

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
Tampa Division

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

THE ONLINE ENTREPRENEUR, INC.,
a corporation, also d/b/a THE SIX FIGURE
PROGRAM and BEN AND DAVE'S
PROGRAM;

**BEN AND DAVE'S CONSULTING
ASSOCIATES, INC.,** a corporation;

BENJAMIN MOSKEL, individually and as
an officer or owner of THE ONLINE
ENTREPRENEUR, INC.; and BEN AND
DAVE'S CONSULTING ASSOCIATES,
INC.; and

DAVID CLABEAUX, individually and as
an officer or owner of THE ONLINE
ENTREPRENEUR, INC., and BEN AND
DAVE'S CONSULTING ASSOCIATES,
INC.,

Defendants.

Case No. 8:12-cv-2500-T-27MAP

SEALED EX PARTE TEMPORARY RESTRAINING ORDER

Plaintiff Federal Trade Commission ("FTC" or "Commission") has filed a Complaint for Injunction and Other Equitable Relief pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the FTC's Trade Regulation Rule entitled "Disclosure Requirements and Prohibitions Concerning Business

Opportunities (“Business Opportunity Rule”), 16 C.F.R. Part 437, as amended. The Plaintiff has also moved for an *ex parte* temporary restraining order with an asset freeze, appointment of receiver, and other equitable relief, and an order to show cause why a preliminary injunction should not issue, pursuant to Rule 65(b) of the Federal Rules of Civil Procedure.

FINDINGS OF FACT

Having considered the Complaint, *ex parte* application for temporary restraining order, declarations and exhibits, and memorandum filed in support thereof, and being otherwise advised, it appears that:

1. This Court has jurisdiction over the subject matter of this case, and there is good cause to believe it will have jurisdiction over all parties hereto, and that venue in this district is proper;

2. There is good cause to believe that The Online Entrepreneur, Inc., Ben and Dave’s Consulting Associates, Inc., Benjamin Moskel, and David Clabeaux, (collectively “Defendants”) have engaged in and are likely to continue to engage in acts or practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC’s Business Opportunity Rule, 16 C.F.R. Part 437, as amended, and that the FTC is likely to prevail on the merits of this action.

3. There is good cause to believe that immediate and continued consumer injury will result from Defendants’ ongoing violations of the FTC Act and the Business Opportunity Rule unless Defendants are restrained and enjoined by Order of this Court.

4. There is good cause to believe that immediate and irreparable damage to the Court’s ability to grant effective final relief for consumers in the form of monetary restitution

will occur from the sale, transfer, or other disposition or concealment by Defendants of assets or records if Defendants are provided with advance notice of this Order, and that therefore in accordance with Fed. R. Civ. P. 65(b), the interests of justice require that this order be granted without prior notice to Defendants. There is thus good cause for relieving the Commission of the duty to provide Defendants with prior notice of the Commission's application.

5. Good cause exists for (a) the appointment of a Temporary Receiver over the Corporate Defendants; (b) an asset freeze; and (c) ancillary relief.

6. Weighing the equities and considering the Commission's likelihood of ultimate success, it is in the public interest that the Court enter a Temporary Restraining Order ("Order") that (1) enjoins Defendants from violating the FTC Act and the Business Opportunity Rule; (2) appoints a temporary receiver over the Corporate Defendants; (3) freezes the assets of the Defendants; (4) orders Defendants to show cause why a preliminary injunction should not issue; (5) provides other equitable relief against all Defendants.

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

DEFINITIONS

For purposes of this Temporary Restraining Order ("Order"), the following definitions shall apply:

1. "Asset" or "assets" means any legal or equitable interest in, right to, or claim to, any real or personal property, including, but not limited to, "goods," "instruments," "equipment," "fixtures," "general intangibles," "inventory," "checks," or "notes," (as these

terms are defined in the Uniform Commercial Code), lines of credit, chattels, leaseholds, contracts, mail or other deliveries, shares of stock, lists of consumer names, accounts, credits, premises, receivables, funds, and all cash, wherever located.

