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11 Attorneys for Plaintiff
FEDERAL TRADE COMMISSION

12 UNITED STATES DISTRICT COURT
13 FOR THE CENTRAL DISTRICT OF CALIFORNIA

14 FEDERAL TRADE COMMISSION,

15 Plaintiff,

16 v.

17 FORENSIC CASE MANAGEMENT
18 SERVICES, INC. d/b/a Commercial
Investigations, Inc., FCMS, Inc., Commercial
19 Recovery Solutions, Inc., and Rumson,
Bolling & Associates, a California
20 corporation; SPECIALIZED RECOVERY,
INC. d/b/a Joseph, Steven & Associates and
21 Specialized Debt Recovery, a California
corporation; COMMERCIAL
22 RECEIVABLES ACQUISITION, INC. d/b/a
Commercial Recovery Authority, Inc. and
23 The Forwarding Company, a California
corporation; DAVID M. HYNES II a/k/a
24 David M. Hynes, Jr.; JAMES HYNES;
KEVIN MEDLEY; HEATHER TRUE;
25 FRANK E. LINDSTROM, JR.; and
LORENA QUIROZ-HYNES a/k/a Lorena
26 Quiroz and Lorena Hynes,

27 Defendants.
28

LACV11-7484-2611-SS01
Case No.:

~~PROPOSED~~
PRELIMINARY
INJUNCTION AND
ORDER CONTINUING
ASSET FREEZE AND
OTHER PROVISIONS OF
THE TRO, AND
APPOINTING A
PERMANENT RECEIVER

1 Plaintiff, the Federal Trade Commission ("FTC"), pursuant to Section 13(b)
2 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), and Section
3 814(a) of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692l(a),
4 has filed a Complaint for a permanent injunction and other equitable relief,
5 including restitution to consumers, and applied for a temporary restraining order
6 pursuant to Rule 65(b) of the Federal Rules of Civil Procedure.

7 **FINDINGS OF FACT**

8 This Court, having considered the FTC's pleadings, declarations, exhibits,
9 and memoranda, and the evidence presented by all parties, finds that:

10 1. This Court has jurisdiction over the subject matter of this case, there is good
11 cause to believe it will have jurisdiction over all the parties hereto, and

12 venue in this district is proper;

13 2. There is good cause to believe that Defendants Forensic Case Management
14 Services, Inc. (d/b/a Commercial Investigations, Inc., FCMS, Inc.,
15 Commercial Recovery Solutions, Inc., and Rumson, Bolling & Associates),
16 a California corporation; Specialized Recovery, Inc. (d/b/a Joseph, Steven &
17 Associates and Specialized Debt Recovery), a California corporation; and
18 Commercial Receivables Acquisition, Inc. (d/b/a Commercial Recovery
19 Authority, Inc. and The Forwarding Company), a California corporation;
20 David M. Hynes II; James Hynes; Kevin Medley; Heather True; Frank E.
21 Lindstrom, Jr., and Lorena Quiroz-Hynes have engaged and are likely to
22 continue to engage in acts or practices that violate Section 5(a) of the FTC
23 Act, 15 U.S.C. § 45(a), and the FDCPA, 15 U.S.C. § 1692-1692p, and that
24 the FTC is therefore likely to prevail on the merits of this action;

25 3. There is good cause to believe that immediate and irreparable harm will
26 result from Defendants' ongoing violations of Section 5(a) of the FTC Act
27 and the FDCPA unless Defendants are restrained and enjoined by Order of
28 this Court;

Having considered evidence contained in Vols. I and II of Plaintiff's attached evidence,

Based on evidence contained in PX 30 PPR 6-11, A-Part T, and PX 33,

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- 4. There is good cause to believe that immediate and irreparable damage to the Court’s ability to grant effective final relief for consumers in the form of monetary restitution and disgorgement of ill-gotten gains will occur from the transfer, dissipation, or concealment by Defendants of their assets or business records unless Defendants are restrained and enjoined by Order of this Court;
- 5. Good cause exists for appointing a permanent receiver over Defendants Forensic Case Management Services, Inc. (d/b/a Commercial Investigations, Inc., FCMS, Inc., Commercial Recovery Solutions, Inc. and Rumson, Bolling & Associates); Specialized Recovery, Inc. (d/b/a Joseph, Steven & Associates and Specialized Debt Recovery); and Commercial Receivables Acquisition, Inc. (d/b/a Commercial Recovery Authority, Inc. and The Forwarding Company), continuing the asset freeze imposed pursuant to the temporary restraining order (“TRO”) issued in this case and permitting the FTC access to Defendants’ business premises at the discretion of the Receiver.
- 6. Weighing the equities and considering the FTC’s likelihood of ultimate success, this order is in the public interest; and
- 7. No security is required of any agency of the United States for issuance of a restraining order. Fed. R. Civ. P. 65.

