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

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

IMPETUS ENTERPRISE, INC., a California corporation, also d/b/a Aiding Student Relief, Aiding Students & Teachers, Aidnest, Avec Staffing, and National Education Student and Teacher; FIG TREE & CO., LLC, a California limited liability company, also d/b/a Aiding Student Relief, Aiding Students & Teacher, and Aiding Students & Teachers; TUAN DINH DUONG, a/k/a Thomas Duong, a/k/a Thomas Dinh, individually and as an officer of IMPETUS ENTERPRISE, INC.; BRENDA AVITIA-PENA, individually and as an officer of IMPETUS ENTEPRISE, INC. and FIG TREE & CO., LLC; and BRIAN

Case No. 8:18-cv-01987-JLS-KES

**PRELIMINARY INJUNCTION
WITH ASSET FREEZE,
APPOINTMENT OF
RECEIVER, AND OTHER
EQUITABLE RELIEF**

1 COLOMBANA d/b/a FUTERO,
2 individually and as an officer of FIG
3 TREE & CO., LLC,

4 Defendants, and

5 NOEL SOLUTIONS, LLC, a Wyoming
6 limited liability company,

7 Relief Defendant.

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1 Plaintiff, the Federal Trade Commission, has filed a Complaint for
2 Permanent Injunction and Other Equitable Relief pursuant to Section 13(b) of the
3 Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), and the
4 Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing
5 Act”), 15 U.S.C. §§ 6101-6108, to obtain temporary, preliminary, and permanent
6 injunctive relief, rescission or reformation of contracts, restitution, the refund of
7 monies paid, disgorgement of ill-gotten monies, and other equitable relief for
8 Defendants’ acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C.
9 § 45(a), and the Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310. Plaintiff
10 has moved for a preliminary injunction pursuant to FED. R. CIV. P. 65(b).

11 On November 13, 2018, the Court issued its *Ex Parte Temporary*
12 *Restraining Order with Asset Freeze, Appointment of Temporary Receiver, and*
13 *Other Equitable Relief* [D.E. #23]. Defendants were ordered to appear at a hearing
14 on November 26, 2018 to “show cause, if there is any, why this Court should not
15 enter a preliminary injunction, pending final ruling on the Complaint against
16 Defendants, enjoining the violations of the law alleged in the Complaint,
17 continuing the asset freeze and receivership, and imposing such additional relief as
18 may be appropriate.” *Id.* § XXVII. Plaintiff filed returns of service for Defendants
19 via ECF. D.E. #28-32. This Court further ordered Defendants to file with the
20 Court and serve upon FTC counsel by November 20, 2018, “any answering
21 pleadings, affidavits, motions, expert reports or declarations, or legal memoranda.”
22 D.E. #23 § XXVIII. Appearing at the hearing through counsel were plaintiff FTC,
23 Defendant TUAN DINH DUONG, and third parties, JIMMY CALDERON,
24 CAPITAL SUN INVESTMENTS, and PREMIER CAPITAL INVESTMENTS.
25 After consideration of the parties’ and third parties’ pleadings and arguments, the
26 Court hereby GRANTS the Preliminary Injunction against Defendants.

FINDINGS OF FACT

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2 The Court, having considered the FTC’s Complaint, *ex parte* Application for
3 a Temporary Restraining Order, declarations, exhibits, and memoranda filed in
4 support of the FTC’s request for relief, and the evidence presented, and having
5 considered all papers filed in advance of the hearing, and having been advised by
6 Defendant Duong at the hearing that he submits on the papers filed by the FTC and
7 offers no further evidence or opposition, and having been advised that third party
8 Calderon does not seek to admit any evidence beyond that which was contained in
9 his filing with the Court, finds that:

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

13 2. On November 6, 2018, the FTC filed its Complaint and Memorandum
14 in Support of Ex Parte Application for Temporary Restraining Order with Asset
15 Freeze, Appointment of Temporary Receiver, and Other Equitable Relief, and
16 Order to Show Cause Why a Preliminary Injunction Should Not Issue and related
17 pleadings. [D.E. #2].

18 3. On November 13, 2018, the Court entered its Ex Parte Temporary
19 Restraining Order with Asset Freeze, Appointment of Temporary Receiver, Other
20 Equitable Relief, and Order to Show Cause Why Preliminary Injunction Should
21 Not Issue (“TRO”). [D.E. #23.]

22 4. The FTC served the TRO, and all of its pleadings, upon all
23 Defendants except Defendant Brian Colombana by personal service pursuant to
24 Federal Rule of Civil Procedure 4. [D.E. #28-32.] Additionally, as shown in the
25 FTC’s Supplemental Brief in Support of Preliminary Injunction, the FTC served
26 the TRO via email, pursuant to Section XXV of the TRO, upon all Defendants
27 including Defendant Brian Colombana.
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1 5. In numerous instances, Defendants have falsely and misleadingly
2 represented, directly or indirectly, expressly or by implication, that consumers who
3 purchase student loan debt relief services from them will, or likely will, have their
4 monthly loan payments reduced or their loan balances forgiven in whole or in part;
5 and in telemarketing such services, Defendants have requested and received illegal
6 advance fees for such services.

