

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

APEX CAPITAL GROUP, LLC, et al.,

Defendants.

Case No. 2:18-cv-09573-JFW (JPRx)

**STIPULATED ORDER FOR
PERMANENT INJUNCTION
AND MONETARY JUDGMENT**

On November 13, 2018, Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), filed its Complaint for Permanent Injunction and Other Equitable Relief in this matter, subsequently amended as First Amended Complaint for Permanent Injunction and Other Equitable Relief, (as amended, “Complaint”), pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, the Restore Online Shoppers’ Confidence Act (“ROSCA”), 15 U.S.C. § 8404, and Section 918(c) of the Electronic Fund Transfer Act (“EFTA”), 15 U.S.C. § 1693o(c). The Commission and Defendants Phillip Peikos, Apex Capital Group, LLC, Capstone Capital Solutions Limited, Klik Trix Limited, Empire Partners Limited, Interzoom Capital Limited, Lead Blast Limited, Mountain Venture Solutions Limited, Nutra Global Limited, Omni Group Limited,

1 Rendezvous IT Limited, Sky Blue Media Limited, and Tactic Solutions Limited
2 stipulate to the entry of this [Proposed] Stipulated Order for Permanent Injunction
3 and Monetary Judgment to resolve all matters in dispute in this action between
4 them.

5 THEREFORE, IT IS ORDERED as follows:

6 **FINDINGS**

7 1. This Court has jurisdiction over this matter.

8 2. The Complaint charges that Settling Defendants participated in
9 deceptive and unfair acts or practices in violation of Section 5 of the FTC Act, 15
10 U.S.C. § 45, Section 4 of ROSCA, 15 U.S.C. § 8403, and Section 907(a) of EFTA,
11 15 U.S.C. § 1693e(a) and Section 1005.10(b) of Regulation E, 12 C.F.R.
12 § 1005.10(b), in connection with the unfair and deceptive advertising, marketing,
13 promotion, or sale of certain dietary supplements, skin creams, and other products
14 or services through a Negative Option Feature.

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

18 4. Settling Defendants waive any claim that they may have under the
19 Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this
20 action through the date of this Order, and agree to bear their own costs and
21 attorney fees.

22 5. Settling Defendants and the Commission waive all rights to appeal or
23 otherwise challenge or contest the validity of this Order.

24 **DEFINITIONS**

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

26 A. **“Acquirer”** means a business organization, financial institution, or an
27 agent of a business organization or financial institution that has authority from an
28 organization that operates or licenses a credit card system (*e.g.* Visa, MasterCard,

1 American Express, and Discover) to authorize Merchants to accept, transmit, or
2 process payment by credit card through the credit card system for money, goods or
3 services, or anything else of value.

4 B. “**Add-On**” means any additional good or service that is offered to the
5 consumer for purchase immediately preceding, at the time of, or closely proximate
6 in time after the consumer’s purchase of a different good or service, where the
7 different good or service is or was advertised, marketed, promoted, or offered for
8 sale by the Settling Defendants, whether directly or through an intermediary,
9 including by consulting, planning, participating, facilitating, or advising.

10 C. “**Affiliate**” means any person, including any third-party marketer,
11 who participates in an Affiliate Program.

12 D. “**Affiliate Network**” means any person who provides another person
13 with Affiliates for an Affiliate Program or with whom any person contracts as an
14 Affiliate to promote any good or service.

15 E. “**Affiliate Program**” means any arrangement under which any
16 Settling Defendant pays, or offers to pay, or provides, or offers to provide, any
17 form of consideration to any third party, either directly or through an Affiliate
18 Network (i) to provide any Settling Defendant with, or refer to any Settling
19 Defendant, potential or actual customers; or (ii) otherwise to market, advertise, or
20 offer for sale any good or service on behalf of any Settling Defendant.

21 F. “**Asset**” means any legal or equitable interest in, right to, or claim to,
22 any property, wherever located and by whomever held.

23 G. “**Billing Information**” means any data that enables any person to
24 access a customer’s account, such as a credit card, checking, savings, share, or
25 similar account, utility bill, mortgage loan account, or debit card.

26 H. “**Chargeback**” means a procedure whereby an issuing bank or other
27 financial institution charges all or part of an amount of a credit or debit transaction
28 back to the acquiring or merchant bank.

1 I. “Clear and Conspicuous” or “Clearly and Conspicuously” means
2 that a required disclosure is difficult to miss (i.e., easily noticeable) and easily
3 understandable by ordinary consumers, including in all of the following ways:

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

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

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

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

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

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

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

26 8. The disclosure must not be contradicted or mitigated by, or
27 inconsistent with, anything else in the communication; and
28

1 9. When the representation or sales practice targets a specific
2 audience, such as children, the elderly, or the terminally ill, “ordinary consumers”
3 includes reasonable members of that group.

4 J. “**Close Proximity**” means immediately adjacent to the triggering
5 representation. In the case of advertisements disseminated verbally or through
6 audible means, the disclosure shall be made as soon as practicable after the
7 triggering representation.

8 K. “**Commission**” or “**FTC**” means the Federal Trade Commission.

9 L. “**Corporate Defendants**” means Apex Capital Group, LLC, Capstone
10 Capital Solutions Limited, Klik Trix Limited, Empire Partners Limited, Interzoom
11 Capital Limited, Lead Blast Limited, Mountain Venture Solutions Limited, Nutra
12 Global Limited, Omni Group Limited, Rendezvous IT Limited, Sky Blue Media
13 Limited, and Tactic Solutions Limited, and each of their subsidiaries, affiliates,
14 successors, and assigns.

15 M. “**Cosmetic**” means:

16 1. articles to be rubbed, poured, sprinkled, or sprayed on,
17 introduced into, or otherwise applied to the human body or any part thereof
18 intended for cleansing, beautifying, promoting attractiveness, or altering the
19 appearance; and

20 2. articles intended for use as a component of any such article,
21 except that such term shall not include soap.

22 N. “**Credit Card Laundering**” means:

23 1. Presenting or depositing into, or causing or allowing another to
24 present or deposit into, the credit card system for payment, a Credit Card Sales
25 Draft generated by a transaction that is not the result of a credit card transaction
26 between the cardholder and the Merchant;

27 2. Employing, soliciting, or otherwise causing or allowing a
28 Merchant, or an employee, representative, or agent of a Merchant, to present to or

1 deposit into the credit card system for payment, a Credit Card Sales Draft
2 generated by a transaction that is not the result of a credit card transaction between
3 the cardholder and the Merchant; or

4 3. Obtaining access to the credit card system through the use of a
5 business relationship or an affiliation with a Merchant, when such access is not
6 authorized by the Merchant Account agreement or the applicable credit card
7 system.

8 O. **“Credit Card Sales Draft”** means any record or evidence of a credit
9 card transaction.

10 P. **“Dietary Supplement”** means:

11 1. any product labeled as a dietary supplement or otherwise
12 represented as a dietary supplement; or

13 2. any pill, tablet, capsule, powder, softgel, gelcap, liquid, or other
14 similar form containing one or more ingredients that are a vitamin, mineral, herb or
15 other botanical, amino acid, probiotic, or other dietary substance for use by humans
16 to supplement the diet by increasing the total dietary intake, or a concentrate,
17 metabolite, constituent, extract, or combination of any ingredient described above,
18 that is intended to be ingested, and is not represented to be used as a conventional
19 Food or as a sole item of a meal or the diet.

