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16 UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

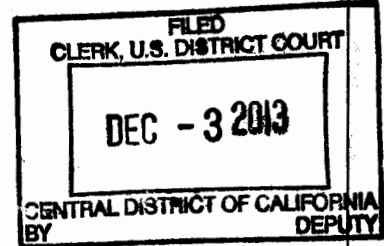
18 FEDERAL TRADE COMMISSION,

19 Plaintiff,

20 v.

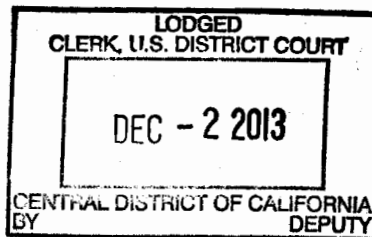
22 CREAM GROUP, INC., also d/b/a
Terra Nova, TNT, Inc., and CRM, Inc.,
23 a California Corporation;

24 SAMI CHARCHIAN, also d/b/a Oro
Marketing, Inc., Modo, Modo Industry,
25 Oro Max, Casa de Oro, Casa de Moda,
Oro Mundo, and Nation/Modo,
26 individually and as an owner or director
of Cream Group, Inc.;



17 Case No. **CV 13-8843 JFW (PLA)**

**[PROPOSED] TEMPORARY
RESTRAINING ORDER**



28 [PROPOSED] TEMPORARY RESTRAINING ORDER - 1

1 JOHN CHARCHIAN, a/k/a Djahangir
2 Charchian and Jahangir John Charchian,
3 also d/b/a Oro Marketing, Inc., Modo,
4 Modo Industry, Oro Max, Casa de Oro,
5 Casa de Moda, Oro Mundo, and
6 Nation/Modo, individually and as an
7 owner or director of Cream Group, Inc.;
8 and

9 NORMA RAE RAMOS, individually
10 and as officer and director of Cream
11 Group, Inc.,

12 Defendants.

13 Plaintiff Federal Trade Commission ("Commission" or "FTC"), pursuant to
14 Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15
15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse
16 Prevention Act ("Telemarketing Act"), 15 U.S.C. §§ 6101-6108, has filed a
17 Complaint for Permanent Injunction and Other Equitable Relief, and has applied
18 for a temporary restraining order, asset freeze, and other equitable relief, and an
19 order to show cause why a preliminary injunction should not issue pursuant to
20 Rule 65 of the Federal Rules of Civil Procedure, for Defendants' acts or practices
21 in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC's
22 Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310.

23 **FINDINGS OF FACT**

24 This Court, having considered the FTC's Complaint, Application for *Ex*
25 *Parte* Temporary Restraining Order, Memorandum of Points and Authorities,
26 declarations, exhibits, and all other papers filed in support of the FTC's
27 application, finds that:

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

1 2. There is good cause to believe that Defendants CREAM GROUP,
2 INC., also d/b/a Terra Nova, TNT, Inc., and CRM, Inc., a California corporation;
3 its principal, SAMI CHARCHIAN, also d/b/a Oro Marketing, Inc., Modo, Modo
4 Industry, Oro Max, Casa de Oro, Casa de Moda, Oro Mundo, and Nation/Modo;
5 its principal, JOHN CHARCHIAN, a/k/a Djahangir Charchian and Jahangir John
6 Charchian, also d/b/a Oro Marketing, Inc., Modo, Modo Industry, Oro Max, Casa
7 de Oro, Casa de Moda, Oro Mundo, and Nation/Modo; and its principal NORMA
8 RAE RAMOS have engaged in, and are likely to continue to engage in, acts and
9 practices that violate Section 5(a) of the FTC Act and the TSR, and that the
10 Commission is likely to prevail on the merits of this action.

11 3. There is good cause to believe that consumers will suffer immediate
12 and irreparable harm from Defendants' ongoing violations of Section 5(a) of the
13 FTC Act and the TSR unless Defendants are restrained and enjoined by this
14 Court's entry of a Temporary Restraining Order ("Order").

15 4. There is good cause to believe that immediate and irreparable
16 damage to the Court's ability to grant effective final relief for consumers,
17 including the refund of monies paid, restitution, or rescission of contracts, will
18 occur from the sale, transfer, or other disposition, or concealment by Defendants
19 of their assets or records unless they are immediately restrained and enjoined by
20 order of this Court and that, in accordance with Fed. R. Civ. P. 65(b), the interest
21 of justice requires that the FTC's Motion be heard *ex parte* without prior notice to
22 Defendants. Thus, there is good cause for an asset freeze, the appointment of a
23 temporary receiver, and for issuing this Order without prior notice to Defendants
24 of the Commission's application, pursuant to Federal Rule of Civil Procedure
25 65(b).

1 3. **“Assisting Others”** includes, but is not limited to: (1) performing
2 customer service functions, including, but not limited to, receiving or responding
3 to consumer complaints; (2) formulating or providing, or arranging for the
4 formulation or provision of, any telephone script, direct mail solicitation, or other
5 design, text, or use of images of any Internet website, email, or other electronic
6 communication; (3) formulating or providing, or arranging for the formulation or
7 provision of, any marketing support material or service, including, but not limited
8 to, web or internet protocol addresses or domain name registration of any Internet
9 websites, affiliate marketing services, or media placement services; (4)
10 formulating or providing, or arranging for the formulation or provision of, any
11 material sent to consumers, including, but not limited to, any form, pamphlet,
12 brochure, or software; (5) shipping, or arranging for the shipping of any material
13 to consumers; (6) providing or arranging for the provision of mail drops; (7)
14 providing names, or assisting in the generation of, potential customers; and (8)
15 performing marketing, billing, or payment services of any kind.

