UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

FEDERAL TRADE COMMISSION, **Plaintiff,** **v.** **LIBERTY SUPPLY CO., a corporation, also d/b/a Omni Services;** **MIA L. MCCRARY, individually and as an officer of Liberty Supply Co., also d/b/a Omni Services;** **JOHN B. HART, individually and as an officer of Liberty Supply Co., also d/b/a Omni Services;** **Defendants, and** **NOR-JAY ENTERPRISES, INC., a corporation,** **Relief Defendant.**	**Case No.** 4:15cv829 **FILED UNDER SEAL**

TEMPORARY RESTRAINING ORDER

Plaintiff Federal Trade Commission ("FTC") filed its Complaint for Permanent Injunction and Other Equitable Relief against Liberty Supply Co., doing business as Omni Services, Mia L. McCrary, John B. Hart, and Nor-Jay Enterprises, Inc., under Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101-6108, and the Unordered Merchandise Statute, 39 U.S.C. § 3009, and moved for an *ex parte* temporary restraining order, asset freeze, and order to show cause why a preliminary injunction should not

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DAVID A. O'TOOLE, CLERK
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
By: Becca Terrell

issue under Rule 65 of the Federal Rules of Civil Procedure. The court has considered the Complaint, declarations, exhibits, and memorandum of law filed in support, and finds that:

FINDINGS

1. This Court has jurisdiction over the subject matter of this case, and there is good cause to believe it will have jurisdiction over the parties.

2. This Court is a proper venue for this case.

3. The Complaint states a claim upon which relief may be granted under Sections 5(a), 13(b), and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 53(b), and 57(b).

4. Section 13(b) of the FTC Act allows this Court to grant the FTC a preliminary injunction upon a showing that, considering the FTC's ultimate likelihood of success and weighing the equities, a preliminary injunction is in the public interest. 15 U.S.C. § 53(b). Section 19 of the FTC Act allows this Court to grant such relief as the Court finds necessary to redress injury to consumers resulting from the violation of any rule enforced by the FTC. 15 U.S.C. § 57.

5. In deciding whether to grant preliminary relief, the court must: (a) consider the likelihood that the FTC will ultimately succeed on the merits; and (b) balance the equities. *FTC v. Sw. Sunsites, Inc.*, 665 F.2d 711, 714 (5th Cir. 1982). The FTC need not show irreparable harm in this matter, as irreparable injury may be presumed in a statutory law enforcement action. *See EEOC v. Cosmair, Inc.*, 821 F.2d 1085, 1090 (5th Cir. 1987).

6. The FTC has shown a likelihood that it will ultimately succeed on the merits. Based upon the evidence presented, there is good cause to believe that Defendants have violated Section 5(a) of the FTC Act, in connection with the marketing, sale, and offering for sale of nondurable office supplies to small business consumers nationwide, by:

a) Failing to disclose or disclose adequately (i) that a package of items contains numerous units; and (ii) the total amount Defendants will charge to consumers.

b) Misrepresenting that (i) consumers agreed to pay total cost of goods shipped in the amount billed by Defendants; and (ii) consumers ordered the quantity of goods that Defendants shipped.

7. Based upon the evidence presented, there is good cause to believe that Defendants have violated the Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310, in connection with the telemarketing of nondurable office supplies to small business consumers nationwide, by:

a) Failing to disclose truthfully, in a clear and conspicuous manner, before the customer consents to pay for the goods or services offered, the total cost to purchase and quantity of goods that are the subject of the sales offer; and

b) Misrepresenting the total cost to purchase and the quantity of goods that are the subject of the sales offer.

8. Based upon the evidence presented, there is good cause to believe that, in connection with the marketing, sale, and offering for sale of nondurable office supplies, Defendants have violated the Unordered Merchandise Statute, 39 U.S.C. § 3009, by mailing unordered office supplies to consumers that were not marked as free samples and by sending consumers invoices attempting to collect payment on those shipments.

9. A proper balance of the equities in this matter favors the FTC:

a) Based upon the evidence presented, there is good cause to believe that:

i) Defendants are violating and, unless enjoined by this Court, will continue to violate Section 5(a) of the FTC Act, the TSR, and the Unordered Merchandise Statute;

ii) Consumers nationwide have suffered and, unless enjoined by this Court, will continue to suffer harm including economic injury as a result of Defendants' violations of Section 5(a) of the FTC Act, the TSR, and the Unordered Merchandise Statute;

iii) Defendants have received and, unless enjoined by this Court, will continue to receive, ill-gotten gains as a result of their violations of Section 5(a) of the FTC Act, the TSR, and the Unordered Merchandise Statute;

b) This Court finds that the public interest is served by:

i) Enjoining deceptive or unfair acts or practices that violate the law;

ii) Maintaining the *status quo* over assets and business documents relating to Defendants' alleged law violations until a fair and impartial hearing may be held;

iii) Preserving the Court's ability to award full and effective final relief at trial or other disposition of this matter;

c) This Court further finds that, under the facts presented, the private interests of Defendants do not outweigh the public interest in enjoining future law violations, protecting assets or documents, or preserving the court's ability to award effective full and final relief.

