

UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

FEDERAL TRADE COMMISSION,
STATE OF KANSAS,
STATE OF MINNESOTA, and
STATE OF NORTH CAROLINA,

Plaintiffs,

v.

AFFILIATE STRATEGIES, INC.,
LANDMARK PUBLISHING GROUP, L.L.C.,
(d/b/a G.F. INSTITUTE and GRANT
FUNDING INSTITUTE),
GRANT WRITERS INSTITUTE, L.L.C.,
ANSWER CUSTOMERS, L.L.C.,
APEX HOLDINGS INTERNATIONAL, L.L.C.,
BRETT BLACKMAN, individually and as an
officer, manager, and/or member of
Affiliate Strategies, Inc., Landmark
Publishing Group, L.L.C., Grant Writers
Institute, L.L.C., Answer Customers,
L.L.C., and Apex Holdings International,
L.L.C.,
JORDAN SEVY, individually and as a manager
of Landmark Publishing Group,
JAMES RULISON, individually and as president
of Answer Customers, L.L.C.,
REAL ESTATE BUYERS FINANCIAL
NETWORK LLC (d/b/a GRANT
WRITERS RESEARCH NETWORK),
MARTIN NOSSOV, individually and as a
manager and member of Real Estate
Buyers Financial Network LLC, and
ALICIA NOSSOV, individually and as a
manager and member of Real Estate
Buyers Financial Network LLC,

Defendants.

Case No. 5:09-CV-04104-JAR-KGS

**TEMPORARY RESTRAINING
ORDER WITH ASSET FREEZE,
APPOINTMENT OF RECEIVER
AND OTHER EQUITABLE
RELIEF**

Plaintiffs, the Federal Trade Commission (“FTC”), and the States of Kansas, Minnesota and North Carolina (collectively “Plaintiffs”) have filed a Complaint for 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 57(b), the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101 – 6108, the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.*; Minn. Stat. §§ 8.01 & 8.31; the Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. §§ 325D.43-325D.48; Minn. Stat. § 325F.67; the Minnesota Prevention of Consumer Fraud Act, Minn. Stat. §§ 325F.68-325F.70; and Minn. Stat. § 325F.71, subd. 2 (2008); and the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. §§ 75-1.1, *et seq.*, to obtain temporary, preliminary, and permanent injunctive relief, rescission or reformation of contracts, restitution, disgorgement of ill-gotten gains, civil penalties and other equitable relief for Defendants’ acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), the FTC’s Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310; the Kansas Consumer Protection Act; the Minnesota Uniform Deceptive Trade Practices Act; the Minnesota Prevention of Consumer Fraud Act, and the North Carolina Unfair and Deceptive Trade Practices Act, and have applied for a temporary restraining order with asset freeze and other equitable relief, and for an order to show cause why a Preliminary Injunction should not issue pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 65(b).

FINDINGS OF FACT

The Court, having considered the Complaint, the Application for a Temporary Restraining Order, declarations and exhibits, and the memorandum of points and authorities filed in support thereof, and being otherwise advised, it appears to the satisfaction of the Court that:

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 Defendants Affiliate Strategies Inc., Landmark Publishing Group, LLC d/b/a G.F. Institute and Grant Funding Institute, Grant Writers Institute, LLC, Answer Customers, LLC, Apex Holdings International, LLC, Brett Blackman, Jordan Sevy, and James Rulison (collectively “Defendants”) have engaged in and are likely to engage in acts and practices that violate Section 5(a) of the Federal Trade Commission Act, the Kansas Consumer Protection Act, the Minnesota Uniform Deceptive Trade Practices Act, the Minnesota Prevention of Consumer Fraud Act, and the North Carolina Unfair and Deceptive Trade Practices Act;
3. There is good cause to believe that the Plaintiffs are likely to prevail on the merits of this action;
4. There is good cause to believe that immediate and irreparable damage to this Court’s ability to grant effective final relief for consumers, including monetary restitution, rescission or refunds, will occur from the sale, transfer, or other disposition by Defendants of their Assets or company records, or those Assets and

company records under their control, unless Defendants are immediately restrained and enjoined by order of this Court;

