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By: *JH*  
Deputy Clerk

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

06 CV 1692

FEDERAL TRADE COMMISSION

Plaintiff,

v.

Prophet 3H, Inc., et al.,

Defendants

Civil Action No. \_\_\_\_\_

[PROPOSED]  
EX PARTE TEMPORARY  
RESTRAINING ORDER  
WITH ASSET FREEZE,  
APPOINTMENT OF  
RECEIVER, AND OTHER  
EQUITABLE RELIEF

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), having filed a Complaint for a Permanent Injunction and Other Relief, including redress to consumers, pursuant to Sections 13(b) and 19(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b(a), and having moved for an *Ex Parte* Temporary Restraining Order pursuant to Rule 65 of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 65, and the Court having considered the Complaint, declarations, exhibits, and memorandum of law filed in support, finds that:

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

2. There is good cause to believe that Defendants Prophet 3H, Inc., Prophet 3H, LLC, Georgia Home Health Care License and Certification Institute, Inc., d/b/a GHLCI, Healthcare State License and Certification Institute, Inc., d/b/a HSLCI, HLCI and HSLCC, M7 Holdings, LLC, Jeffrey Wayne McLain, Victor McLain, and Alexander McLain have engaged and are likely to engage in acts and practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the Commission's Rule entitled Disclosure Requirements and Prohibitions Concerning Franchise and Business Opportunity Ventures (the "Franchise Rule"), 16 C.F.R. Part 436, and that the Commission is, therefore, likely to prevail on the merits of this action;

3. There is good cause to believe that immediate and irreparable harm will result from Defendants' ongoing violations of Section 5 of the FTC Act and the Franchise Rule unless Defendants are restrained and enjoined by Order of this Court;

4. There is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief for consumers in the form of monetary restitution will occur from the sale, transfer, or other disposition or concealment by Defendants of assets or records unless Defendants are

immediately restrained and enjoined by Order of this Court. Therefore, in accordance with Fed. R. Civ. P. 65(b), good cause and the interests of justice require that this Order be granted without prior notice to Defendants.

Accordingly, the Commission is relieved of the duty to provide Defendants with prior notice of the Commission's motion;

5. Good cause exists for appointing a temporary Receiver for the Corporate Defendants Prophet 3H, Inc., Prophet 3H, LLC, Georgia Home Health Care License and Certification Institute, Inc., Healthcare State License and Certification Institute, Inc., and M7 Holdings, LLC;

6. Weighing the equities and considering the Commission's likelihood of ultimate success, a Temporary Restraining Order with an asset freeze, appointment of a temporary Receiver, and other equitable relief is in the public interest; and

7. No security is required of any agency of the United States for issuance of a restraining order. Fed. R. Civ. P. 65(c).

## DEFINITIONS

1. "Assets" means any legal or equitable interest in, right to, or claim to, any real and personal property, including, but not limited to, chattel, goods, instruments, equipment, fixtures, general intangibles, inventory, checks, notes, leaseholds, effects, contracts, mail or other deliveries, shares of stock, lists of consumer names, accounts, credits, premises, receivables, funds, and cash, wherever located, whether in the United States or abroad;
2. "Business venture" means any written or oral business arrangement, however denominated, regardless of whether covered by the Franchise Rule, which consists of the payment of any consideration for:
  - a. the right or means to offer, sell, or distribute goods or services (regardless of whether identified by a trademark, service mark, trade name, advertising, or other commercial symbol); and
  - b. more than nominal assistance to any person or entity in connection with or incident to the establishment, maintenance, or operation of a new business or the entry by an existing business into a new line or type of business;

3. "Corporate Defendants" means Prophet 3H, Inc., Prophet 3H, LLC, Georgia Home Health Care License and Certification Institute, Inc., Healthcare State License and Certification Institute, Inc., and M7 Holdings, LLC, and any affiliates, fictitious names, d/b/a's, subsidiaries, successors, or assigns of the aforementioned entities;
4. "Individual Defendants" means Jeffrey Wayne McLain, Alexander McLain, and Victor McLain;
5. "Defendants" means: (a) each Corporate Defendant; (b) each Individual Defendant; (c) any person insofar as he or she is acting in the capacity of an officer, agent, servant, employee or attorney of any Corporate Defendant or any Individual Defendant; and (d) any persons or entities in active concert or participation with any of the foregoing who receives actual notice of this Order by personal service or otherwise, whether these persons or entities are acting directly or through a trust, corporation, subsidiary, division, or other device.
6. "Document" is synonymous in meaning and equal in scope to the usage of the term in Fed. R. Civ. P. 34(a), and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary,

through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term;

7. "Health-related product" means any food, drug, dietary supplement, or device for which a health benefit is claimed.

