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U.S. DISTRICT COURT  
WESTERN DISTRICT MICH  
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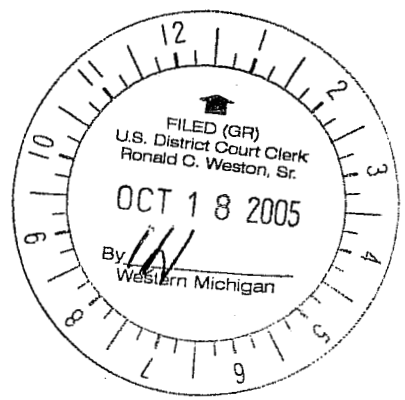
**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

FEDERAL TRADE COMMISSION, )  
)  
Plaintiff, )  
)  
v. )  
)  
SUCCESS EXPRESS, INC., a Michigan )  
corporation, also d/b/a Success Express, )  
)  
EXAM RESOURCE CENTER, INC., a Michigan )  
corporation, also d/b/a Exam Resource, )  
)  
OCCUPATIONAL ADVANCEMENT CENTER, )  
INC., a Michigan corporation, also d/b/a )  
Occupational Advancement and OAC, )  
)  
EMPLOYMENT RESOURCE, LLC, )  
a Michigan Limited Liability Company, also )  
d/b/a Employment Resources, )  
)  
DAVID JAMES DANIELL, a/k/a David James, )  
individually and as an officer of Occupational )  
Advancement Center and Employment Resource, )  
)  
WANDA J. TAUGNER, individually and )  
as an officer of Success Express, )  
)  
KATHY L. STAFFORD, individually and as )  
and officer of Exam Resource Center, Inc., )  
)  
Defendants. )

Case Number:  
1:05 CV 0714

Judge:

**Gordon J. Quist  
U.S. District Judge**



**(Proposed) EX PARTE TEMPORARY RESTRAINING ORDER WITH APPOINTMENT  
OF RECEIVER, ASSET FREEZE AND ACCOUNTING AND ORDER TO SHOW  
CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE**

Plaintiff Federal Trade Commission (“Commission” or “FTC”) having filed its complaint for a permanent injunction and other relief in this matter pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), and having applied *ex parte* for a temporary restraining order pursuant to Rule 65 of the Federal Rules of Civil Procedure, and the Court having considered the complaint, Plaintiff’s brief, exhibits and other materials filed in support thereof, and now being advised in the premises, finds as follows:

1. This Court has jurisdiction of the subject matter of this case and there is good cause to believe it will have jurisdiction of all parties hereto. The Complaint states a claim upon which relief may be granted under Sections 5 and 13(b) of the FTC Act, 15 U.S.C. § 45 and 53(b).

2. Good cause exists to believe that the Commission ultimately will succeed in establishing that the above-named Defendants have engaged in, and are likely to engage in, acts and practices that violate Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a), and that the Commission is likely to prevail on the merits.

3. Good cause exists to believe that immediate and irreparable damage will occur to the Court’s ability to grant effective final relief for consumers in the form of monetary redress from the sale, transfer, destruction, concealment or other disposition of Defendants’ assets or records unless Defendants are immediately restrained and enjoined.

4. Weighing the equities and considering the Commission’s likelihood of ultimate success, a temporary restraining order with appointment of receiver, asset freeze, accounting, and other equitable relief is in the public interest.

5. No security is required of any agency of the United States for issuance of a restraining order. Fed. R. Civ. P. 65(c).

## DEFINITIONS

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

1. **“Defendants”** means Success Express, Inc., d/b/a Success Express; Exam Resource Center, Inc., d/b/a Exam Resource; Occupational Advancement Center, Inc., d/b/a Occupational Advancement and OAC; Employment Resource, LLC, d/b/a Employment Resources; David James Daniell a/k/a David James; Wanda J. Taugner; and Kathy L. Stafford, and each of them, by whatever names each may be known, as well as their successors, assigns, officers, directors, agents, servants, employees, salespersons, attorneys and those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service, facsimile, e-mail, publication, or otherwise, whether acting directly or through any corporation, subsidiary, division or other device.
2. **“Individual Defendants”** means David James Daniell, a/k/a David James, Wanda J. Taugner, and Kathy L. Stafford.
3. **“Assets”** means any legal or equitable interest in, right to, or claim to, any real and personal property, including but not limited to chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, premises, contracts, mail or other deliveries, shares of stock, lists of consumer names, inventory, checks, notes, accounts, credits, receivables, funds, and all cash, wherever located.
4. **“Document”** is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts,

photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

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

6. **“Person”** means a natural person, organization or other legal entity, including a corporation, partnership, proprietorship, association, cooperative, government or governmental subdivision or agency, or any other group or combination acting as an entity.