2. **“Business Opportunity”** refers to a commercial arrangement as defined in the FTC Rule entitled “Disclosure Requirements and Prohibitions Concerning Business Opportunities” 16 C.F.R. Part 437, as amended.

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

4. **“Corporate Defendants”** means The Online Entrepreneur, Inc., and Ben and Dave’s Consulting Associates, Inc., and their successors, affiliates, subsidiaries, and assigns, and any fictitious business entities or business names under which they do business.

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

6. **“Document”** or **“documents”** means any materials listed in Fed. R. Civ. P. 34(a), and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data or data compilations, stored in any medium, from which information can be obtained either directly or, if necessary, after translation into a reasonably usable form through detection devices. A draft or non-identical copy is a separate “document” within the meaning of this term.

7. **“Earnings claim”** means any oral, written, or visual representation to a prospective purchaser that conveys, expressly or by implication, a specific level or range of actual or potential sales, or gross or net income or profits.

8. **“Individual Defendants”** means Benjamin Moskel and David Clabeaux, individually, collectively, or in any combination.

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

10. **“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.

11. **“Representatives”** means Defendants’ successors, assigns, officers, agents, servants, employees, or attorneys, and any person or entity in active concert or participation with them who receives actual notice of this Order by personal service.

12. **“Receiver”** means the temporary receiver appointed in Section XI of this Order and any deputy receivers that shall be named by the temporary receiver.

13. **“Receivership Defendants”** means the “Corporate Defendants.”

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

I. PROHIBITED BUSINESS ACTIVITIES

IT IS THEREFORE ORDERED that, in connection with the advertising, marketing, promotion, offering for sale, or sale of any business opportunity, Defendants and their Representatives, whether acting directly or through any entity, corporation, subsidiary,

division, affiliate, or other device, are hereby temporarily restrained and enjoined from making, in any manner, expressly or by implication, any false or misleading representations of any material fact with respect to the following:

- A. the income, earnings, or profits that consumers who purchase Defendants' asserted business opportunity are likely to earn;
- B. all products and services that are part of the sales offer; and
- C. the total costs to purchase, receive, or use, and the quantity of any goods or services that are the subject of the sales offer.

IT IS FURTHER ORDERED that Defendants and their Representatives, whether acting directly or through any corporation, subsidiary, division, or other device, are hereby temporarily restrained and enjoined from:

- A. failing to provide a complete disclosure document to prospective purchasers at least seven (7) days before the prospective purchaser signs a contract or makes a payment in connection with a business opportunity;
- B. making earnings claims regarding a business opportunity without having (1) a reasonable basis for the claim at the time it is made and (2) written materials in their possession to substantiate the claim at the time it is made;
- C. making earnings claims regarding a business opportunity and (1) failing to furnish an Earnings Claim statement to prospective purchasers in conjunction with the disclosure document, containing, among other things, information regarding the time frame captured by the earnings claim, the characteristics of the purchasers, and the number and percentage of all persons who purchased

the business opportunity within the time frame who achieved at least the stated level of earnings; or (2) failing to provide written substantiation of the earnings claim to any prospective purchaser who requests it; and

- D. making earnings claims regarding a business opportunity in the general media, such as through Internet websites, and failing to state in immediate conjunction with those claims the beginning and ending dates when the represented earnings were achieved, and the number and percentage of all persons who purchased Defendants' business opportunity prior to that ending date who achieved at least the stated level of earnings.

