



**NOW THEREFORE**, the Plaintiff and Defendants, having requested the Court to enter this Order, and the Court having considered the Order reached between the parties, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

**FINDINGS**

1. This is an action by the Commission instituted under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b). The Commission has the authority to seek the relief contained herein.
2. The Commission's Complaint states claims upon which relief may be granted under Sections 5(a), 12 and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a), 52 and 53(b).
3. This Court has jurisdiction over the subject matter of this case and personal jurisdiction over Defendants.
4. Venue in the United States District Court for the District of New Jersey is proper pursuant to 28 U.S.C. § 1391 (b) and (c) and 15 U.S.C. § 53(b).
5. The alleged activities of Defendants are "in or affecting commerce" as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
6. Defendants, without admitting the allegations set forth in the Commission's Complaint, with the exception of venue and jurisdictional facts, and

without any admission or finding of liability thereunder, agree to entry of this Order.

7. Defendants waive: (a) all rights to seek appellate review or otherwise challenge or contest the validity of this Order; (b) any claim that they may have against the Commission, its employees, representatives, or agents; (c) all claims under the Equal Access to Justice Act, 28 U.S.C. § 2412, *as amended by* Pub. L. 104-121, 110 Stat. 847, 863-64 (1996); and (d) any rights to attorney's fees that may arise under said provision of law. The Commission and Defendants shall each bear their own costs and attorney's fees incurred in this action.

8. This Order is in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law.

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

### **DEFINITIONS**

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

1. **“Acai Berry Product”** or **“Acai Berry Products”** mean any Dietary Supplement, Food, or Drug, sold alone or in combination with companion products, that is advertised, marketed, promoted, offered for sale, distributed, or sold with express or implied representations that the product contains acai berries or the extract thereof.

2. **“Adequate and Well-Controlled Human Clinical Study”** means a human clinical study that is randomized, double-blind, placebo-controlled, and conducted by persons qualified by training and experience to conduct such a study.

3. **“Assisting Others”** includes, but is not limited to: (a) arranging for the dissemination or publication of advertisements; (b) assisting in the formulation, drafting, or revision of advertisements; (c) creating, hosting, or maintaining websites; (d) recruiting third parties to advertise or market products, services, or programs; (e) obtaining or generating customer leads; (f) performing or providing marketing, billing, or collection services of any kind; (g) verifying, processing, fulfilling, or arranging for the fulfillment of orders; or (h) acting as an officer or director of a business entity.

4. **“Clearly and Prominently”** shall mean: (a) in textual communications (*e.g.*, printed publications or words displayed on the screen of a computer), the required disclosures are of a type, size, and location sufficiently noticeable for an ordinary consumer to read and comprehend them, in print that contrasts with the background on which they appear; (b) in communications disseminated orally or through audible means (*e.g.*, radio or streaming audio), the required disclosures are delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend them; (c) in communications disseminated through video means (*e.g.*, television or streaming video), the

required disclosures are in writing in a form consistent with subparagraph (a) of this definition and shall appear on the screen for a duration sufficient for an ordinary consumer to read and comprehend them; (d) in communications made through interactive media, such as the Internet, online services, and software, the required disclosures are unavoidable and presented in a form consistent with subparagraph (a) of this definition, in addition to any audio or video presentation of them; and (e) in all instances, the required disclosures are presented in an understandable language and syntax, in the same language as the predominant language that is used in the communication, and with nothing contrary to, inconsistent with, or in mitigation of the disclosures used in any communication of them.

5. **“Individual Defendant”** means Andrew Davidson, by whatever name he may be known.

6. **“Corporate Defendant”** means Circa Direct, LLC, and its successors and assigns, as well as any subsidiaries, and any fictitious business entities or business names created or used by these entities, or any of them.

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

8. **“Device”** means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including

any component, part, or accessory, which is: (a) recognized in the official National Formulary, or the United States Pharmacopeia, or any supplement to them; (b) intended for use in the diagnosis of disease or other condition, or in the cure, mitigation, treatment, or prevention of disease, in man or other animals; or (c) intended to affect the structure or any function of the body of man or other animals; and which does not achieve any of its principal intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for the achievement of any of its principal intended purposes.

