

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

RECORDED

2009 FEB -2 AM 11:02
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
SANTA ANA
BY: *me*

FILED-SOUTHERN DIVISION
CLERK, U.S. DISTRICT COURT
FEB - 2 2009
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY
BY: *[Signature]*

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Federal Trade Commission,
Plaintiff,
v.
National Foreclosure Relief, Inc.,
a corporation;
David Ealy,
an individual;
Chele Stone, a/k/a Chele Medina,
an individual; and
Hugo Tapia,
an individual,
Defendants.

Case No. SACV09-117 DOC(MLGx)

(Proposed)
Temporary Restraining Order
With Asset Freeze, Appointment of
Temporary Receiver and Other
Equitable Relief, and Order to Show
Cause Why a Preliminary Injunction
Should Not Issue and a Permanent
Receiver Should Not Be Appointed

Plaintiff Federal Trade Commission having filed its Complaint for a permanent injunction and other equitable relief in this matter pursuant to Section 13(b) the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), and having applied *ex parte* for a Temporary Restraining Order ("Order") pursuant to Rule 65 of the Federal Rules of Civil Procedure, and the Court having considered the Complaint, Plaintiff's application, and the memorandum of points and authorities and

1 other materials filed in support thereof, and now being advised in the premises, finds
2 as follows:

3 1. This Court has jurisdiction of the subject matter of this case. There is
4 also good cause to believe it will have jurisdiction of all parties hereto, and that
5 venue in this district is proper.

6 2. There is good cause to believe that Defendants National Foreclosure
7 Relief, Inc., David Ealy, Chele Stone a/k/a Chele Medina, and Hugo Tapia
8 ("Defendants") have engaged in and are likely to engage in acts that violate Section
9 5(a) of the FTC Act, 15 U.S.C. § 45(a), and that the Commission is likely to prevail
10 on the merits of this action.

11 3. There is good cause to believe that immediate and irreparable harm will
12 result from Defendants' ongoing violations of the FTC Act unless Defendants are
13 restrained and enjoined by Order of this Court.

14 4. There is good cause to believe that immediate and irreparable damage to
15 the Court's ability to grant effective final relief for consumers—including refunds,
16 rescission and restitution, disgorgement or other equitable monetary relief—will
17 occur from the sale, transfer, or other disposition or concealment by Defendants of
18 assets or records if Defendants are provided with advance notice of this Order, and
19 that therefore in accordance with Fed. R. Civ. P. 65(b), the interests of justice
20 therefore require that this Order be granted without prior notice to Defendants.
21 There is thus good cause for relieving the Commission of the duty to provide
22 Defendants with prior notice of the Commission's application.

23 5. Good cause exists for the appointment of a Temporary Receiver over
24 corporate Defendant National Foreclosure Relief, Inc.

25 6. Considering Plaintiff's likelihood of ultimate success and weighing the
26 equities, a Temporary Restraining Order with an asset freeze, the appointment of a
27 Temporary Receiver, and other equitable relief is in the public interest.

28

1 deed of trust or mortgage on a residence in foreclosure or contained in that deed of
2 trust or mortgage, (F) obtain a loan or advance of funds that is connected to the
3 consumer's home ownership, (G) avoid or ameliorate the impairment of the owner's
4 credit standing, credit rating or credit profile resulting from the recording of a notice
5 of default or the conduct of a foreclosure sale, (H) save the owner's residence from
6 foreclosure, or (I) assist the owner in obtaining from the beneficiary, mortgagee,
7 trustee under a power of sale, or counsel for the beneficiary, mortgagee, or trustee,
8 the remaining proceeds from the foreclosure sale of the owner's residence. The
9 foregoing shall include any manner of claimed assistance, including, but not limited
10 to, debt, budget, or financial counseling; receiving money for the purpose of
11 distributing it to creditors; contacting creditors on behalf of the homeowner;
12 arranging or attempting to arrange for an extension of the period within which the
13 owner of property sold at foreclosure may cure his or her default; arranging or
14 attempting to arrange for any delay or postponement of the time of a foreclosure sale;
15 and giving advice of any kind with respect to filing for bankruptcy.

16 7. "Assisting others" means knowingly providing any of the following
17 goods or services to another person or entity:
18 a. performing customer service functions, including, but not limited
19 to, receiving or responding to consumer complaints; or
20 b. formulating or providing, or arranging for the formulation or
21 provision of, any telephone sales script or any other marketing
22 material; or
23 c. providing names of, or assisting in the generation of, potential
24 customers; or
25 d. performing marketing services of any kind.

26 8. "Material fact" means any fact that is likely to affect a person's choice
27 of, or conduct regarding, goods or services.

