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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

TRIANGLE MEDIA CORPORATION;
JASPER RAIN MARKETING LLC;
HARDWIRE INTERACTIVE INC.; and
BRIAN PHILLIPS,

Defendants.

Case No.: 18cv1388-MMA (NLS)

PRELIMINARY INJUNCTION

[Doc. No. 5]

Plaintiff, Federal Trade Commission (“FTC” or “Commission”), filed its Complaint for Permanent Injunction and Other Equitable Relief in this matter, pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), Section 5 of the Restore Online Shoppers’ Confidence Act (“ROSCA”), 15 U.S.C. § 8404, and Section 918(c) of the Electronic Fund Transfer Act (“EFTA”), 15 U.S.C. § 1693o(c), and moved for an *Ex Parte* Temporary Restraining Order With Asset Freeze, Appointment of a Receiver, Other Equitable Relief, and Order to Show Cause Why a Preliminary Injunction Should Not Issue (“TRO”) against Defendants. For the reasons stated in the Court’s Order filed contemporaneously herewith, the Court finds a preliminary injunction against Defendants is appropriate.

FINDINGS OF FACT

1
2 The TRO having been granted (Doc. No. 11) and served with the Complaint and
3 Summons on Defendants, and the Court having considered all the pleadings, memoranda,
4 declarations, and other exhibits filed herein, and being fully advised in the premises, finds
5 that:

6 A. This Court has jurisdiction over the subject matter of this case and the
7 parties.

8 B. Venue in this district is proper.

9 C. There is good cause to believe that Defendants have engaged in and are
10 likely to engage in acts or practices that violate Section 5(a) of the FTC Act, 15 U.S.C. §
11 45(a), Section 4 of the Restore Online Shoppers' Confidence Act ("ROSCA"), 15 U.S.C.
12 § 8403, and Section 907(a) of the Electronic Fund Transfer Act ("EFTA"), 15 U.S.C.
13 § 1693e(a), and Section 1005.10(b) of Regulation E, 12 C.F.R. § 1005.10(b) and Plaintiff
14 is therefore likely to prevail on the merits of this action.

15 D. There is good cause to believe that immediate and irreparable harm will
16 result from Defendants' ongoing violations of Section 5(a) of the FTC Act, 15 U.S.C. §
17 45(a), Section 4 of the Restore Online Shoppers Confidence Act ("ROSCA"), 15 U.S.C.
18 § 8403, and Section 907(a) of the Electronic Fund Transfer Act ("EFTA"), 15 U.S.C.
19 § 1693e(a), and Section 1005.10(b) of Regulation E, 12 C.F.R. § 1005.10(b), unless
20 Defendants are restrained and enjoined by order of this Court.

21 E. There is good cause to believe that immediate and irreparable damage to the
22 Court's ability to grant effective final relief for consumers, including monetary
23 restitution, rescission, disgorgement, or refunds, will occur from the sale, transfer, or
24 other disposition or concealment by Defendants of their assets or records unless
25 Defendants are restrained and enjoined by Order of this Court. Therefore, there is good
26 cause for an asset freeze and receivership.

27 F. There is good cause for issuing this Order pursuant to Federal Rule of Civil
28 Procedure 65.

1 G. Weighing the equities and considering Plaintiff’s likelihood of ultimate
2 success on the merits, this Order is in the public interest.

3 H. Plaintiff is an independent agency of the United States. No security is
4 required of any agency of the United States for issuance of a preliminary injunction. Fed.
5 R. Civ. P. 65(c).

6 **DEFINITIONS**

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

8 A. **“Asset”** includes any legal or equitable interest in, right to, or claim to, any
9 property, wherever located and by whomever held, and all proceeds, product, offspring,
10 rents, or profit of or from that property.

11 B. **“Billing Information”** means any data that enables any person to access a
12 customer’s account, such as a credit card, checking, savings, share or similar account, or
13 debit card.

14 C. **“Charge,” “Charged,” or “Charging”** means any attempt to collect money
15 or other consideration from a consumer, including causing Billing Information to be
16 submitted for payment, including against the consumer’s credit card, debit card, bank
17 account, or other account.

18 D. **“Clearly and Conspicuously”** means that a required disclosure is difficult
19 to miss (i.e., easily noticeable) and easily understandable by ordinary consumers,
20 including in all of the following ways:

21 1. In any communication that is solely visual or solely audible, the
22 disclosure must be made through the same means through which the communication is
23 presented. In any communication made through both visual and audible means, such as a
24 television advertisement, the disclosure must be presented simultaneously in both the
25 visual and audible portions of the communication even if the representation requiring the
26 disclosure is made in only one means;

1 2. A visual disclosure, by its size, contrast, location, the length of time it
2 appears, and other characteristics, must stand out from any accompanying text or other
3 visual elements so that it is easily noticed, read, and understood;

4 3. An audible disclosure, including by telephone or streaming video,
5 must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to
6 easily hear and understand it;

7 4. In any communication using an interactive electronic medium, such as
8 the Internet or software, the disclosure must be unavoidable;

9 5. The disclosure must use diction and syntax understandable to ordinary
10 consumers and must appear in each language in which the representation that requires the
11 disclosure appears;

12 6. The disclosure must comply with these requirements in each medium
13 through which it is received, including all electronic devices and face-to-face
14 communications;

15 7. The disclosure must not be contradicted or mitigated by, or
16 inconsistent with, anything else in the communication; and

17 8. When the representation or sales practice targets a specific audience,
18 such as children, the elderly, or the terminally ill, “ordinary consumers” includes
19 reasonable members of that group.

20 E. “**Corporate Defendants**” means Triangle Media Corporation, Jasper Rain
21 Marketing LLC, Hardwire Interactive Inc., and by whatever other names they may be
22 known, each of their subsidiaries, affiliates, successors, and assigns, and any fictitious
23 business entities or business names created or used by these entities, or any of them.

