

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

INDEPENDENT MARKETING
EXCHANGE, Inc., et al.

Defendants.

Case No. 1:10-cv-00568-NLH-KMW

[PROPOSED]

**STIPULATED FINAL
JUDGMENT AND ORDER FOR
PERMANENT INJUNCTION
AND MONETARY RELIEF**

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”) filed a Complaint for Permanent Injunction and Other Equitable Relief (“Complaint”) pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), to obtain temporary, preliminary, and permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief for Defendants’ acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), in connection with the marketing of Work-At-Home and Mystery Shopping Opportunities.

The parties, Plaintiff Federal Trade Commission and Defendants Independent Marketing Exchange, Inc., a corporation, also d/b/a National Data

Management, N.D.M., Global Mailing Services, G.M.S., Independent Mailing Services, Independent Mailing Services, Inc., I.M.S., Independent Shoppers Network, Independent Shoppers, Success At Home, Success-At-Home Mailing, IMEX, IMEX, Inc., and Continental Publishing Company; and Wayne J. Verderber II, a/k/a Wayne Verd and Brian West, having agreed to entry of this Stipulated Final Judgment and Order for Permanent Injunction and Monetary Relief (“Order”), hereby request that the Court enter this Order to resolve all matters in dispute in this action between them, without trial or adjudication of any issue of fact or law, other than those stated below.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

FINDINGS

1. This Court has jurisdiction of the subject matter of this case and the parties pursuant to 15 U.S.C. §§ 45(a) and 53(b), and 28 U.S.C. §§ 1331, 1337(a) and 1345.
2. Venue in this District is proper under 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b) and (c).
3. The activities of Defendants, as alleged in the Complaint, are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

4. The Complaint states a claim upon which relief may be granted under Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b).

5. Defendants have entered into this Order freely and without coercion. Defendants further acknowledge that they have read the provisions of this Order and are prepared to abide by them.

6. The parties waive all rights to seek judicial review or otherwise challenge or contest the validity of this Order. Defendants further waive and release any claim they may have against the Commission and its employees, representatives, and agents.

7. Defendants waive any claims they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of the entry of this Order.

8. Defendants stipulate and agree to this Order for settlement purposes only, to settle and resolve all matters alleged in the Complaint to the date of entry of this Order. Defendants do not admit any of the allegations set forth in the Complaint, other than the jurisdictional facts, and deny any and all wrongdoing.

9. The parties agree, for purposes of facilitating resolution of this matter, that entry of this Order is in the public interest.

DEFINITIONS

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

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

2. **“Assisting others”** includes, but is not limited to: (1) performing customer service functions, including, but not limited to, receiving or responding to consumer complaints; (2) formulating or providing, or arranging for the formulation or provision of, any marketing material; (3) providing names of, or assisting in the generation of lists of, potential customers; (4) performing marketing or billing services of any kind; (5) processing credit and debit card payments; or (6) acting or serving as an owner, officer, director, manager, or principal of any entity.

3. **“Corporate Defendant”** means Independent Marketing Exchange, Inc., also d/b/a National Data Management, N.D.M., Global Mailing Services,

G.M.S., Independent Mailing Services, Independent Mailing Services, Inc., I.M.S., Independent Shoppers Network, Independent Shoppers, Success At Home, Success-At-Home Mailing, IMEX, IMEX, Inc., and Continental Publishing Company and its successors and assigns.

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

5. **“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, Internet sites, webpages, websites, electronic correspondence, including e-mail and instant messages, photographs, audio and video recordings, contracts, accounting data, advertisements (including, but not limited to, advertisements placed on the World Wide Web), FTP Logs, Server Access Logs, USENET Newsgroup postings, World Wide Web pages, books, written or printed records, handwritten notes, telephone logs, telephone scripts, receipt books, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, computer records, and other data compilations from which information can be obtained and translated. A draft or non-identical copy is a separate document within the meaning of the term.

6. **“Financial Statements”** means the financial statements submitted by

Individual Defendant Wayne J. Verderber II and Corporate Defendant Independent Marketing Exchange, Inc., to the Commission, which were both signed and dated by Individual Defendant Wayne J. Verderber II on May 13, 2010, including all attachments, supplemental materials, and copies of tax returns for Defendants as well as:

- the additional documentation submitted by email from Elissa J. Shane, on behalf of Defendants' counsel Andrew Lustigman to Commission counsel Russell Deitch and Christine Todaro dated July 14, 2010, attaching, "2010-07-14 Lustigman Letter to FTC re Production and Financial Responses" and "IME000176 - 260,"

- the additional documentation submitted by email from Defendants' counsel Andrew Lustigman to Commission counsel Russell Deitch and Christine Todaro dated October 22, 2010,

- the additional documentation submitted by email from Defendants' counsel Andrew Lustigman to Commission counsel Russell Deitch and Christine Todaro dated August 9, 2010, attaching, "Production 2010-08-09.pdf" and "2010-08-09 Lustigman Letter to FTC re Response to August 5 Letter.pdf,"

- the additional documentation submitted by email from Defendants' counsel Andrew Lustigman to Commission counsel Russell Deitch and Christine

Todaro dated August 19, 2010, attaching, "Ex. 5A.pdf,"

- the additional documentation submitted by email from Defendants' counsel Andrew Lustigman to Commission counsel Russell Deitch and Christine Todaro dated December 3, 2010 and

- the additional documentation submitted by email from Defendants' counsel Andrew Lustigman to Commission counsel Russell Deitch and Christine

Todaro dated December 21, 2010, attaching, "Cape Bank Statement as of 2010-10-20.pdf."