5. Good cause exists for appointing a temporary Receiver for Defendants Affiliate Strategies Inc., Landmark Publishing Group, LLC d/b/a G.F. Institute and Grant Funding Institute, Grant Writers Institute, LLC, Answer Customers, LLC, and Apex Holdings International, LLC;
6. Weighing the equities and considering the Plaintiffs' likelihood of ultimate success on the merits, a Temporary Restraining Order with asset freeze and other equitable relief is in the public interest;
7. There is good cause for issuing this Temporary Restraining Order pursuant to Rule 65(b) of the Federal Rules of Civil Procedure; and
8. The FTC is an independent agency of the United States of America. No security is required of any agency of the United States for the issuance of a Temporary Restraining Order. Fed. R. Civ. P. 65(c).

ORDER

DEFINITIONS

For the purpose of this Temporary Restraining Order ("Order"), the following definitions shall apply:

1. "**Asset**" means any legal or equitable interest in, right to, or claim to, any real and personal property, including, but not limited to, "goods," "instruments," "equipment," "fixtures," "general intangibles," "inventory," "checks," "notes" (as these terms are defined in the Uniform Commercial Code), and all chattel,

leaseholds, contracts, mail or other deliveries, shares of stock, lists of consumer names, accounts, credits, premises, receivables, funds, reserve funds, and cash, wherever located.

2. “**Assisting others**” includes knowingly providing any of the following goods or services to another entity: (1) performing customer service functions, including, but not limited to, 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; (5) hosting of websites; or (6) processing credit and debit card payments.
3. “**Corporate Defendants**” means Affiliate Strategies Inc., Landmark Publishing Group, LLC d/b/a G.F. Institute and Grant Funding Institute, Grant Writers Institute, LLC, Answer Customers, LLC, and Apex Holdings International, LLC, and their successors and assigns.
4. “**Defendants**” means Affiliate Strategies Inc., Landmark Publishing Group, LLC d/b/a G.F. Institute and Grant Funding Institute, Grant Writers Institute, LLC, Answer Customers, LLC, Apex Holdings International, LLC, Brett Blackman, Jordan Sevy, and James Rulison.
5. “**Document**” is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts, Internet sites, Webpages, Websites, electronic correspondence, including e-mail and instant messages, photographs, audio and video recordings,

contracts, accounting data, advertisements (including, but not limited to, advertisements placed on the World Wide Web), FTP Logs, Server Access Logs, USENET Newsgroup postings, World Wide Web pages, books, written or printed records, handwritten notes, telephone logs, telephone scripts, receipt books, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, computer records, and other data compilations from which information can be obtained and translated. A draft or non-identical copy is a separate document within the meaning of the term.

6. “**Individual Defendants**” means Brett Blackman, Jordan Sevy, and James Rulison.
7. “**Material**” means likely to affect a person’s choice of, or conduct regarding, goods or services.
8. “**Plaintiffs**” means the Federal Trade Commission, and the States of Kansas, Minnesota and North Carolina.
9. “**Receivership Defendants**” means Affiliate Strategies Inc., Landmark Publishing Group, LLC d/b/a G.F. Institute and Grant Funding Institute, Grant Writers Institute, LLC, Answer Customers, LLC, and Apex Holdings International, LLC.
10. “**Representatives**” means Defendants’ successors, assigns, officers, agents, servants, employees, or attorneys, and any person or entity in active concert or participation with them who receives actual notice of this Order by personal service or otherwise.

11. “**Telemarketing**” means a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call.
12. “**Telemarketing Sales Rule**” means the FTC Rule entitled “Telemarketing Sales Rule,” 16 C.F.R. Part 310.

I.

