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12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA

14 _____)
15 FEDERAL TRADE COMMISSION,)
16)
17 Plaintiff,)
18 vs.) Case No.SACV13-0919-DOC (RNBx)
19)
20 A TO Z MARKETING, INC., a)
Nevada corporation, also dba Client)
21 Services, *et al.*,)
22 Defendants.)
_____)

23
24 **PRELIMINARY INJUNCTION AS TO DEFENDANTS**
25 **A TO Z MARKETING, INC., APEX MEMBERS, LLC,**
26 **APEX SOLUTIONS, INC., EXPERT PROCESSING CENTER, INC.,**
27 **SMART FUNDING CORP., WILLIAM D. GOODRICH, ATTY, INC.,**
28 **RATAN BAID, MADHULIKA BAID, AND WILLIAM D. GOODRICH**

1 On June 18, 2013, the Federal Trade Commission (FTC or Commission),
2 filed **PLAINTIFF FEDERAL TRADE COMMISSION'S COMPLAINT FOR**
3 **INJUNCTIVE AND OTHER EQUITABLE RELIEF** (Doc. 1) (Complaint)
4 seeking temporary, preliminary, and permanent injunctive relief, rescission or
5 reformation of contracts, restitution, the refund of monies paid, disgorgement of
6 ill-gotten monies, and other equitable relief. The Complaint alleged that the
7 Defendants had violated and were violating the Federal Trade Commission Act, 15
8 U.S.C. § 41 et. seq. (FTC Act), and the Mortgage Assistance Relief Services Rule,
9 16 C.F.R. Part 322 (MARS Rule), recodified as Mortgage Assistance Relief
10 Services, 12 C.F.R. Part 1015 (Regulation O), in connection with the marketing
11 and sale of mortgage assistance relief services. With its Complaint, the
12 Commission requested, and on June 19, 2013, the Court issued, its **TEMPORARY**
13 **RESTRAINING ORDER INCLUDING AN ASSET FREEZE AND LIMITS**
14 **ON USING ASSETS, APPOINTMENT OF A RECEIVER, IMMEDIATE**
15 **ACCESS TO BUSINESS PREMISES, LIMITED EXPEDITED**
16 **DISCOVERY, AND AN ORDER TO SHOW CAUSE WHY A**
17 **PRELIMINARY INJUNCTION SHOULD NOT ISSUE** (Doc. 13) (TRO). The
18 TRO ordered the Defendants to show cause, if there is any, why a preliminary
19 injunction should not be entered, and set a hearing for July 1, 2013, (Doc. 13, p. 33
20 of 60), which was later advanced to June 28, 2013 (Doc. 18).

21 On June 27, 2013, the Court approved a joint motion by the FTC and
22 Defendants A to Z Marketing, Inc., Apex Members, LLC, Apex Solutions, Inc.,
23 Expert Processing Center, Inc., Smart Funding Corp., William D. Goodrich, Atty,
24 Inc., Ratan Baid, Madhulika Baid, and William D. Goodrich (all Defendants
25 except for Defendant Backend, Inc.) (Baid/Goodrich Defendants) to extend the
26 TRO as to those parties to July 18, 2013, to give these parties time to negotiate a
27 preliminary, and possibly permanent, injunction. (Doc. 21) The Baid Defendants
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1 filed an Opposition to the preliminary injunction on July 3, 2013, causing the Court
2 to set a hearing for July 18, 2013 (Doc. 67), which was later advanced to July 17,
3 2013 (Doc 68). This matter is now before the Court on the FTC's request for a
4 preliminary injunction.

5 6 **FINDINGS OF FACT**

7 1. This Court has jurisdiction over the subject matter of this case and of
8 the parties. Venue in this district is proper.

9 2. The Commission and the Baid Defendants have been represented by
10 counsel in the negotiations concerning the joint motion and proposed preliminary
11 injunction.

12 3. The Commission and the Baid Defendants agree to the terms of this
13 preliminary injunction and to its entry by the Court.

14 4. The Baid Defendants' agreement to this preliminary injunction does
15 not constitute an admission of any allegations in the Complaint or a waiver of any
16 defenses they may have.

17 5. The FTC's agreement to this preliminary injunction does not
18 constitute an abandonment of any allegations in the Complaint or admission of any
19 defenses the Baid Defendants may have.

20 6. Entry of this preliminary injunction is in the public interest.

21 22 **DEFINITIONS**

23 The following definitions apply to this preliminary injunction:

24 A. **"Assets"** means any legal or equitable interest in, right to, or claim to,
25 any and all property, real or personal, tangible or intangible, wherever located,
26 belonging to, for the benefit of, in the name of, subject to access or use by, or
27 under the signatory power of any Defendant, including but not limited to cash,
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1 goods, equipment, fixtures, patents, licenses, leaseholds, contracts, mail or other
2 deliveries, checks, notes, deposits, accounts, credits, accounts receivable, securities
3 of any type, and trusts, including but not limited to any trust held for the benefit of
4 any Defendant, any Individual Defendant's minor children, or of any Individual
5 Defendant's spouse, and shall include both existing assets and assets acquired after
6 the date of entry of this Order.