ORDER

Definitions

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

- A. “Assets” means any legal or equitable interest in, right to, or claim to, any real, personal, or intellectual property of any Defendants, or held for the benefit of any Defendants, wherever located, whether in the United States or abroad, including, but not limited to, chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, contracts, mail or other

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

7 B. "Corporate Defendants" means Forensic Case Management Services, Inc.
8 (also d/b/a Commercial Investigations, Inc., FCMS, Inc., Commercial
9 Recovery Solutions, Inc., and Rumson, Bolling & Associates), a California
10 corporation; Specialized Recovery, Inc. (also d/b/a Joseph, Steven &
11 Associates and Specialized Debt Recovery), a California corporation; and
12 Commercial Receivables Acquisition, Inc. (also d/b/a Commercial Recovery
13 Authority, Inc. and The Forwarding Company), a California corporation;
14 and their successors, assigns, affiliates, or subsidiaries, and each of them by
15 whatever names each might be known.

16 C. "Defendants" means all of the Individual Defendants and the Corporate
17 Defendants, individually, collectively, or in any combination, and each of
18 them by whatever names each might be known.

19 D. "Debt" means any obligation or alleged obligation to pay money arising out
20 of a transaction, whether or not such obligation has been reduced to
21 judgment.

22 E. "Document" or "Electronically Stored Information" is synonymous in
23 meaning and equal in scope to the usage of the terms in Rule 34(a) of the
24 Federal Rules of Civil Procedure and includes:

- 25 1. The original or a true copy of any written, typed, printed,
26 electronically stored, transcribed, taped, recorded, filmed, punched, or
27 graphic matter or other data compilations of any kind, including, but
28 not limited to, letters, email or other correspondence, messages,

1 memoranda, interoffice communications, notes, reports, summaries,
2 manuals, magnetic tapes or discs, tabulations, books, records, checks,
3 invoices, work papers, journals, ledgers, statements, returns, reports,
4 schedules, or files; and

- 5 2. Any electronically stored information stored on any Blackberrys, flash
6 drives, personal digital assistants (“PDAs”), desktop personal
7 computer and workstations, laptops, notebooks, and other portable
8 computers, or other electronic storage media, whether assigned to
9 individuals or in pools of computers available for shared use; and
10 home computers used for work-related purposes; backup disks and
11 tapes, archive disks and tapes, and other forms of offline storage,
12 whether stored onsite with the computer used to generate them, stored
13 offsite in another company facility, or stored, hosted, or otherwise
14 maintained offsite by a third-party; and computers and related offline
15 storage used by Defendants or Defendants’ participating associates,
16 which may include persons who are not employees of the company or
17 who do not work on company premises.

18 F. “Electronic Data Host” means any person or entity that stores, hosts, or
19 otherwise maintains electronically stored information.

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

24 H. “Individual Defendants” means David M. Hynes II a/k/a David Hynes, Jr.,
25 James Hynes, Kevin Medley, Heather True, Frank E. Lindstrom, Jr., and
26 Lorena Quiroz-Hynes a/k/a Lorena Quiroz and Lorena Hynes, and each of
27 them by whatever names each might be known.

28 I. “Material fact” means any fact that is likely to affect a person’s choice of, or

1 conduct regarding, goods or services.

2 J. "Person" means any individual, group, unincorporated association, limited
3 or general partnership, corporation, or other business entity.

4 K. "Receiver" means the permanent receiver appointed by the Court herein and
5 any deputy receivers as may be named by the permanent receiver.

6 L. "Receivership Defendants" means Forensic Case Management Services, Inc.
7 (also d/b/a Commercial Investigations, Inc., FCMS, Inc., Commercial
8 Recovery Solutions, Inc., and Rumson, Bolling & Associates), a California
9 corporation; Specialized Recovery, Inc. (also d/b/a Joseph, Steven &
10 Associates and Specialized Debt Recovery), a California corporation; and
11 Commercial Receivables Acquisition, Inc. (also d/b/a Commercial Recovery
12 Authority, Inc. and The Forwarding Company), a California corporation;
13 and their successors, assigns, affiliates, or subsidiaries, and each of them by
14 whatever names each might be known that conduct any business related to
15 Defendants' debt collection business and which the Receiver has reason to
16 believe are owned or controlled in whole or in part by any of the Defendants.
17 M. The words "and" and "or" shall be understood to have both conjunctive and
18 disjunctive meanings as necessary to make the applicable phrase or sentence
19 inclusive rather than exclusive.