28

- 1 3. prevent a notice of default from being filed with respect to any
- 2 consumer's residence or home loan;
- 3 4. obtain or write a new home loan for any consumer;
- 4 5. obtain or arrange refinancing of a home loan for any consumer;
- 5 6. obtain or arrange a forbearance from any beneficiary, mortgagee,
- 6 or other home-loan holder;
- 7 7. obtain or arrange a modification of any consumer's home loan;
- 8 8. obtain or arrange lower monthly mortgage payments for any
- 9 consumer;
- 10 9. obtain or arrange affordable monthly mortgage payments for any
- 11 consumer;
- 12 10. immediately or promptly contact any consumer's home-loan
- 13 holder; or
- 14 11. give a full refund of any fees paid if the Defendant or any other
- 15 person fails to stop, prevent, or postpone any foreclosure;
- 16 B. the terms that any beneficiary, mortgagee, or other home-loan holder
- 17 will or is likely to offer or accept to cure any delinquency or default on, or to re-
- 18 instate, any mortgage or other home loan, including but not limited to:
- 19 1. the amount of any good-faith, up-front, or lump sum payment that
- 20 the consumer will be required to make; or
- 21 2. the amount of any monthly payment(s) that the consumer will be
- 22 require to make;
- 23 C. the amount of time that it will take or is likely to take for any Defendant
- 24 or other person to arrange or reach an agreement with any consumer's home-loan
- 25 holder to prevent foreclosure or to cure any delinquency or default on, or to re-
- 26 instate, any mortgage or other home loan;
- 27
- 28

1 D. the nature of the Defendant's or any other person's relationship with
2 any lender or other home-loan holder;

3 E. the length of time that any Defendant or any other person has been in
4 the mortgage foreclosure rescue business;

5 F. the cost of such service or of any aspect of such service;

6 G. that any Defendant or any other person is affiliated with, endorsed or
7 approved by, or otherwise connected to any government agency, unit or department,
8 including but not limited to the U.S. Department of Housing and Urban
9 Development (H.U.D.);

10 H. the refund policy of any Defendant or any other person, including but
11 not limited to the likelihood of a consumer obtaining a full or partial refund, or the
12 circumstances in which a full or partial refund will be granted to the consumer; or

13 I. any other material fact.

14 II.

15 ASSET FREEZE

16 IT IS FURTHER ORDERED that each of the Defendants is hereby
17 temporarily restrained and enjoined, until further order of this Court, from:

18 A. Transferring, encumbering, selling, concealing, pledging,
19 hypothecating, assigning, spending, withdrawing, disbursing,
20 conveying, gifting, dissipating, or otherwise disposing of any funds,
21 property, coins, lists of consumer names, shares of stock, or other assets,
22 wherever located, that are (1) owned or controlled by any of the
23 Defendants, in whole or in part; (2) in the actual or constructive
24 possession of any of the Defendants; (3) held by an agent of any of the
25 Defendants, as a retainer for the agent's provision of services to a
26 Defendant; or (4) owned, controlled by, or in the actual or constructive
27 possession of, or otherwise held for the benefit of, any corporation,
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

partnership, or other entity directly or indirectly owned or controlled by any of the Defendants;

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

C. Incurring charges or cash advances on any credit or debit card issued in the name, singly or jointly, of any of the Defendants, or any corporation, partnership, or other entity directly or indirectly owned or controlled by any of the Defendants; and

D. Failing to disclose to Plaintiff, immediately upon service of this Order, information that fully identifies each asset of the Defendants, and each entity holding such asset, including, without limitation, the entity's name, address, and telephone number, the number of the account, and the name under which the account is held.

E. Provided, that the freeze imposed in this Section shall be construed to apply to assets that any of the Defendants acquires following service of this Order only if such assets are derived from activity prohibited by this Order.

III.

FINANCIAL REPORTS

IT IS FURTHER ORDERED that within forty-eight (48) hours after service of this Order:

A. Each of the Individual Defendants shall complete and deliver to Plaintiff the Financial Statement captioned "Financial Statement of Individual Defendant," a copy of which is attached hereto as Attachment I;

B. The Individual Defendants shall prepare and deliver to Plaintiff and the Temporary Receiver, for NFR, the Financial Statement captioned

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

"Financial Statement of Corporate Defendant," a copy of which is attached hereto as Attachment 2. The Individual Defendants shall be jointly and severally liable for this obligation;

C. Each of the Individual Defendants shall, on behalf of each corporation of which he or she is the majority owner or otherwise controls, other than NFR, complete and deliver to Plaintiff a separate copy of the "Financial Statement of Corporate Defendant"; and

D. Defendants shall provide the Commission access to records and documents pertaining to assets of any of the Defendants that are held by financial institutions outside the territory of the United States by signing a Consent to Release of Financial Records if requested by Plaintiff.

