

United States District Court  
Middle District of Tennessee  
Nashville Division

Federal Trade Commission, and

State of Tennessee, *ex rel.*  
Robert E. Cooper, Jr., Attorney General and  
Reporter,

Plaintiffs,

v.

United States Benefits, LLC, a limited liability  
company, also d/b/a United States Health, United  
Benefits of America, LLC, UBA, United Benefits,  
United Health Benefits, Health Care America,  
HCA, National Benefits of America, Insurance  
Specialty Group, and Adova Health,

Timothy Thomas, individually and as an officer  
of United States Benefits, LLC, also d/b/a United  
States Health, United Benefits of America, LLC,  
UBA, United Benefits, United Health Benefits,  
Health Care America, HCA, National Benefits of  
America, Insurance Specialty Group, and Adova  
Health,

Defendants, and

Kennan Dozier, also d/b/a Kennan Dozier  
Thomas, Accentuate Designs, and Accentuate  
Your Home, LLC,

Relief Defendant.

**Case No. 3-10 0733**

**STIPULATED  
PRELIMINARY INJUNCTION**

Plaintiffs Federal Trade Commission and the State of Tennessee (“Plaintiffs”) filed a Complaint for a 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 the Tennessee Consumer Protection Act of 1977 (“TCPA”), Tenn. Code Ann. § 47-18-101, *et seq.* [Docket Entry 1]. In addition, Plaintiffs applied *ex parte* for a Temporary Restraining Order pursuant to Rule 65 of the Federal Rules of Civil Procedure [Docket Entry 3]. On August 4, the Court entered a TRO [Docket Entry 12]. The parties agree to the entry of this Stipulated Preliminary Injunction, which shall remain in effect until this Court’s determination of the merits of this action, or until otherwise modified, and good cause appearing. The Court therefore finds as follows:

#### FINDINGS

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

2. Plaintiffs have served process on Defendants United States Benefits, LLC, Timothy Thomas, and Relief Defendant Kennan Dozier (“Defendants”);

3. There is good cause to believe that Defendants have engaged in and are likely to engage in acts that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), the Commission’s Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310, and the TCPA, Tenn. Code Ann. § 47-18-101, *et seq.*, and that Plaintiffs are likely to prevail on the merits of this action;

4. There is good cause to believe that Defendants have represented, directly or indirectly, expressly or by implication, to consumers that they sell major medical health

insurance;

5. There is good cause to believe that Defendants' claims are false because they do not sell major medical health insurance;

6. There is good cause to believe that Defendants' misrepresentations that they sell major medical health insurance are deceptive in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a);

7. There is good cause to believe that Defendants' misrepresentations that they sell major medical health insurance are deceptive telemarketing acts or practices that violate the TSR, 16 C.F.R. § 310.3(a)(2)(iii);

8. There is good cause to believe that Defendants have engaged in, or caused others to engage in, initiating outbound telephone calls to phone numbers on the National Do Not Call Registry in violation of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B);

9. There is good cause to believe that, in violation of the TSR, 16 C.F.R. § 310.4(d) and 16 C.F.R. § 310.4(b)(1)(v)(B)(ii), Defendants have made, or have caused a telemarketer to make, outbound telephone calls, on or after December 1, 2008, that deliver prerecorded messages, which fail to disclose promptly and in a clear and conspicuous manner to the person receiving the call (A) the identity of the seller; or (B) the nature of the goods or services;

10. There is good cause to believe that, in violation of the TSR, 16 C.F.R. § 310.4(b)(1)(v)(A), Defendants have initiated, or caused a telemarketer to initiate, outbound telephone calls that delivered prerecorded messages when the persons to whom these telephone calls were made had not expressly agreed, in writing, to authorize the seller to place prerecorded calls to such person;

11. There is good cause to believe that Defendants' misrepresentations that they sell major medical health insurance are unfair or deceptive acts in violation of Tenn. Code Ann. § 47-18-104(a), (b)(1), (b)(2), (b)(3), (b)(5), (b)(7), (b)(12), (b)(14), (b)(19), (b)(22), and (b)(27);

12. There is good cause to believe that Defendants will continue to make misrepresentations that they sell major medical health insurance and place illegal phone calls in the future unless they are immediately restrained and enjoined from doing so by Order of this Court;