16 4. **“Corporate Defendant”** means Cream Group, Inc., also d/b/a Terra
17 Nova, TNT, Inc., and CRM, Inc., and its successors and assigns, as well as any
18 subsidiaries, affiliates, and any fictitious business entities or business names
19 created or used by this entity.

20 5. **“Defendants”** means the Individual Defendants and the Corporate
21 Defendant, individually, collectively, or in any combination, and each of them by
22 whatever names each might be known.

23 6. **“Document”** and **“Electronically Stored Information”** is
24 synonymous in meaning and equal in scope to the usage of the terms in Federal
25 Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts,
26 photographs, audio and video recordings, computer records, digital records, and
27

1 other data compilations from which information can be obtained and translated, if
2 necessary, into reasonably usable form through detection devices. A draft or
3 nonidentical copy is a separate Document or Electronically Stored Information
4 within the meaning of the terms.

5 7. **“Electronic Data Host”** means any person or entity that stores,
6 hosts, or otherwise maintains Electronically Stored Information.

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

11 9. **“Individual Defendants”** means Sami Charchian, also d/b/a Oro
12 Marketing, Inc., Modo, Modo Industry, Oro Max, Casa de Oro, Casa de Moda,
13 Oro Mundo, and Nation/Modo; John Charchian, a/k/a Djahangir Charchian and
14 Jahangir John Charchian, and also d/b/a Oro Marketing, Inc., Modo, Modo
15 Industry, Oro Max, Casa de Oro, Casa de Moda, Oro Mundo, and Nation/Modo;
16 and Norma Rae Ramos, by whatever other names each may be known.

17 10. **“Person”** means a natural person, an organization or other legal
18 entity, including a corporation, partnership, sole proprietorship, limited liability
19 company, association, cooperative, or any other group or combination acting as
20 an entity.

21 11. **“Receivership Defendant”** means Cream Group, Inc., and its
22 successors, assigns, affiliates, or subsidiaries and any related d/b/a used by any of
23 the Individual Defendants, including, but not limited to, Oro Marketing, Inc.,
24 Modo, Modo Industry, Oro Max, Casa de Oro, Casa de Moda, Oro Mundo, and
25 Nation/Modo, and each of them by whatever names each might be known.

1 12. **“Temporary Receiver”** means the temporary receiver appointed in
2 this Order. The term “temporary receiver” also includes any deputy receivers as
3 may be named by the temporary receiver.

4 13. **“Telemarketing”** means any plan, program, or campaign that is
5 conducted to induce the purchase of goods or services by use of one or more
6 telephones, and which involves a telephone call, whether or not covered by the
7 TSR.

8 **I. PROHIBITED BUSINESS ACTIVITIES**

9 **IT IS THEREFORE ORDERED** that Defendants and their officers,
10 agents, servants, employees, and attorneys, and all other Persons in active concert
11 or participation with any of them, who receive actual notice of this Order, by
12 personal service or otherwise, whether acting directly or through any corporation,
13 subsidiary, division, or other device, in connection with the advertising,
14 marketing, promotion, offering for sale, or the sale of goods or services, are
15 hereby temporarily restrained and enjoined from:

16 A. Misrepresenting, or Assisting Others, in misrepresenting, directly or
17 indirectly, expressly or by implication, any material fact, including, but not
18 limited to, the following:

19 1. Consumers who purchase merchandise from Defendants will
20 receive well-known, brand-name merchandise at low or wholesale prices; and

21 2. Consumers who accept receipt of additional shipments from
22 Defendants will receive the well-known, brand-name merchandise consumers
23 ordered, along with a refund of the amount they paid to Defendants;

24 B. Violating, or Assisting Others in violating, any provision of the TSR,
25 including, but not limited to:

1 1. Section 310.3(a)(2)(iii) of the TSR, 16 C.F.R.
2 § 310.3(a)(2)(iii), by misrepresenting, directly or by implication, any material
3 aspect of the performance, efficacy, nature, or central characteristics of the goods
4 or services that are the subject of Defendants' sales offer;

5 2. Section 310.3(a)(4) of the TSR, 16 C.F.R. § 310.(a)(4), by
6 making any false or misleading statement to induce consumers to pay for goods or
7 services;

8 3. Section 310.3(a)(2)(iv) of the TSR, 16 C.F.R. § 310.(a)(2)(iv),
9 by misrepresenting, directly or by implication, any material aspect of the nature or
10 terms of Defendants' refund, cancellation, exchange, or repurchase policies;

11 4. Section 310.3(a)(1)(iii) of the TSR, 16 C.F.R.
12 § 310.3(a)(1)(iii), by failing to disclose truthfully, in a clear and conspicuous
13 manner, before a consumer consents to pay for goods or services offered, that
14 Defendants have a policy of not making refunds or cancellations; and

15 5. Section 310.4(a)(1) of the TSR, 16 C.F.R. § 310.4(a)(1), by
16 using threats or intimidation to coerce consumers to pay Defendants, including,
17 but not limited to, threatening consumers with false legal actions, fines, damage to
18 consumers' credit history, garnishment of income and bank accounts, arrest, and
19 reports to immigration authorities.

20 **II. PROHIBITION ON RELEASE OF CONSUMER INFORMATION**

21 **IT IS FURTHER ORDERED** that, except as required by a law
22 enforcement agency, law, regulation, or court order, Defendants and their officers,
23 agents, servants, employees, and attorneys, and all other Persons in active concert
24 or participation with any of them, who receive actual notice of this Order, by
25 personal service or otherwise, whether acting directly or through any corporation,
26 subsidiary, division, or other device, are hereby temporarily restrained and

1 enjoined from disclosing, using, selling, transferring, or benefitting from
2 consumer information, including the name, address, telephone number, email
3 address, social security number, other identifying information, or any data that
4 enables access to a consumer's account (including a credit card, bank account, or
5 other financial account), of any Person which any Defendant obtained prior to
6 entry of this Order in connection with the advertising, marketing, promotion,
7 offering for sale, or the sale of merchandise to consumers.