20 Q. **“Drug”** means:

21 1. articles recognized in the official United States Pharmacopoeia,
22 official Homeopathic Pharmacopoeia of the United States, or official National
23 Formulary, or any supplement to any of them;

24 2. articles intended for use in the diagnosis, cure, mitigation,
25 treatment, or prevention of disease in humans or other animals;

26 3. articles (other than Food) intended to affect the structure or any
27 function of the body of humans or other animals; and
28

1 4. articles intended for use as a component of any article specified
2 in Subsection (1), (2), or (3); but does not include devices or their components,
3 parts, or accessories.

4 R. **“Food”** means:

- 5 1. any article used for food or drink for humans or other animals;
- 6 2. chewing gum; and
- 7 3. any article used for components of any such article.

8 S. **“Including”** means including but not limited to.

9 T. **“Individual Defendant”** means individual defendant Phillip Peikos.

10 U. **“Merchant”** means any natural person, entity, corporation,
11 partnership, or association of persons who is authorized under a written contract
12 with an Acquirer to honor or accept credit cards, or to transmit or process for
13 payment credit card payments, for the purchase of good or services.

14 V. **“Merchant Account”** means an account with an Acquirer that
15 authorizes and allows a Merchant to honor or accept credit cards, or to transmit or
16 process for payment credit card payments, for the purchase of goods or services or
17 a charitable contribution.

18 W. **“Negative Option Feature”** means, in an offer or agreement to sell or
19 provide any good or service, a provision under which the consumer’s silence or
20 failure to take affirmative action to reject a good or service, or to cancel the
21 agreement, is interpreted by the seller or provider as acceptance or continuing
22 acceptance of the offer.

23 X. **“Preauthorized Electronic Fund Transfer”** means an electronic
24 fund transfer authorized in advance to recur at substantially regular intervals.

25 Y. **“Receiver”** means Thomas McNamara, as set forth in Section XIV of
26 the Stipulated Preliminary Injunction with Asset Freeze, Receiver, and Other
27 Equitable Relief Against Corporate Defendants and Defendant Phillip Peikos
28

1 (“Preliminary Injunction”), and any deputy receivers that shall be named by the
2 Receiver.

3 Z. **“Receivership Entities”** means the Corporate Defendants, the
4 Wyoming Related Companies, the UK Related Companies, Albright Solutions
5 LLC, Apex Capital International Sarl, Asus Capital Solutions LLC, Brandooza
6 LLC, DMB Marketing LLC, Element Media Group LLC, Jaci, LLC, Jaci Holding
7 LLC, Jaci PR LLC, NextG Payments, LLC, NextLevel Solutions LLC, Omni
8 Holding Company, LLC, and Vortex Media Group LLC.

9 AA. **“Receivership Estate”** means all Assets managed, held, or
10 maintained by the Receiver in connection with his role as Receiver in this
11 litigation.

12 BB. **“Settling Defendants”** means the Individual Defendant and all of the
13 Corporate Defendants, individually, collectively, or in any combination.

14 CC. **“Telemarketing”** means any plan, program, or campaign which is
15 conducted to induce the purchase of goods or services by use of one or more
16 telephones, and which involves a telephone call, whether or not covered by the
17 Telemarketing Sales Rule, 16 C.F.R. Part 310.

18 DD. **“UK Related Companies”** means the companies identified in **Exhibit**
19 **2** to this Order and each of their subsidiaries, affiliates, successors, and assigns

20 EE. **“Wyoming Related Companies”** means the companies identified in
21 **Exhibit 1** to this Order and each of their subsidiaries, affiliates, successors, and
22 assigns.

23 **ORDER**

24 **I.**

25 **BAN ON CERTAIN NEGATIVE OPTION SALES**

26 **IT IS ORDERED** that Settling Defendants are permanently restrained and
27 enjoined from advertising, marketing, promoting, or offering for sale, whether
28 directly or through an intermediary, including by consulting, planning,

1 participating, facilitating, or advising, any good or service with a Negative Option
2 Feature in the following circumstances:

3 A. Where the good or service is or relates to a Cosmetic, Food, Dietary
4 Supplement, or Drug;

5 B. Where the good or service is or relates to an Add-On good or service;
6 or

7 C. Where the good or service is advertised, marketed, promoted, or
8 offered for sale as either “free,” “risk free,” a “trial,” a “sample,” a “bonus,” a
9 “gift,” “no obligation,” or using any other words, depictions, or illustrations that
10 denote or imply the absence of an obligation on the part of the recipient of the offer
11 to affirmatively act in order to avoid charges.

12 **II.**

13 **PROHIBITED BUSINESS ACTIVITIES**

14 **IT IS FURTHER ORDERED** that Settling Defendants, Settling
15 Defendants’ officers, agents, and employees, and all other persons in active concert
16 or participation with any of them, who receive actual notice of this Order, whether
17 acting directly or indirectly, in connection with the advertising, marketing,
18 promotion, offering for sale, or sale of any good or service are permanently
19 restrained and enjoined from:

20 A. Before a consumer consents to pay for such good or service, failing to
21 disclose, or assisting others in failing to disclose in a Clear and Conspicuous
22 manner all material terms and conditions of any offer, including:

- 23 1. The total cost or price of the good or service;
- 24 2. The amount, timing, and manner of all fees, charges, or other
25 amounts that a consumer will be charged or billed, including the date of the charge
26 and whether it will be a credit card or checking account charge; and
- 27 3. The mechanism for consumers to stop a charge.
- 28

1 B. Before a consumer consents to pay for such product, service, or
2 program, failing to disclose, or assisting others in failing to disclose in a Clear and
3 Conspicuous manner all material terms and conditions of any refund or
4 cancellation policy, including:

5 1. The specific steps and means by which such requests must be
6 submitted;

7 2. The customer service telephone number or numbers that a
8 customer must call to cancel and/or return goods or services;

9 3. The email address, web address, or street address to which such
10 requests must be directed;

11 4. Any mechanism that customers must use to return any products,
12 including any requirement for specific tracking methods or delivery confirmation
13 for a package;

14 5. If there is any policy of not making refunds or cancellations,
15 including any requirement that a product will not be accepted for return or refund
16 unless it is unopened and in re-sellable condition, a statement regarding this policy;
17 and

18 6. The date by which a customer is required to request a refund.

19 C. Misrepresenting, or assisting others in misrepresenting, expressly or
20 by implication, any fact material to consumers concerning any good or service,
21 such as:

22 1. That the consumer will not be charged for any good or service;

23 2. That a good or service is free, risk free, a bonus, a gift, without
24 cost, or without obligation;

25 3. That the consumer can obtain a good or service for a
26 processing, service, shipping, handling, or administrative fee with no further
27 obligation;

28

1 4. The purpose(s) for which the consumer’s Billing Information
2 will be used;

3 5. The date by which the consumer will incur any obligation or be
4 charged unless the consumer takes an affirmative action with respect to a Negative
5 Option Feature that is not banned under the Section of this Order entitled “Ban on
6 Certain Negative Option Sales”;

7 6. The amount that a consumer’s credit or debit card will be
8 charged and the timing of the charge(s);

9 7. The total cost to purchase, receive, or use a good or service;

10 8. Any material restrictions, limitations or conditions to purchase,
11 receive, or use the good or service;

12 9. That a transaction has been authorized by a consumer;

13 10. That a purchase is offered with a satisfaction guarantee or with
14 a money-back guarantee;

15 11. Any material aspect of the nature or terms of a refund,
16 cancellation, exchange, or repurchase policy for the good or service;

