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17 **UNITED STATES DISTRICT COURT**
 18 **CENTRAL DISTRICT OF CALIFORNIA**

19 FEDERAL TRADE COMMISSION,

Case No. CV 13-8843 JFW (PLAx)

20 Plaintiff,

**FINAL ORDER FOR PERMANENT
 INJUNCTION AND MONETARY
 JUDGMENT AGAINST
 DEFENDANT JOHN CHARCHIAN**

21 v.

22 CREAM GROUP, INC., also d/b/a
 23 Terra Nova, TNT, Inc., and CRM, Inc.,
 24 a California Corporation, *et al.*,

25 Defendants.

1 Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), filed
2 its Complaint for Permanent Injunction and Other Equitable Relief, for a
3 permanent injunction and other equitable relief in this matter, pursuant to Sections
4 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§
5 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention
6 Act (“Telemarketing Act”), 15 U.S.C. §§ 6101-6108. On December 3, 2013, the
7 Court entered a temporary restraining order against Defendants (Doc. 20). The
8 Court entered a Stipulated Preliminary Injunction on January 9, 2014 (Doc. 32).
9 On April 2, 2014, the FTC amended its Complaint (“First Amended Complaint”)
10 (Doc. 58), adding claims against Relief Defendants Spring Acres, LLC, and
11 Bahareh Ramin. Through counsel, the Commission and John Charchian
12 (“Stipulating Defendant”) stipulate to the entry of this Stipulated Order for
13 Permanent Injunction and Monetary Judgment Against Defendant John Charchian
14 (“Order”) to resolve all matters in dispute in this action between them.

15 THEREFORE, IT IS ORDERED as follows:

16 **FINDINGS**

- 17 1. This Court has jurisdiction over this matter.
- 18 2. The First Amended Complaint charges that Defendants participated
19 in deceptive acts or practices in violation of Section 5(a) of the FTC Act,
20 15 U.S.C. § 45(a), and the FTC’s Telemarketing Sales Rule (“TSR”), 16 C.F.R.
21 Part 310. The First Amended Complaint seeks both permanent injunctive relief
22 and equitable monetary relief for Defendants’ deceptive acts or practices as
23 alleged therein, and disgorgement from Relief Defendants of all funds and assets
24 received by them that are traceable to Defendants’ unlawful acts or practices.
- 25 3. Stipulating Defendant neither admits nor denies any of the
26 allegations in the First Amended Complaint, except as specifically stated in this
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1 Order. Only for purposes of this action, Stipulating Defendant admits the facts
2 necessary to establish jurisdiction.

3 4. Stipulating Defendant waives any claim that he may have under the
4 Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this
5 action through the date of this Order. The Commission and Stipulating Defendant
6 shall each bear their own costs and attorney fees incurred in this action.

7 5. Stipulating Defendant and the Commission waive all rights to appeal
8 or otherwise challenge or contest the validity of this Order.

9 6. Entry of this Order is in the public interest.

10 DEFINITIONS

11 For purposes of this Order, the following definitions apply:

12 A. **“Corporate Defendant”** means Cream Group, Inc., also d/b/a Terra
13 Nova, TNT, Inc., and CRM, Inc., and its successors, assigns, affiliates, and
14 subsidiaries.

15 B. **“Defendants”** means the Individual Defendants and the Corporate
16 Defendant, individually, collectively, or in any combination.

17 C. **“Individual Defendants”** means Sami Charchian, also d/b/a Oro
18 Marketing, Inc., Modo, Modo Industry, Oro Max, Casa de Oro, Casa de Moda,
19 Oro Mundo, and Nation/Modo; and John Charchian, a/k/a Djahangir Charchian
20 and Jahangir John Charchian, also d/b/a Oro Marketing, Inc., Modo, Modo
21 Industry, Oro Max, Casa de Oro, Casa de Moda, Oro Mundo, and Nation/Modo,
22 by whatever other names each may be known.

