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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 **Federal Trade Commission,**

13 Plaintiff,

14 v.

15 **National Foreclosure Relief, Inc., et al.**
a corporation;

16 Defendants.
17

Case No. SACV-09-117-DOC(MLGx)

**STIPULATED FINAL ORDER FOR
PERMANENT INJUNCTION AND
SETTLEMENT OF CLAIMS AS TO
DEFENDANT AS TO DEFENDANT
DAVID EALY**

18 Plaintiff Federal Trade Commission (“FTC”) commenced this civil action on
19 February 2, 2009, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), to
20 obtain preliminary and permanent injunctive and other equitable relief for
21 Defendants’ violations of Section 5 of the FTC Act, 15 U.S.C. § 45, in connection
22 with the marketing and sale of mortgage loan modification and foreclosure relief
23 services. The FTC and Defendant David Ealy (“Defendant”) have stipulated to the
24 entry of this Final Order for Permanent Injunction and Settlement of Claims
25 (“Order”).

26 Having reviewed Plaintiff’s and Defendant’s Stipulation to Entry of Final
27 Order as to Defendant David Ealy, and good cause appearing therefor, the Court
28 hereby orders as follows:

FINDINGS

By stipulation of the parties and being advised of the premises, the Court finds:

1. This is an action by the FTC instituted under Sections 5 and 13(b) of the FTC Act, 15 U.S.C. §§ 45 and 53(b). The Complaint seeks both permanent injunctive relief and consumer redress for Defendant’s alleged deceptive acts or practices in connection with the marketing and sale of mortgage loan modification and foreclosure relief services.

2. The FTC has the authority under Section 13(b) of the FTC Act to seek the relief it has requested, and the Complaint states a claim upon which relief can be granted against Defendant.

3. This Court has jurisdiction over the subject matter of this case and has jurisdiction over Defendant. Venue in the Central District of California is proper.

4. The activities of Defendant, as alleged in the Complaint, are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

5. The parties stipulate and agree to entry of this Order, without trial or final adjudication of any issue of fact or law, to settle and resolve all matters in dispute arising from the conduct alleged in the Complaint to the date of entry of this Order. This settlement does not settle and resolve any matters not alleged in the Complaint. Defendant does not admit any of the allegations set forth in the Complaint, other than the jurisdictional facts, merely by stipulating and agreeing to the entry of this Order.

6. Defendant waives all rights to seek judicial review or otherwise challenge or contest the validity of this Order. Defendant also waives any claim that he may have held under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the date of this Order. Each settling party shall bear its own costs and attorneys fees.

1 and one or more unsecured creditors, servicers, or debt collectors, including but not
2 limited to, a reduction in the balance, interest rate, or fees owed by a consumer to an
3 unsecured creditor, servicer, or debt collector.

4 4. ***“Defendant”*** means Defendant David Ealy.

5 5. ***“Financial related good or service”*** means any good, service, plan, or
6 program that is represented, expressly or by implication, to (A) provide any
7 consumer, arrange for any consumer to receive, or assist any consumer in receiving,
8 credit, debit, or stored value cards; (B) improve, or arrange to improve, any
9 consumer’s credit record, credit history, or credit rating; (C) provide advice or
10 assistance to any consumer with regard to any activity or service the purpose of
11 which is to improve a consumer’s credit record, credit history, or credit rating; (D)
12 provide any consumer, arrange for any consumer to receive, or assist any consumer in
13 receiving, a loan or other extension of credit; (E) provide any consumer, arrange for
14 any consumer to receive, or assist any consumer in receiving, debt relief goods or
15 services; or (F) provide any consumer, arrange for any consumer to receive, or assist
16 any consumer in receiving any service represented, expressly or by implication, to
17 renegotiate, settle, or in any way alter the terms of payment or other terms of the debt
18 between a consumer and one or more secured creditors, servicers, or debt collectors.