III. ASSET FREEZE

IT IS FURTHER ORDERED that Defendants and their Representatives, whether acting directly or through any trust, corporation, subsidiary, division or other device, or any of them, except as provided herein, as stipulated by the parties, or as directed by further order of the Court, are hereby restrained and enjoined from:

A. Assigning, concealing, converting, disbursing, dissipating, encumbering, liquidating, loaning, pledging, selling, spending, transferring, or withdrawing any asset that is:

1. Owned, controlled by, or held for the benefit of any Defendant, directly or indirectly;
2. In the actual or constructive possession of any Defendant;
3. Held as a retainer or deposit for the provision of goods or services to any Defendant; or

4. Owned, controlled by, in the actual or constructive possession of, or otherwise held for the benefit of any entity directly or indirectly owned, managed, or controlled by any Defendant;
- B. Opening or causing to be opened any safe deposit box, commercial mail box, or storage facility belonging to, for the use or benefit of, under the control of, or subject to access by any Defendant;
- C. Incurring charges or cash advances on any credit card, charge card, debit card, or lines of credit issued in the name of any CORPORATE Defendant;
- D. Obtaining a personal or secured loan that encumbers an asset of any Defendant;
- E. Imposing or incurring liens or other encumbrances on an asset of any Defendant.

IV. DUTIES OF ASSET HOLDERS

IT IS FURTHER ORDERED that, pending determination of the Commission's request for a preliminary injunction, any financial or brokerage institution, payment processor, business entity, or person served with a copy of this Order that holds, controls or maintains custody of any account, safe deposit box, or other asset of any Defendant or has maintained any such account, safe deposit box, or other asset of any Defendant at any time since March 20, 2007, shall:

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

B. Deny any person, except the Receiver, access to any safe deposit box that is titled in the name of, individually or jointly, any Defendant;

C. Provide the Commission's counsel and the Receiver, within fourteen (14) business days of receiving a copy of this Order, a certified statement setting forth:

1. The identification number of each such account or asset titled in the the name, individually or jointly, of any Defendant, or to which any Defendant is signatory, or which is held on behalf of, or for the benefit or use of, any Defendant, or subject to any Defendant's control, including all trust accounts on behalf of any Defendant or subject to any Defendant's control;
2. The balance of each such account, or a description and appraisal of the value of each such asset, as of the close of business on the day on which notice of this Order is received, and, if the account or Asset has been closed or removed, or more than \$1,000 withdrawn or transferred from it within the last one hundred and twenty (120) days, the date of the closure or removal of funds, the total funds removed or transferred, and the name and account number of the person or entity to whom such account, funds, or other Asset was remitted; and
3. The identification of any safe deposit box that is titled in the name of, individually or jointly, or otherwise subject to access by any Defendant; and

D. Upon request by the Commission or the Receiver, promptly provide all

records or other documentation pertaining to each such account or asset, including, but not limited to, originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs. The deadline or doing so shall be fourteen (14) days.

E. Plaintiff or the Receiver may properly serve this Order on any financial or brokerage institution, business entity or person that holds, controls or maintains custody of any account or asset of any Defendant or has held, controlled or maintained custody of any account or asset of any Defendant at any time since March 20, 2007, by facsimile transmission, hand delivery, or overnight carrier. Any service by facsimile transmittal shall be effective upon written acknowledgment of receipt by the responsible party.

V. FINANCIAL STATEMENTS AND INFORMATION

IT IS FURTHER ORDERED that, subject to his right to assert the right against self-incrimination, each Defendant, within fourteen (14) days of service of this Order, shall prepare and deliver to counsel for the Commission and to the Receiver:

A. Completed financial statements on the forms attached to this Order as Attachment A (Financial Statement of Individual Defendant) for themselves individually, and Attachment B (Financial Statement of Corporate Defendant) for each business entity under which they conduct business or of which they are an officer, and for each trust for which any Defendant is a trustee. The financial statements shall be accurate as of the date of entry of this Order. Each Defendant shall include in the financial statements a full accounting of all funds and assets, whether located inside or outside of the United States, that

are: (a) titled in the name of such Defendant, jointly, severally, or individually; (b) held by any person or entity for the benefit of such Defendant; or (c) under the direct or indirect control of such Defendant. Defendants shall attach to these completed financial statements copies of all local, state, provincial, and federal income and property tax returns, with attachments and schedules, as called for by the instructions to the financial statements.