20 I.

21 **PROHIBITION AGAINST USE OF DECEPTION AND**
22 **MISREPRESENTATION IN DEALING WITH CLIENTS AND**
23 **POTENTIAL CLIENTS**

24 **IT IS THEREFORE ORDERED** that in connection with offering their
25 services to creditors and other clients, Defendants and their officers, agents,
26 servants, employees, and attorneys, and all other persons or entities in active
27 concert or participation with any of them who receive actual notice of this Order by
28 personal service, facsimile, email, or otherwise, each are hereby restrained and
enjoined from, directly or indirectly:

1 A. Violating Section 5 of the FTC Act, 15 U.S.C. § 45, by engaging in unfair or
2 deceptive acts or practices, including but not limited to:

- 3 1. Misrepresenting, directly or by implication, that if Defendants collect
4 money from the alleged debtor, Defendants will forward the collected
5 amount, minus a contingency fee for debt collection services, to the
6 creditor on whose behalf Defendants propose to conduct debt
7 collection services;
- 8 2. Misrepresenting, directly or by implication, that Defendants have
9 identified or located at least some of the alleged debtor's assets, which
10 can be used toward the satisfaction of the alleged debt;
- 11 3. Misrepresenting, directly or by implication, that Defendants will
12 undertake certain legal actions, such as the filing of a collection
13 lawsuit, the garnishment of wages, or seizure of assets; or
- 14 4. Misrepresenting, directly or by implication, that collection of at least
15 some of the money owed on the alleged debt is guaranteed if the
16 creditor on whose behalf Defendants propose to conduct debt
17 collection services pays Defendants a fee to initiate the specified legal
18 action(s).

19 **II.**

20 **PROHIBITION AGAINST USE OF DECEPTION,**
21 **MISREPRESENTATION, ABUSE, AND HARASSMENT**
22 **IN DEBT COLLECTION**

23 **IT IS THEREFORE ORDERED** that in connection with the collection or
24 attempted collection of any debt, Defendants and their officers, agents, servants,
25 employees, and attorneys, and all other persons or entities in active concert or
26 participation with any of them who receive actual notice of this Order by personal
27 service, facsimile, email, or otherwise, each are hereby restrained and enjoined
28 from, directly or indirectly:

A. Violating the FDCPA, 15 U.S.C. § 1692-1692p, including but not limited to:

1 jurisdiction, and when not reasonably necessary to effectuate a postjudgment
2 judicial remedy; and

3 D. Engaging in conduct the natural consequence of which is to harass, oppress,
4 or abuse a person, including, but not limited to:

- 5 1. using or threatening to use violence or other criminal means to harm
6 the physical person, reputation, or property of any person;
- 7 2. using obscene or profane language or language the natural
8 consequence of which is to abuse the hearer; or
- 9 3. causing a telephone to ring or engaging a person in telephone
10 conversation repeatedly or continuously with the intent to annoy,
11 abuse, or harass a person at the number called.

12 **III.**

13 **ASSET FREEZE**

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

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

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

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

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

10 D. Obtaining a personal or secured loan;

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

13 F. Transferring any funds or other assets subject to this Order for attorneys'
14 fees or living expenses, except from accounts or other assets identified by
15 prior written notice to the FTC; *provided that* no attorneys' fees or living
16 expenses, other than those set forth in Subparagraph G of this Paragraph III,
17 and only in accordance with the procedures set forth in Subparagraph G of
18 this Paragraph III, shall be paid from funds or other assets subject to this
19 Order until the financial statements required by Paragraph V are provided to
20 counsel for the FTC.

21 G. Notwithstanding the above, following the submission of all of the financial
22 statements required by Paragraph V and, to the extent not already done so
23 pursuant to the TRO issued in this case, any Defendant may make a one-
24 time-only payment of up to \$1,000 from his personal funds for necessary
25 living expenses and/or attorneys' fees. No such expense, however, shall be
26 paid from funds subject to this Order except from cash on the person of any
27 Defendant, or from an account designated by prior written notice to counsel
28 for the FTC.

H. Defendants' Request for Release of funds
for attorneys' fees and living expenses are
denied at this time for failure to show
reasonableness and sufficient proof.

1 otherwise maintained on behalf of Defendants for forensic imaging;

2 C. Deny access to any safe deposit boxes that are either titled in the name,
3 individually or jointly, or subject to access by, any Defendant or other party
4 subject to Paragraph III above; and

5 D. To the extent not already done so pursuant to the TRO issued in this case,
6 provide to counsel for the FTC and the Receiver, within one (1) business
7 day, a sworn statement setting forth:

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

24 E. To the extent not already done so pursuant to the TRO issued in this case,
25 provide counsel for the FTC and the Receiver, within three (3) business days
26 after being served with a request, copies of all documents pertaining to such
27 account or asset, including but not limited to originals or copies of account
28 applications, account statements, signature cards, checks, drafts, deposit

1 tickets, transfers to and from the accounts, all other debit and credit
2 instruments or slips, currency transaction reports, 1099 forms, and safe
3 deposit box logs; provided that such institution or custodian may charge a
4 reasonable fee; and

5 F. Cooperate with all reasonable requests of the Receiver relating to this
6 Order's implementation.

7 **IT IS FURTHER ORDERED** that the accounts subject to this provision
8 include existing assets and assets deposited after the effective date of this Order.
9 This Paragraph shall not prohibit transfers in accordance with any provision of this
10 Order, or any further order of the Court.

