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9
10 UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

11
12 FEDERAL TRADE COMMISSION,

Case no. SACV10-1161-JVS-RNBx

13 Plaintiff,

14 v.

15 HEALTH CARE ONE LLC, an Arizona
16 limited liability company, also d/b/a
17 "HealthcareOne," "Americans4
18 Healthcare," "Citizens4Healthcare,"
"American Eagle Healthcare,"
"EasyLife Healthcare," "Elite
Healthcare," "Global Healthcare," and
"Republic Healthcare";

19 AMERICANS4HEALTHCARE INC., a
20 Delaware corporation;

21 MICHAEL JAY ELLMAN, an
individual;

22 ELITE BUSINESS SOLUTIONS, INC.,
23 a Nevada corporation, also d/b/a
24 "EasyLife Healthcare," "Elite
Healthcare" and "Republic Healthcare";

25 ROBERT DANIEL FREEMAN, an
26 individual;

27 Defendants.
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PRELIMINARY INJUNCTION WITH
ASSET FREEZE, APPOINTMENT OF
PERMANENT RECEIVER, AND
OTHER EQUITABLE RELIEF
AGAINST DEFENDANTS
HEALTH CARE ONE LLC,
AMERICANS4HEALTHCARE INC.,
AND MICHAEL ELLMAN

1 On August 3, 2010, Plaintiff Federal Trade Commission (“Commission” or
2 “FTC”), pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act
3 (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer
4 Fraud and Abuse Protection Act, 15 U.S.C. §§ 6101-6108, filed a Complaint for a
5 permanent injunction and other equitable relief against Health Care One LLC
6 (“Health Care One”), Americans4Healthcare Inc. (“Americans4Healthcare”), Elite
7 Business Solutions, Inc. (“Elite Business Solutions”), Michael Jay Ellman, and
8 Robert Daniel Freeman (also known as Dan Freeman). Plaintiff concurrently applied
9 *ex parte* for a Temporary Restraining Order (“TRO”), and for an Order to Show
10 Cause (“OSC”) why a preliminary injunction should not be granted and why a
11 permanent receiver should not be appointed over the corporate Defendants.

12 On August 3, 2010, the Court entered a TRO, which would expire on, and
13 scheduled a hearing on the OSC for, August 13, 2010. On August 11, 2010, the
14 Court extended the TRO for good cause shown through, and rescheduled the OSC
15 hearing for, August 27, 2010.

16 On August 23, 2010, the Court entered a stipulated preliminary injunction
17 against Defendants Elite Business Solutions, Inc., and Robert Daniel Freeman, and
18 appointed Thomas W. McNamara as permanent receiver over Elite Business
19 Solutions, Inc., and Freeman’s affiliated entities, including Mile High Enterprise,
20 Inc., Freeman Consulting, and Lighthouse Business Solutions LLC.

21 On August 27, 2010, after consideration of the briefs and evidence filed in
22 support of and in opposition to the OSC, and upon good cause shown, the Court
23 granted Plaintiff’s application for a preliminary injunction against Defendants Health
24 Care One, Americans4Healthcare, and Michael Ellman and appointment of a
25 permanent receiver over Health Care One, Americans4Healthcare, and Ellman’s
26 affiliated entities, including Secure Healthplan Corporation, HCO Marketing Inc.,
27 The American Mint, Ltd., Red Carpet Skincare Inc., Quad Digital Corporation,
28 AutoPlanOne Inc., and Magnum Financial Management, Inc. The Court ordered that

1 the TRO entered on August 3, 2010 be extended to remain in full force and effect
2 until the entry of the preliminary injunction.

3 For good cause shown, the Court hereby enters this Preliminary Injunction
4 With Asset Freeze, Appointment of Permanent Receiver and Other Equitable Relief:

5
6 **FINDINGS OF FACT**

7 The Court has considered the Complaint, Plaintiff's *Ex Parte* Application for
8 TRO, memorandum of points and authorities, supplemental brief, and evidence filed
9 in support thereof, Defendants' memorandum of points and authorities and evidence
10 filed in opposition thereto, and the Reports filed by the Temporary Receiver, and it
11 appears to the satisfaction of the Court that:

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

15 2. There is good cause to believe that Defendants Health Care One LLC,
16 Americans4Healthcare Inc., and Michael Jay Ellman ("Defendants") have engaged in
17 and are likely to engage in acts that violate Section 5(a) of the FTC Act, 15 U.S.C.
18 § 45(a), and the FTC's Telemarketing Sales Rule, 16 C.F.R. Part 310, and that the
19 Commission is likely to prevail on the merits of this action.