19 6. ***“Federal homeowner relief or financial stability program”*** means any
20 program (including its sponsoring agencies, telephone numbers, and Internet
21 websites) operated or endorsed by the United States government to provide relief to
22 homeowners or stabilize the economy, including but not limited to (A) the Making
23 Home Affordable Program; (B) the Financial Stability Plan; (C) the Troubled Asset
24 Relief Program and any other program sponsored or operated by the United States
25 Department of the Treasury; (D) the HOPE for Homeowners program, any program
26 operated or created pursuant to the Helping Families Save Their Homes Act, and any
27 other program sponsored or operated by the Federal Housing Administration; or (E)
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1 any program sponsored or operated by the United States Department of Housing and
2 Urban Development (“HUD”), the HOPE NOW Alliance, the Homeownership
3 Preservation Foundation, or any other HUD-approved housing counseling agency.

4 7. **“For-profit”** means any activity organized to carry on business for the
5 profit of the entity engaging in the activity or that of its members.

6 8. **“Material fact”** means any fact that is likely to affect a person’s choice
7 of, or conduct regarding, goods or services.

8 9. **“Mortgage loan modification or foreclosure relief service”** means any
9 good, service, plan, or program that is represented, expressly or by implication, to
10 assist a consumer in any manner to (A) stop, prevent, or postpone any home
11 mortgage or deed of trust foreclosure sale; (B) obtain or arrange a modification of
12 any term of a home loan, deed of trust, or mortgage; (C) obtain any forbearance from
13 any mortgage loan holder or servicer; (D) exercise any right of reinstatement of any
14 mortgage loan; (E) obtain, arrange, or attempt to obtain or arrange any extension of
15 the period within which the owner of property sold at foreclosure may cure his or her
16 default or reinstate his or her obligation; (F) obtain any waiver of an acceleration
17 clause contained in any promissory note or contract secured by a deed of trust or
18 mortgage on a residence in foreclosure or contained in that deed of trust; (G) obtain a
19 loan or advance of funds that is connected to the consumer's home ownership; (H)
20 avoid or ameliorate the impairment of the consumer’s credit record, credit history, or
21 credit rating that is connected to the consumer's home ownership; (I) save the
22 consumer’s residence from foreclosure; (J) assist the consumer in obtaining proceeds
23 from the foreclosure sale of the consumer’s residence; (K) obtain or arrange a
24 pre-foreclosure sale, short sale, or deed-in-lieu of foreclosure; (L) obtain or arrange a
25 refinancing, recapitalization, or reinstatement of a home loan, deed of trust, or
26 mortgage; (M) audit or examine a consumer’s mortgage or home loan application; or
27 (N) obtain, arrange, or attempt to obtain or arrange any extension of the period within
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1 which the renter of property sold at foreclosure may continue to occupy the property.
2 The foregoing shall include any manner of claimed assistance, including, but not
3 limited to, debt, credit, budget, or financial counseling; receiving money for the
4 purpose of distributing it to creditors; contacting creditors or servicers on behalf of
5 the consumer; and giving advice of any kind with respect to filing for bankruptcy.

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

9 11. **“Receiver”** or **“Permanent Receiver”** means Robb Evans and Robb
10 Evans & Associates, LLC.

11 12. **“Servicer”** means any beneficiary, mortgagee, trustee, loan servicer, loan
12 holder, or other entity that performs loan or credit account administration or
13 processing services and/or its authorized agents.

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15 **ORDER**

16 **I.**

17 **BAN ON MORTGAGE LOAN MODIFICATION AND FORECLOSURE**
18 **RELIEF SERVICES**

19 **IT IS THEREFORE ORDERED** that Defendant, whether acting directly or
20 through any other person, is permanently restrained and enjoined from:

21 A. Advertising, marketing, promoting, offering for sale, or selling any
22 mortgage loan modification or foreclosure relief service; and

23 B. Assisting others engaged in advertising, marketing, promoting, offering
24 for sale, or selling any mortgage loan modification or foreclosure relief service.