IV.

PRESERVATION OF RECORDS

IT IS FURTHER ORDERED that Defendants, and their agents, servants, employees, and attorneys, and all persons or entities directly or indirectly under the control of any of them, and all other persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, and each such person, are hereby temporarily restrained and enjoined from destroying, erasing, mutilating, concealing, altering, transferring or otherwise disposing of, in any manner, directly or indirectly, any documents that relate to the business practices or finances of any of the Defendants, including, but not limited to, such documents as any contracts, accounting data, correspondence, advertisements, computer tapes, discs or other computerized records, 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, copies of federal, state, or local business or personal income or property tax returns.

1 This Section specifically applies to all documents that have been or are
2 displayed on or have been or are accessible from any and all Internet websites owned
3 or controlled by any Defendant, including but not limited to any of the websites with
4 the following domain names: nationalforeclosurere relief.com or nfre relief.com.

5
6 **V.**

7 **PROHIBITION ON RELEASE OF
8 CUSTOMER INFORMATION OR CUSTOMERS LISTS**

9 **IT IS FURTHER ORDERED** that Defendants, and officers, agents,
10 directors, servants, employees, salespersons, and attorneys of Defendants, as well as
11 all other persons or entities in active concert or participation with them, who receive
12 actual notice of this Order by personal service or otherwise, whether acting directly
13 or through any trust, corporation, subsidiary, division, or other device, or any of
14 them, are hereby temporarily restrained and enjoined from selling, renting, leasing,
15 transferring, or otherwise disclosing the name, address, telephone number, credit
16 card number, bank account number, e-mail address, or other identifying information
17 of any person who paid money to any of the Defendants for the purchase of any good
18 or service or who were contacted or are on a list to be contacted by any of the
19 Defendants; provided that Defendants may disclose such identifying information to a
20 law enforcement agency or as required by any law, regulation, or court order.

21 **VI.**

22 **RECORD KEEPING**

23 **IT IS FURTHER ORDERED** that each of the Individual Defendants is
24 hereby temporarily restrained and enjoined from failing to make and keep, and to
25 provide to Plaintiff's counsel promptly upon request, an accurate accounting that, in
26 reasonable detail, accurately, fairly, and completely reflects such Defendant's
27 incomes (including all income resulting from any services, activity, or efforts
28 rendered by such Defendant), disbursements, transactions, and use of money,

1 beginning immediately upon service or actual notice of this Order, and continuing
2 daily until otherwise ordered by the Court.

3
4 **VII.**

5 **NOTIFICATION OF BUSINESS ACTIVITIES**

6 **IT IS FURTHER ORDERED** that:

7 A. Each of the Individual Defendants is hereby temporarily restrained and
8 enjoined from directly or indirectly creating, operating, or exercising
9 any control over any business entity, including any partnership, limited
10 partnership, joint venture, sole proprietorship or corporation, without
11 first serving on counsel for the Commission a written statement
12 disclosing the following: (1) the name of the business entity; (2) the
13 address and telephone number of the business entity; (3) the names of
14 the business entity's officers, directors, principals, managers and
15 employees; and (4) a detailed description of the business entity's
intended or actual activities.

16 B. Each of the Individual Defendants shall notify the Commission at least
17 seven (7) days prior to affiliating with, becoming employed by, or
18 performing any work for any business that is not a named Defendant in
19 this action. Each notice shall include the Defendant's new business
20 address and a statement of the nature of the business or employment and
21 the nature of his or her duties and responsibilities in connection with
22 that business or employment.

23 ///

24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VIII.

FINANCIAL INSTITUTIONS

IT IS FURTHER ORDERED that any financial or brokerage institution, any business entity, or any other person having possession, custody, or control of any records of any of the Defendants, or of any account, safe deposit box, or other asset titled in the name of any of the Defendants, either individually or jointly or held for the benefit of any of the Defendants, or which has maintained any such account, safe deposit box, or other asset at any time since **May 8, 2006**, shall:

- A. Hold and retain within its control and prohibit the transfer, encumbrance, pledge, assignment, removal, withdrawal, dissipation, sale, or other disposal of any such account or other asset, except for transfers or withdrawals authorized in writing by counsel for Plaintiff, by the Temporary Receiver (with respect to assets of any of the Receivership Defendants), or by further order of this Court;
- B. Deny access to any safe deposit box titled individually or jointly in the name of, or otherwise subject to access by, any of the Defendants;
- C. Provide to Plaintiff and to the Temporary Receiver, within three (3) business days of notice of this Order, a sworn statement setting forth:
 1. The identification of each account or asset;
 2. The balance of each account or a description of the nature and value of each asset as of the close of business on the day notification of this Order is received, and, if the account or asset has been closed or moved, the balance or value removed and the person or entity to whom it was transferred; and
 3. The identification of any safe deposit box titled in the name of or subject to access by any of the Defendants.