7 6. Additionally, there is good cause to believe that Relief Defendant
8 Noel Solutions, LLC has received at least \$1,556,225 in funds or assets that can be
9 traced to the unlawful acts or practices alleged in the Complaint and has no
10 legitimate claim to those funds.

11 7. There is good cause to believe that Defendants Impetus Enterprise,
12 Inc., Fig Tree & Co., LLC, Tuan Dinh Duong, Brenda Avitia-Pena, and Brian
13 Colombana have engaged in and are likely to engage in acts or practices that
14 violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and Sections 310.4(a)(5)(i)
15 and 310.3(a)(2)(x) of the Telemarketing Sales Rule, 16 C.F.R. §§ 310.4(a)(5)(i),
16 310.3(a)(2)(x), and that Plaintiff is therefore likely to prevail on the merits of this
17 action. As demonstrated by consumer declarations, consumer complaints, a former
18 employee declaration, declarations from representatives of a federal student loan
19 servicer and a federal student loan guarantor, a certified transcript of an inbound
20 call to Defendants' telemarketers, Defendants' banking and payment processing
21 records, and declarations from an FTC investigator, data analyst, and forensic
22 accountant, the FTC has established a likelihood of success in showing: (1) that
23 Defendants have misrepresented that consumers who purchase debt relief services
24 from them will or likely will have their monthly payments reduced or their loan
25 balances forgiven in whole or in part; (2) that Defendants have requested and
26 received illegal advance fees in telemarketing such services; and (3) that the
27 Commission is likely to succeed in disgorging Relief Defendant's ill-gotten funds.
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1 B. **“Asset Freeze Accounts”** includes accounts that are held by or for the
2 benefit of, or controlled by, directly or indirectly, any Corporate Defendant,
3 Individual Defendant, and other Receivership Entities.

4 C. **“Corporate Defendants”** means Impetus Enterprise, Inc., and Fig
5 Tree & Co., LLC, and each of their subsidiaries, affiliates, successors, and assigns,
6 including but not limited to Capital Sun Investments, LLC (d/b/a Studora) or
7 Premier Capital Investments, LLC, and Jimmy Calderon (when conducting
8 activities in relation to any of the foregoing entities).

9 D. **“Defendant(s)”** means Corporate Defendants and Individual
10 Defendants, individually, collectively, or in any combination.

11 E. **“Document”** is synonymous in meaning and equal in scope to the
12 usage of “document” and “electronically stored information” in Federal Rule of
13 Civil Procedure 34(a), FED. R. CIV. P. 34(a), and includes writings, drawings,
14 graphs, charts, photographs, sound and video recordings, images, Internet sites,
15 web pages, websites, electronic correspondence, including e-mail and instant
16 messages, contracts, accounting data, advertisements, FTP Logs, Server Access
17 Logs, books, written or printed records, handwritten notes, telephone logs,
18 telephone scripts, receipt books, ledgers, personal and business canceled checks
19 and check registers, bank statements, appointment books, computer records,
20 customer or sales databases and any other electronically stored information,
21 including Documents located on remote servers or cloud computing systems, and
22 other data or data compilations from which information can be obtained directly or,
23 if necessary, after translation into a reasonably usable form. A draft or non-
24 identical copy is a separate document within the meaning of the term.

25 F. **“Electronic Data Host”** means any person or entity in the business
26 of storing, hosting, or otherwise maintaining electronically stored information.

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1 This includes, but is not limited to, any entity hosting a website or server, and any
2 entity providing “cloud based” electronic storage.

3 G. **“Individual Defendant(s)”** means Tuan Dinh Duong, Brenda Avitia-
4 Pena, and Brian Colombana, individually, collectively, or in any combination.

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

7 I. **“Receivership Entities”** means Corporate Defendants as well as any
8 other entity that has conducted any business related to Defendants’ student debt
9 relief enterprise, including receipt of Assets derived from any activity that is the
10 subject of the Complaint in this matter, and that the Receiver determines is
11 controlled or owned by any Defendant.

12 J. **“Relief Defendant”** means Noel Solutions, LLC, a limited liability
13 company incorporated in Wyoming.

14 K. **“Secured or unsecured debt relief product or service”** means:

15 1. With respect to any mortgage, loan, debt, or obligation between
16 a person and one or more secured or unsecured creditors or debt collectors,
17 any product, service, plan, or program represented, expressly or by
18 implication, to:

19 (a) stop, prevent, or postpone any mortgage or deed of
20 foreclosure sale for a person’s dwelling, any other sale of collateral,
21 any repossession of a person’s dwelling or other collateral, or
22 otherwise save a person’s dwelling or other collateral from
23 foreclosure or repossession;

24 (b) negotiate, obtain, or arrange a modification, or
25 renegotiate, settle, or in any way alter any terms of the mortgage, loan,
26 debt, or obligation, including a reduction in the amount of interest,
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1 principal balance, monthly payments, or fees owed by a person to a
2 secured or unsecured creditor or debt collector;

