UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

SMART TOOLS LLC, a Wyoming Limited Liability Company, KIRSTIN HEGG, individually and as an officer of Smart Tools LLC, and CURTIS DAWN, individually and as an officer of Smart Tools, LLC,

Defendants.

Case No. 3:12-cv-02006-HZ

STIPULATED FINAL JUDGMENT AND ORDER FOR PERMANENT INJUNCTION AND MONETARY RELIEF

THIS MATTER comes before the Court upon the stipulation of Plaintiff, the United States of America, Smart Tools LLC (the "Corporate Defendant"), and Kirstin Hegg and Curtis Dawn (the "Individual Defendants") (collectively, "Defendants"). On November 8, 2012, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission ("FTC" or the "Commission"), filed a Complaint for Civil Penalties, Permanent Injunction and Other Equitable Relief ("Complaint") in this matter, alleging violations of Section 5(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45(a) and the FTC's Trade Regulation Rule entitled "Disclosure Requirements and Prohibitions Concerning Business Opportunities," 16 C.F.R. Part 437, as amended.

The United States and Defendants, having agreed to entry of this Stipulated Final Judgment and Order for Permanent Injunction and Monetary Relief ("Order"), hereby request that the Court enter this Order to resolve all matters in dispute in this action.

**THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

## FINDINGS

1. This Court has jurisdiction of the subject matter of this case and over the parties pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and 15 U.S.C. §§ 45(m)(1)(a), 53(b), and 56(a).

2. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c), and 15 U.S.C. § 53(b).

3. The activities of Defendants, as alleged in the Complaint, are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

4. The Complaint states a claim upon which relief may be granted under Sections 5(a), 5(m)(1)(A), and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), and 53(b).

5. Defendants enter into this Order freely. Defendants further acknowledge that they have read and are prepared to abide by the provisions of this Order.

6. Defendants waive all rights to seek judicial review or otherwise challenge or contest the validity of this Order. Defendants further waive and release any claim they may have against the Commission and its employees, representatives, and agents.

7. Each party shall bear its own costs and attorney fees. Defendants agree that this Order does not entitle them to seek or to obtain attorney fees as a prevailing party under the Equal Access to Justice Act, 28 U.S.C. § 2412, *amended by* Pub. L. No. 104-121, 110 Stat. 847, 863–64 (1996), and Defendants further waive any rights to attorney fees concerning the prosecution of this action through the date of the entry of this Order.

8. Defendants neither admit nor deny any of the allegations in the Complaint, except as specifically stated in this Order. Only for purposes of this action, Defendants admit the facts necessary to establish jurisdiction.

9. The parties agree, for purposes of facilitating resolution of this matter, that entry of this Order is in the public interest.

## DEFINITIONS

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

1. **"Business Opportunity"** means a commercial arrangement in which:
   a. A seller solicits a prospective purchaser to enter into a new business;
   b. The prospective purchaser makes a required payment; and
   c. The seller, expressly or by implication, orally or in writing, represents that the seller or one or more designated persons will:
      i. Provide locations for the use or operation of equipment, displays, vending machines, or similar devices, owned, leased, controlled, or paid for by the purchaser;
      ii. Provide outlets, accounts, or customers including, but not limited to, Internet outlets, accounts, or customers, for the purchaser's goods or services; or
      iii. Buy back any or all of the goods or services that the purchaser makes, produces, fabricates, grows, breeds, modifies, or provides including, but not limited to, providing payment for such services as, for example, stuffing envelopes from the purchaser's home.
2. "**Business Opportunity Rule**" or "**Rule**" means the FTC Rule entitled "Disclosure Requirements and Prohibitions Concerning Business Opportunities" 16 C.F.R. Part 437, as amended.
3. **"Corporate Defendant"** means Smart Tools LLC and its successors and assigns.
4. "**Defendants**" means the Corporate Defendant and the Individual Defendants, individually, collectively, or in any combination.
5. **"Earnings claim"** means any oral, written, or visual representation to a prospective purchaser that conveys, expressly or by implication, a specific level or range of actual or potential sales, gross or net income or profits. Earnings claims include, but are not limited to:

a. Any chart, table, or mathematical calculation that demonstrates possible results based upon a combination of variables; and

b. Any statements from which a prospective purchaser can reasonably infer that he or she will earn a minimum level of income (e.g., "earn enough to buy a Porsche," "earn a six-figure income," or "earn your investment back within one year.").