- 1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
- D. Upon request by counsel for Plaintiff (or by the Temporary Receiver, with respect to assets held for any of the Receivership Defendants), promptly provide Plaintiff or the Temporary Receiver with copies of all records or other documentation pertaining to such account or asset, including but not limited to originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs; and
- E. At the direction of Plaintiff (or the Temporary Receiver, with respect to assets held for any of the Receivership Defendants), and without further order of this Court, convert any stocks, bonds, options, mutual funds, or other securities to their cash equivalents.

IX.

REPATRIATION OF ASSETS

IT IS FURTHER ORDERED that within five business days following service of this Order, each of the Defendants shall:

- A. Repatriate to the United States all funds, documents, or assets in foreign countries held either: (1) by them; (2) for their benefit; or (3) under their direct or indirect control, jointly or singly;
- B. The same business day as any repatriation under paragraph A above,
1. notify Plaintiff and the Temporary Receiver of the name and location of the financial institution or other entity that is the recipient of such funds, documents, or assets; and
 2. serve this Order on any such financial institution or other entity;
- C. Provide Plaintiff and the Temporary Receiver with a full accounting of all funds, documents, and assets outside of the territory of the United

1 States held either: (1) by them; (2) for their benefit; or (3) under their
2 direct or indirect control, jointly or singly; and

- 3 D. Hold and retain all repatriated funds, documents, and assets and prevent
4 any transfer, disposition, or dissipation whatsoever of any such assets or
5 funds.

6 **X.**

7 **IMMEDIATE ACCESS TO DEFENDANTS' RECORDS**

8 **IT IS FURTHER ORDERED** that

- 9 A. Defendants and their successors, assigns, officers, agents, servants,
10 employees, and attorneys, and those persons in active concert or
11 participation with any of them who receive actual notice of this Order
12 by personal service or otherwise, whether acting directly or through any
13 corporation, subsidiary, division, or other device, and the Temporary
14 Receiver, shall allow Plaintiff's representatives, agents, and assistants
15 immediate access to the business premises, mail drops, storage facilities,
16 and all other business locations owned, controlled, or used by
17 Defendants, including, but not limited to business premises at the
18 following street addresses: 1505 E. 17th Street, Suites 201 and 207,
19 Santa Ana, California. The purpose of the access shall be to effect
20 service and to inspect and copy materials relevant to this action.
21 Plaintiff shall have the right to remove documents from Defendants'
22 premises in order that they may be inspected, inventoried, and copied.
23 Plaintiff shall return any such removed documents within three (3)
24 business days, or such time-period that is agreed upon by Plaintiff and
25 Defendants. Defendants, to the extent they are in possession of
26 documents relevant to this action, shall provide Plaintiff with the means
27 necessary to access these documents, including without limitation keys
28

1 and combinations to locks, computer access codes, and storage area
2 access information; and

3 B. The Temporary Receiver shall subsequently allow the Commission's
4 representatives and Defendants and their representatives reasonable
5 access to the business premises of the Receivership Defendants. The
6 purpose of this access shall be to inspect and copy any and all books,
7 records, accounts, and other property owned by or in the possession of
8 the Receivership Defendant. The Temporary Receiver shall have the
9 discretion to determine the time and manner of this access; and

10 C. If, at the time of service of this Order, any records or property relating
11 to NFR or to any Defendant's assets are located in the personal
12 residence of any of the Individual Defendants, or in any other non-
13 business location under the personal control of any of the Individual
14 Defendants, then such Defendant(s) shall, within forty-eight (48) hours
15 of service of this Order, produce to Plaintiff, at a location designated by
16 Plaintiff, the following:

- 17 1. All contracts, accounting data, written or electronic
18 correspondence, advertisements, computer tapes, discs, or other
19 computerized or electronic records, books, written or printed
20 records, handwritten notes, telephone logs, telephone scripts,
21 telephone bills, receipt books, ledgers, customer records and lists,
22 refund records, receipts, ledgers, bank records (including personal
23 and business monthly statements, canceled checks, records of
24 wire transfers, and check registers), appointment books, copies of
25 federal, state, and local business or personal income or property
26 tax returns, 1099 forms, title records, and other documents or
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- records of any kind that relate to Defendants' business and assets;
- and
- 2. All computers and data in whatever form, used by Defendants, in whole or in part, relating to Defendants' business and assets.

XI.