11 **IT IS FURTHER ORDERED** the FTC is granted leave, pursuant to Fed. R.
12 Civ. P. 45, to subpoena documents immediately from any such financial institution,
13 account custodian, or other entity concerning the nature, location, status, and extent
14 of Defendants' accounts, documents, and assets, and compliance with this Order,
15 and such financial institution, account custodian, or other entity shall respond to
16 such subpoena within three (3) business days after service.

17 **V.**

18 **FINANCIAL STATEMENTS AND ACCOUNTING**

19 **IT IS FURTHER ORDERED** that, to the extent it has not already done so
20 pursuant to the TRO issued in this case, each Defendant, within three business days
21 of service of this Order, shall prepare and deliver to counsel for the FTC:

- 22 A. For Individual Defendants, a completed financial statement accurate as of
23 the date of service of this Order upon such Defendant (unless otherwise
24 agreed upon with FTC counsel) on the form lodged as Attachment A to the
25 FTC's TRO Application.
- 26 B. For Corporate Defendants, a completed financial statement accurate as of the
27 date of service of this Order upon such Defendant (unless otherwise agreed
28 upon with FTC counsel) on the form lodged as Attachment B to the FTC's

1 TRO Application.

2 C. For each Defendant, a completed statement, verified under oath, of all
3 payments, transfers or assignments of funds, assets, or property worth
4 \$1,000 or more since January 1, 2008. Such statement shall include: (a) the
5 amount transferred or assigned; (b) the name of each transferee or assignee;
6 (c) the date of the transfer or assignment; and (d) the type and amount of
7 consideration paid the Defendant. Each statement shall specify the name
8 and address of each financial institution and brokerage firm at which the
9 Defendant has accounts or safe deposit boxes. Said statements shall include
10 assets held in foreign as well as domestic accounts.

11 **VI.**

12 **CONSUMER CREDIT REPORTS**

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

16 **VII.**

17 **REPATRIATION OF FOREIGN ASSETS**

18 **IT IS FURTHER ORDERED** that, to the extent not already done so
19 pursuant to the TRO issued in this case, within five (5) business days following the
20 service of this Order, each Defendant shall:

- 21 A. Provide counsel for the FTC and the Receiver with a full accounting of all
22 assets, accounts, funds, and documents outside of the territory of the United
23 States that are held either: (1) by them; (2) for their benefit; (3) in trust by or
24 for them, individually or jointly; or (4) under their direct or indirect control,
25 individually or jointly;
- 26 B. Transfer to the territory of the United States all assets, accounts, funds, and
27 documents in foreign countries held either: (1) by them; (2) for their benefit;
28 (3) in trust by or for them, individually or jointly; or (4) under their direct or

1 indirect control, individually or jointly;

2 C. Hold and retain all repatriated assets, accounts, funds, and documents, and
3 prevent any transfer, disposition, or dissipation whatsoever of any such
4 assets, accounts, funds, or documents except as allowed by Paragraph III of
5 this Order; and

6 D. Provide the FTC access to all records of accounts or assets of the Corporate
7 Defendants and Individual Defendants held by financial institutions located
8 outside the territorial United States by signing the Consent to Release of
9 Financial Records lodged with the FTC's TRO Application as Attachment
10 C.

11 **VIII.**

12 **NONINTERFERENCE WITH REPATRIATION**

13 **IT IS FURTHER ORDERED** that Defendants are hereby restrained and
14 enjoined from taking any action, directly or indirectly, that may result in the
15 encumbrance or dissipation of foreign assets, or in the hindrance of the repatriation
16 required by the preceding Paragraph VII of this Order, including, but not limited
17 to:

- 18 A. Sending any statement, letter, fax, email or wire transmission, or telephoning
19 or engaging in any other act, directly or indirectly, that results in a
20 determination by a foreign trustee or other entity that a "duress" event has
21 occurred under the terms of a foreign trust agreement until such time that all
22 assets have been fully repatriated pursuant to Paragraph VII of this Order; or
23 B. Notifying any trustee, protector, or other agent of any foreign trust or other
24 related entities of either the existence of this Order, or of the fact that
25 repatriation is required pursuant to a court order, until such time that all
26 assets have been fully repatriated pursuant to Paragraph VII of this Order.

1 IX.

2 APPOINTMENT OF RECEIVER

3 IT IS FURTHER ORDERED that Thomas W. McNamara

4 is appointed Receiver for the business activities of Receivership Defendants with
5 the full power of an equity receiver. The Receiver shall be the agent of this Court
6 and solely the agent of this Court in acting as Receiver under this Order. The
7 Receiver shall be accountable directly to this Court. The Receiver shall comply
8 with any laws and Local Rules of this Court governing receivers, including but not
9 limited to Local Rules 66-1 through 66-5.1 and Local Rule 66-8.