8. "Healthcare business venture" shall mean any business venture, program, act, or enterprise for which a health benefit is claimed and any business venture, program, act, or enterprise whose profits are directly or indirectly reliant upon the provision of medical care or health-related products. Health-related service includes, but is not limited to, the provision and management of home health care services, nursing home care services, assisted living services, nurse staffing services, medical billing services, medical record management services, health care consulting services, health care client solicitation services, and services reimbursable through Federal or state Medicaid programs.

9. "Personally identifiable information" or "identity information" shall mean individually identifiable information from or about an individual consumer including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or a

screen name that reveals an individual's email address; (d) a telephone number; (e) a Social Security number; (f) a bank, loan, or credit card account number; (g) a persistent identifier, such as a customer number held in a "cookie" or processor serial number, that is combined with other available data that identifies an individual consumer; (h) a Medicaid client or registration number; or (i) any information that is combined with any of (a) through (h) above.

10. "Receiver" shall mean the temporary receiver appointed in Section X of this Order and any deputy receivers that may be named by the temporary receiver;

11. "Receivership Defendants" shall mean the Corporate Defendants and any other entities owned or controlled by an individual in active concert or participation with the Corporate Defendants who receive actual notice of this Order by personal service or otherwise, whether these entities are acting directly or through a trust, corporation, subsidiary, division, or other device.

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**ORDER****I. PROHIBITION AGAINST VIOLATION OF SECTION 5 OF THE  
FEDERAL TRADE COMMISSION ACT**

**IT IS THEREFORE ORDERED** that, in connection with the offering for sale or selling of any business venture, including franchises, defendants are hereby temporarily restrained and enjoined from making any material misrepresentation or assisting others in making any material misrepresentation, either expressly or by implication, to any prospective purchaser of a business venture, including but not limited to, the following:

1. That defendants' healthcare business ventures do not violate federal or state laws regarding: (a) the filing of false or misleading information, (b) the use of a non-profit entity under Section 501(c)(3) of the tax code, (c) the offering of inducements to Medicaid beneficiaries to influence their selection of a particular provider, (d) the giving or acceptance of remuneration by healthcare providers in return for the referral of a person for whom the provider, by supplying services, will receive Medicaid reimbursement, (e) the use of identity information without the authorization of the subject of the information, or (f) the filing of false statements in relation to healthcare matters;



2. That consumers who purchase defendants' healthcare business ventures will earn substantial income; or
3. That consumers who purchase defendants' healthcare business ventures will receive significant assistance in the operation of their business, including, but not limited to, claims that Defendants will provide purchasers with: (a) legal and technical assistance, including mentoring, with the formation, development and operation of purchasers' healthcare businesses, or (b) clients for whom purchasers may obtain Medicaid reimbursement.

## **II. PROHIBITION AGAINST VIOLATION OF THE FRANCHISE RULE**

**IT IS FURTHER ORDERED** that Defendants are hereby temporarily restrained and enjoined from violating or assisting others to violate any provisions of the Franchise Rule, 16 C.F.R. Part 436, including, but not limited to:

1. Failing to provide a prospective purchaser with a complete and accurate disclosure document as prescribed by the Franchise Rule, 16 C.F.R. § 436.1(a);
2. Failing to provide a prospective purchaser with an earnings claim document as prescribed by the Franchise Rule, 16 C.F.R. § 436.1(b)-(e);
3. Failing to have a reasonable basis for any earnings claim at the time such claim is made, as required by the Franchise Rule, 16 C.F.R. § 436.1(b)-(e);

4. Failing to disclose, in immediate conjunction with any earnings claim, and in a clear and conspicuous manner, that material which constitutes a reasonable basis for the earnings claim is available to the prospective purchasers;
5. Failing to provide material which constitutes a reasonable basis for any earnings claim to prospective purchasers, the Commission, or its staff upon reasonable demand; or
6. Making any statement that contradicts information required to be disclosed in the disclosure document, as required by the Franchise Rule, 16 C.F.R. § 436.1(f).

### **III. PROTECTION OF PERSONALLY IDENTIFIABLE INFORMATION**

**IT IS FURTHER ORDERED** that individual defendants shall immediately upon being served with a copy of this order transfer to the Receiver and not retain copies of any document containing personally identifiable information of members of the public.