7. **“Plaintiff”** means the Federal Trade Commission (“Commission” or “FTC”).

8. **“Record”** means any document, as document is defined in definition 5, above, relating to the business or business practices of any Defendant.

9. The terms **“and”** and **“or”** shall be construed conjunctively or disjunctively as necessary to make the applicable phrase or sentence inclusive rather than exclusive.

## **I. PROHIBITED MISREPRESENTATIONS**

**IT IS THEREFORE ORDERED** that, in connection with the advertising, marketing, offering for sale, or sale of any good or service in furtherance of postal employment, Defendants and their successors, assigns, officers, agents, servants, employees, attorneys and those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division or other device, are hereby temporarily restrained and enjoined from making, expressly

or by implication, any representation that is false or misleading, including but not limited to misrepresenting in any manner:

- A. That Defendants are connected with or endorsed by the United States Postal Service (USPS);
- B. That postal positions are currently available in the geographic areas where the Defendants' advertisements appear;
- C. That Defendants assist consumers in registering for and obtaining employment with the USPS; and
- D. That consumers who obtain a score of 90 percent or above on the postal examination are assured a postal job.

## **II. ASSET FREEZE**

**IT IS FURTHER ORDERED** that Defendants, their agents, employees, officers, independent contractors, attorneys, successors and all other persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, and persons or entities directly or indirectly under the control of any Defendant or under common control with any Defendant, are hereby restrained and enjoined, until further order of this Court, from:

A. Transferring, encumbering, concealing, removing, selling, or otherwise disposing of any funds, property, contracts, shares of stock or other assets of any kind, wherever located,

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that are:

1. Owned or controlled, in whole or in part, by any Defendant;
2. In the actual or constructive possession of any Defendant;

3. Held by an agent of any Defendant as a retainer for the agent's provision of services to any Defendant; or

4. Owned by, controlled by or in the actual or constructive possession of, or otherwise held for the benefit of, any entity or business directly or indirectly owned, managed or controlled by any Defendant, including, but not limited to the Receivership Defendants; these assets shall also include, but are not limited to, any assets held by, for or under the name of any Defendant at any bank, broker, dealer, escrow agent, title company, commodity trading company, precious metal dealer, or other financial institution of any kind.

B. Opening or causing to be opened any new or existing safe deposit boxes, post office box or commercial mail box titled in the name of any Defendant or subject to access by any Defendant, including, but not limited to:

1. Employment Resource Center, LLC, mail box P.O. Box 328, Petoskey, Michigan 49770 or P.O. Box 17445, Nashville, Tennessee 37217;
2. Occupational Advancement Center, Inc., mail box P.O. Box 527 or P.O. Box 825, Petoskey, Michigan 49770;
3. Exam Resource Center, Inc., mail box P.O. Box 119, Charlevoix, Michigan 49720;

C. Incurring charges or cash advances to any credit or debit card issued in the name, individually or jointly, of any Defendant;

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D. Obtaining a personal or secured loan; and

E. Incurring liens or other encumbrances on real property, personal property, or other asset held in the name, individually or jointly, of any Defendant.

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F. This Paragraph shall be construed to apply to both existing assets and assets that Defendants acquire after the date of this Order, if such assets are derived from the marketing or sale of purported postal examination study guides or from any activity prohibited by this Order;

G. Provided further that notwithstanding the asset freeze provision of this Paragraph, any Defendant may pay from his or her personal funds reasonable, usual, ordinary, and necessary living expenses and reasonable attorney's fees, after obtaining written approval <sup>of</sup> by the Commission or by the Court.

