

SEALED

FEB 11 2014

D. MARK JONES, CLERK
BY _____
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

APPLY KNOWLEDGE, LLC, also doing business as APPLY KNOWLEDGE INSTITUTE and COACHING DEPARTMENT, a Utah limited liability company;

DAHM INTERNATIONAL, LLC, a Utah limited liability company;

DOMINION OF VIRGO INVESTMENTS, INC., a Utah corporation;

ECOMMERCE SUPPORT, LLC, an Idaho limited liability company;

ESSENT MEDIA, LLC, a Utah limited liability company;

EVERTEX SOLUTIONS, LLC, a Utah limited liability company;

EVI, LLC, also doing business as MEMBERS LEARNING CENTER, a Utah limited liability company;

NEMROW CONSULTING, LLC, a Utah limited liability company;

NOVUS NORTH, LLC, also doing business as MYMENTORING, YES INTERNATIONAL, LLC, and YOUR ECOMMERCE SUPPORT INTERNATIONAL, LLC, a Utah limited liability company;

Case No. 2:14c88

TEMPORARY RESTRAINING ORDER, ASSET FREEZE, APPOINTMENT OF A TEMPORARY RECEIVER, IMMEDIATE ACCESS, AND ORDER TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE

[Filed Under Seal]

PURPLE BUFFALO, LLC, also doing business as NETMARKETING, a Utah limited liability company;

SUPPLIER SOURCE, LLC, a Utah limited liability company;

365DAILYFIT, LLC, also doing business as NET TRAINING, a Utah limited liability company;

VENSURE INTERNATIONAL, LLC, a Utah limited liability company;

VI EDUCATION, LLC, a Nevada limited liability company;

DAVID GREGORY BEVAN, individually and as an officer, director, or owner of eCommerce Support, LLC;

JESSICA BJARNSON, individually and as an officer, director, or owner of NOVUS NORTH, LLC;

PHILLIP EDWARD GANNUSCIA, individually and as an officer, director, or owner of Dominion of Virgo Investments, Inc., Essent Media, LLC, Novus North, LLC, and Vensure International, LLC, and as a *de facto* principal of eCommerce Support, LLC, EVI, LLC, VI Education, LLC, and 365DailyFit, LLC;

CHAD HUNTSMAN, individually, and as an officer, director, or owner of VI Education, LLC;

RICHARD NEMROW, individually and as an officer, director, or owner of Nemrow Consulting, Essent Media LLC, Novus North, LLC, and Vensure International, LLC;

JEFFREY NICOL, individually and as an officer, director, or owner of 365DailyFit, LLC and DAHM International, LLC;

THOMAS J. RISKAS, III, individually and as an officer, director, or owner of EVI, LLC and Purple Buffalo, LLC;

BABATA SONNENBERG, individually and as an officer, director, or owner of eVertex Solutions, LLC and Supplier Source, LLC; and

KEN SONNENBERG, individually and as an officer, director, or owner of Apply Knowledge, LLC and eVertex Solutions, LLC,

Defendants.

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), has filed its Complaint for Permanent Injunction and Other Equitable Relief pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and applied for a temporary restraining order, asset freeze, other equitable relief, and an order to show cause why a preliminary injunction should not issue pursuant to Rule 65 of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 65, and the Court, having considered the Complaint, declarations, exhibits, and memorandum of points and authorities filed in support thereof, and being otherwise advised finds as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter of this case, and there is good cause to believe it will have jurisdiction over all parties hereto, and that venue in this district is proper.
2. There is good cause to believe that Corporate Defendants Apply Knowledge, LLC (d/b/a Apply Knowledge Institute and Coaching Department), DAHM International, LLC, Dominion of Virgo Investments, Inc., eCommerce Support, LLC, Essent Media, LLC, eVertex Solutions, LLC, EVI, LLC (d/b/a Members Learning Center), Nemrow Consulting, LLC, Novus North LLC (d/b/a MYMENTORING, Yes International, LLC, and Your eCommerce Support

International, LLC), Purple Buffalo, LLC (d/b/a Netmarketing), Supplier Source, LLC, 365DailyFit, LLC (d/b/a Net Training), Vensure International, LLC, VI Education, LLC, and Individual Defendants David Gregory Bevan, Jessica Bjarnson, Phillip Edward Gannuscia, Chad Huntsman, Richard Nemrow, Jeffrey Nicol, Thomas J. Riskas, III, Babata Sonnenberg, and Ken Sonnenberg have engaged in and are likely to engage in acts and practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a) and the FTC's Trade Regulation Rule entitled "Telemarketing Sales Rule" ("TSR" or "Rule"), 16 C.F.R. Part 310, and that the Commission is likely to prevail on the merits of this action.