9. **“Dietary Supplement”** means: (a) any product labeled as a dietary supplement or otherwise represented as a dietary supplement; or (b) any pill, tablet, capsule, powder, softgel, gelcap, liquid, or other similar form containing one or more ingredients that are a vitamin, mineral, herb or other botanical, amino acid, probiotic, or other dietary substance for use by humans to supplement the diet by increasing the total dietary intake, or a concentrate, metabolite, constituent, extract, or combination of any ingredient described above that is intended to be ingested, and is not represented to be used as a conventional Food or as a sole item of a meal or the diet.

10. **“Document” or “Documents”** means any materials listed 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, into reasonably usable form through detection instruments. A draft or nonidentical copy is a separate Document within the meaning of the term.

11. **“Drug”** means: (a) articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; (b) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; (c) articles (other than Food) intended to affect the structure or any function of the body of man or other animals; and (d) articles intended for use as a component of any article specified in clause (a), (b), or (c); but does not include Devices or their components, parts, or accessories.

12. **“Endorsement”** means any advertising message (including verbal statements, demonstrations, or depictions of the name, signature, likeness, or other identifying personal characteristics of an individual or the name or seal of an organization) that consumers are likely to believe reflects the opinions, beliefs, findings, or experience of a party other than the sponsoring advertiser.

13. **“Essentially Equivalent Product”** means a product that contains the identical ingredients, except for inactive ingredients (*e.g.*, binders, colors, fillers, excipients), in the same form and dosage, and with the same route of

administration (*e.g.*, orally, sublingually), as the Dietary Supplement, Food, or Drug; *provided that* the Dietary Supplement, Food, or Drug may contain additional ingredients if reliable scientific evidence generally accepted by experts in the field demonstrates that the amount and combination of additional ingredients are unlikely to impede or inhibit the effectiveness of the ingredients in the Essentially Equivalent Product.

14. **“Food”** means: (a) articles used for food or drink for man or other animals; (b) chewing gum; and (c) articles used for components of any such article.

15. **“Material connection”** means any relationship that materially affects the weight or credibility of any endorsement and that would not reasonably be expected by consumers.

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

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

18. **“Real Property”** means the real property and dwelling located at 607 N. Delavan Avenue, Margate, New Jersey 08402; together with any other

structures, improvements, appurtenances, hereditaments, and other rights appertaining or belonging thereto.

19. **“Real Property Net Proceeds”** means the total proceeds from the sale or auction of the Real Property after payment of the mortgage held, any property taxes owed, any adjustments in favor of the buyers that are required to sell the Real Property, and any reasonable and customary real estate agent fees and closing costs incurred in connection with such sale or auction that have been approved by counsel for the Commission, approval of which shall not be unreasonably withheld.

**I.**

**PROHIBITED BUSINESS ACTIVITIES**

**IT IS THEREFORE ORDERED** that Defendants and their officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other entity, or any of them, in connection with the advertising, marketing, promotion, offering for sale, or sale of any product, service, or program, are hereby permanently restrained and enjoined from:

A. Misrepresenting, or Assisting Others in misrepresenting, any material fact, expressly or by implication, including, but not limited to:

1. That any website or other publication is an objective news report;
2. That objective news reporters have performed independent tests of any product, service, or program, including but not limited to Acai Berry Products or any other Dietary Supplement, Food, Drug, or Device, work-at-home programs, or surplus auction services;
3. That independent tests demonstrate the effectiveness of any product, service, or program featured in any website or other publication, including but not limited to, Acai Berry Products or any other Dietary Supplement, Food, Drug, or Device, work-at-home programs, or surplus auction services;
4. That comments posted on websites express the views of independent consumers;
5. The total cost to purchase, receive, or use the product, service, or program;
6. Any material restrictions, limitations, or conditions to purchase, receive, or use the product, service, or program;
7. Any material aspect of the performance, efficacy, nature, or central characteristics of the product, service, or program; and

8. Any material aspect of the nature or terms of a refund, cancellation, exchange, or repurchase policy for the product, service, or program; and

B. Failing to disclose, Clearly and Prominently:

1. Any material connection, when one exists, between any user or endorser of any product, service, or program and Defendants or any other person manufacturing, advertising, labeling, promoting, offering for sale, selling or distributing such product, service, or program; and

2. If applicable, that the content of any website or other publication has not been authored by an objective journalist but is in fact an advertisement placed for compensation.