24 F. “**Defendants**” means Corporate Defendants and Individual Defendant,
25 individually, collectively, or in any combination.

26 G. “**Document**” is synonymous in meaning and equal in scope to the usage of
27 “document” and “electronically stored information” in Federal Rule of Civil Procedure
28 34(a), Fed. R. Civ. P. 34(a), and includes writings, drawings, graphs, charts, photographs,

1 sound and video recordings, images, Internet sites, web pages, websites, electronic
2 correspondence, including e-mail and instant messages, contracts, accounting data,
3 advertisements, FTP Logs, Server Access Logs, books, written or printed records,
4 handwritten notes, telephone logs, telephone scripts, receipt books, ledgers, personal and
5 business canceled checks and check registers, bank statements, appointment books,
6 computer records, customer or sales databases and any other electronically stored
7 information, including Documents located on remote servers or cloud computing
8 systems, and other data or data compilations from which information can be obtained
9 directly or, if necessary, after translation into a reasonably usable form. A draft or non-
10 identical copy is a separate document within the meaning of the term.

11 H. **“Electronic Data Host”** means any person or entity in the business of
12 storing, hosting, or otherwise maintaining electronically stored information. This
13 includes any entity hosting a website or server, and any entity providing “cloud based”
14 electronic storage.

15 I. **“Financial Institution”** means any bank, savings and loan institution, credit
16 union, or any financial depository of any kind, including, but not limited to, any
17 brokerage house, trustee, broker-dealer, escrow agent, title company, commodity trading
18 company, or precious metal dealer.

19 J. **“Individual Defendant”** means Defendant Brian Phillips.

20 K. **“Negative Option Feature”** means, in an offer or agreement to sell or
21 provide any good or service, a provision under which the consumer’s silence or failure to
22 take affirmative action to reject a good or service or to cancel the agreement is interpreted
23 by the seller or provider as acceptance or continuing acceptance of the offer.

24 L. **“Preauthorized Electronic Fund Transfer”** means an electronic fund
25 transfer authorized in advance to recur at substantially regular intervals.

26 M. **“Receiver”** means the permanent receiver appointed in Section XVI of this
27 Order and any deputy receivers that shall be named by the permanent receiver.
28

1 N. “**Receivership Entities**” means Corporate Defendants as well as any other
2 entity that has conducted any business related to Defendants’ marketing of negative
3 option offers, including receipt of Assets derived from any activity that is the subject of
4 the Complaint in this matter, and that the Receiver determines is controlled or owned by
5 any Defendant.

6 **I. Prohibited Misrepresentations**

7 **IT IS ORDERED** that Defendants, Defendants’ officers, agents, employees, and
8 attorneys, and all other persons in active concert or participation with them, who receive
9 actual notice of this Order, whether acting directly or indirectly, in connection with
10 promoting or offering for sale any good or service with a Negative Option Feature, are
11 restrained and enjoined from misrepresenting or assisting others in misrepresenting,
12 expressly or by implication:

13 A. That Defendants will Charge consumers at most only a shipping and
14 handling fee for a one-time shipment of Defendants’ product;

15 B. That consumers’ orders are not complete; or

16 C. Any other material fact.

17 **II. Required Disclosures Relating to Negative Option Features**

18 **IT IS FURTHER ORDERED** that Defendants, Defendants’ officers, agents,
19 employees, and attorneys, and all other persons in active concert or participation with any
20 of them, who receive actual notice of this Order, whether acting directly or indirectly, in
21 connection with promoting or offering for sale any good or service with a Negative
22 Option Feature, are restrained and enjoined from:

23 A. Representing directly or indirectly, expressly or by implication, that any
24 good or service that includes a Negative Option Feature is being offered on a free, trial,
25 no obligation, reduced, or discounted basis, without disclosing Clearly and
26 Conspicuously, and immediately adjacent to, any such representation:
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1 1. The extent to which the consumer must take affirmative action(s) to
2 avoid any Charges: a) for the offered good or service, b) of an increased amount after the
3 trial or promotional period ends, and c) on a recurring basis;

4 2. The total cost (or range of costs) the consumer will be Charged and, if
5 applicable, the frequency of such Charges unless the consumer timely takes steps to
6 prevent or stop such Charges; and

7 3. The deadline(s) (by date or frequency) by which the consumer must
8 affirmatively act in order to stop all recurring Charges.

9 B. Obtaining Billing Information from a consumer for any transaction
10 involving a good or service that includes a Negative Option Feature, without first
11 disclosing Clearly and Conspicuously, and immediately adjacent to where a consumer
12 provides Billing Information:

13 1. The extent to which the consumer must take affirmative action(s) to
14 avoid any Charges: a) for the offered good or service, b) of an increased amount after the
15 trial or promotional period ends, and c) on a recurring basis;

16 2. The total cost (or range of costs) the consumer will be Charged, the
17 date the initial Charge will be submitted for payment, and, if applicable, the frequency of
18 such Charges unless the consumer timely takes affirmative steps to prevent or stop such
19 Charges;

20 3. The deadline(s) (by date or frequency) by which the consumer must
21 affirmatively act in order to stop all recurring Charges;

22 4. The name of the seller or provider of the good or service and, if the name of
23 the seller or provider will not appear on billing statements, the billing descriptor that will
24 appear on such statements;

25 5. A description of the good or service;

26 6. Any Charge or cost for which the consumer is responsible in connection
27 with the cancellation of an order or the return of a good;

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1 7. The simple cancellation mechanism to stop any recurring Charges, as
2 required by Section IV.