13. There is good cause for the Court to continue the asset freeze against Defendants. Based on the evidence set forth in Plaintiffs' memorandum of law in support of their *ex parte* motion for TRO and order to show cause [Docket Entry 4], Plaintiffs are likely to be able to prove that Defendants have generated significant revenues from activity that violates the FTC Act, TSR, and the TCPA. An asset freeze as to Defendants is necessary in order to preserve the possibility of complete and meaningful relief in the form of consumer redress and/or disgorgement at the conclusion of this litigation;

14. There is good cause to believe that the definition of "Receivership Defendant" set forth in the TRO should be expanded to include Defendant Timothy Thomas and Relief Defendant Kennan Dozier;

15. Weighing the equities and considering Plaintiffs' likelihood of ultimate success, a preliminary injunction that enjoins Defendants from making misrepresentations, in connection with selling benefits association memberships and/or discount products, continues the freeze as to all of their assets, preserves business records, and provides other equitable relief is in the public interest; and

16. No security is required of any agency of the United States for issuance of a restraining order. Fed. R. Civ. P. 65(c). Under the TCPA, § 47-18-108(a)(4), “[t]he courts are authorized to issue orders and injunctions to restrain and prevent violations of this part, and such orders and injunctions shall be without bond.”

#### DEFINITIONS

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

1. “Assets” means any legal or equitable interest in, right to, or claim to, any real or personal property, including, without limitation, chattels, goods, instruments, equipment, fixtures, general intangibles, leaseholds, mail or other deliveries, inventory, checks, notes, accounts, credits, contracts, receivables, shares of stock, and cash, wherever any such asset is located, whether in the United States or abroad.

2. “Corporate Defendant” means United States Benefits, LLC, and any affiliates, fictitious names, d/b/a’s (United States Health, United Benefits of America, LLC, UBA, United Benefits, United Health Benefits, Health Care America, HCA, National Benefits of America, Insurance Specialty Group, and Adova Health), subsidiaries, successors, or assigns of the aforementioned entities.

3. “Defendant” or “Defendants” means (a) the Corporate Defendant; (b) the Individual Defendant; and (c) the Relief Defendant.

4. The term “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, 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.

5. “Individual Defendant” means Timothy Thomas, individually and as an officer of the Corporate Defendant.

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

7. “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.

8. “Plaintiffs” means the Federal Trade Commission and the State of Tennessee.

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

10. “Receivership Defendants” means (a) the Corporate Defendant; (b) the Individual Defendant; and (c) the Relief Defendant.

11. “Relief Defendant” means Kennan Dozier, also d/b/a Kennan Dozier Thomas, Accentuate Designs, and Accentuate Your Home, LLC.

12. “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.

13. “Telemarketing” means any plan, program or campaign (whether or not covered by the TSR, 16 C.F.R. Part 310) that is conducted to induce the purchase of goods or services by means of the use of one or more telephones.

## ORDER

### I. PROHIBITED BUSINESS ACTIVITIES

IT IS THEREFORE ORDERED that Defendants and their Representatives, in connection with the marketing of goods or services, are hereby preliminarily restrained and enjoined from making, or assisting in the making of, expressly or by implication, any false or misleading statement or representation of material fact, including, but not limited to, representing that the goods or services they are selling are major medical health insurance, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), as well as Tenn. Code Ann. §§ 47-18-104(a), (b)(1), (b)(2), (b)(3), (b)(5), (b)(7), (b)(12), (b)(14), (b)(19), (b)(22), and (b)(27).

### II. PROHIBITIONS AGAINST DECEPTIVE AND ABUSIVE TELEMARKETING PRACTICES

IT IS FURTHER ORDERED that, in connection with telemarketing, Defendants and their Representatives are hereby preliminarily restrained and enjoined from engaging in or causing or assisting other persons to engage in, violations of any provision of the TSR, including, but not limited to, the following:

A. Misrepresenting, directly or by implication, in the sale of goods or services, any material aspect of the performance, efficacy, nature, or central characteristics of the goods or services that are the subject of a sales offer, in violation of Section 310.3(a)(2)(iii) of the TSR, 16 C.F.R. § 310.3(a)(2)(iii), and of Tenn. Code Ann. § 47-18-104(a), (b)(5), and (b)(27);