7. **"FTC"** or **"Commission"** means Federal Trade Commission.

8. **"Individual Defendant"** means Wayne J. Verderber II, a/k/a Wayne Verd and Brian West.

9. **"Money-Making Opportunity"** means any good, service, plan or program that is represented, expressly or by implication, to assist an individual in any manner to earn money or other consideration.

10. **"Mystery Shopping Opportunity"** means any good, service, plan or program that is represented, expressly or by implication, to assist an individual in any manner to earn money or other consideration in exchange for visiting an establishment, typically a retail store, bank, or restaurant to observe and measure the customer service, the product quality and the environment of the establishment

in general.

11. **“Net Proceeds”** means the sum remaining after satisfaction of senior recorded liens, payment of federal or state taxes, payment of homeowner association fees and special assessment fees, payment to the Liquidator Receiver of the Liquidator Receiver’s fees, and payment to third parties of any reasonable and customary brokerage fees, commissions, and closing costs. *Provided however*, that all such reasonable and customary brokerage fees, commissions, and closing costs must first be approved by counsel for the FTC.

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

13. **“Personal Property”** means the property described in Attachment A of this Order, individually, collectively, or in any combination.

14. **“Real Property”** or **“Real Properties”** means the properties described in Attachment B of this Order, individually, collectively, or in any combination, and includes the properties commonly known as, 30 Cheshire Drive, Galloway, NJ 08205 (“Cheshire Drive”); 37 S. Iowa Avenue, Apt. 2C, Atlantic City, NJ 08401 (“Iowa 2C”); and 37 S. Iowa Avenue, Apt. 1G, Atlantic City, NJ 08401 (“Iowa 1G”).

15. **“Representatives”** shall have the same scope as Federal Rule of Civil Procedure 65(d)(2), and means Defendants’ agents, servants, employees, and attorneys, and any other person or entity in active concert or participation with them who receives actual notice of this Order by personal service or otherwise.

16. **“Work-at-Home Opportunity”** means any program, plan, product, or service that is represented, expressly or by implication, to enable a participant or purchaser to earn money or other consideration while working from the participant’s home.

17. The words **“and”** and **“or”** shall be understood to have both conjunctive and disjunctive meanings.

ORDER

I.

BAN ON WORK-AT-HOME OPPORTUNITIES AND MYSTERY SHOPPING OPPORTUNITIES

IT IS HEREBY ORDERED that Defendants whether acting directly or through any other person, corporation, partnership, subsidiary, division, agent, or other device, are permanently restrained and enjoined from:

- A. Advertising, marketing, promoting, offering for sale, or selling any Work-at-Home Opportunity and Mystery Shopping Opportunity; and
- B. Assisting others engaged in advertising, marketing, promoting,

offering for sale, or selling any Work-at-Home Opportunity and Mystery Shopping Opportunity.

II.

PROHIBITED REPRESENTATIONS RELATING TO ANY GOODS OR SERVICES

IT IS FURTHER ORDERED that Defendants and their Representatives, whether acting directly or through any corporation, partnership, subsidiary, division, agent, or other device, in connection with the advertising, marketing, promotion, offering for sale or sale of any good, service, plan, or program, are hereby permanently restrained and enjoined from misrepresenting, or assisting others in misrepresenting, expressly or by implication, any material fact, including, but not limited to:

- A. Purchasers are likely to earn substantial income;
- B. Purchasers are likely to obtain employment;
- C. The amount or type of resources or labor required to make money using such goods, services, plans, or programs;
- D. Affiliation with, endorsement or approval by, or other connection to any other person, business, government entity, or program;
- E. The total costs to purchase, receive, or use, and the quantity of, the good, service, plan, or program;

F. Any material restriction, limitation, or condition to purchase, receive, or use the good, service, plan, or program;

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

H. Any material aspect of the performance, efficacy, nature or other characteristic of the good, service, plan, or program.

III.

PROHIBITED UNSUBSTANTIATED REPRESENTATIONS

IT IS FURTHER ORDERED that Defendants and their Representatives, whether acting directly or through any corporation, partnership, subsidiary, division, agent, or other device, in connection with the advertising, marketing, promotion, offering for sale or sale of any Money-Making Opportunity, are hereby permanently restrained and enjoined from making any express or implied, direct or indirect representation, that consumers are likely to earn substantial income, unless the representation is true, and, at the time it is made, Defendants possess and rely upon competent and reliable evidence that, when evaluated in an objective manner, substantiates the claim.

IV.

