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JUDGE KATHLEEN CARDONE FILED

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF TEXAS

2019 JUL 19 PM 2:01

CLERK U.S. DISTRICT COURT WESTERN DISTRICT OF TEXAS BY: *AM*

No. _____:19-CV-

EP 19 CV 0196

~~DR. [unclear]~~

EX PARTE TEMPORARY RESTRAINING ORDER WITH ASSET FREEZE, APPOINTMENT OF A TEMPORARY RECEIVER, AND OTHER EQUITABLE RELIEF, AND ORDER TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE

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Federal Trade Commission, and

State of Ohio ex rel. Attorney General Dave Yost,

Plaintiffs,

v.

Educare Centre Services, Inc., a New Jersey corporation, also dba Credit Card Services, Card Services, Credit Card Financial Services, Care Net, Tripletel Inc., Revit Educ Srvc, L.L. Vision, Care Value Services, and Card Value Services,

Tripletel, Inc., a Delaware corporation,

Prolink Vision, S.R.L., a Dominican Republic limited liability company,

Sam Madi, individually and as an owner, officer, member, and/or manager of Educare Centre Services, Inc.,

Mohammad Souheil a/k/a Mohammed Souheil and Mike Souheil, individually and as an owner, officer, member, and/or manager of Prolink Vision, S.R.L.,

Wissam Abedel Jilal a/k/a Sam Jilal, individually and as an owner, officer, member, and/or manager of Prolink Vision, S.R.L.,

Charles Kharouf, individually and as an owner, officer, member, and/or manager of Prolink Vision, S.R.L.,

Defendants,

9896988 Canada Inc., a Canadian company,

1 Relief Defendant.

2 Plaintiffs, Federal Trade Commission (“FTC”) and the State of Ohio (collectively,
3 “Plaintiffs”), have filed their Complaint for Permanent Injunction and Other Equitable
4 Relief under Section 13(b) and 19 of the FTC Act, 15 U.S.C. § 53(b), 57b, the
5 Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”),
6 15 U.S.C. §§ 6101-6108, the Ohio Consumer Sales Practices Act (“CSPA”), R.C.
7 1345.07, and the and the Ohio Telephone Solicitation Sales Act (“TSSA”), R.C. 4719.01
8 (Docket No. 1-2), and have moved, under Fed. R. Civ. P. 65(b), for a temporary
9 restraining order, asset freeze, other equitable relief, and an order to show cause why a
10 preliminary injunction should not issue against Educare Centre Services, Inc.; Tripletel,
11 Inc.; Prolink Vision, S.R.L.; Sam Madi; Mohammad Souheil; Wissam Abedel Jilal; and
12 Charles Kharouf (collectively, “Defendants”) and Relief Defendant 9896988 Canada, Inc.
13 (Docket No. 1-7).

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16 **FINDINGS OF FACT**

17 The Court, having considered the Complaint, the *ex parte* Motion for a
18 Temporary Restraining Order, declarations, exhibits, and the memorandum of points and
19 authorities filed in support thereof, and being otherwise advised, finds that:

20
21 A. This Court has jurisdiction over the subject matter of this case, and there is good
22 cause to believe that it will have jurisdiction over all parties hereto and that venue in this
23 district is proper.

24 B. Defendants are engaged in an unlawful telemarketing scheme that markets a
25 credit card interest rate reduction service. They deliver unauthorized pre-recorded
26 telephone messages (“robocalls”) to consumers in violation of the Telemarketing Sales
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1 Rule (“TSR”), 16 C.F.R. Part 310. Defendants also violate the TSR by using remotely
2 created payment orders or remotely created checks (“RCPOs”) as payment for goods or
3 services they offer or sell to consumers through telemarketing. The TSR explicitly
4 prohibits the use of RCPOs in any type of telemarketing transactions. 16 C.F.R.
5 310.4(a)(9)
6

7 C. Defendants’ telemarketing scheme has generated more than \$7.5 million in RCPO
8 payments from consumers since June 13, 2016, the date when the TSR prohibition on the
9 use of RCPOs in telemarketing transactions went into effect.

10 D. As demonstrated by the declarations of consumers, hundreds of Better Business
11 Bureau complaints, declarations of investigators from the FTC and the Ohio Attorney
12 General’s Office, bank records, and other documentation filed by Plaintiffs, there is good
13 cause to believe that Defendants have engaged in and are likely to engage in acts or
14 practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), the TSR, 16 C.F.R.
15 Part 310, the Ohio CSPA, R.C. 1345.01 *et seq.*, and the Ohio TSSA, R.C. 4719.01 and
16 that Plaintiffs are therefore likely to prevail on the merits of this action.
17

18 E. There is good cause to believe that immediate and irreparable harm will result
19 from Defendants’ ongoing violations of the FTC Act, the TSR, and the Ohio CSPA and
20 TSSA unless Defendants are restrained and enjoined by order of this Court.
21

22 F. There is good cause to believe that Relief Defendant 9896988 Canada Inc. has
23 received funds in excess of \$1 million that can be traced directly to Defendants’ unlawful
24 acts or practices alleged in the Complaint, and that it has no legitimate claim to those
25 funds.
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1 G. There is good cause to believe that immediate and irreparable damage to the
2 Court's ability to grant effective final relief for consumers – including monetary
3 restitution, rescission, disgorgement or refunds – will occur from the sale, transfer,
4 destruction or other disposition or concealment by Defendants of their assets or records,
5 unless Defendants are immediately restrained and enjoined by order of this Court; and
6 that, in accordance with Fed. R. Civ. P. 65(b) the interests of justice require that this
7 Order be granted without prior notice to Defendants. Thus, there is good cause for
8 relieving Plaintiffs of the duty to provide Defendants with prior notice of its Application
9 for a Temporary Restraining Order.
10

