

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

FEDERAL TRADE COMMISSION,  
and

Civil No. 18-SC-2207 (DWF/TNL)

**FILED UNDER SEAL**

STATE OF MINNESOTA, by its  
Attorney General, Lori Swanson,

Plaintiffs,

v.

**TEMPORARY RESTRAINING  
ORDER**

SELLERS PLAYBOOK, INC., a  
corporation,

EXPOSURE MARKETING  
COMPANY, a corporation, also d/b/a  
Sellers Online and Sellers Systems,

JESSIE CONNERS TIEVA,  
individually and as an officer of  
SELLERS PLAYBOOK, INC. and  
EXPOSURE MARKETING  
COMPANY, and

MATTHEW R. TIEVA, individually  
and as an officer of SELLERS  
PLAYBOOK, INC. and EXPOSURE  
MARKETING COMPANY,

Defendants.

Plaintiffs, the Federal Trade Commission (“FTC” or “Commission”) and the State of Minnesota, by its Attorney General Lori Swanson (“State of Minnesota”), have filed their Complaint for Permanent Injunction and Other Equitable Relief

pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, the Business Opportunity Rule, 16 C.F.R. Part 437, the Consumer Review Fairness Act of 2016 (“CRFA”), 15 U.S.C. § 45b; Minnesota Statutes chapter 8; the Minnesota Attorney General’s common law authority, including *parens patriae* authority; the Minnesota Uniform Deceptive Trade Practices Act (“DTPA”), Minn. Stat. §§ 325D.43-.48, and the Minnesota Prevention of Consumer Fraud Act (“CFA”), Minn. Stat. §§ 325F.68-.694, and have moved, pursuant to Fed. R. Civ. P. 65(b), for a temporary restraining order, asset freeze, other equitable relief, and an order to show cause why a preliminary injunction should not issue.

### **FINDINGS OF FACT**

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

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

B. There is good cause to believe that Defendants Sellers Playbook, Inc., Exposure Marketing Company, Jessie Connors Tieva, and Matthew R. Tieva have

advertised, marketed, distributed, promoted, or sold goods and services, including business opportunities, to consumers throughout the United States and directed those activities from Minnesota.

C. There is good cause to believe that Defendants have engaged in and are likely to engage in acts or practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), multiple sections of the Business Opportunity Rule, 16 C.F.R. Part 437, as amended, the CRFA, 15 U.S.C. § 45b, the DTPA, Minn. Stat. §§ 325D.43-.48, and the CFA, Minn. Stat. §§ 325F.68-.694, and that the Commission and the State of Minnesota (collectively “Plaintiffs”) are therefore likely to prevail on the merits of this action. Furthermore, granting Plaintiffs’ request for an *ex parte* temporary restraining order would fulfill the legislative purpose of the DTPA and the CFA.

D. As demonstrated by the investigator declaration, the declaration of the Plaintiffs’ expert Randy Hlavac, consumer declarations, Defendants’ Internet advertising, transcripts of undercover recordings, financial records, public records, and additional evidence contained in the volumes of exhibits filed by Plaintiffs in support of their *ex parte* Motion for Temporary Restraining Order, Plaintiffs have established a likelihood of success in showing that Defendants have: (1) made false or unsubstantiated earnings claims regarding the goods and services, including business opportunities, they market and sell to consumers, (2) failed to

furnish prospective purchasers of Defendants' business opportunities with the disclosure documents and earnings claim statements required by the Business Opportunity Rule, and (3) used form contract provisions that restrict individual consumers' ability to review Defendants' products, services, or conduct.

E. There is good cause to believe that immediate and irreparable harm will result from Defendants' ongoing violations of the FTC Act and the Business Opportunity Rule, the CRFA, the DTPA, and the CFA, unless Defendants are restrained and enjoined by order of this Court.

F. There is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief for consumers – including monetary restitution, rescission, disgorgement, or refunds – will occur from the sale, transfer, destruction or other disposition or concealment by Defendants of their assets or records, unless Defendants are immediately restrained and enjoined by order of this Court; and that, in accordance with Fed. R. Civ. P. 65(b), the interests of justice require that this Order be granted without prior notice to Defendants. Thus, there is good cause for relieving Plaintiffs of the duty to provide Defendants with prior notice of their Motion for a Temporary Restraining Order.