10 X.

11 DUTIES OF RECEIVER

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

- 14 A. Assume full control of the Receivership Defendants by removing, as the
15 Receiver deems necessary or advisable, any director, officer, independent
16 contractor, employee, or agent of any of the Receivership Defendants,
17 including any named Defendant, from control of, management of, or
18 participation in, the affairs of the Receivership Defendants;
- 19 B. Take exclusive custody, control, and possession of all assets, documents,
20 and electronically stored information of, or in the possession, custody, or
21 under the control of, the Receivership Defendants, wherever situated. The
22 Receiver shall have full power to divert mail and to sue for, collect, receive,
23 take in possession, hold, and manage all assets and documents of the
24 Receivership Defendants and other persons or entities whose interests are
25 now held by or under the direction, possession, custody, or control of the
26 Receivership Defendants. *Provided, however,* that the Receiver shall not
27 attempt to collect or receive any amount from a consumer if the Receiver
28 believes the consumer was a victim of the unlawful conduct alleged in the

1 complaint in this matter;

2 C. Take all steps necessary to secure the business premises of the Receivership
3 Defendants. Such steps may include, but are not limited to, the following, as
4 the Receiver deems necessary or advisable:

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

25 D. Conserve, hold, and manage all Receivership assets, and perform all acts
26 necessary or advisable to preserve the value of those assets, in order to
27 prevent any irreparable loss, damage, or injury to consumers or to creditors
28 of the Receivership Defendants, including, but not limited to, obtaining an

1 accounting of the assets and preventing transfer, withdrawal, or
2 misapplication of assets;

3 E. Liquidate any and all securities or commodities owned by or for the benefit
4 of the Receivership Defendants that the Receiver deems to be advisable or
5 necessary;

6 F. Enter into contracts and purchase insurance as the Receiver deems to be
7 advisable or necessary;

8 G. Prevent the inequitable distribution of assets and determine, adjust, and
9 protect the interests of consumers and creditors who have transacted
10 business with the Receivership Defendants;

11 H. Manage and administer the business of the Receivership Defendants until
12 further order of this Court by performing all incidental acts that the Receiver
13 deems to be advisable or necessary, which includes retaining, hiring, or
14 dismissing any employees, independent contractors, or agents;

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

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

26 K. Determine and implement the manner in which the Receivership Defendants
27 will comply with, and prevent violations of, this Order and all other
28 applicable laws, including, but not limited to, revising sales materials and

1 implementing monitoring procedures;

2 L. Institute, compromise, adjust, appear in, intervene in, or become party to
3 such actions or proceedings in state, federal, or foreign courts that the
4 Receiver deems necessary and advisable to preserve or recover the assets of
5 the Receivership Defendants, or that the Receiver deems necessary and
6 advisable to carry out the Receiver's mandate under this Order;

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

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

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

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

- 1 Q. Maintain accurate records of all receipts and expenditures that he makes as
2 Receiver; and
- 3 R. Cooperate with reasonable requests for information or assistance from any
4 state or federal law enforcement agency.

5 **IT IS FURTHER ORDERED** that the Receiver will be responsible for
6 maintaining the chain of custody of all of Defendants' records in his possession,
7 pursuant to procedures to be established in writing with the approval of the FTC.

8 **XI.**

9 **COOPERATION WITH RECEIVER**

10 **IT IS FURTHER ORDERED** that:

- 11 A. To the extent not already done so pursuant to the TRO issued in this case,
12 Defendants, and their officers, agents, directors, servants, employees,
13 salespersons, independent contractors, attorneys, corporations, subsidiaries,
14 affiliates, successors, and assigns, all other persons or entities in active
15 concert or participation with them, who receive actual notice of this Order
16 by personal service or otherwise, whether acting directly or through any
17 trust, corporation, subsidiary, division, or other device, or any of them, shall
18 fully cooperate with and assist the Receiver. Defendants' cooperation and
19 assistance shall include, but not be limited to:
- 20 1. Providing any information to the Receiver that the Receiver deems
21 necessary to exercising the authority and discharging the
22 responsibilities of the Receiver under this Order, including but not
23 limited to allowing the Receiver to inspect documents and assets and
24 to partition office space;
 - 25 2. Providing any password and executing any documents required to
26 access any computer or electronic files in any medium, including but
27 not limited to electronically stored information stored, hosted or
28 otherwise maintained by an electronic data host; and

1 3. Advising all persons who owe money to the Receivership Defendants
2 that all debts should be paid directly to the Receiver.

