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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Federal Trade Commission,)	Case No.
)	CV-13-1583-PHX-ROS
Plaintiff,)	
)	
vs.)	PRELIMINARY INJUNCTION
)	ORDER WITH ASSET FREEZE,
Money Now Funding, LLC, et. al)	APPOINTMENT OF A
)	PERMANENT RECEIVER, AND
Defendants.)	OTHER EQUITABLE RELIEF AS
)	TO DEFENDANTS CORDELL
)	BESS, CLINTON RACKLEY,
)	AND RONALD W. HOBBS.
)	
)	

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), has filed its Complaint for Permanent Injunction and Other Equitable Relief pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and has applied for a temporary restraining order (“TRO”), asset freeze, other equitable relief, and an order to show cause why a preliminary injunction should not issue pursuant to Rule 65 of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 65. The Court held a show cause hearing on August 14, 2013 and entered a Preliminary Injunction Order (Doc. 56) on August 19, 2013 against all Corporate Defendants and fifteen individual Defendants. This Preliminary Injunction Order applies to three additional Defendants, Cordell Bess, Clinton Rackley, and Ronald W. Hobbs, who had not yet been served at the time of the original show cause hearing. The FTC served Defendants Bess, Rackley, and Hobbs and filed an affidavit of service (Doc. 84).

1 Defendant Clinton Rackley has stipulated to the entry of this Preliminary
2 Injunction Order. The Court held a show cause hearing on September 13, 2013 as to
3 Defendants Cordell Bess and Ronald W. Hobbs.

4 Accordingly, having considered all the arguments, evidence, and pleadings filed in
5 this matter, the Court now finds as follows:

6 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

7 1. This Court has jurisdiction over the subject matter of this case, jurisdiction
8 over all parties, and venue in this district is proper.

9 2. There is good cause to believe that Defendants Money Now Funding, LLC,
10 Rose Marketing, LLC, DePaola Marketing, LLC, Affiliate Marketing Group, LLC, Legal
11 Doxs, LLC, US Doc Assist, LLC, Affinity Technologies, LLC, Marketing Expert
12 Solutions, LLC, Lukeroy K. Rose, Cordell Bess, Solana DePaola, Jennifer Beckman,
13 William D. Claspell, Richard Frost, Dino Mitchell, Clinton Rackley, Lance Himes, Leary
14 Darling, Donna F. Duckett, Della Frost, Christopher Grimes, Alannah M. Harre, Ronald
15 W. Hobbs, Janine Lilly, Michael McIntyre, Benny Montgomery, Virginia Rios, and
16 Kendrick Thomas have engaged in and are likely to engage in acts and practices that
17 violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), the FTC's Trade Regulation Rule
18 entitled "Disclosure Requirements and Prohibitions Concerning Business Opportunities"
19 ("Business Opportunity Rule" or "Rule"), 16 C.F.R. Part 437, as amended, and the FTC's
20 Trade Regulation Rule entitled "Telemarketing Sales Rule" ("TSR" or "Rule"), 16 C.F.R.
21 Part 310, and that the Commission is likely to prevail on the merits of this action.

22 3. There is good cause to believe that immediate and irreparable harm will
23 result from Defendants' ongoing violations of the FTC Act, the Business Opportunity
24 Rule, and the TSR unless Defendants are restrained and enjoined by Order of this Court.

25 4. There is good cause to believe that immediate and irreparable damage to
26 the Court's ability to grant effective final relief for consumers – including the refund of
27 monies paid, restitution, or rescission or reformation of contract – will occur from the
28 sale, transfer, or other disposition or concealment by Defendants of assets or records, and

1 that therefore in accordance with Fed. R. Civ. P. 65(b), the interests of justice require that
2 this Order be granted.

3 5. Good cause exists for (a) the appointment of a Permanent Receiver over
4 Corporate Defendants Money Now Funding, LLC; Rose Marketing, LLC; DePaola
5 Marketing, LLC; Affiliate Marketing Group, LLC; Legal Doxs, LLC; US Doc Assist,
6 LLC; Affinity Technologies, LLC; and Marketing Expert Solutions, LLC; (b) freezing of
7 Defendants' assets; and (c) the ancillary relief ordered below.