PROHIBITED BUSINESS ACTIVITIES

IT IS THEREFORE ORDERED that, in connection with the advertising, marketing, promotion, offering for sale, or sale of any products, goods, or services, Defendants and their Representatives, whether acting directly or through any entity, corporation, subsidiary, division, affiliate, or other device, are **hereby temporarily restrained and enjoined** from:

- A. Making or assisting others in the making of, expressly or by implication, any false or misleading statement or representation of material fact, including but not limited to:
 1. Representations concerning the likelihood of obtaining grant funding for any person;
 2. Representations that grant funding is guaranteed or has been approved or pre-approved; and
 3. Representations concerning any person’s eligibility to receive a grant.
- B. Making any representations concerning Defendants’ success rate in securing grants or any person’s likelihood of receiving a grant, unless the Defendants

possess and rely upon reliable evidence that substantiates the representation at the time the representation is made;

- C. Failing to obtain signed confirmations from Kansas consumers prior to charging the consumers' credit cards for the purchase of Defendants' grant-related publications, products, goods, services, or programs, as required by the Kansas Consumer Protection Act §§ 50-672(b), (c), and 50-675(b); and
- D. Continuing to charge the credit card of any consumer for the purchase of Defendants' grant-related publications, products, goods, services, or programs.

II.

PROHIBITION AGAINST DECEPTIVE TELEMARKETING PRACTICES

IT IS FURTHER ORDERED, that in connection with telemarketing, Defendants and their Representatives are hereby temporarily restrained and enjoined from engaging in or causing or assisting others to engage in violations of the provisions of the Telemarketing Sales Rule, including but not limited to misrepresenting any material aspect of the performance, efficacy, nature, or central characteristics of any products, goods, or services they sell, in violation of 310.3(a)(2)(iii) of the TSR.

III.

FREEZE OF DEFENDANTS' ASSETS

IT IS FURTHER ORDERED that Corporate Defendants and their Representatives, whether acting directly or through any entity, corporation, subsidiary, division, affiliate or other device, are **hereby temporarily restrained and enjoined** from:

- A. Transferring, converting, encumbering, selling, concealing, dissipating,

disbursing, assigning, spending, withdrawing, perfecting a security interest in, or otherwise disposing of any funds, real or personal property, accounts, contracts, shares of stock, lists of consumer names, or other Assets, wherever located, including outside the United States, that are:

1. owned or controlled by, or in the actual or constructive possession of, any Corporate Defendant;
2. owned or controlled by, or held for the benefit of, directly or indirectly, any Corporate Defendant, in whole or in part;
3. held by any agent, credit card processor, payment processor, merchant bank or service provider of any Corporate Defendant as a retainer for the provision of services to any Corporate Defendants; or
4. owned or controlled by, or in the actual or constructive possession of, or otherwise held for the benefit of, any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by any Defendant, including, but not limited to, any Assets held by, for, or subject to access by, any Defendant at any bank or savings and loan institution, or with any broker-dealer, escrow agent, title company, commodity trading company, precious metal dealer, credit card processor, payment processor, merchant bank, or other financial or depository institution of any kind.

B. Opening or causing to be opened, unless accompanied by counsel for the Plaintiffs, any safe deposit boxes titled in the name of any Defendant, either

individually or jointly, or subject to access by any Defendant;

- C. Obtaining a personal or secured loan encumbering the Assets of any Corporate Defendant;
- D. Incurring liens or other encumbrances on real property, personal property, or other Assets in the name, singly or jointly, of any Corporate Defendant or of any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by any Defendant; or
- E. Incurring charges or cash advances on any credit or debit card, issued in the name, individually or jointly, of any Corporate Defendant or any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by any Defendant.

IT IS FURTHER ORDERED that the Assets affected by this Paragraph are those that are (a) existing as of the date this Order was entered, or (b) acquired by any Defendant following entry of this Order, if such assets are derived from any activity covered by this Order.

IV.

FINANCIAL STATEMENTS

IT IS FURTHER ORDERED that each Defendant, within five (5) calendar days of service of this Order upon them, shall provide counsel for the Plaintiffs with completed financial statements, verified under oath and accurate as of the date of their verification under oath, on the forms attached to this Order as **Attachment A**, for the Individual Defendants, and **Attachment B** for the Corporate Defendants.