23 D. **“Receiver”** means the permanent receiver appointed in the Stipulated
24 Preliminary Injunction (Doc. 32). The term “Receiver” also includes any deputy
25 receivers as may be named by the Receiver.

26 E. **“Receivership Defendant”** means Cream Group, Inc., also d/b/a
27 Terra Nova, TNT, Inc., and CRM, Inc., and its successors, assigns, affiliates, and

1 subsidiaries, including, but not limited to, Applied Design Services, Inc., and CA
2 Mart, and any related d/b/a used by any of the Individual Defendants, including,
3 but not limited to, Oro Marketing, Inc., Modo, Modo Industry, Oro Max, Casa de
4 Oro, Casa de Moda, Oro Mundo, and Nation/Modo, and each of them by
5 whatever names each might be known.

6 F. **“Relief Defendants”** means Bahareh Ramin and Spring Acres, LLC,
7 and its successors, assigns, subsidiaries, affiliates.

8 G. **“Stipulating Defendant”** means Individual Defendant John
9 Charchian, also d/b/a Oro Marketing, Inc., Modo, Modo Industry, Oro Max, Casa
10 de Oro, Casa de Moda, Oro Mundo, and Nation/Modo.

11 H. **“Telemarketing”** means a plan, program, or campaign which is
12 conducted to induce the purchase of goods or services or a charitable contribution,
13 by use of one or more telephones and which involves more than one interstate
14 telephone call. The term does not include the solicitation of sales through the
15 mailing of a catalog which: contains a written description or illustration of the
16 goods or services offered for sale; includes the business address of the seller;
17 includes multiple pages of written material or illustrations; and has been issued
18 not less frequently than once a year, when the person making the solicitation does
19 not solicit customers by telephone but only receives calls initiated by customers in
20 response to the catalog and during those calls takes orders only without further
21 solicitation. For purposes of the previous sentence, the term “further solicitation”
22 does not include providing the customer with information about, or attempting to
23 sell, any other item included in the same catalog which prompted the customer’s
24 call or in a substantially similar catalog.

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1 **ORDER**

2 **I. PERMANENT BAN ON TELEMARKETING**

3 IT IS ORDERED that Stipulating Defendant is permanently restrained and
4 enjoined from participating in Telemarketing to consumers, or assisting others
5 engaged in Telemarketing to consumers, whether directly or through an
6 intermediary.

7 **II. PROHIBITION AGAINST MISREPRESENTATIONS**

8 IT IS FURTHER ORDERED that Stipulating Defendant, Stipulating
9 Defendant's officers, agents, servants, employees, and attorneys, and all other
10 persons in active concert or participation with any of them, who receive actual
11 notice of this Order, whether acting directly or indirectly, in connection with the
12 advertising, marketing, promotion, offering for sale, sale, or distribution of, any
13 good or service, are permanently restrained and enjoined from misrepresenting, or
14 assisting others in misrepresenting, expressly or by implication, any material fact,
15 including, but not limited to, the following:

16 A. That consumers will receive:

- 17 1. Well-known or brand-name merchandise; or
18 2. Merchandise at low or wholesale prices;

19 B. That consumers who pay for or accept additional shipments of
20 merchandise will receive:

- 21 1. The well-known or brand-name goods they ordered; or
22 2. A refund of the amount they paid;

23 C. That any adverse action will be taken against any consumer,
24 including, but not limited to, legal actions, fines, damage to consumers' credit
25 history, garnishment of income and bank accounts, arrest, or reporting consumers
26 to immigration authorities;

1 D. Any material aspect of the performance, efficacy, nature, or central
2 characteristics of any good or service, including, but not limited to, the quality or
3 manufacturer of merchandise;

4 E. Any material aspect of the nature or terms of any refund,
5 cancellation, exchange, or repurchase policy, including, but not limited to, that
6 customers will be granted refunds if they pay for additional goods;

7 F. The total costs to purchase, receive, or use, or the quantity of, goods
8 or services; and

9 G. Any material restriction, limitation, or condition on purchasing,
10 receiving, or using a good or service.

11 **III. MONETARY JUDGMENT**

12 IT IS FURTHER ORDERED that:

13 A. Judgment in the amount of Three Hundred Seventy Five Thousand
14 Dollars (\$375,000.00) is entered in favor of the Commission against Stipulating
15 Defendant as equitable monetary relief.