5. **"FTC"** or **"Commission"** means the Federal Trade Commission.

6. **"Individual Defendants"** means Kirstin Hegg, individually and as an officer of the Corporate Defendant, and Curtis Dawn, individually and as an officer of the Corporate Defendant.

7. "**Material**" means likely to affect a person's choice of, or conduct regarding, opportunities, products, or services.

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

9. "**Plaintiff**" means the United States.

10. "**The Automobile**" means the 2010 Infinity G37 with the VIN number JN1CV6AR3AM460278.

11. "**The Property**" means the property owned by Individual Defendants located at 22611 SW 96th Drive, Tualatin, Oregon 97062.

12. **"Work-at-Home Opportunity"** means any good, service, plan, or program that is represented, expressly or by implication, to assist any individual in any manner to start any new business and earn money while working from home or from locations other than the business premises of Defendants, whether or not covered by the Business Opportunity Rule. "New business" includes a new work-at-home business to be started by a consumer already working from home.

13. The words "**and**" and "**or**" shall be understood to have both conjunctive and disjunctive meanings.

## ORDER

## I.
## REQUIREMENTS IN SALES OF BUSINESS OPPORTUNITIES AND WORK-AT-HOME OPPORTUNITIES

**IT IS ORDERED** that Defendants and their officers, agents, servants, employees, 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 through any corporation, partnership, subsidiary, division, agent, or other device, in connection with the advertising, marketing, promotion, offering for sale or sale of any business opportunity or work-at-home opportunity including, but not limited to, the goods, services, plans or programs sold by Defendant Smart Tools LLC, are permanently restrained and enjoined from:

A. Failing to provide, at least seven (7) days before the prospective purchaser either signs any contract or makes a payment in connection with the business opportunity or work-at-home opportunity, a written disclosure document to a prospective purchaser that identifies: (1) the name, address, and telephone number of the seller and the name of the salesperson who communicated with the prospective purchaser; (2) any earnings claims; (3) legal actions against the seller; (4) cancellation and refund policies; and (5) references of all purchasers of the business opportunity or work-at-home opportunity for the last three years or, in the alternative, if more than 10 purchasers purchased the business opportunity or work-at-home opportunity within the last three years, the name, state, and telephone number of at least the 10 purchasers within the past three years who are located nearest to the prospective purchaser's location;

B. Making any earnings claim to a prospective purchaser unless Defendants (1) have a reasonable basis for the claim at the time the claim is made; (2) have written materials in their

possession that substantiate the claim at the time the claim is made; and (3) make the written substantiation available upon request to the prospective purchaser;

C. Making any earnings claim to a prospective purchaser unless Defendants furnish a written earnings claim statement containing, among other things: (1) the name of the person making the earnings claim, the earnings claim, and the date of the earnings claim; (2) the beginning and ending dates when the represented earnings were achieved; (3) the number and percentage of all persons who purchased the business opportunity or work-at-home opportunity who achieved at least the stated level of earnings; and (4) any characteristics of the purchasers who achieved at least the represented level of earnings, such as their location, that may differ materially from the characteristics of the prospective purchasers being offered the business opportunity or work-at-home opportunity;

D. Making any earnings claim in the general media, such as through direct mail and Internet websites, unless Defendants: (1) have a reasonable basis for the claim at the time the claim is made; and (2) have in their possession written material that substantiates the claim at the time the claim is made;

E. Making any earnings claim in the general media unless Defendants state in immediate conjunction with those claims: (1) the beginning and ending dates when the represented earnings were achieved; and (2) the number and percentage of all persons who purchased such business opportunity or work-at-home opportunity who achieved at least the stated level of earnings; and

E. Failing to comply with any requirement of the Business Opportunity Rule, 16 C.F.R. Part 437, a copy of which is attached to this Order.

