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12 UNITED STATES DISTRICT COURT
 13 CENTRAL DISTRICT OF CALIFORNIA
 SOUTHERN DIVISION

14 FEDERAL TRADE COMMISSION,
 15
 Plaintiff,
 16
 v.
 17 AMERICAN MORTGAGE
 CONSULTING GROUP, LLC, a
 18 California Limited Liability Company,
 also d.b.a. American Mortgage Group and
 19 American Mortgage Consulting;
 20 HOME GUARDIAN MANAGEMENT
 SOLUTIONS, LLC, a California Limited
 21 Liability Company, also d.b.a. Home
 Guardian Solutions; and
 22
 23 MARK NAGY ATALLA, d.b.a. Home
 Guardian Solutions, Home G Solutions
 24 Firm, and Home G Solutions Group,
 25 Defendants.

Case No. SACV 12-1561-DOC (JPRx)

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

26 Plaintiff Federal Trade Commission (“FTC”), pursuant to Sections 13(b) and 19
 27 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and the
 28

1 2009 Omnibus Appropriations Act, Pub. L. No. 111-8, § 626, 123 Stat. 524, 678 (Mar.
2 11, 2009) (“Omnibus Act”), as clarified by the Credit Card Accountability
3 Responsibility and Disclosure Act of 2009, Pub. L. No. 111-24, § 511, 123 Stat. 1734,
4 1763-64 (May 22, 2009) (“Credit Card Act”), and amended by the Dodd-Frank Wall
5 Street Reform and Consumer Financial Protection Act, Pub. L. No. 111-203, § 1097,
6 124 Stat. 1376, 2102-03 (July 21, 2010) (“Dodd-Frank Act”), 12 U.S.C. § 5538, has
7 filed a Complaint for preliminary and permanent injunctive relief, rescission or
8 reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-
9 gotten monies, and other equitable relief for Defendants’ acts or practices in violation of
10 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the Mortgage Assistance Relief
11 Services Rule, 16 C.F.R. Part 322, recodified as Mortgage Assistance Relief Services
12 (“Regulation O”), 12 C.F.R. Part 1015 (“MARS Rule”) (Attachment D to this Order), in
13 connection with the marketing and sale of mortgage assistance relief services, and has
14 applied for a temporary restraining order pursuant to Rule 65(b) of the Federal Rules of
15 Civil Procedure.

16 **FINDINGS OF FACT**

17 This Court, having considered the FTC’s Complaint, *ex parte* application,
18 declarations, exhibits, and memoranda filed in support of the FTC’s application, and the
19 evidence presented by all parties, finds that:

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

23 2. There is good cause to believe that Defendants American Mortgage
24 Consulting Group, LLC, Home Guardian Management Solutions, LLC, and Mark Nagy
25 Atalla (collectively “Defendants”) have engaged and are likely to continue to engage in
26 acts or practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the
27 MARS Rule, and that the FTC is therefore likely to prevail on the merits of this action.

1 3. There is good cause to believe that immediate and irreparable harm will
2 result from Defendants' ongoing violations of Section 5(a) of the FTC Act and the
3 MARS Rule unless Defendants are restrained and enjoined by Order of this Court.

4 4. There is good cause to believe that immediate and irreparable damage to
5 the Court's ability to grant effective final relief for consumers in the form of monetary
6 restitution and disgorgement of ill-gotten gains will occur from the transfer, dissipation,
7 or concealment by Defendants of their assets or business records unless Defendants are
8 restrained and enjoined by Order of this Court; and that in accordance with Fed. R. Civ.
9 P. 65(b), the interest of justice requires that the FTC's application be heard *ex parte*
10 without prior notice to Defendants. Therefore, there is good cause for relieving the FTC
11 of the duty to provide Defendants with prior notice of the FTC's application.

12 5. Good cause exists for appointing a temporary receiver over American
13 Mortgage Consulting Group, LLC, and Home Guardian Management Solutions, LLC,
14 permitting the FTC immediate access to Defendants' business premises, and permitting
15 the FTC to take expedited discovery.

16 6. Weighing the equities and considering the FTC's likelihood of ultimate
17 success, a temporary restraining order with an asset freeze, expedited discovery as to the
18 existence and location of assets and documents, and other equitable relief is in the
19 public interest.

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

22 **ORDER**

23 **DEFINITIONS**

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

25 A. "Assets" means any legal or equitable interest in, right to, or claim to any
26 real, personal, or intellectual property of any Defendant, or held for the benefit of any
27 Defendant, wherever located, whether in the United States or abroad, including, but not
28 limited to, chattel, goods, instruments, equipment, fixtures, general intangibles, effects,

1 leaseholds, contracts, mail or other deliveries, shares of stock, commodities, futures,
2 inventory, checks, notes, accounts, credits, receivables (as those terms are defined in the
3 Uniform Commercial Code), cash, and trusts, including, but not limited to, any trust
4 held for the benefit of any Defendant, any of the Individual Defendant’s minor children,
5 or any of the Individual Defendant’s spouses, and shall include both existing assets and
6 assets acquired after the date of entry of this Order.

7 B. “Commercial communication” means any written or oral statement,
8 illustration, or depiction, whether in English or any other language, that is designed to
9 effect a sale or create interest in purchasing any service, plan, or program, whether it
10 appears on or in a label, package, package insert, radio, television, cable television,
11 brochure, newspaper, magazine, pamphlet, leaflet, circular, mailer, book insert, free
12 standing insert, letter, catalogue, poster, chart, billboard, public transit card, point of
13 purchase display, film, slide, audio program transmitted over a telephone system,
14 telemarketing script, onhold script, upsell script, training materials provided to
15 telemarketing firms, program-length commercial (“infomercial”), the internet, cellular
16 network, or any other medium. Promotional materials and items and Web pages are
17 included in the term “commercial communication.”

18 C. “Consumer-specific commercial communication” means a commercial
19 communication that occurs prior to the consumer agreeing to permit the provider to seek
20 offers of mortgage assistance relief on behalf of the consumer, or otherwise agreeing to
21 use the mortgage assistance relief service, and that is directed at a specific consumer.

22 D. “General commercial communication” means a commercial
23 communication that occurs prior to the consumer agreeing to permit the provider to seek
24 offers of mortgage assistance relief on behalf of the consumer, or otherwise agreeing to
25 use the mortgage assistance relief service, and that is not directed at a specific
26 consumer.

1 E. "Corporate Defendants" means American Mortgage Consulting Group,
2 LLC, Home Guardian Management Solutions, LLC, and their successors, assigns,
3 affiliates, or subsidiaries, and each of them by whatever names each might be known.

4 F. "Defendants" means the Individual Defendant and all of the Corporate
5 Defendants, individually, collectively, or in any combination, and each of them by
6 whatever names each might be known.

7 G. "Document" and "electronically stored information" are synonymous in
8 meaning and equal in scope to the usage of the terms in Rule 34(a) of the Federal Rules
9 of Civil Procedure and include, but are not limited to:

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

17 2. Any electronically stored information stored on any Blackberrys, flash
18 drives, personal digital assistants ("PDAs"), desktop personal computer and
19 workstations, laptops, notebooks, and other portable computers, or other
20 electronic storage media, whether assigned to individuals or in pools of
21 computers available for shared use, or personally owned but used for work-
22 related purposes; backup disks and tapes, archive disks and tapes, and other forms
23 of offline storage, whether stored onsite with the computer used to generate them,
24 stored offsite in another company facility, or stored, hosted, or otherwise
25 maintained offsite by a third party; and computers and related offline storage used
26 by Defendants or Defendants' participating associates, which may include
27 persons who are not employees of the company or who do not work on company
28 premises.