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1 (f) that the credit does not have a prepayment penalty or that
2 no prepayment penalty and/or other fees or costs will be incurred if the consumer
3 subsequently refinances; and

4 (g) that the interest rate(s) or annual percentage rate(s) are
5 fixed rather than adjustable or adjustable rather than fixed;

6 2. That any person can improve any consumer's credit record, credit
7 history, or credit rating by permanently removing negative information from the
8 consumer's credit record, credit history, or credit rating, even where such information
9 is accurate and not obsolete;

10 3. Any person's ability to improve or otherwise affect a consumer's
11 credit record, credit history, or credit rating or ability to obtain credit;

12 4. Any aspect of any debt relief good or service, including but not
13 limited to, the amount of savings a consumer will receive from purchasing, using, or
14 enrolling in such debt relief good or service; the amount of time before which a
15 consumer will receive settlement of the consumer's debts; or the reduction or
16 cessation of collection calls; and

17 5. That a consumer will receive legal representation;

18 B. Advertising or assisting others in advertising credit terms other than
19 those terms that actually are or will be arranged or offered by a creditor or lender.

20 **III.**

21 **PROHIBITED REPRESENTATIONS RELATING TO ANY GOODS OR**
22 **SERVICES**

23 **IT IS FURTHER ORDERED** that Defendant and his agents, servants,
24 employees, and attorneys, and those persons or entities in active concert or
25 participation with any of them who receive actual notice of this Order by personal
26 service, facsimile transmission, email, or otherwise, whether acting directly or
27 through any corporation, subsidiary, division, or other device, in connection with the
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1 advertising, marketing, promotion, offering for sale or sale of any good, service, plan,
2 or program are hereby permanently restrained and enjoined from misrepresenting or
3 assisting others in misrepresenting, expressly or by implication, any material fact,
4 including but not limited to:

5 A. Any material aspect of the nature or terms of any refund, cancellation,
6 exchange, or repurchase policy, including, but not limited to, the likelihood of a
7 consumer obtaining a full or partial refund, or the circumstances in which a full or
8 partial refund will be granted to the consumer;

9 B. That any person is affiliated with, endorsed or approved by, or otherwise
10 connected to any other person, government entity, any federal homeowner relief or
11 financial stability program, or any other program;

12 C. The total costs to purchase, receive, or use, and the quantity of, the good
13 or service;

14 D. Any material restriction, limitation, or condition to purchase, receive, or
15 use the good or service; and

16 E. Any material aspect of the performance, efficacy, nature, or
17 characteristics of the good or service.

18 **IV.**

19 **PROHIBITION ON ENFORCEMENT OF CONTRACTS**

20 **IT IS FURTHER ORDERED** that Defendant and his agents, servants,
21 employees, and attorneys, and those persons or entities in active concert or
22 participation with any of them who receive actual notice of this Order by personal
23 service or otherwise, whether acting directly or through any corporation, subsidiary,
24 division, or other device, are hereby permanently enjoined from demanding payment
25 on or enforcing or threatening to enforce any contract or agreement with any
26 consumer, in conjunction with the sale of any mortgage loan modification or
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1 foreclosure relief service, entered into by Defendant National Foreclosure Relief,
2 Inc., prior to the effective date of this Order.

3 **V.**

4 **PROHIBITION ON SALE OF CUSTOMER INFORMATION**

5 **IT IS FURTHER ORDERED** that Defendant and his agents, servants,
6 employees, and attorneys, and those persons or entities in active concert or
7 participation with any of them who receive actual notice of this Order by personal
8 service or otherwise, whether acting directly or through any corporation, subsidiary,
9 division, or other device, are permanently restrained and enjoined from:

10 A. disclosing, using, or benefitting from customer information, including
11 the name, address, telephone number, email address, social security number, other
12 identifying information, or any data that enables access to a customer's account
13 (including a credit card, bank account, or other financial account), of any person
14 which any Defendant obtained prior to entry of this Order in connection with the
15 advertising, marketing, promotion, offering for sale or sale of any mortgage loan
16 modification or foreclosure relief service; and

17 B. failing to dispose of such customer information in all forms in their
18 possession, custody, or control within thirty (30) days after entry of this Order.
19 Disposal shall be by means that protect against unauthorized access to the customer
20 information, such as by burning, pulverizing, or shredding any papers, and by erasing
21 or destroying any electronic media, to ensure that the customer information cannot
22 practicably be read or reconstructed.