17 12. Any material aspect of the performance, efficacy, nature, or
18 central characteristics of a good or service;

19 13. That any advertisement for a good or service sold by Settling
20 Defendants is an objective source of information, such as an unaffiliated news
21 report or magazine article; and

22 14. That an endorsement is by a bona fide user of the good or
23 service and reflects the honest opinions, findings, beliefs, or experience of the
24 endorser;

25 D. Failing, in connection with the advertising, promotion, marketing,
26 offering for sale, sale, or provision of any good or service through an Affiliate
27 Program to:
28

1 1. Require each Affiliate and/or Affiliate Network to provide to
2 Settling Defendants the following identifying information:

3 a. In the case of a natural person, the Affiliate's or Affiliate
4 Network's first and last name, physical address, country, telephone number, email
5 address, and complete bank account information as to where payments are to be
6 made to that person;

7 b. In the case of a business entity, the Affiliate's or Affiliate
8 Network's name and any and all names under which it does business, state of
9 incorporation, registered agent, and the first and last name, physical address,
10 country, telephone number, and email address for at least one natural person who
11 owns, manages, or controls the Affiliate or Affiliate Network, and the complete
12 bank account information as to where payments are to be made to the Affiliate or
13 Affiliate Network;

14 c. If Settling Defendants only have access to certain
15 Affiliates through an Affiliate Network, then Settling Defendants shall
16 contractually require each Affiliate Network to obtain and maintain from those
17 Affiliates the identifying information set forth in Subsections D.1.a and D.1.b of
18 this Section prior to the Affiliate's or Affiliate Network's participation in the
19 Settling Defendants' Affiliate Program.

20 2. As a condition of doing business with any Affiliate or Affiliate
21 Network or such Affiliate or Affiliate Network's acceptance into Settling
22 Defendants' Affiliate Program: (a) provide each such Affiliate or Affiliate
23 Network a copy of this Order; (b) obtain from each such Affiliate or Affiliate
24 Network a signed and dated statement acknowledging receipt of this Order and
25 expressly agreeing to comply with this Order; and (c) clearly and conspicuously
26 disclose in writing that engaging in acts or practices prohibited by this Order will
27 result in immediate termination of any Affiliate or Affiliate Network and forfeiture
28 of all monies owed to such Affiliate or Affiliate Network; *provided, however, that*

1 if Settling Defendants only have access to certain Affiliates through an Affiliate
2 Network, then Settling Defendants shall contractually require that the Affiliate
3 Network provide the information required by this Subsection to each of those
4 Affiliates and retain proof of the same prior to any such Affiliate being used in
5 Settling Defendants' Affiliate Program; and if Settling Defendants should acquire
6 any entity that has an existing program of selling through Affiliates, the entity must
7 complete all steps in this Subsection prior to Settling Defendants' acquisition of
8 the entity.

9 3. Require that each Affiliate or Affiliate Network, prior to the
10 public use or dissemination of any marketing materials, including websites, emails,
11 and pop-ups used by any Affiliate or Affiliate Network to advertise, promote,
12 market, offer for sale, or sell any products, services, or programs through Settling
13 Defendants' Affiliate Program, provide Settling Defendants with the following
14 information: (a) copies of all materially different marketing materials to be used by
15 the Affiliate or Affiliate Network, including text, graphics, video, audio, and
16 photographs; (b) each location the Affiliate or Affiliate Network maintains, or
17 directly or indirectly controls, where the marketing materials will appear, including
18 the URL of any website; (c) for hyperlinks contained within the marketing
19 materials, each location to which a consumer will be transferred by clicking on the
20 hyperlink, including the URL of any website; and (d) the range of dates that the
21 marketing materials will be publicly used or disseminated to consumers; *provided,*
22 *however,* that if Settling Defendants only have access to certain Affiliates through
23 an Affiliate Network, then Settling Defendants shall contractually require that the
24 Affiliate Network obtain and maintain the same information set forth above from
25 each of those Affiliates who are part of Settling Defendants' Affiliate Program
26 prior to the public use or dissemination of any such marketing materials, and
27 provide proof to Settling Defendants of having obtained the same.
28

1 4. Promptly review the marketing materials specified in Section
2 II.D.3 above as necessary to ensure compliance with this Order. Settling
3 Defendants shall also promptly take steps as necessary to ensure that the marketing
4 materials provided to Settling Defendants under Section II.D.3 above are the
5 marketing materials publicly used or disseminated to consumers by the Affiliate or
6 Affiliate Network. If Settling Defendants determine that the use of any marketing
7 material does not comply with this Order, Settling Defendants shall inform the
8 Affiliate or Affiliate Network in writing that approval is denied and shall not pay
9 any amounts to the Affiliate or Affiliate Network for such marketing, including
10 any payments for leads, “click-throughs,” or sales resulting therefrom; *provided,*
11 *however,* that if Settling Defendants only have access to certain Affiliates through
12 an Affiliate Network, then Settling Defendants shall contractually require that the
13 Affiliate Network comply with the procedures set forth in this Subsection as to
14 those Affiliates.

15 5. Promptly and completely investigate any complaints that
16 Settling Defendants receive through any source to determine whether any Affiliate
17 or Affiliate Network is engaging in acts or practices prohibited by this Order,
18 either directly or through any Affiliate that is part of Settling Defendants’ Affiliate
19 Program.

20 6. Upon determining that any Affiliate or Affiliate Network has
21 engaged in, or is engaging in, acts or practices prohibited by this Order, either
22 directly or through any Affiliate that is part of Settling Defendants’ Affiliate
23 Program, immediately:

24 a. Disable any connection between the Settling Defendants’
25 Affiliate Program and the marketing materials used by the Affiliate or Affiliate
26 Network to engage in such acts or practices prohibited by this Order;

27 b. Immediately halt the processing of any payments or
28 charges generated by the Affiliate or Affiliate Network;

1 c. Fully refund, or cause to be refunded, within five (5)
2 business days, each consumer charged by Settling Defendants whose sale
3 originated from the Affiliate or Affiliate Network on or after the date the Affiliate
4 or Affiliate Network engaged in acts or practices prohibited by this Order; and

5 d. Immediately terminate the Affiliate or Affiliate Network;
6 *provided, however*, Settling Defendants shall not be in violation of this subsection
7 if Settling Defendants fail to terminate an Affiliate Network in a case where
8 Settling Defendants' only access to an Affiliate who has engaged in acts or
9 practices prohibited by this Order is through an Affiliate Network and Settling
10 Defendants receive notice that the Affiliate Network immediately terminated the
11 Affiliate violating this Order from any Affiliate Program maintained by the
12 Settling Defendants.

13 **III.**

14 **REQUIRED DISCLOSURES RELATING TO**
15 **NEGATIVE OPTION FEATURES**

16 **IT IS FURTHER ORDERED** that Settling Defendants, Settling
17 Defendants' officers, agents, and employees, and all other persons in active concert
18 or participation with any of them, who receive actual notice of this Order, whether
19 acting directly or indirectly, in connection with promoting or offering for sale any
20 good or service with a Negative Option Feature, other than any good or service
21 covered under the Section of this Order entitled "Ban on Certain Negative Option
22 Sales," are permanently restrained and enjoined from:

23 A. Obtaining Billing Information from a consumer for any transaction
24 involving a good or service that includes a Negative Option Feature, without first
25 disclosing Clearly and Conspicuously, and in Close Proximity to where a
26 consumer provides Billing Information:

27 1. The extent to which the consumer must take affirmative
28 action(s) to avoid any charges on a recurring basis;

1 2. The total cost (or range of costs) the consumer will be charged,
2 the date the initial charge will be submitted for payment, and the frequency of such
3 charges unless the consumer timely takes affirmative steps to prevent or stop such
4 charges;

5 3. The deadline(s) (by date or frequency) by which the consumer
6 must affirmatively act in order to stop all recurring charges;

7 4. The name of the seller or provider of the good or service and, if
8 the name of the seller or provider will not appear on billing statements, the billing
9 descriptor that will appear on such statements;

10 5. A description of the good or service;

11 6. Any charge or cost for which the consumer is responsible in
12 connection with the cancellation of an order or the return of a product; and

13 7. The simple cancellation mechanism to stop any recurring
14 Charges, as required by Section V of this Order.