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

23 4. Good cause exists for the appointment of a Permanent Receiver over
24 Corporate Defendants Health Care One LLC, Americans4Healthcare Inc., and
25 Defendant Ellman's affiliated entities, including Secure Healthplan Corporation,
26 HCO Marketing Inc., The American Mint, Ltd., Red Carpet Skincare Inc., Quad
27 Digital Corporation, AutoPlanOne Inc., and Magnum Financial Management, Inc.

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1 6. **“Assisting others”** means knowingly providing any of the following
2 goods or services to another person or entity:

- 3 a. performing customer service functions, including, but not limited
4 to, receiving or responding to consumer complaints; or
5 b. formulating or providing, or arranging for the formulation or
6 provision of, any telephone sales script or any other marketing
7 material; or
8 c. providing names of, or assisting in the generation of, potential
9 customers; or
10 d. performing marketing services of any kind.

11 7. **“Assets”** means any legal or equitable interest in, right to, or claim to,
12 any real or personal property, including, without limitation, chattels, goods,
13 instruments, equipment, fixtures, general intangibles, leaseholds, mail or other
14 deliveries, inventory, checks, notes, accounts, credits, contracts, receivables, shares
15 of stock, and all cash, wherever located.

16 8. The term **“document”** is equal in scope and synonymous in meaning to
17 the terms “document” and “electronically stored information,” as described and used
18 in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs,
19 charts, photographs, audio and video recordings, computer records, and any other
20 data compilations from which information can be obtained. A draft or non-identical
21 copy is a separate document within the meaning of the term.

22 9. **“Material fact”** means any fact that is likely to affect a person’s choice
23 of, or conduct regarding, goods or services.

24 10. **“Person”** means a natural person, organization, or other legal entity,
25 including a corporation, partnership, proprietorship, association, cooperative, or any
26 other group or combination acting as an entity.

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I.

PROHIBITED REPRESENTATIONS

IT IS THEREFORE ORDERED that Defendants and their successors, assigns, officers, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, marketing, promotion, offering for sale or sale of any good or service, **are hereby restrained and enjoined** from falsely representing, or from assisting others who are falsely representing, any of the following:

- A. The program that Defendants are selling or marketing is health insurance;
- B. The program that Defendants are selling or marketing is affiliated with or endorsed or sponsored by the federal government;
- C. Enrollment in the program that Defendants are selling or marketing will result in substantial healthcare savings to the consumers;
- D. Consumers who enroll in the program that Defendants are selling or marketing will be able to obtain program benefits from the consumers' current healthcare providers and from other healthcare providers in the consumers' local communities;
- E. Defendants will provide a full refund, subject to no or only a nominal processing fee to consumers who enroll in the program that Defendants are selling or marketing, if the consumer submits a cancellation request before the thirty-day trial period expires; and
- F. Any other fact material to a consumer's decision to purchase any good or service from Defendants.

1 the nature or terms of the seller's refund or cancellation policies, including that
2 Defendants will provide a full refund, subject to no or only a nominal processing fee,
3 if the consumer submits a cancellation request before the thirty-day trial period
4 expires.

5 **III.**

6 **ASSET FREEZE**

7 **IT IS FURTHER ORDERED** that each of the Defendants is hereby
8 restrained and enjoined, until further order of this Court, from:

9 A. Transferring, encumbering, selling, concealing, pledging,
10 hypothecating, assigning, spending, withdrawing, disbursing, conveying, gifting,
11 dissipating, or otherwise disposing of any funds, property, coins, lists of consumer
12 names, shares of stock, or other assets, wherever located, that are (1) owned or
13 controlled by any of the Defendants, in whole or in part; (2) in the actual or
14 constructive possession of any of the Defendants; (3) held by an agent of any of the
15 Defendants, as a retainer for the agent's provision of services to a Defendant; or (4)
16 owned, controlled by, or in the actual or constructive possession of, or otherwise
17 held for the benefit of, any corporation, partnership, or other entity directly or
18 indirectly owned or controlled by any of the Defendants.