3 C. Failing to send the consumer:

4 1. Immediately after the consumer’s submission of an online order,
5 written confirmation of the transaction by email. The email must Clearly and
6 Conspicuously disclose all the information required by Subsection II, and contain a
7 subject line reading “Order Confirmation” along with the name of the product or service,
8 and no additional information; or

9 2. Within two (2) days after receipt of the consumer’s order by mail or
10 telephone, a written confirmation of the transaction, either by email or first class mail.
11 The email or letter must Clearly and Conspicuously disclose all the information required
12 by Subsection II. The subject line of the email must Clearly and Conspicuously state
13 “Order Confirmation” along with the name of the product or service, and nothing else.
14 The outside of the envelope must Clearly and Conspicuously state “Order Confirmation”
15 along with the name of the product or service, and no additional information other than
16 the consumer’s address, the Defendants’ return address, and postage.

17 **III. Obtaining Express Informed Consent**

18 **IT IS FURTHER ORDERED** that Defendants, Defendants’ officers, agents,
19 employees, and attorneys, and all other persons in active concert or participation with any
20 of them, who receive actual notice of this Order, whether acting directly or indirectly, in
21 connection with promoting or offering for sale any good or service with a Negative
22 Option Feature, are restrained and enjoined from using, or assisting others in using,
23 Billing Information to obtain payment from a consumer, unless Defendant first obtains
24 the express informed consent of the consumer to do so.

25 **IV. Simple Mechanism to Cancel Negative Option Feature**

26 **IT IS FURTHER ORDERED** that Defendants, Defendants’ officers, agents,
27 employees, attorneys, and all other persons in active concert or participation with any of
28 them, who receive actual notice of this Order, whether acting directly or indirectly, in

1 connection with promoting or offering for sale any good or service with a Negative
2 Option Feature, are restrained and enjoined from failing to provide a simple mechanism
3 for the consumer to: (1) avoid being Charged, or Charged an increased amount, for the
4 good or service and (2) immediately stop any recurring Charges. Such mechanism must
5 not be difficult, costly, confusing, or time consuming, and must be at least as simple as
6 the mechanism the consumer used to initiate the Charge(s).

7 **V. Prohibition Against Debiting Consumers' Bank Accounts Without Authorization**

8 **IT IS FURTHER ORDERED** that Defendants, Defendants' officers, agents,
9 employees, and attorneys, and all other persons in active concert or participation with any
10 of them, who receive actual notice of this Order, whether acting directly or indirectly, in
11 connection with the sale of any good or service, are restrained and enjoined from:

12 A. Failing to timely obtain written authorization signed or similarly
13 authenticated by the consumer for any Preauthorized Electronic Fund Transfer from a
14 consumer's account before initiating any Preauthorized Electronic Fund Transfer; and

15 B. Failing to provide the consumer a copy of a valid written authorization
16 signed or similarly authenticated by the consumer for any Preauthorized Electronic Fund
17 Transfer.

18 **VI. Prohibition on Release of Customer Information**

19 **IT IS FURTHER ORDERED** that Defendants, Defendants' officers, agents,
20 employees, and attorneys, and all other persons in active concert or participation with any
21 of them, who receive actual notice of this Order, whether acting directly or indirectly, are
22 restrained and enjoined from:

23 A. Selling, renting, leasing, transferring, or otherwise disclosing, the name,
24 address, birth date, telephone number, e-mail address, credit card number, bank account
25 number, Social Security number, or other financial or identifying information of any
26 person that any Defendant obtained in connection with any activity that pertains to the
27 subject matter of this Order; or
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1 B. Benefiting from or using the name, address, birth date, telephone number, e-
2 mail address, credit card number, bank account number, Social Security number, or other
3 financial or identifying information of any person that any Defendant obtained in
4 connection with any activity that pertains to the subject matter of this Order.

5 *Provided, however,* that Defendants may disclose such identifying information to a
6 law enforcement agency, to their attorneys as required for their defense, as required by
7 any law, regulation, or court order, or in any filings, pleadings or discovery in this action
8 in the manner required by the Federal Rules of Civil Procedure and by any protective
9 order in the case.

10 **VII. Asset Freeze**

11 **IT IS FURTHER ORDERED** that Defendants, and their officers, agents,
12 employees, and attorneys, and all other persons in active concert or participation with any
13 of them, who receive actual notice of this Order, whether acting directly or indirectly, are
14 restrained and enjoined from:

15 A. Transferring, liquidating, converting, encumbering, pledging, loaning,
16 selling, concealing, dissipating, disbursing, assigning, relinquishing, spending,
17 withdrawing, granting a lien or security interest or other interest in, or otherwise
18 disposing of any Assets that are:

- 19 1. Owned or controlled, directly or indirectly, by any Defendant;
- 20 2. Held, in part or in whole, for the benefit of any Defendant;
- 21 3. In the actual or constructive possession of any Defendant; or
- 22 4. Owned or controlled by, in the actual or constructive possession of, or
23 otherwise held for the benefit of, any corporation, partnership, asset protection trust, or
24 other entity that is directly or indirectly owned, managed or controlled by any Defendant;

25 B. Opening or causing to be opened any safe deposit boxes, commercial mail
26 boxes, or storage facilities titled in the name of any Defendant or subject to access by any
27 Defendant, except as necessary to comply with written requests from the Receiver acting
28 pursuant to its authority under this Order, and after providing Plaintiff prior notice and an

1 opportunity to inspect the contents to determine that they contain no Assets covered by
2 this Section;

3 C. Incurring charges or cash advances on any credit, debit, or ATM card issued
4 in the name, individually or jointly, of any Corporate Defendant or any corporation,
5 partnership, or other entity directly or indirectly owned, managed, or controlled by any
6 Defendant or of which any Defendant is an officer, director, member, or manager. This
7 includes any corporate bankcard or corporate credit card account for which any
8 Defendant is, or was on the date that this Order was signed, an authorized signor; or

9 D. Depositing or cashing any checks or depositing any money orders or cash
10 received from consumers, clients, or customers of any Defendant. The Assets affected by
11 this Section shall include: (1) all Assets of Defendants as of the time this Order is
12 entered; and (2) Assets obtained by Defendants after this Order is entered if those Assets
13 are derived from any activity that is the subject of the Complaint in this matter or that is
14 prohibited by this Order. This Section does not prohibit any transfer of Assets to the
15 Receiver or agreed to in writing by Plaintiff, or repatriation of foreign Assets specifically
16 required by this Order.