1 H. "Electronic data host" means any person or entity that stores, hosts, or
2 otherwise maintains electronically stored information.

3 I. "Financial institution" means any bank, savings and loan institution, credit
4 union, or any financial depository of any kind, including, but not limited to, any
5 brokerage house, trustee, broker-dealer, escrow agent, title company, commodity trading
6 company, or precious metal dealer.

7 J. "Individual Defendant" means Mark Nagy Atalla and any other names by
8 which he might be known.

9 K. "Material fact" means any fact that is likely to affect a person's choice of,
10 or conduct regarding, goods, or services.

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

- 15 1. stopping, preventing, or postponing any mortgage or deed of trust
16 foreclosure sale for the consumer's dwelling, any repossession of the consumer's
17 dwelling, or otherwise saving the consumer's dwelling from foreclosure or
18 repossession;
- 19 2. negotiating, obtaining, or arranging a modification of any term of a
20 dwelling loan, including a reduction in the amount of interest, principal balance,
21 monthly payments, or fees;
- 22 3. obtaining any forbearance or modification in the timing of payments from
23 any dwelling loan holder or servicer on any dwelling loan;
- 24 4. negotiating, obtaining, or arranging any extension of the period of time
25 within which the consumer may (i) cure his or her default on a dwelling loan,
26 (ii) reinstate his or her dwelling loan, (iii) redeem a dwelling, or (iv) exercise any
27 right to reinstate a dwelling loan or redeem a dwelling;

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

3 6. negotiating, obtaining, or arranging (I) a short sale of a dwelling, (ii) a
4 deed-in-lieu of foreclosure, or (iii) any other disposition of a dwelling other than a
5 sale to a third party who is not the dwelling loan holder.

6 The foregoing shall include any manner of claimed assistance, including, but not limited
7 to, auditing or examining a consumer's mortgage or home loan application and offering
8 to provide or providing legal services.

9 M. "Person" means any individual, group, unincorporated association, limited
10 or general partnership, corporation, or other business entity.

11 N. "Receivership Defendants" means American Mortgage Consulting Group,
12 LLC, and Home Guardian Management Solutions, LLC, and their successors, assigns,
13 affiliates, or subsidiaries, and each of them by whatever names each might be known,
14 provided that the Receiver has reason to believe they are owned or controlled in whole
15 or in part by any of the Defendants.

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19 **I.**

20 **PROHIBITION ON COLLECTION OF ADVANCE FEES**

21 **IT IS THEREFORE ORDERED** that Defendants and their officers, agents,
22 servants, employees, and attorneys, and those persons or entities in active concert or
23 participation with any of them who receive actual notice of this Order by personal
24 service, facsimile transmission, email, or otherwise, whether acting directly or through
25 any corporation, subsidiary, division, or other device, in connection with providing,
26 offering to provide, or arranging for others to provide any mortgage assistance relief
27 service, are hereby temporarily restrained and enjoined from requesting or receiving
28 payment of a fee or other consideration before the consumer has executed a written

1 agreement between the consumer and the consumer's dwelling loan holder or servicer
2 incorporating the offer of mortgage assistance relief that Defendants obtained from the
3 consumer's dwelling loan holder or servicer, in violation of Section 1015.5(a) of the
4 MARS Rule, 12 C.F.R. § 1015.5(a).

5 **II.**

6 **REPRESENTATIONS PROHIBITED BY SECTION 5 OF THE FTC ACT**

7 **IT IS FURTHER ORDERED** that Defendants and their officers, agents,
8 servants, employees, and attorneys, and those persons or entities in active concert or
9 participation with any of them who receive actual notice of this Order by personal
10 service, facsimile transmission, email, or otherwise, whether acting directly or through
11 any corporation, subsidiary, division, or other device, in connection with the
12 advertising, marketing, promotion, offering for sale, or sale of any mortgage assistance
13 relief service, are hereby temporarily restrained and enjoined from engaging in, or
14 assisting others in engaging in, the following conduct:

- 15 A. Misrepresenting, directly or indirectly, expressly or by implication, that
16 Defendants generally will obtain mortgage loan modifications for
17 consumers that will make consumers' payments substantially more
18 affordable; and
19 B. Misrepresenting, directly or indirectly, expressly or by implication, that
20 Defendants will refund the consumer's fee if Defendants fail to obtain the
21 promised mortgage loan modification.

22 **III.**

23 **REPRESENTATIONS PROHIBITED AND DISCLOSURES REQUIRED**
24 **BY MARS RULE**

25 **IT IS FURTHER ORDERED** that Defendants and their officers, agents,
26 servants, employees, and attorneys, and those persons or entities in active concert or
27 participation with any of them who receive actual notice of this Order by personal
28 service, facsimile transmission, email, or otherwise, whether acting directly or through

1 any corporation, subsidiary, division, or other device, in connection with providing,
2 offering to provide, or arranging for others to provide any mortgage assistance relief
3 service, are hereby temporarily restrained and enjoined from engaging in the following
4 conduct:

5 A. Representing, expressly or by implication, in connection with the
6 advertising, marketing, promotion, offering for sale, sale, or performance
7 of any mortgage assistance relief service, that a consumer cannot or should
8 not contact or communicate with his or her lender or servicer, in violation
9 of Section 1015.3(a) of the MARS Rule, 12 C.F.R. § 1015.3(a);

10 B. Misrepresenting, expressly or by implication, any material aspect of any
11 mortgage assistance relief service, including, but not limited to:

- 12 1. The likelihood of negotiating, obtaining, or arranging any
13 represented service or result, including, but not limited to, the
14 likelihood of negotiating, obtaining, or arranging a modification of
15 any term of a dwelling loan, including a reduction in the amount of
16 interest, principal balance, monthly payments, or fees, in violation of
17 Section § 1015.3(b)(1) of the MARS Rule, 12 C.F.R. § 1015.3(b)(1);
- 18 2. The amount of time it will take the mortgage assistance relief service
19 provider to accomplish any represented service or result, in violation
20 of Section 1015.3(b)(2) of the MARS Rule, 12 C.F.R.
21 § 1015.3(b)(2);
- 22 3. That a mortgage assistance relief service is affiliated with, endorsed
23 or approved by, or otherwise associated with the government or the
24 maker, holder, or servicer of the consumer's dwelling loan, in
25 violation of Section 1015.3(b)(3) of the MARS Rule, 12 C.F.R.
26 § 1015.3(b)(3);
- 27 4. The consumer's obligation to make scheduled periodic payments or
28 any other payments pursuant to the terms of the consumer's

1 dwelling loan, in violation of Section 1015.3(b)(4) of the MARS
2 Rule, 12 C.F.R. § 1015.3(b)(4);

3 5. The terms or conditions of any refund, cancellation, exchange, or
4 repurchase policy for a mortgage assistance relief service, including,
5 but not limited to, the likelihood of obtaining a full or partial refund,
6 or the circumstances in which a full or partial refund will be granted,
7 for a mortgage assistance relief service, in violation of Section
8 1015.3(b)(6) of the MARS Rule, 12 C.F.R. § 1015.3(b)(6); or

9 6. That the consumer will receive legal representation, in violation of
10 Section 1015.3(b)(8) of the MARS Rule, 12 C.F.R. § 1015.3(b)(8);

11 C. Making any representation, expressly or by implication, about the benefits,
12 performance, or efficacy of any mortgage assistance relief service
13 including, but not limited to, Defendants' representations that the vast
14 majority of their clients obtain the solutions they contract for, unless, at the
15 time such representation is made, Defendants possess and rely upon
16 competent and reliable evidence that substantiates that the representation is
17 true, in violation of Section 1015.3(c) of the MARS Rule, 12 C.F.R.
18 § 1015.3(c);