11 H. Good cause exists for appointing a temporary receiver over the Receivership
12 Entities, freezing Defendants' and Relief Defendant's assets, permitting the Receiver
13 immediate access to Defendants' and the Relief Defendant's business premises to obtain
14 and take control of Defendants' and the Relief Defendant's business records wherever the
15 records are stored, and permitting the Plaintiffs and the Receiver to take expedited
16 discovery.
17

18 I. Weighing the equities and considering Plaintiffs' likelihood of ultimate success
19 on the merits, a temporary restraining order with an asset freeze, the appointment of a
20 temporary receiver, immediate access to Defendants' business premises and records,
21 expedited discovery, and other equitable relief is in the public interest.
22

23 J. This Court has authority to issue this Order pursuant to Section 13(b) of the FTC
24 Act, 15 U.S.C. § 53(b); Federal Rule of Civil Procedure 65; and the All Writs Act, 28
25 U.S.C. § 1651.
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1 K. No security is required of any agency of the United States for issuance of a
2 temporary restraining order. Fed. R. Civ. P. 65(c).

3 **DEFINITIONS**

4 For the purpose of this Order, the following definitions shall apply:

5 A. **“Corporate Defendants”** means Educare Centre Services, Inc.; Tripletel, Inc.;
6 Prolink Vision, S.R.L., and each of their subsidiaries, affiliates, successors, and assigns.

7 B. **“Debt Relief Product or Service”** means any product, service, plan, or program
8 represented, expressly or by implication, to renegotiate, settle, or in any way alter the
9 terms of payment or other terms of the debt or obligation between a consumer and one or
10 more creditors or debt collectors, including a reduction in the balance, interest rate, or
11 fees owed by a consumer to a creditor or debt collector.
12

13 C. **“Defendants”** means the Corporate Defendants and the Individual Defendants,
14 individually, collectively, or in any combination.
15

16 D. **“Document”** is synonymous in meaning and equal in scope to the usage of
17 “document” and “electronically stored information” in Federal Rule of Civil Procedure
18 34(a), Fed. R. Civ. P. 34(a), and includes writings, drawings, graphs, charts, photographs,
19 sound and video recordings, images, Internet sites, web pages, websites, electronic
20 correspondence, including e-mail and instant messages, contracts, accounting data,
21 advertisements, FTP Logs, Server Access Logs, books, written or printed records,
22 handwritten notes, telephone logs, telephone scripts, receipt books, ledgers, personal and
23 business canceled checks and check registers, bank statements, appointment books,
24 computer records, customer or sales databases and any other electronically stored
25 information, including Documents located on remote servers or cloud computing
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1 systems, and other data or data compilations from which information can be obtained
2 directly or, if necessary, after translation into a reasonably usable form. A draft or non-
3 identical copy is a separate Document within the meaning of the term.

4 E. **“Electronic Data Host”** means any Person in the business of storing, hosting, or
5 otherwise maintaining electronically stored information. This includes, but is not limited
6 to, any entity hosting a website or server, and any entity providing “cloud based”
7 electronic storage.

9 F. **“Individual Defendants”** means Sam Madi; Mohammad Souheil; Wissam
10 Abedel Jilal; and Charles Kharouf, individually, collectively, or in any combination.

11 G. **“National Do Not Call Registry”** means the registry of telephone numbers
12 maintained by the FTC, pursuant to Section 310.4(b)(1)(iii)(B) of the TSR, 16 C.F.R. §
13 310.4(b)(1)(iii)(B), of Persons who do not wish to receive Outbound Telephone Calls to
14 induce the purchase of goods or services.

16 H. **“Outbound Telephone Call”** means a telephone call initiated by a Telemarketer
17 to induce the purchase of goods or services or to solicit a charitable contribution.

18 I. **“Person”** means any natural person or any entity, corporation, partnership, or
19 association of persons.

20 J. **“Remotely Created Payment Order”** or **“RCPO”** means a payment instruction
21 or order, whether created in electronic or paper format, drawn on a payor’s account that is
22 initiated or created by or on behalf of the payee, and which is deposited into or cleared
23 through the check clearing system. For purposes of this definition, an account includes
24 any financial account or credit or other arrangement that allows checks, payment
25 instructions, or orders to be drawn against it that are payable by, through, or at a bank.
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1 K. “**Receiver**” means the temporary receiver appointed in Section XII of this Order
2 and any deputy receivers that shall be named by the temporary receiver.

3 L. “**Receivership Entities**” means the Corporate Defendants, the Relief Defendant,
4 as well as any other entity that has conducted any business related to Defendants’ credit
5 card interest rate reduction services or products, including receipt of assets or funds
6 derived from any activity that is the subject of the Complaint in this matter, and that the
7 Receiver determines is controlled or owned by any Defendant.
8

9 M. “**Relief Defendant**” means 9896988 Canada, Inc. and each of its subsidiaries,
10 affiliates, successors, and assigns.

11 N. “**Seller**” means any Person who, in connection with a Telemarketing transaction,
12 provides, offers to provide, or arranges for others to provide goods or services to a
13 customers in exchange for consideration.
14

15 O. “**Telemarketer**” means any Person who, in connection with Telemarketing,
16 initiates or receives telephone calls to or from a customer or donor.