17 *Provided, however,* that Defendants Phillips, Triangle Media, and Jasper Rain, may
18 request from Commission counsel, in writing and with supporting documentation,
19 reasonable and necessary expenses. Commission counsel shall review the requests and
20 communicate any objections to their counsel. Once any objections have been resolved,
21 Commission counsel shall authorize Defendant Phillips to use personal funds to pay the
22 expenses, or shall submit a written request to the Receiver to disburse Receivership assets
23 to Defendants Phillips, Triangle Media, and Jasper Rain to pay the expenses.

24 **VIII. Duties of Asset Holders and Other Third Parties**

25 **IT IS FURTHER ORDERED** that any financial or brokerage institution,
26 Electronic Data Host, credit card processor, payment processor, merchant bank, acquiring
27 bank, independent sales organization, third party processor, payment gateway, insurance
28 company, business entity, or person who receives actual notice of this Order (by service

1 or otherwise) and that (a) holds, controls, or maintains custody, through an account or
2 otherwise, of any Document on behalf of any Defendant or any Asset that is: owned or
3 controlled, directly or indirectly, by any Defendant; held, in part or in whole, for the
4 benefit of any Defendant; in the actual or constructive possession of any Defendant; or
5 owned or controlled by, in the actual or constructive possession of, or otherwise held for
6 the benefit of, any corporation, partnership, asset protection trust, or other entity that is
7 directly or indirectly owned, managed or controlled by any Defendant; (b) holds,
8 controls, or maintains custody of any Document or Asset associated with credits, debits
9 or charges made on behalf of any Defendant, including reserve funds held by payment
10 processors, credit card processors, merchant banks, acquiring banks, independent sales
11 organizations, third party processors, payment gateways, insurance companies, or other
12 entities; or (c) has held, controlled, or maintained custody of any such Document, Asset,
13 or account at any time since the date of entry of this Order shall:

14 A. Hold, preserve, and retain within its control and prohibit the withdrawal,
15 removal, alteration, assignment, transfer, pledge, encumbrance, disbursement,
16 dissipation, relinquishment, conversion, sale, or other disposal of any such Document or
17 Asset, as well as all Documents or other property related to such Assets, except by further
18 order of this Court;

19 B. Deny any Person, except the Receiver, access to any safe deposit box,
20 commercial mail box, or storage facility that is titled in the name of any Defendant, either
21 individually or jointly, or otherwise subject to access by any Defendant;

22 C. Unless previously submitted in full compliance with the TRO, provide
23 Plaintiff's counsel and the Receiver, within three (3) business days of receiving a copy of
24 this Order, a sworn statement setting forth, for each Asset or account covered by this
25 Section:

- 26 1. The identification number of each such account or Asset;
- 27 2. The balance of each such account, or a description of the nature and
28 value of each such Asset as of the close of business on the day on which this Order is

1 served, and, if the account or other Asset has been closed or removed, the date closed or
2 removed, the total funds removed in order to close the account, and the name of the
3 person or entity to whom such account or other Asset was remitted; and

4 3. The identification of any safe deposit box, commercial mail box, or
5 storage facility that is either titled in the name, individually or jointly, of any Defendant,
6 or is otherwise subject to access by any Defendant; and

7 D. Provide Plaintiff's counsel and the Receiver, within five (5) business days of
8 a request from Plaintiff's counsel or the Receiver, with copies of all records or other
9 Documents pertaining to such account or Asset, including originals or copies of account
10 applications, account statements, signature cards, checks, drafts, deposit tickets, transfers
11 to and from the accounts, including wire transfers and wire transfer instructions, all other
12 debit and credit instruments or slips, currency transaction reports, 1099 forms, and all
13 logs and records pertaining to safe deposit boxes, commercial mail boxes, and storage
14 facilities.

15 *Provided, however,* that this Section does not prohibit any transfers of Assets to the
16 Receiver or agreed to in writing by Plaintiff, or repatriation of foreign Assets specifically
17 required by this Order.

18 **IX. Financial Disclosures**

19 **IT IS FURTHER ORDERED** that, unless previously submitted in full
20 compliance with the TRO, each Defendant, within five (5) days of entry of this Order,
21 shall prepare and deliver to Plaintiff's counsel and the Receiver:

22 A. Completed financial statements on the forms attached to the TRO as
23 **Attachment A** (Financial Statement of Individual Defendant) for each Individual
24 Defendant, and **Attachment B** (Financial Statement of Corporate Defendant) for each
25 Corporate Defendant; and

26 B. Completed **Attachment C** to the TRO (IRS Form 4506, Request for Copy
27 of a Tax Return) for each Individual and Corporate Defendant.

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1 **X. Foreign Asset Repatriation**

2 **IT IS FURTHER ORDERED** that, unless previously completed in full
3 compliance with the TRO, within five (5) days following entry of this Order, each
4 Defendant shall:

5 A. Provide Plaintiff's counsel and the Receiver with a full accounting, verified
6 under oath and accurate as of the date of this Order, of all Assets, Documents, and
7 accounts outside of the United States which are: (1) titled in the name, individually or
8 jointly, of any Defendant; (2) held by any person or entity for the benefit of any
9 Defendant or for the benefit of, any corporation, partnership, asset protection trust, or
10 other entity that is directly or indirectly owned, managed or controlled by any Defendant;
11 or (3) under the direct or indirect control, whether jointly or singly, of any Defendant;

12 B. Take all steps necessary to provide Plaintiff's counsel and Receiver access to
13 all Documents and records that may be held by third parties located outside of the
14 territorial United States, including signing the Consent to Release of Financial Records
15 appended to the TRO as **Attachment D**;

16 C. Transfer to the territory of the United States all Documents and Assets
17 located in foreign countries which are: (1) titled in the name, individually or jointly, of
18 any Defendant; (2) held by any person or entity for the benefit of any Defendant or for
19 the benefit of any corporation, partnership, asset protection trust, or other entity that is
20 directly or indirectly owned, managed or controlled by any Defendant; or (3) under the
21 direct or indirect control, whether jointly or singly, of any Defendant; and

22 D. The same business day as any repatriation, (1) notify the Receiver and
23 counsel for Plaintiff of the name and location of the Financial Institution or other entity
24 that is the recipient of such Documents or Assets; and (2) serve this Order on any such
25 Financial Institution or other entity.