APPOINTMENT OF TEMPORARY RECEIVER

IT IS FURTHER ORDERED that: Robb Evans + Robb Evans + Associates LLC is appointed Temporary Receiver for Defendant National Foreclosure Relief, Inc., as well as for any successors, assigns, affiliates, and subsidiaries that conduct any business related to the Defendants' mortgage foreclosure rescue services and which the Temporary Receiver has reason to believe are owned or controlled in whole or in part by any of the Defendants (hereinafter referred to as the "Receivership Defendants"), with the full power of an equity receiver. The Temporary Receiver shall be the agent of this Court and solely the agent of this Court in acting as Receiver under this Order. The Temporary Receiver shall be accountable directly to this Court. The Temporary Receiver shall comply with all Local Rules of this Court governing receivers.

XII.

RECEIVERSHIP DUTIES

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

- A. Assume full control of the Receivership Defendants by removing, as the Temporary Receiver deems necessary or advisable, any manager, independent contractor, employee, or agent of the Receivership Defendants, including Defendants Ealy, Stone, or Tapia from control of, management of, or participation in, the affairs of the Receivership Defendants;

1 B. Take exclusive custody, control and possession of all assets and
2 documents of, or in the possession, custody, or under the control of, the Receivership
3 Defendants, wherever situated. The Temporary Receiver shall have full power to
4 divert mail and to sue for, collect, receive, take in possession, hold, and manage all
5 assets and documents of the Receivership Defendants and other persons or entities
6 whose interests are now held by or under the direction, possession, custody, or
7 control of the Receivership Defendants;

8 C. Take all steps necessary to secure all premises owned, rented, leased, or
9 otherwise controlled by the Receivership Defendants, including but not limited to all
10 such premises located at 1505 E. 17th Street, Suites 201 and 207, Santa Ana,
11 California. Such steps may include, but are not limited to, the following, as the
12 Temporary Receiver deems necessary or advisable: (1) serving and filing this Order;
13 (2) completing a written inventory of all receivership assets; (3) obtaining pertinent
14 information from all employees and other agents of the Receivership Defendants,
15 including, but not limited to, the name, home address, social security number, job
16 description, method of compensation, and all accrued and unpaid commissions and
17 compensation of each such employee or agent; (4) photographing and video taping
18 all portions of the location; (5) securing the location by changing the locks and
19 disconnecting any computer modems or other means of access to the computer or
20 other records maintained at that location; or (6) requiring any persons present on the
21 premises at the time this Order is served to leave the premises, to provide the
22 Temporary Receiver with proof of identification, or to demonstrate to the satisfaction
23 of the Temporary Receiver that such persons are not removing from the premises
24 documents or assets of the Receivership Defendants;

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 prevent any
27 irreparable loss, damage, or injury to consumers or to creditors of the Receivership
28

1 Defendants, including, but not limited to, obtaining an accounting of the assets and
2 preventing transfer, withdrawal, or misapplication of assets;

3 E. Enter into contracts and purchase insurance as advisable or necessary;

4 F. Prevent the inequitable distribution of assets and to determine, adjust,
5 and protect the interests of consumers and creditors who have transacted business
6 with the Receivership Defendants;

7 G. Manage and administer the business of the Receivership Defendants
8 until further order of this Court by performing all incidental acts that the Temporary
9 Receiver deems to be advisable or necessary, which includes retaining, hiring, or
10 dismissing any employees, independent contractors, or agents;

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

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

22 J. Determine and implement the manner in which the Receivership
23 Defendants will comply with, and prevent violations of, this Order and all other
24 applicable laws;

25 K. Institute, compromise, adjust, appear in, intervene in, or become party
26 to such actions or proceedings in state, federal or foreign courts that the Temporary
27 Receiver deems necessary and advisable to preserve or recover the assets of the
28

1 Receivership Defendants or that the Temporary Receiver deems necessary and
2 advisable to carry out the Temporary Receiver's mandate under this Order;

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

9 M. Issue subpoenas to obtain documents and records pertaining to the
10 receivership, and conduct discovery in this action on behalf of the receivership
11 estate;

12 N. Open one or more bank accounts as designated depositories for funds of
13 the Receivership Defendants. The Temporary Receiver shall deposit all funds of the
14 Receivership Defendants in such a designated account and shall make all payments
15 and disbursements from the receivership estate from such an account; and

16 O. Maintain accurate records of all receipts and expenditures that he makes
17 as Temporary Receiver.

18 XIII.

19 COOPERATION WITH THE TEMPORARY RECEIVER

20 **IT IS FURTHER ORDERED** that Defendants, and their agents, servants,
21 employees, and attorneys, and all persons or entities directly or indirectly under the
22 control of any of them, and all other persons or entities in active concert or
23 participation with any of them who receive actual notice of this Order by personal
24 service or otherwise, and each such person, shall fully cooperate with and assist the
25 Temporary Receiver. Such cooperation and assistance shall include, but not be
26 limited to, providing any information to the Temporary Receiver that the Temporary
27 Receiver deems necessary to exercising the authority and discharging the
28

1 responsibilities of the Temporary Receiver under this Order; providing any password
2 required to access any computer or electronic files in any medium; or advising all
3 persons who owe money to the Receivership Defendants that all debts should be paid
4 directly to the Temporary Receiver.