3 (c) obtain any forbearance or modification in the timing of
4 payments from any secured or unsecured holder or servicer of any
5 mortgage, loan, debt, or obligation;

6 (d) negotiate, obtain, or arrange any extension of the period
7 of time within which a person may (i) cure his or her default on the
8 mortgage, loan, debt, or obligation, (ii) reinstate his or her mortgage,
9 loan, debt, or obligation, (iii) redeem a dwelling or other collateral, or
10 (iv) exercise any right to reinstate the mortgage, loan, debt, or
11 obligation or redeem a dwelling or other collateral;

12 (e) obtain any waiver of an acceleration clause or balloon
13 payment contained in any promissory note or contract secured by any
14 dwelling or other collateral; or

15 (f) negotiate, obtain, or arrange (i) a short sale of a dwelling
16 or other collateral, (ii) a deed-in-lieu of foreclosure, or (iii) any other
17 disposition of a mortgage, loan, debt, or obligation other than a sale to
18 a third party that is not the secured or unsecured loan holder.

19 The foregoing shall include any manner of claimed assistance, including
20 auditing or examining a person's application for the mortgage, loan, debt, or
21 obligation.

22 2. With respect to any loan, debt, or obligation between a person
23 and one or more unsecured creditors or debt collectors, any product, service,
24 plan, or program represented, expressly or by implication, to:

25 (a) repay one or more unsecured loans, debts, or obligations;

26 or
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1 (b) combine unsecured loans, debts, or obligations into one
2 or more new loans, debts, or obligations.

3 **ORDER**

4 **I. CONTINUATION OF BAN**

5 **IT IS THEREFORE ORDERED** that Defendant Tuan Dinh Duong desist
6 from:

7 A. Advertising, marketing, promoting, offering for sale, or selling any
8 secured or unsecured debt relief product or service; and

9 B. Assisting others engaged in advertising, marketing, promoting,
10 offering for sale, or selling any secured or unsecured debt relief product or service.

11 The Permanent Injunction entered by the U.S. District Court for the Central
12 District of California prohibiting Defendant Tuan Dinh Duong from the above
13 conduct remains in full force and effect. Perm. Inj., *FTC v. CD Capital Invs., LLC*,
14 Civ. No. 8:14-1033-JLS-RNB, D.E. No. 172, at 6 ¶ I (C.D. Cal. Aug. 22, 2016).

15 **II. PROHIBITION ON DECEPTIVE REPRESENTATIONS**

16 **IT IS FURTHER ORDERED** that:

17 A. Defendants, Defendants' officers, agents, employees, and attorneys,
18 and all other persons in active concert or participation with them, who receive
19 actual notice of this Order by personal service or otherwise, whether acting directly
20 or indirectly, in connection with the advertising, marketing, promoting, or offering
21 for sale of any goods or services, are restrained and enjoined from misrepresenting
22 or assisting others in misrepresenting, expressly or by implication, any fact
23 material to consumers concerning any good or service, such as: the total costs; any
24 material restrictions, limitations, or conditions; or any material aspect of its
25 performance, efficacy, nature, or central characteristics.

26 B. Defendants Impetus Enterprise, Inc., Fig Tree & Co., LLC, Brenda
27 Avitia-Pena, and Brian Colombana, and their officers, agents, employees, and
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1 attorneys, as well as those of Defendant Tuan Dinh Duong, and all other persons in
2 active concert or participation with them, who receive actual notice of this Order
3 by personal service or otherwise, whether acting directly or indirectly, in
4 connection with the advertising, marketing, promoting, or offering for sale of any
5 program or service represented, directly or by implication, to renegotiate, settle, or
6 in any way alter the terms of payment or other terms of the debt between a person
7 and one or more unsecured creditors or debt collectors, (including, but not limited
8 to, a reduction in the balance, interest rate, or fees owed by a person to an
9 unsecured creditor or debt collector), are restrained and enjoined from
10 misrepresenting or assisting others in misrepresenting, expressly or by implication,
11 that consumers who purchase such programs or services will or likely will have
12 their monthly payments reduced or their loan balances forgiven in whole or in part.

13 **III. PROHIBITION ON COLLECTION OF ADVANCE FEES**

14 **IT IS FURTHER ORDERED** that Defendants Impetus Enterprise, Inc., Fig
15 Tree & Co., LLC, Brenda Avitia-Pena, and Brian Colombana, and their officers,
16 agents, employees, and attorneys, as well as those of Defendant Tuan Dinh Duong,
17 and all other persons in active concert or participation with them, who receive
18 actual notice of this Order by personal service or otherwise, whether acting directly
19 or indirectly, are hereby restrained and enjoined from:

20 A. Providing, offering to provide, or arranging for others to provide any
21 program or service represented, directly or by implication, to renegotiate, settle, or
22 in any way alter the terms of payment or other terms of the debt between a person
23 and one or more unsecured creditors or debt collectors, (including, but not limited
24 to, a reduction in the balance, interest rate, or fees owed by a person to an
25 unsecured creditor or debt collector), and requesting or receiving payment of any
26 fees or consideration for any such program or service, until and unless:

27 1. The seller or telemarketer has renegotiated, settled, reduced, or
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1 otherwise altered the terms of at least one debt pursuant to a settlement
2 agreement, debt management plan, or other such valid contractual agreement
3 executed by the customer;

4 2. The customer has made at least one payment pursuant to that
5 settlement agreement, debt management plan, or other valid contractual
6 agreement between the customer and the creditor or debt collector; and

7 3. To the extent that debts enrolled in a service are renegotiated,
8 settled, reduced, or otherwise altered individually, the fee or consideration
9 either:

10 (a) bears the same proportional relationship to the total fee
11 for renegotiating, settling, reducing, or altering the terms of the entire
12 debt balance as the individual debt amount bears to the entire debt
13 amount. The individual debt amount and the entire debt amount are
14 those owed at the time the debt was enrolled in the service; or

15 (b) is a percentage of the amount saved as a result of the
16 renegotiation, settlement, reduction, or alteration. The percentage
17 charged cannot change from one individual debt to another. The
18 amount saved is the difference between the amount owed at the time
19 the debt was enrolled in the service and the amount actually paid to
20 satisfy the debt.

21 **IV. PROHIBITION ON RELEASE OF CUSTOMER INFORMATION**

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

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

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

9 *Provided, however,* that Defendants may disclose such identifying
10 information to a law enforcement agency, to their attorneys as required for their
11 defense, as required by any law, regulation, or court order, or in any filings,
12 pleadings or discovery in this action in the manner required by the Federal Rules
13 of Civil Procedure and by any protective order in the case.

14 **V. ASSET FREEZE**

15 **IT IS FURTHER ORDERED** that:

16 A. Defendants, Relief Defendant, and their officers, agents, employees,
17 and attorneys, and all other persons in active concert or participation with any of
18 them, who receive actual notice of this Order, whether acting directly or indirectly,
19 are hereby restrained and enjoined from:

20 1. Transferring, liquidating, converting, encumbering, pledging,
21 loaning, selling, concealing, dissipating, disbursing, assigning, relinquishing,
22 spending, withdrawing, granting a lien or security interest or other interest
23 in, or otherwise disposing of any Assets that are:

24 (a) owned or controlled, directly or indirectly, by any
25 Defendant or Relief Defendant;

26 (b) held, in part or in whole, for the benefit of any Defendant
27 or Relief Defendant;
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1 (c) in the actual or constructive possession of any Defendant
2 or Relief Defendant; or

3 (d) owned or controlled by, in the actual or constructive
4 possession of, or otherwise held for the benefit of, any corporation,
5 partnership, asset protection trust, or other entity that is directly or
6 indirectly owned, managed or controlled by any Defendant or Relief
7 Defendant.

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

13 3. Incurring charges or cash advances on any credit, debit, or
14 ATM card issued in the name, individually or jointly, of any Corporate
15 Defendant or any corporation, partnership, or other entity directly or
16 indirectly owned, managed, or controlled by any Defendant or Relief
17 Defendant, or of which any Defendant or Relief Defendant is an officer,
18 director, member, or manager. This includes any corporate bankcard or
19 corporate credit card account for which any Defendant or Relief Defendant
20 is, or was on the date that this Order was signed, an authorized signor; or

21 4. Cashing any checks or depositing any money orders or cash
22 that is received from, or that draws on a bank or financial account belonging
23 to, consumers, clients, or customers of any Defendant.

24 B. The Assets affected by this Section V(A) of this Order shall include:
25 (1) all Assets of Defendants as of the time this Order is entered; (2) all Assets of
26 Relief Defendant except for any Assets that the Receiver excludes from this
27 Section pursuant to Section V(C) below; and (3) Assets obtained by Defendants
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1 and Relief Defendant after this Order is entered if those Assets are derived from
2 any activity that is the subject of the Complaint in this matter or that is prohibited
3 by this Order.

4 C. If the Receiver determines that Relief Defendant's Assets affected by
5 this Section are more than sufficient to satisfy a judgment, in favor of the FTC,
6 against it in the amount of \$1,556,225, the Receiver shall determine, in his or her
7 sole discretion, which of its Assets to exclude from Section V(A) of this Order.

8 D. This Section does not prohibit any transfers to the Receiver or
9 repatriation of foreign Assets specifically required by this Order.