26 **XI. Non-Interference with Repatriation**

27 **IT IS FURTHER ORDERED** that Defendants, Defendants' officers, agents,
28 employees, and attorneys, and all other persons in active concert or participation with any

1 of them, who receive actual notice of this Order, whether acting directly or indirectly, are
2 restrained and enjoined from taking any action, directly or indirectly, which may result in
3 the encumbrance or dissipation of foreign Assets, or in the hindrance of the repatriation
4 required by this Order, including:

5 A. Sending any communication or engaging in any other act, directly or
6 indirectly, that results in a determination by a foreign trustee or other entity that a
7 “duress” event has occurred under the terms of a foreign trust agreement until such time
8 that all Defendants’ Assets have been fully repatriated pursuant to this Order; or

9 B. Notifying any trustee, protector or other agent of any foreign trust or other
10 related entities of either the existence of this Order, or of the fact that repatriation is
11 required pursuant to a court order, until such time that all Defendants’ Assets have been
12 fully repatriated pursuant to this Order.

13 **XII. Suspension of Collection On Accounts**

14 **IT IS FURTHER ORDERED** that Defendants, Defendants’ officers, agents,
15 employees, and attorneys, and all other persons in active concert or participation with
16 them, who receive actual notice of this Order, whether acting directly or indirectly, and
17 any other person served with a copy of this Order, are hereby restrained and enjoined
18 from attempting to collect, collecting, or assigning any right to collect payment for
19 Defendants’ products or services.

20 **XIII. Consumer Credit Reports**

21 **IT IS FURTHER ORDERED** that Plaintiff may obtain credit reports concerning
22 any Defendants pursuant to Section 604(a)(1) of the Fair Credit Reporting Act, 15 U.S.C.
23 1681b(a)(1), and that, upon written request, any credit reporting agency from which such
24 reports are requested shall provide them to Plaintiff.

25 **XIV. Preservation of Records**

26 **IT IS FURTHER ORDERED** that Defendants, Defendants’ officers, agents,
27 employees, and attorneys, and all other persons in active concert or participation with any
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1 of them, who receive actual notice of this Order, whether acting directly or indirectly, are
2 restrained and enjoined from:

3 A. Destroying, erasing, falsifying, writing over, mutilating, concealing, altering,
4 transferring, or otherwise disposing of, in any manner, directly or indirectly, Documents
5 that relate to: (1) the business, business practices, Assets, or business or personal
6 finances of any Defendant; (2) the business practices or finances of entities directly or
7 indirectly under the control of any Defendant; or (3) the business practices or finances of
8 entities directly or indirectly under common control with any other Defendant; or

9 B. Failing to create and maintain Documents that, in reasonable detail,
10 accurately, fairly, and completely reflect Defendants' incomes, disbursements,
11 transactions, and use of Defendants' Assets.

12 **XV. Report of New Business Activity**

13 **IT IS FURTHER ORDERED** that Defendants, Defendants' officers, agents,
14 employees, and attorneys, and all other persons in active concert or participation with any
15 of them, who receive actual notice of this Order, whether acting directly or indirectly, are
16 restrained and enjoined from creating, operating, or exercising any control over any
17 business entity, whether newly formed or previously inactive, including any partnership,
18 limited partnership, joint venture, sole proprietorship, or corporation, without first
19 providing Plaintiff's counsel and the Receiver with a written statement disclosing: (1)
20 the name of the business entity; (2) any fictitious business names associated with the
21 entity; (3) the address and telephone number of the business entity; (4) the state of
22 incorporation or organization of the business entity; (5) the Employee Identification
23 Number or Federal Employer Identification Number of the business entity; (6) the names
24 of the business entity's officers, directors, principals, managers, and employees; and (7) a
25 detailed description of the business entity's intended activities.

26 **XVI. Permanent Receiver**

27 **IT IS FURTHER ORDERED** that Thomas W. McNamara of McNamara Smith
28 LLP, San Diego, California, is appointed Permanent Receiver of the Receivership

1 Entities and any of their affiliates, subsidiaries, divisions, or sales or customer service
2 operations, wherever located, with full power of an equity receiver. The Receiver shall
3 be accountable directly to this Court. The Receiver shall comply with all Local Rules of
4 this Court governing receivers.

5 **XVII. Receivership Duties**

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

8 A. Assume full control of Receivership Entities by removing, as the Receiver
9 deems necessary or advisable, any director, officer, independent contractor, employee,
10 attorney, or agent of any Receivership Entity from control of, management of, or
11 participation in, the affairs of the Receivership Entity;

12 B. Take exclusive custody, control, and possession of all Assets and
13 Documents of, or in the possession, custody, or under the control of, any Receivership
14 Entity, wherever situated. The Receiver shall have full power to divert and open mail,
15 and to sue for, collect, receive, take in possession, hold and manage all assets and
16 documents of the Receivership Entities and other persons or entities whose interests are
17 now held by or under the direction, possession, custody, or control of the Receivership
18 Entities. Provided, however, that the Receiver shall not collect any amount from a
19 consumer or allow the Receivership Entities to continue to debit or otherwise charge a
20 consumer's account, if the Receiver believes the consumer was a victim of the unfair or
21 deceptive acts or practices alleged in the Complaint in this matter;