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

4. There is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief for consumers - including the refund of monies paid, restitution, or rescission or reformation of contract - will occur from the sale, transfer, or other disposition or concealment by Defendants of assets or records if Defendants are provided with advance notice of this Order, and that therefore in accordance with Fed. R. Civ. P. 65(b), the interests of justice require that this Order be granted without prior notice to Defendants. There is thus good cause for relieving the Commission of the duty to provide Defendants with prior notice of the Commission's application.

5. Good cause exists for (a) the appointment of a Temporary Receiver over Corporate Defendants Apply Knowledge, LLC (d/b/a Apply Knowledge Institute and Coaching Department), DAHM International, LLC, Dominion of Virgo Investments, Inc., eCommerce Support, LLC, Essent Media, LLC, eVertex Solutions, LLC, EVI, LLC (d/b/a Members Learning Center), Nemrow Consulting, LLC, Novus North LLC (d/b/a MYMENTORING, Yes International, LLC, and Your eCommerce Support International, LLC), Purple Buffalo, LLC (d/b/a Netmarketing), Supplier Source, LLC, 365DailyFit, LLC (d/b/a Net Training), Vensure International, LLC, and VI Education, LLC; (b) the freezing of Defendants' assets; and (c) the ancillary relief ordered below.

6. Weighing the equities and considering the Commission's likelihood of ultimate success on the merits, a temporary restraining order with an asset freeze, the appointment of a Temporary Receiver, and other equitable relief is in the public interest.

7. The Commission is an independent agency of the United States of America. No security is required of any agency of the United States for issuance of a restraining order. Fed. R. Civ. P. 65(c).

DEFINITIONS

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

1. **"Asset"** means any legal or equitable interest in, right to, or claim to, any real, personal, or intellectual property of any Corporate Defendant or Individual Defendant, or held for the benefit of any Corporate Defendant or Individual Defendant, wherever located, including chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, contracts, mail or other deliveries, shares of stock, securities, inventory, checks, notes, accounts, credits, receivables (including as those terms are defined in the Uniform Commercial Code), cash, trusts, including any trust held for the benefit of any of the Defendants, and reserve funds or any other funds or accounts associated with payments processed by, or on behalf of, any of the Defendants, including merchant accounts owned, controlled, managed, or operated by or on behalf of one or more of the Defendants and reserve funds or accounts held by payment processors or financial institutions.

2. **"Assisting others"** includes providing any of the following goods or services to another entity: (1) performing customer service functions, including charging consumers for products or services, or receiving or responding to consumer complaints; (2) formulating or providing, or arranging for the formulation or provision of, any promotional material; (3) providing names of, or assisting in the generation of, potential customers; (4) performing promotional or marketing services of any kind, including creating, hosting, or maintaining websites, or recruiting affiliates; or (5) processing credit and debit card payments.

3. **"Corporate Defendants"** means Apply Knowledge, LLC (d/b/a Apply Knowledge Institute and Coaching Department), DAHM International, LLC, Dominion of Virgo

Investments, Inc., eCommerce Support, LLC, Essent Media, LLC, eVertex Solutions, LLC, EVI, LLC (d/b/a Members Learning Center), Nemrow Consulting, LLC, ~~Novus North~~ LLC (d/b/a MYMENTORING), Yes International, LLC, and Your eCommerce Support International, LLC), Purple Buffalo, LLC (d/b/a Netmarketing), Supplier Source, LLC, 365DailyFit, LLC (d/b/a Net Training), Vensure International, LLC, and VI Education, LLC, and their affiliates, subsidiaries, successors, and assigns.

4. **“Defendants”** means all of the Individual Defendants ~~and the Corporate Defendants~~, individually, collectively, or in any combination.

5. **“Document”** is equal in scope and synonymous in meaning to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts, photographs, images, audio and video recordings, computer records, and any other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

6. **“Individual Defendants”** means David Gregory Bevan, Jessica Bjarnson, Phillip Edward Gannuscia, Chad Huntsman, Richard Nemrow, Jeffrey Nicol, Thomas J. Riskas, III, Babata Sonnenberg, and Ken Sonnenberg, individually, collectively, or in any combination.

7. **“Material”** means likely to affect a person’s choice of, or conduct regarding, goods or services.

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

9. **“Plaintiff”** means the Federal Trade Commission.

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

11. **“Receivership Defendants”** means the Corporate Defendants.

12. **“Representatives”** means Defendants’ officers, agents, servants, employees, or attorneys, and any other persons or entities in active concert or participation with one or more of

the Defendants or the foregoing that receive actual notice of this Order by personal service or otherwise, whether these persons or entities are acting directly or through an individual, trust, corporation, subsidiary, division, or other device.

13. “**Telemarketing**” means any plan, program, or campaign which is conducted to induce the purchase of goods or services by use of one or more telephones, and which involves a telephone call, whether or not covered by the TSR.

ORDER

I.