8 **III. PRESERVATION OF RECORDS AND TANGIBLE THINGS**

9 **IT IS FURTHER ORDERED** that Defendants and their officers, agents,
10 servants, employees, and attorneys, and all other Persons in active concert or
11 participation with any of them, who receive actual notice of this Order, by
12 personal service or otherwise, whether acting directly or through any corporation,
13 subsidiary, division, or other device, are hereby temporarily restrained and
14 enjoined from:

15 A. Destroying, erasing, mutilating, concealing, altering, transferring, or
16 otherwise disposing of, in any manner, directly or indirectly, any Documents or
17 records that relate to the business practices, or business or personal finances, of
18 Defendants, or any entity directly or indirectly under the control of Defendants;
19 and

20 B. Failing to create and maintain documents that, in reasonable detail,
21 accurately, fairly, and completely reflect Defendants' incomes, disbursements,
22 transactions, and use of Defendants' Assets.

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IV. ASSET FREEZE

IT IS FURTHER ORDERED that Defendants and their officers, agents, servants, employees, and attorneys, and all other Persons directly or indirectly under the control of any of them, including any Financial Institution, and all other Persons in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, are hereby temporarily restrained and enjoined from, directly or indirectly:

A. Selling, liquidating, assigning, transferring, converting, loaning, hypothecating, disbursing, gifting, conveying, encumbering, pledging, concealing, dissipating, spending, withdrawing, or otherwise disposing of any funds, real or personal property, or other Assets or any interest therein, wherever located, including any Assets outside the territorial United States, that are: (1) in the actual or constructive possession of any Asset Freeze Defendant; (2) owned or controlled by, or held, in whole or in part for the benefit of, or subject to access by, or belonging to, any Asset Freeze Defendant; or (3) in the actual or constructive possession of, or owned or controlled by, or subject to access by, or belonging to, any corporation, partnership, trust, or other entity directly or indirectly owned, managed, or under the control of any Asset Freeze Defendant;

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

C. Incurring charges or cash advances on any credit card, stored value card, debit card, or charge card issued in the name, singly or jointly, of any Asset Freeze Defendant or any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by any Asset Freeze Defendant;

1 D. Obtaining a personal or secured loan for or on behalf of any Asset
2 Freeze Defendant, or any corporation, partnership, or other entity directly or
3 indirectly owned, managed, or controlled by any Asset Freeze Defendant;

4 E. Incurring liens or other encumbrances on real property, personal
5 property, or other Assets titled in the name, singly or jointly, of any Asset Freeze
6 Defendant, or any corporation, partnership, or other entity directly or indirectly
7 owned, managed, or controlled by any Asset Freeze Defendant; and

8 F. Cashing any checks from consumers, clients, or customers of any of
9 the Defendants.

10 Notwithstanding the Asset freeze provisions of this Section, and subject to
11 prior written agreement with the Commission, Individual Defendants Sami
12 Charchian and John Charchian may, upon compliance with Section VI (Financial
13 Disclosures), pay from their individual personal funds reasonable, usual, ordinary,
14 and necessary living expenses.

15 The funds, property, and Assets affected by this Section shall include both
16 existing Assets and Assets acquired after the effective date of this Order.

17 **V. RETENTION OF ASSETS AND DOCUMENTS BY THIRD**
18 **PARTIES**

19 **IT IS FURTHER ORDERED** that, pending determination of the FTC's
20 request for a preliminary injunction, any Financial Institution, business entity,
21 Electronic Data Host, or Person who has received actual notice of this Order, by
22 personal service or otherwise, that holds, controls, or maintains custody of any
23 account, Document, Electronically Stored Information, or Asset of, on behalf of,
24 in the name of, for the benefit of, subject to withdrawal by, subject to access or
25 use by, or under the signatory power of, any Asset Freeze Defendant or other
26 party subject to Section IV above, or has held, controlled, or maintained any such

1 account, Document, Electronically Stored Information, or Asset at any time since
2 January 1, 2009 shall:

3 A. Hold and retain within its control and prohibit the withdrawal,
4 removal, assignment, transfer, pledge, hypothecation, encumbrance,
5 disbursement, dissipation, conversion, sale, liquidation, or other disposal of any of
6 the Assets, funds, Documents or other property held by, or under its control:

7 1. On behalf of, or for the benefit of, any Asset Freeze Defendant
8 or any other party subject to Section IV above;

9 2. In any account maintained in the name of, or for the benefit of,
10 or subject to withdrawal by, any Asset Freeze Defendant or other party subject to
11 Section IV above; and

12 3. That are subject to access or use by, or under the signatory
13 power of, any Asset Freeze Defendant or other party subject to Section IV above;

14 B. Deny Asset Freeze Defendants access to any safe deposit boxes or
15 storage facilities that are either:

16 1. Titled in the name, individually or jointly, of any Asset Freeze
17 Defendant, or other party subject to Section IV above; or

18 2. Subject to access by any Asset Freeze Defendant or other
19 party subject to Section IV above;

20 C. Within five (5) days of the date of service of this Order, provide the
21 FTC a sworn statement setting forth:

22 1. The identification number of each account or Asset titled in
23 the name, individually or jointly, of any Asset Freeze Defendant, or held on or
24 behalf of, or for the benefit of, any Asset Freeze Defendant or other party subject
25 to Section IV above, including all trust accounts managed on behalf of any Asset
26 Freeze Defendant or subject to any Asset Freeze Defendant's control;