V.

REPATRIATION OF ASSETS AND DOCUMENTS

IT IS FURTHER ORDERED that Defendants and their Representatives, whether acting directly or through any entity, corporation, subsidiary, division, affiliate or other device, shall:

- A. Within three (3) business days following the service of this Order, take such steps as are necessary to transfer to the territory of the United States of America all Documents and Assets that are located outside of such territory and are held:
 - 1. by any Defendant;
 - 2. held on behalf of any Defendant, or for the benefit, directly or indirectly, individually or jointly, of any Defendant; or
 - 3. under the direct or indirect control, individually, severally, or jointly, of any Defendant;
- B. Hold and retain all transferred Documents and Assets and prevent any transfer, disposition, or dissipation whatsoever of any such Assets or funds;
- C. Within three (3) business days of any repatriation under sub-paragraph A above:
 - 1. notify counsel for Plaintiffs of the name and location of the financial institution or other entity that is the recipient of such funds, Documents, or Assets; and
 - 2. serve this Order on any such financial institution or other entity;
 - 3. provide counsel for Plaintiffs with a full accounting of all Documents and Assets subject to this Section; and
- D. Provide counsel for Plaintiffs access to Defendants' records and Documents held by financial institutions outside the territorial United States, by signing the

“Consent to Release of Financial Records,” attached hereto as **Attachment C**, within three (3) business days following the service of this Order.

VI.

NONINTERFERENCE WITH REPATRIATION

IT IS FURTHER ORDERED that Defendants and their Representatives, whether acting directly or through any entity, corporation, subsidiary, division, affiliate 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 Paragraph V of this Order, including, but not limited to:

- A. Sending any statement, letter, fax, email or wire transmission, or telephoning or engaging in any other act, directly or indirectly, which 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 all Assets have been fully repatriated pursuant to Paragraph V of this Order; or
- 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 all Assets have been fully repatriated pursuant to Paragraph V of this Order.

VII.

DUTIES OF ASSET HOLDERS

IT IS FURTHER ORDERED that any financial or brokerage institution, business entity, credit card processor, payment processor, merchant bank, or person served with a copy of this Order that holds, controls, or maintains custody of any account containing Assets of any Corporate Defendant or of any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by any Defendant, or has held, controlled, or maintained custody of any such account or Asset at any time since the date of entry of this Order 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 this Court;
- B. Deny access to any safe deposit box that is:
 - 1. titled in the name of any Corporate Defendant or of any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by any Defendant, either individually, or jointly; or
 - 2. otherwise subject to access by any Corporate Defendant or of any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by any Defendant;
- C. Provide counsel for Plaintiffs, within five (5) business days of receiving a copy of this Order, a sworn statement setting forth:
 - 1. the identification number of each account or Asset titled in the name, individually or jointly, of any Corporate Defendant or of any corporation,

partnership, or other entity directly or indirectly owned, managed, or controlled by any Defendant, or held on behalf of, or for the benefit of, any Corporate Defendant or of any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by any Defendant;

2. the balance of each such account, or a description of the nature and value of each 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 either titled in the name, individually or jointly, of any Corporate Defendant or of any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by any Defendant, or is otherwise subject to access by any Corporate Defendant or of any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by any Defendant; and

D. Upon the request of any counsel for Plaintiffs, promptly provide copies of all records or other documentation pertaining to such account or Asset, including, but not limited to, originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts,

all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs.

VIII.

CONSUMER CREDIT REPORTS

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

IX.

PRESERVATION OF EXISTING RECORDS

IT IS FURTHER ORDERED that Defendants, and their Representatives, whether acting directly or through any entity, corporation, subsidiary, division, affiliate or other device, are hereby temporarily restrained and enjoined from destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any Documents, including any contracts, accounting data, correspondence, email, advertisements, computer tapes, discs, or other computerized storage media, books, written or printed records, handwritten notes, telephone logs, telephone scripts, recordings, receipt books, ledgers, personal and business cancelled checks and check registers, bank statements, appointment books, copies of federal, state or local business or personal income or property tax returns, and other Documents or records of any kind that relate to any Defendant's services, programs or products, or to the finances and Assets of any Defendant.