10. The Federal Rules of Civil Procedure permit this Court to issue an *ex parte* temporary restraining order where specific facts clearly show a likelihood that immediate and irreparable injury, loss, or damage will result if notice is provided. Fed. R. Civ. P. 65(b)(1). The FTC has established that Defendants are violating and, unless enjoined by this Court, will continue to violate Section 5(a) of the FTC Act, the TSR, and the Unordered Merchandise

Statute. Irreparable injury may be presumed in a statutory law enforcement action. *EEOC v. Cosmair, Inc.*, 821 F.2d 1085, 1090 (5th Cir. 1987); *see also Jones v. Dallas County*, 2013 U.S. Dist. LEXIS 112864, at *8 (N.D. Tex. Aug. 9, 2013) ("irreparable harm need not be proven if (1) the injunctive relief is sought pursuant to statute by the appropriate government officer or agency and (2) all of the statutory prerequisites are met[.]") Nonetheless, this Court finds that Plaintiff has shown that Defendants are likely to dissipate assets or destroy business documents, which would cause immediate and irreparable injury, loss, or damage to this Court's ability to award effective final relief at trial or other disposition of this matter. In making this determination, the court relies upon the following:

a) Defendants have engaged in clandestine behavior that makes it more difficult for law enforcement and consumers to identify the company and its principals. Such behavior includes using aliases, using unmarked office and warehouse spaces, having unlisted phone numbers, and using P.O. Boxes for communications with consumers;

b) Defendants conceal their assets by emptying their corporate operating accounts sweeping the money into an apparent shell company several times per month; and

c) In the FTC's law enforcement experience, defendants who receive notice of the filing of an action by the FTC often attempt to immediately dissipate assets or destroy documents. The FTC has provided, in its Rule 65(b)(1)(B) declaration, numerous examples of defendants who have or have attempted to interfere with the court's ability to award full and effective final relief by dissipating assets or destroying documents. Such

conduct is likely in cases such as this, where defendants have generated millions of dollars using business practices permeated by deception.

11. The FTC has demonstrated that Relief Defendant Nor-Jay Enterprises, Inc. should be subject to the asset freeze because it receives 30-40% of Omni's cash flow, without appearing to provide legitimate goods or services to Omni.

12. Because the FTC is likely to ultimately succeed on the merits of its complaint, the balance of the equities tips in the FTC's favor, and immediate and irreparable harm, including the dissipation of assets, is probable absent immediate injunctive relief, this Court finds that an *ex parte* temporary restraining order with an asset freeze and receivership provisions is warranted.

13. The United States, its officers, and its agencies are not required to give security before issuance of a temporary restraining order. Fed. R. Civ. P. 65(c).

DEFINITIONS

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

A. **"Asset"** or **"Assets"** means any legal or equitable interest in, right to, or claim to any item of economic value, in whole or part, whether tangible or intangible, including, but not limited to, accounts, accounts receivable, cash, certificates of deposit, chattels, checks, contracts, credits, currency, fixtures, funds, equipment, income, intellectual property, inventory, instruments, investments, leaseholds, lines of credit, mail, notes, personal property, real property, revenues, securities, shares of stock, trusts, or any interest therein, whether located within or outside the United States.

B. **"Clear(ly) and conspicuous(ly)"** means that a required disclosure is difficult to miss (*i.e.*, easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:

1. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure is made in only one means.

2. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.

3. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.

4. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.

5. On a product label, the disclosure must be presented on the principal display panel.

6. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires the disclosure appears.

7. The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications.

8. The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.

9. When the representation or sales practice targets a specific audience, such as children, the elderly, or the terminally ill, "ordinary consumers" includes reasonable members of that audience.

C. **"Defendants"** means all of the Individual Defendants, the Corporate Defendant, , individually, collectively, or in any combination.

1. **"Individual Defendants"** means Mia L. McCrary and John B. Hart, by whatever other names each may be known.

2. **"Corporate Defendant"** means Liberty Supply Co., a corporation, also d/b/a Omni Services, and its successors and assigns, as well as any subsidiaries, fictitious business entities, or business names created or used by these entities, or by entities owned or controlled by the Individual Defendants, that are related to, or directly or indirectly receive funds from, the sale of nondurable office supplies.