1 2. The balance of each such account, or a description of the
2 nature and value of such Asset;

3 3. The identification and location of any safe deposit box,
4 commercial mail box, or storage facility that is either titled in the name,
5 individually or jointly, of any Asset Freeze Defendant, or is otherwise subject to
6 access or control by any Asset Freeze Defendant or other party subject to Section
7 IV above, whether in whole or in part; and

8 4. If the account, safe deposit box, storage facility, or other Asset
9 has been closed or removed, the date closed or removed and the balance on said
10 date;

11 D. Within five (5) days of a request from the FTC, provide the FTC
12 copies of all records or other documentation pertaining to each such account or
13 Asset, including, but not limited to, originals or copies of account applications,
14 account statements, corporate resolutions, signature cards, checks, drafts, deposit
15 tickets, transfers to and from the accounts, all other debit and credit instruments or
16 slips, currency transaction reports, 1099 forms, and safe deposit box logs; and

17 E. This Section shall apply to existing accounts and Assets, Assets
18 deposited or accounts opened after the effective date of this Order, and any
19 accounts or Assets maintained, held, or controlled three years before the effective
20 date of this Order. This Section shall not prohibit transfers in accordance with
21 any provision of this Order, any further order of the Court, or by written
22 agreement of the parties.

23 **VI. FINANCIAL DISCLOSURES**

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

1 A. For each Individual Defendant, a completed financial statement
2 accurate as of the date of service of this Order upon such Defendant on the form
3 of Attachment A to this Order captioned “Financial Statement of Individual
4 Defendant;”

5 B. For the Corporate Defendant, a completed financial statement
6 accurate as of the date of service of this Order upon such Defendant in the form of
7 Attachment B to this Order captioned “Financial Statement of Corporate
8 Defendant;” and

9 C. For all Defendants, a list of all officers and directors of each
10 Corporate Defendant and all other individuals or entities with authority to direct
11 the operations of each Corporate Defendant or withdraw money from the account
12 of each Corporate Defendant.

13 **VII. REPATRIATION OF FOREIGN ASSETS AND DOCUMENTS**

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

16 A. Provide counsel for the FTC and the Temporary Receiver with a full
17 accounting of all Assets, accounts, funds, and Documents outside of the territory
18 of the United States that are held either: (1) by any Asset Freeze Defendant; (2)
19 for the benefit of any Asset Freeze Defendant; (3) in trust by or for any Asset
20 Freeze Defendant, individually or jointly; or (4) under the direct or indirect
21 control, individually or jointly of any Asset Freeze Defendant;

22 B. Transfer to the territory of the United States and deliver to the
23 Temporary Receiver all Assets, accounts, funds, and Documents in foreign
24 countries held either: (1) by any Asset Freeze Defendant; (2) for the benefit of
25 any Asset Freeze Defendant; (3) in trust by or for any Asset Freeze Defendant,
26 individually or jointly;

1 C. Provide the FTC access to all records of accounts or Assets of any
2 Asset Freeze Defendant held by Financial Institutions located outside the
3 territorial United States by signing the Consent to Release of Financial Records
4 appended to this Order as Attachment C; and

5 D. All repatriated Assets, accounts, funds, and Documents are subject to
6 Section IV of this Order.

7 **VIII. NONINTERFERENCE WITH REPATRIATION**

8 **IT IS FURTHER ORDERED** that Defendants and their officers, agents,
9 servants, employees, and attorneys, and all other Persons in active concert or
10 participation with any of them, who receive actual notice of this Order, by
11 personal service or otherwise, whether acting directly or through any corporation,
12 subsidiary, division, or other device, are hereby temporarily restrained and
13 enjoined from taking any action, directly or indirectly, that may result in the
14 encumbrance or dissipation of foreign Assets, or in the hindrance of the
15 repatriation required by Section VII of this Order, including, but not limited to:

16 A. Sending any statement, letter, facsimile transmission, email, or wire
17 transmission, or telephoning or engaging in any other act, directly or indirectly,
18 that results in a determination by a foreign trustee or other entity that a “duress”
19 event has occurred under the terms of a foreign trust agreement until such time
20 that all Assets have been fully repatriated pursuant to Section VII of this Order;
21 and

22 B. Notifying any trustee, protector, or other agent of any foreign trust or
23 other related entities of either the existence of this Order, or of the fact that
24 repatriation is required pursuant to a court order, until such time that all Assets
25 have been fully repatriated pursuant to Section VII of this Order.

1 **IX. CONSUMER CREDIT REPORTS**

2 **IT IS FURTHER ORDERED** that pursuant to Section 604(a)(1) of the
3 Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(1), any consumer reporting
4 agency may furnish a consumer report as requested concerning any of the
5 Defendants to the FTC.

6 **X. APPOINTMENT OF A TEMPORARY RECEIVER**

7 **IT IS FURTHER ORDERED** that Brick Kane is appointed
8 Temporary Receiver for the Receivership Defendant with the full power of an
9 equity receiver. The Temporary Receiver shall be an agent of this Court, and
10 solely the agent of this Court, in acting as Temporary Receiver under this Order.
11 The Temporary Receiver shall be accountable directly to this Court. The
12 Temporary Receiver shall comply with all laws and Local Rules of this Court
13 governing receivers, including, but not limited to, Local Rules 66-1 through 66-
14 5.1 and Local Rule 66-8.