MONETARY RELIEF

IT IS FURTHER ORDERED that

A. Judgment is hereby entered in favor of the Commission and against Defendants, jointly and severally, in the amount of nine hundred and nineteen thousand dollars (\$919,000), as equitable monetary relief for consumer injury; provided, however, that subject to the provisions of Section V below, this judgment shall be suspended upon Defendants' completion of the requirements stated in Subsections B-F.

B. The Individual Defendant:

1. Waives all claims to, unconditionally releases, and consents to transfer to the Liquidator Receiver appointed in Section VI of this Order ("Liquidator"), or to his designated trust, possession and legal and equitable title to the Individual Defendant's Personal Property.
2. Shall cooperate fully with the Liquidator and take such other steps as the Liquidator may require to transfer to the Liquidator, or to his designated trust, possession and legal and equitable title to the Personal Property within ten (10) days of request by

the Liquidator, including executing any documents, procuring the signatures of any person or entity under his control, providing access to the Personal Property and any necessary information, and turning over the Personal Property. The Personal Property shall be delivered to the office of the Liquidator in marketable and operable condition. Except as set forth in Section VI.J. of this Order, the costs and expenses of transferring the Personal Property shall be paid by the Liquidatorship.

3. Represents that no encumbrances to the Personal Property have been added since execution of the Financial Statements, and that there are no existing encumbrances to the Personal Property.
4. Shall not add encumbrances to the Personal Property after entry of this Order.
5. Prior to surrendering possession and equitable title of the Personal Property to the Liquidator, shall:
 - a. Maintain and take no action to diminish the value of the Personal Property; and

and legal and equitable title of the Individual Defendant's Real Property.

2. Shall, within thirty (30) days of entry of this Order, unless otherwise agreed to in writing by the Liquidator and the Commission, transfer possession and legal and equitable title of the Real Property to the Liquidator, or to his designated trust.
3. Represents that no encumbrances to the Real Property have been added since execution of the Financial Statements, other than those disclosed below, and that the only existing encumbrances to the Real Property are the following:
 - a. A mortgage with Bank of America, N.A., valued at approximately \$61,515 on Iowa 2C;
 - b. A mortgage with TD Bank, N.A., valued at approximately \$78,960 on Cheshire Drive;
 - c. Approximately \$1,549 in unpaid real estate taxes for Cheshire Drive;
 - d. Approximately \$1,193 in unpaid real estate taxes on Iowa 1G;
 - e. Iowa 2C's homeowner association's special

assessment fee of \$1,484; and

- f. Iowa IG's homeowner association's special assessment fee of \$1,004.

4. Shall not add any additional encumbrances to the Real Property after entry of this Order.
5. Shall cooperate fully with the Liquidator and take such other steps as the Liquidator may require to transfer to the Liquidator, or to his designated trust, possession and legal and equitable title to the Real Property, including executing any documents, procuring the signatures of any person or entity under his control, providing access to the Real Property, providing any necessary information, and turning over the Real Property. Except as set forth in Section VIJ of this Order, the costs and expenses of transferring the Real Property to the Liquidator shall be paid by the Liquidatorship.
6. Represents that he is the sole owner of the Real Property, and acknowledges that the Commission is relying upon this material representation.
7. Prior to transferring possession and legal and equitable title of

the Real Property to the Liquidator, shall:

- a. Maintain and take no action to diminish the value of the Real Property; and
 - b. Apply any income received from the Real Property to all amounts due and payable on the Real Property, including but not limited to mortgage, tax, homeowner's assessments, insurance, maintenance, and similar fees.
8. Shall, upon entry of this Order, cause existing insurance coverage for the Real Property to remain in force and shall both notify the insurance carrier(s) immediately of the appointment of the Liquidator and request that the Liquidator and the Commission be added to the insurance policy or policies as additional insureds thereunder.
9. Nothing in this Order requires the Individual Defendant to pay any amount relating to or concerning the Real Property, including, but not limited to, any taxes, insurance, homeowner's assessments, maintenance, and similar fees, after the Individual Defendant has transferred possession and legal and equitable

title of the Real Property to the Liquidator. The transfer of possession of the Real Property occurs when the Individual Defendant delivers all keys and security codes, if any, to the Liquidator along with written notice that possession is surrendered.

D. Within ten (10) business days after entry of this Order, the Individual Defendant shall:

1. Take all necessary steps to cause the following financial institutions to remit the entire amount held in the following accounts to the Commission:
 - a. All frozen funds held at TD Bank, N.A. in the Individual Defendant's account ending in 1411;
and
 - b. All frozen funds held at ING Bank FSB/ING Direct in the Individual Defendant's account ending in 7472.
2. Take all necessary steps to cause the following financial institutions to remit one half (50%) of the entire amount held in the following accounts to the Commission:

- a. All frozen funds held at TD Bank, N.A. in the Individual Defendant's account ending in 3620;
 - b. All frozen funds held at Cape Bank in the Individual Defendant's account ending in 5127;
and
 - c. All frozen funds held at Cape Bank in the Individual Defendant's account ending in 9128.
3. Take all necessary steps to cause Wells Fargo Advisors, LLC to liquidate all holdings in the Individual Defendant's account ending in 5227 and to transfer 72.6% of the Net Proceeds of such liquidation to the FTC.
 4. Take all necessary steps to cause Wells Fargo Advisors, LLC to liquidate all holdings in the Individual Defendant's account ending in 5083 and to transfer the Net Proceeds of such liquidation to the FTC.