22 C. Use any means necessary to take possession of and to secure all areas of the
23 business premises of the Receivership Entities. Such steps may include the following as
24 the Receiver deems necessary or advisable: (a) serving this Order; (b) completing a
25 written inventory of all receivership assets; (c) obtaining pertinent information from all
26 employees and other agents of the Receivership Entities, including the name, home
27 address, Social Security number, job description, method of compensation, and all
28 accrued and unpaid commissions and compensation of each such employee or agent; (d)

1 videotaping all portions of the locations; (e) securing the locations by changing the locks
2 and disconnecting any computer modems or other means of access to the computer or
3 other records maintained at the locations; (f) requiring any persons present on the
4 premises at the time this Order is served to leave the premises, to provide the Receiver
5 with proof of identification, or to demonstrate to the satisfaction of the Receiver that such
6 persons are not removing from the premises documents or assets of the Receivership
7 Entities; and/or (g) employ the assistance of law enforcement officers as the Receiver
8 deems necessary to implement the provisions of this Order;

9 D. Conserve, hold, and manage all receivership assets, and perform all acts
10 necessary or advisable to preserve the value of those assets, in order to prevent any
11 irreparable loss, damage, or injury to consumers or to creditors of the Receivership
12 Entities, including obtaining an accounting of the assets and preventing transfer,
13 withdrawal, or misapplication of assets, and including the authority to liquidate or close
14 out any open securities or commodity futures positions of the Receivership Entities;

15 E. Enter into contracts and purchase insurance as advisable or necessary;

16 F. Prevent the inequitable distribution of assets and determine, adjust, and
17 protect the interests of consumers and creditors who have transacted business with the
18 Receivership Entities;

19 G. Manage and administer the business of the Receivership Entities until
20 further order of this Court by performing all incidental acts that the Receiver deems to be
21 advisable or necessary, which includes retaining, hiring, or dismissing any employees,
22 independent contractors, or agents;

23 H. Choose, engage, and employ attorneys, accountants, appraisers, and other
24 independent contractors and technical specialists, as the Receiver deems advisable or
25 necessary in the performance of duties and responsibilities under the authority granted by
26 this Order;

27 I. Make payments and disbursements from the receivership estate that are
28 necessary or advisable for carrying out the directions of, or exercising the authority

1 granted by, this Order, and to incur, or authorize the making of, such agreements as may
2 be necessary and advisable in discharging his or her duties as Receiver. The Receiver
3 shall apply to the Court for prior approval of any payment of any debt or obligation
4 incurred by the Receivership Entities prior to the date of entry of this Order, except
5 payments that the Receiver deems necessary or advisable to secure Assets of the
6 Receivership Entities, such as rental payments;

7 J. Determine and implement the manner in which the Receivership Entities
8 will comply with, and prevent violations of, this Order and all other applicable laws;

9 K. Institute, compromise, adjust, appear in, intervene in, or become party to
10 such actions or proceedings in state, federal or foreign courts that the Receiver deems
11 necessary and advisable to preserve or recover the assets of the Receivership Entities or
12 that the Receiver deems necessary and advisable to carry out the Receiver's mandate
13 under this Order;

14 L. Defend, compromise, adjust, or otherwise dispose of any or all actions or
15 proceedings instituted in the past or in the future against the Receiver in his or her role as
16 Receiver, or against the Receivership Entities that the Receiver deems necessary and
17 advisable to preserve the assets of the Receivership Entities or that the Receiver deems
18 necessary and advisable to carry out the Receiver's mandate under this Order;

19 M. Continue and conduct the business of the Receivership Entities in such
20 manner, to such extent, and for such duration as the Receiver may in good faith deem to
21 be necessary or appropriate to operate the business profitably and lawfully, if at all;
22 provided, however, that the continuation and conduct of the business shall be conditioned
23 upon the Receiver's good faith determination that the business can be lawfully operated
24 at a profit using the assets of the receivership estate;

25 N. Issue and serve discovery and subpoenas on persons or entities for the
26 production of documents or for oral examination relating to the acts, conduct, property,
27 assets, liabilities and financial condition of the Defendants and other entities that are now
28 or may later be placed in receivership, or to any matter that affects the administration of

1 the receivership estate, such that the Receiver's investigatory powers are coextensive
2 with the authority that Federal Rule of Bankruptcy Procedure 2004(b) grants to a
3 bankruptcy trustee. The Receiver is authorized to serve the discovery and subpoenas
4 authorized under this Paragraph by certified mail, overnight delivery, personally, by any
5 private process server, or by any similar means;

6 O. Open one or more bank accounts as designated depositories for funds of the
7 Receivership Entities. The Receiver shall deposit all funds of the Receivership Entities in
8 such a designated account and shall make all payments and disbursements from the
9 receivership estate from such an account;

10 P. Maintain accurate records of all receipts and expenditures incurred as
11 Receiver;

12 Q. Cooperate with reasonable requests for information or assistance from any
13 state or federal civil or criminal law enforcement agency; and

14 R. File reports with the Court on a timely and reasonable basis.

15 **XVIII. Cooperation With the Receiver**

16 **IT IS FURTHER ORDERED** that:

17 A. Defendants, Receivership Entities, their officers, agents, employees, and
18 attorneys, and all other persons in active concert or participation with any of them, who
19 receive actual notice of this Order shall fully cooperate with and assist the Receiver. This
20 cooperation and assistance shall include, but not be limited to:

21 1. Providing information to the Receiver that the Receiver deems
22 necessary to exercise the authority and discharge the responsibilities of the Receiver
23 under this Order;

24 2. Providing any keys, codes, user names and passwords required to
25 access any computers, electronic devices, mobile devices, and machines (onsite or
26 remotely) and any cloud account (including specific method to access account) or
27 electronic file in any medium; and
28

1 3. Advising all persons who owe money to any Receivership Entity that
2 all debts should be paid directly to the Receiver.