3 B. Defendants and their officers, directors, agents, servants, employees,
4 attorneys, successors, assigns, and all other persons or entities directly or
5 indirectly, in whole or in part, under their control, and all other persons in
6 active concert or participation with them who receive actual notice of this
7 Order by personal service or otherwise, are hereby restrained and enjoined
8 from directly or indirectly:

- 9 1. Transacting any of the business of the Receivership Defendants;
- 10 2. Destroying, secreting, erasing, mutilating, defacing, concealing,
11 altering, transferring or otherwise disposing of, in any manner,
12 directly or indirectly, any documents, electronically stored
13 information, or equipment of the Receivership Defendants, including
14 but not limited to contracts, agreements, consumer files, consumer
15 lists, consumer addresses and telephone numbers, correspondence,
16 advertisements, brochures, sales material, sales presentations,
17 documents evidencing or referring to Defendants' services, debt
18 collection training materials, debt collection scripts, data, computer
19 tapes, disks, or other computerized records, books, written or printed
20 records, handwritten notes, telephone logs, "verification" or
21 "compliance" tapes or other audio or video tape recordings, receipt
22 books, invoices, postal receipts, ledgers, personal and business
23 canceled checks and check registers, bank statements, appointment
24 books, copies of federal, state or local business or personal income or
25 property tax returns, photographs, mobile devices, electronic storage
26 media, accessories, and any other documents, records or equipment of
27 any kind that relate to the business practices or business or personal
28 finances of the Receiver Defendants or any other entity directly or

1 indirectly under the control of the Receiver Defendants;

- 2 3. Transferring, receiving, altering, selling, encumbering, pledging,
3 assigning, liquidating, or otherwise disposing of any assets owned,
4 controlled, or in the possession or custody of, or in which an interest
5 is held or claimed by, the Receivership Defendants, or the Receiver;
- 6 4. Excusing debts owed to the Receivership Defendants;
- 7 5. Failing to notify the Receiver of any asset, including accounts, of a
8 Receivership Defendant held in any name other than the name of the
9 Receivership Defendant, or by any person or entity other than the
10 Receivership Defendant, or failing to provide any assistance or
11 information requested by the Receiver in connection with obtaining
12 possession, custody, or control of such assets;
- 13 6. Failing to create and maintain books, records, and accounts which, in
14 reasonable detail, accurately, fairly, and completely reflect the
15 incomes, assets, disbursements, transactions and use of monies by the
16 Defendants or any other entity directly or indirectly under the control
17 of the Defendants;
- 18 7. Doing any act or refraining from any act whatsoever to interfere with
19 the Receiver's taking custody, control, possession, or managing of the
20 assets or documents subject to this Receivership; or to harass or to
21 interfere with the Receiver in any way; or to interfere in any manner
22 with the exclusive jurisdiction of this Court over the assets or
23 documents of the Receivership Defendants; or to refuse to cooperate
24 with the Receiver or the Receiver's duly authorized agents in the
25 exercise of their duties or authority under any Order of this Court;
- 26 8. Filing, or causing to be filed, any petition on behalf of the
27 Receivership Defendants for relief under the United States
28 Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, without prior permission

1 from this Court; and

2 9. Creating, operating, exercising any control over, becoming employed
3 by or affiliated with, or performing any work for any business entity,
4 including but not limited to any partnership, limited partnership, joint
5 venture, sole proprietorship, or corporation without first providing the
6 FTC with a sworn written statement at least seven (7) calendar days
7 prior to such creation, operation, exercise, employment, affiliation, or
8 performance of work disclosing:

- 9 a. The name, address and telephone number of the business entity;
10 b. The names of the business entity's officers, directors,
11 principals, managers, and employees; and
12 c. A detailed description of the business entity's intended
13 activities and the nature of the duties or responsibilities of the
14 Receivership Defendant.

15 **XII.**

16 **DELIVERY OF RECEIVERSHIP PROPERTY**

17 **IT IS FURTHER ORDERED** that, to the extent not already done so
18 pursuant to the TRO issued in this case, immediately upon service of this Order
19 upon them or upon their otherwise obtaining actual knowledge of this Order, or
20 within a period permitted by the Receiver, Defendants or any other person or
21 entity, including but not limited to financial institutions and electronic data hosts,
22 shall transfer or deliver access to, possession, custody, and control of the following
23 to the Receiver:

- 24 A. All assets of the Receivership Defendants;
25 B. All documents and electronically stored information of the Receivership
26 Defendants, including, but not limited to, books and records of accounts, all
27 financial and accounting records, balance sheets, income statements, bank
28 records (including monthly statements, canceled checks, records of wire

1 transfers, records of ACH transactions, and check registers), client or
2 customer lists, title documents and other papers;

3 C. All assets belonging to members of the public now held by the Receivership
4 Defendants;

5 D. All keys, computer and other passwords, entry codes, combinations to locks
6 required to open or gain or secure access to any assets or documents of the
7 Receivership Defendants, wherever located, including, but not limited to,
8 access to their business premises, means of communication, accounts,
9 computer systems, or other property; and

10 E. Information identifying the accounts, employees, properties, or other assets
11 or obligations of the Receivership Defendants.

12 **IT IS FURTHER ORDERED** that, in the event any person or entity fails to
13 deliver or transfer immediately any asset or otherwise fails to comply with any
14 provision of this Paragraph XIII, the Receiver may file *ex parte* with the Court an
15 Affidavit of Non-Compliance regarding the failure. Upon filing of the affidavit,
16 the Court may authorize, without additional process or demand, Writs of
17 Possession or Sequestration or other equitable writs requested by the Receiver.
18 The writs shall authorize and direct the United States Marshal or any sheriff or
19 deputy sheriff of any county (pursuant to Fed. R. Civ. P. 4(c)(1)) to seize the asset,
20 document, or other thing and to deliver it to the Receiver.