**II.**

**PROHIBITED REPRESENTATIONS: WEIGHT LOSS CLAIMS**

**IT IS FURTHER ORDERED** that Defendants and their officers, agents, servants, employees, and attorneys, and all other Persons in active concert or participation with any of them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other entity, or any of them, in connection with the advertising, marketing, promotion, offering for sale, or sale of any Dietary Supplement, Food, or Drug, are hereby permanently restrained and enjoined from

making, or Assisting Others in making, directly or by implication, including through the use of a product name, Endorsement, depiction, or illustration, any representation that such product:

- A. Causes or helps cause weight loss;
- B. Causes or helps cause rapid weight loss; or
- C. Causes or helps cause substantial weight loss;

unless the representation is non-misleading and, at the time of making such representation, Defendants possess and rely upon competent and reliable scientific evidence that substantiates that the representation is true. For purposes of Part II, competent and reliable scientific evidence shall consist of at least two Adequate and Well-Controlled Human Clinical Studies of any Dietary Supplement, Food, or Drug or of an Essentially Equivalent Product, conducted by different researchers, independently of each other, that conform to acceptable designs and protocols and whose results, when considered in light of the entire body of relevant and reliable scientific evidence, are sufficient to substantiate that the representation is true.

Defendants shall have the burden of proving that a product satisfies the definition of Essentially Equivalent Product.

**III.**

**PROHIBITED REPRESENTATIONS:  
OTHER HEALTH-RELATED CLAIMS**

**IT IS FURTHER ORDERED** that Defendants and their officers, agents, servants, employees, and attorneys, and all other Persons in active concert or participation with any of them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other entity, or any of them, in connection with the advertising, marketing, promotion, offering for sale, or sale of any Dietary Supplement, Food, Drug, or Device, are hereby permanently restrained and enjoined from making, or Assisting Others in making, directly or by implication, including through the use of a product name, Endorsement, depiction, or illustration, any representation, other than representations covered under Part II of this Order for any Dietary Supplement, Food, or Drug, about the health benefits, performance, or efficacy of any Dietary Supplement, Food, Drug, or Device, unless the representation is non-misleading, and, at the time of making such representation, Defendants possess and rely upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the

representation is true. For purposes of Part III, competent and reliable scientific evidence means tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results.

#### IV.

#### **PROHIBITED REPRESENTATIONS:**

#### **NON-HEALTH-RELATED CLAIMS**

**IT IS FURTHER ORDERED** that Defendants and their officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other entity, or any of them, in connection with the advertising, marketing, promotion, offering for sale, or sale of any product, service, or program that is *not* a Dietary Supplement, Food, Drug, or Device, are hereby permanently restrained and enjoined from making, or Assisting Others in making, directly or by implication, including through the use of a product name, endorsement, depiction, or illustration, any representation regarding the benefits, performance, or efficacy of any products, services, or programs, unless the representation is non-misleading, and, at the time of making such representation, Defendants possess and rely upon competent and reliable evidence that

substantiates that the representation is true. For the purposes of Part IV, competent and reliable evidence means tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by individuals qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

**V.**

**PROHIBITED REPRESENTATIONS: TESTS OR STUDIES**

**IT IS FURTHER ORDERED** that Defendants, and their officers, agents, servants, employees, and attorneys and all other Persons in active concert or participation with any of them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other entity, or any of them, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Dietary Supplement, Food, Drug, or Device, or any other product, service, or program, in or affecting commerce, are hereby permanently restrained and enjoined from misrepresenting, in any manner, expressly or by implication, including through the use of any product name or Endorsement, the existence, contents, validity, results, conclusions, or interpretations of any test,

study, or research, in connection with any representations covered by Parts II, III, and IV of this Order.