15 B. Failing to send the consumer:

16 1. Immediately after the consumer's submission of an online
17 order, written confirmation of the transaction by email. The email must Clearly
18 and Conspicuously disclose all the information required by Subsection III.A, and
19 contain a subject line reading "Order Confirmation" along with the name of the
20 good or service and no additional information; or

21 2. Within two (2) days after receipt of the consumer's order by
22 mail or telephone, a written confirmation of the transaction, either by email or first
23 class mail. The email or letter must Clearly and Conspicuously disclose all the
24 information required by Subsection III.A. The subject line of the email must
25 Clearly and Conspicuously state "Order Confirmation" along with the name of the
26 good or service and nothing else. The outside of the envelope must Clearly and
27 Conspicuously state "Order Confirmation" along with the name of the good or
28

1 service and no additional information other than the consumer's address, the
2 seller's return address, and postage.

3 **IV.**

4 **OBTAINING EXPRESS INFORMED CONSENT**

5 **IT IS FURTHER ORDERED** that Settling Defendants, Settling
6 Defendants' officers, agents, and employees, and all other persons in active concert
7 or participation with any of them, who receive actual notice of this Order, whether
8 acting directly or indirectly, in connection with promoting or offering for sale any
9 good or service with a Negative Option Feature, other than any good or service
10 covered under the Section of this Order entitled "Ban on Certain Negative Option
11 Sales," are permanently restrained and enjoined from using, or assisting others in
12 using, Billing Information to obtain payment from a consumer, unless Settling
13 Defendants first obtain the express informed consent of the consumer to do so. To
14 obtain express informed consent, Settling Defendants must:

15 A. For all written offers (including over the Internet or other web-based
16 applications or services), obtain consent through a check box, signature, or other
17 substantially similar method, which the consumer must affirmatively select or sign
18 to accept the Negative Option Feature, and no other portion of the offer. Settling
19 Defendants shall disclose Clearly and Conspicuously, and in Close Proximity to
20 such check box, signature, or substantially similar method of affirmative consent,
21 only the following, with no additional information:

- 22 1. The extent to which the consumer must take affirmative
23 action(s) to avoid any charges on a recurring basis;
- 24 2. The total cost (or range of costs) the consumer will be charged
25 and, if applicable, the frequency of such charges unless the consumer timely takes
26 affirmative steps to prevent or stop such charges; and
- 27 3. The deadline(s) (by date or frequency) by which the consumer
28 must affirmatively act in order to stop all recurring charges.

1 B. For all oral offers, prior to obtaining any Billing Information from the
2 consumer:

3 1. Clearly and Conspicuously disclose the information contained
4 in Subsection IV.A; and

5 2. Obtain affirmative unambiguous express oral confirmation that
6 the consumer: (a) consents to being charged for any good or service, including
7 providing, at a minimum, the last four (4) digits of the consumer's account number
8 to be charged, (b) understands that the transaction includes a Negative Option
9 Feature, and (c) understands the specific affirmative steps the consumer must take
10 to prevent or stop further charges.

11 C. For transactions conducted through Telemarketing, Settling
12 Defendants shall maintain for three (3) years from the date of each transaction an
13 unedited voice recording of the entire transaction, including the prescribed
14 statements set out in Subsection IV.B. Each recording must be retrievable by date
15 and by the consumer's name, telephone number, or Billing Information, and must
16 be provided upon request to the consumer, the consumer's bank, or any law
17 enforcement entity.

18 V.

19 **SIMPLE MECHANISM TO CANCEL**
20 **NEGATIVE OPTION FEATURE**

21 **IT IS FURTHER ORDERED** that Settling Defendants, Settling
22 Defendants' officers, agents, and employees, and all other persons in active concert
23 or participation with any of them, who receive actual notice of this Order, whether
24 acting directly or indirectly, in connection with promoting or offering for sale any
25 good or service with a Negative Option Feature, other than any good or service
26 covered under the Section of this Order entitled "Ban on Certain Negative Option
27 Sales," are permanently restrained and enjoined from failing to provide a simple
28 mechanism for the consumer to immediately stop any recurring charges. Such

1 mechanism must not be difficult, costly, confusing, or time consuming, and must
2 be at least as simple as the mechanism the consumer used to initiate the charge(s).

3 In addition:

4 A. For consumers who entered into the agreement to purchase a good or
5 service including a Negative Option Feature over the Internet or through other
6 web-based applications or services, Settling Defendants must provide a
7 mechanism, accessible over the Internet or through such other web-based
8 application or service that consumers can easily use to cancel the good or service
9 and to immediately stop all further charges.

10 B. For consumers who entered into the agreement to purchase a good or
11 service including a Negative Option Feature through an oral offer and acceptance,
12 Settling Defendants must maintain a telephone number and a postal address that
13 consumers can easily use to cancel the good or service and to immediately stop all
14 further charges. Settling Defendants must assure that all calls to this telephone
15 number shall be answered during normal business hours and that mail to the postal
16 address is retrieved regularly.

17 **VI.**

18 **PROHIBITIONS AGAINST VIOLATION OF THE ELECTRONIC**
19 **FUND TRANSFER ACT**

20 **IT IS FURTHER ORDERED** that Settling Defendants and Settling
21 Defendants' officers, agents, and employees, and all other persons in active concert
22 or participation with any of them, who receive actual notice of this Order, whether
23 acting directly or indirectly, in connection with the sale of any good or service are
24 hereby permanently restrained and enjoined from:

25 A. Engaging in any recurring debiting of a consumer's account without
26 first obtaining a valid written pre-authorization for Preauthorized Electronic Fund
27 Transfers from the consumer's account, which pre-authorization is clear and
28 readily understandable, identifiable as a pre-authorization, and reflects the

1 consumer's assent, as required by Section 907(a) of the Electronic Fund Transfer
2 Act, 15 U.S.C. § 1693e(a), and Section 1005.10(b) of Regulation E, as more fully
3 set out in Section 1005.10(b) of the Consumer Financial Protection Bureau's
4 Official Staff Commentary to Regulation E ("Official Staff Commentary to
5 Regulation E"), 12 C.F.R. § 1005.10(b), cmts. 5 and 6, Supp. I;

6 B. Engaging in any recurring debiting of a consumer's account without
7 first providing a copy of a valid written pre-authorization to the consumer for
8 Preauthorized Electronic Fund Transfers from the consumer's account, which copy
9 is clear and readily understandable, identifiable as a pre-authorization, and reflects
10 the consumer's assent, as required by Section 907(a) of EFTA, 15 U.S.C.
11 § 1693e(a), and Section 1005.10(b) of Regulation E, as more fully set out in
12 Section 1005.10(b) of the Official Staff Commentary to Regulation E, 12 C.F.R.
13 § 1005.10(b), cmts. 5 and 6, Supp. I; and

14 C. Failing to maintain procedures reasonably adapted to avoid an
15 unintentional failure to obtain a written authorization for Preauthorized Electronic
16 Fund Transfers, as required in Section 1005.10(b) of the Official Staff
17 Commentary to Regulation E, 12 C.F.R. § 1005.10(b), cmt. 7, Supp. I.