8 6. Considering Plaintiff's likelihood of ultimate success and weighing the
9 equities, a Preliminary Injunction with asset freeze, the appointment of a Permanent
10 Receiver, and other equitable relief is in the public interest.

11 7. No security is required of any agency of the United States for issuance of a
12 preliminary injunction. Fed. R. Civ. P. 65(c).

13 To the extent any of Findings of Fact are more properly characterized as
14 Conclusions of Law, they should be so considered; to the extent any Conclusions of Law
15 are more properly characterized as Findings of Fact, they should be so considered.

16 DEFINITIONS

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

18 1. "**Asset**" means any legal or equitable interest in, right to, or claim to, any
19 real, personal, or intellectual property of any Corporate Defendant or Individual
20 Defendant, or held for the benefit of any Corporate Defendant or Individual Defendant,
21 wherever located, including, but not limited to, chattel, goods, instruments, equipment,
22 fixtures, general intangibles, effects, leaseholds, contracts, mail or other deliveries, shares
23 of stock, securities, inventory, checks, notes, accounts, credits, receivables (as those
24 terms are defined in the Uniform Commercial Code), cash, trusts, including, but not
25 limited to, any trust held for the benefit of any of the Defendants, and reserve funds or
26 any other accounts associated with payments processed by, or on behalf of, any of the
27 Defendants, including, but not limited to, reserve funds held by payment processors or
28 financial institutions.

1 2. **“Business Opportunity Rule”** means the FTC Rule entitled “Disclosure
2 Requirements and Prohibitions Concerning Business Opportunities” 16 C.F.R. Part 437,
3 as amended.

4 3. **“Corporate Defendants”** means Money Now Funding, LLC, Rose
5 Marketing, LLC, DePaola Marketing, LLC, Affiliate Marketing Group, LLC, Legal
6 Doxs, LLC, US Doc Assist, LLC, Affinity Technologies, LLC, Marketing Expert
7 Solutions, LLC and their successors and assigns.

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

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

16 6. **“Individual Defendants”** means Lukeroy K. Rose, Cordell Bess, Solana
17 DePaola, Jennifer Beckman, William D. Claspell, Richard Frost, Dino Mitchell, Clinton
18 Rackley, Lance Himes, Leary Darling, Donna F. Duckett, Della Frost, Alannah M. Harre,
19 Ronald W. Hobbs, Janine Lilly, Michael McIntyre, Benny Montgomery, and Kendrick
20 Thomas individually, collectively, or in any combination.

21 7. **“Material”** means likely to affect a person’s choice of, or conduct
22 regarding, opportunities, products or services.

23 8. **“National Do Not Call Registry”** means the registry of telephone numbers
24 maintained by the FTC, pursuant to the Telemarketing Sales Rule, 16 C.F.R. section
25 310.4(b)(1)(iii)(B) , of Persons who do not wish to receive Outbound Telephone Calls to
26 induce the purchase of goods or services.

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1 advertising, marketing, promotion, offering for sale, or sale of any products or services,
2 are **hereby preliminarily restrained and enjoined** from making, in any manner,
3 expressly or by implication, any false or unsubstantiated representations of any material
4 fact including, but not limited to:

5 A. That any Defendant or other person offers, sells, or provides loans or cash
6 advances;

7 B. The amount of income, earnings, or profits that a person may or is likely to
8 earn, or that other persons have earned;

9 C. That any Defendants or other person will provide, locate, or obtain leads
10 containing the names or contact information of persons potentially interested in
11 Defendants products or services;

12 D. That any Defendant or other person will contact, sell, or provide services to
13 businesses consumers refer;

14 E. The total cost to purchase, receive, or use any products or services; or

15 F. Any material aspect of the performance, efficacy, nature, or central
16 characteristics any product or service.

17 **II.**

18 **PROHIBITIONS RELATED TO THE SALE AND MARKETING OF BUSINESS**
19 **OR WORK AT HOME OPPORTUNITIES**

20 **IT IS THEREFORE ORDERED** that Defendants Bess, Rackley, and Hobbs and
21 their Representatives, whether acting directly or indirectly, in connection with the
22 advertising, marketing, promotion, offering for sale, or sale of any business opportunity
23 or Work-at-home opportunity, are **hereby preliminarily restrained and enjoined** from:

24 A. Failing to disclose, or disclose adequately, in writing material information
25 pertaining to the any opportunity at least seven (7) days before the consumer signs a
26 contract or makes a payment in connection with that opportunity including:

27 1. Basic identifying information of the seller of the opportunity,
28 including the seller's name, business address, and telephone number;

- 1 2. Any civil or criminal actions against the seller or affiliates of the
- 2 seller for misrepresentation, fraud, or unfair or deceptive practices
- 3 within the 10 years preceding the date that the opportunity is offered;
- 4 3. Material terms and conditions of any cancellation or refund policy;
- 5 or
- 6 4. Any claim of actual or potential earnings that purchasers of the
- 7 opportunity may experience.

8 B. Making any earnings claims unless there is (1) a reasonable basis for the
9 claim at the time the claim is made; and (2) written substantiation for the earnings claim
10 in the possession of Defendants' at the time the claim is made;

11 C. Violating the Business Opportunity Rule, 16 C.F.R. Part 437, as amended,
12 a copy of which is attached.

13 **III.**
14 **PROHIBITIONS AGAINST VIOLATING**
15 **THE TELEMARKETING SALES RULE**

16 **IT IS THEREFORE ORDERED** that Defendants Bess, Rackley, and Hobbs and
17 their Representatives, whether acting directly or indirectly, in connection with
18 Telemarketing of any product or service, are **hereby preliminarily restrained and**
19 **enjoined** from engaging in violations of the Telemarketing Sales Rule, 16 C.F.R. Part
20 310, including, but not limited to:

21 A. Initiating, or causing others to initiate, an outbound telephone call (1) to a
22 person's telephone number on the National Do Not Call Registry or (2) to a person who
23 previously has stated that he or she does not wish to receive an outbound telephone call
24 made by or on behalf of the seller whose goods or services are being offered;

25 B. Causing the telephone to ring or engaging persons in telephone
26 conversation repeatedly or continuously, with intent to annoy, abuse, or harass the person
27 at the called number;

28 C. Threatening, intimidating, or the using of profane or obscene language; or

1 D. Initiating outbound telephone calls to a telephone number within a given
2 area code on behalf of a seller who has not, either directly or through another person, paid
3 the required annual fee for access to the telephone numbers within that area code that are
4 included in the National Do Not Call Registry.

5 **IV.**

6 **ASSET FREEZE**

7 **IT IS FURTHER ORDERED** that Defendants Bess, Rackley, and Hobbs and
8 their Representatives, whether acting directly indirectly, are **hereby preliminarily**
9 **restrained and enjoined** from:

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

25 B. Opening or causing to be opened any safe deposit boxes titled in the name
26 of, or subject to access by, any of the Defendants;

27 C. Incurring charges or cash advances on any credit card issued in the name,
28 singly or jointly, of any of the Corporate Defendants;

1 D. Obtaining a personal or secured loan encumbering the assets of any of the
2 Defendants, or any corporation, partnership, or other entity directly or indirectly owned,
3 managed, or controlled by any of the Defendants; or

4 E. Incurring liens or other encumbrances on real property, personal property or
5 other assets titled in the name, singly or jointly, of any of the Defendants or any
6 corporation, partnership, or other entity directly or indirectly owned, managed, or
7 controlled by any of the Defendants.

8 *Provided*, that the assets affected by this Section IV shall include: (1) all assets of
9 any of the Defendants as of the time of issuance of this Order; and (2) assets obtained
10 after the time of issuance of this Order if the assets are derived from the conduct alleged
11 in the Commission's Complaint.

12 *Provided further*, that this Section IV shall not prevent the Defendants Bess,
13 Rackley, and Hobbs from paying bills or making purchases of necessities with funds
14 obtained by them subsequent to imposition of the asset freeze from any legitimate source,
15 such as funds borrowed from family, friends, or others; income from lawful employment;
16 or charges made to those individual defendants' credit cards.