17 P. “**Telemarketing**” means any plan, program, or campaign that is conducted to
18 induce the purchase of goods or services or a charitable contribution by use of one or
19 more telephones.
20

21 **ORDER**

22 **I. PROHIBITED MISREPRESENTATIONS AND OMISSIONS**

23 **IT IS THEREFORE ORDERED** that Defendants, Defendants’ officers, agents,
24 employees, and attorneys, and all other Persons in active concert or participation with
25 them, who receive actual notice of this Order by personal service or otherwise, whether
26 acting directly or indirectly, are temporarily restrained and enjoined from:
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1 A. Misrepresenting, or assisting others in misrepresenting, expressly or by
2 implication:

3 1. That consumers who purchase a service or product from Defendants will
4 have their credit card interest rates reduced substantially;

5 2. That consumers who purchase a service or product from Defendants will
6 be entitled to a full refund if Defendants will not obtain a lower interest rate for
7 the consumers, or if the consumers are not completely satisfied with Defendants'
8 service or product;

9 3. Any other fact material to consumers concerning any good or service, such
10 as: the total costs; any material restrictions, limitations or conditions; or any
11 material aspect of its performance, efficacy, nature, or central characteristics;
12

13
14 B. Representing, or assisting others in representing, expressly or by implication, the
15 benefits, performance, or efficacy of any good or service, unless the representation is
16 non-misleading, and, at the time such representation is made, Defendants possess and
17 rely upon competent and reliable evidence to substantiate that the representation is true.
18

19 **II. PROHIBITIONS ON VIOLATING THE TSR**

20 **IT IS FURTHER ORDERED** that Defendants, Defendants' officers, agents,
21 employees, and attorneys, and all other Persons in active concert or participation with
22 them, who receive actual notice of this Order by personal service or otherwise, whether
23 acting directly or indirectly, in connection with Telemarketing of any product or service,
24 are temporarily restrained and enjoined from:
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26 A. Initiating, or causing others to initiate, an Outbound Telephone Call:
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1. That misrepresents, directly or by implication, any material aspect of any Debt Relief Product or Service, including the amount of money or the percentage of the debt amount that a consumer may save by using such service and the amount of time necessary to achieve the represented results;
2. That fails to disclose, in a clear and conspicuous manner, that any Debt Relief Product or Service might result in a consumer having to pay additional fees to a credit-card issuer;
3. That misrepresents, directly or by implication:
 - (a) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of a sales offer;
 - (b) Any material restriction, limitation, or condition to purchase, receive, or use goods or services that are the subject of a sales offer;
 - (c) Any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer; or
 - (d) Any material aspect of the nature or terms of the seller's refund, cancellation, exchange, or repurchase policies;
4. To a Person whose telephone number is on the National Do Not Call Registry;
5. That delivers a prerecorded message;
6. To a telephone number within a given area code when Defendants have not, either directly or through another Person, paid the required annual fee for access to the telephone numbers within that area code that are included on the National Do Not Call Registry;

1 B. Creating or causing to be created, directly or indirectly, a Remotely Created
2 Payment Order as payment for goods or services offered or sold through telemarketing;

3 C. Requesting or receiving payment of any fee or consideration from a consumer for
4 any Debt Relief Product or Service until and unless Defendants have renegotiated,
5 settled, reduced, or otherwise altered the terms of at least one debt pursuant to a
6 settlement agreement, debt management plan, or other such valid contractual agreement
7 executed by the consumer and the consumer has made at least one payment pursuant to
8 that settlement agreement, debt management plan, or other valid contractual agreement
9 between the consumer and the creditor or debt collector; or
10

11 D. Violating any provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310,
12 attached as Attachment A.
13

14 **III. PROHIBITION ON RELEASE OF CUSTOMER INFORMATION**

15 **IT IS FURTHER ORDERED** that Defendants, Defendants' officers, agents,
16 employees, and attorneys, and all other Persons in active concert or participation with any
17 of them, who receive actual notice of this Order, whether acting directly or indirectly, are
18 hereby temporarily restrained and enjoined from:
19

20 A. Selling, renting, leasing, transferring, or otherwise disclosing, the name, address,
21 birth date, telephone number, email address, credit card number, bank account number,
22 Social Security number, or other financial or identifying information of any person that
23 any Defendant obtained in connection with any activity that pertains to the subject matter
24 of this Order; and
25

26 B. Benefitting from or using the name, address, birth date, telephone number, email
27 address, credit card number, bank account number, Social Security number, or other
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1 financial or identifying information of any person that any Defendant obtained in
2 connection with any activity that pertains to the subject matter of this Order.

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

9 **IV. ASSET FREEZE**

10 **IT IS FURTHER ORDERED** that Defendants and the Relief Defendant,
11 Defendants' and the Relief Defendants' officers, agents, employees, and attorneys, and
12 all other Persons in active concert or participation with any of them, who receive actual
13 notice of this Order, whether acting directly or indirectly, are hereby temporarily
14 restrained and enjoined from:
15

16 A. Transferring, liquidating, converting, encumbering, pledging, loaning, selling,
17 concealing, dissipating, disbursing, assigning, relinquishing, spending, withdrawing,
18 granting a lien or security interest or other interest in, or otherwise disposing of any assets
19 that are:
20

- 21 1. owned or controlled, directly or indirectly, by any Defendant or Relief
22 Defendant;
- 23 2. held, in part or in whole, for the benefit of any Defendant or Relief
24 Defendant;
- 25 3. in the actual or constructive possession of any Defendant or Relief
26 Defendant; or
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1 A. Hold, preserve, and retain within its control and prohibit the withdrawal, removal,
2 alteration, assignment, transfer, pledge, encumbrance, disbursement, dissipation,
3 relinquishment, conversion, sale, or other disposal of any such Document or asset, as well
4 as all Documents or other property related to such assets, except by further order of this
5 Court; provided, however, that this provision does not prohibit an individual defendant
6 from incurring charges on a personal credit card established prior to entry of this Order,
7 up to the pre-existing credit limit;
8

9 B. Deny any Person, except the Receiver, access to any safe deposit box, commercial
10 mail box, or storage facility that is titled in the name of any Defendant or Relief
11 Defendant, either individually or jointly, or otherwise subject to access by any Defendant
12 or Relief Defendant;
13

14 C. Provide Plaintiffs' counsel and the Receiver, within three (3) days of receiving a
15 copy of this Order, a sworn statement setting forth, for each asset or account covered by
16 this Section:

- 17 1. The identification number of each such account or asset;
- 18 2. The balance of each such account, or a description of the nature and value
19 of each such asset as of the close of business on the day on which this
20 Order is served, and, if the account or other asset has been closed or
21 removed, the date closed or removed, the total funds removed in order to
22 close the account, and the name of the Person whom such account or other
23 asset was remitted; and
- 24 3. The identification of any safe deposit box, commercial mail box, or
25 storage facility that is either titled in the name, individually or jointly, of
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1 any Defendant or Relief Defendant, or is otherwise subject to access by
2 any Defendant or Relief Defendant; and