7 B. **"Assisting others"** includes, but is not limited to:

8 1. Performing customer service functions, including, but not
9 limited to, receiving or responding to consumer complaints;

10 2. Formulating or providing, or arranging for the formulation or
11 provision of, any advertising or marketing material, including, but not
12 limited to, any telephone sales script, direct mail solicitation, or the design,
13 text, or use of images of any Internet website, email, or other electronic
14 communication;

15 3. Formulating or providing, or arranging for the formulation or
16 provision of, any marketing support material or service, including, but not
17 limited to, web or Internet Protocol addresses or domain name registration
18 for any Internet websites, affiliate marketing services, or media placement
19 services;

20 4. Providing names of, or assisting in the generation of, potential
21 customers;

22 5. Performing marketing, billing, or payment services of any kind;
23 and,

24 6. Acting or serving as an owner, officer, director, manager, or
25 principal of any person.

26 C. **"Corporate Defendants"** means A to Z Marketing, Inc., Apex
27 Members, LLC, Apex Solutions, Inc., Expert Processing Center, Inc., Smart
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1 Funding Corp., William D. Goodrich, Atty, Inc., and their successors, assigns,
2 affiliates, or subsidiaries, and each of them by whatever names each might be
3 known.

4 D. **“Defendants”** means all Individual Defendants and all Corporate
5 Defendants, individually, collectively, or in any combination, and each of them, by
6 whatever names each might be known.

7 E. **“Document”** and **“Electronically Stored Information”** are
8 synonymous in meaning and equal in scope to the usage of the terms in Rule 34(a)
9 of the Federal Rules of Civil Procedure and include but are not limited to:

10 1. The original or a true copy of any written, typed, printed,
11 electronically stored, transcribed, taped, recorded, filmed, punched, or
12 graphic matter or other data compilations of any kind, including, but not
13 limited to, letters, email or other correspondence, messages, memoranda,
14 interoffice communications, notes, reports, summaries, manuals, magnetic
15 tapes or discs, tabulations, books, records, checks, invoices, work papers,
16 journals, ledgers, statements, returns, reports, schedules, or files; and

17 2. Any electronically stored information stored on any computer
18 (including, but not limited to, any server, workstation, or desktop, laptop,
19 notebook, or tablet computer), mobile communications device (including,
20 but not limited to, Blackberrys, i-Phones, and Smart Phones of any type or
21 brand), flash drives, personal digital assistants, or any other electronic
22 storage media, whether assigned to individuals or in pools of computers
23 available for shared use, or personally owned but used for work-related
24 purposes; backup disks and tapes, archive disks and tapes, and other forms
25 of offline storage, whether stored onsite with the computer used to generate
26 them, stored offsite in another company facility, or stored, hosted, or
27 otherwise maintained offsite by a third-party; and computers and related
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1 offline storage used by Defendants or Defendants' participating associates,
2 which may include persons who are not employees of the company or who
3 do not work on company premises.

4 F. **"Electronic Data Host"** means any person in the business of storing,
5 hosting, or otherwise maintaining electronically stored information.

6 G. **"Financial Institution"** means any bank, savings and loan institution,
7 credit union, or any financial depository of any kind, including, but not limited to,
8 any brokerage house, trustee, broker-dealer, escrow agent, title company,
9 commodity trading company, or precious metal dealer.

10 H. **"Individual Defendants"** means Ratan Baid, Madhulika Baid, and
11 William Goodrich, and any other names by which they are known or conduct
12 business.

13 I. **"Mortgage assistance relief product or service"** means any product,
14 service, plan, or program, offered or provided to the consumer in exchange for
15 consideration, that is represented, expressly or by implication, to assist or attempt
16 to assist the consumer with any of the following:

17 1. stopping, preventing, or postponing any mortgage or deed of
18 trust foreclosure sale for the consumer's dwelling, any repossession of the
19 consumer's dwelling, or otherwise saving the consumer's dwelling from
20 foreclosure or repossession;

21 2. negotiating, obtaining, or arranging a modification of any term
22 of a dwelling loan, including a reduction in the amount of interest, principal
23 balance, monthly payments, or fees;

24 3. obtaining any forbearance or modification in the timing of
25 payments from any dwelling loan holder or servicer on any dwelling loan;

26 4. negotiating, obtaining, or arranging any extension of the period
27 of time within which the consumer may (i) cure his or her default on a
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1 dwelling loan, (ii) reinstate his or her dwelling loan, (iii) redeem a dwelling,
2 or (iv) exercise any right to reinstate a dwelling loan or redeem a dwelling;

3 5. obtaining any waiver of an acceleration clause or balloon
4 payment contained in any promissory note or contract secured by any
5 dwelling; or

6 6. negotiating, obtaining, or arranging (i) a short sale of a
7 dwelling, (ii) a deed in lieu of foreclosure, (iii) or any other disposition of a
8 dwelling other than a sale to a third party that is not the dwelling loan
9 holder.

10 The foregoing shall include any manner of claimed assistance, including, but not
11 limited to, auditing or examining a consumer's mortgage or home loan
12 application, offering to provide or providing legal services, or offering to sell a
13 consumer a plan or subscription to a service that provides such assistance.
14 business.

15 J. **"Person"** means any individual and any partnership, corporation,
16 limited liability company, association, or other entity, however formed or
17 organized.