21 **XIII.**

22 **COMPENSATION FOR RECEIVER**

23 **IT IS FURTHER ORDERED** that the Receiver and all personnel hired by
24 the Receiver as herein authorized, including counsel to the Receiver and
25 accountants, are entitled to reasonable compensation for the performance of duties
26 pursuant to this Order, and for the cost of actual out-of-pocket expenses incurred by
27 them, from the assets now held by or in the possession or control of, or which may
28 be received by, the Receivership Defendants, *or, as otherwise ordered by the Court* The Receiver shall file with the Court

1 and serve on the parties periodic requests for the payment of such reasonable
2 compensation, with the first such request filed no more than sixty (60) days after the
3 date of this Order. The Receiver shall not increase the hourly rates used as the
4 bases for such fee applications without prior approval of the Court.

5 **XIV.**

6 **RECEIVER'S REPORTS**

7 **IT IS FURTHER ORDERED** that, no more than thirty (30) days after the
8 date of this Order, the Receiver shall report to this Court, regarding: (1) the steps
9 taken by the Receiver to implement the terms of this Order; (2) the value of all
10 liquidated and unliquidated assets of the Receivership Defendants; (3) the sum of
11 all liabilities of the Receivership Defendants; (4) the steps the Receiver intends to
12 take in the future to: (a) prevent any diminution in the value of assets of the
13 Receivership Defendants, (b) pursue receivership assets from third parties, and (c)
14 adjust the liabilities of the Receivership Defendants, if appropriate; and (5) any
15 other matters which the Receiver believes should be brought to the Court's
16 attention. *Provided, however,* if any of the required information would hinder the
17 Receiver's ability to pursue receivership assets, the portions of the Receiver's
18 report containing such information may be filed under seal and not served on the
19 parties.

20 **XV.**

21 **RECEIVER'S BOND**

22 **IT IS FURTHER ORDERED** that the Receiver shall file with the Clerk of
23 this Court a bond in the sum of \$1,000,000 with sureties to be approved by the
24 Court, conditioned that the Receiver will well and truly perform the duties of the
25 office and abide by and perform all acts the Court directs.

26 **XVI.**

27 **REQUIREMENT TO REPORT INFORMATION**
28 **REGARDING DEFENDANTS' CLIENTS**

IT IS FURTHER ORDERED that, to the extent not already done so

1 pursuant to the TRO issued in this case, within five (5) calendar days from the date
2 of this Order, Defendants shall provide the FTC with the following information for
3 each of its clients who has engaged any Defendant for any debt collection service,
4 practice, or activity, including but not limited to engaging any Defendant to collect
5 any past-due credit accounts on that client's behalf:

6 A. The client's name, address, telephone number(s), and e-mail address(es);

7 B. The total amount paid by the client to any Defendant for any debt collection
8 service, practice, or activity, including the amount and date(s) of such
9 payments;

10 C. The date and status of any request for a refund by the client, and the amount
11 and date of any refund that any Defendant paid to its client;

12 D. The name, address, telephone number(s), and e-mail address(es) of every
13 third party with whom any Defendant (or their employees, agents,
14 representatives, independent contractors, or franchisees) have communicated
15 in connection with providing any debt collection service, practice, or activity
16 for such client; the date of each communication; and a summary of the
17 nature of the communication;

18 E. The name, address, telephone number(s), and e-mail address(es) of each
19 person, including but not limited to attorneys, who has provided any service
20 to any Defendant in connection with Defendants' debt collection services,
21 practices, or activities and the amount paid for such service;

22 F. The status, resolution, and results of any debt collection service, practice, or
23 activity performed by Defendants (or their employees, agents,
24 representatives, independent contractors, or franchisees) on behalf of such
25 client, including but not limited to the date and amount of any debt collected
26 and paid to such client;

27 G. The status, resolution, and result of any litigation filed against an alleged
28 debtor on behalf of such client, including but not limited to the date the

1 action was filed, the date any alleged debtor was served or service of process
2 was attempted, a description of any failed attempt to serve process on any
3 alleged debtor, the jurisdiction and case number of the action, and the name
4 and contact information of the attorney representing any Defendant or any of
5 its clients in the action;

6 H. Copies of correspondence, settlement agreements, and all documents filed
7 with any court in connection with any litigation identified in Subparagraph
8 XVI(G) above; and

9 I. A copy of any contract or agreement, including all signed versions, between
10 the client and any Defendant (or their employees, agents, representatives,
11 independent contractors, or franchisees) for the provision of debt collection
12 services, practices or activities.

