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14
 15 **UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA**

16 FEDERAL TRADE COMMISSION,

Case No. CV 13-8843 JFW (PLAx)

17
 18 Plaintiff,

**STIPULATED ORDER FOR
 PRELIMINARY INJUNCTION
 WITH ASSET FREEZE,
 APPOINTMENT OF A RECEIVER,
 AND OTHER EQUITABLE RELIEF**

19 v.

20 CREAM GROUP, INC., also d/b/a
 21 Terra Nova, TNT, Inc., and CRM, Inc.,
 a California Corporation, *et al.*,

22 Defendants.
 23

24 On December 2, 2013, Plaintiff Federal Trade Commission (“Commission”
 25 or “FTC”) filed its Complaint for Permanent Injunction and Other Equitable
 26 Relief pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act
 27 (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer
 28

1 Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101-6108,
2 and applied for a temporary restraining order, asset freeze, and other equitable
3 relief, and an order to show cause why a preliminary injunction should not issue
4 pursuant to Rule 65 of the Federal Rules of Civil Procedure, for Defendants’ acts
5 or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the
6 FTC’s Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310. On December 3,
7 2013, this Court granted the FTC’s *Ex Parte* Application for a Temporary
8 Restraining Order (Doc. 4) and entered a Temporary Restraining Order (“TRO”)
9 (Doc. 20) with an order to show cause why a preliminary injunction should not
10 issue against Defendants Cream Group, Inc., also d/b/a Terra Nova, TNT, Inc.,
11 and CRM, Inc.; Sami Charchian, also d/b/a Oro Marketing, Inc., Modo, Modo
12 Industry, Oro Max, Casa de Oro, Casa de Moda, Oro Mundo, and Nation/Modo;
13 John Charchian, also d/b/a Oro Marketing, Inc., Modo, Modo Industry, Oro Max,
14 Casa de Oro, Casa de Moda, Oro Mundo, and Nation/Modo; and Norma Rae
15 Ramos. All Defendants have been served with the Summons, Complaint, TRO,
16 and other related papers filed in this action.

17 Now, the FTC and Defendants, acting by and through their respective
18 counsel, have consented to entry of this Stipulated Order for Preliminary
19 Injunction with Asset Freeze, the Appointment of a Receiver, and Other Equitable
20 Relief (“Order”), to remain in effect until the final resolution of this matter, with
21 the following findings of fact and Order:

22 **FINDINGS OF FACT**

23 1. This Court has jurisdiction over the subject matter of this case and
24 over Defendants, who were properly served with the Complaint, Summonses, and
25 TRO in this matter.

26 2. Venue lies properly with this Court.

1 3. There is good cause to believe that Defendants have engaged in, and
2 are likely to continue to engage in, acts and practices that violate Section 5(a) of
3 the FTC Act and the TSR, and that the Commission is likely to prevail on the
4 merits of this action.

5 4. There is good cause to believe that consumers will suffer immediate
6 and irreparable harm from Defendants' ongoing violations of Section 5(a) of the
7 FTC Act and the TSR unless Defendants are restrained by Order of this Court.

8 5. There is good cause to believe that immediate and irreparable
9 damage to the Court's ability to grant effective final relief for consumers,
10 including the refund of monies paid, restitution, or rescission of contracts, will
11 occur from the sale, transfer, or other disposition, or concealment by Defendants
12 of their assets or records unless they are immediately restrained and enjoined by
13 order of this Court. Thus, there is good cause for an asset freeze, expedited
14 discovery, and the appointment of a permanent receiver over the Corporate
15 Defendant.

16 6. Considering the Commission's likelihood of ultimate success and
17 weighing the equities, a preliminary injunction with an asset freeze, appointment
18 of a permanent receiver, and other equitable relief as to the Defendants is in the
19 public interest.