10 **VI. DUTIES OF ASSET HOLDERS AND OTHER THIRD PARTIES**

11 **IT IS FURTHER ORDERED** that any financial or brokerage institution,
12 Electronic Data Host, credit card processor, payment processor, merchant bank,
13 acquiring bank, independent sales organization, third-party processor, payment
14 gateway, insurance company, business entity, or person who receives actual notice
15 of this Order (by service or otherwise) that: (a) holds, controls, or maintains
16 custody, through an account or otherwise, of any Document on behalf of any
17 Defendant or Relief Defendant or any Asset that is: owned or controlled, directly
18 or indirectly, by any Defendant or Relief Defendant; held, in part or in whole, for
19 the benefit of any Defendant or Relief Defendant; in the actual or constructive
20 possession of any Defendant or Relief Defendant; or owned or controlled by, in
21 the actual or constructive possession of, or otherwise held for the benefit of, any
22 corporation, partnership, asset protection trust, or other entity that is directly or
23 indirectly owned, managed or controlled by any Defendant or Relief Defendant;
24 (b) holds, controls, or maintains custody, through an account or otherwise, of any
25 Document or Asset associated with credits, debits, or charges made on behalf of
26 any Defendant or Relief Defendant, including reserve funds held by payment
27 processors, credit card processors, merchant banks, acquiring banks, independent
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1 sales organizations, third-party processors, payment gateways, insurance
2 companies, or other entities; (c) has extended credit to any Defendant or Relief
3 Defendant, including through a credit card account; or (d) has held, controlled, or
4 maintained custody of any such Document, Asset, or account at any time since the
5 date of entry of this Order, shall:

6 A. Hold, preserve, and retain within its control and prohibit the
7 withdrawal, removal, alteration, assignment, transfer, pledge, encumbrance,
8 disbursement, dissipation, relinquishment, conversion, sale, or other disposal of
9 any such Document or Asset, as well as all Documents or other property related to
10 such Assets, except by further order of this Court; *provided, however*, that this
11 provision does not prohibit an Individual Defendant from incurring charges on a
12 personal credit card established prior to entry of this Order, up to the pre-existing
13 credit limit;

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

18 C. Within 3 days of entry of this Order, provide FTC counsel and the
19 Receiver a sworn statement setting forth:

- 20 1. The identification number of each such account or Asset;
- 21 2. The balance of each such account, or a description of the nature
22 and value of each such Asset as of the close of business on the day on which
23 this Order is served, and, if the account or other Asset has been closed or
24 removed, the date closed or removed, the total funds removed in order to
25 close the account, and the name of the person or entity to whom such
26 account or other Asset was remitted; and

1 3. The identification of any safe deposit box, commercial mail
2 box, or storage facility that is either titled in the name, individually or
3 jointly, of any Defendant or Relief Defendant, or is otherwise subject to
4 access by any Defendant or Relief Defendant; and

5 D. Upon the request of FTC counsel or the Receiver, promptly provide
6 FTC counsel and the Receiver with copies of all records or other Documents
7 pertaining to each account or Asset, including originals or copies of account
8 applications, account statements, signature cards, checks, drafts, deposit tickets,
9 transfers to and from the accounts, including wire transfers and wire transfer
10 instructions, all other debit and credit instruments or slips, currency transaction
11 reports, 1099 forms, and all logs and records pertaining to safe deposit boxes,
12 commercial mail boxes, and storage facilities.

13 This Section does not prohibit any transfers to the Receiver or repatriation of
14 foreign Assets specifically required by this Order.

15 **VII. FINANCIAL DISCLOSURES**

16 **IT IS FURTHER ORDERED** that any Defendants or Relief Defendant that
17 has not yet provided financial statements that it has been ordered to provide to the
18 FTC in accordance with Section VII of the TRO shall, within 1 business day of
19 entry of this Order, prepare and deliver to FTC counsel and the Receiver:

20 A. Completed financial statements on the forms attached to this Order as
21 **Attachment A** (Financial Statement of Individual Defendant) for each Individual
22 Defendant, and **Attachment B** (Financial Statement of Corporate Defendant) for
23 each Corporate Defendant and Relief Defendant, and for each business entity
24 under which an Individual Defendant conducts business, controls, or in which they
25 are an officer, director, member, or manager;

1 B. Completed **Attachment C** (IRS Form 4506, Request for Copy of a
2 Tax Return) for each Individual Defendant and Corporate Defendant, and the
3 Relief Defendant;

4 C. Additionally, Relief Defendant shall provide a completed statement,
5 verified under oath, listing all payments, transfers, or assigns of funds, assets, or
6 property, made to Relief Defendant or for Relief Defendant's benefit by any
7 Defendant or Receivership Entity since January 1, 2017. This statement shall
8 specify the date of the identified transaction; disclosing the subject of the
9 transaction (including, where applicable, the amount of the transaction); and
10 identifying by name, address, email address, and phone number all parties to the
11 transaction and all entities who participated in it, including, where applicable, any
12 financial or brokerage institution, Electronic Data Host, credit card processor,
13 payment processor, merchant bank, acquiring bank, independent sales
14 organization, third-party processor, payment gateway, insurance company,
15 business entity, or person.

16 **VIII. FOREIGN ASSET REPATRIATION**

17 **IT IS FURTHER ORDERED** that within one (1) day following entry of
18 this Order, to the extent not already done in accordance with the TRO, each
19 Defendant and the Relief Defendant shall:

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

3 B. Take all steps necessary to provide FTC counsel and Receiver access
4 to all Documents and records that may be held by third parties located outside of
5 the territorial United States, including signing the Consent to Release of Financial
6 Records appended to this Order as **Attachment D**.