15 **XI. DUTIES AND AUTHORITY OF TEMPORARY RECEIVER**

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

18 A. Assume full control of the Receivership Defendant by removing, as
19 the Temporary Receiver deems necessary or advisable, any director, officer,
20 independent contractor, employee, or agent of any of the Receivership Defendant,
21 including any Defendant, from control of, management of, or participation in, the
22 affairs of the Receivership Defendant;

23 B. Take exclusive custody, control, and possession of all Assets,
24 Documents, and Electronically Stored Information of, or in the possession,
25 custody, or under the control of, the Receivership Defendant, wherever situated.
26 The Temporary Receiver shall have full power to divert mail and to sue for,

1 collect, receive, take in possession, hold, and manage all Assets and Documents
2 of the Receivership Defendant and other Persons whose interests are now held by
3 or under the direction, possession, custody, or control of, the Receivership
4 Defendant. The Temporary Receiver shall assume control over the income and
5 profits therefrom and all sums of money now or hereafter due or owing to the
6 Receivership Defendant. *Provided, however,* that the Temporary Receiver shall
7 not attempt to collect or receive any amount from a consumer if the Temporary
8 Receiver believes the consumer was a victim of the unfair or deceptive acts or
9 practices or other violations of law alleged in the Complaint in this matter;

10 C. Take all steps necessary to secure the business premises of the
11 Receivership Defendant. Such steps may include, but are not limited to, any of
12 the following, as the Temporary Receiver deems necessary or advisable:

13 (1) serving and filing this Order; (2) completing a written inventory of all
14 Receivership assets; (3) obtaining pertinent information from all employees and
15 other agents of the Receivership Defendant, including, but not limited to, the
16 name, home address, social security number, job description, method of
17 compensation, and all accrued and unpaid commissions and compensation of each
18 such employee or agent, and all computer hardware and software passwords; (4)
19 photographing and/or videotaping any or all portions of the location; (5) securing
20 the location by changing the locks and disconnecting any computer modems or
21 other means of access to the computer or other records maintained at that
22 location; (6) requiring any Persons present on the premises at the time this Order
23 is served to leave the premises, to provide the Temporary Receiver with proof of
24 identification, and to demonstrate to the satisfaction of the Temporary Receiver
25 that such Persons are not removing from the premises Documents or Assets of the
26 Receivership Defendant; and (7) requiring all employees, independent

1 contractors, and consultants of the Receivership Defendant to complete a
2 questionnaire submitted by the Temporary Receiver. Law enforcement personnel,
3 including, but not limited to, police or sheriffs, may assist the Temporary
4 Receiver in implementing these provisions in order to keep the peace and
5 maintain security. If requested by the Temporary Receiver, the United States
6 Marshals Service will provide appropriate and necessary assistance to the
7 Temporary Receiver to implement this Order and is authorized to use any
8 necessary and reasonable force to do so;

9 D. Conserve, hold, and manage all Receivership Assets, and perform all
10 acts necessary or advisable to preserve the value of those Assets in order to
11 prevent any irreparable loss, damage, or injury to consumers or creditors of the
12 Receivership Defendant, including, but not limited to, obtaining an accounting of
13 the Assets and preventing the transfer, withdrawal, or misapplication of Assets;

14 E. Enter into contracts and purchase insurance as the Temporary
15 Receiver deems to be advisable or necessary;

16 F. Liquidate any and all securities or commodities owned by or for the
17 benefit of the Receivership Defendant as the Temporary Receiver deems to be
18 advisable or necessary;

19 G. Prevent the inequitable distribution of Assets and determine, adjust,
20 and protect the interests of consumers and creditors who have transacted business
21 with the Receivership Defendant;

22 H. Manage and administer the business of the Receivership Defendant
23 until further order of this Court by performing all incidental acts that the
24 Temporary Receiver deems to be advisable or necessary, which includes, but is
25 not limited to, retaining, hiring, or dismissing any employees, independent
26 contractors, or agents;

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

5 J. Make payments and disbursements from the receivership estate that
6 are necessary or advisable for carrying out the directions of, or exercising the
7 authority granted by, this Order. The Temporary Receiver shall apply to the
8 Court for prior approval of any payment of any debt or obligation incurred by the
9 Receivership Defendant prior to the date of entry of this Order, except payments
10 that the Temporary Receiver deems necessary or advisable to secure Assets of the
11 Receivership Defendant, such as rental payments;

12 K. Determine and implement measures to ensure that the Receivership
13 Defendant comply with, and prevent violations of, this Order and all other
14 applicable laws;

15 L. Institute, compromise, adjust, appear in, intervene in, or become
16 party to such actions or proceedings in state, federal, or foreign courts or
17 arbitration proceedings as the Temporary Receiver deems necessary and advisable
18 to preserve or recover the Assets of the Receivership Defendant, or that the
19 Temporary Receiver deems necessary and advisable to carry out the Temporary
20 Receiver's mandate under this Order, including, but not limited to, actions
21 challenging fraudulent or voidable transfers;

22 M. Defend, compromise, adjust, or otherwise dispose of any or all
23 actions or proceedings instituted in the past or in the future against the Temporary
24 Receiver in his role as Temporary Receiver, or against the Receivership
25 Defendant, as the Temporary Receiver deems necessary and advisable to preserve
26 the Assets of the Receivership Defendant, or that the Temporary Receiver deems

1 necessary and advisable to carry out the Temporary Receiver's mandate under
2 this Order;

3 N. Continue and conduct the business of the Receivership Defendant in
4 such manner, to such extent, and for such duration as the Temporary Receiver
5 may in good faith deem to be necessary or appropriate to operate the business
6 profitably and lawfully, if at all; *provided, however*, that the continuation and
7 conduct of the business shall be conditioned upon the Temporary Receiver's good
8 faith determination that the business can be lawfully operated at a profit using the
9 Assets of the receivership estate;

10 O. Take depositions and issue subpoenas to obtain Documents and
11 records pertaining to the receivership estate and compliance with this Order.
12 Subpoenas may be served by agents or attorneys of the Temporary Receiver and
13 by agents of any process server retained by the Temporary Receiver;