## II.
## PROHIBITED REPRESENTATIONS RELATING TO ANY GOODS OR SERVICES

**IT IS FURTHER ORDERED** that Defendants and their officers, agents, servants, employees, and all 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 through any corporation, partnership, subsidiary, division, agent, or other device, in connection with the advertising, marketing, promotion, offering for sale or sale of any good, service, plan, or program, are permanently restrained and enjoined from misrepresenting, or assisting others in misrepresenting, expressly or by implication, any material fact including, but not limited to:

A. The income, profit, or sales volume that a purchaser is likely to achieve;

B. The availability of and cost to obtain from the federal government lists of consumers owed Federal Housing Administration ("FHA") mortgage insurance premium refunds;

C. The costs to purchase, receive, or use, and the quantity of the good, service, plan, or program;

D. Any material restriction, limitation, or condition to purchase, receive, or use the good, service, plan, or program;

E. Any material aspect of the benefits, performance, efficacy, nature, or other characteristic of the good, service, plan, or program; and

F. Any material aspect of the nature or terms of any refund, cancellation, exchange, or repurchase policy including, but not limited to, the likelihood of a consumer obtaining a full or partial refund, or the circumstances in which a full or partial refund will be granted to a consumer.

## III.
## NOTICE TO CUSTOMERS

**IT IS FURTHER ORDERED** that:

A. Defendants shall, within ten (10) days after the final date of this order, deliver to the Commission a list, in the form of a sworn affidavit in Excel spreadsheet format, of all consumers who purchased any mortgage insurance refund business opportunity or work-at-home opportunity from Defendants, on or after January 1, 2009 and until the final date of this order, and who had not canceled their subscription to Defendants' services or were still being charged or billed by Defendants as of the final date of this order. Such list shall include each consumer's name and address, email address, and, if available, telephone number;

B. Within forty-five (45) days after the final date of this order, Respondents shall send by first class mail, postage prepaid, an exact copy of the notice attached as Attachment A to all persons identified in Section III.A., above. The face of the envelope containing the notice shall be an exact copy of Attachment B. The mailing shall not include any other documents; and

C. Defendants shall immediately cancel all consumer subscriptions and stop charging consumers' credit and debit cards unless a consumer notifies Defendants in writing, either by U.S. mail or electronic mail, within thirty (30) days of receipt of the letter that is attached to this Order as Attachment A, that the consumer wishes to continue their subscription with Smart Tools and agrees to ongoing charges on their credit or debit card.

## IV.
## PROHIBITED USE OF CUSTOMER LISTS

**IT IS FURTHER ORDERED** that Defendants and their officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are permanently restrained and enjoined from:

A. Disclosing, selling, or benefitting from customer information, including the name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account) of any person which Defendants obtained prior to entry of this Order in connection with the sale of any mortgage insurance refund business opportunity or work-at-home opportunity; and

B. Failing to dispose of such customer information in all forms in their possession, custody, or control within thirty (30) days after entry of this Order. Disposal shall be by means that protect against unauthorized access to the customer information, such as by burning, pulverizing, or shredding any papers, and by erasing or destroying any electronic media, to ensure that the customer information cannot practicably be read or reconstructed. ***Provided, however***, that customer information need not be disposed of, and may be disclosed, to the extent requested by a government agency or required by a law, regulation, or court order; ***provided further*** that customer information for any current customer of Defendants need not be disposed of until that customer cancels his or her association with Defendant.

## V.
## MONETARY RELIEF

**IT IS FURTHER ORDERED** that judgment is entered in favor of the United States and against Defendants, jointly and severally, in the amount of seven million four-hundred-twenty-five thousand fifty one dollars ($7,425,051) as equitable monetary relief for consumer injury; provided, however, that subject to Sections V.A.-V.F., below, this judgment shall be suspended. The suspension of this judgment is based on Defendants' inability to pay and is expressly conditioned on the truthfulness of Defendants' financial disclosures described in Section VI.