D. **"Relief Defendant"** means Nor-Jay Enterprises, Inc., a corporation, and its successors and assigns.

E. **"Document"** means the complete original and any non-identical copy (whether different from the original because of notations or otherwise) of any electronically stored information or filed, graphic, imaged, printed, punched, texted, transcribed, typed, or written matter of every type and description, including, but not limited to, writings, drawings, graphs, charts, photographs, sound records, images, and other data or data compilations that are stored in any medium from which information can be obtained either directly or indirectly or, if necessary, translated into a reasonably usable form.

F. **"Financial institution"** means insured bank, commercial bank or trust company, private banker, agency or branch of a foreign bank whether located within or outside the United States, credit union, thrift institution, broker or dealer registered with the Securities and Exchange Commission, broker or dealer in securities or commodities, whether or not registered with the Securities and Exchange Commission, investment banker or investment company, currency exchange, issuer, redeemer, or cashier of travelers' checks, checks, money orders, or similar investments, operator of a credit card system, insurance company, dealer in precious metals, stones, or jewels, pawnbroker, loan or finance company, licensed sender of money or other person who engages as a business in the transmission of funds, telegraph company, persons involved in real estate closings and settlements, casino, or gaming establishment.

G. **"Material"** means likely to affect a person's choice of, or conduct regarding, goods or services.

H. **"Nondurable office supplies"** means consumables, or anything that when used, is depleted, and must be replaced, including, but not limited to, binder clips, highlighters, labels, markers, paper, paper clips, pens, pencils, Post-it notes, staples, and tape.

I. **"Person"** means a natural person, an organization, or other legal entity, including, an association, cooperative, corporation, limited liability company, partnership, proprietorship, or any group or combination acting as an entity.

J. **"Temporary Receiver"** means the receiver appointed in Section X of this Order and any deputy receivers that shall be named by the Temporary Receiver.

ORDER

I. PROHIBITED BUSINESS ACTIVITIES

IT IS HEREBY ORDERED that Defendants and their officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the marketing, selling, offering for sale or distribution of any goods or services, are temporarily restrained and enjoined from:

A. Failing to disclose truthfully, in a clear and conspicuous manner, all material terms of their offer, including:

1. that a package of items contains numerous units; and
2. the total amount that Defendants will charge to consumers.

B. Misrepresenting, expressly or by implication, any material fact, including that:

1. consumers agreed to pay the total cost of goods shipped in the amount billed by Defendants.
2. consumers ordered the quantity of goods Defendants shipped.
3. that any Defendant is doing business in any location other than Gainesville, Texas;

4. that any Defendant was referred to consumers by a local organization or public entity;

5. that any Defendant is calling to offer office supplies at a discounted or reduced price because it is going out of business, is merging offices or warehouses, or is in financial distress;

6. that any Defendant is calling to offer office supplies at a discounted or reduced price unless the total cost of the offer is clearly disclosed to the consumer; or

7. any other fact material to a consumer's decision whether to purchase any good or service.

C. Violating, or assisting others in violating, any provision of the TSR, 16 CFR Part 310, as presently promulgated or as it may hereafter by amended, including, but not limited to:

1. 16 CFR 310.3(a)(1)(i), by failing to disclose truthfully, in a clear and conspicuous manner and before a consumer agrees to pay for goods and services offered, material information about the total costs to purchase or receive or the quantity of goods or services offered, including, but not limited to, disclosing the cost of each item, the number of items ordered, and the total amount of the sale.

2. 16 CFR 310.3(a)(2)(i), by misrepresenting the total cost to purchase and the quantities of goods that are the subject of a sales offer.

D. Shipping any good without prior express consent of the recipient or without identifying the good as a free sample, or sending any billing or dunning communication, or otherwise communicating with consumers and requesting payment, for any good sent to consumer without prior express request or consent of the recipient.

II. PRESERVATION OF RECORDS AND REPORT OF NEW BUSINESS ACTIVITY

IT IS FURTHER ORDERED that the Defendants, and their officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, whether acting directly or indirectly, are temporarily restrained and enjoined from:

A. Failing to maintain accounts, bank statements, books, cash disbursements ledgers and source Documents, cash receipts ledgers, current accountants' reports, Documents indicating title to real or personal property, general journals, general ledgers, records, and any other data which, in reasonable detail, accurately and fairly reflect the disbursements, dispositions, incomes, transactions, and uses of Defendants' Assets;

B. Altering, concealing, destroying, erasing, mutilating, transferring, or otherwise disposing of, in any manner, directly or indirectly, any Documents that relate in any way to the business practices or business or personal finances of the Defendants; to the business practices or finances of entities directly or indirectly under the control of Defendants; or to the business practices or finances of entities directly or indirectly under common control with any other Defendant; and

C. Creating, operating, or exercising any control over any new business entity, whether newly formed or previously inactive, including any partnership, limited partnership, joint venture, sole proprietorship or corporation, without first providing the FTC with a written statement disclosing: (1) the name of the business entity; (2) the address, telephone number, e-mail address, and website address 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 activities.