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

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

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

1 Plaintiff a separate copy of the “Financial Statement of Business Entity Defendant”;
2 and

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

7 **V.**

8 **PRESERVATION OF RECORDS**

9 **IT IS FURTHER ORDERED** that Defendants, and their agents, servants,
10 employees, and attorneys, and all persons or entities directly or indirectly under the
11 control of any of them, and all other persons or entities in active concert or
12 participation with any of them who receive actual notice of this Order by personal
13 service or otherwise, and each such person, are hereby restrained and enjoined from
14 destroying, erasing, mutilating, concealing, altering, transferring or otherwise
15 disposing of, in any manner, directly or indirectly, any documents that relate to the
16 business practices or finances of any of the Defendants, including, but not limited to,
17 such documents as any contracts, accounting data, correspondence, advertisements,
18 computer tapes, discs or other computerized records, books, written or printed
19 records, handwritten notes, telephone logs, telephone scripts, receipt books, ledgers,
20 personal and business canceled checks and check registers, bank statements,
21 appointment books, copies of federal, state, or local business or personal income or
22 property tax returns.

23 This Section specifically applies to all documents displayed on or accessible
24 from any and all Internet websites owned or controlled by any Defendant, including
25 but not limited to any of the websites with the following domain names:
26 www.healthcareone.com, www.americans4healthcare.com, www.a4hrx.com,
27 www.citizens4healthcare.com, www.elitehealthcareinc.com,
28

1 www.republichealthcare.com, www.easylifehealthcare.com,
2 www.americaneaglehealthcare.com, and www.myglobalhealthonline.com.

3 **VI.**

4 **RECORD KEEPING**

5 **IT IS FURTHER ORDERED** that the Individual Defendant is hereby
6 restrained and enjoined from failing to make and keep, and to provide to Plaintiff's
7 counsel promptly upon request, an accurate accounting that, in reasonable detail,
8 accurately, fairly, and completely reflects his income (including all income resulting
9 from any services, activity, or efforts rendered by the Individual Defendant),
10 disbursements, transactions, and use of money, beginning immediately upon service
11 or actual notice of this Order, and continuing daily until otherwise ordered by the
12 Court.

13 **VII.**

14 **NOTIFICATION OF BUSINESS ACTIVITIES**

15 **IT IS FURTHER ORDERED** that:

16 A. The Individual Defendant is hereby restrained and enjoined from
17 directly or indirectly creating, operating, or exercising any control over any business
18 entity, including any partnership, limited partnership, joint venture, sole
19 proprietorship, limited liability company, or corporation, without first serving on
20 counsel for the Commission a written statement disclosing the following: (1) the
21 name of the business entity; (2) the address and telephone number of the business
22 entity; (3) the names of the business entity's officers, directors, principals, managers
23 and employees; and (4) a detailed description of the business entity's intended
24 activities.

25 B. The Individual Defendant shall notify the Commission at least seven (7)
26 days prior to affiliating with, becoming employed by, or performing any work for
27 any business that is not a named Defendant in this action. Each notice shall include
28 the Defendant's new business address and a statement of the nature of the business or

1 employment and the nature of his duties and responsibilities in connection with that
2 business or employment.

3 **VIII.**

4 **FINANCIAL INSTITUTIONS**

5 **IT IS FURTHER ORDERED** that any financial or brokerage institution, any
6 business entity, or any other person having possession, custody, or control of any
7 records of any of the Defendants, or of any account, safe deposit box, or other asset
8 titled in the name of any of the Defendants, either individually or jointly or held for
9 the benefit of any of the Defendants, or which has maintained any such account, safe
10 deposit box, or other asset at any time since March 1, 2006, who is served with a
11 copy of this Order, or who otherwise has actual knowledge of this Order, shall:

12 A. Hold and retain within its control and prohibit the transfer,
13 encumbrance, pledge, assignment, removal, withdrawal, dissipation, sale, or other
14 disposal of any such account or other asset, except for transfers or withdrawals
15 authorized in writing by counsel for Plaintiff, by the Permanent Receiver (with
16 respect to assets of any of the Receivership Defendants), or by further order of this
17 Court;

18 B. Deny access to any safe deposit box titled individually or jointly in the
19 name of, or otherwise subject to access by, any of the Defendants;

20 C. Provide to Plaintiff and to the Permanent Receiver, within three (3)
21 business days of notice of this Order, if not already provided pursuant to the TRO, a
22 sworn statement setting forth:

- 23 1. The identification of each account or asset;
- 24 2. The balance of each account or a description of the nature and
25 value of each asset as of the close of business on the day
26 notification of this Order is received, and, if the account or asset
27 has been closed or moved, the balance or value removed and the
28 person or entity to whom it was transferred; and

1 either: (1) by them; (2) for their benefit; or (3) under their direct or indirect control,
2 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 funds.