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

22 **ORDER**

23 **DEFINITIONS**

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

25 1. **"Asset"** or **"Assets"** means any legal or equitable interest in, right to,
26 or claim to any real, personal, or intellectual property of any Defendant, or held
27 for the benefit of any Defendant, wherever located, whether in the United States

1 or abroad, including, but not limited to, chattel, goods, instruments, equipment,
2 fixtures, general intangibles, effects, leaseholds, contracts, mail or other
3 deliveries, shares of stock, commodities, futures, inventory, checks, notes,
4 accounts, credits, receivables (as those terms are defined in the Uniform
5 Commercial Code), cash and trusts including, but not limited to, the John and
6 Victoria Charchian Family Trust, and shall include both existing assets and assets
7 acquired after the date of entry of this Order.

8 2. **“Asset Freeze Defendants”** means the Corporate Defendant, Sami
9 Charchian, and John Charchian, individually, collectively, or in any combination,
10 and each of them by whatever other names each might be known, and any
11 fictitious business entities or business names created or used by any of them,
12 including but not limited to, Oro Marketing, Inc., Modo, Modo Industry, Oro
13 Max, Casa de Oro, Casa de Moda, Oro Mundo, and Nation/Modo.

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

1 performing marketing, billing, or payment services of any kind relating to
2 consumers.

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

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

10 6. **“Document”** and **“Electronically Stored Information”** is
11 synonymous in meaning and equal in scope to the usage of the terms in Federal
12 Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts,
13 photographs, audio and video recordings, computer records, digital records, and
14 other data compilations from which information can be obtained and translated, if
15 necessary, into reasonably usable form through detection devices. A draft or
16 nonidentical copy is a separate Document or Electronically Stored Information
17 within the meaning of the terms.

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

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

24 9. **“Individual Defendants”** means Sami Charchian, also d/b/a Oro
25 Marketing, Inc., Modo, Modo Industry, Oro Max, Casa de Oro, Casa de Moda,
26 Oro Mundo, and Nation/Modo; John Charchian, a/k/a Djahangir Charchian and
27 Jahangir John Charchian, and also d/b/a Oro Marketing, Inc., Modo, Modo

1 Industry, Oro Max, Casa de Oro, Casa de Moda, Oro Mundo, and Nation/Modo;
2 and Norma Rae Ramos, by whatever other names each may be known.

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

7 11. “**Receivership Defendant**” means Cream Group, Inc., and its
8 successors, assigns, affiliates, or subsidiaries, including, but not limited to,
9 Applied Design Services, Inc. and CA Mart, and any related d/b/a used by any of
10 the Individual Defendants, including, but not limited to, Oro Marketing, Inc.,
11 Modo, Modo Industry, Oro Max, Casa de Oro, Casa de Moda, Oro Mundo, and
12 Nation/Modo, and each of them by whatever names each might be known.

13 12. “**Receiver**” means the permanent receiver appointed in this Order.
14 The term “Receiver” also includes any deputy receivers as may be named by the
15 Receiver.

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

20 **I. PROHIBITED BUSINESS ACTIVITIES**

21 **IT IS THEREFORE ORDERED** that Defendants and their officers,
22 agents, servants, employees, and attorneys, and all other Persons in active concert
23 or participation with any of them, who receive actual notice of this Order, by
24 personal service or otherwise, whether acting directly or through any corporation,
25 subsidiary, division, or other device, in connection with the advertising,
26

1 marketing, promotion, offering for sale, or the sale of goods or services, are
2 hereby restrained and enjoined from:

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

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

8 2. Consumers who pay for and accept receipt of additional
9 shipments from Defendants will receive the well-known, brand-name
10 merchandise consumers ordered, along with a refund of the amount they paid to
11 Defendants;

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

14 1. Section 310.3(a)(2)(iii) of the TSR, 16 C.F.R.
15 § 310.3(a)(2)(iii), by misrepresenting, directly or by implication, any material
16 aspect of the performance, efficacy, nature, or central characteristics of the goods
17 or services that are the subject of Defendants' sales offer;