B. Initiating any outbound telemarketing call to a person's telephone number on the National Do Not Call Registry of persons who do not wish to receive outbound telephone calls to induce the purchase of goods or services, in violation of Section 310.4(b)(1)(iii)(B) of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B), unless:

- (1) the seller has obtained the express agreement, in writing, of such person to place calls to that person. Such written agreement shall clearly evidence such person's authorization that calls made by or on behalf of a specific party may be placed to that person, and shall include the telephone number to which the calls may be placed and the signature of that person; or
- (2) the seller has an established business relationship with such person and that person has not previously stated that he or she does not wish to receive outbound telemarketing calls made by or on behalf of Defendants; and

C. Failing in any outbound telephone call to disclose truthfully, promptly, and in a clear and conspicuous manner (a) the identity of the seller and (b) the nature of the goods or service, in violation of Section 310.4(d)(1) and (3) of the TSR, 16 C.F.R. § 310.4(d)(1) and (3), and Section 310.4(b)(1)(v)(B)(ii) of the TSR, 16 C.F.R. § 310.4(b)(1)(v)(B)(ii); and

D. Initiating any outbound call that delivers a prerecorded message to induce the purchase of any good or service, in violation of Section 310.4(b)(1)(v)(A) of the TSR, 16 C.F.R. § 310.4(b)(1)(v)(A), unless the seller has obtained from the recipient of the call an express agreement, in writing, that evidences the willingness of the recipient of the call to receive calls that deliver prerecorded messages by or on behalf of a specific seller.

### III. ASSET FREEZE

IT IS FURTHER ORDERED that Defendants and their Representatives are hereby preliminarily restrained and enjoined from:

- A. Transferring, liquidating, converting, encumbering, pledging, loaning, selling,

concealing, dissipating, disbursing, assigning, spending, 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, 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 Defendant, in whole or in part; (2) held for the benefit of any Defendant; (3) in the actual or constructive possession of any Defendant; or (4) owned, controlled by, or in the actual or constructive possession 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 or 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 metals dealer, or other financial institution or depository of any kind;

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

C. Obtaining a personal or secured loan encumbering the assets of any Defendant;  
and

D. Incurring liens or other encumbrances on real property, personal property or other assets titled in the name, singly or jointly, of any Defendant.

The assets affected by this Section III shall include: (1) all assets of any Defendant 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 Plaintiffs' Complaint.

IT IS FURTHER ORDERED that Defendants shall be entitled to an immediate one-time

release of \$30,000 for attorneys' fees, and the Individual Defendant and Relief Defendant shall be entitled to no more than a combined total of \$2,000 per month in living expenses, DIRECTLY PAYABLE TO MICHAEL ABELOW, OF THE LAW FIRM SHERRARD & POE, P.L.C., 424 CHURCH STREET, SUITE 2000, NASHVILLE, TN 37219, without further order of this Court.

IT IS FURTHER ORDERED that the Receiver shall directly pay certain regular or monthly expenses of the Individual Defendant and Relief Defendant, including but not limited to: (1) the mortgage payment on the residence; (2) real property taxes on the residence; (3) HOA dues for the residence; (4) contracted maintenance fees and charges for the residence; (5) utility bills for services at the residence; (6) the car payments on the Lexus and the Hummer; and (7) all insurance premiums due on existing policies, including policies for homeowners, car, life, and medical/health insurance.

IT IS FURTHER ORDERED that the Receiver may pay, at his discretion or by further order of the Court, other expenses brought to the attention of the Receiver, if the payment of those expenses preserves or protects assets in the Receivership estate.

#### IV. RETENTION OF ASSETS AND RECORDS BY FINANCIAL INSTITUTIONS

IT IS FURTHER ORDERED that, pending determination of Plaintiffs' request for a preliminary injunction, any financial or brokerage institution, business entity, or person served with a copy of this Order that holds, controls or maintains custody of any account or asset of any Defendant 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 or by request of the Receiver;

B. Deny any person, except the Receiver acting pursuant to Section XI 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 Defendant;

C. If it has not already done so in compliance with the Temporary Restraining Order previously issued in this case, provide Plaintiffs' counsel 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 any Defendant, or held on behalf of, or for the benefit of any Defendant;
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 Defendant; and

D. Upon request by Plaintiffs, promptly provide Plaintiffs with copies of all records or other documentation pertaining to each 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.