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

19 Q. Maintain accurate records of all receipts and expenditures incurred as
20 Temporary Receiver;

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

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

1 B. Information identifying the accounts, employees, properties, or other
2 Assets or obligations of the Receivership Defendant; and

3 C. In the event any Person or entity fails to deliver or transfer
4 immediately any Asset or otherwise fails to comply with any provision of this
5 Section, the Temporary Receiver may file *ex parte* with the Court an Affidavit of
6 Non-Compliance regarding the failure. Upon filing of the affidavit, the Court
7 may authorize, without additional process or demand, Writs of Possession or
8 Sequestration or other equitable writs requested by the Temporary Receiver. The
9 writs shall authorize and direct the United States Marshals Service or any sheriff
10 or deputy sheriff of any county to seize the Asset, Document, or other thing and to
11 deliver it to the Temporary Receiver.

12 **XIII. COOPERATION WITH THE TEMPORARY RECEIVER**

13 **IT IS FURTHER ORDERED** that Defendants and their officers, agents,
14 directors, servants, employees, salespersons, independent contractors, attorneys,
15 and corporations, and all other Persons in active concert or participation with any
16 of them, who receive actual notice of this Order, by personal service or otherwise,
17 whether acting directly or through any corporation, subsidiary, division, or other
18 device, are hereby temporarily restrained and enjoined from directly or indirectly:

19 A. Failing to fully cooperate with and assist the Temporary Receiver.
20 Defendants' cooperation and assistance shall include, but not be limited to: (1)
21 providing any information to the Temporary Receiver that the Temporary
22 Receiver deems necessary to exercising the authority and discharging the
23 responsibilities of the Temporary Receiver under this Order, including, but not
24 limited to, allowing the Temporary Receiver to inspect Documents and Assets
25 and to partition office space; (2) providing any username or password and
26 executing any Documents required to access any computer or electronic files in
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1 any medium, including, but not limited to, Electronically Stored Information
2 stored, hosted, or otherwise maintained by an Electronic Data Host; and (3)
3 advising all Persons who owe money to the Receivership Defendant that all debts
4 should be paid directly to the Temporary Receiver;

5 B. Transacting any of the business of the Receivership Defendant;

6 C. Destroying, secreting, erasing, mutilating, defacing, concealing,
7 altering, transferring, or otherwise disposing of, in any manner, directly or
8 indirectly, any Documents, Electronically Stored Information, or equipment of the
9 Receivership Defendant, including, but not limited to, books, records, accounts,
10 writings, drawings, graphs, charts, photographs, audio and video recordings,
11 computer records, and other data compilations, electronically-stored records, or
12 any other records of any kind or nature;

13 D. Transferring, receiving, altering, selling, encumbering, pledging,
14 assigning, liquidating, or otherwise disposing of any Assets owned, controlled, or
15 in the possession or custody of, or in which an interest is held or claimed by, the
16 Receivership Defendant or the Temporary Receiver;

17 E. Excusing debts owed to the Receivership Defendant;

18 F. Failing to notify the Temporary Receiver of any Asset, including
19 accounts, of a Receivership Defendant held in any name other than the name of
20 the Receivership Defendant, or by any Person other than the Receivership
21 Defendant, or failing to provide any assistance or information requested by the
22 Temporary Receiver in connection with obtaining possession, custody, or control
23 of such Assets;

24 G. Doing any act or refraining from any act whatsoever to interfere with
25 the Temporary Receiver's taking custody, control, possession, or managing of the
26 Assets or Documents subject to this Receivership; or to harass or to interfere with
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1 the Temporary Receiver in any way; or to interfere in any manner with the
2 exclusive jurisdiction of this Court over the Assets or Documents of the
3 Receivership Defendant; or to refuse to cooperate with the Temporary Receiver or
4 the Temporary Receiver's duly authorized agents in the exercise of their duties or
5 authority under any Order of this Court; and

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

9 **XIV. STAYS OF ACTIONS AGAINST RECEIVERSHIP DEFENDANT**

10 **IT IS FURTHER ORDERED** that:

11 A. Except by leave of this Court, during pendency of the Receivership
12 ordered herein, Defendants and all other Persons be and hereby are stayed from
13 taking any action to establish or enforce any claim, right, or interest for, against,
14 on behalf of, in, or in the name of, the Receivership Defendant, any of their
15 subsidiaries, affiliates, partnerships, Assets, Documents, or the Temporary
16 Receiver or the Temporary Receiver's duly authorized agents acting in their
17 capacities as such, including, but not limited to, the following actions:

18 1. Petitioning, or assisting in the filing of a petition, that would
19 cause any Receivership Defendant to be placed in bankruptcy;

20 2. Commencing, prosecuting, continuing, entering, or enforcing
21 any suit or proceeding, *except* that such actions may be commenced if necessary
22 to toll any applicable statute of limitations;

23 3. Accelerating the due date of any obligation or claimed
24 obligation; filing or enforcing any lien; taking or attempting to take possession,
25 custody, or control of any Asset; attempting to foreclose, forfeit, alter, or

1 terminate any interest in any Asset, whether such acts are part of a judicial
2 proceeding, are acts of self-help, or otherwise;

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

7 5. Doing any act or thing whatsoever to interfere with the
8 Temporary Receiver taking custody, control, possession, or management of the
9 Assets or Documents subject to this Receivership, or to harass or interfere with
10 the Temporary Receiver in any way, or to interfere in any manner with the
11 exclusive jurisdiction of this Court over the Assets or Documents of the
12 Receivership Defendant;