A. Defendants shall pay to the Commission the sum of two hundred thirty four thousand, eight hundred forty-seven dollars ($234,847) as follows:

1. Defendants shall pay twenty-six thousand two hundred dollars ($26,200) within ten (10) days of entry of this Order;

2. Defendants shall pay two hundred eight thousand, six hundred forty-seven dollars ($208,647) in twelve (12) quarterly installments of seventeen thousand, three hundred eighty-seven dollars and twenty-five cents ($17,387.25);

3. These quarterly payments shall begin on the first day of the fourth month following the date of entry of this Order and shall be made on the first day of every third month thereafter until complete; and

B. To secure the payments required by Section V.A.2., Defendants Kirstin Hegg and Curtis Dawn hereby grant to the Commission a lien on and security interest in The Property. Defendants Kirstin Hegg and Curtis Dawn represent and acknowledge that the Commission is relying on the material representation that they are the sole owners in fee simple of The Property, that title to The Property is marketable, and that The Property currently is not encumbered by any other lien, mortgage, deed of trust, assignment, pledge, security interest or other interest

except as disclosed to the Commission in the Financial Statements. Defendants Kirstin Hegg and Curtis Dawn represent that none of the encumbrances on The Property are in default. Defendants Kirstin Hegg and Curtis Dawn further agree that, as of the date on which they sign this Order, and until their obligation under Section V.A.2. of this Order is satisfied, they shall refrain from transferring, converting, encumbering, selling, assigning, or otherwise disposing of The Property, except with the express prior written permission of counsel for the Commission; Defendants Kirstin Hegg and Curtis Dawn shall cooperate fully with the Commission and be responsible for preparing, executing, and recording the necessary documents and taking whatever additional steps the Commission deems necessary or desirable to perfect, evidence, and effectuate its lien and security interest granted herein. No later than five (5) days after the date on which the Commission authorizes staff to sign this Order, Defendants Kirstin Hegg and Curtis Dawn shall prepare, execute and deliver (at their expense) to the Commission a mortgage or deed of trust in form and substance satisfactory to the Commission (the "Security Documents") and take such other steps as the Commission may require to perfect, evidence, and effectuate its lien, security interest, and assignment and to carry out the purposes of this Order. The Commission shall not record the Security Documents until after the Court's entry of this Order. In the event that the Court does not enter this Order, within five (5) days after receipt of the Court's denial of this Order, the FTC shall return the Security Documents to Defendants Kirstin Hegg and Curtis Dawn. Defendants Kirstin Hegg and Curtis Dawn shall be responsible for paying all costs and fees (including attorneys' fees and filing fees) required in connection with the lien and security interest granted herein, including all fees and costs related to the preparation, execution, delivery, filing, continuation, and termination of such lien and security interest and to carry out the purposes of this Order;

C. Upon Defendants Kirstin Hegg and Curtis Dawn's timely completion of the payments required by Section V.A.2. of this Order, the Commission agrees to release the lien and security interest granted herein, and Defendants Kirstin Hegg and Curtis Dawn shall be responsible for preparing and filing (at their expense) any termination or other statements reasonably required in connection therewith. The Commission shall also promptly release said lien and security interest to the extent necessary to permit the sale or encumbrance of part or all of The Property if the proceeds of such sale or financing are remitted directly to the Commission immediately upon closing of such sale or financing in complete satisfaction of this Order, and Defendants Kirstin Hegg and Curtis Dawn shall pay all fees and costs related to such release, including filing fees;