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

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

24 4. Section 310.3(a)(1)(iii) of the TSR, 16 C.F.R.
25 § 310.3(a)(1)(iii), by failing to disclose truthfully, in a clear and conspicuous
26 manner, before a consumer consents to pay for goods or services offered, that
27 Defendants have a policy of not making refunds or cancellations; and

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

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

7 **IT IS FURTHER ORDERED** that, except as required by a law
8 enforcement agency, law, regulation, or court order, Defendants and their officers,
9 agents, servants, employees, and attorneys, and all other Persons in active concert
10 or 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 restrained and enjoined from
13 disclosing, using, selling, transferring, or benefitting from consumer information,
14 including the name, address, telephone number, email address, social security
15 number, other identifying information, or any data that enables access to a
16 consumer's account (including a credit card, bank account, or other financial
17 account), of any Person which any Defendant obtained prior to entry of this Order
18 in connection with the advertising, marketing, promotion, offering for sale, or the
19 sale of merchandise to consumers.

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

21 **IT IS FURTHER ORDERED** that Defendants and their officers, agents,
22 servants, employees, and attorneys, and all other Persons in active concert or
23 participation with any of them, who receive actual notice of this Order, by
24 personal service or otherwise, whether acting directly or through any corporation,
25 subsidiary, division, or other device, are hereby restrained and enjoined from:
26

1 A. Destroying, erasing, mutilating, concealing, altering, transferring, or
2 otherwise disposing of, in any manner, directly or indirectly, any Documents or
3 records that relate to the business practices, or business or personal finances, of
4 Defendants, or any entity directly or indirectly under the control of Defendants;

5 B. Failing to create and maintain documents that, in reasonable detail,
6 accurately, fairly, and completely reflect Defendants' incomes, disbursements,
7 transactions, and use of Defendants' Assets; and

8 C. Creating, operating, or exercising any control over any new business
9 entity, whether newly formed or previously inactive, including any partnership,
10 limited partnership, joint venture, sole proprietorship, or corporation, without first
11 providing Plaintiff with a written statement disclosing: (1) the name of the
12 business entity; (2) the address, telephone number, email address, and website
13 address of the business entity; (3) the names of the business entity's officers,
14 directors, principals, managers, and employees; and (4) a detailed description of
15 the business entity's intended activities.

16 **IV. ASSET FREEZE**

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

23 A. Selling, liquidating, assigning, transferring, converting, loaning,
24 hypothecating, disbursing, gifting, conveying, encumbering, pledging, concealing,
25 dissipating, spending, withdrawing, or otherwise disposing of any funds, real or
26 personal property, or other Assets or any interest therein, wherever located,
27

1 including any Assets outside the territorial United States, that are: (1) in the actual
2 or constructive possession of any Asset Freeze Defendant; (2) owned or
3 controlled by, or held, in whole or in part for the benefit of, or subject to access
4 by, or belonging to, any Asset Freeze Defendant; or (3) in the actual or
5 constructive possession of, or owned or controlled by, or subject to access by, or
6 belonging to, any corporation, partnership, trust, or other entity directly or
7 indirectly owned, managed, or under the control of any Asset Freeze Defendant;

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

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

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

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

21 F. Cashing any checks from consumers, clients, or customers of any of
22 the Defendants.

23 *Provided that* the Assets affected by this Section shall include: (1) all
24 Assets of Asset Freeze Defendants as of the time this Order is entered; and (2) for
25 Assets obtained after the time this Order is entered, those Assets of Asset Freeze
26 Defendants that are derived, directly or indirectly, from Asset Freeze Defendants'
27 activities related to the marketing or sale of merchandise to consumers.