13 B. This Section does not stay (1) the commencement or continuation of
14 a criminal action or proceeding; (2) the commencement or continuation of an
15 action or proceeding by a governmental unit to enforce such governmental unit's
16 police or regulatory power; (3) the enforcement of a judgment, other than a
17 money judgment, obtained in an action or proceeding by a governmental unit to
18 enforce such governmental unit's police or regulatory power; or (4) the issuance
19 to a Receivership Defendant of a notice of tax deficiency; and

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

1 **XV. COMPENSATION FOR TEMPORARY RECEIVER**

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

13 **XVI. RECEIVER'S REPORTS**

14 **IT IS FURTHER ORDERED** that the Temporary Receiver shall report to
15 this Court on or before the date set for the hearing to Show Cause regarding the
16 Preliminary Injunction, regarding: (1) the steps taken by the Temporary Receiver
17 to implement the terms of this Order; (2) the value of all liquidated and
18 unliquidated Assets of the Receivership Defendant; (3) the sum of all liabilities of
19 the Receivership Defendant; (4) the steps the Temporary Receiver intends to take
20 in the future to: (a) prevent any diminution in the value of Assets of the
21 Receivership Defendant, (b) pursue receivership Assets from third parties, and (c)
22 adjust the liabilities of the Receivership Defendant, if appropriate; (5) the
23 Temporary Receiver's assessment of whether the business can be operated in
24 compliance with this Order; and (6) any other matters that the Temporary
25 Receiver believes should be brought to the Court's attention. *Provided, however,*
26 *if any of the required information would hinder the Temporary Receiver's ability*

1 to pursue Receivership Assets, the portions of the Temporary Receiver's report
2 containing such information may be filed under seal and not served on the parties.

3 **XVII. TEMPORARY RECEIVER'S BOND**

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

13 **XVIII. IMMEDIATE ACCESS TO BUSINESS PREMISES AND**
14 **DOCUMENTS**

15 **IT IS FURTHER ORDERED** that Defendants and their officers,
16 directors, agents, servants, employees, attorneys, and all other Persons in active
17 concert or participation with any of them who receive actual notice of this Order
18 by personal service or otherwise, whether acting directly or through any
19 corporation, subsidiary, division, or other device, shall allow the FTC's
20 representatives, agents, and assistants, as well as Receivership Defendant's
21 representatives, and the Individual Defendants themselves, reasonable access to:
22 (1) all of the Defendants' business premises, including, but not limited to: 14037
23 Vanowen St., Van Nuys, CA 91405, and such other business locations that are
24 wholly or partially owned, rented, leased, or under the temporary or permanent
25 control of any Defendant; (2) any other premises where the Defendants conduct
26 business, sales operations, or customer service operations; (3) any premises where
27 Documents related to the Defendants' businesses are stored or maintained; (4) any

1 premises where Assets belonging to any Defendant are stored or maintained; and
2 (5) any Documents located at any of the locations described in this Section;

3 The purpose of this access shall be to inspect and copy any and all books,
4 records, Documents, accounts, and other property owned by, or in the possession
5 of, the Receivership Defendant or its agents. The Receiver shall have the
6 discretion to determine the time, manner, and reasonable conditions of such
7 access. The FTC may remove materials from the Receivership Defendant's
8 business premises to inspect, inventory, and copy such materials. The FTC shall
9 return materials so removed within five (5) business days of completing said
10 inventory and copying. The FTC's access to the Defendants' Documents
11 pursuant to this Section shall not provide grounds for any Defendant to object to
12 any subsequent request for Documents served by the FTC.

13 **XIX. LIMITED EXPEDITED DISCOVERY**

14 **IT IS FURTHER ORDERED** that the parties are granted leave to conduct
15 certain expedited discovery, and that, commencing with the time and date of this
16 Order, in lieu of the time periods, notice provisions, and other requirements of
17 Rules 26, 30, 34, and 45 of the Federal Rules of Civil Procedure, and applicable
18 Local Rules, the FTC is granted leave to:

19 A. Take the deposition, on three (3) days' notice, of any Person,
20 whether or not a party, for the purpose of discovering: (1) the nature, location,
21 status, and extent of Assets of Defendants or their affiliates or subsidiaries; (2) the
22 nature and location of Documents and business records of Defendants or their
23 affiliates or subsidiaries; and (3) compliance with this Order. The limitations and
24 conditions set forth in Fed. R. Civ. P. 30(a)(2)(B) and 31(a)(2)(B) regarding
25 subsequent depositions shall not apply to depositions taken pursuant to this
26 Section. In addition, any such depositions taken pursuant to this Section shall not
27

1 be counted toward the ten-deposition limit set forth in Fed. R. Civ. P.
2 30(a)(2)(A)(I) and 31(a)(2)(A)(I) and shall not preclude the FTC from
3 subsequently deposing the same Person in accordance with the Federal Rules of
4 Civil Procedure. Service of discovery upon a party, taken pursuant to this
5 Section, shall be sufficient if made by facsimile, email, or by overnight delivery.
6 Any deposition taken pursuant to this Subsection that has not been reviewed and
7 signed by the deponent may be used by any party for purposes of the preliminary
8 injunction hearing;

9 B. Serve upon parties requests for production of documents or
10 inspection that require production or inspection within three (3) calendar days of
11 service, and may serve subpoenas upon non-parties that direct production or
12 inspection within five (5) calendar days of service, for the purpose of discovering:
13 (1) the nature, location, status, and extent of Assets of Defendants or their
14 affiliates or subsidiaries; (2) the nature and location of Documents and business
15 records of Defendants or their affiliates or subsidiaries; and (3) compliance with
16 this Order, *provided that* twenty-four (24) hours' notice shall be deemed
17 sufficient for the production of any such Documents that are maintained or stored
18 only as electronic data;