**VI.**

**FDA APPROVED CLAIMS**

**IT IS FURTHER ORDERED** that nothing in this Order shall prohibit Defendants from making any representation for any product that is specifically permitted in labeling for such product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

**VII.**

**MONETARY JUDGMENT**

**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 ELEVEN MILLION FIVE HUNDRED THOUSAND dollars (\$11,500,000.00); *provided, however*, that this judgment shall be suspended, subject to the provisions of Part VIII, upon satisfaction of the obligations imposed by Part VII.

B. Within fourteen (14) calendar days of executing this Order, Defendants shall transfer to their undersigned counsel all funds held in:

1. The Wells Fargo Accounts in the name of Individual Defendant with the last four digits: 8879, 4594, and 7660;
2. The Wells Fargo Accounts in the name of Corporate Defendant with the last four digits 0321 and 0392;
3. The Wells Fargo Accounts in the name of Vivad Marketing with the last four digits 8190 and 8271; and
4. The Bank of America Account in the name of Individual Defendant and another person with the last four digits 4152.

Defendants' undersigned counsel, as Defendants stipulate, shall hold such funds in escrow for the purpose of transferring the funds to the Commission, except that such funds may be used to pay the mortgage obligations, taxes, and insurance on, and any reasonable and customary expenses incurred in the sale and maintenance of, the Real Property pursuant to this Order. A portion of such funds also may be used to pay attorneys' fees and costs reasonably incurred by undersigned counsel in connection with their representation of Defendants in this litigation, contingent on either agreement of FTC counsel or the approval of the Court pursuant to a motion. To ensure compliance with this provision, Defendants shall enter into an agreement with undersigned counsel, designating the Commission as beneficiary of such funds held in escrow and requiring Commission or Court approval prior to the transfer of any such funds. Within seven (7) calendar days of the sale of the

Real Property pursuant to Section VII.D, Defendants shall pay the balance of such funds held in escrow to the Commission by wire transfer in accordance with wiring instructions to be provided by counsel for the FTC, and provide to the Commission an accounting of all transactions for the account in which undersigned counsel held such escrowed funds.

C. Within seven (7) calendar days of entry of this Order, Defendants shall take all necessary steps to cause Wells Fargo to remit to the Commission the entire amount, minus any taxes and penalties legally withheld, held in:

1. The IRA account with the last four digits 3588;
2. The Diversified Stock Income Plan account with the last four digits 3708; and
3. The MUNI and SPEC investment account with the last four digits 4771.

D. Within one hundred twenty (120) calendar days of entry of this order, Defendants shall sell the Real Property upon terms and conditions acceptable to the Commission and, within seven (7) calendar days of the sale of the Real Property, transfer the Real Property Net Proceeds to the Commission or its designated agent by wire transfer in accordance with wiring instructions to be provided by counsel for the FTC, and pursuant to the following provisions:

1. Defendants shall make all good faith efforts necessary to sell promptly the Real Property and shall comply with all reasonable requests from counsel for the Commission related to the sale of the Real Property, including, but not limited to, signing listing contracts with a real estate agent approved by counsel for the Commission; keeping the Real Property in a condition suitable for showing to prospective purchasers; signing contracts for the sale of the Real Property; and signing all documents necessary or appropriate for the transfer of the Real Property to a new buyer, *provided that*, subject to the requirements of Section VII.D and E, Individual Defendant is permitted to reside in the Real Property until such property is sold pursuant to this Order.

2. Defendants shall provide to counsel for the Commission as soon as possible and, in any event, not later than one (1) week prior to the closing date for the sale of the Real Property: (a) a copy of the executed contract related to the proposed sale; (b) written notice of the closing date; (c) contact information for the closing agent, including the name, address and telephone number of the individual closing agent; and (d) a copy of the Good Faith Estimate to be used in connection with the closing.

3. Defendants shall provide to counsel for the Commission, within five (5) calendar days of closing, a copy of the final HUD-1 settlement

statement or, if a HUD-1 settlement statement is not available, any similar such documents relating to the consummation of the sale of the Real Property.

4. Within thirty (30) calendar days of the sale or auction of the Real Property, Defendants shall provide counsel for the Commission with: (a) proof of such transfer, including the amount paid for the Real Property; and (b) proof of payment of any reasonable and customary brokerage fees, commissions, and closing costs.

