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15 **UNITED STATES DISTRICT COURT**
16 **DISTRICT OF NEVADA**

17 **FEDERAL TRADE COMMISSION,**

18 Plaintiff,

19 v.

20 **LEAD EXPRESS, INC., et al.,**

21 Defendants.
22

Case No. 2:20-cv-00840-JAD-NJK

**ORDER GRANTING
STIPULATION TO ENTER
PRELIMINARY INJUNCTION
AGAINST THE CORPORATE
DEFENDANTS**

[ECF No. 34]

23
24 Plaintiff, the Federal Trade Commission (“FTC”) commenced this civil action on May
25 11, 2020, pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”),
26 15 U.S.C. §§ 53(b) and 57b, Section 6(b) of the Telemarketing and Consumer Fraud and Abuse
27 Prevention Act (“Telemarketing Act”), 15 U.S.C. § 6105(b), Section 108(c) of the Truth in

1 Lending Act (“TILA”), 15 U.S.C. § 1607(c), and Section 918(c) of the Electronic Fund Transfer
2 Act (“EFTA”), 15 U.S.C. § 1693o(c). (ECF No. 1.) On May 19, 2020, on motion by the FTC,
3 the Court entered an *ex parte* temporary restraining order (“TRO”) with asset freeze and other
4 equitable relief against Defendants Lead Express, Inc., Camel Coins, Inc., Sea Mirror, Inc., Naito
5 Corp., Kotobuki Marketing, Inc., Ebisu Marketing, Inc., Hotei Marketing, Inc., Daikoku
6 Marketing, Inc., La Posta Tribal Lending Enterprise, Takehisa Naito, and Keishi Ikeda. (ECF
7 No. 13.) Now, the FTC and Defendants Lead Express, Inc., Camel Coins, Inc., Sea Mirror, Inc.,
8 Naito Corp., Kotobuki Marketing, Inc., Ebisu Marketing, Inc., Hotei Marketing, Inc., and
9 Daikoku Marketing, Inc., by and through their undersigned counsel, have stipulated and agreed
10 to entry of a preliminary injunction (“Order”).

11 **FINDINGS OF FACT**

12 By stipulation of the parties, the Court finds that:

- 13 A. The FTC and the Corporate Defendants have stipulated and agreed to the entry of this
14 preliminary injunction order without any admission of wrongdoing or violation of law, and
15 without a finding by the Court of law or fact other than stated below.
- 16 B. The Corporate Defendants waive all rights to seek judicial review or otherwise challenge or
17 contest the validity of this Order.
- 18 C. This Court has jurisdiction over the subject matter of this case, and the FTC asserts that there
19 is good cause to believe that the Court will have jurisdiction over all parties hereto and that
20 venue in this district is proper.
- 21 D. The FTC asserts that there is good cause to believe that the Corporate Defendants have
22 engaged in and are likely to engage in acts or practices that violate Section 5(a) of the FTC
23 Act, 15 U.S.C. § 45(a), the FTC’s Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310,
24 TILA, 15 U.S.C. §§ 1601-1666j, and its implementing Regulation Z, 12 C.F.R. Part 1026,
25 and EFTA, 15 U.S.C. §§ 1693-1693r, and its implementing Regulation E, 12 C.F.R. Part
26 1005, and that the FTC is therefore likely to prevail on the merits of this action.

- 1 E. The FTC asserts that there is good cause to believe that immediate and irreparable harm will
2 result from the Corporate Defendants’ ongoing violations of the FTC Act, the TSR, TILA
3 and Regulation Z, and EFTA and Regulation E unless the Corporate Defendants are
4 immediately restrained and enjoined by order of this Court.
- 5 F. The FTC asserts that there is good cause to believe that immediate and irreparable damage to
6 the Court’s ability to grant effective final relief for consumers—including monetary
7 restitution, rescission, disgorgement or refunds—will occur from the sale, transfer,
8 destruction or other disposition or concealment by the Corporate Defendants of their assets or
9 records, unless the Corporate Defendants are immediately restrained and enjoined by order of
10 this Court.
- 11 G. The FTC asserts that good cause exists for appointing a receiver over the Receivership
12 Entities and continuing the asset freeze over the Corporate Defendants’ assets.
- 13 H. This Order is in the public interest.
- 14 I. This Court has authority to issue this Order pursuant to Sections 13(b) and 19 of the FTC
15 Act, 15 U.S.C. §§ 53(b) and 57b, Section 6(b) of the Telemarketing Act, 15 U.S.C. §
16 6105(b), Section 108(c) of TILA, 15 U.S.C. § 1607(c), and Section 918(c) of EFTA, 15
17 U.S.C. § 1693o(c); Federal Rule of Civil Procedure 65; and the All Writs Act, 28 U.S.C.
18 § 1651.
- 19 J. No security is required of any agency of the United States for issuance of a temporary
20 restraining order. Fed. R. Civ. P. 65(c).