17 **V.**

18 **DUTIES OF ASSET HOLDERS**

19 **IT IS FURTHER ORDERED** that any financial or brokerage institution, credit
20 card processing company, payment processor, merchant bank, acquiring bank,
21 independent sales organization, business entity, or person served with a copy of this
22 Order, or who otherwise has actual knowledge of this Order, that (a) holds, controls or
23 maintains custody of any account, safe deposit box, or other asset of Defendants Bess,
24 Rackley, and Hobbs, (b) holds, controls, or maintains custody of any asset associated
25 with credits, debits, or charges made on behalf of Defendants Bess, Rackley, and Hobbs,
26 including, but not limited to, reserve funds held by payment processors or other entities,
27 or (c) has held, controlled, or maintained any such account, safe deposit box, or other
28 asset at any time since August 1, 2010 shall:

1 A. Hold and retain within its control and prohibit the withdrawal, removal,
2 assignment, transfer, pledge, encumbrance, disbursement, dissipation, conversion, sale, or
3 other disposal of any such asset, except by further order of the Court;

4 B. Deny any person, except the Receiver acting pursuant to Section XIV of
5 this Order, access to any safe deposit box that is titled in the name of, individually or
6 jointly, or otherwise subject to access by, Defendants Bess, Rackley, and Hobbs;

7 C. Provide the Commission's counsel and to the Receiver, within five (5)
8 business days of receiving a copy of this Order, a sworn statement setting forth:

- 9 1. The identification number of each such account or asset titled in the
10 name, individually or jointly, of Defendants Bess, Rackley, and
11 Hobbs, or held on behalf of or for the benefit of Defendants Bess,
12 Rackley, and Hobbs;
- 13 2. The balance of each such account, or a description of the nature and
14 value of such asset as of the close of business on the day on which
15 this Order is served, and, if the account or other asset has been
16 closed or removed, the date closed or removed, the total funds
17 removed in order to close the account, and the name of the person or
18 entity to whom such account or other asset was remitted; and
- 19 3. The identification of any safe deposit box that is titled in the name
20 of, individually or jointly, or otherwise subject to access by any of
21 the Defendants; and

22 D. Upon request by the Commission, promptly provide the Commission with
23 copies of all records or other documentation pertaining to each such account or asset,
24 including, but not limited to, originals or copies of account applications, account
25 statements, signature cards, checks, drafts, deposit tickets, transfers to and from the
26 accounts, all other debit and credit instruments or slips, currency transaction reports,
27 1099 forms, and safe deposit box logs.

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1 **VI.**

2 **FINANCIAL DISCLOSURES**

3 **IT IS FURTHER ORDERED** that within three (3) calendar days of service of
4 this Order, Defendants Bess, Rackley, and Hobbs shall prepare and deliver the following
5 forms to counsel for the Commission and to the Receiver:

6 A. Completed financial statements on the forms attached to this Order as
7 Attachment A (Financial Statement of Individual Defendant) for themselves individually
8 and Attachment B (Financial Statement of Corporate Defendant) for each business entity
9 under which they conduct business or of which they are an officer, and for each trust for
10 which any Defendant is a trustee. The financial statements shall be accurate as of the
11 date of entry of this Order. Defendants Bess, Rackley, and Hobbs shall include in the
12 financial statements a full accounting of all funds and assets, whether located inside or
13 outside of the United States, that are: (1) titled in the name of such Defendant, jointly,
14 severally, or individually; (2) held by any person or entity for the benefit of such
15 Defendant; or (3) under the direct or indirect control of such Defendant. Defendants
16 Bess, Rackley, and Hobbs shall attach to these completed financial statements copies of
17 all local, state, provincial, and federal income and property tax returns, with attachments
18 and schedules, as called for by the instructions to the financial statements; and

19 B. Attachment C (Consent to Release and Request for Copy of Tax Return).

20 **VII.**

21 **REPATRIATION OF ASSETS AND DOCUMENTS**

22 **IT IS FURTHER ORDERED** that within five (5) days following the service of
23 this Order, Defendants Bess, Rackley, and Hobbs shall:

24 A. Provide the Commission and the Receiver with a full accounting of all
25 funds, documents, and assets outside of the United States which are: (1) titled in the
26 name, individually or jointly, of any of the Defendants; or (2) held by any person or
27 entity for the benefit of any of the Defendants; or (3) under the direct or indirect control,
28 whether jointly or singly, of any of the Defendants;