### III. FINANCIAL INSTITUTIONS AND DUTIES OF ASSET HOLDERS

IT IS FURTHER ORDERED that, effective immediately upon notification of this Order, any financial or brokerage institution, escrow agent, money market or mutual fund, title company, commodity trading company, common carrier, storage company, trustee, commercial mail receiving agency, merchant account processor, mail holding or forwarding company, creditor or credit card issuer, or any other person or entity having possession, custody or control of any assets or records of any Defendant, or of any account, safe deposit box, or other asset of any Defendant, either individually or jointly, or held on behalf of or for the benefit of any Defendant, at any time since January 1, 2003, shall:

A. Hold and retain within its control and prohibit the transfer, encumbrance, pledge, assignment, removal, withdrawal, dissipation, sale or other disposal of any such account or other asset, except for transfers or withdrawals directed by further order of this Court;

B. Deny any person or entity access to any safe deposit box titled individually or jointly in the name of any Defendant or otherwise held for the benefit of or subject to access by any Defendant;

C. Provide to counsel for the Commission, within five (5) business days of notice of this Order, a sworn statement setting forth:

1. The identification number of each account or asset titled in the name, individually or jointly, of any Defendant, or held on behalf of, or for the benefit of, any Defendant;
2. The balance of each account or a description of the nature and value of each asset as of the close of business on the day this Order is served, and, if the account or asset has been closed or moved, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other asset was remitted; and
3. The identification of any safe deposit box or storage facility that is either titled in the name of or subject to access by the Defendant.

D. Upon the request by the Commission, promptly provide the Commission with copies of all records or other documentation pertaining to each such account or asset, including but not limited to originals or copies of account applications, 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. For the purposes of this Paragraph, the Commission 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 January 1, 2003, by facsimile transmission, hand delivery or overnight carrier.

**IV. RECORD KEEPING/MAINTAINING BUSINESS RECORDS**

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

A. Failing to create and maintain books, records, accounts, bank statements, current accountants' reports, general ledgers, general journals, cash receipts ledgers, cash disbursements 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 their incomes, disbursements, transactions, and dispositions of the assets of the Defendants; and

B. Destroying, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, any books, records, tapes, discs, accounting data, checks (fronts and backs), correspondence, forms, advertisements, brochures, manuals, electronically stored data, banking records, customer lists, customer files, invoices, telephone records, ledgers, payroll records, or other documents of any kind, including information stored in computer-maintained form, in their possession, custody, or control that relate to the business practices or business or personal finances of any Defendant from January 1, 2003, to the present.

**V. DISTRIBUTION OF ORDER BY DEFENDANTS**

**IT IS FURTHER ORDERED** that Defendants shall immediately provide a copy of this Order to each affiliate, 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 Commission 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. The Temporary Receiver has no obligation under this provision.

**VI. SERVICE OF ORDER**

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

Plaintiff's agents or employees may serve this Order upon Defendants or other person that may be subject to any provision of this Order by serving a copy personally or by first class mail, overnight delivery, facsimile or electronic mail.

**VII. CREDIT REPORTS**

**IT IS FURTHER ORDERED** that the Commission may obtain credit reports concerning 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 Commission. The Commission may provide copies of the credit reports to the Temporary Receiver.

**VIII. FINANCIAL REPORTS**

**IT IS FURTHER ORDERED** that each Defendant shall, within forty-eight (48) hours of service of this Order, prepare and provide to counsel for the Commission:

A. A completed financial statement accurate as of the date of service of this Order upon Defendants which shall include all financial information as requested by the Financial Statement of Individual Defendant, appended as Attachment A, and Financial Statement of Corporate Defendant, appended as Attachment B, for themselves and for each business entity under which they conduct business, or of which they are an officer or member, and for each trust of which they are a trustee. The financial statements shall be accurate as of the date of entry of this Order and shall be verified under oath;

B. A full accounting of all assets and documents that are located inside or outside of the territory of the United States of America and are held by or for Defendants or are under their direct or indirect control, jointly, severally, or individually; and

C. The name, address and telephone number of each accountant, financial planner, investment advisor, stock broker or other individual, corporation or partnership whom they hired for financial, business or tax advice or services, since January 1, 2003 .

#### **IX. APPOINTMENT OF TEMPORARY RECEIVER**

**IT IS FURTHER ORDERED** that (proposed) Phillip S. Stenger is appointed as a temporary receiver ("Receiver") for Defendants Success Express, Inc., d/b/a Success Express; Exam Resource Center, Inc., d/b/a Exam Resource; Occupational Advancement Center, Inc., d/b/a Occupational Advancement and OAC; Employment Resource, LLC, d/b/a Employment Resources (hereinafter "Receivership Defendants"), with the full power of an equity receiver, subject to the following provisions, and with directions and authority to accomplish the following:

A. Assume full control of the Receivership Defendants by removing, as the Receiver deems necessary or advisable, any director, officer, independent contractor, employee, or agent of any of the Receivership Defendants, including any Defendant, from control of, management of, or participation in, the affairs of the Receivership Defendants. The Receiver shall, however, not interfere with or be privy to the defense of this action;

B. Take custody, control, and possession of all funds, property, premises, accounts, mail, and other assets and documents of, or in the possession, custody, or under the control of, the Receivership Defendants, wherever situated and including, but not limited to, the business premises of the Receivership Defendants, take the income and profits therefrom, and all sums of money now or hereafter due or owing to the Receivership Defendants, with full power to collect, receive and take possession of all goods, chattels, rights, credits, moneys, effects, lands, leases, books and records, work papers, and records of accounts, including computer-maintained information, contracts, financial records, monies on hand in banks and other financial institutions, and other papers and documents 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 the unfair or deceptive acts or practices alleged in the Complaint in this matter, without prior Court approval;

C. Take all steps necessary to secure each and every location from which the Receivership Defendants operate their business, including, but not limited to, all such premises located on 1520 South Bridge Street, Charlevoix, Michigan. 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 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, or to demonstrate to the satisfaction of the Receiver that such persons are not removing from the premises documents or assets of the Receivership Defendants. Law enforcement personnel, including, but not limited to, police or sheriffs, may assist the Receiver in implementing these provisions in order to keep the peace and maintain security;

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;

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, including, but not limited to, revising sales materials and implementing monitoring procedures;

J. Except as to the instant case, institute, compromise, adjust, appear in, intervene in, or become party to such actions or proceedings in state, federal or foreign courts or arbitration proceedings as 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, including but not limited to, actions challenging fraudulent or voidable transfers;

K. Defend, compromise, adjust, or otherwise dispose of any or all actions or proceedings instituted in the past or in the future 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, or cease operation of 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 businesses can be lawfully operated at a profit using the assets of the receivership estate;

M. Issue subpoenas to compel testimony of persons or production of records on behalf of the receivership estate in a manner consistent with the Federal Rules of Civil Procedure and the Rules of the Court;

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. Allow the Commission access to documents in the possession, custody, or control of the Receivership Defendants, or on their behalf, including, but not limited to, books, records, tapes, discs, accounting data, checks, correspondence, forms, advertisements, brochures, manuals, electronically stored data, banking records, customer lists, customer files, invoices, telephone records, ledgers and payroll records, and any other document or record that relates to

the business practices or finances of the Receivership Defendants, including information stored in computer maintained form (such as electronic mail);

Q. Employ such employees, accountants, and attorneys, including the law firm of Stenger & Stenger, P.C. ("Retained Personnel"), as the Receiver determines is necessary and proper for the conduct of the receivership;

R. The Receiver and his agents (including Retained Personnel) are entitled to rely on all outstanding rules of law and Court orders and shall not be liable to anyone for their own good faith compliance with any order, rule, law, judgment, or decree. In no event shall the Receiver or his agents be liable to anyone for their good faith compliance with their duties and responsibilities as Receiver or agent for Receiver, nor shall the Receiver or his agents be liable to anyone for any actions taken or omitted by them except upon a finding by this Court that they acted or failed to act as a result of malfeasance, bad faith, gross negligence, or in reckless disregard of their duties. The Receiver and his agents shall be indemnified and held harmless out of the receivership assets for all costs and expenses, including reasonable attorney fees, incurred as a result of such actions;

S. Make appropriate notification to the United States Postal Service to forward delivery of any mail addressed to Receivership Defendants or any company or entity under the direction or control of the Receivership Defendants to the Receiver. Further, the Receiver is hereby authorized to open and inspect all such mail in the conduct of the receivership and has no duty to forward any such mail to the Receivership Defendants or others; and



T. Apply to the Court to reissue this Order and, with notice to all parties, for issuance of such other orders as may be necessary and appropriate in order to carry out the mandate of this Court.

