Receiver shall allow the Defendants and their representatives reasonable access to the premises of the Receivership Defendants. The purpose of this access shall be to inspect and copy any and all Documents and other property owned by or in the possession of the Receivership Defendants, provided that those Documents and property are not removed from the premises. The Receiver shall have the discretion to determine the time, manner, and reasonable conditions of such access.

### **XIV. DELIVERY OF RECEIVERSHIP PROPERTY**

**IT IS FURTHER ORDERED** that, immediately upon service of this Order upon them, or within such time as may be permitted by the Receiver, Defendants, or any other Person or entity served with a copy of this Order, shall transfer or deliver possession, custody and control of the following to the Receiver:

A. All Assets of the Receivership Defendants (including, but not limited to, desktop and laptop computers and network servers), including Assets subject to repatriation

pursuant to Section XV, *infra*;

B. All Documents of the Receivership Defendants, including, but not limited to, all financial and accounting records, balance sheets, income statements, bank records (including monthly statements, canceled checks, records of wire transfers, and check registers), customer lists, title documents, contracts, accounting data, written or electronic correspondence, advertisements, computer tapes, disks, or other computerized records, books, written or printed records, handwritten notes, telephone logs, telephone scripts, membership records and lists, refund records, receipts, ledgers, personal and business canceled checks and check registers, appointment books, copies of federal, state, or local business, personal income, or property tax returns, and other Documents or records of any kind that relate to the Receivership Defendants' business practices;

C. All funds and other Assets belonging to members of the public now held by the Receivership Defendants; and

D. All keys, codes, and passwords, entry codes, combinations to locks, safe combinations, and information or devices required to open or gain access to any Asset or Document, including, but not limited to, access to their business premises, means of communication, accounts, computer systems, or other property.

#### **XV. NON-COMPLIANCE WITH TRANSFERS OR DELIVERY**

**IT IS FURTHER ORDERED** that, in the event any Person or entity fails to transfer or deliver any Asset, Document, or other thing or otherwise fails to comply with any provision of this Order requiring the delivery of Assets, Documents or other things, the Receiver may file *ex parte* an affidavit of non-compliance regarding the failure. Upon filing

of the affidavit, the Court may authorize, without additional process or demand, writs of possession or sequestration or other equitable writs requested by the Receiver. The writs shall authorize and direct the United States Marshal, any sheriff or deputy sheriff of any county, or any other federal, state, or local law enforcement officer, to seize the Asset, Document, or other thing and to deliver it to the Receiver.

**XVI. REPATRIATION OF FOREIGN ASSETS AND DOCUMENTS**

**IT IS FURTHER ORDERED** that, within five (5) business days following service of this Order, Defendants shall, to the extent not previously done:

A. Repatriate to the United States all funds, Documents or Assets in foreign countries held either: (1) by any Defendant; (2) for the benefit of any Defendant; or (3) under the direct or indirect control, jointly or individually, of any Defendant;

B. The same business day as any repatriation, (1) notify counsel for the Plaintiff and the Receiver of the name and location of the financial institution or other entity that is the recipient of such funds, Documents or Assets; and (2) serve this Order on any such financial institution or other entity;

C. Provide the Plaintiff and the Receiver with a full accounting of all funds, Documents, and Assets outside of the territory of the United States held either: (1) by the Defendants; (2) for the Defendants' benefit; or (3) under the Defendants' direct or indirect control, individually or jointly; and

D. Provide Plaintiff with access to all records of accounts or Assets of Defendants held by financial institutions whether located outside the territorial United States or otherwise by signing the Consent to Release of Financial Records attached to this Order as

Attachment C.

**XVII. INTERFERENCE WITH REPATRIATION**

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

A. Sending any statement, letter, fax, e-mail or wire transmission, or telephoning or engaging in any other act, directly or indirectly, that results in a determination by a foreign trustee or other entity that a "duress" event has occurred under the terms of a foreign trust agreement, until such time as all Assets have been fully repatriated pursuant to the preceding Section of this Order; and

B. Notifying any trustee, protector or other agent of any foreign trust or other related entities of either the existence of this Order, or of the fact that repatriation is required pursuant to a Court Order, until such time as all Assets have been fully repatriated pursuant to the preceding Section of this Order.

**XVIII. CREDIT REPORTS**

**IT IS FURTHER ORDERED** that the Plaintiff may obtain credit reports concerning the Individual Defendants pursuant to Section 604(a)(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(1), and that, upon written request, any credit reporting agency from which such report is requested shall provide it to the Plaintiff.