18 K. **"Receivership Defendants"** means A to Z Marketing, Inc., Apex
19 Members, LLC, Apex Solutions, Inc., Expert Processing Center, Inc., Smart
20 Funding Corp., William D. Goodrich, Atty, Inc., Top Legal Advocates, P.C., and
21 Evergreen Law Offices, PLLC, as well as any affiliates and subsidiaries that
22 conduct any business related to the Receivership Defendants' provision of MARS
23 and that the Receiver has reason to believe are owned or controlled in whole or in
24 part by any of the Defendants; *provided, however*, that Summit Client Solutions,
25 Inc., is a Receivership Defendant until such time that the Receiver determines
26 otherwise; *provided further, however*, that Red Hill Plaza, LLC, and Getting
27 Visible, a dba Amenisha Group, Inc., are not Receivership Defendants; *provided*
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1 *further, however*, that Ratan Baid may use the name Expert Marketing Services
2 for businesses unrelated to mortgage assistance relief products or services.
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4 **I. PROHIBITED REPRESENTATIONS**

5 **IT IS ORDERED THAT** Defendants and their successors, assigns,
6 officers, agents, servants, employees, attorneys, and all other persons in active
7 concert or participation with any of them, who receive actual notice of this Order,
8 by personal service, facsimile, email, or otherwise, whether acting directly or
9 through any trust, corporation, subsidiary, division, or other device, are temporarily
10 restrained and enjoined from falsely representing, or assisting others who are
11 falsely representing, expressly or by implication, any of the following:

12 A. That any Defendant or any other person generally will obtain for
13 consumers mortgage loan modifications that will make consumers' payments
14 substantially more affordable, or will help consumers avoid foreclosure;

15 B. That any Defendant or any other person, as a result of various loan
16 audits, including a forensic loan audit, generally will obtain for consumers
17 mortgage loan modifications that will make consumers' payments substantially
18 more affordable, or will help consumers avoid foreclosure; and,

19 C. The amount of time it will take the mortgage assistance relief service
20 provider to accomplish any represented service or result.
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22 **II. PROHIBITION ON COLLECTING ADVANCE FEES**

23 **IT IS FURTHER ORDERED THAT** Defendants and their successors,
24 assigns, officers, agents, servants, employees, attorneys, and all other persons in
25 active concert or participation with any of them, who receive actual notice of this
26 Order, by personal service, facsimile, email, or otherwise, whether acting directly
27 or through any trust, corporation, subsidiary, division, or other device, in
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1 connection with the telemarketing, advertising, marketing, promotion, offering for
2 sale or sale of any mortgage assistance relief product or service or any other credit-
3 or debt-related good or service, are temporarily restrained and enjoined from
4 asking for or receiving payment before the consumer has executed a written
5 agreement between the consumer and the creditor, loan holder, or servicer of
6 secured or unsecured debt that incorporates the offer obtained by Defendants on
7 the consumer's behalf.

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9 **III. FAILURE TO DISCLOSE INFORMATION REQUIRED**
10 **BY THE MARS RULE**

11 **IT IS FURTHER ORDERED THAT** Defendants and their successors,
12 assigns, officers, agents, servants, employees, attorneys, and all other persons in
13 active concert or participation with any of them, who receive actual notice of this
14 Order, by personal service, facsimile, email, or otherwise, whether acting directly
15 or through any trust, corporation, subsidiary, division, or other device, are
16 temporarily restrained and enjoined from:

17 A. Failing to make the following disclosure in all general and
18 consumer-specific commercial communications: “[Name of Company] is not
19 associated with the government, and our service is not approved by the government
20 or your lender,” in violation of 16 C.F.R. §§ 322.4(a)(1) and 322.4(b)(2),
21 recodified at 12 C.F.R. §§ 1015.4(a)(1) and 1015.4(b)(2);

22 B. Failing to make the following disclosure in all general and
23 consumer-specific commercial communications: “[Name of Company] is not
24 associated with the government, and our service is not approved by the government
25 or your lender,” in violation of 16 C.F.R. §§ 322.4(a)(1) and 322.4(b)(2),
26 recodified at 12 C.F.R. §§ 1015.4(a)(1) and 1015.4(b)(2);

1 C. Failing to make the following disclosure in all consumer-specific
2 commercial communications:

3 You may stop doing business with us at any time. You may accept or
4 reject the offer of mortgage assistance we obtain from your lender [or
5 servicer]. If you reject the offer, you do not have to pay us. If you
6 accept the offer, you will have to pay us [insert amount or method for
7 calculating the amount] for our services.

8 in violation of 16 C.F.R. § 322.4(b)(1), recodified at 12 C.F.R. § 1015.4(b)(1). For
9 the purposes of this Section III, the amount “you will have to pay” shall consist of
10 the total amount the consumer must pay to purchase, receive, and use all of the
11 mortgage assistance relief products or services that are the subject of the sales
12 offer, including but not limited to, all fees and charges;

13 D. Failing, in all general commercial communications, consumer-specific
14 commercial communications, and other communications in cases where any
15 Defendant or any Defendant’s officers, agents, servants, employees, or attorneys
16 has represented, expressly or by implication, in connection with the advertising,
17 marketing, promotion, offering for sale, or performance of any mortgage assistance
18 relief product or service, that the consumer should temporarily or permanently
19 discontinue payments, in whole or in part, on a dwelling loan, to place clearly and
20 prominently, and in close proximity to any such representation the following
21 disclosure: “If you stop paying your mortgage, you could lose your home and
22 damage your credit rating,” in violation of 16 C.F.R. § 322.4(c), recodified at 12
23 C.F.R. § 1015.4(c).