PROHIBITED BUSINESS ACTIVITIES

IT IS THEREFORE ORDERED that Defendants and their Representatives, whether acting directly or indirectly, in connection with the advertising, marketing, promotion, distribution, offering for sale, or sale of any goods or services, are **hereby temporarily restrained and enjoined from**:

A. Making, or assisting other persons in making, in any manner, expressly or by implication, any earnings claim unless there is (1) a reasonable basis for the claim at the time the claim is made; and (2) written substantiation for the earnings claim in the possession of Defendants at the time the claim is made; or,

B. Making, or assisting other persons in making, in any manner, expressly or by implication, any misleading, false, or unsubstantiated representations of any material fact.

II.

PROHIBITIONS AGAINST DECEPTIVE TELEMARKETING PRACTICES

IT IS THEREFORE ORDERED that, in connection with telemarketing, Defendants and their Representatives, whether acting directly or indirectly, are **hereby temporarily restrained and enjoined from** engaging in or causing or assisting other persons to engage in, any of the following practices:

A. Misrepresenting, expressly or by implication any material aspect of an investment opportunity including, but not limited to, risk, liquidity, ~~earnings potential; or profitability;~~

B. Making, expressly or by implication, false or misleading statements to induce any person to pay for goods or services;

C. Misrepresenting, expressly or by implication, any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are subject to a sales offer; or

D. Engaging in or causing or assisting others to engage in any other violations of the Telemarketing Sales Rule, 16 C.F.R. Part 310, attached hereto as Attachment A.

III.

ASSET FREEZE

IT IS FURTHER ORDERED that Defendants and their Representatives, whether acting directly or indirectly, are **hereby temporarily restrained and enjoined** from:

A. Transferring, liquidating, converting, ~~encumbering, pledging, hypothecating,~~ loaning, selling, concealing, dissipating, wasting, disbursing, assigning, spending, conveying, gifting, withdrawing, granting a lien or security interest or other interest in, or otherwise disposing of any funds, real or personal property, accounts, contracts, consumer lists, shares of stock, or other assets, tangible or intangible, or any interest therein, wherever located, whether within the United States or within a jurisdiction outside the United States, that are:

1. owned or controlled by any of the Defendants, ~~in whole or in part;~~
2. held for the benefit of any of the Defendants;
3. in the actual or constructive possession of any of the Defendants;
4. held by an agent of any of the Defendants as a retainer for the agent's provision of services for one or more of the Defendants;
5. owned, controlled by, or in the ~~actual or constructive possession of,~~ or otherwise held for the benefit of any corporation, partnership, asset protection trust, or other entity directly or indirectly owned, managed, or controlled by any of the

Defendants. This includes any assets held by, for, or subject to access by any of the Defendants at any bank, savings and loan institution, or credit union, or with any broker-dealer, escrow agent, title company, commodity trading company, precious metals dealer, or other financial institution or depository institution of any kind; or

6. held in any account for which any of the Defendants is an authorized signer.

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

C. Incurring charges or cash advances on any credit card issued in the name, individually or jointly, of any of the Defendants;

D. Obtaining a personal or secured loan encumbering the assets of any of the Defendants, or any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by any of the Defendants; or

E. Incurring liens or other encumbrances on real property, personal property or other assets titled in the name, individually or jointly, of any of the Defendants or any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by any of the Defendants.

Provided, that the assets affected by this Section III shall include: (1) all assets of each of the Defendants as of the time of issuance of this Order; and (2) assets obtained after the time of issuance of this Order if the assets are derived from the conduct alleged in the Commission's Complaint.

IV.

DUTIES OF ASSET HOLDERS

IT IS FURTHER ORDERED that any financial or brokerage institution, credit card processing company, payment processor, merchant bank, acquiring bank, independent sales organization, business entity, or person served with a copy of this Order, or who otherwise has actual knowledge of this Order, that (a) holds, controls, or maintains custody of any account, safe deposit box, or other asset of any of the Defendants, (b) holds, controls, or maintains custody of

any asset associated with credits, debits, or charges made on behalf of any of the Defendants, including reserve funds held by payment processors or other entities, or (c) has held, controlled, or maintained any such account, safe deposit box, or other asset at any time since January 1, 2009 shall:

A. Hold and retain within its control and prohibit the withdrawal, removal, assignment, transfer, pledge, encumbrance, disbursement, dissipation, conversion, sale, or other disposal of any such asset, except by further order of the Court;

B. Deny any person, except the Receiver acting pursuant to Section XII of this Order, access to any safe deposit box that is titled in the name of, individually or jointly, or otherwise subject to access by, any of the Defendants;

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

1. The identification number of each such account or asset titled in the name, individually or jointly, of one or more of the Defendants, or held on behalf of or for the benefit of one or more of the Defendants;
2. The balance of each such account, or a description of the nature and value of such asset as of the close of business on the day on which this Order is served, and, if the account or other asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other asset was remitted; and
3. The identification of any safe deposit box that is titled in the name of, individually or jointly, or otherwise subject to access by any of the Defendants; and

D. Upon request by the Commission, promptly provide the Commission with copies of all records or other documentation pertaining to each such account or asset, including originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs.