### **IV. ASSET FREEZE**

**IT IS FURTHER ORDERED** that Defendants are hereby temporarily restrained and enjoined from:

1. Transferring, liquidating, converting, encumbering, pledging, loaning, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, granting a lien or security interest or other interest in, or otherwise disposing of any funds, real or personal property, accounts, contracts, consumer lists, shares of stock, or other assets, or any interest therein, wherever located, whether within the United States or within a jurisdiction outside the United States, that are: (1) owned or controlled by any of the Corporate Defendants or Individual Defendants, in whole or in part, or held on or on behalf of or for the benefit of any Corporate Defendant or Individual Defendant; (2) in the actual or constructive possession of any Corporate Defendant or Individual Defendant; or (3) owned, controlled by, or in the actual or constructive possession of any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by any Corporate Defendant or Individual Defendant, including, but not limited to, any assets held by or for, or subject to access by, any of the Defendants, at any bank or savings and loan institution, or with any broker-dealer, escrow agent, title company, commodity trading company, precious metals dealer, or other financial institution or depository of any kind;

2. Opening or causing to be opened any safe deposit boxes titled in the name of any Corporate Defendant or Individual Defendant, or subject to access by any of them;
3. Incurring charges or cash advances on any credit card issued in the name, singly or jointly, of any Corporate Defendant;
4. Obtaining a personal or secured loan encumbering the assets of any Corporate Defendant or Individual Defendant; and
5. Incurring liens or other encumbrances on real property, personal property or other assets in the name, singly or jointly, of any Corporate Defendant or Individual Defendant.

The assets affected by this Section include: (1) all assets of any of the Corporate Defendants or Individual Defendants as of the time this Order was entered; and (2) assets obtained after the time this Order was entered if the assets are derived from the conduct alleged in the Commission's Complaint.

#### **V. RETENTION OF ASSETS AND RECORDS BY FINANCIAL INSTITUTIONS**

**IT IS FURTHER ORDERED** that, pending determination of the Commission's request for a preliminary injunction, any financial or brokerage

institution, business entity, or person served with a copy of this Order that holds, controls or maintains custody of any account or asset of any Corporate Defendant or Individual Defendant shall:

1. Hold and retain within its control and prohibit the withdrawal, removal, assignment, transfer, pledge, encumbrance, disbursement, dissipation, conversion, sale, or other disposal of any such asset, except by further order of the Court;
2. Deny Defendants access to any safe deposit box that is titled in the name, individually or jointly, or otherwise subject to access by any Corporate Defendant or Individual Defendant;
3. Provide the Commission's counsel, within five (5) days of receiving a copy of this Order, a sworn statement setting forth:
  - a. the identification number of each such account or asset titled in the name, individually or jointly, of any Corporate Defendant or Individual Defendant, or held on behalf of, or for the benefit of any Corporate Defendant or Individual Defendant;
  - b. the balance of each such account, or a description of the nature and value of such asset as of the date and time it was served with a copy of this Order, and, if the account or other asset has

been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other asset was remitted; and

- c. the identification of any safe deposit box that is titled in the name, individually or jointly, of any Corporate Defendant or Individual Defendant, or is otherwise subject to access by any Corporate Defendant or Individual Defendant; and

4. Upon request by the Commission, promptly provide the Commission with copies of all records or other documentation pertaining to each such account or asset, including, but not limited to, originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs.

## **VI. PRESERVATION OF RECORDS**

**IT IS FURTHER ORDERED** that Defendants are hereby temporarily restrained and enjoined from:

1. Destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any documents that relate to the business, business practices, assets, or business or personal finances of any corporate or individual Defendant, and
2. Failing to create and maintain documents that, in reasonable detail, accurately, fairly, and completely reflect Defendants' incomes, disbursements, transactions, and use of money.

## VII. FINANCIAL DISCLOSURES

**IT IS FURTHER ORDERED** that each Corporate Defendant and Individual Defendant, within forty-eight (48) hours of service of this Order, shall prepare and deliver to counsel for the Commission and to the Receiver completed financial statements on the forms attached to this Order as Attachment A (Financial Statement of Individual Defendant) and Attachment B (Financial Statement of Corporate Defendant), for themselves individually and for each business entity under which they conduct business or of which they are an officer, and for each trust for which any Corporate Defendant or Individual Defendant is a trustee. The financial statements shall be accurate as of the date of entry of this Order. Each Corporate Defendant and each Individual Defendant shall include in

the financial statements a full accounting of all funds and assets, whether located inside or outside of the United States, that are: (a) titled in the name of such Corporate Defendant or Individual Defendant, jointly, severally, or individually; (b) held by any person or entity on behalf of or for the benefit of such Corporate Defendant or Individual Defendant; or (c) under the direct or indirect control of such Corporate Defendant or Individual Defendant.