1 **V. RETENTION OF ASSETS AND DOCUMENTS BY THIRD**
2 **PARTIES**

3 **IT IS FURTHER ORDERED** that any Financial Institution, business
4 entity, Electronic Data Host, or Person who has received actual notice of this
5 Order, by personal service or otherwise, that holds, controls, or maintains custody
6 of any account, Document, Electronically Stored Information, or Asset of, on
7 behalf of, in the name of, for the benefit of, subject to withdrawal by, subject to
8 access or use by, or under the signatory power of, any Asset Freeze Defendant or
9 other party subject to Section IV above, or has held, controlled, or maintained any
10 such account, Document, Electronically Stored Information, or Asset at any time
11 since January 1, 2009 shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

26 E. This Section shall apply to existing accounts and Assets, Assets
27 deposited or accounts opened after the effective date of this Order that relate to

1 the marketing or sale of merchandise to consumers, and any accounts or Assets
2 maintained, held, or controlled three years before the effective date of this Order.
3 This Section shall not prohibit transfers in accordance with any provision of this
4 Order, any further order of the Court, or by written agreement of the parties.

5
6 **VI. FINANCIAL DISCLOSURES**

7 **IT IS FURTHER ORDERED** that, unless previously submitted in full
8 compliance with the TRO entered in this case on December 3, 2013, each
9 Defendant, within three (3) business days of the entry of this Order, shall prepare
10 and deliver to counsel for the FTC:

11 A. For each Individual Defendant, a completed financial statement
12 accurate as of the date of entry of this Order on the form of Attachment A to this
13 Order captioned “Financial Statement of Individual Defendant;”

14 B. For the Corporate Defendant, a completed financial statement
15 accurate as of the date of entry of this Order in the form of Attachment B to this
16 Order captioned “Financial Statement of Corporate Defendant;” and

17 C. For all Defendants, a list of all officers and directors of each
18 Corporate Defendant and all other individuals or entities with authority to direct
19 the operations of each Corporate Defendant or withdraw money from the account
20 of each Corporate Defendant.

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

22 **IT IS FURTHER ORDERED** that, unless previously completed in full
23 compliance with the TRO entered in this case on December 3, 2013, within three
24 (3) business days following the entry of this Order, each of the Defendants shall:

25 A. Provide counsel for the FTC and the Receiver with a full accounting
26 of all Assets, accounts, funds, and Documents outside of the territory of the
27 United States that are held either: (1) by any Asset Freeze Defendant; (2) for the

1 benefit of any Asset Freeze Defendant; (3) in trust by or for any Asset Freeze
2 Defendant, individually or jointly; or (4) under the direct or indirect control,
3 individually or jointly of any Asset Freeze Defendant;

4 B. Transfer to the territory of the United States and deliver to the
5 Receiver all Assets, accounts, funds, and Documents in foreign countries held
6 either: (1) by any Asset Freeze Defendant; (2) for the benefit of any Asset Freeze
7 Defendant; (3) in trust by or for any Asset Freeze Defendant, individually or
8 jointly;

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

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

15 **VIII. NONINTERFERENCE WITH REPATRIATION**

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

24 A. Sending any statement, letter, facsimile transmission, email, or wire
25 transmission, or telephoning or engaging in any other act, directly or indirectly,
26 that results in a determination by a foreign trustee or other entity that a “duress”
27

1 event has occurred under the terms of a foreign trust agreement until such time
2 that all Assets have been fully repatriated pursuant to Section VII of this Order;
3 and

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

8
9 **IX. CONSUMER CREDIT REPORTS**

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

14 **X. APPOINTMENT OF A PERMANENT RECEIVER**

15 **IT IS FURTHER ORDERED** that Robb Evans and Associates, LLC is
16 appointed Permanent Receiver (“Receiver”) for the Receivership Defendant and
17 any of its affiliates, subsidiaries, divisions, or sales or customer service
18 operations, wherever located, including, but not limited to, Applied Design
19 Services, Inc. and CA Mart, with the full power of an equity receiver. The
20 Receiver shall be an agent of this Court, and solely the agent of this Court, in
21 acting as Receiver under this Order. The Receiver shall be accountable directly to
22 this Court. The Receiver shall comply with all laws and Local Rules of this Court
23 governing receivers, including, but not limited to, Local Rules 66-1 through 66-
24 5.1 and Local Rule 66-8.