23 *Provided, however,* that customer information need not be disposed of, and
24 may be disclosed, to the extent requested by a government agency or required by a
25 law, regulation, or court order.

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1 **VI.**

2 **MONETARY RELIEF**

3 **IT IS FURTHER ORDERED** that Judgment is hereby entered against
4 Defendant Ealy in the amount of \$12,000,000 (TWELVE MILLION DOLLARS);
5 *provided, however,* that this judgment shall be suspended upon Defendant Ealy's
6 payment to the FTC of all funds remaining as of the date of entry of this Order in the
7 accounts belonging to or held in the name of Defendant Ealy as follows: HSBC
8 Account ending in 8664; ING Direct Account ending in 0752, and WaMu/Chase
9 accounts ending in 4384, 3413, and 8476. Toward satisfying this judgment,
10 Defendant hereby authorizes, and the Court hereby directs, HSBC Bank USA, ING
11 Direct, and WaMu/Chase to release to the FTC all funds remaining in the above
12 accounts belonging to or held in the name of Defendant Ealy. Such funds shall be
13 paid to the FTC within five [5] business days after this Order has been served by fax
14 upon said financial institution(s) (or as otherwise agreed between Plaintiff and the
15 financial institution). Payment shall be made by wire transfer or check, as directed
16 by the FTC, its counsel or other representative. After all funds have been transferred
17 from these accounts to the FTC, all holds or freezes on these accounts shall be lifted.

18 A. All funds paid to the FTC pursuant to this Paragraph shall be deposited
19 into a fund administered by the Commission or its agent to be used for equitable
20 relief, including but not limited to restitution and any attendant expenses for the
21 administration of any restitution fund. In the event that direct restitution to
22 consumers is wholly or partially impracticable or funds remain after restitution is
23 completed, the Commission may apply any remaining funds for such other equitable
24 relief (including consumer information remedies) as it determines to be reasonably
25 related to the practices alleged in the Complaint. Any funds paid to the FTC and not
26 used for such equitable relief shall be deposited to the Department of the Treasury as
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1 disgorgement and not as a fine or penalty. The Commission shall have full and sole
2 discretion to:

- 3 1. Determine the criteria for participation by individual claimants in
4 any consumer restitution program implemented pursuant to this
5 Order;
- 6 2. Determine the manner and timing of any notices to be given to
7 consumers regarding the existence and terms of such programs,
8 and
- 9 3. Delegate any and all tasks connected with such restitution
10 program to any individual, partnerships, or corporations; and pay
11 reasonable fees, salaries, and expenses incurred thereby from the
12 payments made pursuant to this Order;

13 B. Defendant shall have no right to challenge the Commission's choice of
14 remedies under this Paragraph.

15 C. Defendant relinquishes all dominion, control, and title to the funds paid
16 to the fullest extent permitted by law. Defendant shall make no claim to or demand
17 return of the funds, directly or indirectly, through counsel or otherwise.

18 D. Defendant agrees that the facts as alleged in the Complaint filed in this
19 action shall be taken as true without further proof in any bankruptcy case or
20 subsequent civil litigation pursued by the Commission to enforce its rights to any
21 payment or money judgment pursuant to this Order, including but not limited to a
22 nondischargeability complaint in any bankruptcy case. Defendant further stipulates
23 and agrees that the facts alleged in the Complaint establish all elements necessary to
24 sustain an action pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C.
25 § 523(a)(2)(A), and that this Order shall have collateral estoppel effect for such
26 purposes.