V.

FINANCIAL DISCLOSURES

IT IS FURTHER ORDERED that within three (3) calendar days of service of this Order, each of the Defendants shall prepare and deliver the following forms to counsel for the Commission and to the Receiver:

A. Completed financial statements on the forms attached to this Order as Attachment B (Financial Statement of Individual Defendant) for themselves ~~individually and Attachment C~~ (Financial Statement of Corporate Defendant) for each business entity under which they conduct business or of which they are an officer or hold an ownership interest, and for each trust for which any Defendant is a trustee. The financial statements shall be accurate as of the date of entry of this Order. Each Defendant shall include in the financial statements a full accounting of all funds and assets, whether located inside or outside of the United States, that are: (1) titled in the name of such Defendant, individually or jointly; (2) held by any person or entity for the benefit of such Defendant; or (3) under the direct or indirect control of such Defendant. Defendants shall attach to these completed financial statements copies of all local, state, provincial, and federal income and property tax returns, with attachments and schedules, as called for by the instructions to the financial statements; and

B. Attachment D (Consent to Release and Request for Copy of Tax Return).

VI.

REPATRIATION OF ASSETS AND DOCUMENTS

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

A. Provide the Commission and the Receiver with a full accounting of all funds, documents, and assets outside of the United States which are: (1) titled in the name, individually or jointly, of any of the Defendants; or (2) held by any person or entity for the benefit of any of the Defendants; or (3) under the direct or indirect control, whether individually or jointly, of any of the Defendants;

B. Transfer to the territory of the United States and deliver to the Receiver all funds, documents, and assets located in foreign countries which are: (1) titled in the name individually or jointly of any of the Defendants; or (2) held by any person or entity, for the benefit of any of the Defendants; or (3) under the direct or indirect control of any of the Defendants, whether individually or jointly;

C. Provide the Commission access to all records of accounts or assets of any of the Defendants held by financial institutions located outside the territorial United States by signing the Consent to Release of Financial Records appended to this Order as Attachment C.

VII.

NON-INTERFERENCE WITH REPATRIATION

IT IS FURTHER ORDERED that Defendants and their Representatives, whether acting directly or through any entity, corporation, subsidiary, division, director, manager, member, affiliate, independent contractor, accountant, financial advisor, or other device, are hereby temporarily restrained and enjoined from taking any action, directly or indirectly, which may result in the encumbrance or dissipation of foreign assets, or in the hindrance of the repatriation required by Section VI of this Order, including the following:

A. Sending any statement, letter, fax, e-mail or wire transmission, telephoning or engaging in any other act, directly or indirectly, that results in a determination by a foreign trustee or other entity that a “duress” event has occurred under the terms of a foreign trust agreement until such time that all assets have been fully repatriated pursuant to Section VI of this Order;

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

VIII.

CONSUMER CREDIT REPORTS

IT IS FURTHER ORDERED that pursuant to Section 604(a)(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(1), any consumer reporting agency served with this Order shall promptly furnish consumer reports as requested concerning any of the Defendants to the Commission.

IX.

PRESERVATION OF RECORDS

IT IS FURTHER ORDERED that Defendants and their Representatives, whether acting directly or through any entity, corporation, subsidiary, division, director, manager, member, affiliate, independent contractor, accountant, financial advisor, or other device, are hereby temporarily restrained and enjoined from:

A. Destroying, erasing, falsifying, writing over, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, documents that relate to: (1) the business, business practices, assets, or business or personal finances of any of the Defendants, (2) the business practices or finances of entities directly or indirectly under the control of any of the Defendants, or (3) the business practices or finances of entities directly or indirectly under common control with any other Defendant or any other person or entity, including: any and all marketing materials, World Wide Web pages, consumer complaints, rate decks, call detail records, telephone logs, telephone scripts, contracts, correspondence, email, corporate books and records, accounting data, financial statements, receipt books, ledgers, personal and business canceled checks and check registers, bank statements, calendars, appointment books, and tax returns; and

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

X.

NOTIFICATION OF NEW BUSINESS ACTIVITY

IT IS FURTHER ORDERED that Defendants and their Representatives, whether acting directly or through any entity, corporation, subsidiary, division, director, manager, member, affiliate, independent contractor, accountant, financial advisor, or other device, are hereby temporarily restrained and enjoined from creating, operating, or exercising any control over any new business entity, whether newly formed or ~~previously inactive, including any partnership,~~ limited partnership, joint venture, sole proprietorship, limited liability company, or corporation, without first providing counsel for the Commission with a written statement disclosing: (1) the name of the business entity; (2) the address and telephone number of the business entity; (3) the names of the business entity's officers, directors, principals, managers, members, and employees; and (4) a detailed description of the business entity's intended activities.