X.

MAINTENANCE OF BUSINESS RECORDS

IT IS FURTHER ORDERED that Defendants, and their Representatives, whether acting directly or through any entity, corporation, subsidiary, division, affiliate or other device, are hereby temporarily restrained and enjoined from:

- A. Failing to create and maintain Documents that, in reasonable detail, accurately, fairly, and completely reflect Defendants' incomes, disbursements, transactions, and use of money with respect to their publications, products, goods, services, or programs; and
- B. Creating, operating, or exercising any control over any business entity, including any partnership, limited partnership, joint venture, sole proprietorship, corporation or limited liability company, without first providing counsel for Plaintiffs 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 and employees; and (4) a detailed description of the business entity's intended or actual activities.

XI.

CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Defendants and their successors, assigns, officers, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service, facsimile transmission, email, or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate or other device, are hereby temporarily restrained and enjoined

from using, selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, credit card number, bank account number, e-mail address, or other identifying information of any person who paid money to the Defendants for grant-related publications, products, goods, services, or programs, or who were contacted or are on a list to be contacted by the Defendants; *provided* that the 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 Larry E. Cook is appointed temporary receiver for the Receivership Defendants. 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. Unless otherwise ordered, the administration of the Receivership shall be governed by Fed. R. Civ. P. 66, and D. Kan Rule 66.1.

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. *Provided, however,* that the Receivership Defendants'

attorneys of record shall not be removed absent Order of the Court;

- 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 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 each location from which the Receivership Defendants operate their business. Such steps may include, but are not limited to, 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, but not limited to, 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. *Provided, however,* that this information shall not be

obtained from the Receivership Defendants' counsel of record in this case absent prior Order of the Court; (4) photographing and video taping 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, but not limited to, 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 Marshal 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. 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, but not limited to, obtaining an accounting of the assets and preventing the unauthorized transfer, withdrawal, or misapplication of assets;
- E. Enter into contracts and purchase insurance as advisable or necessary;
- F. 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;

- G. 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 but is not limited to retaining, hiring, or dismissing any employees, independent contractors, or agents. *Provided, however,* that the Receivership Defendants' counsel of record shall not be dismissed absent prior Order of the Court;
- H. Choose, engage, and employ attorneys, accountants, appraisers, 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;
- I. 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;
- J. Suspend business operations of the Receivership Defendants if in the judgment of the Receiver such operations cannot be continued legally and profitably;
- K. 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 but not limited to, actions challenging fraudulent or voidable transfers;

- L. 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;
- M. Issue subpoenas to obtain documents and records pertaining to the Receivership, and conduct discovery in this action on behalf of the Receivership estate;
- N. 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;
- O. Maintain accurate records of all receipts and expenditures incurred as Receiver; and
- P. Cooperate with reasonable requests for information or assistance from any state or federal law enforcement agency.

XIV.

TRANSFER OF RECEIVERSHIP PROPERTY TO RECEIVER

IT IS FURTHER ORDERED that Defendants, their Representatives, and any other person or entity with possession, custody or control of property of or records relating to the Receivership Defendants shall upon notice of this Order by personal service or otherwise immediately notify the Receiver of, and, upon receiving a request from the Receiver, immediately transfer or deliver to the Receiver possession, custody, and control of, the following:

- A. All assets of the Receivership Defendants;
- B. All documents of the Receivership Defendants, including, but not limited to, 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;
- C. All computers and data in whatever form used to conduct the business of the Receivership Defendants;
- D. All assets belonging to other persons or entities whose interests are now under the direction, possession, custody, or control of, the Receivership Defendants; and
- E. All keys, codes, and passwords necessary to gain or to secure access to any assets or documents of the Receivership Defendants, including, but not limited to, access to their business premises, means of communication, accounts, computer systems, or other property.