19 D. Failing to disclose the following information in every consumer-specific
20 commercial communication: "You may stop doing business with us at any
21 time. You may accept or reject the offer of mortgage assistance we obtain
22 from your lender [or servicer]. If you reject the offer, you do not have to
23 pay us. If you accept the offer, you will have to pay us [insert amount or
24 method for calculating the amount] for our services," in violation of
25 Section 1015.4(b)(1) of the MARS Rule, 12 C.F.R. § 1015.4(b)(1). For the
26 purposes of this section, the amount "you will have to pay" shall consist of
27 the total amount the consumer must pay to purchase, receive, and use all of
28

1 the mortgage assistance relief services that are the subject of the sales
2 offer, including but not limited to, all fees and charges; and

3 E. Failing to disclose the following information in every general commercial
4 communication and every consumer-specific commercial communication:

- 5 1. “[Name of Company] is not associated with the government, and our
6 service is not approved by the government or your lender,” in
7 violation of Section 1015.4(a)(1) and (b)(2) of the MARS Rule,
8 12 C.F.R. § 1015.4(a)(1) and (b)(2); and
- 9 2. In cases where the mortgage assistance relief service provider has
10 represented, expressly or by implication, that consumers will receive
11 any service or result set forth in paragraphs (2) through (6) of the
12 definition of “Mortgage Assistance Relief Service,” Section 1015.2
13 of the MARS Rule, 12 C.F.R. § 1015.2, “Even if you accept this
14 offer and use our service, your lender may not agree to change your
15 loan,” in violation of Section 1015.4(a)(2) and (b)(3), 12 C.F.R.
16 § 1015.4(a)(2) and (b)(3).

17 **IV.**

18 **PRESERVATION OF RECORDS AND TANGIBLE THINGS**

19 **IT IS FURTHER ORDERED** that Defendants and their officers, agents,
20 servants, employees, and attorneys, and those persons or entities in active concert or
21 participation with any of them who receive actual notice of this Order by personal
22 service, facsimile transmission, email, or otherwise, whether acting directly or through
23 any corporation, subsidiary, division, or other device, are hereby temporarily enjoined
24 from destroying, erasing, mutilating, concealing, altering, transferring, or otherwise
25 disposing of, in any manner, directly or indirectly, any documents or records that relate
26 to the business practices, or business or personal finances, of Defendants, or other entity
27 directly or indirectly under the control of Defendants.

V.

DISABLEMENT OF WEBSITES

IT IS FURTHER ORDERED that, immediately upon service of the Order upon them and pending determination of the FTC's request for a preliminary injunction, (1) any person hosting any Internet website for, or on behalf of, any Defendant, and (2) Defendants and their officers, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service, facsimile transmission, email, or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, shall:

- A. Immediately do whatever is necessary to ensure that any Internet website used by Defendants for the advertising, marketing, promotion, offering for sale, or sale of any mortgage assistance relief service, including, but not limited to, www.homeguardiansolutions.com, www.americanmortgageconsulting.com, and www.americanmortgagegroup.co, and containing statements or representations prohibited by Sections I, II, and III of this Order, cannot be accessed by the public;
- B. Prevent the destruction or erasure of any Internet website used by Defendants for the advertising, marketing, promotion, offering for sale, or sale of any mortgage assistance relief service, by preserving such website in the format in which it is maintained currently; and
- C. Immediately notify in writing counsel for the FTC of any other Internet website operated or controlled by any Defendant not listed in Subsection V.A above.

1 **VI.**

2 **SUSPENSION OF INTERNET DOMAIN NAME REGISTRATIONS**

3 **IT IS FURTHER ORDERED** that, pending determination of the FTC's request
4 for a preliminary injunction, any domain name registrar shall suspend the registration of
5 any Internet website used by Defendants for the advertising, marketing, promotion,
6 offering for sale, or sale of any mortgage assistance relief service, and containing
7 statements or representations prohibited by Sections I, II, and III of this Order,
8 including, but not limited to, www.homeguardiansolutions.com,
9 www.americanmortgageconsulting.com, and www.americanmortgagegroup.co, and
10 provide immediate notice to counsel for the FTC of any other Internet domain names
11 registered or controlled by any Defendants.

12 **VII.**

13 **ASSET FREEZE**

14 **IT IS FURTHER ORDERED** that Defendants, and their officers, agents,
15 servants, employees, and attorneys, and all persons or entities directly or indirectly
16 under the control of any of them, including any financial institution, and all other
17 persons or entities in active concert or participation with any of them who receive actual
18 notice of this Order by personal service, facsimile transmission, email, or otherwise, are
19 hereby temporarily restrained and enjoined from directly or indirectly:

- 20 A. Selling, liquidating, assigning, transferring, converting, loaning,
21 hypothecating, disbursing, gifting, conveying, encumbering, pledging,
22 concealing, dissipating, spending, withdrawing, or otherwise disposing of
23 any funds, real or personal property, or other assets or any interest therein,
24 wherever located, including any assets outside the territorial United States,
25 that are:
- 26 1. in the actual or constructive possession of any Defendant;
 - 27 2. owned or controlled by, or held, in whole or in part for the benefit
28 of, or subject to access by, or belonging to, any Defendant; or

1 3. in the actual or constructive possession of, or owned or controlled
2 by, or subject to access by, or belong to, any corporation,
3 partnership, trust, or other entity directly or indirectly owned,
4 managed, or under the control of any Defendant;

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

7 C. Incurring charges on any credit card, stored value card, debit card, or
8 charge card issued in the name, singly or jointly, of any Defendant or any
9 other entity directly or indirectly owned, managed, or controlled by any
10 Defendant;

11 D. Obtaining a personal or secured loan for or on behalf of any Defendant; or

12 E. Cashing any checks from consumers, clients, or customers of any
13 Defendant; and

14 F. The funds, property, and assets affected by this Section shall include:

15 (a) all assets of each Defendant as of the time this Order is entered,
16 including, without limitation, accounts held by American Mortgage
17 Consulting Group, LLC, also d.b.a. American Mortgage Consulting,
18 American Mortgage Group, AMC Consulting, and AMG Consulting;
19 Home Guardian Management Solutions, LLC, also d.b.a. Home Guardian
20 Solutions and HGS Consulting; and Newport Mortgage or Newport
21 Mortgage Group, to the extent that it may hold accounts on which
22 Defendant Mark Nagy Atalla is a signatory; and Mark Nagy Atalla; and

23 (b) those assets obtained or received after entry of this Order that are
24 derived from the actions alleged in Plaintiff's Complaint. This Section
25 does not prohibit transfers to the Receiver, as specifically required in
26 Section XVII, nor does it prohibit the Repatriation of Foreign Assets, as
27 specifically required in Section XI of this Order.
28

VIII.