5. In the event that the Real Property has not sold within one hundred twenty (120) calendar days of the date of entry of this Order, Defendants shall take the necessary steps to auction the property, including, but not limited to the following:

a. Defendants shall retain an auction company and direct it to sell all interests in the Real Property at a public auction to occur within two (2) months of entry of this Order, subject to Commission approval to extend the time in which to auction the Real Property as necessary;

b. Defendants shall obtain from counsel for the Commission written approval of the auction company and the terms that Defendants establish for the auction;

c. Within thirty (30) calendar days of the auction of the Real Property, Defendants shall transfer the Real Property Net Proceeds, if any, to the Commission or its designated agent by wire transfer in accordance with wiring instructions to be provided by counsel for the FTC; and

d. If the property remains unsold after auction, Defendants shall market and re-auction the property until sold.

6. Defendants hereby release and waive any statutory, common law, or other homestead exemption that may apply to the Real Property, and shall not declare or claim any homestead exemption in the Real Property.

E. To secure performance of Defendants' obligations under Section

VII.D of this Order:

1. Defendants grant to the Commission a lien on and a security interest in the Real Property, which shall terminate upon Defendants' transfer of all interests in such property and remittance of any resulting Real Property Net Proceeds to the Commission or its designated agent. The Commission also shall promptly release a lien or security interest to the extent necessary to permit the sale of the Real Property, *provided that* Defendants remit the Real Property Net Proceeds to the Commission or its

designated agent by wire transfer in accordance with wiring instructions to be provided by counsel for the FTC, upon closing of the sale.

2. Defendants shall cooperate fully with the Commission and be responsible for preparing, executing, and recording the necessary instruments and documents, and undertake all reasonable efforts to perfect, evidence, continue, and terminate the lien and security interest granted herein. Defendants also shall be responsible for paying all related fees and costs, including attorneys' fees and filing fees, pursuant to the terms of the escrow established in Section VII.B.

3. Defendants shall deliver to the Commission copies of the instruments and documents necessary to perfect the lien and security interest granted herein, in form and substance satisfactory to the Commission, no later than twenty (20) calendar days after the date of filing of this Order with the Court. Defendants shall record these documents and provide counsel for the FTC with proof thereof within thirty (30) calendar days of the date of entry of this Order.

4. With the exception of the lien granted pursuant to Section VII.E.1 above, Defendants are hereby prohibited from encumbering the Real Property with any lien, mortgage, deed of trust, assignment, pledge, security

interest, or other interest between the date of execution of this Order and disposition of the Real Property under Section VII.D.

F. Defendants shall take the steps set forth below to sell all interest in the 2010 Nissan Maxima VIN # 1N4AA5AP0AC806792 (“Nissan Maxima”) listed on the financial statements provided to the Commission:

1. Defendants shall immediately place the Nissan Maxima for sale through an appropriate broker or automobile listing service at the direction of the Commission;

2. Defendants shall notify counsel for the Commission of the amount of any offer to purchase the Nissan Maxima immediately upon receiving such offer. Acceptance of any such offer shall be in the Commission’s sole discretion;

3. Within five (5) calendar days of receipt of net proceeds from the sale of all interest in the Nissan Maxima, Defendants shall cause such net proceeds to be wired to the Commission in accordance with the instructions provided by the Commission;

4. Defendants agree that, prior to the sale required by Section VII.F, they will maintain insurance on the Nissan Maxima in an amount of not less than the full replacement value of the vehicle. In the event that the Nissan Maxima suffers any loss or damage covered by such insurance

policy, Defendants shall make such claims as the insurance policy permits and shall assign or remit to the Commission the remainder of any insurance payments they receive as a result of such loss or damage after paying the cost to repair said loss or damage; and

5. To secure Defendants' performance under Section VII.F, Defendants hereby agree to grant to the Commission a lien on, and security interest in, the entire value of the Nissan Maxima, which terminates upon sale of the vehicle.