5 **X.**

6 **APPOINTMENT OF PERMANENT RECEIVER**

7 **IT IS FURTHER ORDERED** that Thomas W. McNamara is appointed
8 Permanent Receiver for Defendants Health Care One LLC, Americans4Healthcare
9 Inc., and Ellman’s affiliated entities, including Secure Healthplan Corporation, HCO
10 Marketing Inc., The American Mint, Ltd., Red Carpet Skincare Inc., Quad Digital
11 Corporation, AutoPlanOne Inc., and Magnum Financial Management, Inc., as well as
12 for any successors, assigns, affiliates, and subsidiaries that conduct any business
13 related to the Defendants’ national healthcare discount program and which the
14 Permanent Receiver has reason to believe are owned or controlled in whole or in part
15 by any of the Defendants (the “Receivership Defendants”), with the full power of an
16 equity receiver. The Permanent Receiver shall be the agent of this Court and solely
17 the agent of this Court in acting as Receiver under this Order. The Permanent
18 Receiver shall be accountable directly to this Court. The Permanent Receiver shall
19 comply with all Local Rules of this Court governing receivers.

20 **XI.**

21 **RECEIVERSHIP DUTIES**

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

24 A. Assume full control of the Receivership Defendants by removing, as the
25 Permanent Receiver deems necessary or advisable, any manager, independent
26 contractor, employee, or agent of the Receivership Defendants, including the
27 Individual Defendant, from control of, management of, or participation in, the affairs
28 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 Permanent 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 3220 S. Fair Lane, Suite 12, Tempe, AZ 85282. Such steps
11 may include, but are not limited to, the following, as the Permanent Receiver deems
12 necessary or advisable: (1) serving and filing this Order; (2) completing a written
13 inventory of all receivership assets; (3) obtaining pertinent information from all
14 employees and other agents of the Receivership Defendants, including, but not
15 limited to, the name, home address, social security number, job description, method
16 of compensation, and all accrued and unpaid commissions and compensation of each
17 such employee or agent; (4) photographing and video taping all portions of the
18 location; (5) securing the location by changing the locks and disconnecting any
19 computer modems or other means of access to the computer or other records
20 maintained at that location; or (6) requiring any persons present on the premises at
21 the time this Order is served to leave the premises, to provide the Permanent
22 Receiver with proof of identification, or to demonstrate to the satisfaction of the
23 Permanent Receiver that such persons are not removing from the premises
24 documents or assets of the Receivership Defendants. Law enforcement officers may
25 assist the Permanent Receiver in implementing these provisions to keep the peace
26 and maintain security;

27 D. Continue to conduct the business, or cease operation of the business, of
28 the Receivership Defendants in such manner, to such extent, and for such duration as

1 the Permanent Receiver may in good faith deem to be necessary or appropriate to
2 operate the businesses profitably and lawfully.

3 E. Conserve, hold, and manage all receivership assets, and perform all acts
4 necessary or advisable to preserve the value of those assets, in order to prevent any
5 irreparable loss, damage, or injury to consumers or to creditors of the Receivership
6 Defendants, including, but not limited to, obtaining an accounting of the assets and
7 preventing transfer, withdrawal, or misapplication of assets;

8 F. Enter into contracts and purchase insurance as advisable or necessary;

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

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

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

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

1 K. Determine and implement the manner in which the Receivership
2 Defendants will comply with, and prevent violations of, this Order and all other
3 applicable laws;

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

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

15 N. Issue subpoenas to obtain documents and records pertaining to the
16 receivership, and conduct discovery in this action on behalf of the receivership
17 estate;

18 O. Open one or more bank accounts as designated depositories for funds of
19 the Receivership Defendants. The Permanent Receiver shall deposit all funds of the
20 Receivership Defendants in such a designated account and shall make all payments
21 and disbursements from the receivership estate from such an account; and

22 P. Maintain accurate records of all receipts and expenditures that s/he
23 makes as Permanent Receiver.

24 Q. Cooperate with reasonable requests for information or assistance from
25 any state or federal law enforcement agency.