B. A completed statement, signed under penalty of perjury, of all payments, transfers, or assignments of assets worth \$10,000 or more since March 20, 2007. Such statement shall include: (1) the amount transferred or assigned; (2) the name of each transferee or assignee; (3) the date of transfer or assignment; and (4) the type and amount of consideration paid to Defendant. Each statement shall specify the name and address of each Financial Institution and brokerage firm at which Defendant has accounts or safe deposit boxes. Said statements shall include assets held in foreign as well as domestic accounts.

VI. CONSUMER CREDIT REPORTS

IT IS FURTHER ORDERED that pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(1), any consumer reporting agency may furnish to the Commission a consumer report concerning any Defendant.

VII. FOREIGN ASSET REPATRIATION

IT IS FURTHER ORDERED that within fourteen (14) days following the service of this Order, each Defendant shall:

A. Provide the Commission and the Receiver with a full accounting of all funds, documents, and assets outside of the United States which are: (1) titled in the name, individually or jointly, of any Defendant; or (2) held by any person or

entity for the benefit of any Defendant; or (3) under the direct or indirect control, whether jointly or singly, of any Defendant;

- B. Transfer to the territory of the United States and deliver to the Receiver all funds, documents, and assets located in foreign countries which are: (1) titled in the name individually or jointly of any Defendant; or (2) held by any person or entity, for the benefit of any Defendant; or (3) under the direct or indirect control of any Defendant, whether jointly or singly;
- C. Provide the Commission access to all records of accounts or assets of any Defendant held by financial institutions located outside the territorial United States by signing the Consent to Release of Financial Records appended to this Order as Attachment C.

VIII. INTERFERENCE WITH REPATRIATION

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

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

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

IX. PRESERVATION OF RECORDS

IT IS FURTHER ORDERED that Defendants and their Representatives, whether acting directly or through any entity, corporation, subsidiary, division, director, manager, member, affiliate, independent contractor, accountant, financial advisor, or other device, are hereby temporarily restrained and enjoined from:

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

- B. Failing to create and maintain Documents that, in reasonable detail, accurately, fairly, and completely reflect Defendants' incomes, disbursements, transactions, and use of Defendants' assets; and
- C. Creating, operating, or exercising any control over any new business entity, whether newly formed or previously inactive, including any partnership, limited partnership, joint venture, sole proprietorship, or corporation, without first providing counsel for the FTC with a written statement disclosing: (1) the name of the business entity; (2) the address and telephone number of the business entity; (3) the names of the business entity's officers, directors, principals, managers, members, and employees; and (4) a detailed description of the business entity's intended activities.

X. PROHIBITION ON RELEASE OF CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Defendants and their Representatives, whether acting directly or through any entity, corporation, subsidiary, division, director, manager, member, affiliate, independent contractor, accountant, financial advisor, or other device, are hereby temporarily restrained and enjoined from selling, renting, leasing, transferring, using, disclosing, or otherwise benefitting from the name, address, telephone number, credit card number, bank account number, email address, or other identifying information of any Person that any Defendant obtained prior to entry of this Order in connection with any activity that pertains to the subject matter of this Order; provided, however, that Defendants may disclose such identifying information to a law enforcement agency or as required by any law, regulation, or court order.

XI. APPOINTMENT OF TEMPORARY RECEIVER

IT IS FURTHER ORDERED that Michael Moecker of Michael Moecker & Associates, P.A. is appointed temporary receiver for the Receivership Defendants. The Receiver shall be the agent of this Court, and solely the agent of this Court, in acting as Receiver under this Order. The Receiver shall be accountable directly to this Court.

XII. RECEIVER'S DUTIES

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

- A. Assume full control of the Receivership Defendants by removing, as the Receiver deems necessary or advisable, any director, officer, independent contractor, employee, or agent of any of the Receivership Defendants, including any Defendant, from control of, management of, or participation in, the affairs of the Receivership Defendants;
- B. Take exclusive custody, control, and possession of all assets and documents of, or in the possession, custody, or under the control of, the Receivership Defendants, wherever situated. The Receiver shall have full power to divert mail and to sue for, collect, receive, take in possession, hold, and manage all assets and documents of the Receivership Defendants and other persons or entities whose interests are now under the direction, possession, custody, or control of, the Receivership Defendants. The Receiver shall assume control over the income and profits therefrom and all sums of money now or hereafter due or owing to the Receivership Defendants. *Provided, however,*