E. The Corporate Defendant shall transfer to the Commission or its designated agent, by wire transfer, three thousand dollars (\$3,000) within ten (10) business days of entry of this Order by the Court, in accordance with instructions provided by a representative of the Commission.

F. Within ten (10) business days after entry of this Order, the Corporate Defendant shall:

1. Take all necessary steps to cause TD Bank, N.A. to remit the entire amount held in the Corporate Defendant's account ending 3901 to the Commission.

G. In the event of any default by Defendants in paying the judgment or satisfying any of their obligations under this Order and such default continues for ten (10) calendar days beyond either the date the payment is due or the date their obligations should have been satisfied, the entire amount of the judgment, less any amounts previously paid pursuant to this Order, together with interest, shall immediately become due and payable, and the Commission shall be entitled pursue any and all other remedies available to it at law or equity. Further, interest, computed pursuant to 28 U.S.C. § 1961(a), shall accrue from the date of default to the date of payment. Defendants shall be jointly and severally liable for all payments required by this Order and any interest on such payments.

H. All funds paid pursuant to this Order shall be deposited into a fund administered by the Commission or its agents to be used for equitable relief, including, but not limited to, redress to consumers, and any attendant expenses for the administration of such equitable relief. In the event that direct redress to

consumers is wholly or partially impracticable or funds remain after the redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendants' practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the United States Treasury as disgorgement. Defendants shall have no right to challenge the Commission's choice of remedies under this Paragraph. Defendants shall have no right to contest the manner of distribution chosen by the Commission.

I. No portion of any payment under the judgment herein shall be deemed a payment of any fine, penalty, or punitive assessment.

J. Defendants relinquish all dominion, control, and title to the Real Property and Personal Property, and all funds paid to the Commission pursuant to this Order, including, but not limited to, the Net Proceeds from the sale of the Real Property, the Net Proceeds from the sale of the Personal Property, and the Net Proceeds from all other liquidated assets, to the fullest extent permitted by law. Defendants shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise.

K. Defendants agree that the facts as alleged in the Complaint filed in this action shall be taken as true without further proof in any bankruptcy case or

subsequent civil litigation pursued by the Commission to enforce its rights to any payment or money judgment pursuant to this Order, including, but not limited to, a nondischargeability complaint in any bankruptcy case. Defendants further stipulate and agree that the facts alleged in the Complaint establish all elements necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order shall have collateral estoppel effect for such purposes.

L. In accordance with 31 U.S.C. § 7701, Defendants are hereby required, unless they have done so already, to furnish to the Commission their taxpayer identifying numbers and/or social security numbers, which shall be used for the purposes of collecting and reporting on any delinquent amount arising out of Defendants' relationship with the government.

M. Defendants agree that they will not, whether acting directly or through any corporation, partnership, subsidiary, division, trade name, device, or other entity, submit to any federal or state tax authority any return, amended return, or other official document that takes a deduction for, or seeks a tax refund or other favorable treatment for, any payment by Defendants pursuant to this Order. Defendants further agree that they will not seek a credit or refund of any kind for federal or state taxes or penalties for tax years 2000 to 2011 arising from any

payments made pursuant to this Order. However, if Defendants otherwise obtain a credit or refund of any federal or state taxes or penalties paid for tax years 2000 to 2011 arising from any payments made pursuant to this Order, then Defendants shall promptly pay the Commission the amount of such credit or refund, together with any interest the Defendants have earned in connection with any such credit or refund. *Provided, however*, that Defendants may use the amount paid to the Commission pursuant to Section IV of this Order only to offset any taxable capital gains resulting from the transfer of the Real Properties.

N. Upon Defendants' fulfillment of their obligations set forth in this Section IV B-F and upon a written request by the Defendants, counsel for the Commission will promptly file with the Court a statement that Defendants, subject to Section V of this Order, have satisfied their obligations under this Section IV, Subsections B-F.

V.

RIGHT TO REOPEN

IT IS FURTHER ORDERED that

A. The Commission's agreement to, and the Court's approval of, this Order, including, but not limited to, the suspension of the monetary judgment against Defendants, is expressly premised upon the truthfulness, accuracy, and

completeness of Defendants' Financial Statements, all of which the Commission relied upon in negotiating and agreeing to the terms of this Order.

B. If, upon motion by the Commission to the Court, the Court finds that any Defendant, in any of the above-referenced Financial Statements, failed to disclose any material asset, materially misrepresented the value of any asset, or made any other material misrepresentation or omission, the suspension shall be lifted on the monetary judgment in Section IV, above, and that judgment amount, less any payments already made to the Commission, shall be immediately due and payable.

C. Defendants agree that the above-referenced Financial Statements may be used to investigate, monitor, and enforce Defendants' compliance with this Order.