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

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

19 **IX. NON-INTERFERENCE WITH REPATRIATION**

20 **IT IS FURTHER ORDERED** that Defendants and Relief Defendant, their
21 officers, agents, employees, and attorneys, and all other persons in active concert
22 or participation with any of them, who receive actual notice of this Order, whether
23 acting directly or indirectly, are hereby restrained and enjoined from taking any
24 action, directly or indirectly, which may result in the encumbrance or dissipation of
25 foreign Assets, or in the hindrance of the repatriation required by this Order,
26 including, but not limited to:

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

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

11 **X. CONSUMER CREDIT REPORTS**

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

17 **XI. PRESERVATION OF RECORDS**

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

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

3 B. Failing to create and maintain Documents that, in reasonable detail,
4 accurately, fairly, and completely reflect Defendants' and Relief Defendant's
5 incomes, disbursements, transactions, and use of Defendants' and Relief
6 Defendant's Assets.

7 **XII. REPORT OF NEW BUSINESS ACTIVITY**

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

19 **XIII. TEMPORARY RECEIVER**

20 **IT IS FURTHER ORDERED** that Krista L. Freitag is appointed as
21 Receiver of the Receivership Entities with full powers of an equity Receiver. The
22 Receiver shall be solely the agent of this Court in acting as Receiver under this
23 Order.

24 **XIV. DUTIES AND AUTHORITY OF RECEIVER**

25 **IT IS FURTHER ORDERED** that the Receiver is directed and authorized
26 to accomplish the following:
27
28

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

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

8 C. Take exclusive custody, control, and possession of all Documents or
9 Assets associated with credits, debits, or charges made on behalf of any
10 Receivership Entity, wherever situated, including reserve funds held by payment
11 processors, credit card processors, merchant banks, acquiring banks, independent
12 sales organizations, third party processors, payment gateways, insurance
13 companies, or other entities;

14 D. Conserve, hold, manage, and prevent the loss of all Assets of the
15 Receivership Entities, and perform all acts necessary or advisable to preserve the
16 value of those Assets. The Receiver shall assume control over the income and
17 profits therefrom and all sums of money now or hereafter due or owing to the
18 Receivership Entities. The Receiver shall have full power to sue for, collect, and
19 receive, all Assets of the Receivership Entities and of other persons or entities
20 whose interests are now under the direction, possession, custody, or control of, the
21 Receivership Entities. Provided, however, that the Receiver shall not attempt to
22 collect any amount from a consumer if the Receiver believes the consumer's debt
23 to the Receivership Entities has resulted from the deceptive acts or practices or
24 other violations of law alleged in the Complaint in this matter, without prior Court
25 approval;

26 E. Obtain, conserve, hold, manage, and prevent the loss of all Documents
27 of the Receivership Entities, and perform all acts necessary or advisable to
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1 preserve such Documents. The Receiver shall: divert mail; preserve all
2 Documents of the Receivership Entities that are accessible via electronic means
3 (such as online access to financial accounts and access to electronic documents
4 held onsite or by Electronic Data Hosts, by changing usernames, passwords or
5 other log-in credentials); take possession of all electronic Documents of the
6 Receivership Entities stored onsite or remotely; take whatever steps necessary to
7 preserve all such Documents; and obtain the assistance of the FTC's Digital
8 Forensic Unit for the purpose of obtaining electronic documents stored onsite or
9 remotely.

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

14 G. Make payments and disbursements from the Receivership estate that
15 are necessary or advisable for carrying out the directions of, or exercising the
16 authority granted by, this Order, and to incur, or authorize the making of, such
17 agreements as may be necessary and advisable in discharging his or her duties as
18 Receiver. The Receiver shall apply to the Court for prior approval of any payment
19 of any debt or obligation incurred by the Receivership Entities prior to the date of
20 entry of this Order, except payments that the Receiver deems necessary or
21 advisable to secure Assets of the Receivership Entities, such as rental payments;

22 H. Take all steps necessary to secure and take exclusive custody of each
23 location from which the Receivership Entities operate their businesses. Such steps
24 may include, but are not limited to, any of the following, as the Receiver deems
25 necessary or advisable: (1) securing the location by changing the locks and alarm
26 codes and disconnecting any internet access or other means of access to the
27 computers, servers, internal networks, or other records maintained at that location;
28

1 and (2) requiring any persons present at the location to leave the premises, to
2 provide the Receiver with proof of identification, and/or to demonstrate to the
3 satisfaction of the Receiver that such persons are not removing from the premises
4 Documents or Assets of the Receivership Entities. Law enforcement personnel,
5 including, but not limited to, police or sheriffs, may assist the Receiver in
6 implementing these provisions in order to keep the peace and maintain security;

7 I. Take all steps necessary to prevent the modification, destruction, or
8 erasure of any web page or website registered to and operated, in whole or in part,
9 by any Defendants, and to provide access to all such web page or websites to
10 Plaintiff's representatives, agents, and assistants, as well as Defendants or Relief
11 Defendants, and their representatives;