1 **VII.**

2 **RELIANCE ON REPRESENTATIONS**

3 **IT IS FURTHER ORDERED** that the Commission's agreement to, and the
4 Court's approval of, this Order is expressly premised upon the truthfulness, accuracy,
5 and completeness of Defendant's financial condition, as represented in the financial
6 statement dated February 3, 2010, which the Commission relied upon in negotiating
7 and agreeing to the terms of this Order. If, upon motion by the Commission to the
8 Court, the Court finds that Defendant, in any of the above-referenced materials, failed
9 to disclose any asset with a value in excess of \$1,000, materially misrepresented the
10 value of any asset, or made any other material misrepresentation or omission, the
11 suspended judgment against Defendant Ealy above in Paragraph VI in the amount of
12 \$12,000,000.00 (TWELVE MILLION DOLLARS) shall become immediately due
13 and payable, less any payments already made by any Defendant in this action, plus
14 interest from the date of entry of this Order as allowed by law; provided, however,
15 that in all other respects this Order shall remain in full force and effect unless
16 otherwise ordered by the Court; and, provided further, that proceedings instituted
17 under this provision would be in addition to, and not in lieu of, any other civil or
18 criminal remedies as may be provided by law, including any other proceedings that
19 the Commission may initiate to enforce this Order. For purposes of this Section,
20 Defendant Ealy waives any right to contest any of the allegations in the Complaint.

21 **VIII.**

22 **COMPLIANCE MONITORING**

23 **IT IS FURTHER ORDERED** that, for the purpose of (i) monitoring and
24 investigating compliance with any provision of this Order, and (ii) investigating the
25 accuracy of the Defendant's financial statement upon which the Commission's
26 agreement to this Order is expressly premised:

1 provisions of this Order may be monitored:

2 A. Defendant shall, for a period of five (5) years after the date of entry of
3 this Order, notify the Commission of the following:

4 1. Any changes in Defendant's residence, mailing addresses, and
5 telephone numbers, within ten (10) days of the date of such change;

6 2. Any changes in Defendant's employment status (including
7 self-employment), and any change in Defendant's ownership in any business entity,
8 within ten (10) days of the date of such change. Such notice shall include the name
9 and address of each business that Defendant is affiliated with, employed by, creates
10 or forms, or performs services for; a detailed description of the nature of the business;
11 and a detailed description of Defendant's duties and responsibilities in connection
12 with the business or employment; and

13 3. Any changes in Defendant's name or use of any aliases or
14 fictitious names, within ten (10) days of the date of such change.

15 B. Defendant shall, for a period of five (5) years after the date of entry of
16 this Order, notify the Commission of any changes in any business entity that
17 Defendant directly or indirectly controls, or has an ownership interest in, that may
18 affect compliance obligations arising under this Order, including but not limited to:
19 incorporation or other organization; a dissolution, assignment, sale, merger, or other
20 action; the creation or dissolution of a subsidiary, parent, or affiliate that engages in
21 any acts or practices subject to this Order; or a change in the business name or
22 address, at least thirty (30) days prior to such change, provided that, with respect to
23 any proposed change in the business entity about which Defendant learns less than
24 thirty (30) days prior to the date such action is to take place, Defendant shall notify
25 the Commission as soon as is practicable after obtaining such knowledge;

26 C. One hundred eighty (180) days after the date of entry of this Order and
27 annually thereafter for a period of five (5) years, Defendant shall provide a written
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1 report to the FTC, which is true and accurate and sworn to under penalty of perjury,
2 setting forth in detail the manner and form in which Defendant has complied and is
3 complying with this Order. This report shall include, but not be limited to:

- 4 1. Defendant's then-current residence address, mailing addresses,
5 and telephone numbers;
- 6 2. Defendant's then-current employment status (including
7 self-employment), including the name, addresses, and telephone
8 numbers of each business that such Defendant is affiliated with,
9 employed by, or performs services for; a detailed description of
10 the nature of the business; and a detailed description of such
11 Defendant's duties and responsibilities in connection with the
12 business or employment;
- 13 3. A copy of each acknowledgment of receipt of this Order, obtained
14 pursuant to Paragraph XI.C, below; and
- 15 4. Any other changes required to be reported under part A of this
16 Paragraph;

17 D. Defendant shall notify the Commission of the filing of a bankruptcy
18 petition by Defendant within fifteen (15) days of filing;