3 B. Defendants and their officers, agents, employees, and attorneys, and all other
4 persons in active concert or participation with any of them, who receive actual notice of
5 this Order, whether acting directly or indirectly, are hereby restrained and enjoined from:

6 1. Transacting any of the business of the Receivership Entities;

7 2. Destroying, secreting, defacing, transferring, or otherwise altering or
8 disposing of any documents of the Receivership Entities, including books, records,
9 accounts, writings, drawings, graphs, charts, photographs, audio and video recordings,
10 computer records, and other data compilations, electronically-stored records, or any other
11 records of any kind or nature;

12 3. Transferring, receiving, altering, selling, encumbering, pledging,
13 assigning, liquidating, or otherwise disposing of any assets owned, controlled, or in the
14 possession or custody of, or in which an interest is held or claimed by, the Receivership
15 Entities, or the Receiver;

16 4. Excusing debts owed to the Receivership Entities;

17 5. Failing to notify the Receiver of any asset, including accounts, of the
18 Receivership Entities held in any name other than the name of the Receivership Entities,
19 or by any person or entity other than the Receivership Entities, or failing to provide any
20 assistance or information requested by the Receiver in connection with obtaining
21 possession, custody, or control of such assets;

22 6. Doing any act or refraining from any act whatsoever to interfere with
23 the Receiver's taking custody, control, possession, or managing of the assets or
24 documents subject to this receivership; or to harass or interfere with the Receiver in any
25 way; or to interfere in any manner with the exclusive jurisdiction of this Court over the
26 assets or documents of the Receivership Entities; or to refuse to cooperate with the
27 Receiver or the Receiver's duly authorized agents in the exercise of their duties or
28 authority under any Order of this Court; or

1 7. Filing, or causing to be filed, any petition on behalf of the
2 Receivership Entities for relief under the United States Bankruptcy Code,
3 11 U.S.C. §§ 101-1532, without prior permission from this Court.

4 **XIX. Delivery of Receivership Property**

5 **IT IS FURTHER ORDERED** that:

6 A. Immediately upon entry of this Order, or within such period as may be
7 permitted by the Receiver, Defendants or any other person or entity shall transfer or
8 deliver possession, custody, and control of the following to the Receiver:

9 1. All assets of the Receivership Entities, including assets subject to
10 repatriation pursuant to Section X, *infra*;

11 2. All documents of the Receivership Entities, including books and
12 records of accounts, all financial and accounting records, balance sheets, income
13 statements, bank records (including monthly statements, canceled checks, records of wire
14 transfers, and check registers), client lists, title documents and other papers;

15 3. All assets belonging to members of the public now held by the
16 Receivership Entities; and

17 4. All keys, codes, and passwords necessary to gain or to secure access
18 to any assets or documents of the Receivership Entities, including access to their business
19 premises, means of communication, accounts, computer systems (onsite and remote),
20 mailboxes, virtual offices, electronic data hosts, or other property. This includes
21 providing the necessary means to gain access to P.O. Boxes, CMRA accounts and/or mail
22 receiving boxes.

23 B. In the event any person or entity fails to deliver or transfer any receivership
24 asset or document or otherwise fails to comply with any provision of this Section, the
25 Receiver may file *ex parte* an Affidavit of Non-Compliance regarding the failure. Upon
26 filing of the affidavit, the Court may authorize, without additional process or demand,
27 Writs of Possession or Sequestration or other equitable writs requested by the Receiver.
28 The writs shall authorize and direct the United States Marshal or any sheriff or deputy

1 sheriff of any county, or any other federal or state law enforcement officer, to seize the
2 asset, document, or other thing and to deliver it to the Receiver.

3 **XX. Transfer of Funds to the Receiver**

4 **IT IS FURTHER ORDERED** that, upon service of a copy of this Order, all
5 financial institutions, finance companies, commercial lending companies, credit card
6 processing agents or agents providing electronic funds transfer services or automated
7 clearing house processing, brokerage houses, escrow agents, money market or mutual
8 funds, title companies, commodity futures merchants, commodity trading companies,
9 precious metal dealers, trustees, or other financial institutions or depositories of any kind,
10 shall cooperate with all reasonable requests of the Receiver relating to implementation of
11 this Order, including transferring funds at his or her direction and producing records
12 related to the assets of the Receivership Entities.

13 **XXI. Stay of Actions**

14 **IT IS FURTHER ORDERED** that, except by leave of this Court, during the
15 pendency of the receivership ordered herein, Defendants, Defendants' officers, agents,
16 employees, attorneys, and all other persons in active concert or participation with any of
17 them, who receive actual notice of this Order, and their corporations, subsidiaries,
18 divisions, or affiliates, and all investors, creditors, stockholders, lessors, customers and
19 other persons seeking to establish or enforce any claim, right, or interest against or on
20 behalf of Defendants, and all others acting for or on behalf of such persons, are enjoined
21 from taking action that would interfere with the exclusive jurisdiction of this Court over
22 the Assets or Documents of the Receivership Entities, including:

23 A. Filing or assisting in the filing of a petition for relief under the Bankruptcy
24 Code, 11 U.S.C. § 101 *et seq.*, or of any similar insolvency proceeding on behalf of the
25 Receivership Entities;

26 B. Commencing, prosecuting, or continuing a judicial, administrative, or other
27 action or proceeding against the Receivership Entities, including the issuance or
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1 employment of process against the Receivership Entities, except that such actions may be
2 commenced if necessary to toll any applicable statute of limitations; or

3 C. Filing or enforcing any lien on any asset of the Receivership Entities, taking
4 or attempting to take possession, custody, or control of any Asset of the Receivership
5 Entities; or attempting to foreclose, forfeit, alter, or terminate any interest in any Asset of
6 the Receivership Entities, whether such acts are part of a judicial proceeding, are acts of
7 self-help, or otherwise.