3 D. Upon the request of Plaintiffs' counsel or the Receiver, promptly provide
4 Plaintiffs' counsel and the Receiver with copies of all records or other Documents
5 pertaining to any account covered by this Section or asset, including originals or copies
6 of account applications, account statements, signature cards, checks, drafts, deposit
7 tickets, transfers to and from the accounts, including wire transfers and wire transfer
8 instructions, all other debit and credit instruments or slips, currency transaction reports,
9 1099 forms, and all logs and records pertaining to safe deposit boxes, commercial mail
10 boxes, and storage facilities.
11

12 This Section does not prohibit any transfer of assets to the Receiver or repatriation
13 of assets specifically required by this Order.
14

15 VI. FINANCIAL DISCLOSURES

16 **IT IS FURTHER ORDERED** that each Defendant and Relief Defendant, within
17 five (5) days of service of this Order upon them, shall prepare and deliver to Plaintiffs'
18 counsel and the Receiver:
19

20 A. Completed financial statements on the forms attached to this Order as
21 **Attachment B** (Financial Statement of Individual Defendant) for each Individual
22 Defendant, and **Attachment C** (Financial Statement of Corporate Defendant) for each
23 Corporate Defendant or Relief Defendant; and

24 B. Completed **Attachment D** (IRS Form 4506, Request for Copy of a Tax Return)
25 for each Defendant.
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VII. FOREIGN ASSET REPATRIATION

IT IS FURTHER ORDERED that within five (5) days following the service of this Order, each Defendant shall:

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

B. Take all steps necessary to provide Plaintiffs' counsel and the Receiver access to all Documents and records that may be held by third parties located outside of the territorial United States of America, including signing the Consent to Release of Financial Records appended to this Order as **Attachment E**.

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

1 D. The same business day as any repatriation, (1) notify the Receiver and counsel for
2 Plaintiffs of the name and location of the financial institution or other entity that is the
3 recipient of such Documents or assets; and (2) serve this Order on any such financial
4 institution or other entity.

5 **VIII. NON-INTERFERENCE WITH REPATRIATION**

6 **IT IS FURTHER ORDERED** that Defendants and the Relief Defendant,
7 Defendants' and the Relief Defendant's officers, agents, employees, and attorneys, and
8 all other Persons in active concert or participation with any of them, who receive actual
9 notice of this Order, whether acting directly or indirectly, are hereby temporarily
10 restrained and enjoined from taking any action, directly or indirectly, which may result in
11 the encumbrance or dissipation of foreign assets, or in the hindrance of the repatriation
12 required by this Order, including, but not limited to:

13 A. Sending any communication or engaging in any other act, directly or indirectly,
14 that results in a determination by a foreign trustee or other entity that a "duress" event has
15 occurred under the terms of a foreign trust agreement until such time that all Defendants'
16 and Relief Defendant's assets have been fully repatriated pursuant to this Order; or

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

21 **IX. CONSUMER CREDIT REPORTS**

22 **IT IS FURTHER ORDERED** that Plaintiffs may obtain credit reports
23 concerning any Defendants pursuant to Section 604(a)(1) of the Fair Credit Reporting
24

1 Act, 15 U.S.C. 1681b(a)(1), and that, upon written request, any credit reporting agency
2 from which such reports are requested shall provide them to Plaintiffs.

3 **X. PRESERVATION OF RECORDS**

4 **IT IS FURTHER ORDERED** that Defendants and the Relief Defendant,
5 Defendants' and the Relief Defendant's officers, agents, employees, and attorneys, and
6 all other Persons in active concert or participation with any of them, who receive actual
7 notice of this Order, whether acting directly or indirectly, are hereby temporarily
8 restrained and enjoined from:
9

10 A. Destroying, erasing, falsifying, writing over, mutilating, concealing, altering,
11 transferring, or otherwise disposing of, in any manner, directly or indirectly, Documents
12 that relate to: (1) the business, business practices, assets, or business or personal finances
13 of any Defendant or Relief Defendant; (2) the business practices or finances of entities
14 directly or indirectly under the control of any Defendant or Relief Defendant; or (3) the
15 business practices or finances of entities directly or indirectly under common control with
16 any other Defendant or Relief Defendant; and
17

18 B. Failing to create and maintain Documents that, in reasonable detail, accurately,
19 fairly, and completely reflect Defendants' or Relief Defendant's incomes, disbursements,
20 transactions, and use of Defendants' or Relief Defendant's assets.
21

22 **XI. REPORT OF NEW BUSINESS ACTIVITY**

23 **IT IS FURTHER ORDERED** that Defendants, Defendants' officers, agents,
24 employees, and attorneys, and all other Persons in active concert or participation with any
25 of them, who receive actual notice of this Order, whether acting directly or indirectly, are
26 hereby temporarily restrained and enjoined from creating, operating, or exercising any
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1 control over any business entity, whether newly formed or previously inactive, including
2 any partnership, limited partnership, joint venture, sole proprietorship, or corporation,
3 without first providing Plaintiffs' counsel and the Receiver with a written statement
4 disclosing: (1) the name of the business entity; (2) the address and telephone number of
5 the business entity; (3) the names of the business entity's officers, directors, principals,
6 managers, and employees; and (4) a detailed description of the business entity's intended
7 activities.
8

9 **XII. TEMPORARY RECEIVER**

10 **IT IS FURTHER ORDERED** that Robb Evans Assoc. LLC is appointed as
11 temporary receiver of the Receivership Entities with full powers of an equity receiver.
12 The Receiver shall be solely the agent of this Court in acting as Receiver under this
13 Order.
14