Provided, however, that in all other respects, this Order shall remain in full force and effect, unless otherwise ordered by the Court; and,

Provided further, that proceedings initiated under this provision would be in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any proceedings that the Commission may initiate to enforce this Order.

VI.

APPOINTMENT AND DUTIES OF LIQUIDATOR RECEIVER

IT IS FURTHER ORDERED that Richard Trenk, Esq. of Trenk,

DiPasquale, PC, 347 Mount Pleasant Avenue, Suite 300, West Orange, New Jersey is appointed as Liquidator Receiver ("Liquidator") with all the rights and powers of an equity receiver, over the Real Property and the Personal Property.

A. As soon as reasonably possible, the Liquidator shall, at reasonable cost and in a commercially reasonable fashion, liquidate the Real Property and Personal Property. Counsel for the Commission shall approve the final sale price of the Real Property. Should the Real Property be auctioned, any minimum bid will be set by counsel for the Commission. Within thirty (30) business days after all of the Real Property and Personal Property has been liquidated, the Liquidator shall account for the Net Proceeds derived, and transfer all such Net Proceeds to the Commission. The Liquidator shall make the transfer required by this paragraph by wire transfer, in accordance with instructions provided by a representative of the Commission.

B. Upon the Individual Defendant's transfer or surrender of legal and equitable title and possession, the Liquidator is authorized to assume responsibility for management of the Real Property and Personal Property, including but not

limited to making disbursements for operating expenses as may be appropriate, undertaking repairs, and taking any other actions necessary to efficiently manage the Real Property and Personal Property and to maintain its value.

C. The Liquidator shall take all necessary action to procure appropriate insurance for the Real Property and Personal Property, naming the Liquidator and the Commission as insureds, and to remove the Individual Defendant as an insured. The Liquidator may, as an option, keep in force the existing insurance coverage(s), each of which shall name the Commission and the Liquidator as additional insureds thereunder.

D. The Liquidator shall have all necessary powers to operate and otherwise manage the Real Property and Personal Property including, without limitation, the following powers and responsibilities:

1. To take possession of the Real Property and Personal Property;
2. To supervise and oversee the management of the Real Property and Personal Property, including making payments and paying taxes as and when the Liquidator has funds available from the Real Property or Personal Property, or from the liquidation of the Real Property or Personal Property;
3. To employ such counsel, real estate agents, auctioneers,

appraisers, accountants, contractors, other professionals, and other such persons as may be necessary in order to carry out his duties as Liquidator and to preserve, maintain, and protect the Real Property and Personal Property;

4. To determine or abrogate, in the Liquidator's sole sound business discretion, any or all agreements, contracts, understandings or commitments entered into by any Defendant with respect to the Real Property and Personal Property to the extent permitted by applicable law;
5. To open new accounts with, or negotiate, compromise or otherwise modify the Individual Defendant's existing obligations with third parties, including utility companies, other service providers or suppliers of goods and services related to the Real Property and Personal Property, and to otherwise enter into such agreements, contracts, or understandings with such third parties as are necessary to maintain, preserve, and protect the Real Property and Personal Property;
6. To open new bank accounts with respect to the Liquidator's management and operation of the Real Property and Personal

Property;

7. To apply to this Court for further directions and for such further powers as may be necessary to enable the Liquidator to fulfill his duties; and
8. To rent the Real Property to third parties, until the Real Property is sold.

E. The Liquidator shall keep a true and accurate account of any and all receipts and expenditures and periodically file with the Court a Liquidatorship Report under oath, accurately identifying all such revenues received and expenditures made, including adequately detailed information concerning income, expenses, payables and receivables. These periodic filings shall be served by the Liquidator on the Commission and Defendants' counsel.

F. The Defendants and their agents, employees or other representatives are enjoined from interfering in any manner with the Liquidator's management and operation of the Real Property and Personal Property and the Defendants and their agents, employees or other representatives are enjoined and restrained from collecting any rents or profits which are now or hereafter become due with respect to all or any portion of the Real Property and Personal Property and from interfering in any way with the Liquidator's collection of such rents or profits.

G. The Liquidator shall not be bound by all or any unsecured contracts, agreements, understandings or other commitments in the nature of service contracts the Defendants had, have or may have with third parties with respect to the Real Property and Personal Property, whether oral or written, and the Liquidator shall be authorized, by affirmative written ratification executed by the Liquidator, to agree to become bound by any such contracts, agreements, understandings or other commitments, or may agree to enter into new or amended contracts, agreements, understandings or other commitments.

H. Any and all sums collected by the Liquidator over and above those necessary to manage the Real Property and Personal Property or those necessary to make payments authorized by this Order shall be paid to the Commission.

I. The Liquidator is entitled to reasonable compensation for the performance of duties undertaken pursuant to this Order and for the cost of actual out-of-pocket expenses incurred by him. The Liquidator's compensation and the compensation of any persons hired by him are to be paid solely from the proceeds of the sale of the Real Property and Personal Property, and such payments shall have priority over all other distributions except for (1) any transfer fees, recording fees, or other payments owed through the transfer of the Real Property or Personal Property at the time of its sale and (2) any existing encumbrances or liens that were

disclosed in the Financial Statements.