#### VIII. CONSUMER CREDIT REPORTS

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

#### IX. APPOINTMENT OF TEMPORARY RECEIVER

**IT IS FURTHER ORDERED** that Kevin O'Halloran is appointed temporary receiver for the Receivership Defendants. The Receiver shall be the agent of this Court, and solely the agent of this Court, in acting as Receiver under this Order. The Receiver shall be accountable directly to this Court.



## X. RECEIVER'S DUTIES

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

1. Assume full control of the Receivership Defendants by removing, as the Receiver deems necessary or advisable, any director, officer, independent contractor, employee, or agent of any of the Receivership Defendants, including any Defendant, from control of, management of, or participation in, the affairs of the Receivership Defendants;
2. Take exclusive custody, control, and possession of all assets and documents of, or in the possession, custody, or under the control of, the Receivership Defendants, wherever situated. The Receiver shall have full power to divert and open mail and to sue for, collect, receive, take in possession, hold, and manage all assets and documents of the Receivership Defendants and other persons or entities whose interests are now under the direction, possession, custody, or control of, the Receivership Defendants. The Receiver shall assume control over the income and profits therefrom and all sums of money now or hereafter due or owing to the Receivership Defendants. *Provided, however,* that the Receiver shall not attempt to collect any amount from a consumer if the Receiver believes the consumer was

a victim of the unfair or deceptive acts or practices or other violations of law alleged in the Complaint in this matter, without prior Court approval;

3. Take all steps necessary to secure each location from which the Receivership Defendants operate their business. Such steps may include, but are not limited to, any of the following, as the Receiver deems necessary or advisable: (1) serving this Order; (2) completing a written inventory of all receivership assets; (3) obtaining pertinent information from all employees and other agents of the Receivership Defendants, including, but not limited to, the name, home address, Social Security number, job description, passwords or access codes, method of compensation, and all accrued and unpaid commissions and compensation of each such employee or agent; (4) photographing and video taping any or all portions of the location; (5) securing the location by changing the locks and disconnecting any computer modems or other means of access to the computer or other records maintained at that location; and (6) requiring any persons present on the premises at the time this Order is served to leave the premises, to provide the Receiver with proof of identification, or to demonstrate to the satisfaction of the Receiver that such persons are not removing from the premises documents or assets of the Receivership Defendants. Law enforcement personnel, including, but

not limited to, police or sheriffs, may assist the Receiver in implementing these provisions in order to keep the peace and maintain security. If requested by the Receiver, the United States Marshall will provide appropriate and necessary assistance to the Receiver to implement this Order;

4. Conserve, hold, and manage all assets of the Receivership Defendants, and perform all acts necessary or advisable to preserve the value of those assets in order to prevent any irreparable loss, damage, or injury to consumers or creditors of the Receivership Defendants, including, but not limited to, obtaining an accounting of the assets and preventing the unauthorized transfer, withdrawal, or misapplication of assets;

5. Enter into contracts and purchase insurance as advisable or necessary;

6. Prevent the inequitable distribution of assets and determine, adjust, and protect the interests of consumers and creditors who have transacted business with the Receivership Defendants;

7. Manage and administer the business of the Receivership Defendants until further order of this Court by performing all incidental acts that the Receiver deems to be advisable or necessary, which includes, but is not limited to, retaining, hiring, or dismissing any employees, independent contractors, or agents;

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

9. Make payments and disbursements from the receivership estate that are necessary or advisable for carrying out the directions of, or exercising the authority granted by, this Order. The Receiver shall apply to the Court for prior approval of any payment of any debt or obligation incurred by the Receivership Defendants prior to the date of entry of this Order, except payments that the Receiver deems necessary or advisable to secure assets of the Receivership Defendants, such as rental payments;

10. Suspend business operations of the Receivership Defendants if in the judgment of the Receiver such operations cannot be continued legally and profitably;

11. Institute, compromise, adjust, appear in, intervene in, or become party to such actions or proceedings in state, federal or foreign courts or arbitration proceedings as the Receiver deems necessary and advisable to preserve or recover the assets of the Receivership Defendants, or that the Receiver deems necessary

and advisable to carry out the Receiver's mandate under this Order, including, but not limited to, actions challenging fraudulent or voidable transfers;