18 VII.

19 PROHIBITIONS RELATED TO MERCHANT ACCOUNTS

20 **IT IS FURTHER ORDERED** that Settling Defendants, Settling
21 Defendants' officers, agents, and employees, and all other persons in active concert
22 or participation with any of them, who receive actual notice of this Order, whether
23 acting directly or indirectly, are permanently restrained and enjoined from:

24 A. Failing to disclose to any bank, payment processor, credit card
25 processor, independent sales organization, third party processor, payment gateway,
26 or other financial institution any material fact relating to obtaining a Merchant
27 Account, including, but not limited to, the identity of the owner, manager, director,
28 or officer of an entity applying for or holding a Merchant Account, and whether

1 such owner, manager, director, or officer:

2 1. Has been or is placed in a Merchant Account monitoring
3 program;

4 2. Has had a Merchant Account terminated by a bank, payment
5 processor, or other financial institution; or

6 3. Has been fined or otherwise disciplined by a bank, payment
7 processor, or other financial institution, in connection with a Merchant Account.

8 B. Making, or assisting others in making, directly or by implication, any
9 false or misleading statements or material omissions in order to obtain a Merchant
10 Account or respond to a Chargeback.

11 C. Engaging in tactics to avoid any fraud or risk monitoring program
12 established by any financial institution, acquiring bank, or the operators of any
13 payment system, including:

14 1. Using shell companies or nominees (including nominee owners,
15 officers, or managers) to obtain Merchant Accounts;

16 2. Balancing or distributing sales transaction volume or sales
17 transaction activity among multiple Merchant Accounts or merchant billing
18 descriptors; or

19 3. Splitting a single transaction into multiple smaller transactions.

20 D. Causing a sham sales transaction, including microtransactions
21 (sometimes referred to as Value Added Propositions or VAP) or sales transactions
22 by a Merchant to itself.

23 **VIII.**

24 **PROHIBITION ON CREDIT CARD LAUNDERING**

25 **IT IS FURTHER ORDERED** that Settling Defendants, Settling
26 Defendants' officers, agents, and employees, and all other persons in active concert
27 or participation with any of them, who receive actual notice of this Order, whether
28

1 acting directly or indirectly, in connection with a Merchant Account are
2 permanently restrained and enjoined from Credit Card Laundering.

3 **IX.**

4 **MONETARY JUDGMENT AND PARTIAL SUSPENSION**

5 **IT IS FURTHER ORDERED** that:

6 A. Judgment in the amount of sixty million, three hundred thousand,
7 dollars (\$60,300,000) is entered in favor of the Commission against Settling
8 Defendants, jointly and severally, as equitable monetary relief, which may include
9 restitution. Upon complete payment and transfer to the Commission of all Assets
10 listed in Subsections IX.B-D below, the remainder of the judgment is suspended,
11 subject to Subsections IX.E-G below.

12 B. In partial satisfaction of the monetary judgment set forth above,
13 within seven (7) days after the entry of this Order, the following transfers of Assets
14 shall be made to the Commission by electronic fund transfer in accordance with
15 instructions provided by a representative of the Commission. Individual Defendant
16 Phillip Peikos relinquishes all legal and equitable right, title, control, and interest in
17 these Assets and shall take all steps necessary to transfer possession, custody, and
18 control of the Assets to the Commission:

19 1. Banco Popular de Puerto Rico shall transfer to the Commission
20 all Assets held in the bank accounts ending in account numbers 5794 and 5816 in
21 the name of Phillip Peikos; and

22 2. Citibank, N.A. shall transfer to the Commission all Assets held
23 in the bank accounts ending in account numbers 9763 and 9771 in the name of
24 Phillip Peikos.

25 C. In partial satisfaction of the monetary judgment set forth above,
26 within seven (7) days after the entry of this Order, the following transfers of Assets
27 shall be made to the Receiver, to the extent not already transferred to the Receiver,
28 and such Assets shall be included within the Receivership Estate. Settling

1 Defendants relinquish all legal and equitable right, title, control, and interest in
2 these Assets and shall take all steps necessary to transfer possession, custody, and
3 control of the Assets to the Receiver:

4 1. Citibank, N.A. shall transfer to the Receiver all Assets held in
5 the name of or for the benefit of any of the Receivership Entities, including the
6 Assets held in the following bank accounts:

7 a. The bank account ending in account number 9275 in the
8 name of Apex Capital Group, LLC;

9 b. The bank account ending in account number 5557 in the
10 name of Jaci, LLC;

11 c. The bank account ending in account number 5540 in the
12 name of Jaci Holding LLC; and

13 d. The bank account ending in account number 6446 in the
14 name of NextG Payments, LLC.

15 2. Banco Popular de Puerto Rico shall transfer to the Receiver all
16 Assets held in the name of or for the benefit of any of the Receivership Entities,
17 including the Assets held in the following bank accounts:

18 a. The bank account ending in account number 7665 in the
19 name of Apex Capital Group, LLC; and

20 b. The bank account ending in account number 2294 in the
21 name of Brandooza LLC.

22 3. Wells Fargo Bank, N.A. shall transfer to the Receiver all Assets
23 held in the name of or for the benefit of any of the Receivership Entities, including
24 the Assets held in the following bank accounts:

25 a. The bank account ending in account number 4941 in the
26 name of Apres Vous Media, LLC;

27 b. The bank account ending in account number 2944 in the
28 name of Cascade Canyon LLC;

1 c. The bank accounts ending in account numbers 8505 and
2 7158 in the name of Confidential Holdings LLC;

3 d. The bank account ending in account number 4982 in the
4 name of Cornice Group LLC;

5 e. The bank account ending in account number 8305 in the
6 name of Horizon Media, LLC;

7 f. The bank account ending in account number 3074 in the
8 name of Interzoom, LLC;

9 g. The bank account ending in account number 2621 in the
10 name of Mountain Range Ventures LLC;

11 h. The bank account ending in account number 4966 in the
12 name of Shadow Peak, LLC;

13 i. The bank accounts ending in account numbers 2434 and
14 1101 in the name of Singletrack Solutions LLC;

15 j. The bank account ending in account number 2969 in the
16 name of Sky Media Group, LLC;

17 k. The bank account ending in account number 8690 in the
18 name of Teton Pass LLC; and

19 l. The bank account ending in account number 2977 in the
20 name of Wyoming Freedom Group, LLC.

21 4. Barclays Bank PLC shall transfer to the Receiver all Assets
22 held in the name of or for the benefit of any of the Receivership Entities, including
23 the bank accounts in the name of Omni Group Limited.

24 5. BMO Harris Bank, N.A. shall transfer to the Receiver all
25 Assets, including reserve funds, held in the name of or for the benefit of any of the
26 Receivership Entities.

27
28

1 6. Cashflows Europe Limited shall transfer to the Receiver all
2 Assets, including reserve funds, held in the name of or for the benefit of any of the
3 Receivership Entities.

4 7. Chase Paymentech shall transfer to the Receiver all Assets,
5 including reserve funds, held in the name of or for the benefit of any of the
6 Receivership Entities.