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1 **XII.**

2 **COOPERATION WITH THE PERMANENT RECEIVER**

3 **IT IS FURTHER ORDERED** that Defendants and Receivership Defendants,
4 and their agents, servants, employees, and attorneys, and all persons or entities
5 directly or indirectly under the control of any of them, and all other persons or
6 entities in active concert or participation with any of them who receive actual notice
7 of this Order by personal service or otherwise, and each such person, shall fully
8 cooperate with and assist the Permanent Receiver. Such cooperation and assistance
9 shall include, but not be limited to, providing any information to the Permanent
10 Receiver that the Permanent Receiver deems necessary to exercising the authority
11 and discharging the responsibilities of the Permanent Receiver under this Order;
12 providing any password required to access any computer or electronic files in any
13 medium; or advising all persons who owe money to the Receivership Defendants that
14 all debts should be paid directly to the Permanent Receiver. Defendants are hereby
15 restrained and enjoined from directly or indirectly:

16 A. Transacting any of the business of the Receivership Defendants, or
17 transacting business under the name Health Care One, Americans4 Healthcare,
18 Citizens4Healthcare, American Eagle Healthcare, EasyLife Healthcare, Elite
19 Healthcare, Global Healthcare, and Republic Healthcare, or any substantially similar
20 name;

21 B. Destroying, secreting, defacing, transferring, or otherwise altering or
22 disposing of any documents of the Receivership Defendants, including, but not
23 limited to, books, records, accounts, or any other papers of any kind or nature;

24 C. Transferring, receiving, altering, selling, encumbering, pledging,
25 assigning, liquidating, or otherwise disposing of any assets owned, controlled, or in
26 the possession or custody of, or in which an interest is held or claimed by, the
27 Receivership Defendants, or the Permanent Receiver;

28 D. Excusing debts owed to the Receivership Defendants;

1 E. Failing to notify the Permanent Receiver of any asset, including
2 accounts, of any Receivership Defendant held in any name other than the name of
3 any Receivership Defendant, or by any person or entity other than the Receivership
4 Defendants, or failing to provide any assistance or information requested by the
5 Permanent Receiver in connection with obtaining possession, custody, or control of
6 such assets; or

7 F. Doing any act or refraining from any act whatsoever to interfere with
8 the Permanent Receiver's taking custody, control, possession, or managing of the
9 assets or documents subject to this receivership; or to harass or interfere with the
10 Permanent Receiver in any way; or to interfere in any manner with the exclusive
11 jurisdiction of this Court over the assets or documents of the Receivership
12 Defendants; or to refuse to cooperate with the Permanent Receiver or the Permanent
13 Receiver's duly authorized agents in the exercise of their duties or authority under
14 any Order of this Court.

15 **XIII.**

16 **DELIVERY OF RECEIVERSHIP PROPERTY**

17 **IT IS FURTHER ORDERED** that:

18 A. Immediately upon service of this Order upon them, or within a period
19 permitted by the Permanent Receiver, Defendants and all other persons in
20 possession, custody, and control of assets or documents of the Receivership
21 Defendants shall transfer or deliver possession, custody, and control of the following
22 to the Permanent Receiver:

- 23 1. All assets of the Receivership Defendants;
- 24 2. All documents of the Receivership Defendants, including, but not
25 limited to, books and records of accounts, all financial and
26 accounting records, balance sheets, income statements, bank
27 records (including monthly statements, canceled checks, records
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1 of wire transfers, and check registers), client lists, title documents
2 and other papers;

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

5 4. All keys and codes necessary to gain or to secure access to any
6 assets or documents of the Receivership Defendants, including,
7 but not limited to, access to their business premises, means of
8 communication, accounts, computer systems, or other property.

9 B. In the event any person or entity fails to deliver or transfer any asset or
10 otherwise fails to comply with any provision of this Section, the Permanent Receiver
11 may file, on an *ex parte* basis, an Affidavit of Non-Compliance regarding the failure.
12 Upon filing of the affidavit, the Court may authorize, without additional process or
13 demand, Writs of Possession or Sequestration or other equitable writs requested by
14 the Permanent Receiver. The writs shall authorize and direct the United States
15 Marshal or any sheriff or deputy sheriff of any county to seize the asset, document,
16 or other thing and to deliver it to the Permanent Receiver.

17 **XIV.**

18 **BANKRUPTCY PETITIONS**

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

24 **XV.**

25 **TRANSFER OF FUNDS TO THE PERMANENT RECEIVER**

26 **IT IS FURTHER ORDERED** that, upon service of a copy of this Order, all
27 banks, broker-dealers, savings and loans, escrow agents, title companies, commodity
28 trading companies, or other financial institutions shall cooperate with all reasonable

1 requests of the Permanent Receiver relating to implementation of this Order,
2 including transferring funds at his or her direction and producing records related to
3 the assets of the Receivership Defendants.