15 **XIII. DUTIES AND AUTHORITY OF RECEIVER**

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

- 18 A. Assume full control of Receivership Entities by removing, as the Receiver deems
19 necessary or advisable, any director, officer, independent contractor, employee, attorney,
20 or agent of any Receivership Entity from control of, management of, or participation in,
21 the affairs of the Receivership Entity;
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23 B. Take exclusive custody, control, and possession of all assets and Documents of,
24 or in the possession, custody, or under the control of, any Receivership Entity, wherever
25 situated;
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1 C. Take exclusive custody, control, and possession of all Documents or assets
2 associated with credits, debits, or charges made on behalf of any Receivership Entity,
3 wherever situated, including reserve funds held by payment processors, credit card
4 processors, merchant banks, acquiring banks, independent sales organizations, third party
5 processors, payment gateways, insurance companies, or other entities;

6
7 D. Conserve, hold, manage, and prevent the loss of all assets of the Receivership
8 Entities, and perform all acts necessary or advisable to preserve the value of those assets.
9 The Receiver shall assume control over the income and profits therefrom and all sums of
10 money now or hereafter due or owing to the Receivership Entities. The Receiver shall
11 have full power to sue for, collect, and receive, all assets of the Receivership Entities and
12 of other Persons whose interests are now under the direction, possession, custody, or
13 control of, the Receivership Entities. Provided, however, that the Receiver shall not
14 attempt to collect any amount from a consumer if the Receiver believes the consumer's
15 debt to the Receivership Entities has resulted from the deceptive acts or practices or other
16 violations of law alleged in the Complaint in this matter, without prior Court approval;

17
18 E. Obtain, conserve, hold, manage, and prevent the loss of all Documents of the
19 Receivership Entities, and perform all acts necessary or advisable to preserve such
20 Documents. The Receiver shall: divert mail; preserve all Documents of the Receivership
21 Entities that are accessible via electronic means (such as online access to financial
22 accounts and access to electronic Documents held onsite or by Electronic Data Hosts, by
23 changing usernames, passwords or other log-in credentials); take possession of all
24 electronic Documents of the Receivership Entities stored onsite or remotely; take
25 whatever steps necessary to preserve all such Documents; and obtain the assistance of the
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1 FTC's Digital Forensic Unit for the purpose of obtaining electronic Documents stored
2 onsite or remotely.

3 F. Choose, engage, and employ attorneys, accountants, appraisers, and other
4 independent contractors and technical specialists, as the Receiver deems advisable or
5 necessary in the performance of duties and responsibilities under the authority granted by
6 this Order;

7
8 G. Make payments and disbursements from the receivership estate that are necessary
9 or advisable for carrying out the directions of, or exercising the authority granted by, this
10 Order, and to incur, or authorize the making of, such agreements as may be necessary and
11 advisable in discharging his or her duties as Receiver. The Receiver shall apply to the
12 Court for prior approval of any payment of any debt or obligation incurred by the
13 Receivership Entities prior to the date of entry of this Order, except payments that the
14 Receiver deems necessary or advisable to secure assets of the Receivership Entities, such
15 as rental payments;

16
17 H. Take all steps necessary to secure and take exclusive custody of each non-
18 residential location from which the Receivership Entities operate their businesses. Such
19 steps may include, but are not limited to, any of the following, as the Receiver deems
20 necessary or advisable: (1) securing the location by changing the locks and alarm codes
21 and disconnecting any internet access or other means of access to the computers, servers,
22 internal networks, or other records maintained at that location; and (2) requiring any
23 persons present at the location to leave the premises, to provide the Receiver with proof
24 of identification, and/or to demonstrate to the satisfaction of the Receiver that such
25 persons are not removing from the premises Documents or assets of the Receivership
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1 Entities. Law enforcement personnel, including, but not limited to, police or sheriffs,
2 may assist the Receiver in implementing these provisions in order to keep the peace and
3 maintain security. If requested by the Receiver, the United States Marshal will provide
4 appropriate and necessary assistance to the Receiver to implement this Order and is
5 authorized to use any necessary and reasonable force to do so;

6
7 I. Take all steps necessary to prevent the modification, destruction, or erasure of any
8 web page or website registered to and operated, in whole or in part, by any Defendants,
9 including echeckprocessing.net, and to provide access to all such web page or websites to
10 Plaintiffs' representatives, agents, and assistants, as well as Defendants and their
11 representatives;

12
13 J. Enter into and cancel contracts and purchase insurance as advisable or necessary;

14
15 K. Prevent the inequitable distribution of assets and determine, adjust, and protect
16 the interests of consumers who have transacted business with the Receivership Entities;

17
18 L. Make an accounting, as soon as practicable, of the assets and financial condition
19 of the receivership and file the accounting with the Court and deliver copies thereof to all
20 parties;

21
22 M. Institute, compromise, adjust, appear in, intervene in, defend, dispose of, or
23 otherwise become party to any legal action in state, federal or foreign courts or arbitration
24 proceedings as the Receiver deems necessary and advisable to preserve or recover the
25 assets of the Receivership Entities, or to carry out the Receiver's mandate under this
26 Order, including but not limited to, actions challenging fraudulent or voidable transfers;

1 N. Issue subpoenas to obtain Documents and records pertaining to the Receivership,
2 and conduct discovery in this action on behalf of the receivership estate, in addition to
3 obtaining other discovery as set forth in this Order;

4 O. Open one or more bank accounts at designated depositories for funds of the
5 Receivership Entities. The Receiver shall deposit all funds of the Receivership Entities in
6 such designated accounts and shall make all payments and disbursements from the
7 receivership estate from such accounts. The Receiver shall serve copies of monthly
8 account statements on all parties;
9

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

11 Q. Allow the FTC's representatives, agents, and assistants, as well as Defendants'
12 representatives and Defendants themselves, reasonable access to the premises of the
13 Receivership Entities, or any other premises where the Receivership Entities conduct
14 business. The purpose of this access shall be to inspect and copy all books, records,
15 Documents, accounts, and other assets owned by, or in the possession of, the
16 Receivership Entities or their agents. The Receiver shall have the discretion to determine
17 the time, manner, and reasonable conditions of such access, and access by the FTC's
18 representatives, agents, and assistants shall be allowed as soon as practicable;
19
20