#### V. PRESERVATION OF RECORDS

IT IS FURTHER ORDERED that Defendants and their Representatives are hereby preliminarily restrained and enjoined from:

A. Destroying, erasing, mutilating, concealing, altering, transferring or otherwise disposing of, in any manner, directly or indirectly, any documents that relate to the business, business practices, assets, or business or personal finances of any Defendant; and

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

#### VI. FINANCIAL DISCLOSURES

IT IS FURTHER ORDERED that each Defendant, within forty-eight (48) hours of service of this Order, if it has not already done so in compliance with the Temporary Restraining Order previously issued in this case, shall prepare and deliver to counsel for Plaintiffs and to the Receiver completed financial statements on the forms attached to this Order as Attachment A (Financial Statement of Individual Defendant) for themselves individually, and Attachment B (Financial Statement of Corporate Defendant) for each business entity under which they conduct business or of which they are an officer, 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: (a) titled in the name of such Defendant, jointly,

severally, or individually; (b) held by any person or entity for the benefit of such Defendant; or (c) under the direct or indirect control of such Defendant.

#### VII. CONSUMER CREDIT REPORTS

IT IS FURTHER ORDERED that pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(1), any consumer reporting agency may furnish a consumer report concerning any Defendant, to Plaintiffs.

#### VIII. FOREIGN ASSET REPATRIATION

IT IS FURTHER ORDERED that within five (5) business days following the service of this Order, each Defendant, if it has not already done so in compliance with the Temporary Restraining Order previously issued in this case, shall:

A. Provide Plaintiffs 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 Defendant; or (2) held by any person or entity for the benefit of any Defendant; or (3) under the direct or indirect control, whether jointly or singly, of any Defendant;

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 Defendant; or (2) held by any person or entity, for the benefit of any Defendant; or (3) under the direct or indirect control of any Defendant, whether jointly or singly;

C. Provide Plaintiffs access to all records of accounts or assets of any Defendant 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.

#### IX. INTERFERENCE WITH REPATRIATION

IT IS FURTHER ORDERED that Defendants and their Representatives are hereby preliminarily 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 VIII of this Order, including but not limited to:

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 VIII 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 VIII of this Order.

#### X. APPOINTMENT OF TEMPORARY RECEIVER

IT IS FURTHER ORDERED that Robert H. Waldschmidt 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.

#### XI. 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 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 each location from which the Receivership Defendants operates its 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; (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, highway patrol, 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 Corporate Defendant 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;

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 Corporate Defendant, or permanently close the Corporate Defendant's business premises located at 1283 Murfreesboro Road, Suite 420, Nashville, TN 37217, if in the judgment of the Receiver, the Corporate Defendant's 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.

## XII. 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. Provided, however, that the Receiver may authorize, in writing, the Individual Defendant and Relief Defendant to maintain possession of particular assets of the Individual Defendant and Relief Defendant. The Receiver may revoke such authorization at any time. Provided, further, that the Receiver is not obligated to pay the rent, mortgage, or other obligations of the Individual Defendant and Relief Defendant.

If it has not already done so in compliance with the Temporary Restraining Order previously issued in this case, any person or entity (including any bank, financial institution, benefit association, or company doing business with the (1) Corporate Defendant, (2) Individual Defendant, or (3) Relief Defendant, which holds funds in the name of any of said Defendants, or which owes money to any of said Defendants, shall, within five (5) days of service of this Order, pay to the Receiver the total balance of all funds, together with an accounting of the source of

said funds and/or any debts or credits connected with the balance being paid to the Receiver. This directive shall be continuing in nature, and any funds which subsequently become due to any of said Defendants by any company or entity, shall be tendered to the Receiver within five (5) days of becoming due, until this Court directs otherwise.

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 XII, 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 XII and to deliver it to the Receiver.