1 **XI. DUTIES AND AUTHORITY OF RECEIVER**

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

4 A. Assume full control of the Receivership Defendant by removing, as
5 the Receiver deems necessary or advisable, any director, officer, independent
6 contractor, employee, or agent of the Receivership Defendant, including any
7 Defendant, from control of, management of, or participation in, the affairs of the
8 Receivership Defendant;

9 B. Take exclusive custody, control, and possession of all Assets,
10 Documents, and Electronically Stored Information of, or in the possession,
11 custody, or under the control of, the Receivership Defendant, wherever situated.
12 The Receiver shall have full power to divert mail and to sue for, collect, receive,
13 take in possession, hold, and manage all Assets and Documents of the
14 Receivership Defendant and other Persons whose interests are now held by or
15 under the direction, possession, custody, or control of, the Receivership
16 Defendant. The Receiver shall assume control over the income and profits
17 therefrom and all sums of money now or hereafter due or owing to the
18 Receivership Defendant. *Provided, however,* that the Receiver shall not attempt
19 to collect or receive any amount from a consumer if the Receiver believes the
20 consumer was a victim of the unfair or deceptive acts or practices or other
21 violations of law alleged in the Complaint in this matter;

22 C. Take all steps necessary to secure the business premises of the
23 Receivership Defendant. Such steps may include, but are not limited to, any of
24 the following, as the Receiver deems necessary or advisable: (1) serving and
25 filing this Order; (2) completing a written inventory of all Receivership Assets;
26 (3) obtaining pertinent information from all employees and other agents of the
27 Receivership Defendant, including, but not limited to, the name, home address,

1 social security number, job description, method of compensation, and all accrued
2 and unpaid commissions and compensation of each such employee or agent, and
3 all computer hardware and software passwords; (4) photographing and/or
4 videotaping any or all portions of the location; (5) securing the location by
5 changing the locks and disconnecting any computer modems or other means of
6 access to the computer or other records maintained at that location; (6) requiring
7 any Persons present on the premises at the time this Order is served to leave the
8 premises, to provide the Receiver with proof of identification, and to demonstrate
9 to the satisfaction of the Receiver that such Persons are not removing from the
10 premises Documents or Assets of the Receivership Defendant; and (7) requiring
11 all employees, independent contractors, and consultants of the Receivership
12 Defendant to complete a questionnaire submitted by the Receiver. Law
13 enforcement personnel, including, but not limited to, police or sheriffs, may assist
14 the Receiver in implementing these provisions in order to keep the peace and
15 maintain security. If requested by the Receiver, the United States Marshals
16 Service will provide appropriate and necessary assistance to the Receiver to
17 implement this Order and is authorized to use any necessary and reasonable force
18 to do so;

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

24 E. Enter into contracts and purchase insurance as the Receiver deems to
25 be advisable or necessary;

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1 F. Liquidate any and all securities or commodities owned by or for the
2 benefit of the Receivership Defendant as the Receiver deems to be advisable or
3 necessary;

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

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

12 I. Choose, engage, and employ attorneys, accountants, appraisers, and
13 other independent contractors and technical specialists, as the Receiver deems
14 advisable or necessary in the performance of duties and responsibilities under the
15 authority granted by this Order;

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

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

26 L. Institute, compromise, adjust, appear in, intervene in, or become
27 party to such actions or proceedings in state, federal, or foreign courts or

1 arbitration proceedings as the Receiver deems necessary and advisable to preserve
2 or recover the Assets of the Receivership Defendant, or that the Receiver deems
3 necessary and advisable to carry out the Receiver's mandate under this Order,
4 including, but not limited to, actions challenging fraudulent or voidable transfers;