7 8. Connected Payment Services, Inc. shall transfer to the Receiver
8 all Assets, including reserve funds, held in the name of or for the benefit of any of
9 the Receivership Entities.

10 9. Decta Limited shall transfer to the Receiver all Assets,
11 including reserve funds, held in the name of or for the benefit of any of the
12 Receivership Entities.

13 10. Deutsche Bank AG shall transfer to the Receiver all Assets,
14 including reserve funds, held in the name of or for the benefit of any of the
15 Receivership Entities.

16 11. Elavon Inc. shall transfer to the Receiver all Assets, including
17 reserve funds, held in the name of or for the benefit of any of the Receivership
18 Entities.

19 12. Esquire Bank shall transfer to the Receiver all Assets, including
20 reserve funds, held in the name of or for the benefit of any of the Receivership
21 Entities.

22 13. EVO Payments International shall transfer to the Receiver all
23 Assets, including reserve funds, held in the name of or for the benefit of any of the
24 Receivership Entities.

25 14. Global Electronic Technology, Inc. shall transfer to the
26 Receiver all Assets, including reserve funds, held in the name of or for the benefit
27 of any of the Receivership Entities.
28

1 15. Global Merchant Advisors, Inc. shall transfer to the Receiver all
2 Assets, including reserve funds, held in the name of or for the benefit of any of the
3 Receivership Entities.

4 16. Humboldt Merchant Services shall transfer to the Receiver all
5 Assets, including reserve funds, held in the name of or for the benefit of any of the
6 Receivership Entities.

7 17. Merrick Bank shall transfer to the Receiver all Assets,
8 including reserve funds, held in the name of or for the benefit of any of the
9 Receivership Entities.

10 18. National Merchant Services LLC shall transfer to the Receiver
11 all Assets, including reserve funds, held in the name of or for the benefit of any of
12 the Receivership Entities.

13 19. National Merchants Association shall transfer to the Receiver
14 all Assets, including reserve funds, held in the name of or for the benefit of any of
15 the Receivership Entities.

16 20. Payment World, LLC shall transfer to the Receiver all Assets,
17 including reserve funds, held in the name of or for the benefit of any of the
18 Receivership Entities.

19 21. Paysafe Group Plc shall transfer to the Receiver all Assets,
20 including reserve funds, held in the name of or for the benefit of any of the
21 Receivership Entities.

22 22. Priority Payment Systems LLC shall transfer to the Receiver all
23 Assets, including reserve funds, held in the name of or for the benefit of any of the
24 Receivership Entities.

25 23. Signapay shall transfer to the Receiver all Assets, including
26 reserve funds, held in the name of or for the benefit of any of the Receivership
27 Entities.

1 24. Signature Card Services shall transfer to the Receiver all
2 Assets, including reserve funds, held in the name of or for the benefit of any of the
3 Receivership Entities.

4 25. Synovus Financial Corp. shall transfer to the Receiver all
5 Assets, including reserve funds, held in the name of or for the benefit of any of the
6 Receivership Entities.

7 26. Transact Pro shall transfer to the Receiver all Assets, including
8 reserve funds, held in the name of or for the benefit of any of the Receivership
9 Entities.

10 27. U.S. Merchant Systems LLC shall transfer to the Receiver all
11 Assets, including reserve funds, held in the name of or for the benefit of any of the
12 Receivership Entities.

13 28. Woodforest National Bank shall transfer to the Receiver all
14 Assets, including reserve funds, held in the name of or for the benefit of any of the
15 Receivership Entities.

16 29. Worldpay, LLC shall transfer to the Receiver all Assets,
17 including reserve funds, held in the name of or for the benefit of any of the
18 Receivership Entities.

19 30. Individual Defendant Phillip Peikos shall transfer to the
20 Receiver all of his rights and interests in Jaci and Jaci Holdings (USA), as
21 identified in his November 30, 2018 Financial Statement, including attachments.

22 31. Individual Defendant Phillip Peikos shall transfer to the
23 Receiver all of his rights and interests in Cinsay (USA), as identified in his
24 November 30, 2018 Financial Statement, including attachments.

25 32. Individual Defendant Phillip Peikos shall transfer to the
26 Receiver all of his rights and interests in Brandooza (Puerto Rico), as identified in
27 his November 30, 2018 Financial Statement, including attachments.
28

1 33. Individual Defendant Phillip Peikos shall transfer to the
2 Receiver his 2016 Bentley GTC Speed, as identified in his November 30, 2018
3 Financial Statement, including attachments.

4 34. Individual Defendant Phillip Peikos shall transfer to the
5 Receiver his 2017 Jeep Wrangler, as identified in his November 30, 2018 Financial
6 Statement, including attachments.

7 35. Settling Defendants shall transfer to the Receiver their rights
8 and interests in BrightGuard Inc.

9 36. Settling Defendants shall transfer to the Receiver their rights
10 and interests in Highpost Holdings Limited, including any and all rights related to
11 the Highpost Holdings Limited Share Purchase Agreement, entered into by Apex
12 Capital Group LLC and C.D.L. Developing Limited with an effective date of
13 February 20, 2018.

14 37. Defendant Omni Group Limited shall transfer to the Receiver
15 its rights and interests in any loan made to Highpost Holdings Limited, including
16 amounts loaned to Highpost Holdings Limited in October 2017, as identified in its
17 November 30, 2018 Financial Statement, including attachments.

18 38. Defendant Apex Capital Group, LLC shall transfer to the
19 Receiver its rights and interests in any loan made to Sestito Property Management,
20 LLC, as identified in its November 30, 2018 Financial Statement, including
21 attachments.

22 D. In partial satisfaction of the monetary judgment set forth above, the
23 following transfer and sale of the property located at 740 Country Valley Road,
24 Westlake Village, California 91362, including all furniture contained therein (the
25 “Westlake Village Property” or the “Property”) shall occur:

26 1. Within seven (7) days of entry of this Order, Individual
27 Defendant Phillip Peikos shall cooperate fully with the Receiver and take such
28 steps as the Receiver may require, including executing any documents and

1 providing any information, to transfer to the Receiver possession and full legal and
2 equitable title to the Westlake Village Property, unless such transfer has already
3 taken place. Until title and possession are transferred, Individual Defendant Phillip
4 Peikos shall maintain and take no action to diminish the value of the Westlake
5 Village Property, including any structures, fixtures, and appurtenances thereto.
6 Any persons currently residing at the Westlake Village Property shall vacate the
7 Property in “broom clean condition” and deliver to the Receiver all keys and
8 security codes, if any, along with written notice that possession is surrendered.
9 Individual Defendant Phillip Peikos represents that no encumbrances to the
10 Westlake Village Property have been added since the execution of his Financial
11 Statement dated November 30, 2018 and that he will not add any encumbrances
12 after signing this Order.

13 2. The Receiver shall, within six (6) months from the date of this
14 Order, make all good faith efforts to sell the Westlake Village Property.

15 3. The Receiver and all personnel hired by the Receiver in
16 connection with the sale of the Westlake Village Property shall be paid their
17 reasonable and customary fees for the performance of their duties in connection
18 with the sale of the Property and for the cost of out-of-pocket expenses incurred by
19 them. Such compensation shall be paid from the proceeds of the sale of the
20 Westlake Village Property.