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

- C. The Receiver shall relinquish funds to Defendants for necessary expenses for daily living, in an amount to be determined within the Receiver's discretion;
- D. Take all steps necessary to secure each location from which the Receivership Defendants operate their business. Such steps may include, but are not limited to, any of the following, as the Receiver deems necessary or advisable: (1) serving this Order; (2) completing a written inventory of all Receivership assets; (3) obtaining pertinent information from all employees and other agents of the Receivership Defendants, including, but not limited to, the name, home address, Social Security Number, job description, passwords or access codes, method of compensation, and all accrued and unpaid commissions and compensation of each such employee or agent; (4) photographing and video taping any or all portions of the location; (5) securing the location by changing the locks and disconnecting any computer modems or other means of access to the computer or other records maintained at that location; and (6) requiring any persons present on the premises at the time this Order is served to leave the premises, to provide the Receiver with proof of identification, or to demonstrate to the satisfaction of the Receiver that such persons are not removing from the premises

documents or assets of the Receivership Defendants. Law enforcement personnel, including, but not limited to, police or sheriffs, may assist the Receiver in implementing these provisions in order to keep the peace and maintain security. If requested by the Receiver, the United States Marshal will provide appropriate and necessary assistance to the Receiver to implement this Order and is authorized to use any necessary and reasonable force to do so;

- E. Conserve, hold, and manage all assets of the Receivership Defendants, and perform all acts necessary or advisable to preserve the value of those assets in order to prevent any irreparable loss, damage, or injury to consumers or creditors of the Receivership Defendants, including, but not limited to, obtaining an accounting of the assets and preventing the unauthorized transfer, withdrawal, or misapplication of assets;
- F. Enter into contracts and purchase insurance as advisable or necessary;
- G. Prevent the inequitable distribution of assets and determine, adjust, and protect the interests of consumers and creditors who have transacted business with the Receivership Defendants;
- H. Manage and administer the business of the Receivership Defendants until further order of this Court by performing all incidental acts that the Receiver deems to be advisable or necessary, which includes but is not limited to retaining, hiring, or dismissing any employees, independent contractors, or agents;

- I. Choose, engage, and employ attorneys, accountants, appraisers, and other independent contractors and technical specialists, as the Receiver deems advisable or necessary in the performance of duties and responsibilities under the authority granted by this Order;
- J. Make payments and disbursements from the receivership estate that are necessary or advisable for carrying out the directions of, or exercising the authority granted by, this Order. The Receiver shall apply to the Court for prior approval of any payment of any debt or obligation incurred by the Receivership Defendants prior to the date of entry of this Order, except payments that the Receiver deems necessary or advisable to secure assets of the Receivership Defendants, such as rental payments;
- K. Suspend business operations of the Receivership Defendants if in the judgment of the Receiver such operations cannot be continued legally and profitably;
- L. Institute, compromise, adjust, appear in, intervene in, or become party to such actions or proceedings in state, federal or foreign courts or arbitration proceedings as the Receiver deems necessary and advisable to preserve or recover the assets of the Receivership Defendants, or that the Receiver deems necessary and advisable to carry out the Receiver's mandate under this Order, including but not limited to, actions challenging fraudulent or voidable transfers;

- M. Defend, compromise, adjust, or otherwise dispose of any or all actions or proceedings instituted in the past or in the future against the Receiver in his role as Receiver, or against the Receivership Defendants, as the Receiver deems necessary and advisable to preserve the assets of the Receivership Defendants, or as the Receiver deems necessary and advisable to carry out the Receiver's mandate under this Order;
- N. Issue subpoenas to obtain documents and records pertaining to the Receivership, and conduct discovery in this action on behalf of the Receivership estate;
- O. Open one or more bank accounts as designated depositories for funds of the Receivership Defendants. The Receiver shall deposit all funds of the Receivership Defendants in such a designated account and shall make all payments and disbursements from the Receivership estate from such an account. The Receiver shall serve copies of monthly account statements on all parties;
- P. Maintain accurate records of all receipts and expenditures incurred as Receiver; and
- Q. Cooperate with reasonable requests for information or assistance from any state or federal law enforcement agency.