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

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

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

22 P. Open one or more bank accounts in the Central or Southern District
23 of California as designated depositories for funds of the Receivership Defendant.
24 The Receiver shall deposit all funds of the Receivership Defendant in such a
25 designated account and shall make all payments and disbursements from the
26 receivership estate from such account(s);

1 Q. Maintain accurate records of all receipts and expenditures incurred as
2 Receiver;

3 R. Cooperate with reasonable requests for information or assistance
4 from any state or federal law enforcement agency;

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

8 T. File reports with the Court on a timely and reasonable basis.

9
10 **XII. TRANSFER OF RECEIVERSHIP PROPERTY TO RECEIVER**

11 **IT IS FURTHER ORDERED** that:

12 A. Immediately upon entry of this Order or upon their obtaining actual
13 knowledge of this Order, by personal service or otherwise, or within a period
14 permitted by the Receiver, Defendants and any other Person with possession,
15 custody, or control of Assets or Documents relating to the Receivership
16 Defendant, including, but not limited to, Financial Institutions and Electronic
17 Data Hosts, shall transfer or deliver access to, or possession, custody, and control
18 of, the following to the Receiver:

- 19 1. All Assets of the Receivership Defendant;
- 20 2. All Documents and Electronically Stored Information of the
21 Receivership Defendant, including, but not limited to, books and records of
22 accounts, all financial and accounting records, balance sheets, income statements,
23 bank records (including monthly statements, canceled checks, records of wire
24 transfers, records of ACH transfers, and check registers), client or customer lists,
25 title documents, and other papers;

1 whether acting directly or through any corporation, subsidiary, division, or other
2 device, are hereby restrained and enjoined from directly or indirectly:

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

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

15 C. Destroying, secreting, erasing, mutilating, defacing, concealing,
16 altering, transferring, or otherwise disposing of, in any manner, directly or
17 indirectly, any Documents, Electronically Stored Information, or equipment of the
18 Receivership Defendant, including, but not limited to, books, records, accounts,
19 writings, drawings, graphs, charts, photographs, audio and video recordings,
20 computer records, and other data compilations, electronically-stored records, or
21 any other records of any kind or nature;

22 D. Transferring, receiving, altering, selling, encumbering, pledging,
23 assigning, liquidating, or otherwise disposing of any Assets owned, controlled, or
24 in the possession or custody of, or in which an interest is held or claimed by, the
25 Receivership Defendant or the Receiver;

26 E. Excusing debts owed to the Receivership Defendant;

1 F. Failing to notify the Receiver of any Asset, including accounts, of a
2 Receivership Defendant held in any name other than the name of the Receivership
3 Defendant, or by any Person other than the Receivership Defendant, or failing to
4 provide any assistance or information requested by the Receiver in connection
5 with obtaining possession, custody, or control of such Assets;

6 G. Doing any act or refraining from any act whatsoever to interfere with
7 the Receiver's taking custody, control, possession, or managing of the Assets or
8 Documents subject to this Receivership; or to harass or to interfere with the
9 Receiver in any way; or to interfere in any manner with the exclusive jurisdiction
10 of this Court over the Assets or Documents of the Receivership Defendant; or to
11 refuse to cooperate with the Receiver or the Receiver's duly authorized agents in
12 the exercise of their duties or authority under any Order of this Court; and

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

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

17 **IT IS FURTHER ORDERED** that:

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

25 1. Petitioning, or assisting in the filing of a petition, that would
26 cause any Receivership Defendant to be placed in bankruptcy;
27

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

4 3. Accelerating the due date of any obligation or claimed
5 obligation; filing or enforcing any lien; taking or attempting to take possession,
6 custody, or control of any Asset; attempting to foreclose, forfeit, alter, or
7 terminate any interest in any Asset, whether such acts are part of a judicial
8 proceeding, are acts of self-help, or otherwise;