G. Good cause exists for appointing a temporary receiver over the Corporate Defendants Sellers Playbook, Inc. and Exposure Marketing Company;

freezing Defendants' assets; permitting the Plaintiffs and the receiver immediate access to the Defendants' business premises; and permitting the Plaintiffs and the receiver to take expedited discovery.

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

I. This Court has authority to issue this Order pursuant to Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and § 57b; Federal Rule of Civil Procedure 65; and the All Writs Act, 28 U.S.C. § 1651.

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

K. No security is required of the State of Minnesota for issuance of a temporary restraining order. *See* Minn. Stat. § 574.18; *State v. Nelson*, 189 Minn. 87, 89-90, 248 N.W. 751, 752 (1933).

### **DEFINITIONS**

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

A. “**Asset**” means property of all kinds, including any legal or equitable interest in, right to, or claim to, any tangible or intangible property, and any real or personal property, wherever located and by whomever held.

B. **“Corporate Defendants”** means Sellers Playbook, Inc., Exposure Marketing Company and each of their subsidiaries, affiliates, successors, and assigns.

C. **“Covered Communication”** means a written, oral, or pictorial review, performance assessment, or other similar analysis, including by electronic means, of goods, services, or conduct.

D. **“Defendants”** means each Corporate Defendant, Jessie Connors Tieva, and Matthew R. Tieva, individually, collectively, or in any combination.

E. **“Document”** is synonymous in meaning and equal in scope to the usage of “document” and “electronically stored information” in Federal Rule of Civil Procedure 34(a), Fed. R. Civ. P. 34(a), and includes writings, drawings, graphs, charts, photographs, sound and video recordings, images, internet sites, web pages, websites, electronic correspondence, including e-mail and instant messages, contracts, accounting data, advertisements (including advertisements placed on the World Wide Web), FTP Logs, Server Access Logs, USENET Newsgroup postings, books, written or printed records, handwritten notes, telephone logs, telephone scripts, receipt books, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, computer records, customer or sales databases, and any other electronically stored information, including Documents located on remote servers or cloud computing

systems, and other data or data compilations from which information can be obtained directly or, if necessary, after translation into a reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

F. **“Earnings Claim”** means any oral, written, or visual representation to a consumer, prospective purchaser or investor that conveys, expressly or by implication, a specific level or range of actual or potential sales, or gross or net income or profits. Earnings claims include, but are not limited to, any: (1) chart, table, or mathematical calculation that demonstrates possible results based upon a combination of variables; and (2) statements from which a consumer, prospective purchaser or investor can reasonably infer that he or she will earn a minimum level of income (e.g., “earn enough to buy a Porsche,” “earn a six-figure income,” or “earn your investment back within one year”).

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

H. **“Individual Defendants”** means Jessie Connors Tieva and Matthew R. Tieva, individually or collectively.

I. **“Person”** means a natural person, organization, or legal entity, including a corporation, partnership, proprietorship, association, cooperative, government or governmental subdivision or agency, or any other group or combination acting as an entity.

J. **“Pictorial”** includes pictures, photographs, video, illustrations, and symbols.

K. **“Prohibited Contract Provision”** means a standard contract provision used in the course of selling or leasing goods or services that:

1. prohibits or restricts the ability of a person who is a party to the contract to engage in a covered communication;
2. imposes a penalty or fee against a person who is a party to the contract for engaging in a covered communication; or
3. transfers, or requires a person who is a party to the contract to transfer, to any other person any intellectual property rights in a covered communication, with the exception of a non-exclusive license to lawfully use a covered communication about a Defendant’s goods, services, or conduct.

L. **“Receiver”** means the temporary receiver appointed in Section XII of this Order and any deputy receivers that shall be named by the temporary receiver.



M. **“Receivership Entities”** means the Corporate Defendants as well as any other entity that the Receiver determines is controlled or owned by any Defendant and (1) conducted any business related to Defendants’ advertising, marketing, distributing, promoting, or selling of business opportunities, (2) commingled or pooled Assets with any Defendant, or (3) otherwise participated in the transfer of Assets stemming from the advertising, marketing, distributing, promoting, or selling of business opportunities. Upon determining that a nonparty entity is a Receivership Entity, the Receiver shall promptly notify the entity as well as the parties, and shall inform the entity that it can challenge the Receiver’ determination by filing a motion with the Court. Provided, however, that the Receiver may delay providing such notice for up to 48 hours if the Receiver determines that notice to the entity or the parties before the Receiver establishes control over the entity may result in the destruction of records, dissipation of Assets, or any other obstruction of the Receiver’s control of the entity.