XI.

PROHIBITION ON RELEASE OF CONSUMER INFORMATION

IT IS FURTHER ORDERED that Defendants and their Representatives, whether acting directly or indirectly, are hereby temporarily restrained and enjoined from selling, renting, leasing, transferring, using, disclosing, or otherwise benefitting from the name, address, telephone number(s), credit card number(s), bank account number(s), email address(es), or other identifying information of any person who: (1) paid money to the Defendants; (2) was contacted by the Defendants or their Representatives in connection with the sale of work-at-home programs or opportunities, business coaching programs, or any goods or services to assist in the creation, advertising, marketing, promotion, ~~or operation of work-at-home programs or~~ opportunities or business coaching programs, including website design or development, advertising, marketing, lead generation, social media promotion, search engine optimization, business coaching, business establishment services, accounting or tax filing services, or drop-shipping services; or (3) was on a list to be contacted by the Defendants or their Representatives; provided, however, that Defendants may disclose such identifying information to a law enforcement agency or as required by any law, regulation, or court order.

XII.

APPOINTMENT OF TEMPORARY RECEIVER

IT IS FURTHER ORDERED that Robb Evans & Associates LLC is appointed temporary receiver for the Receivership Defendants, as well as for any affiliates, subsidiaries, divisions, telephone sales, or customer service operations, wherever located, with the full power of an equity receiver. The Receiver shall be the agent of this Court, and solely the agent of this Court, in acting as Receiver under this Order. ~~The Receiver shall be accountable directly to this Court.~~

XIII.

RECEIVER'S DUTIES

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

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

B. Take exclusive custody, control, and possession of ~~all assets and documents of, or~~ in the possession, custody, or under the control of, the Receivership Defendants, wherever situated. The Receiver shall have full power to divert mail and to sue for, collect, receive, take in possession, hold, and manage all assets and documents of the Receivership Defendants and other persons or entities whose interests are now under the direction, possession, custody, or control of the Receivership Defendants. ~~The Receiver shall assume control over the income and profits~~ therefrom and all sums of money now or hereafter due or owing to the Receivership Defendants. *Provided, however,* that the Receiver shall not attempt to collect any amount from a consumer if the Receiver believes the consumer was a victim of the unfair or deceptive acts or practices or other violations of law alleged in the Complaint in this matter, without prior Court approval;

C. Take all steps necessary to secure and take exclusive custody of each location from which the Receivership Defendants operate their business. Such steps may include any of

the following, as the Receiver deems necessary or advisable: (1) serving this Order; (2) completing a written inventory of all Receivership assets; (3) obtaining pertinent information from all employees and other agents of the Receivership Defendants, including the name, home address, Social Security Number, job description, passwords or access codes, method of compensation, and all accrued and unpaid commissions and compensation of each such employee or agent; (4) photographing and videotaping any or all portions of the location; (5) securing the location by changing the locks and ~~disconnecting any computer modems or other~~ means of access to the computer or other records maintained at that location; and (6) requiring any persons present on the premises at the time this Order is served to leave the premises, to provide the Receiver with proof of identification, or to demonstrate to the satisfaction of the Receiver that such persons are not removing from the premises documents or assets of the Receivership Defendants. Law enforcement personnel, including police or sheriffs, may assist the Receiver in implementing these provisions in order to keep the peace and maintain security. If requested by the Receiver, the United States Marshals Service will provide appropriate and necessary assistance to the Receiver to implement this Order and is authorized to use any necessary and reasonable force to do so;

D. Suspend business operations of the Receivership Defendants if in the judgment of the Receiver such operations cannot be continued legally and profitably;

E. Conserve, hold, and manage all assets of the Receivership Defendants, and perform all acts necessary or advisable to preserve the value of those assets in order to prevent any irreparable loss, damage, or injury to consumers or creditors of the Receivership Defendants, including obtaining an accounting of the assets and ~~preventing the unauthorized transfer,~~ withdrawal, or misapplication of assets;

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

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

H. Prevent the destruction or erasure of any web pages or websites registered to or operated, in whole or in part, by the Receivership Defendants or operated on behalf of the Receivership Defendants;

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

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

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

L. Institute, compromise, adjust, appear in, intervene in, or become party to such actions or proceedings in state, federal or foreign courts or arbitration proceedings as the Receiver deems necessary and advisable to preserve or recover the assets of the Receivership Defendants, or that the Receiver deems necessary and advisable to carry out the Receiver's mandate under this Order, including actions challenging fraudulent or voidable transfers;

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

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

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

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

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

R. File reports with the Court on a timely basis and at regular intervals or as otherwise directed by the Court.

XIV.