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**IV. MAINTENANCE OF RECORDS AND
REPORTING OF NEW BUSINESS ACTIVITY**

1 **IT IS FURTHER ORDERED THAT** Defendants and their successors,
2 assigns, officers, agents, servants, employees, attorneys, and all other persons in
3 active concert or participation with any of them, who receive actual notice of this
4 Order, by personal service, facsimile, email, or otherwise, whether acting directly
5 or through any trust, corporation, subsidiary, division, or other device, in
6 connection with the advertising, marketing, telemarketing, promotion, offering for
7 sale or sale of any good or service, are temporarily restrained and enjoined from
8 the following:

9 A. Failing to create and maintain books, records, accounts, bank
10 statements, current accountants' reports, general ledgers, general journals, cash
11 receipt ledgers, cash disbursement ledgers and source documents, documents
12 indicating title to real or personal property, and any other data which, in reasonable
13 detail, accurately, fairly, and completely reflect the incomes, disbursements,
14 transactions, dispositions, and uses of assets of any business which Defendants
15 own, create, operate, or exercise control over, however organized;

16 B. Destroying, erasing, mutilating, concealing, altering, transferring, or
17 otherwise disposing of or rendering inaccessible, in any manner, directly or
18 indirectly, any documents or records that relate to the business practices of or
19 business or personal finances of any Defendant or a person directly or indirectly
20 under the control of a Defendant;

21 C. Creating, operating, or exercising any control over, any business,
22 whenever and however formed, including any partnership, limited partnership,
23 joint venture, sole proprietorship, or corporation, without first providing the FTC
24 with a written statement disclosing (1) the name of the business; (2) the physical
25 address, telephone number, email address, and web site address of the business; (3)
26 the names of the business's officers, directors, principals, managers, and
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1 employees; and (4) a detailed description of the business's activities and the
2 Defendant's duties;

3 D. Failing to notify the Commission at least seven (7) days before
4 affiliating with, becoming employed by, or performing any work (whether
5 compensated or uncompensated) for any business that is not a named defendant in
6 this action. Each notice shall include the Defendant's new business address and
7 telephone number, a statement of the nature of the business, and a statement of the
8 Defendant's her duties and responsibilities in connection with the business or
9 employment.

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11 **V. PROHIBITION ON RELEASE OF CONSUMER INFORMATION**

12 **IT IS FURTHER ORDERED THAT**, except as required by a law
13 enforcement agency, law, regulation or court order, Defendants and their
14 successors, assigns, officers, agents, servants, employees, attorneys, and all other
15 persons in active concert or participation with any of them, who receive actual
16 notice of this Order, by personal service, facsimile, email, or otherwise, whether
17 acting directly or through any trust, corporation, subsidiary, division, or other
18 device, are temporarily restrained and enjoined from disclosing, using, or
19 benefitting from consumer information, including the name, address, telephone
20 number, email address, social security number, other identifying information, or
21 any data that enables access to a consumer's account (including a credit card, bank,
22 or other financial account), of any person which any Defendant obtained prior to
23 entry of this Order in connection with any mortgage assistance relief product or
24 service.

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1 **VI. DISABLEMENT OF WEBSITES AND**
2 **PRESERVATION OF ELECTRONICALLY STORED INFORMATION**

3 **IT IS FURTHER ORDERED THAT**, immediately upon service of this
4 Order upon them (1) any person hosting any Internet website or server for, or on
5 behalf of, any Defendant, and (2) Defendants and their successors, assigns,
6 officers, agents, servants, employees, attorneys, and those persons or entities in
7 active concert or participation with any of them who receive actual notice of this
8 Order by personal service or otherwise, whether acting directly or through any
9 trust, corporation, subsidiary, division, or other device, shall, unless already done
10 so in compliance with the TRO or at the instruction of the Receiver appointed in
11 the TRO:

12 A. Immediately take any necessary steps to render inaccessible to the
13 public any Internet website used by Defendants for the advertising, marketing,
14 promotion, offering for sale, sale, or provision of any mortgage assistance relief
15 product or service, and containing statements or representations prohibited by
16 Section I of this Order, including but not limited to the websites
17 www.BurkeLawCenter.com, www.TopLegalAdvocates.com, and
18 www.evergreenlawoffices.com.; and

19 B. Prevent the alteration, destruction or erasure of (1) any Internet
20 websites used by Defendants for the advertising, marketing, promotion, offering
21 for sale, sale, or provision of any mortgage assistance relief product or service, by
22 preserving such websites in the format in which they are maintained currently, and
23 (2) any electronically stored information stored on behalf of Defendants or entities
24 in active concert or participation with any of them.

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26 **VII. SUSPENSION OF INTERNET DOMAIN NAME REGISTRATIONS**
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IT IS FURTHER ORDERED THAT, any domain name registrar or other person shall suspend the registration of any Internet website used by Defendants for the advertising, marketing, promotion, offering for sale, sale, or provision of any mortgage assistance relief product or service, or containing statements or representations prohibited by Section I of this Order, and provide immediate notice to the FTC and to the Receiver of any other Internet domain names registered by Defendants or their officers, agents, servants, employees, attorneys, and persons or entities in active concert or participation with any of them.