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

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

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

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

1 N. Issue subpoenas to obtain Documents and records pertaining to the
2 Receivership, and conduct discovery in this action on behalf of the Receivership
3 estate, in addition to obtaining other discovery as set forth in this Order;

4 O. Open one or more bank accounts at designated depositories for funds
5 of the Receivership Entities. The Receiver shall deposit all funds of the
6 Receivership Entities in such designated accounts and shall make all payments and
7 disbursements from the Receivership estate from such accounts. The Receiver
8 shall serve copies of monthly account statements on all parties;

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

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

19 R. Allow the Plaintiffs' representatives, agents, and assistants, as well as
20 Defendants and the Relief Defendant, and their representatives, reasonable access
21 to all Documents in the possession, custody, or control of the Receivership
22 Entities;

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

25 T. Suspend business operations of the Receivership Entities if in the
26 judgment of the Receiver such operations cannot be continued legally and
27 profitably;

28

1 U. If in the Receiver's judgment the business operations cannot be
2 continued legally and profitably, take all steps necessary to ensure that any of the
3 Receivership Entities' web pages or websites relating to the activities alleged in the
4 Complaint cannot be accessed by the public, or are modified for consumer
5 education and/or informational purposes, and take all steps necessary to ensure that
6 any telephone numbers associated with the Receivership Entities cannot be
7 accessed by the public, or are answered solely to provide consumer education or
8 information regarding the status of operations; and

9 V. If the Receiver identifies a nonparty entity as a Receivership Entity,
10 promptly notify the entity as well as the parties, and inform the entity that it can
11 challenge the Receiver's determination by filing a motion with the Court. If the
12 Receiver determines that notice to the entity or the parties before the Receiver
13 establishes control over the entity may result in the destruction of records,
14 dissipation of assets, or any other obstruction of the Receiver's control of the
15 entity, the Receiver must obtain permission from the Court, through an ex parte
16 application filed under seal, to delay providing notice to the entity until the
17 Receiver has established control over the nonparty entity and its assets and records;
18 and

19 If in the Receiver's judgment the business operations cannot be continued
20 legally and profitably, take all steps necessary to ensure that any of the
21 Receivership Entities' web pages or websites relating to the activities alleged in the
22 Complaint cannot be accessed by the public, or are modified for consumer
23 education and/or informational purposes, and take all steps necessary to ensure that
24 any telephone numbers associated with the Receivership Entities cannot be
25 accessed by the public, or are answered solely to provide consumer education or
26 information regarding the status of operations.
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1 **XV. TRANSFER OF RECEIVERSHIP PROPERTY TO RECEIVER**

2 **IT IS FURTHER ORDERED** that Defendants, Relief Defendant, and any
3 other person with possession, custody or control of property of, or records relating
4 to, the Receivership Entities shall, upon notice of this Order by personal service or
5 otherwise, fully cooperate with and assist the Receiver in taking and maintaining
6 possession, custody, or control of the Assets and Documents of the Receivership
7 Entities and immediately transfer or deliver to the Receiver possession, custody,
8 and control of, the following:

9 A. All Assets held by or for the benefit of the Receivership Entities;

10 B. All Documents or Assets associated with credits, debits, or charges
11 made on behalf of any Receivership Entity, wherever situated, including reserve
12 funds held by payment processors, credit card processors, merchant banks,
13 acquiring banks, independent sales organizations, third party processors, payment
14 gateways, insurance companies, or other entities;

15 C. All Documents of or pertaining to the Receivership Entities;

16 D. All computers, electronic devices, mobile devices and machines used
17 to conduct the business of the Receivership Entities;

18 E. All Assets and Documents belonging to other persons or entities
19 whose interests are under the direction, possession, custody, or control of the
20 Receivership Entities; and

21 F. All keys, codes, user names and passwords necessary to gain or to
22 secure access to any Assets or Documents of or pertaining to the Receivership
23 Entities, including access to their business premises, means of communication,
24 accounts, computer systems (onsite and remote), Electronic Data Hosts, or other
25 property.

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

3 **XVI. PROVISION OF INFORMATION TO RECEIVER**

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

6 A. A list of all Assets and accounts of the Receivership Entities that are
7 held in any name other than the name of a Receivership Entity, or by any person or
8 entity other than a Receivership Entity;

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

12 C. A description of any documents covered by attorney-client privilege
13 or attorney work product, including files where such documents are likely to be
14 located, authors or recipients of such documents, and search terms likely to
15 identify such electronic documents.

16 **XVII. COOPERATION WITH THE RECEIVER**

17 **IT IS FURTHER ORDERED** that Defendants; Relief Defendant;
18 Receivership Entities; their officers, agents, employees, and attorneys, all other
19 persons in active concert or participation with any of them, and any other person
20 with possession, custody, or control of property of or records relating to the
21 Receivership entities who receive actual notice of this Order shall fully cooperate
22 with and assist the Receiver. This cooperation and assistance shall include, but is
23 not limited to, providing information to the Receiver that the Receiver deems
24 necessary to exercise the authority and discharge the responsibilities of the
25 Receiver under this Order; providing any keys, codes, user names and passwords
26 required to access any computers, electronic devices, mobile devices, and
27 machines (onsite or remotely) and any cloud account (including specific method to
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1 access account) or electronic file in any medium; advising all persons who owe
2 money to any Receivership Entity that all debts should be paid directly to the
3 Receiver; and transferring funds at the Receiver's direction and producing records
4 related to the Assets and sales of the Receivership Entities.