**XIX. DISTRIBUTION OF ORDER BY DEFENDANTS**

**IT IS FURTHER ORDERED** that Defendants shall immediately provide a copy of this Order to each affiliate, agent, partner, division, sales entity, successor, assignee, officer, director, employee, independent contractor, spouse, Internet web host or master, agent, attorney, and/or representative of Defendants and shall, within ten (10) days from the date of entry of this Order, serve upon counsel for the Plaintiff a sworn statement that the Defendants have complied with this provision of this Order, which statement shall include the names and addresses of each such person or entity who has received a copy of the Order.

**XX. STAY OF ACTIONS**

**IT IS FURTHER ORDERED** that except by leave of this Court, during the pendency of the receivership ordered herein, the Defendants and all other persons and entities are hereby stayed from taking any action to establish or enforce any claim, right or interest for, against, on behalf of, in, or in the name of, the Receivership Defendants, or any of their subsidiaries, affiliates, partnerships, Assets, and Documents, or the Receiver or the Receiver's duly authorized agents acting in their capacities as such, including, but not limited to, the following actions:

A. Commencing, prosecuting, continuing or enforcing any suit or proceeding, except that such actions may be filed to toll any applicable statute of limitations;

B. Accelerating the due date of any obligation or claimed obligation, filing, perfecting, or enforcing any lien; taking or attempting to take possession, custody or control of any Asset; attempting to foreclose, forfeit, alter, or terminate any interest in any Asset, whether such acts are part of a judicial proceeding, are acts of self-help, or otherwise, or setoff of any debt owing to the Receivership Defendants that arose before the date of this

Order against any claim against the Receivership Defendants; and

C. Doing any act or thing whatsoever to interfere with the Receiver taking custody, control, possession or management of the Assets or Documents subject to this receivership, or to harass or interfere with the Receiver in any way, or to interfere in any manner with the exclusive jurisdiction of this Court over the Assets and Documents of the Receivership Defendants.

*Provided, however,* nothing in this Paragraph shall prohibit any law enforcement or regulatory authority from commencing or prosecuting an action against the Receivership Defendants to enforce such governmental unit's police or regulatory power;

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

#### **XXI. SERVICE OF THIS ORDER**

**IT IS FURTHER ORDERED** that copies of this Order may be served by facsimile transmission, personal or overnight delivery, or U.S. Express Mail, by agents and employees of either Plaintiff or any state or federal law enforcement agency or by private process server, on Defendants or any other persons or entities that may be subject to any provision of this Order.

#### **XXII. CORRESPONDENCE WITH AND NOTICE TO PLAINTIFF**

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

Gideon Sinasohn, Esq.  
Federal Trade Commission  
225 Peachtree Street, Suite 1500  
Atlanta, Georgia 30303  
(404) 656-1366 (telephone)  
(404) 656-1379 (facsimile)

Notice may be provided by email to [gsinasohn@ftc.gov](mailto:gsinasohn@ftc.gov).

**XXIII. RETENTION OF JURISDICTION**

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

**IT IS SO ORDERED**, this 27th day of December, 2016, at 11:00 a.m.



  
GREGORY A. PRESNELL  
UNITED STATES DISTRICT JUDGE

**SO STIPULATED**

**FOR PLAINTIFF:**

**Dated:** December 22, 2016

/s/ Gideon E. Sinasohn  
GIDEON E. SINASOHN, ESQ.  
Special Florida Bar No. A55001392  
HAROLD E. KIRTZ, ESQ.  
Special Florida Bar No. A5500743  
Federal Trade Commission,  
Southeast Region  
225 Peachtree Street, N.E., Suite 1500

**Atlanta, GA 30303  
(404) 656-1366 (Sinason)  
(404) 656-1357 (Kirtz)  
Email: BCPBriefBank@ftc.gov**

**/s/ C. Gene Shipley  
C. GENE SHIPLEY, ESQ.  
Fisher Rushmer, Attorneys at Law  
390 N. Orange Ave., Ste. 2200  
P.O. Box 3753  
Orlando, FL 32801-1642  
(407) 843-2111**

**/s/ Jess Kinmont  
JESS KINMONT, individually and on  
behalf of J. William Enterprises, LLC,  
as Member and owner**

**/s/ John P. Wenz  
JOHN P. WENZ, individually and on  
behalf Pro Timeshare Resales of  
Flagler Beach, LLC, as Member and  
owner  
6 River Place  
Palm Coast, FL 32164  
(386) 316-3010**