TRANSFER OF RECEIVERSHIP PROPERTY TO RECEIVER

IT IS FURTHER ORDERED that:

A. Immediately upon service of this Order upon them, or within a period permitted by the Receiver, Defendants, their Representatives, and any other person or entity with possession, custody, or control of assets or documents relating to the Receivership Defendants shall transfer or deliver possession, custody, and control of the following to the Receiver:

1. All assets of the Receivership Defendants;
2. All documents of the Receivership Defendants, including books and records of accounts, all financial and accounting records, balance sheets, income statements, bank records (including monthly statements, canceled checks, records of wire transfers, and check registers), client lists, title documents and other papers;
3. All assets belonging to other persons or entities whose interests are now under the direction, possession, custody, or control of the Receivership Defendants;
4. All computers and data in whatever form, whether cloud based or otherwise, used to conduct the business of the Receivership Defendants; and

5. All keys, codes, and passwords necessary to gain or to secure access to any assets or documents of the Receivership Defendants, including access to their business premises, means of communication, accounts, computer systems, electronic storage systems, or other property.

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

XV.

PROVISION OF INFORMATION TO RECEIVER

IT IS FURTHER ORDERED that Defendants shall provide to the Receiver, immediately upon request, the following:

A. A list of all assets and property, including accounts, of the Receivership Defendants that are held in any name other than the name of a Receivership Defendant, or by any person or entity other than a Receivership Defendant, including trusts; and

B. A list of all agents, employees, officers, servants and other persons in active concert and participation with the Individual Defendants and Receivership Defendants who have been associated with or done business with the Receivership Defendants.

XVI.

COOPERATION WITH THE RECEIVER

IT IS FURTHER ORDERED that Defendants, their Representatives, and all other persons or entities served with a copy of this Order shall fully cooperate with and assist the Receiver in taking and maintaining possession, custody, or control of the assets of the Receivership Defendants. This cooperation and assistance shall include the following: providing information to the Receiver that the Receiver deems necessary in order to exercise the authority

and discharge the responsibilities of the Receiver under this Order; providing any password required to access any computer, electronic file, or telephonic data in any medium; advising all persons who owe money to the Receivership Defendants that all debts should be paid directly to the Receiver; and transferring funds at the Receiver's direction and producing records related to the assets and sales of the Receivership Defendants. The entities obligated to cooperate with the Receiver under this provision include banks, broker-dealers, savings and loans, credit unions, escrow agents, title companies, commodity trading companies, precious metals dealers and other financial institutions and depositories of any kind, payment processors, payment gateways, insurance companies, as well as all third-party billing agents, common carriers and other telecommunications companies, and trusts.

XVII.

INTERFERENCE WITH THE RECEIVER

IT IS FURTHER ORDERED that Defendants, their Representatives, corporations, subsidiaries, divisions, or affiliates are hereby restrained and enjoined from directly or indirectly:

- A. Interfering with the Receiver managing, or taking custody, control, or possession of the assets or documents subject to this Receivership;
- B. Transacting any of the business of the Receivership Defendants, regardless of the name used;
- C. Transferring, receiving, altering, wasting, destroying, selling, encumbering, pledging, hypothecating, assigning, liquidating, or otherwise disposing of any assets owned, controlled, or in the possession or custody of, or in which an interest is held or claimed by, the Receivership Defendants, or the Receiver;
- D. Destroying, secreting, defacing, transferring, or otherwise altering or disposing of any documents of the Receivership Defendants, including books, records, accounts, or any other papers;
- E. Excusing debts owed to the Receivership Defendants;
- F. Refusing to cooperate with the Receiver or the Receiver's duly authorized agents in the exercise of their duties or authority under any order of this Court; and

G. Harassing or interfering in any way with the Receiver or the Receiver's duly authorized agents.

XVIII.

STAY OF ACTIONS AGAINST RECEIVERSHIP DEFENDANTS

IT IS FURTHER ORDERED that:

A. Except by leave of this Court, during pendency of the Receivership ordered herein, Defendants, their Representatives, ~~and all investors, creditors, stockholders, lessors,~~ customers and other persons seeking to establish or enforce any claim, right, or interest against or on behalf of Defendants, and all others acting for or on behalf of such persons, are hereby enjoined from taking action that would interfere with the exclusive jurisdiction of this Court over the assets or documents of the Receivership Defendants, including:

1. Petitioning, or assisting in the filing of a petition, that would cause any Receivership Defendant to be ~~placed in bankruptcy~~;
2. Commencing, prosecuting, or continuing a judicial, administrative, or other action or proceeding against the Receivership Defendants, including the issuance or employment of process against the Receivership Defendants, *except* that such actions may be commenced if necessary to toll any applicable statute of limitations;
3. Filing or enforcing any lien on any asset of the Receivership Defendants; taking or attempting to take possession, custody, or control of any asset of the Receivership Defendants; accelerating the due date of any obligation; or attempting to foreclose, forfeit, ~~alter, or terminate any interest in any asset of the~~ Receivership Defendants, whether such acts are part of a judicial proceeding, are acts of self-help, or otherwise;
4. Initiating any other process or proceeding that would interfere with the Receiver managing or taking custody, control, or possession of, the assets or documents subject to this receivership.