21 4. Following the transfer of title and possession to the Receiver,
22 the Receiver shall be responsible for all mortgage payments, maintenance fees,
23 taxes, utility, sewer and/or water use charges, homeowners association’s fees or
24 penalties, and all other expenses of any nature related to the Westlake Village
25 Property. In addition, the Receiver shall be responsible for all costs associated
26 with the marketing and sale of the Westlake Village Property, including transfer
27 fees, recording fees, advertising costs, and any commissions associated with or
28 resulting from the sale of the Westlake Village Property. All of the expenses, fees,

1 and costs set forth in this Paragraph shall be paid by the Receiver from the
2 proceeds of the sale of the Westlake Village Property.

3 5. Within thirty (30) days of the sale of the Westlake Village
4 Property, the Receiver shall pay to the Commission by electronic fund transfer the
5 net proceeds from the sale (“Net Proceeds”), after the payment of the related liens,
6 debts, fees, and expenses set forth in Paragraph D.4 of this Section. *Provided,*
7 *however,* that if the Net Proceeds from the sale exceed \$500,000, the Receiver
8 shall pay seventy thousand dollars (\$70,000) of the Net Proceeds to non-party Gina
9 Manfredi and the remainder of the Net Proceeds to the Commission.

10 E. The Commission’s agreement to the suspension of part of the
11 judgment is expressly premised upon the truthfulness, accuracy, and completeness
12 of Settling Defendants’ sworn financial statements and related documents
13 (collectively, “financial representations”) submitted to the Commission, namely:

14 1. the Financial Statement of Individual Defendant Phillip Peikos
15 signed on November 30, 2018, including the attachments;

16 2. the Financial Statement of Corporate Defendant Apex Capital
17 Group, LLC, signed by Phillip Peikos, Chief Executive Officer, on November 30,
18 2018, including the attachments;

19 3. the Financial Statement of Corporate Defendant Capstone
20 Capital Solutions Limited, signed by Raul Camacho, Manager, on December 2,
21 2018, including the attachments;

22 4. the Financial Statement of Corporate Defendant Klik Trix
23 Limited, signed by Raul Camacho, Manager, on December 2, 2018, including the
24 attachments;

25 5. the Financial Statement of Corporate Defendant Empire
26 Partners Limited, signed by Raul Camacho, Manager, on December 2, 2018,
27 including the attachments;

1 6. the Financial Statement of Corporate Defendant Interzoom
2 Capital Limited, signed by Raul Camacho, Manager, on December 2, 2018,
3 including the attachments;

4 7. the Financial Statement of Corporate Defendant Lead Blast
5 Limited, signed by Raul Camacho, Manager, on December 2, 2018, including the
6 attachments;

7 8. the Financial Statement of Corporate Defendant Mountain
8 Venture Solutions Limited, signed by Raul Camacho, Manager, on December 2,
9 2018, including the attachments;

10 9. the Financial Statement of Corporate Defendant Nutra Global
11 Limited, signed by Raul Camacho, Manager, on December 2, 2018, including the
12 attachments;

13 10. the Financial Statement of Omni Group Limited, signed by
14 Phillip Peikos, Director, on November 30, 2018, including the attachments;

15 11. the Financial Statement of Corporate Defendant Rendezvous IT
16 Limited, signed by Raul Camacho, Manager, on December 2, 2018, including the
17 attachments;

18 12. the Financial Statement of Corporate Defendant Sky Blue
19 Media Limited, signed by Raul Camacho, Manager, on December 2, 2018,
20 including the attachments;

21 13. the Financial Statement of Corporate Defendant Tactic
22 Solutions Limited, signed by Raul Camacho, Manager, on December 2, 2018,
23 including the attachments; and

24 14. the additional information submitted by email dated March 25,
25 2019, from William Rothbard, attorney for the Settling Defendants, confirming the
26 amount and source of a loan made to Mr. Peikos.

27 F. The suspension of the judgment will be lifted as to any Settling
28 Defendant if, upon motion by the Commission, the Court finds that Settling

1 Defendant failed to disclose any material Asset, materially misstated the value of
2 any Asset, or made any other material misstatement or omission in the financial
3 representations identified above.

4 G. If the suspension of the judgment is lifted, the judgment becomes
5 immediately due as to that Settling Defendant in the amount specified in Section
6 IX.A. above (which the parties stipulate only for purposes of this Section
7 represents the consumer injury alleged in the Complaint), less any payment
8 previously made pursuant to this Section, plus interest computed from the date of
9 entry of this Order.

10 **X.**

11 **ADDITIONAL MONETARY PROVISIONS**

12 **IT IS FURTHER ORDERED** that:

13 A. Settling Defendants relinquish dominion and all legal and equitable
14 right, title, and interest in all Assets transferred pursuant to this Order and may not
15 seek the return of any Assets.

16 B. The facts alleged in the Complaint will be taken as true, without
17 further proof, in any subsequent civil litigation by or on behalf of the Commission
18 to enforce its rights to any payment or monetary judgment pursuant to this Order,
19 such as a nondischargeability complaint in any bankruptcy case.

20 C. The facts alleged in the Complaint establish all elements necessary to
21 sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the
22 Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral
23 estoppel effect for such purposes.

24 D. Settling Defendants acknowledge that their Taxpayer Identification
25 Numbers (Social Security Numbers or Employer Identification Numbers), which
26 Settling Defendants previously submitted to the Commission, may be used for
27 collecting and reporting on any delinquent amount arising out of this Order, in
28 accordance with 31 U.S.C. § 7701.

1 E. All money paid to the Commission pursuant to this Order may be
2 deposited into a fund administered by the Commission or its designee to be used
3 for equitable relief, including consumer redress and any attendant expenses for the
4 administration of any redress fund. If a representative of the Commission decides
5 that direct redress to consumers is wholly or partially impracticable or money
6 remains after redress is completed, the Commission may apply any remaining
7 money for such other equitable relief (including consumer information remedies)
8 as it determines to be reasonably related to Settling Defendants' practices alleged
9 in the Complaint. Any money not used for such equitable relief is to be deposited
10 to the U.S. Treasury as disgorgement. Settling Defendants have no right to
11 challenge any actions the Commission or its representatives may take pursuant to
12 this Subsection.

13 F. The freeze on the Assets of the Settling Defendants pursuant to
14 Section VI of the Preliminary Injunction entered in this action on December 18,
15 2018 is modified to permit the payments and other transfers of Assets identified in
16 Sections IX and X of this Order. Upon completion of all payment and other
17 obligations identified in Sections IX and X of this Order, the asset freezes are
18 dissolved as to the Settling Defendants. A financial institution shall be entitled to
19 rely upon a letter from the Commission stating that the freeze on the Settling
20 Defendants' Assets has been lifted.

21 **XI.**

22 **CUSTOMER INFORMATION**

23 **IT IS FURTHER ORDERED** that Settling Defendants and Settling
24 Defendants' officers, agents, and employees, and all other persons in active concert
25 or participation with any of them, who receive actual notice of this Order, whether
26 acting directly or indirectly, are hereby permanently restrained and enjoined from
27 directly or indirectly:
28

1 places and times as a Commission representative may designate, without the
2 service of a subpoena.

3 **XIII.**

4 **ORDER ACKNOWLEDGMENTS**

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

7 A. Each Settling Defendant, within 7 days of entry of this Order, must
8 submit to the Commission an acknowledgment of receipt of this Order sworn
9 under penalty of perjury.