III. PROHIBITION ON DISCLOSING CUSTOMER INFORMATION

IT IS FURTHER ORDERED that the Defendants, and their officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, whether acting directly or indirectly, are temporarily restrained and enjoined from:

A. Leasing, renting, or selling the address, bank account number, birth date, credit card number, e-mail address, name, Social Security number, telephone number, or other financial or identifying personal information of any person from whom or about whom any Defendant obtained such information in connection with the activities alleged in the FTC's Complaint; and

B. Benefitting from the address, bank account number, birth date, credit card number, e-mail address, name, Social Security number, telephone number, or other financial or identifying personal information of any person from whom or about whom any Defendant obtained such information in connection with the activities alleged in the FTC's Complaint.

Provided, however, that any Defendant may disclose such financial or identifying personal information to a law enforcement agency or as required by any law, regulation, or court order.

IV. ASSET FREEZE PROVISIONS

A. Asset Freeze as to Financial and Other Assets

IT IS FURTHER ORDERED that Defendants and Relief Defendant, their officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, whether acting directly or indirectly, are temporarily restrained and enjoined from:

A. Assigning, concealing, converting, disbursing, dissipating, encumbering, liquidating, loaning, pledging, selling, spending, transferring, or withdrawing any Asset that is:

1. Owned or controlled by, or held for the benefit of any Defendant or Relief Defendant, directly or indirectly;

2. In the actual or constructive possession of any Defendant;

3. Held as a retainer or deposit for the provision of goods or services to any Defendant; or

4. Owned, controlled by, in the actual or constructive possession of, or otherwise held for the benefit of any entity directly or indirectly owned, managed or controlled by any Defendant or Relief Defendant;

B. Opening or causing to be opened any safe deposit box, or storage facility belonging to or for the use or benefit of, under the control of, or subject to access by any Defendant;

C. Incurring charges or cash advances on any credit card, debit card, or checking card issued in the name, singly or jointly, of any Defendant;

D. Obtaining or providing a personal or secured loan that encumbers an asset of any Defendant or Relief Defendant; and

E. Cashing any checks or depositing any money orders or cash received from consumers, clients, or customers of any Defendant or Relief Defendant.

B. Restrictions on Commercial Mail Boxes

IT IS FURTHER ORDERED that Defendants and their officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, whether acting directly or

indirectly, are temporarily restrained and enjoined from opening or causing to be opened any commercial mail box, belonging to or for the use or benefit of, under the control of, or subject to access by any Defendant.

The Assets affected by this Section shall include both existing Assets and Assets acquired after the effective date of this Order.

V. DUTIES OF THIRD PERSONS HOLDING ASSETS

IT IS FURTHER ORDERED that any Person that has, or that at any time since January 1, 2012, has had custody or control over an Asset belonging to, for the use or benefit of, under the control of or subject to access by any Defendant or Relief Defendant, and is provided with a copy of this Order, or otherwise has actual or constructive knowledge of this Order, shall:

A. Hold and retain any such Assets that are within its control and prohibit Defendants or Relief Defendant from assigning, concealing, converting, disbursing, dissipating, encumbering, liquidating, loaning, pledging, selling, spending, transferring, or withdrawing any such Asset except:

1. As directed by further order of the court;

2. As directed in writing by the Temporary Receiver (regarding an Asset belonging to, for the use or benefit of, under the control of, or subject to access by, the Corporate Defendant); or

3. By written stipulation of the Plaintiff and Defendants.

B. Deny Defendants access to any safe deposit box, commercial mail box, or storage facility belonging to, for the use or benefit of, under the control of, or subject to access by Defendants.

C. Within five (5) business days after being served a copy of this Order, provide counsel for Plaintiff and the Temporary Receiver a certified statement setting forth:

1. The identification number of each account or Asset belonging to, for the use or benefit of, under the control of, or subject to access by any Defendant or Relief 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 received, and, if the account or other Asset has been closed or removed, or more than $5,000 withdrawn or transferred from it, the date of the closure or removal of the funds, the total funds removed or transferred, and the name of the person or entity to whom such account or other Asset was remitted; and

3. The identification and location of any safe deposit box, commercial mail box, or storage facility belonging to, for the use or benefit of, under the control of, or subject to access by any Defendant or Relief Defendant, and if the safe deposit box, storage facility, commercial mail box, or storage facility has been closed or removed, the date closed or removed.