5 **XVIII. NON-INTERFERENCE WITH THE RECEIVER**

6 **IT IS FURTHER ORDERED** that Defendants; Relief Defendant;
7 Receivership Entities; their officers, agents, employees, and attorneys; and all other
8 persons in active concert or participation with any of them, who receive actual
9 notice of this Order, and any other person served with a copy of this Order, are
10 hereby restrained and enjoined from directly or indirectly:

11 A. Interfering with the Receiver's efforts to manage, or take custody,
12 control, or possession of, the Assets or Documents subject to the Receivership;

13 B. Transacting any of the business of the Receivership Entities;

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

18 D. Refusing to cooperate with the Receiver or the Receiver's duly
19 authorized agents in the exercise of their duties or authority under any order of this
20 Court.

21 **XIX. STAY OF ACTIONS**

22 **IT IS FURTHER ORDERED** that, except by leave of this Court, during
23 the pendency of the receivership ordered herein, Defendants, Relief Defendants,
24 and their officers, agents, employees, attorneys, and all other persons in active
25 concert or participation with any of them, who receive actual notice of this Order,
26 and their corporations, companies, subsidiaries, divisions, or affiliates, and all
27 investors, creditors, stockholders, lessors, customers and other persons seeking to
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1 establish or enforce any claim, right, or interest against or on behalf of Defendants
2 or Relief Defendants, and all others acting for or on behalf of such persons, are
3 hereby enjoined from taking action that would interfere with the exclusive
4 jurisdiction of this Court over the Assets or Documents of the Receivership
5 Entities, including, but not limited to:

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

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

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

19 *Provided, however,* that this Order does not stay: (1) the commencement or
20 continuation of a criminal action or proceeding; (2) the commencement or
21 continuation of an action or proceeding by a governmental unit to enforce such
22 governmental unit's police or regulatory power; or (3) the enforcement of a
23 judgment, other than a money judgment, obtained in an action or proceeding by a
24 governmental unit to enforce such governmental unit's police or regulatory power.

25 **XX. COMPENSATION OF RECEIVER**

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

9 **XXI. DISTRIBUTION OF ORDER BY DEFENDANTS**

10 **IT IS FURTHER ORDERED** that Defendants shall immediately provide a
11 copy of this Order to each affiliate, telemarketer, marketer, sales entity, successor,
12 assign, member, officer, director, employee, agent, independent contractor, client,
13 attorney, spouse, subsidiary, division, and representative of any Defendant, and
14 shall, within ten (10) days from the date of entry of this Order, provide Plaintiff
15 and the Receiver with a sworn statement that this provision of the Order has been
16 satisfied, which statement shall include the names, physical addresses, phone
17 number, and email addresses of each such person or entity who received a copy of
18 the Order. Defendants shall not take any action that would encourage officers,
19 agents, members, directors, employees, salespersons, independent contractors,
20 attorneys, subsidiaries, affiliates, successors, assigns or other persons or entities in
21 active concert or participation with them to disregard this Order or believe that
22 they are not bound by its provisions.

23 **XXII. SERVICE OF THIS ORDER**

24 **IT IS FURTHER ORDERED** that copies of this Order as well as all other
25 pleadings, Documents, and exhibits filed contemporaneously with this Order, may
26 be served by any means, including facsimile transmission, email or other electronic
27 messaging, personal or overnight delivery, U.S. Mail or FedEx, by agents and
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1 employees of Plaintiff, by any law enforcement agency, or by private process
2 server, upon any Defendant or Relief Defendant or any person (including any
3 financial institution) that may have possession, custody or control of any Asset or
4 Document of any Defendant, or that may be subject to any provision of this Order
5 pursuant to Rule 65(d)(2) of the Federal Rules of Civil Procedure. For purposes of
6 this Section, service upon any branch, subsidiary, affiliate, or office of any entity
7 shall effect service upon the entire entity.

8 **XXIII. CORRESPONDENCE AND SERVICE ON PLAINTIFF**

9 **IT IS FURTHER ORDERED** that, for the purposes of this Order,
10 Defendants and the Relief Defendant shall serve all pleadings or other documents
11 related to this Order to:

12 Joshua S. Millard
13 Brian M. Welke
14 Federal Trade Commission
15 600 Pennsylvania Ave., N.W., Mailstop CC-9528
16 Washington, D.C. 20580
17 jmillard@ftc.gov
18 bwelke@ftc.gov

19 **XXIV. RETENTION OF JURISDICTION**

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

22
23 **SO ORDERED**, this 29th day of November, 2018, at 1:15 p.m.

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25 

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27 UNITED STATES DISTRICT JUDGE