5 Defendants are hereby temporarily restrained and enjoined from directly or
6 indirectly:

7 A. Transacting any of the business of the Receivership Defendants, or
8 transacting business under the name National Foreclosure Relief, Inc., or any
9 substantially similar name;

10 B. Destroying, concealing, defacing, transferring, or otherwise altering or
11 disposing of any documents of the Receivership Defendants, including, but not
12 limited to, books, records, accounts, or any other papers of any kind or nature;

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

17 D. Excusing debts owed to the Receivership Defendants;

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

24 F. Doing any act or refraining from any act whatsoever to interfere with
25 the Temporary Receiver's taking custody, control, possession, or managing of the
26 assets or documents subject to this receivership; or to harass or interfere with the
27 Temporary Receiver in any way; or to interfere in any manner with the exclusive
28

1 jurisdiction of this Court over the assets or documents of the Receivership
 2 Defendants; or to refuse to cooperate with the Temporary Receiver or the Temporary
 3 Receiver's duly authorized agents in the exercise of their duties or authority under
 4 any Order of this Court.

XIV.

DELIVERY OF RECEIVERSHIP PROPERTY

IT IS FURTHER ORDERED that:

8 A. Immediately upon service of this Order upon them, or within a period
 9 permitted by the Temporary Receiver, Defendants and all other persons in
 10 possession, custody, and control of assets or documents of the Receivership
 11 Defendants shall transfer or deliver possession, custody, and control of the following
 12 to the Temporary Receiver:

- 13 1. All assets of the Receivership Defendants;
- 14 2. All documents of the Receivership Defendants, including, but not
 15 limited to, books and records of accounts, all financial and accounting records,
 16 balance sheets, income statements, bank records (including monthly statements,
 17 canceled checks, records of wire transfers, and check registers), client lists, title
 18 documents and other papers;
- 19 3. All assets belonging to members of the public now held by the
 20 Receivership Defendants; and
- 21 4. All keys and codes necessary to gain or to secure access to any
 22 assets or documents of the Receivership Defendants, including, but not limited to,
 23 access to their business premises, means of communication, accounts, computer
 24 systems, or other property.

25 B. In the event any person or entity fails to deliver or transfer any asset or
 26 otherwise fails to comply with any provision of this Section, the Temporary Receiver
 27 may file, on an ex parte basis, an Affidavit of Non-Compliance regarding the failure.
 28

1 Upon filing of the affidavit, the Court may authorize, without additional process or
 2 demand, Writs of Possession or Sequestration or other equitable writs requested by
 3 the Temporary Receiver. The writs shall authorize and direct the United States
 4 Marshal or any sheriff or deputy sheriff of any county to seize the asset, document,
 5 or other thing and to deliver it to the Temporary Receiver.

XV.

BANKRUPTCY PETITIONS

8 **IT IS FURTHER ORDERED** that, in light of the asset freeze and
 9 appointment of the Temporary Receiver, Defendants are hereby prohibited from
 10 filing, or causing to be filed, on behalf of any Receivership Defendant, a petition for
 11 relief under the United States Bankruptcy Code, 11 U.S.C. § 101 et seq., without
 12 prior permission from this Court.

13 **IT IS FURTHER ORDERED** that, in light of the asset freeze, Individual
 14 Defendants must give 21 days' notice to Plaintiff prior to filing, or causing to be
 15 filed, on behalf of the Individual Defendants, a petition for relief under the United
 16 States Bankruptcy Code, 11 U.S.C. § 101 et seq.

XVI.

TRANSFER OF FUNDS TO THE TEMPORARY RECEIVER

19 **IT IS FURTHER ORDERED** that, upon service of a copy of this Order, all
 20 banks, broker-dealers, savings and loans, escrow agents, title companies, commodity
 21 trading companies, or other financial institutions shall cooperate with all reasonable
 22 requests of the Temporary Receiver relating to implementation of this Order,
 23 including transferring funds at his direction and producing records related to the
 24 assets of the Receivership Defendants.