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

XIX.

COMPENSATION OF RECEIVER

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

XX.

RECEIVER'S BOND

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

XXI.

IMMEDIATE ACCESS TO BUSINESS PREMISES AND DOCUMENTS

IT IS FURTHER ORDERED that:

A. In order to allow the Commission and the Receiver to preserve assets and evidence relevant to this action and to expedite discovery, the Commission and Receiver, and

their representatives, agents, contractors, and assistants, shall have immediate access to any and all business premises, storage facilities, and all other business locations owned, controlled, or used by the Receivership Defendants. Such locations include the following: 1250 E 200 S, Suites 1A/2A/2F, Lehi, Utah 84043, 1491 W 500 N, Lindon, Utah 84042, and 1167 Iron Eagle Drive, Eagle, Idaho 83616.

B. The Commission and the Receiver, and their representatives, agents, contractors, and assistants, are authorized to employ the assistance of the ~~United States Postal Inspection Service~~, the United States Marshals Service, the Department of Justice, and other federal, state, or local law enforcement officers as they deem necessary to effect service and to peacefully implement the provisions of this Order.

C. The Receiver shall allow the Commission and its representatives, agents, contractors, and assistants, and the Department of Justice access to the business premises of the Receivership Defendants to inspect and copy Documents relevant to this action. ~~The Receiver~~ and Plaintiff, and their representatives, agents, contractors, and assistants, are authorized to remove documents from the Receivership Defendants' premises in order that they may be inspected, inventoried, and copied. The Documents so removed shall be returned within three (3) days of completing inventorying and copying.

D. The Receiver shall allow the Defendants reasonable access to the premises and business records of the Receivership Defendants within his possession for the purpose of inspecting and copying materials relevant to this action. The Receiver shall have the discretion to determine the time, manner, and reasonable conditions of such access.

E. Defendants and their representatives shall provide the Commission and the Receiver with access to all of Corporate Defendants' documents by, without limitation, identifying the locations and providing the means of access to all of Corporate Defendants' business premises and storage facilities, all computers used to conduct Corporate Defendants' business, all data used to conduct or generated by the business of Corporate Defendants, whether that data are cloud-based or otherwise stored, and all electronic mail, phone, social media, or

other communication accounts used to conduct Corporate Defendants' business, whether such accounts are held by Corporate Defendants or other persons.

F. If any property, records, documents, or computer files relating to Receivership Defendants' finances or business practices are located in the residence of any Defendant or are otherwise in the custody or control of any Defendant, then such Defendant shall produce them to counsel for the Commission and the Receiver within twenty-four (24) hours of service of this Order, along with any codes or passwords needed for access. ~~In order to prevent the destruction~~ of computer data, upon service of this Order upon Defendants, any such computers shall be powered down in the normal course for the operating system used on such computers and shall not be powered up or used again until produced for copying and inspection.

XXII.

EXPEDITED DISCOVERY

IT IS FURTHER ORDERED that, notwithstanding the time periods, notice provisions, and other requirements of Rules 26(d), 26(f), and 30(a)(2)(c) of the Federal Rules of Civil Procedure, and pursuant to Federal Rules of Civil Procedure 30(a), 34, and 45, the Commission and the Receiver are granted leave, at any time after entry of this Order, to conduct limited expedited discovery as to parties and non-parties for the purpose of discovering: (1) the nature, location, status, and extent of Defendants' assets; (2) the nature and location of documents reflecting Defendants' businesses, business transactions, and operations; and (3) the nature and location of documents reflecting the Defendants' businesses activities. The limited expedited discovery set forth in this Section shall proceed as follows:

A. The Commission and the Receiver may ~~take the depositions of parties and non-~~parties. Forty-eight hours (48) notice shall be sufficient notice for such depositions. Deposition transcripts that have not been signed by the witness may be used at the preliminary injunction hearing in this matter. The limitations set forth in Federal Rule of Civil Procedure 30(a)(2) and 31(a)(2) regarding subsequent depositions of an individual shall not apply to depositions taken pursuant to this Section, and those depositions shall not count toward the deposition limit set forth in said rules;

B. The Commission and the Receiver may serve upon parties requests for production of documents or inspection that require production or inspection within ~~three~~ (3) calendar days of service, and may serve subpoenas upon non-parties that direct production or inspection within five (5) calendar days of service;

C. The Commission and the Receiver may serve deposition notices and other discovery requests upon the parties to this action by facsimile or overnight courier, and depositions may be taken by telephone ~~or other remote electronic means; and~~.