4 **XVI.**

5 **STAY OF ACTIONS**

6 **IT IS FURTHER ORDERED** that:

7 A. Except by leave of this Court, during pendency of the receivership
8 ordered herein, Defendants, Receivership Defendants, and all clients, investors, note
9 holders, creditors, claimants, and all others acting on their behalf, and all other
10 persons and entities (except for Plaintiff) are hereby stayed from taking any action to
11 establish or enforce any claim, right, or interest for, against, on behalf of, in, or in the
12 name of: a) any of the Corporate Defendants or Receivership Defendants, or b) any
13 of their assets, or c) the Permanent Receiver or the Permanent Receiver's duly
14 authorized agents acting in their capacities as such, including, but not limited to, the
15 following actions:

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

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

24 3. Executing, issuing, serving, or causing the execution, issuance or
25 service of, any legal process, including, but not limited to, attachments,
26 garnishments, subpoenas, writs of replevin, writs of execution, or any other form of
27 process whether specified in this Order or not; or
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1 Permanent Receiver shall file with the Court and serve on the parties periodic
2 requests for the payment of such reasonable compensation, with the first such request
3 filed no more than sixty days after the date of this Order. The Permanent Receiver
4 shall not increase the hourly rates used as the bases for such fee applications without
5 prior approval of the Court.

6 **XVIII.**

7 **RECEIVER'S BOND**

8 **IT IS FURTHER ORDERED** that the Permanent Receiver shall have on file
9 with the Clerk of this Court a bond in the sum of \$50,000, with sureties to be
10 approved by the Court, conditioned that the Permanent Receiver will well and truly
11 perform the duties of the office and abide by and perform all acts the Court directs.

12 **XIX.**

13 **DISTRIBUTION OF ORDER**

14 **IT IS FURTHER ORDERED** that Defendants shall immediately provide a
15 copy of this Order to each of the Corporate Defendants' affiliates, franchises,
16 subsidiaries, divisions, successors, assigns, directors, officers, managing agents,
17 employees, representatives, and independent contractors and shall, within three (3)
18 business days from the date of service of this Order, serve on Plaintiff affidavits
19 identifying the names, titles, addresses, and telephone numbers of the persons and
20 entities whom they have served pursuant to this provision. The Permanent Receiver
21 has no obligation under this provision.

22 **XX.**

23 **CREDIT REPORTS**

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

1 **XXI.**

2 **LIMITED EXPEDITED DISCOVERY**

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

5 A. Take the deposition of any person or entity, without limitation, for the
6 purpose of:

- 7 1. discovering the nature, location, status, and extent of assets of any
8 of the Defendants, including Receivership Defendants, or of their
9 affiliates or of their subsidiaries,
10 2. discovering the nature, location, status and extent of documents
11 reflecting the business transactions of any of the Defendants;
12 3. discovering the nature and extent of Defendants' business
13 activities, and

14 B. Demand the production of documents from any person or entity relating
15 to the nature, status, location and extent of any of the Defendants' assets, and the
16 location of any documents reflecting the Defendants' business transactions or the
17 nature and extent of Defendants' business operations.

18 Thirty-six (36) hours notice shall be deemed sufficient for any such deposition
19 and forty-eight (48) hours notice shall be deemed sufficient for the production of any
20 such documents. The limitations and conditions set forth in Fed. R. Civ. P. 30(a)(2)
21 and 31(a)(2) shall not apply to depositions taken pursuant to this Section. Any such
22 depositions taken pursuant to this Section shall not be counted toward the ten
23 deposition limit set forth in Fed. R. Civ. P. 30(a)(2)(A) and 31(a)(2)(A). Service of
24 discovery taken pursuant to this Section shall be sufficient if made by facsimile or by
25 overnight delivery.

1 **XXII.**

2 **CORRESPONDENCE**

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

5 Faye Chen Barnouw, Barbara Y.K. Chun, and John D. Jacobs
6 Federal Trade Commission
7 10877 Wilshire Blvd., Suite 700
8 Los Angeles, CA 90024
9 Fax: (310) 824-4380
10 E-mail: fbarnouw@ftc.gov, bchun@ftc.gov,
11 and jjacobs@ftc.gov

12 **XXIII.**

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 **SO ORDERED:**

19 Dated: September 1, 2010



20 Hon. James V. Selna
21 United States District Judge
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