XIII. TRANSFER OF RECEIVERSHIP PROPERTY TO RECEIVER

IT IS FURTHER ORDERED that Defendants, their Representatives, and any other person or entity with possession, custody or control of property of or records relating to the

Receivership Defendants shall upon notice of this Order by personal service or otherwise immediately notify the Receiver of, and, upon receiving a request from the Receiver, immediately transfer or deliver to the Receiver possession, custody, and control of, the following:

- A. All assets of the Receivership Defendants;
- B. All documents of the Receivership Defendants, including, but not limited to, books and records of accounts, all financial and accounting records, balance sheets, income statements, bank records (including monthly statements, canceled checks, records of wire transfers, and check registers), client lists, title documents and other papers;
- C. All computers and data in whatever form used to conduct the business of the Receivership Defendants;
- D. All assets belonging to other persons or entities whose interests are now under the direction, possession, custody, or control of, the Receivership Defendants; and
- E. All keys, codes, and passwords necessary to gain or to secure access to any assets or documents of the Receivership Defendants, including, but not limited to, access to their business premises, means of communication, accounts, computer systems, or other property.

In the event that any person or entity fails to deliver or transfer any asset or otherwise fails to comply with any provision of this Section XIII, the Receiver may file *ex parte* an Affidavit of Non-Compliance regarding the failure. Upon filing of the affidavit, the Court

may authorize, without additional process or demand, Writs of Possession or Sequestration or other equitable writs requested by the Receiver. The writs shall authorize and direct the United States Marshal or any sheriff or deputy sheriff of any county, or any other federal or state law enforcement officer, to seize the asset, document, or other item covered by this Section XIII and to deliver it to the Receiver.

XIV. PROVISION OF INFORMATION TO RECEIVER

IT IS FURTHER ORDERED that Defendants shall provide to the Receiver, within seven (7) days of the date of this Order the following:

- A. A list of all assets and property, including accounts, of the Receivership Defendants that are held in any name other than the name of a Receivership Defendant, or by any person or entity other than a Receivership Defendant; and
- B. A list of all agents, employees, officers, servants or those persons in active concert and participation with the Individual Defendants and Receivership Defendants, who have been associated or done business with the Receivership Defendants.

XV. COOPERATION WITH THE RECEIVER

IT IS FURTHER ORDERED that Defendants, their Representatives, and all other persons or entities served with a copy of this Order shall fully cooperate with and assist the Receiver in taking and maintaining possession, custody, or control of the assets of the Receivership Defendants. This cooperation and assistance shall include, but not be limited to: providing information to the Receiver that the Receiver deems necessary in order to

exercise the authority and discharge the responsibilities of the Receiver under this Order; providing any password required to access any computer, electronic file, or telephonic data in any medium; advising all persons who owe money to the Receivership Defendants that all debts should be paid directly to the Receiver; and transferring funds at the Receiver's direction and producing records related to the assets and sales of the Receivership Defendants. The entities obligated to cooperate with the Receiver under this provision include, but are not limited to, banks, broker-dealers, savings and loans, escrow agents, title companies, commodity trading companies, precious metals dealers and other financial institutions and depositories of any kind, and all third-party billing agents, common carriers, and other telecommunications companies, that have transacted business with the Receivership Defendants.

XVI. INTERFERENCE WITH THE RECEIVER

IT IS FURTHER ORDERED that Defendants and their Representatives are hereby restrained and enjoined from directly or indirectly:

- A. Interfering with the Receiver managing, or taking custody, control, or possession of, the assets or documents subject to this Receivership;
- B. Transacting any of the business of the Receivership Defendants;
- C. Transferring, receiving, altering, selling, encumbering, pledging, assigning, liquidating, or otherwise disposing of any assets owned, controlled, or in the possession or custody of, or in which an interest is held or claimed by, the Receivership Defendants, or the Receiver; and

- D. Refusing to cooperate with the Receiver or the Receiver's duly authorized agents in the exercise of their duties or authority under any order of this Court.