1 B. Transfer to the territory of the United States and deliver to the Receiver all
2 funds, documents, and assets located in foreign countries which are: (1) titled in the
3 name individually or jointly of any of the Defendants; or (2) held by any person or entity,
4 for the benefit of any of the Defendants; or (3) under the direct or indirect control of any
5 of the Defendants, whether jointly or singly;

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

10 **VIII.**

11 **NON-INTERFERENCE WITH REPATRIATION**

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

17 A. Sending any statement, letter, fax, e-mail or wire transmission, telephoning
18 or engaging in any other act, directly or indirectly, that results in a determination by a
19 foreign trustee or other entity that a “duress” event has occurred under the terms of a
20 foreign trust agreement until such time that all assets have been fully repatriated pursuant
21 to Section VII of this Order;

22 B. Notifying any trustee, protector or other agent of any foreign trust or other
23 related entities of either the existence of this Order, or of the fact that repatriation is
24 required pursuant to a court order, until such time that all assets have been fully
25 repatriated pursuant to Section VII of this Order.

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1 **IX.**

2 **CONSUMER CREDIT REPORTS**

3 **IT IS FURTHER ORDERED** that pursuant to Section 604(a)(1) of the Fair
4 Credit Reporting Act, 15 U.S.C. § 1681b(a)(1), any consumer reporting agency served
5 with this Order shall promptly furnish consumer reports as requested concerning
6 Defendants Bess, Rackley, and Hobbs to the Commission.

7 **X.**

8 **PRESERVATION OF RECORDS**

9 **IT IS FURTHER ORDERED** that Defendants Bess, Rackley, and Hobbs and
10 their Representatives, whether acting directly or through any entity, corporation,
11 subsidiary, division, director, manager, member, affiliate, independent contractor,
12 accountant, financial advisor, or other device, are hereby preliminarily restrained and
13 enjoined from:

14 A. Destroying, erasing, falsifying, writing over, mutilating, concealing,
15 altering, transferring, or otherwise disposing of, in any manner, directly or indirectly,
16 Documents that relate to: (1) the business, business practices, Assets, or business or
17 personal finances of any of the Defendants, (2) the business practices or finances of
18 entities directly or indirectly under the control of any of the Defendants, or (3) the
19 business practices or finances of entities directly or indirectly under common control with
20 any other Defendant, including: any and all marketing materials, World Wide Web
21 pages, consumer complaints, rate decks, call detail records, telephone logs, telephone
22 scripts, contracts, correspondence, email, corporate books and records, accounting data,
23 financial statements, receipt books, ledgers, personal and business canceled checks and
24 check registers, bank statements, calendars, appointment books, and tax returns; and

25 B. Failing to create and maintain Documents that, in reasonable detail,
26 accurately, fairly, and completely reflect their incomes, disbursements, transactions, and
27 use of their Assets.

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XI.

NOTIFICATION OF NEW BUSINESS ACTIVITY

IT IS FURTHER ORDERED that Defendants Bess, Rackley, and Hobbs and their Representatives, whether acting directly or through any entity, corporation, subsidiary, division, director, manager, member, affiliate, independent contractor, accountant, financial advisor, or other device, are hereby preliminarily restrained and enjoined from creating, operating, or exercising any control over any new business entity, whether newly formed or previously inactive, including any partnership, limited partnership, joint venture, sole proprietorship, or corporation, without first providing counsel for the FTC 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, members, and employees; and (4) a detailed description of the business entity's intended activities.

XII.

PROHIBITION ON RELEASE OF CONSUMER INFORMATION

IT IS FURTHER ORDERED that Defendants Bess, Rackley, and Hobbs and their Representatives, whether acting directly or indirectly, are hereby preliminarily restrained and enjoined from selling, renting, leasing, transferring, using, disclosing, or otherwise benefitting from the name, address, telephone number, credit card number, bank account number, email address, or other identifying information of any Person who: (1) paid money to the Defendants, (2) was previously contacted by the Defendants in connection with the sale of business opportunities, Work-at-home opportunities, or any service to assist in the creation, advertising, marketing, promotion, or operation of a business opportunity or work-at-home opportunity, including, but not limited to website development, advertising, marketing, lead generation, social media promotion, search engine optimization, training, and business establishment services, (3) who was on a list to be contacted by the Defendants; provided, however, that Defendants may disclose such

1 identifying information to a law enforcement agency or as required by any law,
2 regulation, or court order.