19 E. For the purposes of this Order, Defendant shall, unless otherwise
20 directed by the Commission's authorized representatives, send by overnight courier
21 (not the U.S. Postal Service) all reports and notifications to the Commission that are
22 required by this Order to::

23 Associate Director of Enforcement
24 Bureau of Consumer Protection
25 Federal Trade Commission
26 600 Pennsylvania Ave., N.W.
27 Washington, D.C. 20580

28 Re: **FTC v. National Foreclosure Relief, Inc.**
Civil Action No. SACV-09-117 DOC
FTC Matter No. X090026

1 F. All records and documents necessary to demonstrate full compliance
2 with each provision of this Order, including but not limited to, copies of
3 acknowledgments of receipt of this Order, required by Paragraph XI.C, below, and all
4 reports submitted to the FTC pursuant to Paragraph IX, above (entitled “Compliance
5 Reporting By Defendant”).

6 **XI.**

7 **DISTRIBUTION OF ORDER BY DEFENDANT**

8 **IT IS FURTHER ORDERED** that, for a period of five (5) years from the date
9 of entry of this Order, Defendant shall deliver copies of this Order as directed below:

10 A. Defendant as Control Person: For any business that Defendant controls,
11 directly or indirectly, or in which Defendant has a majority ownership interest,
12 Defendant must deliver a copy of this Order to (1) all principals, officers, directors,
13 and managers of that business; (2) all employees, agents, and representatives of that
14 business who engage in conduct related to the subject matter of the Order; and (3)
15 any business entity resulting from any change in structure set forth in Paragraph
16 IX.B, above (titled “Compliance Reporting by Defendant”). For current personnel,
17 delivery shall be within five (5) days of service of this Order upon Defendant. For
18 new personnel, delivery shall occur prior to them assuming their responsibilities. For
19 any business entity resulting from any change in structure set forth in Paragraph
20 IX.B, above (titled “Compliance Reporting by Defendant”), delivery shall be at least
21 ten (10) days prior to the change in structure.

22 B. Defendant as Employee or Non-Control Person: For any business where
23 Defendant is not a controlling person of a business but otherwise engages in conduct
24 related to the subject matter of this Order, Defendant must deliver a copy of this
25 Order to all principals and managers of such business before engaging in such
26 conduct.

27 C. Defendant must secure a signed and dated statement acknowledging
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1 receipt of the Order, within thirty (30) days of delivery, from all persons receiving a
2 copy of the Order pursuant to this Paragraph.

3 **XII.**

4 **ACKNOWLEDGMENT OF RECEIPT OF ORDER**

5 **BY DEFENDANT**

6 **IT IS FURTHER ORDERED** that, within five (5) business days of receipt of
7 this Order as entered by the Court, Defendant must submit to the Commission a
8 truthful sworn statement acknowledging receipt of this Order.

9 **XIII.**

10 **COOPERATION WITH FTC COUNSEL**

11 **IT IS FURTHER ORDERED** that Defendant shall, in connection with this
12 action or any subsequent investigations related to or associated with the transactions
13 or the occurrences that are the subject of the FTC's Complaint, cooperate in good
14 faith with the FTC and appear at such places and times as the FTC shall reasonably
15 request, after written notice, for interviews, conferences, pretrial discovery, review of
16 documents, and for such other matters as may be reasonably requested by the FTC. If
17 requested in writing by the FTC, Defendant shall appear and provide truthful
18 testimony in any trial, deposition, or other proceeding related to or associated with
19 the transactions or the occurrences that are the subject of the Complaint, without the
20 service of a subpoena.

21 **XIV.**

22 **SEVERABILITY**

23 **IT IS FURTHER ORDERED** that the provisions of this Order are separate
24 and severable from one another. If any provision is stayed or determined to be
25 invalid, all of the remaining provisions shall remain in full force and effect.

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XV.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification and enforcement of this Order.

IT IS SO ORDERED.

DATED: September 21, 2010

David O. Carter

DAVID O. CARTER
United States District Judge

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