21 R. Allow the Plaintiffs' representatives, agents, and assistants, as well as Defendants
22 and their representatives, reasonable access to all Documents in the possession, custody,
23 or control of the Receivership Entities. The purpose of this access shall be to inspect and
24 copy any and all books, records, Documents, accounts, and other property owned by, or
25 in the possession of, the Receivership Entities or their agents. The Receiver shall have
26 the discretion to determine the time, manner, and reasonable conditions of such access;
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1 S. Cooperate with reasonable requests for information or assistance from any state or
2 federal civil or criminal law enforcement agency;

3 T. Suspend business operations of the Receivership Entities if in the judgment of the
4 Receiver such operations cannot be continued legally and profitably;

5 U. If the Receiver identifies a nonparty entity as a Receivership Entity, promptly
6 notify the entity as well as the parties, and inform the entity that it can challenge the
7 Receiver's determination by filing a motion with the Court. Provided, however, that the
8 Receiver may delay providing such notice until the Receiver has established control of
9 the nonparty entity and its assets and records, if the Receiver determines that notice to the
10 entity or the parties before the Receiver establishes control over the entity may result in
11 the destruction of records, dissipation of assets, or any other obstruction of the Receiver's
12 control of the entity; and
13
14

15 V. If in the Receiver's judgment the business operations cannot be continued legally
16 and profitably, take all steps necessary to ensure that any of the Receivership Entities'
17 web pages or websites relating to the activities alleged in the Complaint cannot be
18 accessed by the public, or are modified for consumer education and/or informational
19 purposes, and take all steps necessary to ensure that any telephone numbers associated
20 with the Receivership Entities cannot be accessed by the public, or are answered solely to
21 provide consumer education or information regarding the status of operations.
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1 **XIV. TRANSFER OF RECEIVERSHIP PROPERTY TO RECEIVER**

2 **IT IS FURTHER ORDERED** that Defendants and the Relief Defendant and any
3 other Person, with possession, custody or control of property of, or records relating to, the
4 Receivership Entities shall, upon notice of this Order by personal service or otherwise,
5 fully cooperate with and assist the Receiver in taking and maintaining possession,
6 custody, or control of the assets and Documents of the Receivership Entities and
7 immediately transfer or deliver to the Receiver possession, custody, and control of, the
8 following:
9

10 A. All assets held by or for the benefit of the Receivership Entities;

11 B. All Documents or assets associated with credits, debits, or charges made on behalf
12 of any Receivership Entity, wherever situated, including reserve funds held by payment
13 processors, credit card processors, merchant banks, acquiring banks, independent sales
14 organizations, third party processors, payment gateways, insurance companies, or other
15 entities;
16

17 C. All Documents of or pertaining to the Receivership Entities;

18 D. All computers, electronic devices, mobile devices and machines used to conduct
19 the business of the Receivership Entities;
20

21 E. All assets and Documents belonging to other Persons whose interests are under
22 the direction, possession, custody, or control of the Receivership Entities; and

23 F. All keys, codes, user names and passwords necessary to gain or to secure access
24 to any assets or Documents of or pertaining to the Receivership Entities, including access
25 to their business premises, means of communication, accounts, computer systems (onsite
26 and remote), Electronic Data Hosts, or other property.
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1 In the event that any Person or entity fails to deliver or transfer any asset or
2 Document, or otherwise fails to comply with any provision of this Section, the Receiver
3 may file an Affidavit of Non-Compliance regarding the failure and a motion seeking
4 compliance or a contempt citation.

5 **XV. PROVISION OF INFORMATION TO RECEIVER**

6 **IT IS FURTHER ORDERED** that Defendants and the Relief Defendant shall
7 immediately provide to the Receiver:
8

9 A. A list of all assets and accounts of the Receivership Entities that are held in any
10 name other than the name of a Receivership Entity, or by any Person other than a
11 Receivership Entity;

12 B. A list of all agents, employees, officers, attorneys, servants and those Persons in
13 active concert and participation with the Receivership Entities, or who have been
14 associated or done business with the Receivership Entities; and
15

16 C. A description of any Documents covered by attorney-client privilege or attorney
17 work product, including files where such Documents are likely to be located, authors or
18 recipients of such Documents, and search terms likely to identify such electronic
19 Documents.
20

21 **XVI. COOPERATION WITH THE RECEIVER**

22 **IT IS FURTHER ORDERED** that Defendants; Receivership Entities;
23 Defendants' or Receivership Entities' officers, agents, employees, and attorneys, all other
24 Persons in active concert or participation with any of them, and any other Person with
25 possession, custody, or control of property of or records relating to the Receivership
26 entities who receive actual notice of this Order shall fully cooperate with and assist the
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1 Receiver. This cooperation and assistance shall include, but is not limited to, providing
2 information to the Receiver that the Receiver deems necessary to exercise the authority
3 and discharge the responsibilities of the Receiver under this Order; providing any keys,
4 codes, user names and passwords required to access any computers, electronic devices,
5 mobile devices, and machines (onsite or remotely) and any cloud account (including
6 specific method to access account) or electronic file in any medium; advising all Persons
7 who owe money to any Receivership Entity that all debts should be paid directly to the
8 Receiver; and transferring funds at the Receiver's direction and producing records related
9 to the assets and sales of the Receivership Entities.
10

11 **XVII. NON-INTERFERENCE WITH THE RECEIVER**

12 **IT IS FURTHER ORDERED** that Defendants; Receivership Entities;
13 Defendants' or Receivership Entities' officers, agents, employees, attorneys, and all other
14 Persons in active concert or participation with any of them, who receive actual notice of
15 this Order, and any other Person served with a copy of this Order, are hereby restrained
16 and enjoined from directly or indirectly:
17

- 18 A. Interfering with the Receiver's efforts to manage, or take custody, control, or
19 possession of, the assets or Documents subject to the receivership;
20
21 B. Transacting any of the business of the Receivership Entities;
22
23 C. Transferring, receiving, altering, selling, encumbering, pledging, assigning,
24 liquidating, or otherwise disposing of any assets owned, controlled, or in the possession
25 or custody of, or in which an interest is held or claimed by, the Receivership Entities; or
26
27 D. Refusing to cooperate with the Receiver or the Receiver's duly authorized agents
28 in the exercise of their duties or authority under any order of this Court.