G. In the event of default by Defendants on any obligation imposed under Part VII, interest, computed pursuant to 28 U.S.C. § 1961(a), shall accrue from the date of default to the date of payment and the entire amount shall immediately become due and payable. 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 agent to be used for equitable relief, including, but not limited to, consumer redress, and any attendant expenses for the administration of such equitable relief. Defendants shall cooperate fully to assist the Commission in identifying consumers who may be entitled to redress pursuant to this Order. If the Commission determines, in its sole discretion, that direct redress to consumers is wholly or partially impracticable or funds remain after

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 Order. Defendants shall have no right to contest the manner of distribution chosen by the Commission.

I. In accordance with 31 U.S.C. § 7701, as amended, Defendants are hereby required, unless they already have done so, to furnish to the Commission their respective taxpayer identifying numbers (social security numbers or employer identification numbers), which shall be used for purposes of collecting and reporting on any delinquent amount arising out of Defendants' relationship with the government. Defendants are further required, unless they have already done so, to provide the Commission with clear, legible and full-size photocopies of all valid driver's licenses that they possess, which will be used for reporting and compliance purposes. Within fourteen (14) calendar days of receipt of a written request from a representative of the Commission, Defendants must take all necessary steps, such as filing completed IRS Forms 4506 or 8821, to cause the Internal Revenue Service (IRS) or other tax authority to provide any requested tax information directly to the Commission. The requested information can include

amended tax returns and any other filings that Defendants have the authority to release, including those of any businesses that any Defendant, individually or collectively with any other Defendant, is the majority owner of or directly or indirectly controls.

J. Irrespective of Section VII.N, Defendants agree that they will not, directly or indirectly, take any deduction, capital loss, or other tax benefit on any federal, state, or local tax return for any payment or asset transfer made toward satisfaction of the judgment set forth in this Order.

K. Defendants relinquish all dominion, control, and title to the funds paid 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.

L. 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 that this Order shall have collateral estoppel effect for such purposes.

M. Proceedings instituted under Part VII are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings the Commission may initiate to enforce this Order.

N. This judgment for equitable monetary relief is solely remedial in nature and is not a fine, penalty, punitive assessment, or forfeiture.

### VIII.

#### **RIGHT TO RE-OPEN AS TO MONETARY JUDGMENT**

**IT IS FURTHER ORDERED** that, the FTC's agreement to, and the Court's approval of, this Order is expressly premised on (1) the truthfulness, accuracy and completeness of the Defendants' certified financial statements dated December 19, 2011 and supporting documents submitted to the FTC;

(2) Individual Defendants' material representation that he is the sole owner of the Real Property; that title to the Real Property is marketable; and that the Real Property is not encumbered by any lien, mortgage, deed of trust, assignment, pledge, security interest, or other interest, except for the mortgage owed to Wells Fargo Home Mortgage. Defendants stipulate that all of the materials they submitted are truthful, accurate, and complete. These documents contain material information upon which the Commission relied in negotiating and agreeing to the terms of the Order. If, upon motion by the FTC, the Court finds that the financial statements of any Defendant contain any material misrepresentation or omission,

the suspended judgment entered in Part VII of this Order shall become immediately due and payable as to that Defendant, less any amounts turned over to the FTC pursuant to Part VII of 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 instituted 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 other proceedings that the FTC may initiate to enforce this Order. For purposes of Part VIII, Defendants waive any right to contest any of the allegations in the Complaint.

## IX.

### COOPERATION WITH FTC COUNSEL

**IT IS FURTHER ORDERED** that Defendants shall, in connection with this action or any subsequent investigations related to or associated with the transactions or the occurrences that are the subject of the FTC's Complaint, cooperate in good faith with the FTC and appear or cause its officers, employees, representatives, or agents to appear at such places and times as the FTC shall reasonably request, after written notice, for interviews, conferences, pretrial discovery, review of documents, and for such other matters as may be reasonably requested by the FTC. If requested in writing by the FTC, Defendants shall appear or cause its officers, employees, representatives, or agents to appear and provide

truthful testimony in any trial, deposition, or other proceeding related to or associated with the transactions or the occurrences that are the subject of the Complaint, without the service of a subpoena.