25 ///

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28**XVII.**
STAY OF ACTIONS**IT IS FURTHER ORDERED** that:

A. Except by leave of this Court, during pendency of the receivership ordered herein, Defendants and all other persons and entities (except for Plaintiff) are hereby stayed from taking any action to establish or enforce any claim, right, or interest for, against, on behalf of, in, or in the name of: a) the Corporate Defendant, NFR, or b) any of NFR's assets, or c) the Temporary Receiver or the Temporary Receiver's duly authorized agents acting in their capacities as such, including, but not limited to, the following actions:

1. Commencing, prosecuting, continuing, entering, or enforcing any suit or proceeding, except that such actions may be filed to toll any applicable statute of limitations;

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

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

4. Doing any act or thing whatsoever to interfere with the Temporary Receiver taking custody, control, possession, or management of the assets or documents subject to this receivership, or to harass or interfere with the Temporary Receiver in any way, or to interfere in any manner with

1 the exclusive jurisdiction of this Court over the assets or documents of the
2 Receivership Defendants.

3 B. Paragraph (A) of this Section does not stay;

4 1. The commencement or continuation of a criminal action or
5 proceeding;

6 2. The commencement or continuation of an action or proceeding by
7 a governmental unit to enforce such governmental unit's police or regulatory
8 power;

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

12 4. The commencement of any action by the Secretary of the United
13 States Department of Housing and Urban Development to foreclose a
14 mortgage or deed of trust in any case in which the mortgage or deed of trust
15 held by the Secretary is insured or was formerly insured under the National
16 Housing Act and covers property, or combinations of property, consisting of
17 five or more living units; or

18 5. The issuance to a Receivership Defendant of a notice of tax
19 deficiency.

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

26 ///

27
28

XVIII.**COMPENSATION OF TEMPORARY RECEIVER**

IT IS FURTHER ORDERED that the Temporary Receiver and all personnel hired by the Temporary Receiver as herein authorized, including counsel to the Temporary 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 or in the possession or control of or which may be received by the Receivership Defendants. The Temporary 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 days after the date of this Order. The Temporary Receiver shall not increase the hourly rates used as the bases for such fee applications without prior approval of the Court.

XIX.**RECEIVER'S BOND**

IT IS FURTHER ORDERED that the Temporary Receiver shall file with the Clerk of this Court a bond in the sum of not required, with sureties to be approved by the Court, conditioned that the Temporary Receiver will well and truly perform the duties of the office and abide by and perform all acts the Court directs.

XX.**DISTRIBUTION OF ORDER**

IT IS FURTHER ORDERED that the Individual Defendants shall immediately provide a copy of this Order to each of NFR's affiliates, franchises, subsidiaries, divisions, successors, assigns, directors, officers, managing agents, employees, representatives, and independent contractors and shall, within three (3) business days from the date of service of this Order, serve on Plaintiff affidavits identifying the names, titles, addresses, and telephone numbers of the persons and

1 entities whom they have served pursuant to this provision. The Temporary Receiver
2 has no obligation under this provision.

3 **XXI.**

4 **CREDIT REPORTS**

5 **IT IS FURTHER ORDERED** that Plaintiff may obtain credit reports
6 concerning any of the Defendants pursuant to Section 604(a)(1) of the Fair Credit
7 Reporting Act, 15 U.S.C. § 1681b(a)(1), and that, upon written request, any credit
8 reporting agency from which such reports are requested shall provide them to
9 Plaintiff.

10 **XXII.**

11 **LIMITED EXPEDITED DISCOVERY**

12 **IT IS FURTHER ORDERED** that the Commission is granted leave at any
13 time after service of this Order to:

- 14 A. Take the deposition of any person or entity, without limitation, for the
15 purpose of:
- 16 1. discovering the nature, location, status, and extent of assets of any
17 of the Defendants, including Receivership Defendants, or of their
18 affiliates or of their subsidiaries,
 - 19 2. discovering the nature, location, status and extent of documents
20 reflecting the business transactions of any of the Defendants;
 - 21 3. discovering the nature and extent of Defendants' business
22 activities, and
- 23 B. Demand the production of documents from any person or entity relating
24 to the nature, status, location and extent of any of the Defendants' assets,
25 and the location of any documents reflecting the Defendants' business
26 transactions or the nature and extent of Defendants' business operations.
27
28

1 Thirty-six (36) hours notice shall be deemed sufficient for any such deposition
 2 and forty-eight (48) hours notice shall be deemed sufficient for the production of any
 3 such documents. The limitations and conditions set forth in Fed. R. Civ. P. 30(a)(2)
 4 and 31(a)(2) shall not apply to depositions taken pursuant to this Section. Any such
 5 depositions taken pursuant to this Section shall not be counted toward the ten
 6 deposition limit set forth in Fed. R. Civ. P. 30(a)(2)(A)(i) and 31(a)(2)(A)(i).
 7 Service of discovery taken pursuant to this Section shall be sufficient if made by
 8 facsimile, by overnight delivery, or by email.