21 **DEFINITIONS**

22 For the purpose of this Order, the following definitions shall apply:

- 23 A. “**Asset**” means any legal or equitable interest in, right to, or claim to, any property, wherever
24 located and by whomever held.
- 25 B. “**Consumer**” means any Person.
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- 1 C. “**Corporate Defendants**” means Lead Express, Inc., Camel Coins, Inc., Sea Mirror, Inc.,
2 Naito Corp., Kotobuki Marketing, Inc., Ebisu Marketing, Inc., Hotei Marketing, Inc., and
3 Daikoku Marketing, Inc., and each of their subsidiaries, affiliates, successors, and assigns.
- 4 D. “**Defendants**” means the Corporate Defendants, the Tribal Defendant, and the Individual
5 Defendants, individually, collectively, or in any combination.
- 6 E. “**Document**” is synonymous in meaning and equal in scope to the usage of “document” and
7 “electronically stored information” in Federal Rule of Civil Procedure 34(a), Fed. R. Civ. P.
8 34(a), and includes writings, drawings, graphs, charts, photographs, sound and video
9 recordings, images, Internet sites, web pages, websites, electronic correspondence, including
10 e-mail and instant messages, contracts, accounting data, advertisements, FTP Logs, Server
11 Access Logs, books, written or printed records, handwritten notes, telephone logs, telephone
12 scripts, receipt books, ledgers, personal and business canceled checks and check registers,
13 bank statements, appointment books, computer records, customer or sales databases and any
14 other electronically stored information, including Documents located on remote servers or
15 cloud computing systems, and other data or data compilations from which information can be
16 obtained directly or, if necessary, after translation into a reasonably usable form. A draft or
17 non-identical copy is a separate document within the meaning of the term.
- 18 F. “**Electronic Data Host**” means any Person or entity in the business of storing, hosting, or
19 otherwise maintaining electronically stored information. This includes, but is not limited to,
20 any entity hosting a website or server, and any entity providing “cloud based” electronic
21 storage.
- 22 G. “**Individual Defendants**” means Takehisa Naito and Keishi Ikeda, individually, collectively,
23 or in any combination.
- 24 H. “**Person**” means a natural person, an organization or other legal entity, including a
25 corporation, partnership, sole proprietorship, limited liability company, association,
26 cooperative, or any other group or combination acting as an entity.
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- 1 I. **“Public Health and Safety Event”** means (1) any public health or safety emergency
2 announced or declared by any federal, state, or local governmental authority or (2) the
3 existence of any order, regulation, or action by any federal, state, or local government
4 authority relating to public health or safety governing or otherwise restricting public or
5 commercial activity, such as a quarantine or stay-at-home order.
- 6 J. **“Receiver”** means the receiver appointed in Section XI of this Order and any deputy
7 receivers that shall be named by the Receiver.
- 8 K. **“Receivership Entities”** means the Corporate Defendants as well as any other entity that has
9 conducted any business related to lending services, including receipt of Assets derived from
10 any activity that is the subject of the Complaint in this matter, and that the Receiver
11 determines is controlled or owned by any Corporate Defendant or Individual Defendant.
- 12 L. **“Tribal Defendant”** means La Posta Tribal Lending Enterprise and any name under which it
13 does business including Harvest Moon Financial, Green Stream Lending, and Gentle Breeze
14 Online.

15 **ORDER**

16 **PROHIBITED BUSINESS ACTIVITIES**

- 17 I. **IT IS THEREFORE ORDERED** that the Corporate Defendants, their officers, agents,
18 employees, and attorneys, and all other Persons in active concert or participation with them,
19 who receive actual notice of this Order by personal service or otherwise, whether acting
20 directly or indirectly, in connection with the advertising, marketing, promoting, or offering of
21 any loan or other extension of credit, are temporarily restrained and enjoined from:
- 22 A. misrepresenting or assisting others in misrepresenting, expressly or by implication:
- 23 1. that any Person will withdraw from Consumers’ bank accounts a fixed number of
24 payments to repay Consumers’ loans;
- 25 2. that any Person will withdraw from Consumers’ bank accounts a fixed total of
26 payments to repay Consumers’ loans;
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- 1 3. that any Person will withdraw from Consumers' bank accounts payments that consist
2 of both interest and principal repayment; and
- 3 4. any other fact material to Consumers concerning any loan or other extension of credit,
4 including, but not limited to: (a) closing costs or other fees and how such costs or fees
5 will be assessed, (b) the payment schedule, monthly payment amount(s), any balloon
6 payment, or other payment terms, (c) the interest rate(s), annual percentage rate(s), or
7 finance charge(s), and whether they are fixed or adjustable, (d) the loan amount,
8 credit amount, draw amount, or outstanding balance, (e) the loan term, draw period,
9 or maturity, (f) the amount of cash to be disbursed to the borrower out of the
10 proceeds, or the amount of cash to be disbursed on behalf of the borrower to any third
11 parties, (g) whether any specified minimum payment amount covers both interest and
12 principal, and whether the credit has or can result in negative amortization, and (h)
13 that the credit does not have a prepayment penalty or whether subsequent refinancing
14 may trigger a prepayment penalty and/or other fees;
- 15 B. if a loan or extension of credit contains an automatic renewal or refinance provision,
16 failing to disclose clearly and conspicuously all material terms and conditions of that
17 provision, including, but not limited to (1) the fact that loan or extension of credit will
18 automatically renew or refinance unless the borrower takes an affirmative action to avoid
19 such renewal or refinance, (2) the date the loan or extension of credit will renew or
20 refinance, and (3) the specific steps the borrower must take to avoid renewal or refinance;
- 21 C. creating or causing to be created, directly or indirectly, a remotely created payment order,
22 including a remotely created check, as payment for any good or service offered or sold
23 through telemarketing;
- 24 D. failing to disclose clearly and conspicuously in writing, in a form Consumers may keep,
25 before extending credit, the following information in a manner reflecting the terms of the
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1 legal obligations between the parties: (1) the amount financed, (2) the finance charge, (3)
2 the annual percentage rate, (4) the payment schedule, and (5) the total of payments;

3 E. failing to obtain a written authorization signed or similarly authenticated from any Person
4 before debiting such Person's bank account on a recurring basis; and

5 F. failing to provide a copy of a written authorization signed or similarly authenticated from
6 any Person before debiting such Person's bank account on a recurring basis.