3 **XIII.**

4 **APPOINTMENT OF PERMANENT RECEIVER**

5 The Court appointed Peter S. Davis of Simon Consulting, LLC in the Preliminary
6 Injunction Order (Doc. 56) issued on August 19, 2013 as permanent receiver for the
7 Receivership Defendants, as well as for any affiliates, subsidiaries, divisions, or
8 telephone sales or customer service operations, wherever located, with the full power of
9 an equity receiver. The Receiver shall be the agent of this Court, and solely the agent of
10 this Court, in acting as Receiver under this Order. The Receiver shall be accountable
11 directly to this Court.

12 **XIV.**

13 **RECEIVER'S DUTIES**

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

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

21 B. Take exclusive custody, control, and possession of all assets and documents
22 of, or in the possession, custody, or under the control of, the Receivership Defendants,
23 wherever situated. The Receiver shall have full power to divert mail and to sue for,
24 collect, receive, take in possession, hold, and manage all assets and documents of the
25 Receivership Defendants and other persons or entities whose interests are now under the
26 direction, possession, custody, or control of, the Receivership Defendants. The Receiver
27 shall assume control over the income and profits therefrom and all sums of money now or
28 hereafter due or owing to the Receivership Defendants. *Provided, however,* that the

1 Receiver shall not attempt to collect any amount from a consumer if the Receiver
2 believes the consumer was a victim of the unfair or deceptive acts or practices or other
3 violations of law alleged in the Complaint in this matter, without prior Court approval;

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

24 D. Suspend business operations of the Receivership Defendants if in the
25 judgment of the Receiver such operations cannot be continued legally and profitably;

26 E. Conserve, hold, and manage all assets of the Receivership Defendants, and
27 perform all acts necessary or advisable to preserve the value of those assets in order to
28 prevent any irreparable loss, damage, or injury to consumers or creditors of the

1 Receivership Defendants, including, but not limited to, obtaining an accounting of the
2 assets and preventing the unauthorized transfer, withdrawal, or misapplication of assets;

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

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

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

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

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

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

27 L. Defend, compromise, adjust, or otherwise dispose of any or all actions or
28 proceedings instituted in the past or in the future against the Receiver in his role as

1 Receiver, or against the Receivership Defendants, as the Receiver deems necessary and
2 advisable to preserve the assets of the Receivership Defendants, or as the Receiver deems
3 necessary and advisable to carry out the Receiver's mandate under this Order;

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

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

11 O. Maintain accurate records of all receipts and expenditures incurred as
12 Receiver;

13 P. Cooperate with reasonable requests for information or assistance from any
14 state or federal law enforcement agency;

15 Q. File reports with the Court on a timely basis and at regular intervals or as
16 otherwise directed by the Court.

17 **XV.**

18 **TRANSFER OF RECEIVERSHIP PROPERTY TO RECEIVER**

19 **IT IS FURTHER ORDERED** that:

20 A. Immediately upon service of this Order upon them, or within a period
21 permitted by the Receiver, Defendants Bess, Rackley, Hobbs, their Representatives, and
22 any other person or entity with possession, custody or control of assets or documents
23 relating to the Receivership Defendants shall transfer or deliver possession, custody, and
24 control of the following to the Receiver:

- 25 1. All assets of the Receivership Defendants;
- 26 2. All documents of the Receivership Defendants, including, but not
27 limited to, books and records of accounts, all financial and
28 accounting records, balance sheets, income statements, bank records

- 1 (including monthly statements, canceled checks, records of wire
2 transfers, and check registers), client lists, title documents and other
3 papers;
- 4 3. All assets belonging to other persons or entities whose interests are
5 now under the direction, possession, custody, or control of the
6 Receivership Defendants;
- 7 4. All computers and data in whatever form used to conduct the
8 business of the Receivership Defendants; and
- 9 5. All keys, codes, and passwords necessary to gain or to secure access
10 to any assets or documents of the Receivership Defendants,
11 including, but not limited to, access to their business premises,
12 means of communication, accounts, computer systems, or other
13 property.