9 **XXIII.**

10 **CORRESPONDENCE**

11 **IT IS FURTHER ORDERED** that, for the purposes of this Order, all
 12 correspondence and service of pleadings on Plaintiff shall be addressed to:

13 John D. Jacobs
 14 Barbara Y.K. Chun
 15 Faye Chen Barnouw
 16 Maricela Segura
 17 Federal Trade Commission
 18 10877 Wilshire Blvd., #700
 Los Angeles, CA 90024
 Fax: (310) 824-4380
 E-mail: jjacobs@ftc.gov; bchun@ftc.gov; fbarnouw@ftc.gov;
 msegura@ftc.gov

19 **XXIV.**

20 **PRELIMINARY INJUNCTION HEARING**

21 **IT IS FURTHER ORDERED** that Defendants National Foreclosure Relief,
 22 Inc., David Ealy, Chele Stone, aka Chele Medina, and Hugo Tapia shall appear
 23 before this Court, located at ^{411 W. 4th St., Santa Ana, CA 92701-4516} Courtroom 9D, on the 12 day of
 24 February, 2009, at 4 o'clock a.m. (p.m.), to show cause, if any there be, why
 25 this Court should not enter a preliminary injunction, pending final ruling on the
 26 Complaint, against said Defendants enjoining them from violations of Section 5(a) of
 27 the FTC Act, 15 U.S.C. § 45(a), imposing such additional relief as may be
 28

1 appropriate, and appointing a permanent receiver over Defendant National
2 Foreclosure Relief, Inc.

3 **IT IS FURTHER ORDERED** that, in support of its application for a
4 preliminary injunction, Plaintiff may submit supplemental evidence discovered
5 subsequent to the filing of its application for a TRO, as well as a supplemental
6 memorandum. Plaintiff shall file and serve any supplemental evidence and
7 memorandum by no later than 4:30 p.m. on the sixth court day prior to the
8 preliminary injunction hearing as scheduled above. Such documents may be served
9 on each Defendant by e-mailing, faxing or delivering the document(s) to the attorney
10 for the Defendant, or, if the Defendant is not represented by counsel, to a fax number
11 or email address previously designated by the Defendant in writing to counsel for
12 Plaintiff; if the Defendant has not so designated a fax number or email address,
13 service may be effected by mailing the documents to an address designated in
14 writing by the Defendant to counsel for Plaintiff; if no address has been so
15 designated, service shall be complete upon filing of the documents with this Court.

16 **IT IS FURTHER ORDERED** that Defendants shall file and serve any
17 opposition to the issuance of a preliminary injunction and the appointment of a
18 permanent receiver over the Receivership Defendants, including any declarations,
19 exhibits, memoranda or other evidence on which they intend to rely, and objections
20 to any evidence submitted by Plaintiff, by no later than 4:30 p.m. of the fourth court
21 day prior to the hearing on the preliminary injunction. Such documents may be
22 served by e-mail or fax upon Plaintiff's counsel.

23 **IT IS FURTHER ORDERED** that Plaintiff shall file and serve any reply to
24 Defendants' opposition by no later than the second court day prior to the preliminary
25 injunction hearing.

26 **IT IS FURTHER ORDERED** that there will be no direct examination of
27 witnesses at the preliminary injunction hearing in this matter. Direct testimony shall
28

1 be presented in the form of declarations or affidavits. Consistent with Local Rule 7-
2 6, the Court in ruling on whether a preliminary injunction shall issue will consider
3 declarations or affidavits that have been filed in a timely manner prior to the
4 preliminary injunction hearing without further need of any party moving such
5 documents into evidence.

6 **XXV.**

7 **EXPIRATION**

8 **IT IS FURTHER ORDERED** that this Order shall expire as to each
9 Defendant ten (10) court days after entry unless, within such time, for good cause
10 shown, it is extended for a like period, or unless the Defendant consents that it may
11 be extended for a longer period and the reasons therefor are entered of record.

12 **XXVI.**

13 **SERVICE OF THIS ORDER**

14 **IT IS FURTHER ORDERED** that copies of this Order may be served by any
15 means, including facsimile transmission, upon any financial institution or other
16 entity or person that may have possession, custody, or control of any documents or
17 assets of any Defendant, or that may be subject to any provision of this Order.

18
19 **SO ORDERED:**

20
21 Dated this 2 day of Febvrury, 2009, at 3 o'clock a.m.(p.m)

22
23 Alviril O. Carter
24 United States District Judge