XVII. STAY OF ACTIONS AGAINST RECEIVERSHIP DEFENDANTS

IT IS FURTHER ORDERED that, except by leave of this Court, during pendency of the Receivership ordered herein, Defendants, their Representatives, and all investors, creditors, stockholders, lessors, customers and other persons seeking to establish or enforce any claim, right, or interest against or on behalf of Defendants, and all others acting for or on behalf of such persons, are hereby enjoined from taking action that would interfere with the exclusive jurisdiction of this Court over the assets or documents of the Receivership Defendants, including, but not limited to:

- A. Petitioning, or assisting in the filing of a petition, that would cause any Receivership Defendant to be placed in bankruptcy;
- B. Commencing, prosecuting, or continuing a judicial, administrative, or other action or proceeding against the Receivership Defendants, including the issuance or employment of process against the Receivership Defendants, *except* that such actions may be commenced if necessary to toll any applicable statute of limitations;
- C. Filing or enforcing any lien on any asset of the Receivership Defendants, taking or attempting to take possession, custody, or control of any asset of the Receivership Defendants; or attempting to foreclose, forfeit, alter, or

terminate any interest in any asset of the Receivership Defendants, whether such acts are part of a judicial proceeding, are acts of self-help, or otherwise;

- D. Initiating any other process or proceeding that would interfere with the Receiver managing or taking custody, control, or possession of, the assets or documents subject to this receivership.

Provided that, this Order does not stay: (i) the commencement or continuation of a criminal action or proceeding; (ii) the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power; or (iii) the enforcement of a judgment, other than a money judgment, obtained in an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power.

XVIII. COMPENSATION OF RECEIVER

IT IS FURTHER ORDERED that the Receiver and all personnel hired by the Receiver as herein authorized, including counsel to the Receiver and accountants, are entitled to reasonable compensation for the performance of duties pursuant to this Order and for the cost of actual out-of-pocket expenses incurred by them, from the assets now held by, in the possession or control of, or which may be received by, the Receivership Defendants. The Receiver shall file with the Court and serve on the parties periodic requests for the payment of such reasonable compensation, with the first such request filed no more than sixty (60) days after the date of entry of this Order. The Receiver shall not increase the hourly rates used as the bases for such fee applications without prior approval of the Court.

XIX. RECEIVER'S BOND

IT IS FURTHER ORDERED that the Receiver shall file with the Clerk of this Court a bond in the sum of \$0.00 with sureties to be approved by the Court, conditioned that the Receiver will well and truly perform the duties of the office and abide by and perform all acts the Court directs.

XX. ACCESS TO BUSINESS OFFICES AND RECORDS

IT IS FURTHER ORDERED that, in order to allow the Commission and the Receiver to preserve assets and evidence relevant to this action, and to expedite discovery, Plaintiff and Receiver, and their representatives, agents, and assistants, shall have immediate access to the business premises of the Receivership Defendants. Such locations include, but are not limited to, **8203 Main Street, Suite 9, Williamsville, NY 14221, 2171 Monroe Avenue, Suite 202 & 204, Rochester, NY 14618, and 200 High Point Road, Victor, NY 14564**. The Commission and the Receiver, and their representatives, agents, and assistants, are authorized to employ the assistance of the U.S. Marshal's office and other law enforcement officers as they deem necessary to effect service and to implement peacefully the provisions of this Order. The Commission and the Receiver, and their representatives, agents, and assistants, are authorized to remove documents from the Receivership Defendants' premises in order that they may be inspected, inventoried, and copied for the purpose of preserving discoverable material in connection with this action.

Furthermore, the Receiver shall allow the Defendants reasonable access to the premises and business records of the Receivership Defendants within his possession for the purpose of inspecting and copying materials relevant to this action. The Receiver shall have the discretion to determine the time, manner, and reasonable conditions of such access.