## **ORDER**

### **I. PROHIBITED BUSINESS ACTIVITIES**

**IT IS THEREFORE ORDERED** that Defendants, Defendants’ officers, agents, employees, and attorneys, and all other Persons in active concert or participation with them, who receive actual notice of this Order, whether acting

directly or indirectly, in connection with promoting or offering for sale any good or service, are temporarily restrained and enjoined from:

A. Making any earnings claim, unless the earnings claim is non-misleading, and, at the time such claim is made, Defendants: (1) have a reasonable basis for their claim; (2) have in their possession written materials that substantiate the claim; and (3) make the written substantiation available upon request to the consumer, potential purchaser or investor, the Receiver, and to Plaintiffs;

B. Misrepresenting or assisting others in misrepresenting, expressly or by implication any other fact material to consumers concerning any product or service, such as the total costs; any material restrictions, limitations, or conditions; or any material aspect of its performance, efficacy, nature, or central characteristics; or

C. From violating the Business Opportunity Rule, 16 C.F.R. Part 437, a copy of which is attached as **Attachment A**.

**II. INJUNCTION AGAINST SUPPRESSING COVERED COMMUNICATIONS THROUGH PROHIBITED CONTRACT PROVISIONS**

**IT IS FURTHER ORDERED** that Defendants, Defendants' officers, agents, employees, and attorneys, and all other Persons in active concert or participation with any of them, who receive actual notice of this Order, whether

acting directly or indirectly, are hereby temporarily restrained and enjoined from offering, attempting to enforce, or asserting the validity of, any prohibited contract provision. Nothing in this Section shall: require a Defendant to publish or host the content of any person; affect any other legal duty of a party to a contract; or affect any cause of action arising from the breach of such duty.

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

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

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

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

Provided, however, that Defendants may disclose such identifying information to a law enforcement agency, as required by any law, regulation, or court order, or in any filings, pleadings or discovery in this action, provided the Defendants comply with any protective order in the case.

#### **IV. ASSET FREEZE**

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

A. Transferring, liquidating, converting, encumbering, pledging, loaning, selling, concealing, dissipating, disbursing, assigning, relinquishing, spending, withdrawing, granting a lien or security interest or other interest in, or otherwise disposing of any Assets, wherever located, including outside the United States, that are:

1. Owned or controlled, directly or indirectly, by any Defendant;
2. Held, in part or in whole, for the benefit of any Defendant;
3. In the actual or constructive possession of any Defendant; or

4. Owned or controlled by, in the actual or constructive possession of, or otherwise held for the benefit of, any corporation, partnership, asset protection trust, or other entity that is directly or indirectly owned, managed or controlled by any Defendant, including any Assets held by, for, or subject to access by, any Defendant at any bank or savings and loan institution, or with any broker-dealer, escrow agent, title company, insurance company, commodity trading company, precious metal dealer, payment processor, credit card processor, acquiring bank, merchant bank, independent sales organization, third party processor, payment gateway, or other financial institution or depository of any kind.

B. Opening or causing to be opened any safe deposit boxes, commercial mail boxes, or storage facilities titled in the name of any Defendant or subject to access by any Defendant, except as necessary to comply with written requests from the Receiver acting pursuant to its authority under this Order;

C. Incurring liens or other encumbrances on real property, personal property, or other Assets held, controlled, or subject to access by, or held for the benefit of, any Defendant or any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by any Defendant;

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

E. Cashing any checks or depositing any money orders or cash received from consumers, clients, or customers of any Defendant.

Provided that the Assets affected by this Section shall include: (1) all Assets of Defendants as of the time this Order is entered; and (2) Assets obtained by Defendants after this Order is entered if those Assets are derived from any activity that is the subject of the Complaint in this matter or that is prohibited by this Order.