D. Within five (5) business days of a written request from the FTC or Temporary Receiver, provide to the FTC or Temporary Receiver copies of all Documents relating to each Asset, including, but not limited to account applications, statements, corporate resolutions, 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.

VI. SERVICE OF ORDER UPON PERSONS HOLDING ASSETS

IT IS FURTHER ORDERED that copies of this Order may be served by any means, including U.S. first class mail, overnight delivery, facsimile, electronic mail, or personally by agents or employees of the Plaintiff or the Temporary Receiver, by any law enforcement agency, or by process server, upon any person, including financial institutions, that may have possession, custody, or control over any Asset or Document belonging to, for the use or benefit of, under the control of, or subject to access by any Defendant or Relief Defendant, or that may otherwise be subject to any provision of this Order. Service upon any branch or office of any financial institution shall constitute service upon the entire financial institution.

VII. FINANCIAL STATEMENTS AND ACCOUNTING

IT IS FURTHER ORDERED that Defendants and Relief Defendant shall each:

A. Within five (5) business days after service of this Order, prepare and provide to Plaintiff and the Temporary Receiver complete and accurate financial statements, on the forms attached as **Attachments A** and B to this Order, disclosing all personal Assets and Assets of corporations, partnerships, trusts or other entities that Defendants own or control, jointly or individually;

B. Within five (5) business days after service of this Order, prepare and provide to Plaintiff and the Temporary Receiver complete and accurate copies of federal and state income tax forms, including all schedules and attachments, for the three most recent filing years;

C. Immediately upon service of this Order, provide access to Documents held by persons located outside the United States by signing the Consent to Release Financial Records attached to this Order as **Attachment C**; and

D. Provide copies of such other Documents as Plaintiff or the Temporary Receiver may request in order to monitor compliance with the provisions of this Order.

VIII. REPATRIATION OF ASSETS AND DOCUMENTS

IT IS FURTHER ORDERED that immediately upon service of this Order, Defendants and shall:

A. Take such steps as are necessary to transfer to the United States all Documents and Assets that are located outside the United States and belong to, are for the use or benefit of, under the control of, or subject to access by any Defendant; and

B. Hold and retain all repatriated Assets and prevent the disposition, transfer, or dissipation of such Assets except as required by this Order.

IX. INTERFERENCE WITH REPATRIATION

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

A. Sending any statement, letter, fax, email 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 as all Assets have been fully repatriated according to Section VIII of this Order; or

B. Notifying any trustee, protector, or other agent of any Defendant or Relief Defendant of the existence of this Order, or of the fact that repatriation is required under a court

Order, until such time as all Assets have been fully repatriated according to Section VIII of this Order.

X. APPOINTMENT OF TEMPORARY RECEIVER

IT IS FURTHER ORDERED that: Charlene Koonce is appointed Temporary Receiver for the Corporate Defendant, with the full power of an equity receiver. The Temporary Receiver shall be the agent of this Court when serving as Temporary Receiver under this Order, and shall comply with the Federal Rules of Civil Procedure and Local Rules of this Court.

XI. TEMPORARY RECEIVER'S BOND

IT IS FURTHER ORDERED that the Temporary Receiver shall file with the Clerk of the Court a bond in the sum of 0 with sureties to be approved by the Court, conditioned that the Temporary Receiver will well and truly perform the duties of the Office perform the duties of the office and abide by and perform all the acts the Court directs. No Bond Required At This Time.

XII. DUTIES OF TEMPORARY RECEIVER

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

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

B. Take exclusive custody, control, and possession of all Assets and Documents of, or in the possession, custody, or control of, the Corporate Defendant, wherever situated. The Temporary Receiver shall have full power to divert mail and to sue for, collect, receive, take

possession of, hold, and manage all Assets and Documents of the Corporate Defendant and other persons whose interests are now under the direction, possession, custody, or control of, the Corporate Defendant. The Temporary Receiver shall assume control over the income and profits and all sums now or hereafter due or owing to the Corporate Defendant. *Provided*, however, that the Temporary Receiver shall not attempt to collect any amount from a consumer if the Temporary Receiver believes the consumer was a victim of the unlawful conduct alleged in the Complaint in this matter;

C. Continue and conduct the business of the Corporate Defendant in such manner, to such extent, and for such duration as the Temporary Receiver may in good faith deem to be necessary or advisable to operate the business profitably and lawfully, if at all; provided however, that the continuation and conduct of the business shall be conditioned upon the Temporary Receiver's good faith determination that the business can be lawfully operated at a profit using the Assets of the receivership estate;