VIII. ASSET FREEZE

IT IS FURTHER ORDERED THAT Defendants and Receivership Defendants and their officers, agents, servants, employees, attorneys, and all other persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service, facsimile, email, or otherwise, are temporarily restrained and enjoined from directly or indirectly:

- A. Selling, assigning, transferring, converting, loaning, conveying, encumbering, concealing, spending, withdrawing, granting a lien or security interest or other interest in, or otherwise disposing of any assets that are:
 1. in the possession, actual or constructive, of any Defendant or Receivership Defendant;
 2. owned or controlled by, held in whole or in part for the benefit of, or subject to access by, any Defendant or Receivership Defendant; or
 3. in the actual or constructive possession of, owned or controlled by, subject to access by, or belonging to any person who is directly or indirectly owned, managed, or under the control of any Defendant or Receivership Defendant;

1 B. Opening, or causing to be opened, any safe deposit boxes titled in the
2 name of or subject to access by any Defendant or Receivership Defendant;

3 C. Cashing any checks from consumers, clients, or customers of any
4 Individual Defendant or Receivership Defendant;

5 D. Failing to disclose to the FTC and to the Receiver, immediately upon
6 service of this Order, information that fully identifies each known asset of any
7 Defendant or Receivership Defendant and the person holding such asset, including,
8 without limitation, the person's name, address, and telephone number, the number
9 of an account, and the name under which an account or other asset is held;

10 **IT IS FURTHER ORDERED THAT** the assets affected by this Section
11 VIII shall not include assets acquired after the date of entry of this Order, and shall
12 not include three thousand seven hundred fifty (\$3750) currently due and owing to
13 Defendant Goodrich for legal services unrelated to any mortgage assistance relief
14 product or service;

15 *Provided, however,* that this Section VIII does not prohibit the repatriation
16 of foreign assets as required in Section XII of this Order.

17 *Provide, also,* that freeze on Getting Visible, a dba of Amenisha Group, Inc.
18 shall be lifted.

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20 **IX. HANDLING OF DOCUMENTS, RECORDS, AND ASSETS**
21 **BY THIRD PARTIES**

22 **IT IS FURTHER ORDERED THAT**, any person, including but not
23 limited to any financial institution, electronic data host, or payment processor, who
24 receives actual notice of this Order, by personal service, facsimile, email, or
25 otherwise, who has, or at any time since January 1, 2010, has had, possession,
26 custody, or control of any documents, records, or assets belonging to, in the name
27 of, for the benefit of, subject to access or use by, or under the signatory power of,
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1 any Individual Defendant or Receivership Defendant shall, unless already done so
2 in compliance with the TRO or at the instruction of the Receiver appointed in the
3 TRO:

4 A. Hold, preserve, and retain within such person's control, and prohibit
5 the withdrawal, removal, alteration, transfer, encumbrance, disbursement,
6 dissipation, sale, liquidation, or other disposal of such documents, records, or
7 assets except as directed in writing by the Receiver as to any property of any
8 Receivership Defendant;

9 B. Provide the Receiver and the FTC immediate access to electronically
10 stored information, for forensic imaging, that is stored, hosted, or otherwise
11 maintained on behalf of any Individual Defendant or Receivership Defendant:

12 C. Deny access to any safe deposit boxes that are either titled in the name
13 of, individually or jointly, or subject to access or control by, any Individual
14 Defendant or Receivership Defendant; and

15 D. Provide to counsel for the FTC and the Receiver, within fourteen (14)
16 days of receipt of this Order, a sworn statement setting forth:

17 1. a description of or other identification of the documents,
18 records, or assets;

19 2. the balance of each such account and the value of each other
20 asset as of the close of business on the day on which this Order is
21 served;

22 3. the location of any safe deposit box that is either titled in the
23 name of, individually or jointly, or is otherwise subject to access or
24 control by, any Defendant;

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1 4. if any asset, including any account at any financial institution,
2 has been closed or removed, the date closed or removed, the balance
3 on that date, and the name of the person to whom the account or asset
4 was remitted or transferred;

5 E. Provide counsel for the FTC and the Receiver, within fourteen (14)
6 days after being served with a request, with copies of documents or records and
7 copies of documents pertaining to assets, including but not limited to: account
8 statements, account applications, signature cards, checks, deposit tickets, transfers
9 to and from the accounts, wire transfers, all other debit and credit instruments or
10 slips, 1099 forms, and safe deposit box logs;

11 F. Cooperate with all reasonable requests of the FTC and the Receiver
12 relating to this Order's implementation, including but not limited to transferring
13 funds at the Receiver's direction.

14 G. **IT IS FURTHER ORDERED THAT** this Section IX shall apply to
15 both existing documents, records and assets and to documents, records, and assets
16 acquired after the date of entry of this Order. This Section IX does not prohibit the
17 Repatriation of Foreign Assets, as required in Section XII of this Order.

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19 **X. FINANCIAL STATEMENTS AND ACCOUNTING**

20 **IT IS FURTHER ORDERED THAT**, unless already done so in
21 compliance with the TRO, each Defendant, within fourteen (14) days of entry of
22 this Order, shall prepare and deliver to counsel for the FTC:

23 A. For Individual Defendants, a completed financial statement accurate
24 as of the date of service of this Order upon such Defendant in the form of
25 Attachment A to this Order captioned "Financial Statement of Individual
26 Defendant;"

1 B. For Corporate Defendants, a completed financial statement accurate
2 as of the date of service of this Order upon such Defendant in the form of
3 Attachment B to this Order captioned "Financial Statement of Corporate
4 Defendant."