This Section does not prohibit transfers to the Receiver, as specifically required in Section XIV (Transfer of Receivership Property to Receiver) of this Order, nor does it prohibit the repatriation of foreign Assets, as specifically required in Section VII (Foreign Asset Repatriation) of this Order.

#### **V. DUTIES OF HOLDERS OF DEFENDANTS' ASSETS**

**IT IS FURTHER ORDERED** that any financial or brokerage institution, Electronic Data Host, credit card processor, payment processor, merchant bank,

acquiring bank, independent sales organization, third party processor, payment gateway, insurance company, business entity, or Person who receives actual notice of this Order (by service or otherwise) that (a) holds, controls, or maintains custody of any electronically stored information or Document on behalf of any Defendant, any Asset subject to Section IV (Asset Freeze) or any account holding any Asset subject to Section IV (Asset Freeze); (b) holds, controls, or maintains custody of any Document or any Asset associated with credits, debits or charges made on behalf of any Defendant, including reserve funds held by payment processors, credit card processors, merchant banks, acquiring banks, independent sales organizations, third party processors, payment gateways, insurance companies, or other entities; or (c) has held, controlled, or maintained custody of any such Document, Asset, or account at any time since the date of entry of this Order shall:

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

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

C. Provide Plaintiffs' counsel and the Receiver, **within five (5) days** of receiving a copy of this Order, a sworn statement setting forth:

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

D. Upon the request of Plaintiffs' counsel or the Receiver, promptly provide Plaintiffs' counsel and the Receiver with copies of all records or other Documents pertaining to such account or Asset, including originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, including wire transfers and wire transfer instructions, all other debit and credit instruments or slips, currency



transaction reports, 1099 forms, and all logs and records pertaining to safe deposit boxes, commercial mail boxes, and storage facilities.

## **VI. FINANCIAL DISCLOSURES**

**IT IS FURTHER ORDERED** that each Defendant, within **five (5) days** of service of this Order upon them, shall prepare and deliver to Plaintiffs' counsel and the Receiver completed financial statements on the forms attached to this Order as **Attachment B** (Financial Statement of Individual Defendant) for each Individual Defendant, and **Attachment C** (Financial Statement of Corporate Defendant) for each Corporate Defendant.

## **VII. FOREIGN ASSET REPATRIATION**

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

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

B. Take all steps necessary to provide Plaintiffs' counsel and the Receiver access to all Documents and records of the accounts or Assets described above in subsection A, including signing the Consent to Release of Financial Records appended to this Order as **Attachment D** and serving this Order on any financial institution or other entity holding the assets;

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

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

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

**IT IS FURTHER ORDERED** that Defendants, Defendants' officers, agents, employees, and attorneys, and all other Persons in active concert or participation with any of them, who receive actual notice of this Order, whether

acting directly or indirectly, are hereby temporarily restrained and enjoined from taking any action, directly or indirectly, which may result in the encumbrance or dissipation of foreign Assets, or in the hindrance of the repatriation required by this Order, including, but not limited to:

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

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

#### **IX. CONSUMER CREDIT REPORTS**

**IT IS FURTHER ORDERED** that any consumer reporting agency served with this Order shall:

A. Promptly furnish consumer reports as requested concerning any Defendant to Plaintiffs, pursuant to Section 604(a)(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(1); and

B. Promptly furnish any Documents related to any dispute of the accuracy of information contained in a credit report initiated by any Defendant, including, but not limited to, correspondence and other Documents submitted by any Defendant to the consumer reporting agency and any response from the consumer reporting agency to any Defendant.

#### **X. PRESERVATION OF RECORDS**

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

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

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

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

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

## **XII. TEMPORARY RECEIVER**

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

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

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

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

B. Take exclusive custody, control, and possession of all Assets and Documents of, or in the possession, custody, or under the control of, any Receivership Entity, wherever situated;

C. Conserve, hold, manage, and prevent the loss of all Assets of the Receivership Entities, and perform all acts necessary or advisable to preserve the value of those Assets. The Receiver shall assume control over the income and profits therefrom and all sums of money now or hereafter due or owing to the Receivership Entities. The Receiver shall have full power to sue for, collect, and receive all Assets of the Receivership Entities and of other Persons whose interests are now under the direction, possession, custody, or control of the Receivership Entities. Provided, however, that the Receiver shall not attempt to collect any amount from a consumer if the Receiver believes the consumer's debt to the Receivership Entities has resulted from the deceptive acts or practices or other

violations of law alleged in the Complaint in this matter, without prior Court approval;