**X. 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 customers, principles, investors, creditors, stockholders, lessors, and other persons, seeking to establish or enforce any claim, right or interest against or on behalf of the Receivership Defendants, or any of its subsidiaries or affiliates, and all others acting for or on behalf of such persons, including attorneys, trustees, agents, sheriffs, constables, marshals, and other officers and their deputies, and their respective attorneys, servants, agents and employees be and are hereby stayed from:

A. Commencing, prosecuting, continuing or enforcing any suit or proceeding against the Receivership Defendants, or any of its subsidiaries or affiliates, except that such actions may be filed to toll any applicable statute of limitations;

B. Commencing, prosecuting, continuing or entering any suit or proceeding in the name or on behalf of the Receivership Defendants, or any of its subsidiaries or affiliates;

C. Accelerating the due date of any obligation or claimed obligation, enforcing any lien upon, or taking or attempting to take possession of, or retaining possession of, a property of the Receivership Defendants, or any of its subsidiaries or affiliates or any property claimed by any of them or attempting to foreclose, forfeit, alter or terminate any of the Receivership Defendants' interests in property, including without limitation, the establishment, granting, or

perfection of any security interest, whether such acts are part of a judicial proceeding or otherwise;

D. Using self-help or executing or issuing, or causing the execution or issuance of any court attachment, subpoena, replevin, execution or other process for the purpose of impounding or taking possession of or interfering with, or creating or enforcing a lien upon, any property, wheresoever located, owned by or in the possession of the Receivership Defendants, or the Receiver appointed pursuant to this Order or any agent appointed by said Receiver; and

E. Doing any act or thing whatsoever to interfere with the Receiver taking control, possession or management of the property subject to the receivership, or to in any way interfere with the Receiver, or to harass or interfere with the duties of the Receiver; or to interfere with the exclusive jurisdiction of this Court over the property and assets of the Receivership Defendants, or its subsidiaries or affiliates, including the filing by Defendants of a petition for relief under the United States Bankruptcy Code, 11 U.S.C. § 101 et seq., as to the Receivership Defendants. Provided, however, nothing in this Paragraph shall prohibit any federal or state law enforcement or regulatory authority from commencing or prosecuting an action against the Receivership Defendants.

## **XI. COMPENSATION OF RECEIVER**

**IT IS FURTHER ORDERED** that the Receiver and his Retained Personnel are 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 later received by the Defendants or 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 days after the date of this Order. The Receiver shall not increase the Receiver's hourly billing rate to the receivership estate without prior approval of the Court.

**XII. BOND**

**IT IS FURTHER ORDERED** that the Receiver shall not be required to post bond or give an undertaking of any type in connection with his fiduciary duties and obligations in this matter unless and until this Court so orders.

**XIII. DELIVERY OF BOOKS AND RECORDS**

**IT IS FURTHER ORDERED** that, immediately upon service of this Order upon them, Defendants, and any other person or entity served with a copy of this Order, shall transfer or deliver over to the Receiver:

A. 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, bank statements, appointment books, copies of federal, state or local business or personal income or property tax returns, and other documents or records of any kind that relate to the Receivership Defendants' business practices;

B. All computers and data in whatever form used by Defendants or any of Defendants' agents, employees, officers, servants or those persons in active concert with him or her, in activities relating to Receivership Defendants;

C. Information identifying the accounts, employees, properties, or other assets or obligations of the Receivership Defendants;

D. A list of all agents, employees, officers, servants or those persons in active concert and participation with Defendants, who have been associated or done business with the Receivership Defendants, including the address and telephone number of any businesses, whether or not incorporated, and wherever situated, with whom the Receivership Defendants transacted business since January 1, 2003.

#### **XIV. COOPERATION WITH THE RECEIVER**

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

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

B. Destroying, secreting, defacing, transferring, or otherwise altering or disposing of any documents of the Receivership Defendants, including, but not limited to, books, records, accounts, writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations, electronically-stored records, or any other papers of any kind or nature;

C. Transferring, receiving, altering, selling, encumbering, pledging, assigning, liquidating, or otherwise disposing of any assets 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;

D. Excusing debts owed to the Receivership Defendants;

E. Failing to notify the Receiver of any asset, including accounts, of a Receivership Defendant held in any name other than the name of the Receivership Defendant, or by any person or entity other than the Receivership Defendant, or failing to provide any assistance or information requested by the Receiver in connection with obtaining possession, custody, or control of such assets;

F. 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.

**XV. TRANSFER OF ASSETS TO THE RECEIVER**

**IT IS FURTHER ORDERED** that, upon service of a copy of this Order, Defendants, and any other person or entity served with a copy of this Order upon them, shall deliver over to the Receiver and in the manner specified by the Receiver:

A. All funds, assets, property owned beneficially or otherwise, and all other assets, wherever situated, of the Receivership Defendants;

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

C. All keys, computer passwords, entry codes, combinations to locks required to open or gain access to any of the property or effects; and

D. All monies in any bank or financial institution deposited to the credit of the Receivership Defendants, wherever situated. All banks, broker-dealers, savings and loans, escrow agents, title companies, commodity trading companies, merchant account processors, precious metals dealers and other financial institutions and depositories of any kind, and all third-party billing agents and companies shall cooperate with all reasonable requests of Plaintiff and Receiver relating to implementation of this Order, including requests to transfer funds to the Receiver and to produce records relating to the assets and sales of the Receivership Defendants.