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6 **XI. CONSUMER CREDIT REPORTS**

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

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11 **XII. REPATRIATION OF FOREIGN ASSETS**

12 **IT IS FURTHER ORDERED THAT:**

13 A. Within 14 days of entry of this Order, transfer to the territory of the
14 United States and provide the FTC and the Receiver with a full accounting of all
15 assets, documents, and records outside of the territory of the United States,
16 including but not limited to, financial statements, tax returns, articles of
17 incorporation, partnership agreements, and employment contracts, that are:

- 18 1. in the possession, actual or constructive, of any Defendant;
19 2. owned or controlled by, held in whole or in part for the benefit
20 of, or subject to access by, any Defendant; or
21 3. in the actual or constructive possession of, owned or controlled
22 by, subject to access by, or belonging to any person who is directly or
23 indirectly owned, managed, or under the control of any Defendant;

24 B. Hold all repatriated assets, documents, and records as required by
25 Section VIII of this Order; and

26 C. Provide the FTC access to all records of accounts or assets of the
27 Defendants held by any financial institution or other person located outside the
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1 territorial United States by signing the Consent to Release of Financial Records to
2 be provided by the FTC within 3 days of entry of this Order and receipt of the form
3 from the FTC, and by signing any other documents required by any person,
4 including any financial institution, or other person holding any such asset.

5
6 **XIII. NONINTERFERENCE WITH REPATRIATION**

7 **IT IS FURTHER ORDERED THAT** Defendants are temporarily
8 restrained and enjoined from taking any action, directly or indirectly, that may
9 result in the encumbrance or dissipation of foreign assets or in the hindrance of the
10 repatriation required by Section XII of this Order, including, but not limited to:

11 A. Sending any communication, including but not limited to any
12 statement, letter, fax, email, text message, wire transmission, or telephone call, or
13 engaging in any other act, directly or indirectly, that results in a determination by a
14 foreign trustee or other person that a “duress” event has occurred under the terms of
15 a foreign trust agreement until such time that all assets have been fully repatriated
16 pursuant to Section XII of this Order; or

17 B. Notifying any trustee, protector, or other agent of any foreign trust or
18 other related entities either of the existence of this Order or of the fact that
19 repatriation is required pursuant to a court order, until such time that all assets have
20 been fully repatriated pursuant to Section XII of this Order.

21
22 **XIV. CONTINUATION OF RECEIVERSHIP**

23 **IT IS FURTHER ORDERED THAT** the Receivership created by the TRO
24 (Doc 13, p. 19) and extended by this Court’s **ORDER AUTHORIZING**
25 **TEMPORARY RECEIVER'S IMMEDIATE POSSESSION OF BUSINESS**
26 **PREMISES OF ADDITIONAL RECEIVERSHIP DEFENDANTS AND**
27 **CONFIRMING ACTIONS TAKEN BY RECEIVER TO FREEZE ASSETS**

1 (Order Extending Receivership) (Doc. 50), shall continue. The Receiver shall
2 continue to have all the rights, powers, duties, and authority set forth in the TRO
3 and the Order Extending Receivership. Thomas McNamara, the Receiver
4 appointed in the TRO, shall continue as Receiver until further order of this Court..
5 The Receiver shall be the agent of this Court and solely the agent of this Court
6 when acting pursuant to this Order. The Receiver shall be accountable directly to
7 this Court. The Receiver shall comply with all local rules and laws governing
8 receivers.

9
10 **XV. DUTIES AND AUTHORITY OF THE RECEIVER**

11 **IT IS FURTHER ORDERED THAT** the Receiver is directed and
12 authorized to accomplish the following:

13 A. Assume and maintain full and exclusive control of the Receivership
14 Defendants by removing, as the Receiver deems necessary or advisable, any
15 officer, director, agent, servant, independent contractor or attorney of any of the
16 Receivership Defendants, including any Individual Defendant, from control of,
17 management of, or participation in, the affairs of the Receivership Defendants;

18 B. Take and maintain exclusive custody, control, and possession of all
19 assets, documents, and electronically stored information of, or in the possession,
20 custody, or under the control of, the Receivership Defendants, wherever situated.
21 The Receiver shall have full power to divert mail and to sue for, collect, receive,
22 take into possession, hold, and manage all assets and documents of the
23 Receivership Defendants and other persons whose interests are now held by or
24 under the direction, possession, custody, or control of the Receivership
25 Defendants; *provided, however*, that the Receiver shall not attempt to collect or
26 receive any amount from a consumer if the Receiver believes the consumer was a
27 victim of the unlawful conduct alleged in the complaint in this matter;

1 C. Take all steps necessary to secure and keep secure the business
2 premises of the Receivership Defendants. Such steps may include, but are not
3 limited to, the following, as the Receiver deems necessary or appropriate:

4 1. changing the locks and disconnecting any computer modems,
5 network access, or other means of access to the computer or other records
6 maintained at that location;

7 2. obtaining pertinent information from all employees and other
8 agents of the Receivership Defendants, including, but not limited to, the
9 name, home address, job description, method of compensation, and all
10 accrued and unpaid commissions and compensation of each such employee
11 or agent, and all computer hardware and software passwords, and including
12 the completion of a questionnaire presented by the Receiver;

13 3. requiring any persons present on the premises to provide proof
14 of identification, to leave the premises, and to demonstrate to the satisfaction
15 of the Receiver that such persons are not removing from the premises
16 property (including documents) or assets of the Receivership Defendants;

17 4. completing a written inventory of all Receivership assets;

18 5. videotaping and/or photographing all portions of any location at
19 which any Receivership Defendant conducts business or has assets; and,

20 6. serving and filing this Order;

21 D. Conserve, hold, and manage all Receivership assets, and perform all
22 acts necessary or advisable to preserve the value of those assets, in order to prevent
23 any irreparable loss, damage, or injury to consumers or to creditors of the
24 Receivership Defendants, including, but not limited to, obtaining an accounting of
25 the assets and preventing transfer, unauthorized withdrawal, or misapplication of
26 assets;