D. Obtain, conserve, hold, manage, and prevent the loss of all Documents of the Receivership Entities, and perform all acts necessary or advisable to preserve such Documents. The Receiver shall: divert mail; preserve all Documents of the Receivership Entities that are accessible via electronic means (such as online access to financial accounts and access to electronic documents held onsite or by internet service providers (cloud service, e-mail service and web hosts)), by changing usernames, passwords, or other log-in credentials; and take possession of all electronic Documents of the Receivership Entities stored onsite or remotely;

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

F. Make payments and disbursements from the receivership estate that are necessary or advisable for carrying out the directions of, or exercising the authority granted by, this Order, and to incur, or authorize the making of, such agreements as may be necessary and advisable in discharging his or her duties as Receiver. The Receiver shall apply to the Court for prior approval of any payment

of any debt or obligation incurred by the Receivership Entities prior to the date of entry of this Order, except payments that the Receiver deems necessary or advisable to secure Assets of the Receivership Entities, such as rental payments;

G. Suspend business operations of the Receivership Entities if in the business judgment of the Receiver suspending such operations is in the best interests of the receivership estate;

H. Take all steps necessary to secure and take exclusive custody of each location from which the Receivership Entities operate their businesses. Such steps may include, but are not limited to, any of the following, as the Receiver deems necessary or advisable: (1) securing the location by changing the locks and alarm codes and disconnecting any internet access or other means of access to the computers, internet, or any records maintained at that location; and (2) requiring any persons present at the location to leave the premises, to provide the Receiver with proof of identification, and/or to demonstrate to the satisfaction of the Receiver that such persons are not removing from the premises Documents or Assets of the Receivership Entities. Law enforcement personnel, including, but not limited to, the United States Marshal, police or sheriffs, may assist the Receiver in implementing these provisions in order to keep the peace and maintain security. If requested by the Receiver or counsel for Plaintiffs, the United States Marshal shall provide appropriate and necessary assistance to the Receiver to



implement this Order and is authorized to use any necessary and reasonable force to do so;

I. Take all steps necessary to prevent the modification, destruction, or erasure of any web page or website registered to and operated, in whole or in part, by any of the Defendants, and to provide access to all such web page or websites to the Plaintiffs' representatives,

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

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

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

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

N. Issue subpoenas to obtain Documents and records pertaining to the Receivership, and conduct discovery in this action on behalf of the receivership estate;

O. Open one or more bank accounts at designated depositories for funds of the Receivership Defendants. The Receiver shall deposit all funds of the Receivership Defendants in such a designated account and shall make all payments and disbursements from the receivership estate from such an account. The Receiver shall serve copies of monthly account statements on all parties;

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

Q. Allow the Plaintiffs' representatives, agents, and assistants, as well as Defendants' representatives and Defendants themselves, reasonable access to the premises of the Receivership Entities, or any other premises where the Receivership Entities conduct business. The purpose of this access shall be to inspect and copy any books, records, Documents, accounts, and other property owned by, or in the possession of, the Receivership Entities or their agents. The Receiver shall have the discretion to determine the time, manner, and reasonable conditions of such access;

R. Allow the Plaintiffs' representatives, agents, and assistants, as well as Defendants and their representatives reasonable access to all Documents in the

possession, custody, or control of the Receivership Entities, including, but not limited to electronic Documents; and

S. Cooperate with reasonable requests for information or assistance from any state or federal civil or criminal law enforcement agency.

#### **XIV. TRANSFER OF RECEIVERSHIP PROPERTY TO RECEIVER**

**IT IS FURTHER ORDERED** that the Defendants, their Representatives, and any other Person with possession, custody, or control of property of, or records relating to, the Receivership Entities shall, upon notice of this Order by personal service or otherwise, fully cooperate with and assist the Receiver in taking and maintaining possession, custody, or control of the Assets and Documents of the Receivership Entities and immediately transfer or deliver to the Receiver possession, custody, and control of, the following:

- A. All Assets held by or for the benefit of the Receivership Entities;
  - B. All Documents of the Receivership Entities;
  - C. All computers, electronic devices, mobile devices, and machines used to conduct the business of the Receivership Entities;
  - D. All Assets and Documents belonging to other Persons whose interests are under the direction, possession, custody, or control of the Receivership Entities;
- and

E. All keys, codes, user names and passwords necessary to gain or to secure access to any Assets or Documents of the Receivership Entities, including access to their business premises, means of communication, accounts, computer systems (onsite and remote), remote computing service, or other property.