8 *Provided, however,* that this Order does not stay: (1) the commencement or
9 continuation of a criminal action or proceeding; (2) the commencement or continuation of
10 an action or proceeding by a governmental unit to enforce such governmental unit's
11 police or regulatory power; or (3) the enforcement of a judgment, other than a money
12 judgment, obtained in an action or proceeding by a governmental unit to enforce such
13 governmental unit's police or regulatory power.

14 **XXII. Compensation of Receiver**

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

25 **XXIII. Receiver's Bond**

26 **IT IS FURTHER ORDERED** that, unless he has already done so in compliance
27 with the TRO, the Receiver shall file with the Clerk of this Court a bond in the sum of
28 \$30,000.00 with sureties to be approved by the Court, conditioned that the Receiver will

1 well and truly perform the duties of the office and abide by and perform all acts the Court
2 directs.

3 **XXIV. Access to Business Premises**

4 **IT IS FURTHER ORDERED** that Defendants, and their officers, agents,
5 employees, and attorneys, and all other persons in active concert or participation with any
6 of them, who receive actual notice of this Order, whether acting directly or indirectly, and
7 the Receiver, shall allow the FTC's representatives, agents, and assistants, as well as the
8 Receivership Entities' representatives, and the Individual Defendants themselves, access
9 to all of the Receivership Entities' business premises, or any other premises where the
10 Receivership Entities conduct business

11 The purpose of this access shall be to inspect and copy all books, records,
12 documents, accounts, and other property owned by, or in the possession of, the
13 Receivership Entities or their agents. The Receiver shall have the discretion to determine
14 the time, manner, and conditions of such access. The FTC may remove materials from
15 the Receivership Entities' business premises to inspect, inventory, and copy such
16 materials. The FTC shall return materials so removed within five (5) business days of
17 completing said inventory and copying. The FTC's access to Defendants' documents
18 pursuant to this Section shall not provide grounds for any Defendant to object to any
19 subsequent request for documents served by any Plaintiff.

20 The FTC and the Receiver, and their representatives, agents, contractors, and
21 assistants, are authorized to obtain the assistance of federal, state, and local law
22 enforcement officers, including the United States Marshals Service and United States
23 Postal Service, as they deem necessary to effect service and to implement peacefully the
24 provisions of this Order.

25 **XXV. Expedited Discovery**

26 **IT IS FURTHER ORDERED** that, notwithstanding the provisions of the Fed. R.
27 Civ. P. 26(d) and (f) and 30(a)(2)(A)(iii), and pursuant to Fed. R. Civ. P. 30(a), 34, and
28 45, Plaintiff and the Receiver are granted leave, at any time after service of this Order, to

1 conduct limited expedited discovery for the purpose of discovering: (1) the nature,
2 location, status, and extent of Defendants' Assets; (2) the nature, location, and extent of
3 Defendants' business transactions and operations; (3) Documents reflecting Defendants'
4 business transactions and operations; or (4) compliance with this Order. The limited
5 expedited discovery set forth in this Section shall proceed as follows:

6 A. Plaintiff and the Receiver may serve upon parties requests for production of
7 Documents or inspection that require production or inspection within five (5) days of
8 service, *provided, however*, that three (3) days of notice shall be deemed sufficient for the
9 production of any such Documents that are maintained or stored only in an electronic
10 format.

11 B. Service of discovery upon a party to this action, taken pursuant to this
12 Section, shall be sufficient if made by facsimile, e-mail, or by overnight delivery.

13 C. Any expedited discovery taken pursuant to this Section is in addition to, and
14 is not subject to, the limits on discovery set forth in the Federal Rules of Civil Procedure
15 and the Local Rules of this Court. The expedited discovery permitted by this Section
16 does not require a meeting or conference of the parties, pursuant to Rules 26(d) and (f) of
17 the Federal Rules of Civil Procedure.

18 D. The parties are exempted from making initial disclosures under Fed. R. Civ.
19 P. 26(a)(1) until further order of this Court.

20 **XXVI. Distribution of Order by Defendants**

21 **IT IS FURTHER ORDERED** that Defendants shall immediately provide a copy
22 of this Order to each affiliate, telemarketer, marketer, sales entity, successor, assign,
23 member, officer, director, employee, agent, independent contractor, client, attorney,
24 spouse, subsidiary, division, and representative of any Defendant, and shall, within ten
25 (10) days from the date of entry of this Order, provide Plaintiff and the Receiver with a
26 sworn statement that this provision of the Order has been satisfied, which statement shall
27 include the names, physical addresses, phone numbers, and e-mail addresses of each such
28 person or entity who received a copy of the Order. Furthermore, Defendants shall not

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

5 **XXVII. Service of This Order**

6 **IT IS FURTHER ORDERED** that copies of this Order may be served by any
7 means, including facsimile transmission, electronic mail or other electronic messaging,
8 personal or overnight delivery, U.S. Mail or FedEx, by agents and employees of Plaintiff,
9 by any law enforcement agency, or by private process server, upon any Defendant or any
10 person (including any Financial Institution) that may have possession, custody or control
11 of any Asset or Document of any Defendant, or that may be subject to any provision of
12 this Order pursuant to Rule 65(d)(2) of the Federal Rules of Civil Procedure. For
13 purposes of this Section, service upon any branch, subsidiary, affiliate or office of any
14 entity shall effect service upon the entire entity.

15 **XXVIII. Correspondence and Service on Plaintiff**

16 **IT IS FURTHER ORDERED** that, for the purpose of this Order, all
17 correspondence and service of pleadings on Plaintiff shall be addressed to:

18 Samantha Gordon
19 Matthew Wernz
20 Federal Trade Commission, Midwest Region
21 230 South Dearborn Street, Room 3030
22 Chicago, Illinois 60604
23 (312) 960-5634 [telephone]
24 (312) 960-5600 [facsimile]
25 sgordon@ftc.gov
26 mwernz@ftc.gov

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XXIX. Retention of Jurisdiction

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

IT IS SO ORDERED.

Dated: August 24, 2018


Hon. Michael M. Anello
United States District Judge