**XVI. 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 or otherwise fails to comply with any provision of this Order requiring the delivery of 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 or any sheriff or deputy sheriff of any county, or any other federal or state law enforcement officer, to seize the asset, document, or other thing and to deliver it to the Receiver.

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

**IT IS FURTHER ORDERED** that, within five (5) business days following service of this Order, Defendants shall:

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 and deliver them to the Receiver;

B. The same business day as any repatriation, (1) notify counsel for the Commission 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 Commission 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 Defendant; (2) for the Defendant's benefit; or (3) under the Defendant's direct or indirect control, jointly or singly; and

D. Provide the Commission 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.

### **XVIII. 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.

**XIX. DEFENDANTS' ACCESS TO THEIR BUSINESS PREMISES**

**IT IS FURTHER ORDERED** that the Receiver shall allow the Defendants' representatives, and the Defendants themselves, reasonable access to the premises of the Receivership Defendants. The purpose of this access shall be to inspect and copy any and all books, records, accounts, and other property owned by or in the possession of the Receivership Defendants. The Receiver shall have the discretion to determine the time, manner, and reasonable conditions of such access.

**XX. MONITORING**

**IT IS FURTHER ORDERED** that agents or representatives of the Commission may contact Defendants or their agents or representatives directly and anonymously for the purpose of monitoring compliance with Paragraph I of this Order, and may tape record any oral communications that occur in the course of such contacts.

**XXI. CORRESPONDENCE**

For the purposes of this Order, all correspondence and service of pleadings on plaintiff shall be addressed to:



LARISSA L. BUNGO, Esq.  
Federal Trade Commission  
East Central Region  
Eaton Center, Suite 200  
1111 Superior Avenue  
Cleveland, Ohio 44114-2507  
Phone (216) 263-3403 / Fax (216) 263-3426

**XXII. SERVICE OF THIS ORDER**

**IT IS FURTHER ORDERED** that, pursuant to Fed. R. Civ. P. 4(c)(2), this Order and other initial pleadings and papers filed in this matter may be served by employees of the Commission, by employees of any other law enforcement agency, and by agents of any process servers retained by the Commission, upon any Defendant, upon the business premises of any Defendant, and upon any financial institution or any person or entity that may be in possession of any assets, property or property rights of any Defendant.

**XIII. PRELIMINARY INJUNCTION HEARING**

**IT IS FURTHER ORDERED** that Defendants shall prepare and deliver to the Court and to the Commission, not later than 4:30 p.m. of the third (3<sup>rd</sup>) business day prior to the preliminary injunction hearing, any opposition to issuance of a preliminary injunction, including any declarations, exhibits, memoranda or other evidence on which they intend to rely.

**IT IS FURTHER ORDERED** that, if any party to this action intends to present the testimony of any witness at the preliminary injunction hearing in this matter, that party shall, at least forty-eight (48) hours prior to the scheduled date and time of hearing, file with this Court and serve on all other parties, a witness list which shall include the name, address and telephone number of any such witness, and either a summary of the witness's expected testimony or the witness's affidavit or declaration revealing the substance of such witness's expected testimony.

**IT IS FURTHER ORDERED** that Defendants shall appear before this Court at 9:00 AM

\_\_\_\_\_ on the 27<sup>th</sup> day of OCTOBER, 2005, at \_\_\_\_\_

o'clock a.m./p.m., to show cause, if any there be, why this Court should not enter a preliminary injunction, pending final ruling on the Complaint, against said Defendants enjoining them from further violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and imposing such additional relief as may be appropriate.

**XIV. EXPIRATION**

**IT IS FURTHER ORDERED** that this Order shall expire ten (10) days after entry unless, within such time, for good cause shown, it is extended for a like period, or unless Defendants consent that it may be extended for a longer period and the reasons therefore entered of record.

**XV. JURISDICTION**

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

SO ORDERED, this 18<sup>th</sup> day of October, 2005, at 2:15 o'clock ~~a.m.~~/p.m.



United States District Judge