1 E. Liquidate any and all assets owned by or for the benefit of the
2 Receivership Defendants as the Receiver deems to be advisable or necessary;

3 F. Enter into or break contracts and purchase insurance as the Receiver
4 deems to be advisable or necessary;

5 G. Prevent the inequitable distribution of assets and determine, adjust,
6 and protect the interests of consumers who have transacted business with the
7 Receivership Defendants;

8 H. Manage and administer the business of the Receivership Defendants
9 until further order of this Court by performing all incidental acts that the Receiver
10 deems to be advisable or necessary, which includes retaining, hiring, or dismissing
11 any employees, independent contractors, or agents;

12 I. Choose, engage, and employ, without prior approval of the Court,
13 attorneys, accountants, appraisers, and other independent contractors and technical
14 specialists, as the Receiver deems advisable or necessary in the performance of
15 duties and responsibilities under the authority granted by this Order. The Receiver
16 may engage the services of the law firm of which the Receiver is a member;

17 J. Make payments and disbursements from the Receivership estate that
18 are necessary or advisable for carrying out the directions of, or exercising the
19 authority granted by, this Order. The Receiver shall apply to the Court for prior
20 approval of any payment of any debt or obligation incurred by the Receivership
21 Defendants prior to the date of entry of this Order, except payments that the
22 Receiver deems necessary or advisable to secure assets of the Receivership
23 Defendants, such as rental payments;

24 K. Determine and implement measures to ensure that the Receivership
25 Defendants comply with, and prevent violations of, this Order and all other
26 applicable laws, including, but not limited to, revising sales materials and
27 implementing monitoring procedures;

28

1 L. Institute, defend, compromise, adjust, appear in, intervene in, or
2 become party to any actions or proceedings in state, federal, or foreign courts,
3 including actions or proceedings against a Receivership Defendant or against the
4 Receiver in his role as Receiver, that the Receiver deems necessary or advisable to
5 preserve or recover the assets of the Receivership Defendants or to carry out the
6 Receiver's responsibilities under this Order;

7 M. Conduct the business of the Receivership Defendants in such manner,
8 to such extent, and for such duration as the Receiver may in good faith deem to be
9 necessary or appropriate; *provided, however*, that the continuation and conduct of
10 the business, if done at all, is conditioned upon the Receiver's good faith
11 determination that the businesses can be lawfully operated at a profit using the
12 assets of the receivership estate;

13 N. Take depositions, issue interrogatories, and issue subpoenas to obtain
14 information and documents and records relevant to the Receivership Defendants
15 using the schedule set forth in Section XXI, below;

16 O. Open one or more bank accounts in the Central or Southern District of
17 California as designated depositories for funds of the Receivership Defendants.
18 The Receiver shall deposit all funds of the Receivership Defendants in such a
19 designated account and shall make all payments and disbursements from the
20 receivership estate from such account(s);

21 P. Maintain accurate records of all receipts and expenditures that he
22 makes as Receiver; and,

23 Q. Maintain the chain of custody of all of Defendants' assets, documents,
24 property, and records in his possession; and,

25 R. Cooperate with reasonable requests for information or assistance from
26 any state or federal law enforcement agency.

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1 **XVI. COOPERATING WITH THE RECEIVER**

2 **IT IS FURTHER ORDERED THAT** Defendants, Receivership
3 Defendants and their successors, assigns, officers, agents, servants, employees,
4 attorneys, and all other persons in active concert or participation with any of them,
5 who receive actual notice of this Order, by personal service, facsimile, email, or
6 otherwise, whether acting directly or through any trust, corporation, subsidiary,
7 division, or other device, shall fully cooperate with and assist the Receiver. Such
8 cooperation and assistance shall include, but not be limited to:

- 9 A. Providing any information to the Receiver that the Receiver deems
10 necessary to exercise the authority and discharge the responsibilities of the
11 Receiver under this Order;
- 12 B. Providing any username or password and executing any documents
13 required to access any computer or electronic files in any medium, including
14 but not limited to information stored, hosted, or otherwise maintained by an
15 electronic data host;
- 16 C. Providing the Receiver with access to any Documents belonging to or
17 in the custody or control of any Receivership Defendant;
- 18 D. Refraining from advising any person who owes money to a
19 Receivership Defendant to pay the debt to anyone other than to the Receiver;
20 and,
- 21 E. Refraining from transacting any of the business of the Receivership
22 Defendants except under the direction of the Receiver.
- 23

24 **XVII. COMPENSATION FOR RECEIVER**

25 **IT IS FURTHER ORDERED THAT** the Receiver and all personnel hired
26 by the Receiver as authorized by this Order are entitled to reasonable
27 compensation and expenses for the performance of duties pursuant to this Order
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1 from the assets of the Receivership Defendants. The Receiver shall file with the
2 Court and serve on the parties periodic requests for the payment of such reasonable
3 compensation, with the first such request filed no more than sixty (60) days after
4 the date of the TRO. The Receiver shall not increase the hourly rates used as the
5 bases for such fee applications without prior approval of the Court.