In the event that 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 Marshal or any sheriff or deputy sheriff of any county, or any other federal or state law enforcement officer, to seize the asset, document, or other item covered by this Section XIII 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; and
- B. A list of all agents, employees, officers, servants or those persons in active concert and participation with the Individual Defendants and Receivership Defendants, who have been associated 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, but not be limited to: 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, but are not limited to, banks, broker-dealers, savings and loans, escrow agents, title companies, commodity trading companies, precious metals dealers and other financial institutions and depositories of any kind, and all third-party billing agents, credit card processors, merchant banks, common carriers, and telecommunications companies that have transacted business with the Receivership Defendants.

XVII.

INTERFERENCE WITH THE RECEIVER

IT IS FURTHER ORDERED that Defendants and their Representatives 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;
- C. Transferring, receiving, altering, selling, encumbering, pledging, 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; and
- D. 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.

XVIII.

STAY OF ACTIONS AGAINST RECEIVERSHIP DEFENDANTS

IT IS FURTHER ORDERED that, 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, but not limited to:

- A. Petitioning, or assisting in the filing of a petition, that would cause any Receivership Defendant to be placed in bankruptcy;
- B. 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;
- C. 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; 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;
- D. 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: (i) the commencement or continuation of a criminal action or proceeding; (ii) the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power; or (iii) 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, 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 \$50,000.00 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.

ACCESS TO BUSINESS OFFICES AND RECORDS

IT IS FURTHER ORDERED that, in order to allow Counsel for the Plaintiffs and the Receiver to preserve assets and evidence relevant to this action, and to expedite discovery, Plaintiffs and the Receiver, and their representatives, agents, and assistants, shall have

immediate access to the business premises of the Receivership Defendants. The Plaintiffs and the Receiver, and their representatives, agents, and assistants, are authorized to employ the assistance of the U.S. Marshal's office and other law enforcement officers as they deem necessary to effect service and to implement peacefully the provisions of this Order. The Plaintiffs and the Receiver, and their representatives, agents, and assistants, are authorized to remove documents from the Receivership Defendants' premises in order that they may be inspected, inventoried, and copied for the purpose of preserving discoverable material in connection with this action.

Furthermore, 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.

XXII.

DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that Defendants shall immediately provide a copy of this Order to each affiliate, sales entity, successor, assign, member, officer, employee, agent, servant, attorney, subsidiary, division, and representative of any Defendant, and shall, within five (5) calendar days from the date of entry of this Order, provide counsel for the Plaintiffs with a sworn statement that Defendants have complied with this provision of the Order, which statement shall include the names and addresses of each such person or entity who received a copy of this Order.

XXIII.

SERVICE ON FINANCIAL INSTITUTIONS, ENTITIES OR PERSONS

IT IS FURTHER ORDERED that copies of this Order may be served by any means, including facsimile transmission, email, and overnight delivery service, upon any financial institution or other entity or person that may have possession, custody, or control of any Documents or Assets of any Defendant, 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. For purposes of service on anyone in possession of records, Assets, property or property rights, actual notice of this Order shall be deemed complete upon service of pages 1 through 32 of this Order.

XXIV.

LIMITED EXPEDITED ASSET DISCOVERY

IT IS FURTHER ORDERED, that, pursuant to Fed. R. Civ. P. 26(d)(1), the parties are granted leave at any time after service of this Order to conduct limited discovery of Defendants, or any person or entity, for the purpose of discovering the nature, location, status, and extent of Assets and Documents related to, or derived from, the sale of Defendants' programs, services or products. Counsel for the Plaintiffs may:

- A.** Take the deposition of any person or entity;
- B.** Serve interrogatories, requests for admission or requests for production of Documents on any Defendant; and
- C.** Demand production of Documents from any person or entity.