J. The Liquidator shall file with the Court and serve on the parties a request for the payment of reasonable compensation at the time of the filing of periodic reports and no less than every sixty (60) days. The Liquidator shall not increase the fees or rates used as the bases for such fee applications without prior approval of the Commission and the Court. The Defendants shall have no right to object to the Liquidator's fees or compensation. Absent a violation of this Order that causes the Liquidator to incur fees or expenses, Defendants shall not be liable for the Liquidator's fees or expenses beyond the amount paid pursuant to Section IV.

K. The Liquidator shall file his final application for fees, complete liquidation, and terminate his service within 270 days of the execution of this Order unless good cause is shown to extend beyond 270 days. At the termination of the Liquidator's duties, the Liquidator shall transfer any unliquidated right, title, and interest in the Real Property or Personal Property to the Federal Trade Commission.

L. Upon the final transfer of all funds to the Commission pursuant to this Section, the duties of the Liquidator shall terminate.

M. Upon entry of this Order, the Liquidator shall file with the Clerk of

Court a bond in the sum of TWO HUNDRED AND SIXTY THOUSAND (\$260,000), with sureties to be approved by the Court, conditioned that the Liquidator will well and truly perform the duties of the office and abide by and perform all acts that the Court directs.

N. The Liquidator is bound by, and must comply with, Local Rule of Civil Procedure 66.1 and the Federal Rules of Civil Procedure.

VII.

CONSUMER INFORMATION

IT IS FURTHER ORDERED that Defendants and their Representatives, in connection with the advertising, marketing, promotion, offering for sale or sale of any good, service, plan, or program are permanently restrained and enjoined from:

A. Disclosing, using, or benefitting from customer or prospective customer information, including the name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account), of any person which any Defendant obtained prior to entry of this Order in connection with the advertising, marketing, promoting, offering for sale, or selling of any Work-at-Home Opportunity and Mystery Shopping Opportunity;

B. Failing to dispose of such customer or prospective customer information in all forms in their possession, custody, or control within thirty (30) days after entry of this Order, except as otherwise provided herein; and

C. Failing to dispose of such customer or prospective customer information in all forms within thirty (30) days of receiving possession, custody, or control of such information, except as otherwise provided herein.

Disposal shall be by means that protect against unauthorized access to the customer information, such as by burning, pulverizing, or shredding any papers, and by erasing or destroying any electronic media, to ensure that the customer information cannot practicably be read or reconstructed.

Provided, however, that customer information need not be disposed of, and may be disclosed, to the extent requested by a government agency or required by a law, regulation, or court order. *Provided further* that customer information need not be disposed of and may be disclosed, to the extent Defendants reasonably need this information to defend any current criminal investigation or related prosecution arising out of the same conduct alleged in the Complaint. *Provided further* that within thirty (30) days after the resolution of any current criminal investigation or related prosecution arising out of the same conduct alleged in the Complaint, Defendants must dispose of such customer information.

VIII.

LIFTING OF ASSET FREEZE

IT IS FURTHER ORDERED that the freeze of Defendants' assets set forth in the Preliminary Injunction, entered by this Court on March 3, 2010, shall be lifted to the extent necessary to turn over Defendants' assets as required by Section IV of this Order, and upon completion of the turnover, shall be lifted permanently.

IX.

TURNOVER OF ASSETS HELD BY THIRD PARTIES

IT IS FURTHER ORDERED that, to partially satisfy the monetary judgment, in accordance with the instructions set forth in Section IV above, any law firm, financial or brokerage institution, escrow agent, title company, commodity trading company, automated clearing house, payment processor, business entity, or Person served with a copy of this Order, that holds, controls or maintains custody of any account or asset of, on behalf of, or for the benefit of Defendants, or has held, controlled, or maintained custody of any account or asset of, on behalf of, or for the benefit of Defendants, shall turn over such asset or funds to the Commission, in accordance with instructions provided by a representative of the Commission, within ten (10) business days of receiving notice of this Order by

any means, including but not limited to by facsimile.

X.

COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of (i) monitoring and investigating compliance with any provision of this Order and (ii) investigating the accuracy of any Defendants' Financial Statements upon which the Commission's agreement to this Order is expressly premised:

A. Within ten (10) days of receipt of written notice from a representative of the Commission, Defendants each shall submit additional written reports, which are true and accurate and sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and provide entry during normal business hours to any business location in each Defendant's possession or direct or indirect control to inspect the business operation;

B. In addition, the Commission is authorized to use all other lawful means, including but not limited to:

1. Obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, 45 and 69; and
2. Having its representatives pose as consumers and suppliers to

Defendants, their employees, or any other entity managed or controlled in whole or in part by any Defendant, without the necessity of identification or prior notice.

C. Defendants each shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present.

Provided, however, that nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)). *Provided further* that the Individual Defendant may assert his Fifth Amendment right against self-incrimination. The Commission shall have the ability to challenge the applicability, scope, and all other aspects of the assertion.