RETENTION OF ASSETS AND DOCUMENTS BY THIRD PARTIES

IT IS FURTHER ORDERED that, pending determination of the FTC's request for a preliminary injunction, any financial or brokerage institution, business entity, electronic data host, or person served with a copy of this Order that holds, controls, or maintains custody of any account, document, electronically stored information, or asset of, on behalf of, in the name of, for the benefit of, subject to withdrawal by, subject to access or use by, or under the signatory power of any Defendant or other party subject to Section VII above, or has held, controlled, or maintained any such account, document, electronically stored information, or asset at any time since January 1, 2011, shall:

- A. Hold, preserve, and retain within such entity's or person's control, and prohibit the withdrawal, removal, alteration, assignment, transfer, pledge, hypothecation, encumbrance, disbursement, dissipation, conversion, sale, liquidation, or other disposal of such account, document, electronically stored information, or asset held by or under such entity's or person's control, except as directed by further order of the Court or as directed in writing by the Receiver regarding accounts, documents, or assets held in the name of or benefit of any Receivership Defendant;
- B. Provide the Receiver, the Receiver's agents, the FTC, and the FTC's agents immediate access to electronically stored information stored, hosted, or otherwise maintained on behalf of Defendants for forensic imaging;
- C. Deny access to any safe deposit boxes that are either titled in the name, individually or jointly, or subject to access by, any Defendant or other party subject to Section VII above;
- D. Provide to counsel for the FTC and the Receiver, within one (1) business day, a sworn statement setting forth:

- 1 1. the identification of each account or asset titled in the name,
2 individually or jointly, or held on behalf of or for the benefit of,
3 subject to withdrawal by, subject to access or use by, or under the
4 signatory power of any Defendant or other party subject to Section
5 VII above, whether in whole or in part;
- 6 2. the balance of each such account, or a description of the nature and
7 value of such asset, as of the close of business on the day on which
8 this Order is served;
- 9 3. the identification of any safe deposit box that is either titled in the
10 name of, individually or jointly, or is otherwise subject to access or
11 control by, any Defendant or other party subject to Section VII
12 above, whether in whole or in part; and
- 13 4. if the account, safe deposit box, or other asset has been closed or
14 removed, the date closed or removed, the balance on said date, and
15 the name or the person or entity to whom such account or other asset
16 was remitted;

17 E. Provide to counsel for the FTC and the Receiver, within three (3) business
18 days after being served with a request, copies of all documents pertaining
19 to such account or asset, including, but not limited to, originals or copies of
20 account applications, account statements, signature cards, checks, drafts,
21 deposit tickets, transfers to and from the accounts, all other debit and credit
22 instruments or slips, currency transaction reports, 1099 forms, and safe
23 deposit box logs; provided that such institution or custodian may charge a
24 reasonable fee; and

25 F. Cooperate with all reasonable requests of the Receiver relating to this
26 Order's implementation;

27 G. The accounts subject to this provision include: (a) all assets of each
28 Defendant deposited as of the time this Order is entered, and (b) those

1 assets deposited after entry of this Order that are derived from the actions
2 alleged in Plaintiff's Complaint. This Section does not prohibit transfers to
3 the Receiver, as specifically required in Section XVII, nor does it prohibit
4 the Repatriation of Foreign Assets, as specifically required in Section XI of
5 this Order; and

6 H. The FTC is granted leave, pursuant to Fed. R. Civ. P. 45, to subpoena
7 documents immediately from any financial or brokerage institution,
8 business entity, electronic data host, or person served with a copy of this
9 Order that holds, controls, or maintains custody of any account, document,
10 electronically stored information, or asset of, on behalf of, in the name of,
11 for the benefit of, subject to withdrawal by, subject to access or use by, or
12 under the signatory power of any Defendant or other party subject to
13 Section VII above, or has held, controlled, or maintained any such account,
14 document, electronically stored information, or asset at any time since
15 January 1, 2011, and such financial or brokerage institution, business
16 entity, electronic data host, or person shall respond to such subpoena
17 within three (3) business days after service.

18 IX.

19 FINANCIAL STATEMENTS AND ACCOUNTING

20 **IT IS FURTHER ORDERED** that each Defendant, within three (3) business
21 days of service of this Order, shall prepare and deliver to counsel for the FTC:

- 22 A. For the Individual Defendant, a completed financial statement accurate as
23 of the date of service of this Order upon such Defendant on the form of
24 Attachment A to this Order captioned "Financial Statement of Individual
25 Defendant;"
- 26 B. For each Corporate Defendant, a completed financial statement accurate as
27 of the date of service of this Order upon such Defendant (unless otherwise
28

1 agreed upon with FTC counsel) in the form of Attachment B to this Order
2 captioned “Financial Statement of Corporate Defendant;” and

- 3 C. For all Defendants, a list of all officers and directors of each Corporate
4 Defendant and all other individuals or entities with authority to direct the
5 operations of each Corporate Defendant or withdraw money from the
6 account of each Corporate Defendant.

7 **X.**

8 **CONSUMER CREDIT REPORTS**

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

12 **XI.**

13 **REPATRIATION OF FOREIGN ASSETS**

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

- 16 A. Provide counsel for the FTC and the Receiver with a full accounting of all
17 assets, accounts, funds, and documents outside of the territory of the
18 United States that are held either: (1) by Defendants; (2) for their benefit;
19 (3) in trust by or for them, individually or jointly; or (4) under their direct
20 or indirect control, individually or jointly;
- 21 B. Transfer to the territory of the United States all assets, accounts, funds, and
22 documents in foreign countries held either: (1) by Defendants; (2) for their
23 benefit; (3) in trust by or for them, individually or jointly; or (4) under their
24 direct or indirect control, individually or jointly; and
- 25 C. Provide the FTC access to all records of accounts or assets of the
26 Corporate Defendants and Individual Defendants held by financial
27 institutions located outside the territorial United States by signing the
28

1 Consent to Release of Financial Records attached to this Order as
2 Attachment C;

3 D. All repatriated assets, accounts, funds, and documents are subject to
4 Section VII of this Order.

5 **XII.**

6 **NONINTERFERENCE WITH REPATRIATION**

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

- 11 A. Sending any statement, letter, fax, email, or wire transmission, or
12 telephoning or engaging in any other act, directly or indirectly, that results
13 in a determination by a foreign trustee or other entity that a “duress” event
14 has occurred under the terms of a foreign trust agreement until such time
15 that all assets have been fully repatriated pursuant to Section XI of this
16 Order; or
17 B. Notifying any trustee, protector, or other agent of any foreign trust or other
18 related entities of either the existence of this Order, or of the fact that
19 repatriation is required pursuant to a court order, until such time that all
20 assets have been fully repatriated pursuant to Section XI of this Order.

21 **XIII.**

22 **APPOINTMENT OF TEMPORARY RECEIVER**

23 **IT IS FURTHER ORDERED** that Robb Evans is appointed Receiver for the
24 business activities of Receivership Defendants with the full power of an equity receiver.
25 The Temporary Receiver shall be an agent of this Court and solely an agent of this
26 Court in acting as Temporary Receiver under this Order. The Temporary Receiver shall
27 be accountable directly to this Court. The Temporary Receiver shall comply with all
28

1 laws and Local Rules of this Court governing receivers, including, but not limited to,
2 Local Rules 66-1 through 66-5.1 and Local Rule 66-8.

3 **XIV.**

4 **DUTIES AND AUTHORITY OF RECEIVER**

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

- 7 A. Assume full control of the Receivership Defendants by removing, as the
8 Temporary Receiver deems necessary or advisable, any director, officer,
9 independent contractor, employee, or agent of any of the Receivership
10 Defendants, including any named Defendant, from control of, management
11 of, or participation in, the affairs of the Receivership Defendants;
- 12 B. Take exclusive custody, control, and possession of all assets, documents,
13 and electronically stored information of, or in the possession, custody, or
14 under the control of, the Receivership Defendants, wherever situated. The
15 Temporary Receiver shall have full power to divert mail and to sue for,
16 collect, receive, take into possession, hold, and manage all assets and
17 documents of the Receivership Defendants and other persons or entities
18 whose interests are now held by or under the direction, possession,
19 custody, or control of the Receivership Defendants. *Provided, however,*
20 that the Temporary Receiver shall not attempt to collect or receive any
21 amount from a consumer if the Temporary Receiver believes the consumer
22 was a victim of the unlawful conduct alleged in the Complaint in this
23 matter;
- 24 C. Take all steps necessary to secure the business premises of the
25 Receivership Defendants. Such steps may include, but are not limited to,
26 the following, as the Temporary Receiver deems necessary or advisable:
- 27 1. serving and filing this Order;
 - 28 2. completing a written inventory of all Receivership assets;