7 **PROHIBITION ON RELEASE OF CUSTOMER INFORMATION**

8 **II. IT IS FURTHER ORDERED** that the Corporate Defendants, their officers, agents,
9 employees, and attorneys, and all other Persons in active concert or participation with any of
10 them, who receive actual notice of this Order, whether acting directly or indirectly, are
11 hereby temporarily restrained and enjoined from:

12 A. Selling, renting, leasing, transferring, or otherwise disclosing, the name, address, birth
13 date, telephone number, email address, credit card number, bank account number, Social
14 Security number, or other financial or identifying information of any Person that any
15 Defendant obtained in connection with any activity that pertains to the subject matter of
16 this Order; and

17 B. Benefitting from or using the name, address, birth date, telephone number, email address,
18 credit card number, bank account number, Social Security number, or other financial or
19 identifying information of any Person that any Defendant obtained in connection with
20 any activity that pertains to the subject matter of this Order.

21 C. Provided, however, that the Corporate Defendants may disclose such identifying
22 information to a law enforcement agency, to their attorneys as required for their defense,
23 as required by any law, regulation, or court order, or in any filings, pleadings or
24 discovery in this action in the manner required by the Federal Rules of Civil Procedure
25 and by any protective order in the case.

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ASSET FREEZE

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2 **III. IT IS FURTHER ORDERED** that the Corporate Defendants, their officers, agents,
3 employees, and attorneys, and all other Persons in active concert or participation with any of
4 them, who receive actual notice of this Order, whether acting directly or indirectly, are
5 hereby temporarily restrained and enjoined from:

- 6 A. Transferring, liquidating, converting, encumbering, pledging, loaning, selling,
7 concealing, dissipating, disbursing, assigning, relinquishing, spending, withdrawing,
8 granting a lien or security interest or other interest in, or otherwise disposing of any
9 Assets that are:
- 10 1. owned or controlled, directly or indirectly, by any Defendant;
 - 11 2. held, in part or in whole, for the benefit of any Defendant;
 - 12 3. in the actual or constructive possession of any Defendant; or
 - 13 4. owned or controlled by, in the actual or constructive possession of, or otherwise held
14 for the benefit of, any corporation, partnership, asset protection trust, or other entity
15 that is directly or indirectly owned, managed or controlled by any Defendant.
- 16 B. Opening or causing to be opened any safe deposit boxes, commercial mail boxes, or
17 storage facilities titled in the name of any Defendant or subject to access by any
18 Defendant, except as necessary to comply with written requests from the Receiver acting
19 pursuant to its authority under this Order;
- 20 C. Incurring charges or cash advances on any credit, debit, or ATM card issued in the name,
21 individually or jointly, of any Corporate Defendant or any corporation, partnership, or
22 other entity directly or indirectly owned, managed, or controlled by any Defendant or of
23 which any Defendant is an officer, director, member, or manager. This includes any
24 corporate bankcard or corporate credit card account for which any Defendant is, or was
25 on the date that this Order was signed, an authorized signor; or
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1 D. Cashing any checks or depositing any money orders or cash received from Consumers,
2 clients, or customers of any Defendant.

3 E. The Assets affected by this Section shall include: (1) all Assets of Defendants as of the
4 time this Order is entered; and (2) Assets obtained by Defendants after this Order is
5 entered if those Assets are derived from any activity that is the subject of the Complaint
6 in this matter or that is prohibited by this Order. This Section does not prohibit any
7 transfers to the Receiver or repatriation of foreign Assets specifically required by this
8 order.

9 F.

10 **DUTIES OF ASSET HOLDERS AND OTHER THIRD PARTIES**

11 **IV. IT IS FURTHER ORDERED** that any financial or brokerage institution, Electronic Data
12 Host, credit card processor, payment processor, merchant bank, acquiring bank, independent
13 sales organization, third party processor, payment gateway, insurance company, business
14 entity, or Person who receives actual notice of this Order (by service or otherwise) that (a)
15 has held, controlled, or maintained custody, through an account or otherwise, of any
16 Document on behalf of any Corporate Defendant or any Asset that has been owned or
17 controlled, directly or indirectly, by any Corporate Defendant; held, in part or in whole, for
18 the benefit of any Corporate Defendant; in the actual or constructive possession of any
19 Corporate Defendant; or owned or controlled by, in the actual or constructive possession of,
20 or otherwise held for the benefit of, any corporation, partnership, asset protection trust, or
21 other entity that is directly or indirectly owned, managed or controlled by any Corporate
22 Defendant; (b) has held, controlled, or maintained custody, through an account or otherwise,
23 of any Document or Asset associated with credits, debits, or charges made on behalf of any
24 Corporate Defendant, including reserve funds held by payment processors, credit card
25 processors, merchant banks, acquiring banks, independent sales organizations, third party
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1 processors, payment gateways, insurance companies, or other entities; or (c) has extended
2 credit to any Corporate Defendant, including through a credit card account, shall:

- 3 A. Hold, preserve, and retain within its control and prohibit the withdrawal, removal,
4 alteration, assignment, transfer, pledge, encumbrance, disbursement, dissipation,
5 relinquishment, conversion, sale, or other disposal of any such Document or Asset, as
6 well as all Documents or other property related to such Assets, except by further order of
7 this Court or as directed in writing by the Receiver regarding Assets or Documents
8 owned by, held in the name of, for the benefit of, or otherwise controlled by any
9 Receivership Entity;
- 10 B. Deny any Person, except the Receiver, access to any safe deposit box, commercial mail
11 box, or storage facility that is titled in the name of any Corporate Defendant, either
12 individually or jointly, or otherwise subject to access by any Corporate Defendant;
- 13 C. Provide FTC counsel and the Receiver, within three (3) days of receiving a copy of this
14 Order, a sworn statement setting forth, for each Asset or account covered by this Section:
- 15 1. The identification number of each such account or Asset;
 - 16 2. The balance of each such account, or a description of the nature and value of each
17 such Asset as of the close of business on the day on which this Order is served, and, if
18 the account or other Asset has been closed or removed, the date closed or removed,
19 the total funds removed in order to close the account, and the name of the Person or
20 entity to whom such account or other Asset was remitted; and
 - 21 3. The identification of any safe deposit box, commercial mail box, or storage facility
22 that is either titled in the name, individually or jointly, of any Corporate Defendant, or
23 is otherwise subject to access by any Corporate Defendant; and
- 24 D. Upon the request of FTC counsel or the Receiver, promptly provide FTC counsel and the
25 Receiver with copies of all records or other Documents pertaining to such account or
26 Asset, including originals or copies of account applications, account statements, signature
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1 cards, checks, drafts, deposit tickets, transfers to and from the accounts, including wire
2 transfers and wire transfer instructions, all other debit and credit instruments or slips,
3 currency transaction reports, 1099 forms, and all logs and records pertaining to safe
4 deposit boxes, commercial mail boxes, and storage facilities.

- 5 E. Provided, however, that this Section does not prohibit any transfers to the Receiver or
6 repatriation of foreign Assets specifically required by this order.

7 **FINANCIAL DISCLOSURES**

- 8 **V. IT IS FURTHER ORDERED** that each Defendant, within five (5) days following the date
9 of entry of this Order, shall prepare and deliver to FTC counsel and the Receiver:

- 10 A. completed financial statements on the forms attached to this Order as **Attachment A**
11 (Financial Statement of Corporate Defendant) for each Corporate Defendant; and
12 B. completed **Attachment B** (IRS Form 4506, Request for Copy of a Tax Return) for each
13 Corporate Defendant.

14 **FOREIGN ASSET REPATRIATION**

- 15 **VI. IT IS FURTHER ORDERED** that within five (5) days following the date of entry of this
16 Order, each Corporate Defendant shall:

- 17 A. Provide FTC counsel and the Receiver with a full accounting, verified under oath and
18 accurate as of the date of this Order, of all Assets, Documents, and accounts outside of
19 the United States which are: (1) titled in the name, individually or jointly, of any
20 Corporate Defendant; (2) held by any Person or entity for the benefit of any Corporate
21 Defendant or for the benefit of, any corporation, partnership, asset protection trust, or
22 other entity that is directly or indirectly owned, managed or controlled by any Corporate
23 Defendant; or (3) under the direct or indirect control, whether jointly or singly, of any
24 Corporate Defendant;
- 25 B. Take all steps necessary to provide FTC counsel and Receiver access to all Documents
26 and records that may be held by third parties located outside of the territorial United
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1 States of America, including signing the Consent to Release of Financial Records
2 appended to this Order as **Attachment C**.

- 3 C. Transfer to the territory of the United States all Documents and Assets located in foreign
4 countries which are: (1) titled in the name, individually or jointly, of any Corporate
5 Defendant; (2) held by any Person or entity for the benefit of any Corporate Defendant or
6 for the benefit of, any corporation, partnership, asset protection trust, or other entity that
7 is directly or indirectly owned, managed or controlled by any Corporate Defendant; or (3)
8 under the direct or indirect control, whether jointly or singly, of any Corporate Defendant
9 *provided, however*, that a Corporate Defendant may delay making any such transfer to
10 the extent that a Public Health or Safety Event prevents it from undertaking such transfer
11 safely; and
- 12 D. The same business day as any repatriation, (1) notify the Receiver and counsel for the
13 FTC of the name and location of the financial institution or other entity that is the
14 recipient of such Documents or Assets; and (2) serve this Order on any such financial
15 institution or other entity.

16 **NON-INTERFERENCE WITH REPATRIATION**

17 **VII. IT IS FURTHER ORDERED** that the Corporate Defendants, their officers, agents,
18 employees, and attorneys, and all other Persons in active concert or participation with any of
19 them, who receive actual notice of this Order, whether acting directly or indirectly, are
20 hereby temporarily restrained and enjoined from taking any action, directly or indirectly,
21 which may result in the encumbrance or dissipation of foreign Assets, or in the hindrance of
22 the repatriation required by this Order, including, but not limited to:

- 23 A. Sending any communication or engaging in any other act, directly or indirectly, that
24 results in a determination by a foreign trustee or other entity that a “duress” event has
25 occurred under the terms of a foreign trust agreement until such time that all Defendants’
26 Assets have been fully repatriated pursuant to this Order; or

1 B. Notifying any trustee, protector or other agent of any foreign trust or other related entities
2 of either the existence of this Order, or of the fact that repatriation is required pursuant to
3 a court order, until such time that all Defendants' Assets have been fully repatriated
4 pursuant to this Order.