XXI. SERVICE BY FACSIMILE AUTHORIZED

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

XXII. SERVICE UPON PLAINTIFF

IT IS FURTHER ORDERED that Defendants shall serve all pleadings, memoranda, correspondence, affidavits, declarations, or other documents related to this Order or Plaintiff's motion for a preliminary injunction by facsimile transmission to (404) 656-1379, by hand delivery to the offices of the Federal Trade Commission, 225 Peachtree Street, Suite 1500, Atlanta, Georgia 30303, and addressed to the attention of Barbara E. Bolton, or by overnight shipment through a third-party commercial carrier for delivery at this address.

XXIII. DEFENDANTS' DUTY TO DISTRIBUTE ORDER

IT IS FURTHER ORDERED that Defendants shall immediately provide a copy of this Order to each of their affiliates, subsidiaries, divisions, sales entities, successors, assigns, officers, directors, employees, independent contractors, client companies, agents, attorneys, spouses and representatives, and shall, within fourteen (14) days from the date of entry of this Order, provide the Commission with a sworn statement that: (A) confirms that Defendants have provided copies of the Order as required by this paragraph; and (B) lists the names and addresses of each entity or person to whom Defendants provided a copy of the

Order. Furthermore, Defendants shall not take any action that would encourage officers, agents, directors, employees, salespersons, independent contractors, attorneys, subsidiaries, affiliates, successors, assigns or other persons or entities in active concert or participation with them to disregard this Order or believe that they are not bound by its provisions.

XXIV. DURATION OF TEMPORARY RESTRAINING ORDER

IT IS FURTHER ORDERED that the Temporary Restraining Order granted herein shall expire fourteen (14) days from the date of entry noted below unless, within such time, the Order is extended for an additional period not to exceed fourteen (14) days for good cause shown, or unless, as to any Defendant, such Defendant consents to an extension for a longer period.

XXV. ORDER TO SHOW CAUSE REGARDING PRELIMINARY INJUNCTION

IT IS FURTHER ORDERED, pursuant to Federal Rule of Civil Procedure 65(b), that each Defendant shall appear before this Court on the 15th day of November, 2012, at 2:30 p. m, to show cause, if there is any, why this Court should not enter a Preliminary Injunction enjoining the violations of law alleged in the Commission's Complaint, continuing the freeze of their assets, continuing the Receivership, and imposing such additional relief as may be appropriate.

XXVI. BRIEFS AND AFFIDAVITS CONCERNING PRELIMINARY INJUNCTION

IT IS FURTHER ORDERED that pursuant to Local Rule 4.06(b)(3), Defendants shall file with the Court and serve on Plaintiff's counsel any answering affidavits, pleadings, motions, expert reports or declarations, and/or legal memoranda no later than seven (7) days prior to the hearing on the Plaintiff' request for a preliminary injunction. Plaintiff may file

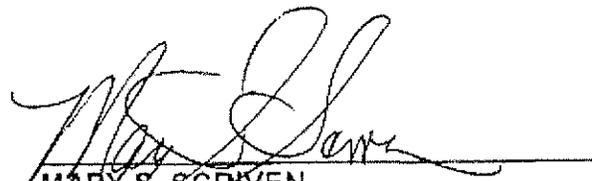
and serve responsive or supplemental pleadings, materials, affidavits, motions, or memoranda no later than three (3) days prior to the hearing. The hearing shall be limited to argument of counsel unless the Court grants express leave to the contrary in advance of the hearing. *See* Local Rule 4.06(b).

XXVII. RETENTION OF JURISDICTION

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

The **CLERK** of Court is directed to maintain this matter **UNDER SEAL** until 4:00 p.m. Eastern Time, November 8, 2012, or until proof of service upon the Defendants is demonstrated.

DONE and **ORDERED** in Tampa, Florida, this 6th day of November 2012.


MARY S. SCRIVEN
UNITED STATES DISTRICT JUDGE