19 C. Serve deposition notices and other discovery requests upon the
20 parties to this action by facsimile, email, or overnight delivery, and take
21 depositions by telephone or other remote electronic means; and

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

1 **XX. SERVICE OF PLEADINGS, MEMORANDA, AND OTHER**
2 **EVIDENCE**

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

13 **XXI. SERVICE OF THIS ORDER**

14 **IT IS FURTHER ORDERED** that:

15 A. Copies of this Order may be served by facsimile transmission, email,
16 personal or overnight delivery, or U.S. Mail, by agents and employees of the FTC
17 or any state or federal law enforcement agency or by private process server, upon
18 any Financial Institution or other Person that may have possession, custody, or
19 control of any Documents or Assets of any Defendant, or that may otherwise be
20 subject to any provision of this Order. Service upon any branch or office of any
21 Financial Institution shall effect service upon the entire Financial Institution; and

22 B. For purposes of service on anyone in possession of records, assets,
23 property, or property rights, actual notice of this Order shall be deemed complete
24 upon notification by any means including, but not limited to, notice by service by
25 facsimile transmission of the first page, Sections IV, V, XII, and the last page of
26 this Order, provided that notice is followed within five (5) business days by
27 delivery of a complete copy of this Order.

1 **XXII. LIVE TESTIMONY; WITNESS IDENTIFICATION**

2 **IT IS FURTHER ORDERED** that the question of whether this Court
3 should enter a preliminary injunction pursuant to Rule 65 of the Federal Rules of
4 Civil Procedure enjoining the Defendants during the pendency of this action shall
5 be resolved on the pleadings, declarations, exhibits, and memoranda filed by, and
6 oral argument of, the parties. Live testimony shall be heard only on further order
7 of this Court on motion filed with the Court and served on counsel for the other
8 parties at least five (5) business days prior to the preliminary injunction hearing in
9 this matter. Such motion shall set forth the name, address, and telephone number
10 of each proposed witness, a detailed summary or affidavit disclosing the
11 substance of each proposed witness' expected testimony, and an explanation of
12 why the taking of live testimony would be helpful to this Court. Any papers
13 opposing a timely motion to present live testimony or to present live testimony in
14 response to live testimony to be presented by another party shall be filed with this
15 Court and served on the other parties at least three (3) business days prior to the
16 preliminary injunction hearing in this matter. *Provided that* service shall be
17 performed by personal or overnight delivery, facsimile, or email and documents
18 shall be delivered so that they shall be received by the other parties no later than
19 4 p.m. (Pacific Time) on the appropriate dates listed in this Section. *Provided*
20 *further*, however, that an evidentiary hearing on the Commission's request for a
21 preliminary injunction is not necessary unless Defendants demonstrate that they
22 have, and intend to introduce, evidence that raises a genuine material factual
23 issue.

24 **XXIII. CORRESPONDENCE WITH PLAINTIFF**

25 **IT IS FURTHER ORDERED** that, for the purpose of this Order, because
26 mail addressed to the FTC is subject to delay due to heightened security
27

1 screening, all correspondence and service of pleadings on the FTC shall be sent
2 either via electronic submission or via Federal Express to:

3 Laura M. Solis
4 Kathryn C. Decker
5 Julie Mayer
6 Federal Trade Commission
7 915 Second Ave., Suite 2896
8 Seattle, WA 98174
9 Fax: 206-220-6366
10 Email: lsolis@ftc.gov
11 kdecker@ftc.gov

12 with a copy to:

13 Raymond E. McKown
14 Federal Trade Commission
15 10877 Wilshire Blvd., Suite 700
16 Los Angeles, CA 90024
17 Fax: (310) 824-4380
18 Email: rmckown@ftc.gov

19 **XXIV. DEFENDANTS' DUTY TO DISTRIBUTE ORDER**

20 **IT IS FURTHER ORDERED** that Defendants shall immediately provide
21 a copy of this Order to each of their affiliates, subsidiaries, divisions, sales
22 entities, successors, assigns, officers, directors, employees, independent
23 contractors, client companies, Electronic Data Hosts, agents, attorneys, spouses,
24 and representatives, and shall, within three (3) calendar days from the date of
25 entry of this Order, provide counsel for the FTC with a sworn statement that: (1)
26 confirms that Defendants have provided copies of the Order as required by this
27

1 Section; and (2) lists the names and addresses of each Person to whom
2 Defendants provided a copy of the Order.

3 **XXV. DURATION OF TEMPORARY RESTRAINING ORDER**

4 **IT IS FURTHER ORDERED** that the Temporary Restraining Order
5 granted herein shall expire on the 17th day of December, 2013, at 2:00
6 p.m. (Pacific Time), unless within such time the Order, for good cause shown, is
7 extended, or unless, as to any Defendant, the Defendant consents that it should be
8 extended for a longer period of time.


9 **XXVI. ORDER TO SHOW CAUSE WHY PRELIMINARY INJUNCTION
SHOULD NOT ISSUE**

10 **IT IS FURTHER ORDERED** that, pursuant to Federal Rule of Civil
11 Procedure 65(b), each of the Defendants shall appear before this Court on the 17th
12 day of December, 2013, at 1:30 p.m. (Pacific Time), to show cause, if there is any,
13 why this Court should not enter a preliminary injunction, pending a formal ruling
14 on the Complaint, enjoining the violations of law alleged in the FTC's Complaint,
15 continuing the freeze of their Assets, and imposing such additional relief as may
16 be appropriate.

17 **XXVII. RETENTION OF JURISDICTION**

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

20
21
22 SO ORDERED, this 3rd day of December, 2013, at 2:00 p.m.

23
24 
25 _____
26 United States District Judge
27
28