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

13 5. Doing any act or thing whatsoever to interfere with the
14 Receiver taking custody, control, possession, or management of the Assets or
15 Documents subject to this Receivership, or to harass or interfere with the Receiver
16 in any way, or to interfere in any manner with the exclusive jurisdiction of this
17 Court over the Assets or Documents of the Receivership Defendant;

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

25 C. Except as otherwise provided in this Order, all Persons in need of
26 documentation from the Receiver shall in all instances first attempt to secure such
27 information by submitting a formal written request to the Receiver, and, if such

1 request has not been responded to within thirty (30) days of receipt by the
2 Receiver, any such Person may thereafter seek an Order of this Court with regard
3 to the relief requested.

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5 **XV. COMPENSATION FOR RECEIVER**

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

17 **XVI. RECEIVER'S BOND**

18 **IT IS FURTHER ORDERED** that no bond shall be required in
19 connection with the appointment of the Receiver. Except for an act of gross
20 negligence, the Receiver and the professionals shall not be liable for any loss or
21 damage incurred by any of the Defendants, their officers, agents, servants,
22 employees, and attorneys or any other Person, by reason of any act performed or
23 omitted to be performed by the Receiver and the professionals in connection with
24 the discharge of his or her duties and responsibilities, including, but not limited
25 to, their withdrawal from the case.

1 **XVII. LIMITED EXPEDITED DISCOVERY**

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

7 A. Take the deposition, on three (3) days' notice, of any Person,
8 whether or not a party, for the purpose of discovering: (1) the nature, location,
9 status, and extent of Assets of Defendants or their affiliates or subsidiaries; (2) the
10 nature and location of Documents and business records of Defendants or their
11 affiliates or subsidiaries; and (3) compliance with this Order. The limitations and
12 conditions set forth in Fed. R. Civ. P. 30(a)(2)(B) and 31(a)(2)(B) regarding
13 subsequent depositions shall not apply to depositions taken pursuant to this
14 Section. In addition, any such depositions taken pursuant to this Section shall not
15 be counted toward the ten-deposition limit set forth in Fed. R. Civ. P.
16 30(a)(2)(A)(I) and 31(a)(2)(A)(I) and shall not preclude the FTC from
17 subsequently deposing the same Person in accordance with the Federal Rules of
18 Civil Procedure. Service of discovery upon a party, taken pursuant to this
19 Section, shall be sufficient if made by facsimile, email, or by overnight delivery.
20 Any deposition taken pursuant to this Subsection that has not been reviewed and
21 signed by the deponent may be used by any party for purposes of the preliminary
22 injunction hearing;

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

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

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

12 **XVIII. SERVICE OF THIS ORDER**

13 **IT IS FURTHER ORDERED** that:

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

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

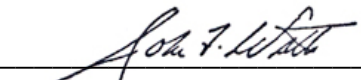
1 **XIX. DEFENDANTS’ DUTY TO DISTRIBUTE ORDER**

2 **IT IS FURTHER ORDERED** that Defendants shall immediately provide
3 a copy of this Order to each of their affiliates, subsidiaries, divisions, sales
4 entities, successors, assigns, officers, directors, employees, independent
5 contractors, client companies, Electronic Data Hosts, agents, attorneys, spouses,
6 and representatives, and shall, within three (3) calendar days from the date of
7 entry of this Order, provide counsel for the FTC with a sworn statement that: (1)
8 confirms that Defendants have provided copies of the Order as required by this
9 Section; and (2) lists the names and addresses of each Person to whom
10 Defendants provided a copy of the Order.

11 **XX. RETENTION OF JURISDICTION**

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

14
15 SO ORDERED, this 9th day of January, 2014.

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18 _____
19 UNITED STATES DISTRICT JUDGE
20 JOHN F. WALTER