D. In the event of default on any obligation to make payment under Section V.A.2. of this Order, which default continues for fifteen (15) calendar days beyond the date payment is due, Defendants Kirstin Hegg and Curtis Dawn shall immediately take all actions necessary to transfer title to The Property to the Receiver appointed in Section V.E. to liquidate The Property, and shall fully cooperate with the Receiver to liquidate The Property. In the event that the Property transfers to the Receiver, Defendants Kirstin Hegg and Curtis Dawn hereby release and waive any statutory, common law, or other homestead exemption that may apply to The Property and shall not declare and claim any homestead exemption in The Property. Defendants Kirstin Hegg and Curtis Dawn may use and occupy the premises at the sole discretion of, and in accordance with the terms set by the Receiver, which use and occupancy shall not unduly interfere with the Receiver's sale of The Property. As long as they occupy the property, Defendants Kirstin Hegg and Curtis Dawn shall maintain and take no action to diminish the value of The Property; they shall remain current on all amounts due and payable on The

Property, including but not limited to mortgage, tax, insurance, reasonable and necessary maintenance, and similar fees; and they shall cause existing insurance coverage for The Property to remain in full force until The Property is liquidated by the Receiver and shall notify insurance carrier(s) immediately of the appointment of the Receiver and request that the Receiver and the United States be added to the insurance policy or policies and additional insureds thereunder;

E. Michael Grassmueck, of Portland, Oregon, is hereby appointed as Receiver with all the rights and powers of an equity receiver over The Property for the limited purpose of selling The Property. 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. The Receiver shall comply with all local rules and laws governing federal equity receivers. Upon receipt of The Property, he is authorized to take all steps necessary to liquidate The Property. The proceeds from such liquidation shall be paid as follows: 1) first, the balance of the mortgage on The Property, reasonable and customary brokerage fees, commissions, and closing costs shall be paid; 2) next, upon approval of the Court, the Receiver's fees and the costs incurred by the Receiver shall be paid; 3) next, Defendants Kirstin Hegg and Curtis Dawn shall be paid an amount equal to any payments they have made pursuant to Section V.A. that exceed $26,200; and 4) the remainder of the proceeds shall be paid to the Commission, by wire transfer, certified check, or money order;

F. Defendants Kirstin Hegg and Curtis Dawn, within thirty (30) days of entry of this Order, shall sell The Automobile and pay all proceeds to the Commission;

G. In the event of default on any obligation to make payment under Sections V.A.1. and V.F. of this Order, interest, computed pursuant to 28 U.S.C. § 1961(a), shall accrue from the date of default to the date of payment. In the event such default continues for fifteen (15)

calendar days beyond the date the payment is due, the entire amount of the judgment, less any amounts previously paid pursuant to this Order, together with interest, shall immediately become due and payable;

H. All payments required by this Order shall be made by wire transfer in accordance with instructions provided by a representative of the Commission;

I. All funds paid pursuant to this Order shall be deposited into a fund administered by the Commission or its agents to be used for equitable relief including, but not limited to, redress to consumers and any attendant expenses for the administration of such equitable relief. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after the redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendants' practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the United States Treasury as disgorgement. Defendants shall have no right to challenge the Commission's choice of remedies under this Paragraph. Defendants shall have no right to contest the manner of distribution chosen by the Commission;

J. No portion of any payment under the Judgment herein shall be deemed a payment of any fine, penalty, or punitive assessment;

K. Defendants relinquish all dominion, control, and title to the funds paid to the fullest extent permitted by law. Defendants shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise;

L. Defendants agree that the facts as alleged in the Complaint filed in this action shall be taken as true without further proof in any bankruptcy case or subsequent civil litigation pursued by the Commission to enforce its rights to any payment or money judgment pursuant to

this Order including, but not limited to, a nondischargeability complaint in any bankruptcy case. Defendants further stipulate and agree that the facts alleged in the Complaint establish all elements necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order shall have collateral estoppel effect for such purposes; and

M. In accordance with 32 U.S.C. § 7701, Defendants are required, unless they have done so already, to furnish to the Commission their taxpayer identifying numbers and/or social security numbers, which shall be used for the purposes of collecting and reporting on any delinquent amount arising out of Defendants' relationship with the government.