10 B. For 5 years after entry of this Order, Individual Defendant Phillip
11 Peikos for any business that he, individually or collectively with any other Settling
12 Defendant, is the majority owner or controls directly or indirectly, and each
13 Corporate Defendant, must deliver a copy of this Order to: (1) all principals,
14 officers, directors, and LLC managers and members; (2) all employees having
15 managerial responsibilities for conduct related to the subject matter of the Order
16 and all agents and representatives who participate in conduct related to the subject
17 matter of the Order; and (3) any business entity resulting from any change in
18 structure as set forth in the Section titled Compliance Reporting. Delivery must
19 occur within 7 days of entry of this Order for current personnel. For all others,
20 delivery must occur before they assume their responsibilities.

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

24 **XIV.**

25 **COMPLIANCE REPORTING**

26 **IT IS FURTHER ORDERED** that Settling Defendants make timely
27 submissions to the Commission:
28

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

3 1. Each Settling Defendant must: (a) identify the primary
4 physical, postal, and email address and telephone number, as designated points of
5 contact, which representatives of the Commission may use to communicate with
6 Settling Defendant; (b) identify all of that Settling Defendant's businesses by all of
7 their names, telephone numbers, and physical, postal, email, and Internet
8 addresses; (c) describe the activities of each business, including the goods and
9 services offered, the means of advertising, marketing, and sales, and the
10 involvement of any other Settling Defendant (which Individual Defendant Phillip
11 Peikos must describe if he knows or should know due to his own involvement); (d)
12 describe in detail whether and how that Settling Defendant is in compliance with
13 each Section of this Order; and (e) provide a copy of each Order Acknowledgment
14 obtained pursuant to this Order, unless previously submitted to the Commission.

15 2. Additionally, Individual Defendant Phillip Peikos must:
16 (a) identify all telephone numbers and all physical, postal, email and Internet
17 addresses, including all residences; (b) identify all business activities, including
18 any business for which such Settling Defendant performs services whether as an
19 employee or otherwise and any entity in which such Settling Defendant has any
20 ownership interest; and (c) describe in detail such Settling Defendant's
21 involvement in each such business, including title, role, responsibilities,
22 participation, authority, control, and any ownership.

23 B. For 15 years after entry of this Order, each Settling Defendant must
24 submit a compliance notice, sworn under penalty of perjury, within 14 days of any
25 change in the following:

26 1. Each Settling Defendant must report any change in: (a) any
27 designated point of contact; or (b) the structure of any Corporate Defendant or any
28 entity that Settling Defendant has any ownership interest in or controls directly or

1 years. Specifically, Corporate Defendants and Individual Defendant Phillip Peikos
2 for any business that such Settling Defendant, individually or collectively with any
3 other Settling Defendant, is a majority owner or controls directly or indirectly,
4 must create and retain the following records:

5 A. accounting records showing the revenues from all goods or services
6 sold;

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

11 C. records of all consumer complaints and refund requests, whether
12 received directly or indirectly, such as through a third party, and any response;

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

15 E. a copy of each unique advertisement or other marketing material.

16 XVI.

17 COMPLIANCE MONITORING

18 **IT IS FURTHER ORDERED** that, for the purpose of monitoring Settling
19 Defendants' compliance with this Order, including the financial representations
20 upon which part of the judgment was suspended and any failure to transfer any
21 Assets as required by this Order:

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

1 B. For matters concerning this Order, the Commission is authorized to
2 communicate directly with each Settling Defendant. Settling Defendants must
3 permit representatives of the Commission to interview any employee or other
4 person affiliated with any Settling Defendant who has agreed to such an interview.
5 The person interviewed may have counsel present.

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


12 D. Upon written request from a representative of the Commission, any
13 consumer reporting agency must furnish consumer reports concerning Individual
14 Defendant Phillip Peikos, pursuant to Section 604(1) of the Fair Credit Reporting
15 Act, 15 U.S.C. § 1681b(a)(1).

16 **XVII.**

17 **RETENTION OF JURISDICTION**

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

20
21 **SO ORDERED this 11th day of September, 2019.**

22
23 
24 _____
25 JOHN F. WALTER
26 UNITED STATES DISTRICT JUDGE
27
28

1 **For Plaintiff Federal Trade Commission:**

2 Dated: 9/6/19

_____/s/
BRIAN N. LASKY
LAURA A. ZUCKERWISE
DARREN LUBETZKY
Federal Trade Commission
One Bowling Green, Suite 318
New York, NY 10004
(212) 607-2804 (Zuckerwise)
(212) 607-2822 (Fax)
lzuckerwise@ftc.gov

FAYE CHEN BARNOUW
Federal Trade Commission
10990 Wilshire Blvd., Suite 400
Los Angeles, CA 90024
(310) 824-4300
(310) 824-4380 (Fax)

3
4
5
6
7
8
9
10
11
12 **For Defendants Phillip Peikos, Apex Capital
13 Group, LLC, Capstone Capital Solutions Limited,
14 Klik Trix Limited, Empire Partners Limited,
15 Interzoom Capital Limited, Lead Blast Limited,
16 Mountain Venture Solutions Limited, Nutra Global
17 Limited, Omni Group Limited, Rendezvous IT
Solutions Limited**

18 Dated: 8/5/19

_____/s/
WILLIAM I. ROTHBARD
Law Offices of William I. Rothbard
2333 Canyonback Road
Los Angeles, CA 90049
(310) 453-8713
(310) 453-8715 (Fax)
Bill@RothbardLaw.com

23 **Defendant Phillip Peikos**

24 Dated: 8/4/19

_____/s/
PHILLIP PEIKOS
*Individually and on behalf of the
Corporate Defendants*

EXHIBIT 1
Wyoming Related Companies

<i>Company</i>
Alpha Group LLC
Apres Vous Media, LLC
Based Capital LLC
Bold Media LLC
Capstone Capital, LLC
Cascade Canyon LLC
Confidential Holdings, LLC
Cornice Group LLC
Crest Capital, LLC
Fortune Ventures LLC
Future Holdings LLC
Grand Assets, LLC
Horizon Media, LLC
Interzoom, LLC
Lead Blast LLC
Lion Capital LLC
Macro Group LLC
Mountain Range Ventures LLC
Mountain Solutions, LLC
Nutra First LLC
Nutra Global LLC
Old West Equity LLC
Omega Assets LLC
Rendezvous IT, LLC
Shadow Peak, LLC
Singletrack Solutions LLC
Sky Media Group, LLC
Teton Pass LLC
Virtual Media LLC
Wonder Leads LLC
Wyoming Freedom Group LLC
Zoom Media LLC

EXHIBIT 2
UK Related Companies

<i>Company</i>
Ace Media Group Ltd
Alpha Corporate Ventures Ltd
Apres Vous Media Ltd
Based Capital Ltd
Capstone Capital Solutions Ltd
Clik Trix Ltd
Crest Capital Ventures Ltd
Digital X Solutions Ltd
Exclusive Media Group Ltd
Empire Partners Ltd
Energy Tomorrow Ltd
Fortune Ventures Ltd
Future Hold Ventures Ltd
Future Precision Ltd
G Force Max Ltd
Grand Assets Ventures Ltd
Horizon Media Partners Ltd
Interzoom Capital Ltd
Lead Blast Ltd
Lion Capital Solutions Ltd
Maverick Pro Ltd
Mountain Venture Solutions Ltd
New Idea Group Ltd
Nutra First Ltd
Nutra Global Ltd
Omega Assets Ltd
Online Product Group Ltd
Precision Tactic Group Ltd
Rendezvous IT Ltd
Sky Blue Media Ltd
Snowdrift Solutions Ltd
Tactic Solutions Ltd
Top Quality Group Ltd
Virtual Media Solutions Ltd
Visitron Capital Ltd
Web Media Depot Ltd
Zoom Media Ltd