13 **XVII.**

14 **REQUIREMENT TO REPORT INFORMATION**
15 **REGARDING ALLEGED DEBTORS**

16 **IT IS FURTHER ORDERED** that, to the extent not already done so
17 pursuant to the TRO issued in this case, within five (5) calendar days from the date
18 of this Order, Defendants shall provide the FTC with the following information for
19 each alleged debtor from whom any Defendant has attempted to collect, either
20 directly or indirectly, any debt or alleged debt as part of any debt collective service,
21 practice, or activity:

22 A. The alleged debtor's name, address, telephone number(s), and e-mail
23 address(es);

24 B. The date of each communication with any such alleged debtor and a
25 summary of the nature of such communication;

26 C. The total amount, if any, collected by any Defendant (or their employees,
27 agents, representatives, independent contractors, or franchisees) from such
28 alleged debtor as part of any debt collection service, practice, or activity; the
amount and date(s) of each payment the alleged debtor made to any

1 Defendant; and the amount and date(s) on which any Defendant remitted a
2 payment, in whole or in part, to any Defendant's client(s);

3 D. The name, address, telephone number(s), and e-mail address(es) of every
4 third party with whom any Defendant (or their employees, agents,
5 representatives, independent contractors, or franchisees) has communicated
6 in connection with any Defendant's attempt to collect any debt or alleged
7 debt; the date of each communication; and a summary of the nature of the
8 communication;

9 E. The status, resolution, and result of any litigation filed against any alleged
10 debtor on behalf of any client of any Defendant, including but not limited to
11 the date the action was filed, the date such alleged debtor was served or
12 service of process was attempted, a description of any failed attempt to serve
13 process, the jurisdiction and case number of the action, and the name and
14 contact information of the attorney representing any Defendant or its
15 client(s) in the action; and

16 F. Copies of correspondence, settlement agreements, and all documents filed
17 with any court in connection with any litigation identified in Subparagraph
18 XVII(E) above.

19 **XVIII.**

20 **PROHIBITION ON RELEASE OF CONSUMER INFORMATION**

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

1 account, or other financial account), of any person which any Defendant obtained
2 prior to entry of this Order in connection with any debt collection service.

3 **XIX.**

4 **STAY OF ACTIONS**

5 **IT IS FURTHER ORDERED** that:

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

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

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

5 B. This Paragraph XIX does not stay:

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

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

22 **XX.**

23 **MONITORING**

24 **IT IS FURTHER ORDERED** that agents or representatives of the FTC
25 may contact Defendants directly or anonymously for the purpose of monitoring
26 compliance with this Order, and may tape record any oral communications that
27 occur in the course of such contacts.
28

1 **XXI.**

2 **DEFENDANTS' DUTY TO DISTRIBUTE ORDER**

3 **IT IS FURTHER ORDERED** that Defendants shall immediately provide a
4 copy of this Order to each affiliate, subsidiary, division, sales entity, successor,
5 assign, officer, director, employee, independent contractor, client company,
6 electronic data host, agent, attorney, spouse, and representative of Defendants and
7 shall, within three (3) calendar days from the date of entry of this Order, provide
8 counsel for the FTC with a sworn statement that: (a) confirms that Defendants
9 have provided copies of the Order as required by this Paragraph and (b) lists the
10 names and addresses of each entity or person to whom Defendants provided a copy
11 of the Order. Furthermore, Defendants shall not take any action that would
12 encourage officers, agents, directors, employees, salespersons, independent
13 contractors, attorneys, subsidiaries, affiliates, successors, assigns, or other persons
14 or entities in active concert or participation with Defendants to disregard this Order
15 or believe that they are not bound by its provisions.

16 **XXII.**

17 **CORRESPONDENCE WITH PLAINTIFF**

18 For the purposes of this Order, all service on and correspondence to the FTC
19 shall be addressed to: Christopher T. Koegel, Federal Trade Commission, 601 New
20 Jersey Ave., N.W., Mail Drop NJ-3158, Washington, DC 20580, with a copy to
21 Raymond E. McKown, Federal Trade Commission, 10877 Wilshire Blvd., Ste.
22 700, Los Angeles, CA 90024.

23 **XXIII.**

24 **SERVICE OF THIS ORDER**

25 **IT IS FURTHER ORDERED** that copies of this Order may be served by
26 any means, including facsimile transmission, email, personal or overnight delivery,
27 or U.S. Mail, by agents and employees of the FTC or any state or federal law
28 enforcement agency or by private process server, upon any financial institution or

1 other entity or person that may have possession, custody, or control of any
2 documents or assets of any Defendant, or that may otherwise be subject to any
3 provision of this Order. Service upon any branch or office of any financial
4 institution shall effect service upon the entire financial institution.

5 **XXIV.**

6 **RETENTION OF JURISDICTION**

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

10
11 **IT IS SO ORDERED**, this 27TH day of SEPTEMBER, 2011, at
12 3:40 p..m., Pacific Standard Time.

13
14
15 Dated: 09.27.11

16 Jay Kans
17 UNITED STATES DISTRICT JUDGE
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