16 B. Stipulating Defendant is ordered to pay to the Commission as
17 follows:

18 1. Stipulating Defendant is ordered to pay to the Commission
19 Three Hundred Seventy Five Thousand Dollars (\$375,000.00), which, as
20 Stipulating Defendant stipulates, his undersigned counsel holds in escrow for no
21 purpose other than payment to the Commission. Such payment must be made
22 within 120 days of entry of this Order by electronic fund transfer in accordance
23 with instructions previously provided by a representative of the Commission.

24 2. Stipulating Defendant grants to the Commission all rights and
25 claims he has to any assets currently in the possession, custody, or control of the
26 Receiver, including, but not limited to, all funds transferred to the Receiver from
27 the following accounts:

1 a. JP Morgan Chase account ending 7023, held in
2 the name of Applied Design Services, Inc.;

3 b. JP Morgan Chase account ending 7487, held in
4 the name of Cream Group, Inc.;

5 c. US Bank account ending 7268, held in the name
6 of Cream Group, Inc.;

7 d. Bank of America account ending 2431, held in
8 the name of Oro Marketing, Inc.; and

9 e. Bank of America account ending 3598, held in
10 the name of Oro Marketing, Inc.

11 **IV. ADDITIONAL MONETARY PROVISIONS**

12 IT IS FURTHER ORDERED that:

13 A. Stipulating Defendant relinquishes dominion and all legal and
14 equitable right, title, and interest in all assets transferred pursuant to this Order
15 and may not seek the return of any assets.

16 B. The facts alleged in the First Amended Complaint will be taken as
17 true, without further proof, in any subsequent civil litigation by or on behalf of the
18 Commission, including in a proceeding to enforce its rights to any payment or
19 monetary judgment pursuant to this Order, such as a nondischargeability
20 complaint in any bankruptcy case.

21 C. The facts alleged in the First Amended Complaint establish all
22 elements necessary to sustain an action by the Commission pursuant to Section
23 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order
24 will have collateral estoppel effect for such purposes.

25 D. Stipulating Defendant acknowledges that his Taxpayer Identification
26 Numbers (Social Security Numbers or Employer Identification Numbers), which
27 Stipulating Defendant previously submitted to the Commission, may be used for

1 collecting and reporting on any delinquent amount arising out of this Order, in
2 accordance with 31 U.S.C. § 7701.

3 E. All money paid to the Commission pursuant to this Order may be
4 deposited into a fund administered by the Commission or its designee to be used
5 for equitable relief, including consumer redress and any attendant expenses for
6 the administration of any redress fund. If a representative of the Commission
7 decides that direct redress to consumers is wholly or partially impracticable or
8 money remains after redress is completed, the Commission may apply any
9 remaining money for such other equitable relief (including consumer information
10 remedies) as it determines to be reasonably related to Defendants' practices
11 alleged in the First Amended Complaint. Any money not used for such equitable
12 relief is to be deposited to the U.S. Treasury as disgorgement. Stipulating
13 Defendant has no right to challenge any actions the Commission or its
14 representatives may take pursuant to this Subsection.

15 F. The Preliminary Injunction's freeze of the Stipulating Defendant's
16 assets shall remain in effect until the assets have been transferred in accordance
17 with Subsection III.B. *Provided, however*, that the asset freeze may be lifted as to
18 the Stipulating Defendant to the extent necessary to comply with the transfer and
19 turnover requirements of Subsection III.B. Upon compliance with the transfer
20 and turnover requirements of Subsection III.B, the freeze on the assets of
21 Stipulating Defendant pursuant to the Stipulated Preliminary Injunction entered in
22 this action is lifted.