XVIII. STAY OF ACTIONS

1
2 **IT IS FURTHER ORDERED** that, except by leave of this Court, during the
3 pendency of the receivership ordered herein, Defendants and the Relief Defendant,
4 Defendants' and the Relief Defendant's officers, agents, employees, attorneys, and all
5 other Persons in active concert or participation with any of them, who receive actual
6 notice of this Order, and their corporations, subsidiaries, divisions, or affiliates, and all
7 investors, creditors, stockholders, lessors, customers and other Persons seeking to
8 establish or enforce any claim, right, or interest against or on behalf of Defendants or the
9 Relief Defendant, and all others acting for or on behalf of such Persons, are hereby
10 enjoined from taking action that would interfere with the exclusive jurisdiction of this
11 Court over the assets or Documents of the Receivership Entities, including, but not
12 limited to:
13

14
15 A. Filing or assisting in the filing of a petition for relief under the Bankruptcy Code,
16 11 U.S.C. § 101 *et seq.*, or of any similar insolvency proceeding on behalf of the
17 Receivership Entities;

18
19 B. Commencing, prosecuting, or continuing a judicial, administrative, or other action
20 or proceeding against the Receivership Entities, including the issuance or employment of
21 process against the Receivership Entities, except that such actions may be commenced if
22 necessary to toll any applicable statute of limitations;

23
24 C. Filing or enforcing any lien on any asset of the Receivership Entities, taking or
25 attempting to take possession, custody, or control of any asset of the Receivership
26 Entities; or attempting to foreclose, forfeit, alter, or terminate any interest in any asset of
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1 the Receivership Entities, whether such acts are part of a judicial proceeding, are acts of
2 self-help, or otherwise.

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

10 **XIX. COMPENSATION OF RECEIVER**

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

23 **XX. RECEIVER'S BOND**

24 **IT IS FURTHER ORDERED** that the Receiver shall file with the Clerk of this
25 Court a bond in the sum of \$10,000.00 with sureties to be approved by the Court,
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1 conditioned that the Receiver will well and truly perform the duties of the office and
2 abide by and perform all acts the Court directs. 28 U.S.C. § 754.

3 **XXI. DISTRIBUTION OF ORDER BY DEFENDANTS**

4 **IT IS FURTHER ORDERED** that Defendants shall immediately provide a copy
5 of this Order to each affiliate, telemarketer, marketer, sales entity, successor, assign,
6 member, officer, director, employee, agent, independent contractor, client, attorney,
7 spouse, subsidiary, division, and representative of any Defendant, and shall, within ten
8 (10) days from the date of entry of this Order, and provide Plaintiffs and the Receiver
9 with a sworn statement that this provision of the Order has been satisfied, which
10 statement shall include the names, physical addresses, phone number, and email
11 addresses of each such Person who received a copy of the Order. Furthermore,
12 Defendants shall not take any action that would encourage officers, agents, members,
13 directors, employees, salespersons, independent contractors, attorneys, subsidiaries,
14 affiliates, successors, assigns or other Persons in active concert or participation with them
15 to disregard this Order or believe that they are not bound by its provisions.
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18 **XXII. EXPEDITED DISCOVERY**

19 **IT IS FURTHER ORDERED** that, notwithstanding the provisions of the Fed. R.
20 Civ. P. 26(d) and (f) and 30(a)(2)(A)(iii), and pursuant to Fed. R. Civ. P. 30(a), 34, and
21 45, Plaintiffs and the Receiver are granted leave, at any time after service of this Order, to
22 conduct limited expedited discovery for the purpose of discovering: (1) the nature,
23 location, status, and extent of Defendants' and the Relief Defendant's assets; (2) the
24 nature, location, and extent of Defendants' and the Relief Defendant's business
25 transactions and operations; (3) Documents reflecting Defendants' and the Relief
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1 Defendant's business transactions and operations; or (4) compliance with this Order. The
2 limited expedited discovery set forth in this Section shall proceed as follows:

3 A. Plaintiffs and the Receiver may take the deposition of parties and non-parties.

4 Forty-eight (48) hours' notice shall be sufficient notice for such depositions. The

5 limitations and conditions set forth in Rules 30(a)(2)(B) and 31(a)(2)(B) of the Federal

6 Rules of Civil Procedure regarding subsequent depositions of an individual shall not

7 apply to depositions taken pursuant to this Section. Any such deposition taken pursuant

8 to this Section shall not be counted towards the deposition limit set forth in Rules

9 30(a)(2)(A) and 31(a)(2)(A) and depositions may be taken by telephone or other remote

10 electronic means;

11 B. Plaintiffs and the Receiver may serve upon parties requests for production of

12 Documents or inspection that require production or inspection within five (5) days of

13 service, provided, however, that three (3) days of notice shall be deemed sufficient for the

14 production of any such Documents that are maintained or stored only in an electronic

15 format.

16 C. Plaintiffs and the Receiver may serve upon parties interrogatories that require

17 response within five (5) days after Plaintiffs serves such interrogatories;

18 D. The Plaintiffs and the Receiver may serve subpoenas upon non-parties that direct

19 production or inspection within five (5) days of service.

20 E. Service of discovery upon a party to this action, taken pursuant to this Section,

21 shall be sufficient if made by facsimile, email, or by overnight delivery.