In the event that any Person fails to deliver or transfer any Asset or Document, or otherwise fails to comply with any provision of this Section, the Receiver may file an Affidavit of Non-Compliance regarding the failure and a motion seeking compliance or a contempt citation.

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

**IT IS FURTHER ORDERED** that Defendants shall immediately provide to the Receiver:

A. A list of all Assets and property, including accounts, of the Receivership Entities that are held in any name other than the name of a Receivership Entity, or by any Person other than a Receivership Entity;

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

C. A description of any documents covered by attorney-client privilege or attorney work product, including files where such documents are likely to be

located, authors or recipients of such documents, and search terms likely to identify such electronic documents.

#### **XVI. COOPERATION WITH THE RECEIVER**

**IT IS FURTHER ORDERED** that Defendants, Receivership Entities, Defendants' or Receivership Entities' officers, agents, employees, and attorneys, and all other Persons in active concert or participation with any of them, who receive actual notice of this Order; and any other Person served with a copy of this Order shall fully cooperate with and assist the Receiver. This cooperation and assistance shall include, but is not limited to, providing information to the Receiver that the Receiver deems necessary to exercise the authority and discharge the responsibilities of the Receiver under this Order; providing any username and password required to access any computer (onsite or remotely) and any cloud account (including specific method to access account), electronic file, or telephonic data in any medium; advising all Persons who owe money to any Corporate Defendant that all debts should be paid directly to the Receiver; and transferring funds at the Receiver's direction and producing records related to the Assets and sales of the Receivership Entities.

#### **XVII. INTERFERENCE WITH THE RECEIVER**

**IT IS FURTHER ORDERED** that Defendants, Receivership Entities, Defendants' or Receivership Entities' officers, agents, employees, attorneys, and

all other Persons in active concert or participation with any of them, who receive actual notice of this Order, and any other Person served with a copy of this Order, are hereby restrained and enjoined from directly or indirectly:

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

#### **XVIII. STAY OF ACTIONS**

**IT IS FURTHER ORDERED** that, except by leave of this Court, during the pendency of the receivership, Defendants, Defendants' officers, agents, employees, attorneys, and all other Persons in active concert or participation with any of them, who receive actual notice of this Order, and their corporations, subsidiaries, divisions, or affiliates, and all investors, creditors, stockholders, lessors, customers and other Persons seeking to establish or enforce any claim,

right, or interest against or on behalf of Defendants, and all others acting for or on behalf of such Persons, are hereby enjoined from taking action that would interfere with the exclusive jurisdiction of this Court over the Assets or Documents of Receivership Entities, including, but not limited to:

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

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

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

Provided, however, that this Order does not stay: (1) the commencement or continuation of a criminal action or proceeding; (2) the commencement or continuation of an action or proceeding by a governmental unit to enforce such

governmental unit's police or regulatory power; or (3) the enforcement of a judgment, other than a money judgment, obtained in an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power.

#### **XIX. COMPENSATION OF RECEIVER**

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

#### **XX. RECEIVER'S BOND**

**IT IS FURTHER ORDERED** that the Receiver shall file with the Clerk of this Court a bond in the sum of **\$20,000.00** with sureties to be approved by the Court, conditioned that the Receiver will well and truly perform the duties of the office and abide by and perform all acts the Court directs. 28 U.S.C. § 754.