**X.**

**ORDER ACKNOWLEDGMENTS**

**IT IS FURTHER ORDERED** that Defendants obtain acknowledgments of receipt of this Order:

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

B. For five (5) years after entry of this Order, each Individual Defendant for any business that such Defendant, individually or collectively with any other Defendant, is the majority owner or directly or indirectly controls, and each Corporate Defendant, must deliver a copy of this Order to: (1) all principals, officers, directors, and managers; (2) all employees, agents, and representatives who participate in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in Part XI, titled Compliance Reporting. Delivery must occur within seven (7) calendar days of entry of this Order for current personnel. To all others, delivery must occur before they assume their responsibilities.

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

## XI.

### COMPLIANCE REPORTING

**IT IS FURTHER ORDERED** that Defendants make timely submissions to the Commission:

A. One year after entry of this Order, each Defendant must submit a compliance report, sworn under penalty of perjury.

1. Each Defendant must: (a) designate at least one telephone number and an email, physical, and postal address as points of contact, which representatives of the Commission may use to communicate with Defendants; (b) identify all of that Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the products and services offered, the means of advertising, marketing, and sales; (d) describe in detail whether and how that Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission;

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

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

1. Each Defendant must report any change in: (a) any designated point of contact; and (b) the structure of each Corporate Defendant and any entity that the Defendants have any ownership interest in or directly or indirectly controls that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

2. Additionally, each Individual Defendant must report any change in: (a) name, including aliases or fictitious name, or residence address; or (b) title or role in any business activity, including any business for which such

Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest, and identify its name, physical address, and Internet address, if any.

C. Each Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or any similar proceeding by or against such Defendant within fourteen (14) calendar days of its filing.

D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: \_\_\_\_\_” and supplying the date, signatory’s full name, title (if applicable), and signature.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: FTC v. Circa Direct LLC and Andrew Davidson, X-110029.

## **XII.**

### **RECORDKEEPING**

**IT IS FURTHER ORDERED** that Defendants must create certain records for twenty (20) years after entry of the Order, and retain each such record for five (5) years. Defendants must take all necessary steps to retain all such records, including any such electronic records, in Defendants' custody and control. Specifically, Corporate Defendant and each Individual Defendant for any business in which that Defendant, individually or collectively with any other Defendants, is a majority owner or directly or indirectly controls, must maintain the following records:

A. Accounting records showing the revenues from each good or service sold, all costs incurred in generating those revenues, and the resulting net profit or loss;

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

C. Complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;

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

E. A copy of each advertisement or other marketing material, including but not limited to any web pages, websites, display banners, mobile web banners, mobile web posters, and any interstitial, email, twitter, short message service (SMS), and multimedia messaging service (MMS) advertisements; and

F. Tax records, including copies of the federal, state, and any local tax return filings, complete with all attachments, for each tax year in which payment or other asset transfer required by this Order is made.

### **XIII.**

#### **COMPLIANCE MONITORING**

**IT IS FURTHER ORDERED** that, for the purpose of monitoring Defendants' compliance with this Order, including any failure to transfer any assets as required by this Order and the representations upon which part of the judgment was suspended:

A. Within fourteen (14) calendar days of receipt of a written request from a representative of the Commission, each Defendant must submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents, for inspection and copying. The Commission also is authorized to obtain discovery, without

further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

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

C. The Commission may use all other lawful means, including posing, through its representatives, as consumers, suppliers, or other individuals or entities, to Defendants or any individual or entity affiliated with Defendants, without the necessity of identification or prior notice. Nothing in this Order limits 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.

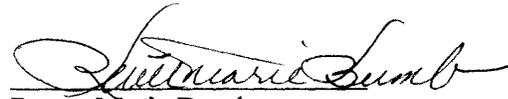
XIV.

RETENTION OF JURISDICTION

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

**IT IS SO ORDERED.**

Dated: October 17, 2012

  
Renee Marie Bumb  
United States District Judge

**SO STIPULATED AND AGREED:**

  
\_\_\_\_\_  
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For Defendant Circa Direct LLC:

By: Andrew Davidson Date: 1/24/12

Title: CEO Date: 1/24/12

For Defendant Andrew Davidson:

Andrew Davidson Date: 1/24/12  
Andrew Davidson, Individually