## VI.
## RIGHT TO REOPEN

**IT IS FURTHER ORDERED** that Plaintiff's agreement to this Order is expressly premised upon the truthfulness, accuracy, and completeness of Defendants' financial condition as represented in the financial statements dated April 26, 2013, the updated financial documents provided by email from defense counsel William Rothbard to Ann Entwistle on June 18, 2013 and the affidavit of Curtis Dawn dated July 5, 2013 and supporting documents, which contain material information upon which Plaintiff relied in negotiating and agreeing to the terms of this Order. If, upon motion by Plaintiff, this Court finds that any Defendant has failed to disclose any material asset, or materially misrepresented the value of any asset, or made any other material misrepresentation in, or omission from, the financial statements, then, as to that Defendant, the full judgment against that Defendant, less amounts already paid, shall become immediately due, and interest computed pursuant to 28 U.S.C. § 1961, as amended, shall immediately begin to accrue on the unpaid balance.

***Provided, however***, that in all other respects, this Order shall remain in full force and effect unless otherwise ordered by this Court.

## VII.
## ORDER ACKNOWLEDGMENTS

**IT IS FURTHER ORDERED** that Defendants obtain acknowledgments of receipt of this Order:

A. Each Defendant, within seven (7) days of entry of this Order, must submit to Plaintiff and the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury;

B. For seven (7) years after entry of this Order, each Individual Defendant for any business that such Defendant, individually or collectively with any other Defendant, is the majority owner or directly or indirectly controls, and each Corporate Defendant, must deliver a copy of this Order to: (1) all principals, officers, directors, and managers; (2) all employees, agents, and representatives who participate in marketing, advertising, promotion, or sales; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within seven (7) days of entry of this Order for current personnel. To all others, delivery must occur before they assume their responsibilities; and

C. From each individual or entity to which a Defendant delivered a copy of this Order, that Defendant must obtain, within thirty (30) days, a signed and dated acknowledgment of receipt of this Order.

## VIII.
## COMPLIANCE REPORTING

**IT IS FURTHER ORDERED** that Defendants make timely submissions to the Commission:

A. One year after entry of this Order, each Defendant must submit a compliance report, sworn under penalty of perjury:

1. Each Defendant must: (a) designate at least one telephone number and an email, physical, and postal address as points of contact, which representatives of the Commission and Plaintiff may use to communicate with that Defendant; (b) identify all of that Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the products and services offered, the means

of advertising, marketing, and sales, and the involvement of any other Defendant; (d) describe in detail whether and how that Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission;

2. Additionally, Individual Defendants Kirstin Hegg and Curtis Dawn must: (a) identify all telephone numbers and all email, Internet, physical, and postal addresses, including all residences; (b) identify all titles and roles in all business activities, including any business for which s/he performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest; and (c) describe in detail her/his involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership;

B. For fifteen (15) years after entry of this Order, each Defendant must submit a compliance notice, sworn under penalty of perjury, within fourteen (14) days of any change in the following:

1. Each Defendant must report any change in: (a) any designated point of contact; or (b) the structure of Smart Tools LLC or any entity that Defendants have any ownership interest in or directly or indirectly control that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order;

2. Additionally, Individual Defendants Kirstin Hegg and Curtis Dawn must report any change in: (a) name, including aliases or fictitious name, or residence

address; or (b) title or role in any business activity, including any business for which s/he performs services whether as an employee or otherwise and any entity in which s/he has any ownership interest, and identify its name, physical address, and Internet address, if any;

C. Each Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or any similar proceeding by or against such Defendant within fourteen (14) days of its filing;

D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: "I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on:_____" and supplying the date, signatory's full name, title (if applicable), and signature; and

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: United States v. Smart Tools LLC, Kirstin Hegg, and Curtis Dawn, X130018.