- 1 3. obtaining pertinent information from all employees and other agents
2 of the Receivership Defendants, including, but not limited to, the
3 name, home address, social security number, job description, method
4 of compensation, and all accrued and unpaid commissions and
5 compensation of each such employee or agent, and all computer
6 hardware and software passwords;
- 7 4. videotaping and/or photographing all portions of the location;
- 8 5. securing the location by changing the locks and disconnecting any
9 computer modems or other means of access to the computer or other
10 records maintained at that location;
- 11 6. requiring any persons present on the premises at the time this Order
12 is served to leave the premises, to provide the Temporary Receiver
13 with proof of identification, and to demonstrate to the satisfaction of
14 the Temporary Receiver that such persons are not removing from the
15 premises documents or assets of the Receivership Defendants; and
- 16 7. requiring all employees, independent contractors, and consultants of
17 the Receivership Defendants to complete a questionnaire submitted
18 by the Temporary Receiver;

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

25 E. Liquidate any and all securities or commodities owned by or for the benefit
26 of the Receivership Defendants as the Receiver deems to be advisable or
27 necessary;

28

- 1 F. Enter into contracts and purchase insurance as the Temporary Receiver
2 deems to be advisable or necessary;
- 3 G. Prevent the inequitable distribution of assets and determine, adjust, and
4 protect the interests of consumers and creditors who have transacted
5 business with the Receivership Defendants;
- 6 H. Manage and administer the business of the Receivership Defendants until
7 further order of this Court by performing all incidental acts that the
8 Temporary Receiver deems to be advisable or necessary, which includes
9 retaining, hiring, or dismissing any employees, independent contractors, or
10 agents;
- 11 I. Choose, engage, and employ attorneys, accountants, appraisers, and other
12 independent contractors and technical specialists, as the Temporary
13 Receiver deems advisable or necessary in the performance of duties and
14 responsibilities under the authority granted by this Order;
- 15 J. Make payments and disbursements from the Receivership estate that are
16 necessary or advisable for carrying out the directions of, or exercising the
17 authority granted by, this Order. The Temporary Receiver shall apply to
18 the Court for prior approval of any payment of any debt or obligation
19 incurred by the Receivership Defendants prior to the date of entry of this
20 Order, except payments that the Temporary Receiver deems necessary or
21 advisable to secure assets of the Receivership Defendants, such as rental
22 payments;
- 23 K. Determine and implement measures to ensure that the Receivership
24 Defendants comply with, and prevent violations of, this Order and all other
25 applicable laws, including, but not limited to, revising sales materials and
26 implementing monitoring procedures;
- 27 L. Institute, compromise, adjust, appear in, intervene in, or become party to
28 such actions or proceedings in state, federal, or foreign courts that the

1 Temporary Receiver deems necessary and advisable to preserve or recover
2 the assets of the Receivership Defendants, or that the Temporary Receiver
3 deems necessary and advisable to carry out the Receiver's mandate under
4 this Order;

5 M. Defend, compromise, adjust, or otherwise dispose of any or all actions or
6 proceedings instituted in the past or in the future against the Temporary
7 Receiver in his role as Temporary Receiver, or against the Receivership
8 Defendants, that the Temporary Receiver deems necessary and advisable to
9 preserve the assets of the Receivership Defendants or that the Temporary
10 Receiver deems necessary and advisable to carry out the Temporary
11 Receiver's mandate under this Order;

12 N. Continue and conduct the business of the Receivership Defendants in such
13 manner, to such extent, and for such duration as the Temporary Receiver
14 may in good faith deem to be necessary or appropriate to operate the
15 business profitably and lawfully, if at all; *provided, however*, that the
16 continuation and conduct of the business shall be conditioned upon the
17 Temporary Receiver's good faith determination that the businesses can be
18 lawfully operated at a profit using the assets of the receivership estate;

19 O. Take depositions and issue subpoenas to obtain documents and records
20 pertaining to the receivership estate and compliance with this Order.
21 Subpoenas may be served by agents or attorneys of the Temporary
22 Receiver and by agents of any process server retained by the Temporary
23 Receiver;

24 P. Open one or more bank accounts in the Central or Southern District of
25 California as designated depositories for funds of the Receivership
26 Defendants. The Temporary Receiver shall deposit all funds of the
27 Receivership Defendants in such a designated account and shall make all
28

1 payments and disbursements from the receivership estate from such
2 account(s);

3 Q. Maintain accurate records of all receipts and expenditures that he makes as
4 Temporary Receiver;

5 R. Cooperate with reasonable requests for information or assistance from any
6 state or federal law enforcement agency; and

7 S. Maintain the chain of custody of all of Defendants' records in his
8 possession, pursuant to procedures to be established in writing with the
9 approval of the FTC.

10 **XV.**

11 **TEMPORARY RECEIVER AND FTC IMMEDIATE ACCESS TO**
12 **BUSINESS PREMISES AND RECORDS**

13 **IT IS FURTHER ORDERED** that Defendants and their officers, directors,
14 agents, servants, employees, attorneys, and all other persons or entities directly or
15 indirectly, in whole or in part, under their control, and all other persons in active concert
16 or participation with them who receive actual notice of this Order by personal service,
17 facsimile transmission, email, or otherwise, whether acting directly or through any
18 corporation, subsidiary, division, or other entity, shall:

19 A. Immediately identify to FTC's counsel and the Temporary Receiver:

- 20 1. All of Defendants' business premises;
- 21 2. Any non-residence premises where any Defendant conducts
- 22 business, sales operations, or customer service operations;
- 23 3. Any non-residence premises where documents or electronically
- 24 stored information related to the business, sales operations, or
- 25 customer service operations of any Defendant are hosted, stored, or
- 26 otherwise maintained, including, but not limited to, the name and
- 27 location of any electronic data hosts; and
- 28

1 4. Any non-residence premises where assets belonging to any
2 Defendant are stored or maintained;

3 B. Allow the FTC and the Temporary Receiver, and their respective
4 representatives, agents, attorneys, investigators, paralegals, contractors, or
5 assistants, immediate access to:

6 1. All of the Defendants' business premises, including, but not limited
7 to:

8 a. 1000 Bristol St. N., Suite 17-135, Newport Beach, CA 92660;

9 b. 3857 Birch St., Suite 313, Newport Beach, CA 92260;

10 c. 2967 Michelson Dr., #G620, Irvine, CA 92612;

11 d. 3400 Irvine Avenue, Suite 205, Newport Beach, CA 92660

12 (which may be signed "Newport Group");

13 and such other business locations that are wholly or partially owned,
14 rented, leased, or under the temporary or permanent control of any
15 Defendant;

16 2. Any other premises where the Defendants conduct business, sales
17 operations, or customer service operations;

18 3. Any premises where documents related to the Defendants'
19 businesses are stored or maintained;

20 4. Any premises where assets belonging to any Defendant are stored or
21 maintained; and

22 5. Any documents located at any of the locations described in this
23 Section;

24 C. Provide the FTC and the Temporary Receiver, and their respective
25 representatives, agents, attorneys, investigators, paralegals, contractors, or
26 assistants, with any necessary means of access to, copying of, and forensic
27 imaging of documents or electronically stored information, including,
28 without limitation, the locations of Receivership Defendants' business

1 premises, keys and combinations to business premises locks, computer
2 access codes of all computers used to conduct Receivership Defendants'
3 business, access to (including, but not limited to, execution of any
4 documents necessary for access to and forensic imaging of) any data
5 stored, hosted, or otherwise maintained by an electronic data host, and
6 storage area access information;