23 **V. CUSTOMER INFORMATION**

24 IT IS FURTHER ORDERED that Stipulating Defendant, Stipulating
25 Defendant's officers, agents, servants, employees, and attorneys, and all other
26 persons in active concert or participation with any of them, who receive actual
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1 notice of this Order are permanently restrained and enjoined from directly or
2 indirectly:

3 A. Failing to provide sufficient customer information to enable the
4 Commission to efficiently administer consumer redress. If a representative of the
5 Commission requests in writing any information related to redress, Stipulating
6 Defendant must provide it, in the form prescribed by the Commission, within
7 fourteen (14) days;

8 B. Disclosing, using, or benefitting from customer information,
9 including the name, address, telephone number, email address, social security
10 number, other identifying information, or any data that enables access to a
11 customer's account (including a credit card, bank account, or other financial
12 account), that any Defendant obtained prior to entry of this Order in connection
13 with the marketing or sale of goods or services; and

14 C. Failing to destroy such customer information in all forms in their
15 possession, custody, or control within thirty (30) days after receipt of written
16 direction to do so from a representative of the Commission. Disposal shall be by
17 means that protect against unauthorized access to the customer information, such
18 as by burning, pulverizing, or shredding any papers, and by erasing or destroying
19 any electronic media, to ensure that the customer information cannot practicably
20 be read or reconstructed. *Provided, however,* that customer information need not
21 be disposed of, and may be disclosed, to the extent requested by a government
22 agency or required by law, regulation, or court order.

23 **VI. PROHIBITION ON COLLECTING ON ACCOUNTS**

24 IT IS FURTHER ORDERED that Stipulating Defendant, Stipulating
25 Defendant's officers, agents, servants, employees, attorneys, and all other persons
26 in active concert or participation with any of them who receive actual notice of
27 this Order, whether acting directly or indirectly, are permanently restrained and

1 enjoined from attempting to collect, collecting, or assigning any right to collect
2 payment from any consumer who purchased or agreed to purchase any good or
3 service from any Defendant.

4 **VII. ORDER ACKNOWLEDGEMENTS**

5 IT IS FURTHER ORDERED that Stipulating Defendant obtain
6 acknowledgements of receipt of this Order:

7 A. Stipulating Defendant, within seven (7) days of entry of this Order,
8 must submit to the Commission an acknowledgment of receipt of this Order
9 sworn under penalty of perjury.

10 B. For five (5) years after entry of this Order, Stipulating Defendant, for
11 any business that he, individually or collectively with any other Defendant, is the
12 majority owner or controls directly or indirectly, must deliver a copy of this Order
13 to: (1) all principals, officers, directors, and LLC managers and members; (2) all
14 employees, agents, and representatives who participate in conduct related to the
15 subject matter of the Order; and (3) any business entity resulting from any change
16 in structure as set forth in the section of this Order titled Compliance Reporting.
17 Delivery must occur within seven (7) days of entry of this Order for current
18 personnel. For all others, delivery must occur before they assume their
19 responsibilities.

20 C. From each individual or entity to which Stipulating Defendant
21 delivered a copy of this Order, Stipulating Defendant must obtain, within thirty
22 (30) days, a signed and dated acknowledgment of receipt of this Order.