6
7 **XVIII. RECEIVER'S REPORTS**

8 **IT IS FURTHER ORDERED THAT** the Receiver shall report to this
9 Court from time to time regarding: (1) the steps taken by the Receiver to
10 implement the terms of this Order; (2) the value of all liquidated and unliquidated
11 assets of the Receivership Defendants; (3) the sum of all liabilities of the
12 Receivership Defendants; (4) the Receiver's assessment of whether the business
13 can be operated profitably and legally; (5) any future steps the Receiver
14 recommends; and (6) any other matters which the Receiver believes should be
15 brought to the Court's attention; *provided, however*, that if any of the required
16 information would hinder the Receiver's ability to pursue receivership assets, the
17 portions of the Receiver's report containing such information may be filed under
18 seal and not served on the parties

19
20 **XIX. RECEIVER'S BOND**

21 **IT IS FURTHER ORDERED THAT** the bond filed with the Clerk of this
22 Court by the Receiver pursuant to the TRO shall remain in effect to ensure that the
23 Receiver will well and truly perform the duties of the office and abide by and
24 perform all acts the Court directs.

25
26 **XX. STAY OF ACTIONS**

27 **IT IS FURTHER ORDERED THAT:**
28

1 A. Except by leave of this Court, during pendency of the Receivership
2 created by this Order, Defendants, Receivership Defendants, and all other persons
3 and entities are stayed from taking any action to establish or enforce any claim,
4 right, or interest for, against, in, on behalf of, or in the name of, any Receivership
5 Defendant or any of their subsidiaries, affiliates, partnerships, assets, or
6 documents, or the Receiver or the Receiver's duly authorized agents acting in their
7 capacities as such, including, but not limited to, the following:

8 1. Commencing, prosecuting, continuing, entering, or enforcing
9 any suit or proceeding, except that such actions may be filed to toll any
10 applicable statute of limitations;

11 2. Accelerating the due date of any obligation or claimed
12 obligation; filing or enforcing any lien; taking or attempting to take
13 possession, custody, or control of any asset; attempting to foreclose, forfeit,
14 alter, or terminate any interest in any asset, whether such acts are part of a
15 judicial proceeding, are acts of self-help, or otherwise;

16 3. Executing, issuing, serving, or causing the execution, issuance
17 or service of, any legal process, including, but not limited to, attachments,
18 garnishments, subpoenas, writs of replevin, writs of execution, or any other
19 form of process whether specified in this Order or not; or,

20 4. Doing any act or thing whatsoever to interfere with the
21 Receiver taking custody, control, possession, or management of the assets or
22 documents subject to this Receivership, or to harass or interfere with the
23 Receiver in any way, or to interfere in any manner with the exclusive
24 jurisdiction of this Court over the assets or documents of the Receivership
25 Defendants;

26 B. This Section XX does not stay:
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- 1 1. The commencement or continuation of a criminal action or
2 proceeding;
- 3 2. The commencement or continuation of an action or proceeding
4 by a bar association to enforce its police or regulatory powers;
- 5 3. The commencement or continuation of an action or proceeding
6 by a governmental unit to enforce such governmental unit's police or
7 regulatory power;
- 8 4. The enforcement of a judgment, other than a money judgment,
9 obtained in an action or proceeding by a governmental unit to enforce such
10 governmental unit's police or regulatory power; or
- 11 5. The issuance to a Receivership Defendant of a notice of tax
12 deficiency.

13
14 **XXI. LIMITED EXPEDITED DISCOVERY**

15 **IT IS FURTHER ORDERED** that the Receiver is granted leave to conduct
16 certain expedited discovery and that in lieu of the time periods, notice provisions,
17 and other requirements of the applicable Local Rules for this District and Rules 26,
18 30, 34, and 45 of the Federal Rules of Civil Procedure, the Receiver is granted
19 leave to:

20 A. Depose, on seven (7) days' notice, any party or non-party for the
21 purpose of discovering: (1) the nature, location, status, and extent of assets of
22 Defendants or their affiliates or subsidiaries; (2) the nature and location of
23 documents and business records of Defendants or their affiliates or subsidiaries;
24 and (3) compliance with this Order. Any such depositions taken pursuant to this
25 Section XXI shall not be counted toward the ten deposition limits set forth in Fed.
26 R. Civ. P. 30(a)(2)(A)(i) and 31(a)(2)(A)(i) and shall not preclude any party from
27 subsequently deposing the same person during discovery on the merits in this case.
28

1 Depositions may be taken by telephone, video conference, or other remote means.
2 Any deposition taken pursuant to this Section XXI that has not been reviewed and
3 signed by the deponent may be used by any party for purposes of the preliminary
4 injunction hearing;

5 B. Serve upon parties interrogatories or requests for production of
6 documents or inspection that require a response, production or inspection within
7 seven (7) days of service, and may serve subpoenas upon non-parties that direct
8 production or inspection within seven (7) days of service, for the purpose of
9 discovering: (1) the nature, location, status, and extent of assets of Defendants or
10 their affiliates or subsidiaries; (2) the nature and location of documents and
11 business records of Defendants or their affiliates or subsidiaries; and (3)
12 compliance with this Order; *provided, however*, that four (4) days' notice shall be
13 deemed sufficient for the production of any such documents that are maintained or
14 stored as electronic data;

15 C. Serve deposition notices and other discovery requests upon the parties
16 to this action personally or by facsimile, email, certified or registered mail, or
17 private courier (including a process server) with a receipt from the courier showing
18 delivery.

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XXII. MONITORING

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IT IS FURTHER ORDERED THAT agents or representatives of the FTC
may contact Defendants and Receivership Defendants directly or anonymously for
the purpose of monitoring compliance with this Order, and may record any
communications that occur in the course of such contacts.

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XXIII. DEFENDANTS' DUTY TO DISTRIBUTE ORDER

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