## **XXI. IMMEDIATE ACCESS TO BUSINESS PREMISES AND RECORDS**

**IT IS FURTHER ORDERED** that:

A. In order to allow the Plaintiffs and the Receiver to preserve Assets and evidence relevant to this action and to expedite discovery, Plaintiffs and the Receiver, and their representatives, agents, contractors, and assistants, shall have immediate access to the business premises and storage facilities, owned, controlled, or used by the Corporate Defendants. Such locations include 9001 Science Center Drive, New Hope, Minnesota 55428; and any offsite location, storage unit, or commercial mailbox used by any Corporate Defendant. The Receiver may exclude Defendants, Receivership Entities, and their employees from the business premises during the immediate access;

B. Plaintiffs and the Receiver, and their representatives, agents, contractors, and assistants are authorized to remove Documents from the Corporate Defendant's premises in order that they may be inspected, inventoried, and copied. Plaintiffs shall return any removed materials to the Receiver within **seven (7) days** of completing inventorying and copying, or such time as is agreed upon by the Plaintiffs and the Receiver;

C. Plaintiffs' access to the Receivership Entities' documents pursuant to this Section shall not provide grounds for any Defendant to object to any subsequent request for documents served by Plaintiffs;

D. If any Documents, computers, or electronic storage devices containing information related to the business practices or finances of the Receivership Entities are at a location other than those listed herein, including personal residence(s) of any Defendant, then, immediately upon receiving notice of this order, Defendants and Receivership Entities shall produce to the Receiver all such Documents, computers, and electronic storage devices, along with any codes or passwords needed for access. In order to prevent the destruction of computer data, upon service of this Order, any such computers or electronic storage devices shall be powered down in the normal course of the operating system used on such devices and shall not be powered up or used until produced for copying and inspection; and

E. If any communications or records of a Corporate Defendant are stored with a remote computing service, such Defendant shall, immediately upon receiving notice of this order, provide the Receiver with the username, passwords, and any other login credential needed to access the communications and records, and shall not attempt to access the communications or records.

## **XXII. DISTRIBUTION OF ORDER BY DEFENDANTS**

**IT IS FURTHER ORDERED** that Defendants shall immediately provide a copy of this Order to each affiliate, telemarketer, marketer, sales entity, successor, assign, member, officer, director, employee, agent, independent contractor, client,

attorney, spouse, subsidiary, division, and representative of any Defendant, and shall, within **fourteen (14) days** from the date of entry of this Order, provide Plaintiffs and the Receiver with a sworn statement that this provision of the Order has been satisfied, which statement shall include the names, physical addresses, phone number, and e-mail addresses of each such Person who received a copy of the Order. Furthermore, Defendants shall not take any action that would encourage officers, agents, members, directors, employees, salespersons, independent contractors, attorneys, subsidiaries, affiliates, successors, assigns or other Persons in active concert or participation with them to disregard this Order or believe that they are not bound by its provisions.

### **XXIII. EXPEDITED DISCOVERY**

**IT IS FURTHER ORDERED** that, notwithstanding the provisions of the Fed. R. Civ. P. 26(d) and (f) and 30(a)(2)(c), and pursuant to Fed. R. Civ. P. 30(a), 34, and 45, discovery in this case shall commence upon entry of this Order. Plaintiffs are also granted leave, at any time after service of this Order, to conduct limited expedited discovery for the purpose of discovering: (1) the nature, location, status, and extent of Defendants' Assets; (2) the nature, location, and extent of Defendants' businesses transactions and operations; (3) Documents reflecting Defendants' business transactions and operations; (4) the existence and identity of other Persons who were or are engaged in the conduct alleged in the

Complaint in active concert or participation with the Defendants; or (5) compliance with this Order. The expedited discovery set forth in this Section shall be designated as such by marking any notices or written discovery requests as “Expedited” and proceed as follows:

A. Plaintiffs and the Receiver may take the expedited deposition of parties and non-parties. Notice of **forty-eight (48) hours** shall be sufficient notice for such depositions. The limitations and conditions set forth in Rules 30(a)(2)(B) and 31(a)(2)(B) of the Federal Rules of Civil Procedure regarding subsequent depositions of an individual shall not apply to depositions taken pursuant to this Section. Any such deposition taken pursuant to this sub-section shall not be counted towards the deposition limit set forth in Rules 30(a)(2)(A) and 31(a)(2)(A) and depositions may be taken by telephone or other remote electronic means;

B. Plaintiffs and the Receiver may serve upon parties expedited requests for production of Documents or inspection that require production or inspection within **seven (7) days** of service, provided that **three (3) days** of notice shall be deemed sufficient for the production of any such Documents that are maintained or stored only in an electronic format;

C. Plaintiffs and the Receiver may serve upon parties expedited interrogatories that require response within seven **(7) calendar days** after the Plaintiffs serve such interrogatories;

D. Plaintiffs and the Receiver may serve expedited subpoenas upon non-parties that direct production or inspection within **seven (7) days** of service;

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

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

G. The Parties are exempted from conferring under Fed. R. Civ. P. 26(f) and making initial disclosures under Fed. R. Civ. P. 26(a)(1) until further order of this Court. The Court reserves the right to direct the parties to participate in a scheduling conference before the Magistrate Judge.