5 **CONSUMER CREDIT REPORTS**

6 **VIII. IT IS FURTHER ORDERED** that the FTC may obtain credit reports concerning any
7 Corporate Defendant pursuant to Section 604(a)(1) of the Fair Credit Reporting Act, 15
8 U.S.C. 1681b(a)(1), and that, upon written request, any credit reporting agency from which
9 such reports are requested shall provide them to the FTC.

10 **PRESERVATION OF RECORDS**

11 **IX. IT IS FURTHER ORDERED** that the Corporate Defendants, their officers, agents,
12 employees, and attorneys, and all other Persons in active concert or participation with any of
13 them, who receive actual notice of this Order, whether acting directly or indirectly, are
14 hereby temporarily restrained and enjoined from:

- 15 A. Destroying, erasing, falsifying, writing over, mutilating, concealing, altering, transferring,
16 or otherwise disposing of, in any manner, directly or indirectly, Documents that relate to:
17 (1) the business, business practices, Assets, or business or personal finances of any
18 Defendant; (2) the business practices or finances of entities directly or indirectly under
19 the control of any Defendant; or (3) the business practices or finances of entities directly
20 or indirectly under common control with any other Defendant; and
21 B. Failing to create and maintain Documents that, in reasonable detail, accurately, fairly, and
22 completely reflect the Corporate Defendants' incomes, disbursements, transactions, and
23 use of the Corporate Defendants' Assets.

24 **REPORT OF NEW BUSINESS ACTIVITY**

25 **X. IT IS FURTHER ORDERED** that the Corporate Defendants, their officers, agents,
26 employees, and attorneys, and all other Persons in active concert or participation with any of
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1 them, who receive actual notice of this Order, whether acting directly or indirectly, are
2 hereby temporarily restrained and enjoined from creating, operating, or exercising any
3 control over any business entity, whether newly formed or previously inactive, including any
4 partnership, limited partnership, joint venture, sole proprietorship, or corporation, without
5 first providing FTC counsel and the Receiver with a written statement disclosing: (1) the
6 name of the business entity; (2) the address and telephone number of the business entity; (3)
7 the names of the business entity's officers, directors, principals, managers, and employees;
8 and (4) a detailed description of the business entity's intended activities.

9 **APPOINTMENT OF RECEIVER**

10 **XI. IT IS FURTHER ORDERED** that Thomas McNamara is appointed as receiver of the
11 Receivership Entities with full powers of an equity receiver. The Receiver shall be solely the
12 agent of this Court in acting as Receiver under this Order.

13 **DUTIES AND AUTHORITY OF RECEIVER**

14 **XII. IT IS FURTHER ORDERED** that the Receiver is directed and authorized to accomplish
15 the following:

- 16 A. Assume full control of Receivership Entities by removing, as the Receiver deems
17 necessary or advisable, any director, officer, independent contractor, employee, attorney,
18 or agent of any Receivership Entity from control of, management of, or participation in,
19 the affairs of the Receivership Entity;
- 20 B. Take exclusive custody, control, and possession of all Assets and Documents of, or in the
21 possession, custody, or under the control of, any Receivership Entity, wherever situated;
- 22 C. Take exclusive custody, control, and possession of all Documents or Assets associated
23 with credits, debits, or charges made on behalf of any Receivership Entity, wherever
24 situated, including reserve funds held by payment processors, credit card processors,
25 merchant banks, acquiring banks, independent sales organizations, third party processors,
26 payment gateways, insurance companies, or other entities;
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- 1 D. Conserve, hold, manage, and prevent the loss of all Assets of the Receivership Entities,
2 and perform all acts necessary or advisable to preserve the value of those Assets. The
3 Receiver shall assume control over the income and profits therefrom and all sums of
4 money now or hereafter due or owing to the Receivership Entities. The Receiver shall
5 have full power to sue for, collect, and receive, all Assets of the Receivership Entities and
6 of other Persons or entities whose interests are now under the direction, possession,
7 custody, or control of, the Receivership Entities. Provided, however, that the Receiver
8 shall not attempt to collect any amount from a Consumer if the Receiver believes the
9 Consumer's debt to the Receivership Entities has resulted from the deceptive acts or
10 practices or other violations of law alleged in the Complaint in this matter, without prior
11 Court approval;
- 12 E. Obtain, conserve, hold, manage, and prevent the loss of all Documents of the
13 Receivership Entities, and perform all acts necessary or advisable to preserve such
14 Documents. The Receiver shall: divert mail; preserve all Documents of the Receivership
15 Entities that are accessible via electronic means such as online access to financial
16 accounts and access to electronic Documents held onsite or by Electronic Data Hosts, by
17 changing usernames, passwords or other log-in credentials; take possession of all
18 electronic Documents of the Receivership Entities stored onsite or remotely; take
19 whatever steps necessary to preserve all such Documents; and obtain the assistance of the
20 FTC's Digital Forensic Unit for the purpose of obtaining electronic Documents stored
21 onsite or remotely.
- 22 F. Choose, engage, and employ attorneys (including McNamara Smith LLP), accountants,
23 appraisers, and other independent contractors and technical specialists, as the Receiver
24 deems advisable or necessary in the performance of duties and responsibilities under the
25 authority granted by this Order;
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- 1 G. Make payments and disbursements from the receivership estate that are necessary or
2 advisable for carrying out the directions of, or exercising the authority granted by, this
3 Order, and to incur, or authorize the making of, such agreements as may be necessary and
4 advisable in discharging his or her duties as Receiver. The Receiver shall apply to the
5 Court for prior approval of any payment of any debt or obligation incurred by the
6 Receivership Entities prior to the date of entry of this Order, except payments that the
7 Receiver deems necessary or advisable to secure Assets of the Receivership Entities, such
8 as rental payments;
- 9 H. Take all steps necessary to secure and take exclusive custody of each location from which
10 the Receivership Entities operate their businesses. Such steps may include, but are not
11 limited to, any of the following, as the Receiver deems necessary or advisable: (1)
12 securing the location by changing the locks and alarm codes and disconnecting any
13 internet access or other means of access to the computers, servers, internal networks, or
14 other records maintained at that location; and (2) requiring any Persons present at the
15 location to leave the premises, to provide the Receiver with proof of identification, and/or
16 to demonstrate to the satisfaction of the Receiver that such Persons are not removing
17 from the premises Documents or Assets of the Receivership Entities. Law enforcement
18 personnel, including, but not limited to, the United States Postal Inspection Service,
19 police, or sheriffs, may assist the Receiver in implementing these provisions in order to
20 keep the peace and maintain security. If requested by the Receiver, the United States
21 Marshal will provide appropriate and necessary assistance to the Receiver to implement
22 this Order and is authorized to use any necessary and reasonable force to do so;
- 23 I. Take all steps necessary to prevent the modification, destruction, or erasure of any web
24 page or website registered to and operated, in whole or in part, by any Defendants, and to
25 provide access to all such web page or websites to FTC representatives, agents, and
26 assistants, as well as Defendants and their representatives;
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- 1 J. Enter into and cancel contracts and purchase insurance as advisable or necessary;
- 2 K. Prevent the inequitable distribution of Assets and determine, adjust, and protect the
- 3 interests of Consumers who have transacted business with the Receivership Entities;
- 4 L. Make an accounting, as soon as practicable, of the Assets and financial condition of the
- 5 receivership and file the accounting with the Court and deliver copies thereof to all
- 6 parties;
- 7 M. Institute, compromise, adjust, appear in, intervene in, defend, dispose of, or otherwise
- 8 become party to any legal action in state, federal or foreign courts or arbitration
- 9 proceedings as the Receiver deems necessary and advisable to preserve or recover the
- 10 Assets of the Receivership Entities, or to carry out the Receiver's mandate under this
- 11 Order, including but not limited to, actions challenging fraudulent or voidable transfers;
- 12 N. Issue subpoenas to obtain Documents and records pertaining to the Receivership, and
- 13 conduct discovery in this action on behalf of the receivership estate, in addition to
- 14 obtaining other discovery as set forth in this Order;
- 15 O. Open one or more bank accounts at designated depositories for funds of the Receivership
- 16 Entities. The Receiver shall deposit all funds of the Receivership Entities in such
- 17 designated accounts and shall make all payments and disbursements from the
- 18 receivership estate from such accounts. The Receiver shall serve copies of monthly
- 19 account statements on all parties;
- 20 P. Maintain accurate records of all receipts and expenditures incurred as Receiver;
- 21 Q. Allow the FTC's representatives, agents, and assistants, as well as Defendants'
- 22 representatives and Defendants themselves, reasonable access to the premises of the
- 23 Receivership Entities, or any other premises where the Receivership Entities conduct
- 24 business. The purpose of this access shall be to inspect and copy any and all books,
- 25 records, Documents, accounts, and other property owned by, or in the possession of, the
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1 Receivership Entities or their agents. The Receiver shall have the discretion to determine the
2 time, manner, and reasonable conditions of such access;

3 R. Allow the FTC's representatives, agents, and assistants, as well as Defendants and their
4 representatives reasonable access to all Documents in the possession, custody, or control
5 of the Receivership Entities;

6 S. Cooperate with reasonable requests for information or assistance from any state or federal
7 civil or criminal law enforcement agency;

8 T. Suspend business operations of the Receivership Entities if in the judgment of the
9 Receiver such operations cannot be continued legally and profitably;

10 U. If the Receiver identifies a nonparty entity as a Receivership Entity, promptly notify the
11 entity as well as the parties, and inform the entity that it can challenge the Receiver's
12 determination by filing a motion with the Court. Provided, however, that the Receiver
13 may delay providing such notice until the Receiver has established control of the
14 nonparty entity and its Assets and records, if the Receiver determines that notice to the
15 entity or the parties before the Receiver establishes control over the entity may result in
16 the destruction of records, dissipation of Assets, or any other obstruction of the
17 Receiver's control of the entity; and

18 V. If in the Receiver's judgment the business operations cannot be continued legally and
19 profitably, take all steps necessary to ensure that any of the Receivership Entities' web
20 pages or websites relating to the activities alleged in the Complaint cannot be accessed by
21 the public, or are modified for consumer education and/or informational purposes, and
22 take all steps necessary to ensure that any telephone numbers associated with the
23 Receivership Entities cannot be accessed by the public, or are answered solely to provide
24 consumer education or information regarding the status of operations;

25 W. *Provided, however*, that the Receiver may delay undertaking any of the duties set forth in
26 this Section XII to the extent that the Receiver determines that a Public Health or Safety
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1 Event prevents the Receiver from undertaking such duties safely; and *provided, further,*
2 that any such delay shall not be deemed a failure of the Receiver to exercise his
3 obligations.