7 D. The FTC and the Temporary Receiver are authorized to employ the
8 assistance of law enforcement officers, including, but not limited to, the
9 United States Postal Inspection Service, Internal Revenue Service, Federal
10 Bureau of Investigation, and local police to effect service, to implement
11 peacefully the provisions of this Order, and to keep the peace. The
12 Temporary Receiver shall allow the FTC and its representatives, agents,
13 contractors, or assistants into the premises and facilities described in this
14 Section to inspect, inventory, image, and copy documents or electronically
15 stored information relevant to any matter contained in this Order. Counsel
16 for the FTC and the Temporary Receiver may exclude Defendants and
17 their agents and employees from the business premises and facilities during
18 the immediate access. No one shall interfere with the FTC's or Temporary
19 Receiver's inspection of the Defendants' premises or documents;

20 E. The Temporary Receiver and the FTC shall have the right to remove any
21 documents related to Defendants' business practices from the premises in
22 order that they may be inspected, inventoried, and copied. The materials
23 so removed shall be returned within five (5) business days of completing
24 said inventory and copying. If any property, records, documents, or
25 computer files relating to the Receivership Defendants' finances or
26 business practices are located in the residence of any Defendant or are
27 otherwise in the custody or control of any Defendant, then such Defendant
28 shall produce them to the Temporary Receiver within twenty-four (24)

1 hours of service of this Order. In order to prevent the destruction of
2 computer data, the Temporary Receiver shall isolate all computers from
3 outside access. The FTC's and the Temporary Receiver's representatives
4 may also photograph and videotape the inside and outside of all premises
5 to which they are permitted access by this Order, and all documents and
6 other items found on such premises;

7 F. The FTC's access to the Defendants' documents pursuant to this provision
8 shall not provide grounds for any Defendant to object to any subsequent
9 request for documents served by the FTC; and

10 G. The Temporary Receiver shall have the discretion to determine the time,
11 manner, and reasonable conditions of such access.

12 **XVI.**

13 **COOPERATION WITH TEMPORARY RECEIVER**

14 **IT IS FURTHER ORDERED** that:

15 A. Defendants, and their officers, agents, directors, servants, employees,
16 salespersons, independent contractors, attorneys, and corporations, and all
17 other persons or entities in active concert or participation with them, who
18 receive actual notice of this Order by personal service, facsimile
19 transmission, email, or otherwise, whether acting directly or through any
20 trust, corporation, subsidiary, division, or other device, or any of them,
21 shall fully cooperate with and assist the Temporary Receiver. Defendants'
22 cooperation and assistance shall include, but not be limited to:

- 23 1. Providing any information to the Temporary Receiver that the
24 Temporary Receiver deems necessary to exercising the authority and
25 discharging the responsibilities of the Temporary Receiver under
26 this Order, including, but not limited to, allowing the Temporary
27 Receiver to inspect documents and assets and to partition office
28 space;

1 2. Providing any username or password and executing any documents
2 required to access any computer or electronic files in any medium,
3 including, but not limited to, electronically stored information
4 stored, hosted or otherwise maintained by an electronic data host;
5 and

6 3. Advising all persons who owe money to the Receivership
7 Defendants that all debts should be paid directly to the Temporary
8 Receiver; and

9 B. Defendants and their officers, directors, agents, servants, employees,
10 attorneys, and all other persons or entities directly or indirectly, in whole
11 or in part, under their control, and all other persons in active concert or
12 participation with them who receive actual notice of this Order by personal
13 service, facsimile transmission, email, or otherwise, are hereby temporarily
14 restrained and enjoined from directly or indirectly:

- 15 1. Transacting any of the business of the Receivership Defendants;
16 2. Destroying, secreting, erasing, mutilating, defacing, concealing,
17 altering, transferring or otherwise disposing of, in any manner,
18 directly or indirectly, any documents, electronically stored
19 information, or equipment of the Receivership Defendants,
20 including, but not limited to, contracts, agreements, consumer files,
21 consumer lists, consumer addresses and telephone numbers,
22 correspondence, advertisements, brochures, sales material, sales
23 presentations, documents evidencing or referring to Defendants’
24 services, training materials, scripts, data, computer tapes, disks,
25 external storage devices, or other computerized records, books,
26 written or printed records, handwritten notes, telephone logs,
27 “verification” or “compliance” tapes or other audio or video tape
28 recordings, receipt books, invoices, postal receipts, ledgers, personal

1 and business canceled checks and check registers, bank statements,
2 appointment books, copies of federal, state, or local business or
3 personal income or property tax returns, photographs, mobile
4 devices, electronic storage media, accessories, and any other
5 documents, records, or equipment of any kind that relate to the
6 business practices or business or personal finances of the
7 Receivership Defendants or any other entity directly or indirectly
8 under the control of the Receivership Defendants;

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

14 4. Excusing debts owed to the Receivership Defendants;

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

21 6. Failing to create and maintain books, records, and accounts which,
22 in reasonable detail, accurately, fairly, and completely reflect the
23 incomes, assets, disbursements, transactions, and use of monies by
24 the Defendants or any other entity directly or indirectly under the
25 control of the Defendants;

26 7. Doing any act or refraining from any act whatsoever to interfere
27 with the Temporary Receiver's taking custody, control, possession,
28 or managing of the assets or documents subject to this Receivership;

1 or to harass or to interfere with the Temporary Receiver in any way;
2 or to interfere in any manner with the exclusive jurisdiction of this
3 Court over the assets or documents of the Receivership Defendants;
4 or to refuse to cooperate with the Temporary Receiver or the
5 Temporary Receiver's duly authorized agents in the exercise of their
6 duties or authority under any Order of this Court; and

7 8. Filing, or causing to be filed, any petition on behalf of the
8 Receivership Defendants for relief under the United States
9 Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, without prior permission
10 from this Court.

11 **XVII.**

12 **DELIVERY OF RECEIVERSHIP PROPERTY**

13 **IT IS FURTHER ORDERED** that immediately upon service of this Order upon
14 them or upon their otherwise obtaining actual knowledge of this Order, or within a
15 period permitted by the Temporary Receiver, Defendants and any other person or entity,
16 including, but not limited to, financial institutions and electronic data hosts, shall
17 transfer or deliver access to, possession, custody, and control of the following to the
18 Temporary Receiver:

- 19 A. All assets of the Receivership Defendants;
- 20 B. All documents and electronically stored information of the Receivership
21 Defendants, including, but not limited to, books and records of accounts,
22 all financial and accounting records, balance sheets, income statements,
23 bank records (including monthly statements, canceled checks, records of
24 wire transfers, records of ACH transactions, and check registers), client or
25 customer lists, title documents and other papers;
- 26 C. All assets belonging to members of the public now held by the
27 Receivership Defendants;
- 28

- 1 D. All keys, computer and other passwords, user names, entry codes,
2 combinations to locks required to open or gain or secure access to any
3 assets or documents of the Receivership Defendants, wherever located,
4 including, but not limited to, access to their business premises, means of
5 communication, accounts, computer systems, or other property; and
6 E. Information identifying the accounts, employees, properties, or other assets
7 or obligations of the Receivership Defendants; and
8 F. In the event any person or entity fails to deliver or transfer immediately
9 any asset or otherwise fails to comply with any provision of this Section
10 XVII, the Temporary Receiver may file *ex parte* with the Court an
11 Affidavit of Non-Compliance regarding the failure. Upon filing of the
12 affidavit, the Court may authorize, without additional process or demand,
13 Writs of Possession or Sequestration or other equitable writs requested by
14 the Receiver. The writs shall authorize and direct the United States
15 Marshal or any sheriff or deputy sheriff of any county to seize the asset,
16 document, or other thing and to deliver it to the Temporary Receiver.