14 B. In the event any person or entity fails to deliver or transfer any asset or
15 otherwise fails to comply with any provision of this Section, the Receiver may file *ex*
16 *parte* an Affidavit of Non-Compliance regarding the failure. Upon filing of the affidavit,
17 the Court may authorize, without additional process or demand, Writs of Possession or
18 Sequestration or other equitable writs requested by the Receiver. The writs shall
19 authorize and direct the United States Marshals Service or any sheriff or deputy sheriff of
20 any county to seize the asset, document, or other item and to deliver it to the Receiver.

21 **XVI.**

22 **PROVISION OF INFORMATION TO RECEIVER**

23 **IT IS FURTHER ORDERED** that Defendants Bess, Rackley, and Hobbs shall
24 provide to the Receiver, immediately upon request, the following:

- 25 A. A list of all assets and property, including accounts, of the Receivership
26 Defendants that are held in any name other than the name of a Receivership Defendant,
27 or by any person or entity other than a Receivership Defendant; and
28

1 B. A list of all agents, employees, officers, servants or those persons in active
2 concert and participation with the Individual Defendants and Receivership Defendants
3 who have been associated with or done business with the Receivership Defendants.

4 **XVII.**

5 **COOPERATION WITH THE RECEIVER**

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

23 **XVIII.**

24 **INTERFERENCE WITH THE RECEIVER**

25 **IT IS FURTHER ORDERED** that Defendants Bess, Rackley, and Hobbs, their
26 Representatives, corporations, subsidiaries, divisions, or affiliates are hereby restrained
27 and enjoined from directly or indirectly:
28

1 A. Interfering with the Receiver managing, or taking custody, control, or
2 possession of the assets or documents subject to this Receivership;

3 B. Transacting any of the business of the Receivership Defendants or any
4 substantially similar name;

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

9 D. Destroying, secreting, defacing, transferring, or otherwise altering or
10 disposing of any documents of the Receivership Defendants, including, but not limited to,
11 books, records, accounts, or any other papers;

12 E. Excusing debts owed to the Receivership Defendants;

13 F. Refusing to cooperate with the Receiver or the Receiver’s duly
14 authorized agents in the exercise of their duties or authority under any order of this Court;
15 and

16 G. Harassing or interfering with the Receiver in any way.

17 **XIX.**

18 **STAY OF ACTIONS AGAINST RECEIVERSHIP DEFENDANTS**

19 **IT IS FURTHER ORDERED** that:

20 A. Except by leave of this Court, during pendency of the Receivership ordered
21 herein, Defendants Bess, Rackley, and Hobbs, their Representatives, and all investors,
22 creditors, stockholders, lessors, customers and other persons seeking to establish or
23 enforce any claim, right, or interest against or on behalf of Defendants, and all others
24 acting for or on behalf of such persons, are hereby enjoined from taking action that would
25 interfere with the exclusive jurisdiction of this Court over the assets or documents of the
26 Receivership Defendants, including, but not limited to:

- 27 1. Petitioning, or assisting in the filing of a petition, that would cause
28 any Receivership Defendant to be placed in bankruptcy;

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- 2. 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;
- 3. 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; accelerating the due date of any obligation; 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;
- 4. 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 (1) The commencement or continuation of a criminal action or proceeding; (2) The commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power; or (3) The enforcement of a judgment, other than a money judgment, obtained in an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power.

XX.

COMPENSATION OF RECEIVER

IT IS FURTHER ORDERED that the Receiver and all personnel hired by the Receiver as herein authorized, including counsel to the Receiver and accountants, are entitled to reasonable compensation for the performance of duties pursuant to this Order and for the cost of actual out-of-pocket expenses incurred by them, from the assets now held by or in the possession or control of or which may be received by the Receivership

1 Defendants. The Receiver shall file with the Court and serve on the parties periodic
2 requests for the payment of such reasonable compensation, with the first such request
3 filed no more than sixty (60) days after the date of entry of this Order. The Receiver
4 shall not increase the hourly rates used as the bases for such fee applications without
5 prior approval of the Court.