4 **TRANSFER OF RECEIVERSHIP PROPERTY TO RECEIVER**

5 **XIII. IT IS FURTHER ORDERED** that the Corporate Defendants and any other Person, with
6 possession, custody or control of property of, or records relating to, the Receivership Entities
7 shall, upon notice of this Order by personal service or otherwise, fully cooperate with and
8 assist the Receiver in taking and maintaining possession, custody, or control of the Assets
9 and Documents of the Receivership Entities and immediately upon the written or oral
10 instruction of the Receiver transfer or deliver to the Receiver possession, custody, and
11 control of, the following:

- 12 A. All Assets held by or for the benefit of the Receivership Entities;
- 13 B. All Documents or Assets associated with credits, debits, or charges made on behalf of
14 any Receivership Entity, wherever situated, including reserve funds held by payment
15 processors, credit card processors, merchant banks, acquiring banks, independent sales
16 organizations, third party processors, payment gateways, insurance companies, or other
17 entities;
- 18 C. All Documents of or pertaining to the Receivership Entities;
- 19 D. All computers, electronic devices, mobile devices and machines used to conduct the
20 business of the Receivership Entities;
- 21 E. All Assets and Documents belonging to other Persons or entities whose interests are
22 under the direction, possession, custody, or control of the Receivership Entities; and
- 23 F. All keys, codes, user names and passwords necessary to gain or to secure access to any
24 Assets or Documents of or pertaining to the Receivership Entities, including access to
25 their business premises, means of communication, accounts, computer systems (onsite
26 and remote), Electronic Data Hosts, or other property.
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1 G. In the event that any Person or entity fails to deliver or transfer any Asset or Document,
2 or otherwise fails to comply with any provision of this Section, the Receiver may file an
3 Affidavit of Non-Compliance regarding the failure and a motion seeking compliance or a
4 contempt citation.

5 **PROVISION OF INFORMATION TO RECEIVER**

6 **XIV. IT IS FURTHER ORDERED** that the Corporate Defendants shall immediately provide to
7 the Receiver:

- 8 A. A list of all Assets and accounts of the Receivership Entities that are held in any name
9 other than the name of a Receivership Entity, or by any Person or entity other than a
10 Receivership Entity;
- 11 B. A list of all agents, employees, officers, attorneys, servants and those Persons in active
12 concert and participation with the Receivership Entities, or who have been associated or
13 done business with the Receivership Entities; and
- 14 C. A description of any Documents covered by attorney-client privilege or attorney work
15 product, including files where such Documents are likely to be located, authors or
16 recipients of such Documents, and search terms likely to identify such electronic
17 Documents.

18 **COOPERATION WITH THE RECEIVER**

19 **XV. IT IS FURTHER ORDERED** that (a) the Corporate Defendants; (b) Receivership Entities;
20 (c) their officers, agents, employees, and attorneys; (d) all other Persons in active concert or
21 participation with any of them; and (e) any other Person with possession, custody, or control
22 of property of or records relating to the Receivership Entities who receive actual notice of
23 this Order shall fully cooperate with and assist the Receiver. This cooperation and assistance
24 shall include, but is not limited to, providing information to the Receiver that the Receiver
25 deems necessary to exercise the authority and discharge the responsibilities of the Receiver
26 under this Order; providing any keys, codes, user names and passwords required to access
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1 any computers, electronic devices, mobile devices, and machines (onsite or remotely) and
2 any cloud account (including specific method to access account) or electronic file in any
3 medium; advising all Persons who owe money to any Receivership Entity that all debts
4 should be paid directly to the Receiver; and transferring funds at the Receiver's direction and
5 producing records related to the Assets and sales of the Receivership Entities.

6 **NON-INTERFERENCE WITH THE RECEIVER**

7 **XVI. IT IS FURTHER ORDERED** that the Corporate Defendants; Receivership Entities; their
8 officers, agents, employees, attorneys, and all other Persons in active concert or participation
9 with any of them, who receive actual notice of this Order, and any other Person served with a
10 copy of this Order, are hereby restrained and enjoined from directly or indirectly:

- 11 A. Interfering with the Receiver's efforts to manage, or take custody, control, or possession
12 of, the Assets or Documents subject to the receivership;
13 B. Transacting any of the business of the Receivership Entities;
14 C. Transferring, receiving, altering, selling, encumbering, pledging, assigning, liquidating,
15 or otherwise disposing of any Assets owned, controlled, or in the possession or custody
16 of, or in which an interest is held or claimed by, the Receivership Entities; or
17 D. Refusing to cooperate with the Receiver or the Receiver's duly authorized agents in the
18 exercise of their duties or authority under any order of this Court.

19 **STAY OF ACTIONS**

20 **XVII. IT IS FURTHER ORDERED** that, except by leave of this Court, during the pendency of
21 the receivership ordered herein, the Corporate Defendants, their officers, agents, employees,
22 attorneys, and all other Persons in active concert or participation with any of them, who
23 receive actual notice of this Order, and their corporations, subsidiaries, divisions, or
24 affiliates, and all investors, creditors, stockholders, lessors, customers and other Persons
25 seeking to establish or enforce any claim, right, or interest against or on behalf of
26 Defendants, and all others acting for or on behalf of such Persons, are hereby enjoined from
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1 taking action that would interfere with the exclusive jurisdiction of this Court over the Assets
2 or Documents of the Receivership Entities, including, but not limited to:

- 3 A. Filing or assisting in the filing of a petition for relief under the Bankruptcy Code, 11
4 U.S.C. § 101 *et seq.*, or of any similar insolvency proceeding on behalf of the
5 Receivership Entities;
- 6 B. Commencing, prosecuting, or continuing a judicial, administrative, or other action or
7 proceeding against the Receivership Entities, including the issuance or employment of
8 process against the Receivership Entities, except that such actions may be commenced if
9 necessary to toll any applicable statute of limitations;
- 10 C. Filing or enforcing any lien on any Asset of the Receivership Entities, taking or
11 attempting to take possession, custody, or control of any Asset of the Receivership
12 Entities; or attempting to foreclose, forfeit, alter, or terminate any interest in any Asset of
13 the Receivership Entities, whether such acts are part of a judicial proceeding, are acts of
14 self-help, or otherwise;
- 15 D. Provided, however, that this Order does not stay: (1) the commencement or continuation
16 of a criminal action or proceeding; (2) the commencement or continuation of an action or
17 proceeding by a governmental unit to enforce such governmental unit's police or
18 regulatory power; or (3) the enforcement of a judgment, other than a money judgment,
19 obtained in an action or proceeding by a governmental unit to enforce such governmental
20 unit's police or regulatory power.

21 **COMPENSATION OF RECEIVER**

22 **XVIII. IT IS FURTHER ORDERED** that the Receiver and all personnel hired by the Receiver as
23 herein authorized, including counsel to the Receiver and accountants, are entitled to
24 reasonable compensation for the performance of duties pursuant to this Order and for the cost
25 of actual out-of-pocket expenses incurred by them, from the Assets now held by, in the
26 possession or control of, or which may be received by, the Receivership Entities. The
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1 Receiver shall file with the Court and serve on the parties periodic requests for the payment
2 of such reasonable compensation, with the first such request filed no more than sixty (60)
3 days after the date of entry of this Order. The Receiver shall not increase the hourly rates
4 used as the bases for such fee applications without prior approval of the Court.

5 **RECEIVER'S BOND**

6 **XIX. IT IS FURTHER ORDERED** that the Receiver shall file with the Clerk of this Court a
7 bond in the sum of \$10,000 with sureties to be approved by the Court, conditioned that the
8 Receiver will well and truly perform the duties of the office and abide by and perform all acts
9 the Court directs. 28 U.S.C. § 754.

10 **RECEIVER'S REPORTS**

11 **XX. T IS FURTHER ORDERED** that the Receiver shall report periodically to this Court,
12 regarding (1) the steps taken by the Receiver to implement the terms of this Order; (2) the
13 value of all liquidated and unliquidated Assets of the Receivership Entities; (3) the sum of all
14 liabilities of the Receivership Entities; (4) the steps the Receiver intends to take in the future
15 to (a) prevent any diminution in the value of Assets of the Receivership Entities, (b) pursue
16 receivership Assets from third parties, and (c) adjust the liabilities of the Receivership
17 Entities, if appropriate; (5) whether the business of the Receivership Entities can be operated
18 lawfully and profitably; and (6) any other matters that the Receiver believes should be
19 brought to the Court's attention. *Provided, however,* that if any of the required information
20 would hinder the Receiver's ability to pursue receivership Assets, the portions of the
21 Receiver's report containing such information may be filed under seal and not served on the
22 parties.

23 **DISTRIBUTION OF ORDER BY DEFENDANTS**

24 **XXI. IT IS FURTHER ORDERED** that the Corporate Defendants shall immediately provide a
25 copy of this Order to each affiliate, telemarketer, marketer, sales entity, successor, assign,
26 member, officer, director, employee, agent, independent contractor, client, attorney, spouse,
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1 subsidiary, division, and representative of any Corporate Defendant, and shall, within ten
2 (10) days from the date of entry of this Order, and provide the FTC and the Receiver with a
3 sworn statement that this provision of the Order has been satisfied, which statement shall
4 include the names, physical addresses, phone number, and email addresses of each such
5 Person or entity who received a copy of the Order. Furthermore, the Corporate Defendants
6 shall not take any action that would encourage officers, agents, members, directors,
7 employees, salespersons, independent contractors, attorneys, subsidiaries, affiliates,
8 successors, assigns or other Persons or entities in active concert or participation with them to
9 disregard this Order or believe that they are not bound by its provisions.

10 **SERVICE OF THIS ORDER**

11 **XXII. IT IS FURTHER ORDERED** that copies of this Order may be served by any means,
12 including facsimile transmission, electronic mail or other electronic messaging, personal or
13 overnight delivery, U.S. Mail or FedEx, by agents and employees of the FTC, by any law
14 enforcement agency, or by private process server, upon any Corporate Defendant or any
15 Person (including any financial institution) that may have possession, custody or control of
16 any Asset or Document of any Corporate Defendant, or that may be subject to any provision
17 of this Order pursuant to Rule 65(d)(2) of the Federal Rules of Civil Procedure. For purposes
18 of this Section, service upon any branch, subsidiary, affiliate or office of any entity shall
19 effect service upon the entire entity.

20 **CORRESPONDENCE AND SERVICE ON THE FTC**


21 **XXIII. IT IS FURTHER ORDERED** that, for the purpose of this Order, all correspondence and
22 service of pleadings on the FTC shall be done via email to Gregory A. Ashe at
23 gashe@ftc.gov and Helen Clark at hclark@ftc.gov.
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RETENTION OF JURISDICTION

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

IT IS SO ORDERED.



U.S. District Judge Jennifer A. Dorsey
Date: June 19, 2020