22 F. Defendant Souheil must, within five (5) days of receipt of this Order provide the

23 Plaintiffs, in writing:

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- 1 1. Acknowledgment of receipt of the Order by Globex Telecom, Inc.;
- 2 2. A sworn statement setting forth (1) that Globex Telecom, Inc. is in
- 3 compliance with this Order and (2) the actions Globex Telecom, Inc., has
- 4 taken, if any, to insure that it and Souheil are in compliance with this
- 5 Order; and
- 6

7 G. Any expedited discovery taken pursuant to this Section is in addition to, and is not
8 subject to, the limits on discovery set forth in the Federal Rules of Civil Procedure and
9 the Local Rules of this Court. The expedited discovery permitted by this Section does
10 not require a meeting or conference of the parties, pursuant to Rules 26(d) & (f) of the
11 Federal Rules of Civil Procedure.

12 H. The Parties are exempted from making initial disclosures under Fed. R. Civ. P.
13 26(a)(1) until further order of this Court.

14 **XXIII. SERVICE OF THIS ORDER**

15 **IT IS FURTHER ORDERED** that copies of this Order as well as the Motion for
16 Temporary Restraining Order and all other pleadings, Documents, and exhibits filed
17 contemporaneously with that Motion (other than the complaint and summons), may be
18 served by any means, including facsimile transmission, electronic mail or other electronic
19 messaging, personal or overnight delivery, U.S. Mail or FedEx, by agents and employees
20 of Plaintiffs, by any law enforcement agency, or by private process server, upon any
21 Defendant, Relief Defendant, or any Person (including any financial institution) that may
22 have possession, custody or control of any asset or Document of any Defendant or Relief
23 Defendant, or that may be subject to any provision of this Order pursuant to Rule
24 65(d)(2) of the Federal Rules of Civil Procedure. For purposes of this Section, service
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1 upon any branch, subsidiary, affiliate or office of any entity shall effect service upon the
2 entire entity.

3 **XXIV. CORRESPONDENCE AND SERVICE ON PLAINTIFFS**

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

6
7 Christopher E. Brown
8 J. Ronald Brooke, Jr.
9 Federal Trade Commission
10 600 Pennsylvania Avenue, NW (CC-8528)
11 Washington, DC 20580
12 Fax: 202-326-3395
13 Email: cbrown3@ftc.gov; jbrooke@ftc.gov

14 Jeffrey Loeser (Ohio Bar #82144)
15 Erin Leahy (Ohio Bar #69509)
16 Assistant Attorneys General
17 Consumer Protection Section
18 30 E. Broad Street, 14th Floor
19 Columbus, Ohio 43215
20 Email: jeff.loeser@OhioAttorneyGeneral.gov;
21 erin.leahy@OhioAttorneyGeneral.gov

22 **XXV. PRELIMINARY INJUNCTION HEARING**

23 **IT IS FURTHER ORDERED** that, pursuant to Fed. R. Civ. P. 65(b), Defendants
24 shall appear before this Court on the 30th day of July, 2019, at
25 1:00 p.m., to show cause, if there is any, why this Court should not enter a
26 preliminary injunction, pending final ruling on the Complaint against Defendants and the
27 Relief Defendant, enjoining the violations of the law alleged in the Complaint, continuing
28 the freeze of their assets, continuing the receivership, and imposing such additional relief
as may be appropriate.

**XXVI. BRIEFS AND AFFIDAVITS CONCERNING
PRELIMINARY INJUNCTION**

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2 A. Defendants shall file with the Court and serve on Plaintiffs' counsel any
3 answering pleadings, affidavits, motions, expert reports or declarations, or legal
4 memoranda no later than four (4) days prior to the order to show cause hearing scheduled
5 pursuant to this Order. Plaintiffs may file responsive or supplemental pleadings,
6 materials, affidavits, or memoranda with the Court and serve the same on counsel for
7 Defendants and Relief Defendant no later than one (1) day prior to the order to show
8 Cause hearing. Provided that such affidavits, pleadings, motions, expert reports,
9 declarations, legal memoranda or oppositions must be served by personal or overnight
10 delivery, facsimile or email, and be received by the other party or parties no later than
11 5:00 p.m. PST on the appropriate dates set forth in this Section.

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14 B. An evidentiary hearing on Plaintiffs' request for a preliminary injunction is not
15 necessary unless Defendants or the Relief Defendant demonstrate that they have, and
16 intend to introduce, evidence that raises a genuine and material factual issue. The
17 question of whether this Court should enter a preliminary injunction shall be resolved on
18 the pleadings, declarations, exhibits, and memoranda filed by, and oral argument of, the
19 parties.
20

21
22 C. Live testimony shall be heard only on further order of this Court. Any motion to
23 permit such testimony shall be filed with the Court and served on counsel for the other
24 parties at least five (5) days prior to the preliminary injunction hearing in this matter.
25 Such motion shall set forth the name, address, and telephone number of each proposed
26 witness, a detailed summary or affidavit revealing the substance of each proposed
27 witness's expected testimony, and an explanation of why the taking of live testimony
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would be helpful to this Court. Any papers opposing a timely motion to present live testimony or to present live testimony in response to another party’s timely motion to present live testimony shall be filed with this Court and served on the other parties at least three (3) days prior to the order to show cause hearing.

Provided, however, that service shall be performed by personal or overnight delivery, facsimile or email, and Documents shall be delivered so that they shall be received by the other parties no later than 5:00 p.m. MDT on the appropriate dates provided in this Section.

XXVII. DURATION OF THE ORDER

IT IS FURTHER ORDERED that this Order shall expire fourteen (14) days from the date of entry noted below, unless within such time, the Order is extended for an additional period pursuant to Fed. R. Civ. P. 65(b)(2).

XXVIII. RETENTION OF JURISDICTION

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

SO ORDERED, this 19th day of July, 2019, at 1:58 p.m.

Katun Sardar
UNITED STATES DISTRICT JUDGE