D. Take all steps necessary to secure the business premises of the Corporate Defendant. Such steps may include, but are not limited to, any of the following, as the Temporary Receiver deems necessary or advisable:

1. Serving this Order;

2. Completing a written inventory of all Corporate Defendant's Assets;

3. Obtaining pertinent information from all employees and other agents of the Corporate Defendant, including the name, home address, Social Security number, job description, method of compensation, user names or passwords needed to access Corporate Defendant' Documents, and all accrued and unpaid commissions and compensation of each such employee or agent;

4. Videotaping and/or photographing 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;

6. Opening and inventorying any safety deposit box, commercial mailbox, or storage facility held in the name of the Corporate Defendant, either individually or jointly, or subject to access by the Corporate Defendant;

7. Requiring any persons present on the premises at the time this Order is served to leave the premises, to provide the Temporary Receiver with proof of identification, or to demonstrate to the satisfaction of the Temporary Receiver that such persons are not removing from the premises Assets or Documents of the Corporate Defendant;

E. Conserve, hold, and manage all Corporate Defendants' Assets, 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 Corporate Defendant, including, but not limited to, obtaining an accounting of the Assets and prohibiting transfer, withdrawal, or misapplication of Assets;

F. Enter into and cancel contracts and purchase insurance as the Temporary Receiver deems to be necessary or advisable;

G. Prevent the inequitable distribution of Assets and determine, adjust, and protect the interests of consumers and creditors who have transacted business with the Corporate Defendant;

H. Manage and administer the business of the Corporate Defendant by performing all incidental acts that the Temporary Receiver deems to be necessary or advisable, which includes retaining, hiring, or dismissing any employees, independent contractors, or agents;

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

J. 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 Temporary Receiver shall apply to the court for prior approval of any payment of any debt or obligation incurred by the Corporate Defendant prior to the date of entry of this Order, except payments that the Temporary Receiver deems necessary or advisable to secure Assets of the Corporate Defendant, such as rental payments;

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 Temporary Receiver deems necessary or advisable to preserve or recover the Assets of the Corporate Defendant, or that the Temporary Receiver deems necessary or advisable to carry out the Temporary Receiver's mandate under this Order, including actions challenging fraudulent or voidable transfers;

L. Authorize the release of any copy or image of any website used or controlled by the Corporate Defendant to the FTC;

M. Defend, compromise, adjust, or otherwise dispose of any or all actions or proceedings instituted in the past or in the future against the Temporary Receiver in the role of

Temporary Receiver, or against the Corporate Defendant, as the Temporary Receiver deems necessary or advisable to preserve the Assets of the Corporate Defendant, or as the Temporary Receiver deems necessary or advisable to carry out the Temporary Receiver's mandate under this Order;

N. Take depositions and issue subpoenas to obtain Documents pertaining to the receivership estate and compliance with this Order. Subpoenas may be served by agents or attorneys of the Temporary Receiver and by agents of any process server retained by the Temporary Receiver;

O. Open one or more bank accounts as designated depositories for funds of the Corporate Defendant. The Temporary Receiver shall deposit all funds of the Corporate Defendant in such designated account(s), and shall make all payments and disbursements from the receivership estate from such account(s);

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

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

XIII. ACCESS TO BUSINESS PREMISES AND RECORDS

IT IS FURTHER ORDERED that:

A. Defendants and their officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, shall allow the Plaintiff and Temporary Receiver, and their respective representatives, agents, attorneys, investigators, paralegals, contractors, or assistants immediate access to:

1. the business premises and storage facilities owned, controlled, or used by the Corporate Defendant, including, but not limited, to the offices and facilities at or in the vicinity of 4241 E Hwy 82, Gainesville, Texas, 76240 and 3809 East Highway 82, Suite B, Gainesville, Texas 76240, and any offsite commercial mail boxes used by Corporate Defendant;

2. any premises where the Corporate Defendant conduct business, manufacturing, warehousing, shipping, sales operations, or customer service operations; and

3. any premises where Assets or Documents related to the Corporate Defendant's businesses are stored or maintained;

B. The Plaintiff and the Temporary Receiver, and their representatives, agents, and assistants, are authorized to employ the assistance of law enforcement personnel, including police or sheriffs, as they deem necessary to affect service and to implement peacefully this Order. If requested by the Plaintiff or Temporary Receiver, the U.S. Marshal will provide appropriate and necessary assistance to implement this Order. The Temporary Receiver may exclude the Corporate and their employees from the business premises during the immediate access;

C. The purpose of the immediate access shall be to inspect and copy the business and financial Documents of the Corporate Defendant, including, but not limited to, forensic imaging of electronically stored information. Such business Documents include, but are not limited to, correspondence, contracts, sales records, and financial data;