### XIII. PROVISION OF INFORMATION TO RECEIVER

IT IS FURTHER ORDERED that Defendants, if they have not already done so in compliance with the Temporary Restraining Order previously issued in this case, 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 the Receivership Defendants, or by any person or entity other than the Receivership Defendants; and

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

#### XIV. 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, common carriers, and other telecommunications companies, that have transacted business with the Receivership Defendants.

#### XV. 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.

#### XVI. 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 the Receivership Defendants 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.

#### XVII. 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.

#### XVIII. RECEIVER'S BOND

IT IS FURTHER ORDERED that the Receiver, if it has not already done so in compliance with the Temporary Restraining Order previously issued in this case, shall file with the Clerk of this Court a bond in the sum of \$50,000 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.

#### XIX. ACCESS TO BUSINESS OFFICES AND RECORDS

IT IS FURTHER ORDERED that, in order to allow Plaintiffs and the Receiver to preserve assets and evidence relevant to this action, and to expedite discovery, Plaintiffs and Receiver, and their representatives, agents, and assistants, shall have immediate access to the business premises of the Receivership Defendants. Such locations include, but are not limited to Airways Plaza, 1283 Murfreesboro Road, Suite 420, Nashville, TN 37217, and 301 Plus Park Boulevard, Suite 500, Nashville, TN 37217. 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. 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.

## XX. COMMENCEMENT OF DISCOVERY

IT IS FURTHER ORDERED that pursuant to Federal Rules of Civil Procedure 30(a), 31(a), 34, and 45, and notwithstanding the provisions of Federal Rules of Civil Procedure 26(d) and (f), 30(a)(2)(A)-(C), and 31(a)(2)(A)-(C), the parties are granted leave, at any time after entry of this Order to commence discovery.

## XXI. SERVICE BY FACSIMILE AUTHORIZED

IT IS FURTHER ORDERED that copies of this Order may be served by any means, including facsimile transmission, 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.

## XXII. 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 ten (10) days from the date of entry of this Order, provide Plaintiffs with a sworn statement that: (A) confirms that Defendants have provided copies of the Order as required by this paragraph; and (B) 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.

XXIII. TENNESSEE CONSUMER PROTECTION ACT ORDER

IT IS FURTHER ORDERED that this is an Order issued pursuant to Tenn. Code Ann. § 47-18-108(a) and (b) subject to the penalties set forth in Tenn Code Ann. § 47-18-108(c) and any other penalties, remedies and sanctions available at law.

XIV. 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 the Defendants, upon the business premises of the Defendants, and upon any financial institution or other entity or person that may have possession, custody or control of any Documents or Assets of the Defendants, or that may be subject to any provision of this Order, by employees of the FTC, by employees of any other law enforcement agency, by any agent of the FTC, or by any agent of any process service retained by the FTC.

//  
//  
//  
//  
//  
//  
//  
//  
//

XV. SERVICE UPON PLAINTIFFS

IT IS FURTHER ORDERED that with regard to any correspondence or pleadings related to this Order, service on Plaintiffs shall be performed by facsimile transmission to (202) 326-3395 and (615) 532-2590, by hand delivery, or by overnight mail delivery to the attention of:

Arturo DeCastro  
Kelly Horne  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Room 288  
Washington, D.C. 20580  
Phone: (202) 326-2747 (DeCastro)  
Phone: (202) 326-3031 (Horne)  
Fax: (202) 326-3395

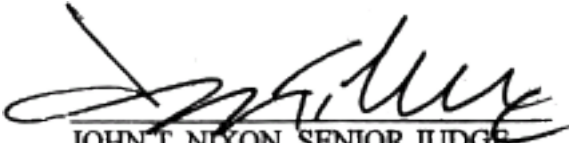
Olha N.M. Rybakoff  
T. Jay Warner  
Assistant Attorneys General  
Office of the Attorney General  
Consumer Advocate and Protection Division  
425 Fifth Avenue North, 3rd Floor  
Nashville, TN 37243  
Phone: (615) 532-2590 (Rybakoff)  
Phone: (615) 532-3382 (Warner)  
Fax: (615) 532-2590

#### XXVI. RETENTION OF JURISDICTION

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

SO ORDERED.

DATED this 19th day of August, 2010 at 1:50 pm.

  
JOHN T. NIXON, SENIOR JUDGE  
UNITED STATES DISTRICT COURT