#### **XXIV. SERVICE OF THIS ORDER**

**IT IS FURTHER ORDERED** that copies of this Order as well as the Motion for Temporary Restraining Order and all other pleadings, Documents, and exhibits filed contemporaneously with that Motion (other than the complaint and summons), may be served by any means, including facsimile transmission, electronic mail or other electronic messaging, personal or overnight delivery, U.S.

Mail or FedEx, by agents and employees of Plaintiffs, by any law enforcement agency, or by private process server, upon any Defendant or any Person (including any financial institution) that may have possession, custody, or control of any property, property right, Document, or Asset of any Defendant, or that may be subject to any provision of this Order pursuant to Rule 65(d)(2) of the Federal Rules of Civil Procedure. For purposes of this Section, service upon any branch, subsidiary, affiliate or office of any entity shall effect service upon the entire entity. This Order shall bind Persons that may be subject to any provision of this Order pursuant to Rule 65(d)(2) of the Federal Rules of Civil Procedure upon such Person's receipt of actual notice, by personal service or otherwise, of this Order.

**XXV. CORRESPONDENCE AND SERVICE ON PLAINTIFFS**

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

Roberto Anguizola, Staff Attorney  
Claire Wack, Staff Attorney  
Federal Trade Commission  
600 Pennsylvania Avenue NW  
Mail Drop CC-8528  
Washington, D.C. 20580  
Fax: (202) 326-3395  
E-mail: [ranguizola@ftc.gov](mailto:ranguizola@ftc.gov); [cwack@ftc.gov](mailto:cwack@ftc.gov)

and

Frances L. Kern  
Assistant Attorney General  
Minnesota Attorney General's Office  
445 Minnesota Street, Suite 1200  
St. Paul, Minnesota 55101-2130  
(651) 757-1373 (voice)  
(651) 296-7438 (fax)  
(651) 297-7206 (TTY)  
E-mail: Frances.Kern@ag.state.mn.us

**XXVI. PRELIMINARY INJUNCTION HEARING**

**IT IS FURTHER ORDERED** that, pursuant to Fed. R. Civ. P. 65(b), Counsel for Plaintiffs and Defendants shall appear before this Court on **August 13, 2018, at 9:00 a.m. (Central Standard Time)** at the: Warren E. Burger Federal Building and U.S. Courthouse, 316 North Robert Street, St. Paul, MN 55101 in Courtroom 7C, for an evidentiary hearing on the Plaintiffs' motion for a preliminary injunction, pending final ruling on the Complaint against Defendants, enjoining the violations of the law alleged in the Complaint, continuing the freeze of Defendants' Assets, continuing the receivership, and imposing such additional relief as may be appropriate.

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

**IT IS FURTHER ORDERED** that:

A. The parties are directed to agree to a briefing schedule concerning the preliminary injunction so that all briefs are filed at least **five (5) days** before the

date of the hearing. Should the parties be unable to agree to a briefing schedule, they should notify the Court, at which time the Court will set a briefing schedule.

B. The parties must serve any filings or pleading concerning preliminary injunction by personal or overnight delivery, or by e-mail, to be received by the other party or parties no later than **5:00 PM (Central Standard Time)** on the applicable dates set forth in subsection A, above.

**XXVIII. DURATION OF THE ORDER**

**IT IS FURTHER ORDERED** that this Order shall expire on the date of the hearing on Plaintiffs' motion for a preliminary injunction, unless the Order is extended for an additional period pursuant to Fed. R. Civ. P. 65(b)(2). Plaintiffs shall file any request to extend the duration of this Order no later than the date of the hearing on Plaintiffs' motion for a preliminary injunction.

**XXIX. RETENTION OF JURISDICTION**

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

Dated: July 30, 2018

s/Donovan W. Frank  
DONOVAN W. FRANK  
United States District Judge