D. The Temporary Receiver and the FTC shall have the right to remove any Documents related to Defendants' business practices from the premises in order that they may be

inspected, inventoried, and copied. The materials so removed shall be returned within five (5) business days of completing said inventory and copying;

E. If any Assets or Documents relating to the Corporate Defendant's finances or business practices are located in the residence of any Defendant or are otherwise in the custody or control of any Defendant, then such Defendant shall produce them to the Temporary Receiver within forty-eight (48) hours of service of this Order;

F. In order to prevent the destruction of electronically stored information, upon service of this Order upon Defendants, any computers used in Corporate Defendant's business shall be powered down (turned off) in the normal course for the operating systems used on such computers and shall not be powered up or used again until produced for copying and inspection, along with any codes needed for access; and

G. The Temporary Receiver shall have the discretion to determine the time, manner, and reasonable conditions of access to the Corporate Defendant's premises.

XIV. DELIVERY OF RECEIVERSHIP PROPERTY

IT IS FURTHER ORDERED that Defendants, their officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, and any other person with possession, custody, or control of Assets or Documents relating to the Corporate Defendant shall, upon notice of this Order by personal service or otherwise, immediately notify the Temporary Receiver of, and upon receiving a request from the Temporary Receiver, immediately deliver to the Temporary Receiver possession, custody, and control of, the following:

1. All Assets of the Corporate Defendant;
2. All Documents of the Corporate Defendant;

3. All Assets belonging to members of the public now held by the Corporate Defendant;

4. All computers and data in whatever form used to conduct the business of the Corporate Defendant; and

5. All keys, codes, and passwords, entry codes, combinations to locks, and information or devices required to open or gain access to any Asset or Document, including, but not limited to, access to the business premises, computer servers, networks, or databases, or telecommunications systems or devices.

In the event any person or entity fails to deliver or transfer any Asset or otherwise fails to comply with any provision of this Section, the Temporary Receiver may file, on an *ex parte* basis, 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 Temporary 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 thing and to deliver it to the Temporary Receiver.

XV. COOPERATION WITH THE TEMPORARY RECEIVER

IT IS FURTHER ORDERED that Defendants and their officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, shall fully cooperate with and assist the Temporary Receiver in taking and maintaining possession, custody, or control of the Assets and Documents of the Corporate Defendant. This cooperation and assistance shall include:

A. Providing information to the Temporary Receiver that the Temporary Receiver deems necessary in order to exercise the authority and discharge the responsibilities of the Temporary Receiver under this Order;

B. Advising all persons who owe money to the Corporate Defendant that all debts should be paid directly to the Temporary Receiver; and

C. Transferring funds at the Temporary Receiver's direction and producing Documents related to the Assets and sales of the Corporate Defendant. The entities obligated to cooperate with the Temporary Receiver under this provision include financial institutions and persons that have transacted business with the Corporate Defendant.

XVI. NON-INTERFERENCE WITH THE TEMPORARY RECEIVER

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

A. Interfering with the Temporary Receiver managing, or taking custody, control, or possession of, the Assets or Documents subject to the receivership;

B. Transacting any of the business of the Corporate Defendant;

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 Corporate Defendant, or the Temporary Receiver; and

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

XVII. TEMPORARY RECEIVER'S REPORTS

IT IS FURTHER ORDERED that the Temporary Receiver shall report to this Court on or before the date set for the hearing to Show Cause regarding the Preliminary Injunction regarding:

A. The steps taken by the Temporary Receiver to implement the terms of this Order;

B. The value of all Assets of the Corporate Defendant;

C. The sum of all liabilities of the Corporate Defendant;

D. The steps the Temporary Receiver intends to take in the future to:

1. Prevent any diminution in the value of Assets of the Corporate Defendant;

2. Pursue receivership Assets from third parties; and

3. Adjust the liabilities of the Corporate Defendant, if appropriate;

E. The Temporary Receiver's finding regarding the ability of the Corporate Defendant to operate legally and profitably; and

F. Any other matters that the Temporary Receiver believes should be brought to the court's attention.

Provided, however, if any of the required information would hinder the Temporary Receiver's ability to pursue receivership Assets, the portions of the Temporary Receiver's report containing the information may be filed under seal.

XVIII. STAY OF ACTIONS

IT IS FURTHER ORDERED that, except by leave of this Court, during pendency of the receivership ordered herein, Defendants and Defendants' officers, agents, employees, attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, and any person seeking to establish or enforce any right, title, interest,

or claim against or on behalf of any Defendant, 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 Defendants, including:

A. Filing or assisting in the filing of a petition for relief under the Bankruptcy Code, 11 U.S.C. § 101 et seq., or of any similar insolvency proceeding.