17 **XVIII.**

18 **COMPENSATION FOR RECEIVER**

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

XIX.**RECEIVER'S REPORTS**

IT IS FURTHER ORDERED that the Temporary Receiver shall report to this Court on or before the date set for the hearing to Show Cause regarding the Preliminary Injunction, regarding: (1) the steps taken by the Temporary Receiver to implement the terms of this Order; (2) the value of all liquidated and unliquidated assets of the Receivership Defendants; (3) the sum of all liabilities of the Receivership Defendants; (4) the steps the Temporary Receiver intends to take in the future to: (a) prevent any diminution in the value of assets of the Receivership Defendants, (b) pursue receivership assets from third parties, and (c) adjust the liabilities of the Receivership Defendants, if appropriate; (5) the Receiver's assessment of whether the business can be operated in compliance with this Order; and (6) any other matters that the Temporary Receiver believes should be brought to the Court's attention. *Provided, however,* if any of the required information would hinder the Temporary Receiver's ability to pursue receivership assets, the portions of the Temporary Receiver's report containing such information may be filed under seal and not served on the parties.

XX.**WITHDRAWAL OF TEMPORARY RECEIVER**

IT IS FURTHER ORDERED that **if** the Temporary Receiver and any professional retained by the Temporary Receiver, including, but not limited to, his attorneys and accountants, **wish** to withdraw from his or her respective appointments or representations and apply for payment of their professional fees and costs at any time after the date of this Order, **the person who wishes to withdraw must send** written notice seven (7) days prior to the date of the intended withdrawal to the Court and to the parties along with a written report reflecting the Temporary Receiver's work, findings, and recommendations, as well as an accounting for all funds and assets in possession or control of the Temporary Receiver. The Temporary Receiver and professionals shall be relieved of all responsibilities, and the receivership deemed closed **upon approval by**

1 **the Court** of withdrawal. The Court will retain jurisdiction to consider the fee
2 applications, report, and accounting submitted by the Receiver and the professionals.
3 The written notice shall include an interim report indicating the Temporary Receiver's
4 actions and reflect the knowledge gained along with the fee applications of the
5 Temporary Receiver and his professionals. The report shall also contain the Temporary
6 Receiver's recommendations, if any.

7 **XXI.**

8 **TEMPORARY RECEIVER'S BOND/LIABILITY**

9 **IT IS FURTHER ORDERED** that no bond shall be required in connection with
10 the appointment of the Temporary Receiver. Except for an act of gross negligence, the
11 Temporary Receiver and the professionals shall not be liable for any loss or damage
12 incurred by any of the Defendants, their officers, agents, servants, employees, and
13 attorneys or any other person, by reason of any act performed or omitted to be
14 performed by the Temporary Receiver and the professionals in connection with the
15 discharge of his or her duties and responsibilities, including, but not limited to, their
16 withdrawal from the case under Section XX.

17 **XXII.**

18 **PROHIBITION ON RELEASE OF CONSUMER INFORMATION**

19 **IT IS FURTHER ORDERED** that, except as required by a law enforcement
20 agency, law, regulation, or court order, Defendants, and their officers, agents, servants,
21 employees, and attorneys, and all other persons in active concert or participation with
22 any of them who receive actual notice of this Order by personal service, facsimile
23 transmission, email, or otherwise, are temporarily restrained and enjoined from
24 disclosing, using, or benefitting from consumer information, including the name,
25 address, telephone number, email address, social security number, other identifying
26 information, or any data that enables access to a consumer's account (including a credit
27 card, bank account, or other financial account), of any person which any Defendant
28

1 obtained prior to entry of this Order in connection with any mortgage assistance relief
2 service.

3 **XXIII.**

4 **STAY OF ACTIONS**

5 **IT IS FURTHER ORDERED** that:

6 A. Except by leave of this Court, during pendency of the Receivership ordered
7 herein, Defendants and all other persons and entities be and hereby are
8 stayed from taking any action to establish or enforce any claim, right, or
9 interest for, against, on behalf of, in, or in the name of, the Receivership
10 Defendants, any of their subsidiaries, affiliates, partnerships, assets,
11 documents, or the Temporary Receiver or the Temporary Receiver's duly
12 authorized agents acting in their capacities as such, including, but not
13 limited to, the following actions:

- 14 1. Commencing, prosecuting, continuing, entering, or enforcing any
15 suit or proceeding, except that such actions may be filed to toll any
16 applicable statute of limitations;
- 17 2. Accelerating the due date of any obligation or claimed obligation;
18 filing or enforcing any lien; taking or attempting to take possession,
19 custody, or control of any asset; attempting to foreclose, forfeit,
20 alter, or terminate any interest in any asset, whether such acts are
21 part of a judicial proceeding, are acts of self-help, or otherwise;
- 22 3. Executing, issuing, serving, or causing the execution, issuance or
23 service of, any legal process, including, but not limited to,
24 attachments, garnishments, subpoenas, writs of replevin, writs of
25 execution, or any other form of process whether specified in this
26 Order or not; or
- 27 4. Doing any act or thing whatsoever to interfere with the Temporary
28 Receiver taking custody, control, possession, or management of the

1 assets or documents subject to this Receivership, or to harass or
2 interfere with the Temporary Receiver in any way, or to interfere in
3 any manner with the exclusive jurisdiction of this Court over the
4 assets or documents of the Receivership Defendants;

5 B. This Section does not stay:

- 6 1. The commencement or continuation of a criminal action or
7 proceeding;
- 8 2. The commencement or continuation of an action or proceeding by
9 the State Bar of California to enforce its police or regulatory power;
- 10 3. The commencement or continuation of an action or proceeding by a
11 governmental unit to enforce such governmental unit's police or
12 regulatory power;
- 13 4. The enforcement of a judgment, other than a money judgment,
14 obtained in an action or proceeding by a governmental unit to
15 enforce such governmental unit's police or regulatory power; or
- 16 5. The issuance to a Receivership Defendant of a notice of tax
17 deficiency; and

18 C. Except as otherwise provided in this Order, all persons and entities in need
19 of documentation from the Temporary Receiver shall in all instances first
20 attempt to secure such information by submitting a formal written request
21 to the Receiver, and, if such request has not been responded to within thirty
22 (30) days of receipt by the Temporary Receiver, any such person or entity
23 may thereafter seek an Order of this Court with regard to the relief
24 requested.

25 **XXIV.**

26 **LIMITED EXPEDITED DISCOVERY**

27 **IT IS FURTHER ORDERED** that the FTC is granted leave to conduct certain
28 expedited discovery, and that, commencing with the time and date of this Order, in lieu

1 of the time periods, notice provisions, and other requirements of Rules 26, 30, 34, and
2 45 of the Federal Rules of Civil Procedure, and applicable Local Rules, the FTC is
3 granted leave to:

- 4 A. Take the deposition, on three (3) days' notice, of any person or entity,
5 whether or not a party, for the purpose of discovering: (1) the nature,
6 location, status, and extent of assets of Defendants or their affiliates or
7 subsidiaries; (2) the nature and location of documents and business records
8 of Defendants or their affiliates or subsidiaries; and (3) compliance with
9 this Order. The limitations and conditions set forth in Fed. R. Civ. P.
10 30(a)(2)(B) and 31(a)(2)(B) regarding subsequent depositions shall not
11 apply to depositions taken pursuant to this Section. In addition, any such
12 depositions taken pursuant to this Section shall not be counted toward the
13 ten-deposition limit set forth in Fed. R. Civ. P. 30(a)(2)(A)(I) and
14 31(a)(2)(A)(I) and shall not preclude the FTC from subsequently deposing
15 the same person or entity in accordance with the Federal Rules of Civil
16 Procedure. Service of discovery upon a party, taken pursuant to this
17 Section, shall be sufficient if made by facsimile, email, or by overnight
18 delivery. Any deposition taken pursuant to this Subsection that has not
19 been reviewed and signed by the deponent may be used by any party for
20 purposes of the preliminary injunction hearing;
- 21 B. Serve upon parties requests for production of documents or inspection that
22 require production or inspection within three (3) calendar days of service,
23 and may serve subpoenas upon non-parties that direct production or
24 inspection within five (5) calendar days of service, for the purpose of
25 discovering: (1) the nature, location, status, and extent of assets of
26 Defendants or their affiliates or subsidiaries; (2) the nature and location of
27 documents and business records of Defendants or their affiliates or
28 subsidiaries; and (3) compliance with this Order, *provided that* twenty-four

1 (24) hours' notice shall be deemed sufficient for the production of any
2 such documents that are maintained or stored only as electronic data;

3 C. Serve deposition notices and other discovery requests upon the parties to
4 this action by facsimile or overnight courier, and take depositions by
5 telephone or other remote electronic means; and

6 D. If a Defendant fails to appear for a properly noticed deposition or fails to
7 comply with a request for production or inspection, seek to prohibit that
8 Defendant from introducing evidence at any subsequent hearing.

9 **XXV.**

10 **SERVICE OF PLEADINGS, MEMORANDA, AND OTHER EVIDENCE**

11 **IT IS FURTHER ORDERED** that Defendants shall file any answering
12 affidavits, pleadings, or legal memoranda with the Court and serve the same on counsel
13 for the FTC no later than five (5) business days prior to the preliminary injunction
14 hearing in this matter. The FTC may file responsive or supplemental pleadings,
15 materials, affidavits, or memoranda with the Court and serve the same on counsel for
16 Defendants no later than one (1) business day prior to the preliminary injunction
17 hearing in this matter. *Provided that* service shall be performed by personal or
18 overnight delivery, facsimile, or email, and documents shall be delivered so that they
19 shall be received by the other parties no later than 4 p.m. (Pacific Time) on the
20 appropriate dates listed in this Section.

21 **XXVI.**

22 **LIVE TESTIMONY; WITNESS IDENTIFICATION**

23 **IT IS FURTHER ORDERED** that the question of whether this Court should
24 enter a preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil
25 Procedure enjoining the Defendants during the pendency of this action shall be resolved
26 on the pleadings, declarations, exhibits, and memoranda filed by, and oral argument of,
27 the parties. Live testimony shall be heard only on further order of this Court on motion
28 filed with the Court and served on counsel for the other parties at least five (5) business

1 days prior to the preliminary injunction hearing in this matter. Such motion shall set
2 forth the name, address, and telephone number of each proposed witness, a detailed
3 summary or affidavit disclosing the substance of each proposed witness' expected
4 testimony, and an explanation of why the taking of live testimony would be helpful to
5 this Court. Any papers opposing a timely motion to present live testimony or to present
6 live testimony in response to live testimony to be presented by another party shall be
7 filed with this Court and served on the other parties at least three (3) business days prior
8 to the preliminary injunction hearing in this matter. *Provided that* service shall be
9 performed by personal or overnight delivery, facsimile, or email, and documents shall
10 be delivered so that they shall be received by the other parties no later than 4 p.m.
11 (Pacific Time) on the appropriate dates listed in this Section. *Provided further,*
12 however, that an evidentiary hearing on the Commission's request for a preliminary
13 injunction is not necessary unless Defendants demonstrate that they have, and intend to
14 introduce, evidence that raises a genuine material factual issue.

15 **XXVII.**

16 **MONITORING**

17 **[intentionally left blank]**

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21 **XXVIII.**

22 **DEFENDANTS' DUTY TO DISTRIBUTE ORDER**

23 **IT IS FURTHER ORDERED** that Defendants shall immediately provide a copy
24 of this Order to each affiliate, subsidiary, division, sales entity, successor, assign,
25 officer, director, employee, independent contractor, client company, electronic data
26 host, agent, attorney, spouse, and representative of Defendants and shall, within three
27 (3) calendar days from the date of entry of this Order, provide counsel for the FTC with
28 a sworn statement that: (a) confirms that Defendants have provided copies of the Order

1 as required by this Section, and (b) lists the names and addresses of each entity or
2 person to whom Defendants provided a copy of the Order. Furthermore, Defendants
3 shall not take any action that would encourage officers, agents, directors, employees,
4 salespersons, independent contractors, attorneys, subsidiaries, affiliates, successors,
5 assigns, or other persons or entities in active concert or participation with Defendants to
6 disregard this Order or believe that they are not bound by its provisions.

7 **XXIX.**

8 **DURATION OF TEMPORARY RESTRAINING ORDER**

9 **IT IS FURTHER ORDERED** that the Temporary Restraining Order granted
10 herein shall expire on the **2nd day of October, 2012, at 11:59 p.m.** (Pacific Time),
11 unless within such time, the Order, for good cause shown, is extended with the consent
12 of the parties, or for an additional period not to exceed fourteen (14) calendar days, or
13 unless it is further extended pursuant to Federal Rule of Civil Procedure 65.

14 **XXX.**

15 **ORDER TO SHOW CAUSE REGARDING PRELIMINARY INJUNCTION**

16 **IT IS FURTHER ORDERED** that, pursuant to Federal Rule of Civil Procedure
17 65(b), each of the Defendants shall appear before this Court on the **1st day of October,**
18 **2012, at 8:30 a.m.** (Pacific Time), to show cause, if there is any, why this Court should
19 not enter a preliminary injunction enjoining the violations of law alleged in the FTC's
20 Complaint, continuing the freeze of their assets, and imposing such additional relief as
21 may be appropriate.

22 **XXXI.**

23 **CORRESPONDENCE WITH PLAINTIFF**

24 **IT IS FURTHER ORDERED** that, for the purposes of this Order, because mail
25 addressed to the FTC is subject to delay due to heightened security screening, all
26 correspondence and service of pleadings on Plaintiff shall be sent either via electronic
27 submission or via Federal Express to:

28 Maxine Stansell

1 Federal Trade Commission
2 915 Second Ave., Suite 2896
3 Seattle, WA 98174
4 mstansell@ftc.gov

5 with a copy to:

6 Barbara Chun
7 Federal Trade Commission
8 10877 Wilshire Blvd., Suite 700
9 Los Angeles, CA 90024
10 bchun@ftc.gov

11 **XXXII.**

12 **SERVICE OF THIS ORDER**

13 **IT IS FURTHER ORDERED** that copies of this Order may be served by
14 facsimile transmission, email, personal or overnight delivery, or U.S. Mail, by agents
15 and employees of the FTC or any state or federal law enforcement agency or by private
16 process server, upon any financial institution or other entity or person that may have
17 possession, custody, or control of any documents or assets of any Defendant, or that
18 may otherwise be subject to any provision of this Order. Service upon any branch or
19 office of any financial institution shall effect service upon the entire financial
20 institution.

XXXIII.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes of construction, modification, and enforcement of this Order.

IT IS SO ORDERED, this 18th day of October, 2012, at 4:30 p.m. (Pacific Time).

Dated: September 18, 2012

David O. Carter

UNITED STATES DISTRICT JUDGE

Dated: September 18, 2012

Respectfully submitted,
WILLARD K. TOM
General Counsel

/s/

MAXINE R. STANSELL
KATHRYN C. DECKER
Attorneys for Plaintiff
Federal Trade Commission

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