D. Any discovery taken pursuant to this Order is in addition to, and is not subject to, the presumptive limits on discovery set forth in the Federal Rules of Civil Procedure and Local Rules of this Court. If a Defendant fails to appear for a properly noticed deposition or fails to comply with a request for production or inspection, that Defendant may be prohibited from introducing evidence at the hearing on the Commission's request for a preliminary injunction.

XXIII.

NONINTERFERENCE WITH CONSUMER WITNESSES

IT IS FURTHER ORDERED that:

A. Defendants and their Representatives, whether acting directly or through any entity, corporation, subsidiary, division, director, manager, member, affiliate, independent contractor, accountant, financial advisor, or other device, are hereby temporarily restrained and enjoined from taking any action, directly or indirectly, that may result in the intimidation and noncooperation of consumer witnesses, or in the hindrance of the expedited discovery required by Section XXII of this Order, including the following:

1. Requiring consumers ~~seeking a refund to sign an agreement preventing them from~~ providing information about Defendants or their Representatives or relaying information about their experiences with Defendants or their Representatives;
2. Enforcing such agreements; or
3. Sending any statement, letter, fax, email, or wire transmission, or telephoning or engaging in any other act, directly or indirectly, that results in the intimidation or noncooperation of consumers or potential witnesses.

B. Consumers may cooperate with the FTC and the Receiver without regard to any existing agreement preventing consumers from communicating with outside parties about Defendants or their Representatives.

XXIV.

SERVICE OF THIS ORDER

IT IS FURTHER ORDERED that copies of this Order may be served by any means, including facsimile transmission, upon ~~any financial institution, any registrar of domain names or~~ any provider of website hosting, website material or content, email service or storage, electronic data storage or transmission, or other entity or person that may have possession, custody, or control of any documents or assets of any of the Defendants, or that may otherwise be subject to any provision of this Order. Service upon any branch or office of any financial institution shall effect service upon the entire financial institution.

XXV.

SERVICE UPON PLAINTIFF

IT IS FURTHER ORDERED that all correspondence and service of pleadings or other documents related to this Order or the Commission's motion for a preliminary injunction shall be addressed to the following:

Svetlana S. Gans
P. Connell McNulty
Federal Trade Commission
600 Pennsylvania Ave., NW, Room H-286
Washington, DC 20580
Fax: 202-326-3395
Email: sgans@ftc.gov; pmcnulty@ftc.gov

XXVI.

DEFENDANTS' DUTY TO DISTRIBUTE ORDER

IT IS FURTHER ORDERED that Defendants shall immediately provide a copy of this Order to each of their affiliates, subsidiaries, divisions, sales entities, successors, assigns, officers, directors, employees, independent contractors, client companies, agents, attorneys, spouses, and representatives, and shall, within five (5) days from the date of entry of this Order,

provide the Commission with a sworn statement that: (1) confirms that Defendants have provided copies of the Order as required by this paragraph; and (2) lists the names and addresses of each entity or person to whom Defendants provided a copy of the Order. Furthermore, Defendants shall not take any action that would encourage officers, agents, directors, employees, salespersons, independent contractors, attorneys, subsidiaries, affiliates, successors, assigns or other persons or entities in active concert or participation with them to disregard this Order or believe that they are not bound by its provisions.

XXVII.

DURATION OF TEMPORARY RESTRAINING ORDER

IT IS FURTHER ORDERED that the Temporary Restraining Order granted herein shall expire fourteen (14) days from the date of entry noted below unless, within such time, the Order is extended for an additional period not to exceed fourteen (14) days for good cause shown, or unless, as to any Defendant, such Defendant consents to an extension for a longer period.

XXVIII.

PRELIMINARY INJUNCTION HEARING

IT IS FURTHER ORDERED pursuant to Federal Rule of Civil Procedure 65(b), that each Defendant shall appear before this Court in courtroom _____ at the United States District Court for the District of Utah, located at 350 South Main Street, Salt Lake City, Utah 84101, on the 24th day of February, 2014, at 12:00 o'clock p.m., to show cause, if there is any, why this Court should not enter a Preliminary Injunction enjoining the violations of law alleged in the Commission's Complaint, continuing the freeze of their assets, continuing the receivership, and imposing such additional relief as may be appropriate pending final adjudication of the Complaint filed in this matter.

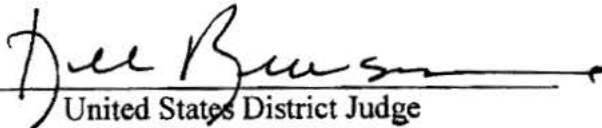
XXIX.

RETENTION OF JURISDICTION

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

IT IS SO ORDERED:

DATED, this 11th day of February 2014.


United States District Judge