## IX.
## RECORDKEEPING

**IT IS FURTHER ORDERED** that Defendants must create certain records for fifteen (15) years after entry of the Order, and retain each such record for five (5) years. Specifically, Smart Tools LLC, Kirstin Hegg, and Curtis Dawn for any business in which that Defendant,

individually or collectively with any other Defendants, is a majority owner or directly or indirectly controls, must maintain the following records:

A. Accounting records showing the revenues from all goods or services sold, all costs incurred in generating those revenues, and the resulting net profit or loss;

B. Personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name, addresses, and telephone numbers; job title or position; dates of service; and, if applicable, the reason for termination;

C. Complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;

D. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission; and

E. A copy of each advertisement or other marketing material.

## X.
## COMPLIANCE MONITORING

**IT IS FURTHER ORDERED** that, for the purpose of monitoring Defendants' compliance with this Order, including the financial representations upon which part of the equitable monetary relief is suspended:

A. Within fourteen (14) days of receipt of a written request from a representative of the Commission or Plaintiff, each Defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents, for inspection and copying. The Commission and Plaintiff are also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69;

B. For matters concerning this Order, the Commission and Plaintiff are authorized to communicate directly with each Defendant. Defendants must permit representatives of the Commission and Plaintiff to interview any employee or other person affiliated with any Defendant who has agreed to such an interview. The person interviewed may have counsel present; and

C. The Commission or Plaintiff may use all other lawful means, including posing, through its representatives, as consumers, suppliers, or other individuals or entities, to Defendants or any individual or entity affiliated with Defendants, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

## XI.
## RETENTION OF JURISDICTION

**IT IS FURTHER ORDERED** that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

FOR THE UNITED STATES OF AMERICA:

STUART F. DELERY
Principal Deputy Assistant Attorney General
MAAME EWUSI-MENSAH FRIMPONG
Deputy Assistant Attorney General
MICHAEL S. BLUME
Director, Consumer Protection Branch
RICHARD GOLDBERG
Assistant Director, Consumer Protection Branch

ANN F. ENTWISTLE
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FOR THE DEFENDANTS:

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Santa Monica, California 90404
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B. For matters concerning this Order, the Commission and Plaintiff are authorized to communicate directly with each Defendant. Defendants must permit representatives of the Commission and Plaintiff to interview any employee or other person affiliated with any Defendant who has agreed to such an interview. The person interviewed may have counsel present; and

C. The Commission or Plaintiff may use all other lawful means, including posing, through its representatives, as consumers, suppliers, or other individuals or entities, to Defendants or any individual or entity affiliated with Defendants, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

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Director, Consumer Protection Branch
RICHARD GOLDBERG
Assistant Director, Consumer Protection Branch

ANN F. ENTWISTLE
Trial Attorney

FOR THE DEFENDANTS:

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KIRSTIN HEGG
Individually and as an officer of Smart Tools LLC

CURTIS DAWN
Individually and as an officer of Smart Tools LLC

SO ORDERED this ___ day of _____, 2013.

HONORABLE MARCO A. HERNANDEZ
UNITED STATES DISTRICT JUDGE

**ATTACHMENT A**

[COMPANY LETTERHEAD]

Date

[Name]
[Address]
[city/state/ZIP]

**RE:** Your subscription to Smart Tools

Dear [name of customer]:

You bought a work-at-home program from us to process mortgage insurance refunds. We bill your credit card each month for a subscription to software and other services.

The Justice Department and the Federal Trade Commission (FTC) have sued us for false advertising. According to the lawsuit, we made false claims about how much money people would make and didn't have proof to back up our promises. We've also been charged with violating the Business Opportunity Rule by failing to provide consumers with required information, including disclosures about earnings and refund policies.

Without commenting on the government's case, we have decided to settle to avoid long, costly litigation. As part of the settlement, we are writing to advise you that if you want to continue your subscription with Smart Tools and agree to ongoing charges on your credit or debit card, you must inform us of your decision in writing, either by U.S. mail or by electronic mail, within thirty (30) days of receipt of this letter. If you do nothing, your subscription will be cancelled automatically, and your credit or debit card will no longer be charged.

Looking for more about this lawsuit? Visit [URL].
Looking for FTC advice about work-at-home plans? Visit [URL].

[name of company representative]

**ATTACHMENT B**

Smart Tools, LLC
[address]

[name and address of purchaser]

**GOVERNMENT ORDERED NOTICE**