23 **VIII. COMPLIANCE REPORTING**

24 IT IS FURTHER ORDERED that Stipulating Defendant make timely
25 submissions to the Commission:

26 A. One (1) year after entry of this Order, Stipulating Defendant must
27 submit a compliance report, sworn under penalty of perjury:

1 1. Stipulating Defendant must: (a) identify the primary physical,
2 postal, and email address and telephone number, as designated points of contact,
3 which representatives of the Commission may use to communicate with
4 Defendant; (b) identify all of that Defendant's businesses by all of their names,
5 telephone numbers, and physical, postal, email, and Internet addresses; (c)
6 describe the activities of each business, including the goods and services offered,
7 the means of advertising, marketing, and sales, and the involvement of any other
8 Defendant (which Stipulating Defendant must describe if he knows or should
9 know due to his own involvement); (d) describe in detail whether and how that
10 Defendant is in compliance with each Section of this Order; and (e) provide a
11 copy of each Order Acknowledgment obtained pursuant to this Order, unless
12 previously submitted to the Commission.

13 2. Additionally, Stipulating Defendant must: (a) identify all
14 telephone numbers and all physical, postal, email and Internet addresses,
15 including all residences; (b) identify all business activities, including any business
16 for which Defendant performs services whether as an employee or otherwise and
17 any entity in which Defendant has any ownership interest; and (c) describe in
18 detail Defendant's involvement in each such business, including title, role,
19 responsibilities, participation, authority, control, and any ownership.

20 B. For ten (10) years after entry of this Order, Stipulating Defendant
21 must submit a compliance notice, sworn under penalty of perjury, within fourteen
22 (14) days of any change in the following:

23 1. Stipulating Defendant must report any change in: (a) any
24 designated point of contact; or (b) the structure of any entity that Stipulating
25 Defendant has any ownership interest in or controls directly or indirectly that may
26 affect compliance obligations arising under this Order, including: creation,
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1 record for five (5) years. Specifically, Stipulating Defendant, for any business
2 that he, individually or collectively with any other Defendant, is a majority owner
3 or controls directly or indirectly, must create and retain the following records:

4 A. accounting records showing the revenues from all goods or services
5 sold;

6 B. personnel records showing, for each person providing services,
7 whether as an employee or otherwise, that person's: name; addresses; telephone
8 numbers; job title or position; dates of service; and (if applicable) the reason for
9 termination;

10 C. records of all consumer complaints and refund requests, whether
11 received directly or indirectly, such as through a third party, and any response;

12 D. all records necessary to demonstrate full compliance with each
13 provision of this Order, including all submissions to the Commission; and

14 E. a copy of all scripts, training materials, unique advertisements, or
15 other marketing materials.

16 X. COMPLIANCE MONITORING

17 IT IS FURTHER ORDERED that, for the purpose of monitoring
18 Stipulating Defendant's compliance with this Order, and any failure to transfer
19 any assets as required by this Order:

20 A. Within fourteen (14) days of receipt of a written request from a
21 representative of the Commission, Stipulating Defendant must: submit additional
22 compliance reports or other requested information, which must be sworn under
23 penalty of perjury; appear for depositions; and produce documents for inspection
24 and copying. The Commission is also authorized to obtain discovery, without
25 further leave of court, using any of the procedures prescribed by the Federal Rules
26 of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45,
27 and 69.

1 B. For matters concerning this Order, the Commission is authorized to
2 communicate directly with Stipulating Defendant. Stipulating Defendant must
3 permit representatives of the Commission to interview any employee or other
4 person affiliated with any Defendant who has agreed to such an interview. The
5 person interviewed may have counsel present.

6 C. The Commission may use all other lawful means, including posing,
7 through its representatives, as consumers, suppliers, or other individuals or
8 entities, to Stipulating Defendant or any individual or entity affiliated with
9 Defendants, without the necessity of identification or prior notice. Nothing in this
10 Order limits the Commission's lawful use of compulsory process, pursuant to
11 Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

12 **XI. RETENTION OF JURISDICTION**

13 IT IS FURTHER ORDERED that this Court retains jurisdiction of this
14 matter for purposes of construction, modification, and enforcement of this Order.

15
16 **SO ORDERED this 22nd day of December, 2014.**

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19 U.S. District Judge John F. Walter