B. Commencing, prosecuting, continuing, entering, or enforcing any suit or proceeding against the Defendants, except that such actions may be commenced if necessary to toll any applicable statute of limitations;

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

D. Filing or enforcing any lien on any Asset of the Defendants, taking or attempting to take possession, custody, or control of any Asset of the Defendants; or attempting to foreclose, forfeit, alter, or terminate any interest in any Asset of the Defendants, whether such acts are part of a judicial proceeding, are acts of self-help, or otherwise; or

E. Initiating any other process or proceeding that would interfere with the Temporary Receiver managing or taking custody, control, or possession of the Assets or Documents subject to this receivership.

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

proceeding by a governmental unit to enforce such governmental unit's police or regulatory power.

XIX. COMPENSATION OF TEMPORARY RECEIVER

IT IS FURTHER ORDERED that the Temporary Receiver, and all persons hired by the Temporary Receiver as authorized by this Order, are entitled to reasonable compensation for the performance of duties undertaken pursuant to this Order, and for the cost of actual out-of-pocket expenses incurred by them solely from the Assets now held by or in the possession or control of, or which may be received by, the Corporate Defendant. The Temporary 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 thirty (30) days after the date of entry of this Order.

XIX. EXPEDITED DISCOVERY

IT IS FURTHER ORDERED that, in anticipation of the preliminary injunction hearing in this matter, the Temporary Receiver is authorized to conduct expedited discovery concerning Corporate Defendant's Assets, the products and business opportunities offered by the Corporate Defendant, and the nature and location of the Corporate Defendant' Documents and business records in accordance with the following provisions:

A. The Temporary Receiver may take the depositions of parties and non-parties. Forty-eight (48) hours' notice shall be sufficient notice for such depositions;

B. The Temporary Receiver may serve upon parties requests for production of Documents or inspection that require production or inspection within five (5) calendar days of service, and may serve subpoenas upon non-parties that direct production or inspection within five (5) calendar days of service;

C. The Temporary Receiver may serve deposition notices and other discovery requests upon the parties to this action by facsimile or overnight courier; and

D. Any discovery taken pursuant to this Order is in addition to, and is not subject to, the presumptive limits on discovery set forth in the Federal Rules of Civil Procedure and Local Rules of this Court.

XXI. 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, director, employee, agent, independent contractor, client, servant, attorney, subsidiary, division, and representative of any Defendant. Within five (5) business days following service of this Order, Defendants shall serve on the FTC an affidavit identifying the name, title, address, telephone number, date of service, and manner of service of each person Defendants have served with a copy of this Order in compliance with this provision.

XXII. CONSUMER REPORTING AGENCIES

IT IS FURTHER ORDERED that the FTC may obtain credit reports concerning any Defendant or Relief Defendant pursuant to Section 604(a)(1) of the Fair Credit Reporting Action, 15 U.S.C. § 1681b(a)(1), and that, upon written request, any consumer reporting agency from which such reports are requested shall provide them to the FTC.

XXIII. ORDER TO SHOW CAUSE REGARDING PRELIMINARY INJUNCTION

IT IS FURTHER ORDERED that each Defendant and Relief Defendant shall appear before this Court on the 17th day of December, 2015, at 10:00 a.m. (Central Time), at the Paul Brown U.S. Courthouse, 101 E. Pecan, Sherman, TX 75090 Courtroom 208, 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 the FTC Act, TSR, and Unordered Merchandise Statute, continuing the freeze of Assets, and imposing such additional relief as may be appropriate.

XXIV. FILING OF DEFENDANTS' OPPOSITION TO ISSUANCE OF A PRELIMINARY INJUNCTION

IT IS FURTHER ORDERED that Defendants and Relief Defendant shall file and serve any opposition to the issuance of a preliminary injunction, including any declarations, exhibits, memoranda or other evidence upon which they intend to rely, and objections to any evidence submitted by the FTC, by no later than 4:30 p.m. (Central Time) of the fourth court day prior to the hearing on the preliminary injunction.

XXV. DURATION OF TEMPORARY RESTRAINING ORDER

IT IS FURTHER ORDERED that, except as ordered by the Court, this Temporary Restraining Order granted herein shall expire within fourteen (14) days from the date of entry noted below, as computed by Rule 6 of the Federal Rules of Civil Procedure, unless within such time the Order, for good cause shown, is extended for an additional period not to exceed fourteen (14) days or unless it is further extended pursuant to Rule 65 of the Federal Rules of Civil Procedure or by stipulation of counsel.

XXVI. RETENTION OF JURISDICTION

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

SO ORDERED, this 4th day of December, 2015, at 4:51 p.m. (Central Time).

UNITED STATES DISTRICT JUDGE