6 **XXI.**

7 **RECEIVER'S BOND**

8 In the Preliminary Injunction Order (Doc. 56) issued on August 19, 2013, the
9 Court ordered that the Receiver maintain with the Clerk of this Court a bond in the sum
10 of \$10,000, with sureties to be approved by the Court, conditioned that the Receiver will
11 well and truly perform the duties of the office and abide by and perform all acts the Court
12 directs. 28 U.S.C. § 754.

13 **XXII.**

14 **EXPEDITED DISCOVERY**

15 **IT IS FURTHER ORDERED** that pursuant to Federal Rule of Civil Procedure
16 26(d)(1), discovery may commence at any time after the entry of this order. In aid of the
17 asset freeze in this matter, the Commission and the Receiver are further authorized to
18 conduct expedited discovery concerning Defendant Bess's, Hobbs's, and Rackley's
19 assets and the location of business records ("expedited asset discovery") in accordance
20 with the following:

21 A. The Commission and the Receiver may take the depositions of parties and
22 non-parties. Ninety-six hours (96) notice shall be sufficient notice for such depositions.
23 Deposition transcripts that have not been signed by the witness may be used the
24 preliminary injunction hearing in this matter. The limitations set forth in Federal Rule of
25 Civil Procedure 30(a)(2) and 31(a)(2) regarding subsequent depositions of an individual
26 shall not apply to depositions taken pursuant to this Section, and those depositions shall
27 not count toward the deposition limit set forth in said rules;

28

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

5 C. The Commission and the Receiver may serve deposition notices and other
6 discovery requests upon the parties to this action by facsimile, overnight courier, or e-
7 mail, and depositions may be taken by telephone or other remote electronic means; and

8 D. Any discovery taken pursuant to this Order is in addition to, and is not
9 subject to, the presumptive limits on discovery set forth in the Federal Rules of Civil
10 Procedure and Local Rules of this Court.

11 **XXIII.**

12 **SERVICE OF THIS ORDER**

13 **IT IS FURTHER ORDERED** that copies of this Order may be served by any
14 means, including facsimile transmission and e-mail, upon any Defendant, financial
15 institution, or other entity or Person that may have possession, custody, or control of any
16 documents or assets of any of the Defendants, or that may otherwise be subject to any
17 provision of this Order. Service upon any branch or office of any financial institution
18 shall effect service upon the entire financial institution.

19 **XXIV.**

20 **SERVICE UPON PLAINTIFF**

21 **IT IS FURTHER ORDERED** that all correspondence and service of pleadings or
22 other documents related to this Order or Plaintiff's motion for a preliminary injunction
23 shall be addressed to

24 Rhonda Perkins
25 Janet Ammerman
26 James Evans
27 Federal Trade Commission
28 600 Pennsylvania Ave., NW, Room H-286
 Washington, DC 20580
 Fax: 202-326-3395
 Email: rperkins@ftc.gov; jammerman1@ftc.gov; jevans1@ftc.gov

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XXV.

DEFENDANTS’ DUTY TO DISTRIBUTE ORDER

IT IS FURTHER ORDERED that Defendants Bess, Rackley, and Hobbs shall immediately provide a copy of this Order to each of their affiliates, subsidiaries, divisions, sales entities, successors, assigns, officers, directors, employees, independent contractors, client companies, agents, attorneys, spouses, and representatives, and shall, within five (5) days from the date of entry of this Order, provide the Commission with a sworn statement that: (1) confirms that they have provided copies of the Order as required by this paragraph; and (2) lists the names and addresses of each entity or person to whom they provided a copy of the Order. Furthermore, Defendants Bess, Rackley, and Hobbs shall not take any action that would encourage officers, agents, directors, employees, salespersons, independent contractors, attorneys, subsidiaries, affiliates, successors, assigns or other persons or entities in active concert or participation with them to disregard this Order or believe that they are not bound by its provisions.

XXVI.

DURATION OF PRELIMINARY INJUNCTION ORDER

IT IS FURTHER ORDERED that this Preliminary Injunction Order shall remain in full force and effect pending trial on the merits unless sooner modified or dissolved.

XXVII.

RETENTION OF JURISDICTION

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

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IT IS SO ORDERED:

DATED this 13th day of September, 2013.

A handwritten signature in black ink, appearing to read "Roslyn O. Silver". The signature is written in a cursive style with a large, prominent initial "R".

Roslyn O. Silver
Senior United States District Judge