XI.

COMPLIANCE REPORTING

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Order may be monitored:

- A. For a period of five (5) years from the date of entry of this Order,
1. The Individual Defendant shall notify the Commission of the following:
 - a. Any changes in such Defendant's residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;
 - b. Any changes in such Defendant's employment status (including self-employment), and any change in such Defendant's ownership in any business entity within ten (10) days of the date of such change. Such notice shall include the name and address of each business that such Defendant is affiliated with, employed by, creates or forms, or performs services for; a detailed description of the nature of the business; and a detailed description of such Defendant's duties and responsibilities in connection with the business or employment; and
 - c. Any changes in such Defendant's name or use of any aliases or fictitious names within ten (10) days of the date of such change.

2. Defendants shall notify the Commission of any changes in structure of any Corporate Defendant or any business entity that any Defendant directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Order, including but not limited to: incorporation or other organization; a dissolution, assignment, sale, merger, or other action; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; or a change in the business name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any such change in the business entity about which a Defendant learns less than thirty (30) days prior to the date such action is to take place, such Defendant shall notify the Commission as soon as is practicable after obtaining such knowledge.

B. One hundred eighty (180) days after the date of entry of this Order and annually thereafter for a period of five (5) years, Defendants each shall provide a written report to the FTC, which is true and accurate and sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied

and are complying with this Order. This report shall include, but not be limited to:

1. For the Individual Defendant:
 - a. Such Defendant's then-current residence address, mailing addresses, and telephone numbers;
 - b. Such Defendant's then-current employment status (including self-employment), including the name, addresses, and telephone numbers of each business that such Defendant is affiliated with, employed by, or performs services for; a detailed description of the nature of the business; and a detailed description of such Defendant's duties and responsibilities in connection with the business or employment; and
 - c. Any other changes required to be reported under Subsection A of this Section.
2. For all Defendants:
 - a. A copy of each acknowledgment of receipt of this Order, obtained pursuant to the Section titled "Distribution of Order;" and
 - b. Any other changes required to be reported under

Subsection A of this Section.

C. Each Defendant shall notify the Commission of the filing of a bankruptcy petition by such Defendant within fifteen (15) days of filing.

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

Associate Director for Enforcement
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
RE: FTC v. Independent Marketing Exchange, Inc., et al.,
Case No.1:10-cv-00568-NLH-KMW

Provided that, in lieu of overnight courier, Defendants may send such reports or notifications by first-class mail, but only if Defendants contemporaneously send an electronic version of such report or notification to the Commission at DEbrief@ftc.gov.

E. For purposes of the compliance reporting and monitoring required by this Order, the Commission is authorized to communicate directly with each Defendant, but shall advise Defendants' counsel, Andrew Lustigman of The Lustigman Firm, P.C., 149 Madison Ave., Suite 805, New York, NY 10016, (212)

683-9180, Ext. 16, of such proposed communication and give Defendants' counsel an opportunity to be present. *Provided however*, nothing in this provision shall limit the Commission's authority to pose as a consumer or supplier pursuant to Subsection B.2 of the Section titled 'Compliance Monitoring.' *Provided further* that should Andrew Lustigman of The Lustigman Firm, P.C. cease representation of either or both Defendants, the Commission is authorized to communicate directly with the Defendant(s) who is no longer represented by Andrew Lustigman. *Provided further* that should the Defendant(s) retain counsel other than Andrew Lustigman, and Defendant(s) want that counsel to be advised of any communication between the Commission and the Defendant(s), the Defendant(s) shall provide written notice of the name, address, and phone number(s) of that counsel by overnight courier (not the U.S. Postal Service) to:

Associate Director for Enforcement
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
RE: FTC v. Independent Marketing Exchange, Inc., et al.,
Case No.1:10-cv-00568-NLH-KMW.

XII.

RECORDKEEPING

IT IS FURTHER ORDERED that, for a period of six (6) years from the

date of entry of this Order, Corporate Defendant and Individual Defendant for any business for which they, individually or collectively, are the majority owner or directly or indirectly control, are hereby restrained and enjoined from failing to create and retain the following records:

- A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
- B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;
- C. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;
- D. Complaints and refund requests (whether received directly or indirectly, such as through a third party), and any responses to those complaints or requests;
- E. Copies of all sales scripts, training materials, advertisements, or other

marketing materials, including, but not limited to, mailers, brochures, websites, flyers, and postcards; and

F. All records and documents necessary to demonstrate full compliance with each provision of this Order, including but not limited to, copies of acknowledgments of receipt of this Order required by the Sections titled “Distribution of Order” and “Acknowledgment of Receipt of Order” and all reports submitted to the FTC pursuant to the Section titled “Compliance Reporting.”

XIII.