Provided, that forty-eight (48) hours notice shall be deemed sufficient for any such

deposition and forty-eight (48) hours notice shall be deemed sufficient for production of any Documents or responses to interrogatories or requests for admission;

Provided further, that depositions may only be conducted on business days unless the parties agree otherwise;

Provided further, that, pursuant to Fed. R. Civ. P. 26(b)(2)(A), any discovery taken or propounded by the parties pursuant to this Paragraph is in addition to, and not subject to, any limits on the quantity of permissible discovery provided for in the Federal Rules of Civil Procedure or the rules of this Court.

XXV.

GENERAL SERVICE OF ORDER

IT IS FURTHER ORDERED that pursuant to Fed. R. Civ. P. 4(c)(2), this Order and the initial papers filed in this matter may be served on Defendants, upon the business premises of Defendants, and upon any financial institution or other entity or person that may have possession, custody or control of any Documents or Assets of any Defendant, or that may be subject to any provision of this Order, by employees of the Plaintiffs, by employees of any other law enforcement agency, by any agent of the Plaintiffs, or by any agent of any process service retained by the Plaintiffs.

XXVI.

CORRESPONDENCE

IT IS FURTHER ORDERED that, for the purpose of this Order, all correspondence between counsel between counsel and the Court shall be conducted by electronic mail. Service of pleadings on counsel for the Plaintiffs shall be sent to the addresses listed on the Complaint

filed in this matter. All pleadings shall also be filed and served electronically according to the local rules and the Civil Administrative Procedures of this District.

XXVII.

PRELIMINARY INJUNCTION HEARING

IT IS FURTHER ORDERED that, pursuant to Fed. R. Civ. P. 65(b), Defendants shall appear before this Court on the 12th day of August, 2009, at 1:30 p.m., before the Honorable Julie A. Robinson, Courtroom 401, in the UNITED STATES DISTRICT COURT, DISTRICT OF KANSAS, Topeka, Kansas to show cause, if there is any, why this Court should not enter a Preliminary Injunction pending final ruling on the Complaint against Defendants, enjoining them from further violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), the TSR, the Kansas Consumer Protection Act, the Minnesota Uniform Deceptive Trade Practices Act, the Minnesota Prevention of Consumer Fraud Act, and the North Carolina Unfair and Deceptive Trade Practices Act, continuing the freeze of their Assets, continuing the Receivership, and imposing such additional relief as may be appropriate.

XXVIII.

PRELIMINARY INJUNCTION HEARING PROCEDURE

IT IS FURTHER ORDERED that:

- A. Plaintiffs, in support of their application for a Preliminary Injunction, may submit supplemental evidence obtained subsequent to the filing of its application for a TRO, as well as a supplemental memorandum. Plaintiff shall file and serve any supplemental evidence by no later than 5:00 p.m. on July 30, 2009. Such documents shall be served on each Defendant by electronically filing the documents with this Court;
- B. Defendants shall file and serve any opposition to the issuance of a Preliminary

Injunction, including any declarations, exhibits, memoranda, or other evidence on which they intend to rely, and objections to any evidence submitted by Plaintiff, no later than 5:00 p.m. on August 5, 2009. Such documents shall be served on each Plaintiff by electronically filing the documents with this Court; and

- C. Plaintiffs may file and serve any reply to Defendants' opposition by no later than 5:00 p.m. on August 7, 2009.

XXIX.

DURATION OF TEMPORARY RESTRAINING ORDER

IT IS FURTHER ORDERED that this Temporary Restraining Order shall expire within ten (10) days after entry, as computed by Fed. R. Civ. P. 6, unless within such time, the Order, for good cause shown, is extended for an additional period not to exceed ten (10) days or unless it is further extended pursuant to Fed. R. Civ. P. 65 or by stipulation of counsel.

XXX.

RETENTION OF JURISDICTION

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

SO ORDERED.

Dated: July 24, 2009 (2:41pm CDT)

S/ Julie A. Robinson
JULIE A. ROBINSON
UNITED STATES DISTRICT JUDGE