DISTRIBUTION OF ORDER

IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry of this Order, Defendants shall deliver copies of the Order as directed below:

A. Corporate Defendant: The Corporate Defendant must deliver a copy of this Order to (1) all of its principals, officers, directors, and managers; (2) all of its employees, agents, and representatives who engage in the sale or marketing of any good or service; and (3) any business entity resulting from any change in structure set forth in Subsection A(2) of the Section titled “Compliance Reporting.” For current personnel, delivery shall be within five (5) days of service of this Order upon such Defendant. For new personnel, delivery shall occur prior

to them assuming their responsibilities. For any business entity resulting from any change in structure set forth in Subsection A(2) of the Section titled "Compliance Reporting," delivery shall be at least ten (10) days prior to the change in structure.

B. Individual Defendant as control person: For any business that the Individual Defendant controls, directly or indirectly, or in which such Defendant has a majority ownership interest, such Defendant must deliver a copy of this Order to (1) all principals, officers, directors, and managers of that business; (2) all employees, agents, and representatives of that business who engage in the sale or marketing of any Money-Making Opportunity; and (3) any business entity resulting from any change in structure set forth in Subsection A(2) of the Section titled "Compliance Reporting." For current personnel, delivery shall be within five (5) days of service of this Order upon such Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities. For any business entity resulting from any change in structure set forth in Subsection A(2) of the Section titled "Compliance Reporting," delivery shall be at least ten (10) days prior to the change in structure.

C. Individual Defendant as employee or non-control person: For any business where the Individual Defendant is not a controlling person of a business but otherwise engages in the sale or marketing of any plan or program that is

represented, expressly or by implication, to assist an individual in any manner to earn money or other consideration, such Defendant must deliver a copy of this Order to all principals and managers of such business before engaging in such conduct.

D. Defendants must secure a signed and dated statement acknowledging receipt of the Order, within thirty (30) days of delivery, from all persons receiving a copy of the Order pursuant to this Section.

XIV.

ACKNOWLEDGMENT OF RECEIPT OF ORDER

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

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.

SO ORDERED this 11th day of April, 2011.

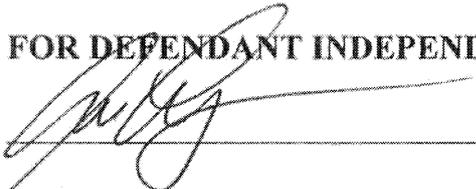
Noel L. Hillman

Honorable Judge Noel L. Hillman
United States District Judge

//

SO STIPULATED AND AGREED:

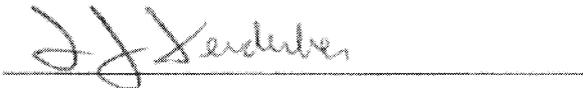
FOR DEFENDANT INDEPENDENT MARKETING EXCHANGE, INC.



Andrew Lustigman
The Lustigman Firm, P.C.
Attorney for Corporate Defendant
149 Madison Ave., Suite 805
New York, New York 10016
212-683-9180 Ex. 16
COUNSEL FOR INDEPENDENT MARKETING EXCHANGE, INC.

Date: 4/11/2011

**FOR DEFENDANTS Wayne J. Verderber II AND INDEPENDENT
MARKETING EXCHANGE, INC.**



Date: 1/11/11

**INDIVIDUALLY AND AS AN OFFICER OF INDEPENDENT
MARKETING EXCHANGE, INC.**

**FOR THE PLAINTIFF
FEDERAL TRADE COMMISSION:**



Date: 4/8/11

Russell Deitch
Christine Todaro
Attorneys
Federal Trade Commission
Washington, D.C. 20580
PHONE: 202-326-2585/202-326-3711
FAX: 202-326-3395
EMAIL: rdeitch@ftc.gov/ctodaro@ftc.gov

ATTACHMENT A (PERSONAL PROPERTY)

1. The Individual Defendant's Mercedes Benz identified in Item 21 of the Individual Defendant's May 13, 2010 sworn financial statements, and which is listed below:
 - 1999 Mercedes-Benz E-Class, Vehicle Identification Number RGA-97A-NJ

2. The precious metals identified in Item 20 of the Individual Defendant's May 13, 2010 sworn financial statements, and further identified in the documents entitled, "2010-07-14 Lustigman Letter to FTC re Production and Financial Responses" and "IME000176 - 260," which were attached to an email from Elissa J. Shane, on behalf of Defendants' counsel Andrew Lustigman to Commission counsel Russell Deitch and Christine Todaro, dated July 14, 2010, and which are listed below:
 - 100, 1 oz .999 Fine Silver Bars
 - 7, 1/4 oz .9999 Fine Gold Rounds

ATTACHMENT B (REAL PROPERTY)

The real properties identified in Item 22 of the Individual Defendant's May 13, 2010 sworn financial statements, and which are listed below:

1. The property located at Lot Number: 15.04, Block: 988.11, District: 0111, commonly known as 30 Cheshire Drive, Galloway, NJ 08205.
2. The property located at Lot Number: 2114, Block: 173, District: 0102, commonly known as 37 S Iowa Ave 2C, Atlantic City, NJ 08401.
3. The property located at Lot Number: 2107, Block: 173, District: 0102, commonly known as 37 S Iowa Ave 1G, Atlantic City, NJ 08401.