12. Defend, compromise, adjust, or otherwise dispose of any or all actions or proceedings instituted in the past or in the future against the Receiver in his role as Receiver, or against the Receivership Defendants, as the Receiver deems necessary and advisable to preserve the assets of the Receivership Defendants, or as the Receiver deems necessary and advisable to carry out the Receiver's mandate under this Order, including any actions or proceedings against consumers who pursue defendants' business ventures;

13. Issue subpoenas to obtain documents and records pertaining to the receivership, and conduct discovery in this action on behalf of the receivership estate;

14. Open one or more bank accounts as designated depositories for funds of the Receivership Defendants. The Receiver shall deposit all funds of the Receivership Defendants in such a designated account and shall make all payments and disbursements from the receivership estate from such an account. The Receiver shall serve copies of monthly account statements on all parties;

15. Maintain accurate records of all receipts and expenditures that he makes as Receiver; and
16. Cooperate with reasonable requests for information or assistance from any state or federal law enforcement agency.

#### **XI. TRANSFER OF RECEIVERSHIP PROPERTY TO RECEIVER**

**IT IS FURTHER ORDERED** that Defendants and any other person or entity with possession, custody, or control of property of or records relating to the Receivership Defendants shall upon notice of this order by personal service or otherwise immediately notify the Receiver of, and immediately upon receiving a request from the Receiver, transfer or deliver to the Receiver possession, custody, and control of, the following:

1. All assets of the Receivership Defendants;
2. All documents of the Receivership Defendants, including, but not limited to, books and records of accounts, all financial and accounting records, balance sheets, income statements, bank records (including monthly statements, canceled checks, records of wire transfers, and check registers), client lists, title documents and other papers;

3. All computers and data in whatever form used to conduct the business of the Receivership Defendants;

4. All assets belonging to other persons or entities whose interests are now under the direction, possession, custody, or control of, the Receivership Defendants; and

5. All keys, codes, and passwords necessary to gain or to secure access to any assets or documents of the Receivership Defendants, including, but not limited to, access to their business premises, means of communication, accounts, computer systems, or other property.

In the event that any person or entity fails to deliver or transfer any asset or otherwise fails to comply with any provision of this Paragraph, the Receiver may file *ex parte* an Affidavit of Non-Compliance regarding the failure. Upon filing of the affidavit, the Court may authorize, without additional process or demand, Writs of Possession or Sequestration or other equitable writs requested by the Receiver. The writs shall authorize and direct the United States Marshal or any sheriff or deputy sheriff of any county, or any other federal or state law enforcement officer, to seize the asset, document, or any other item covered by this section, and to deliver it to the Receiver.

## **XII. PROVISION OF INFORMATION TO RECEIVER**

**IT IS FURTHER ORDERED** that Defendants shall provide to the Receiver, immediately upon request, the following:

1. A list of all assets and property, including accounts of the Receivership Defendants that are held in any name other than the name of a Receivership Defendant, or by any person or entity other than a Receivership Defendant; and
2. A list of all agents, employees, officers, servants, or those persons in active concert and participation with the Individual Defendants and Receivership Defendants, who have been associated or done business with the Receivership Defendants.

## **XIII. COOPERATION WITH THE RECEIVER**

**IT IS FURTHER ORDERED** that Defendants and all other persons or entities served with a copy of this Order shall fully cooperate with and assist the Receiver in taking and maintaining possession, custody, or control of the assets of the Receivership Defendants. This cooperation and assistance shall include, but not be limited to: providing information to the Receiver that the Receiver deems necessary in order to exercise the authority and discharge the responsibilities of the Receiver under this Order; advising all persons who owe money to the



Receivership Defendants that all debts should be paid directly to the Receiver; transferring funds at the Receivers' direction; and producing records related to the assets and sales of the Receivership Defendants. The entities obligated to cooperate with the Receiver under this provision include, but are not limited to, banks, broker-dealers, savings and loans, escrow agents, title companies, commodity trading companies, precious metals dealers and other financial institutions and depositories of any kind, and all third-party billing agents, common carriers, and other telecommunications companies, that have transacted business with the Receivership Defendants.

#### **XIV. INTERFERENCE WITH THE RECEIVER**

**IT IS FURTHER ORDERED** that Defendants are hereby restrained and enjoined from directly or indirectly:

1. Interfering with the Receiver managing or taking custody, control, or possession of, the assets or documents subject to this receivership;
2. Transacting any of the business of the Receivership Defendants;
3. Transferring, receiving, altering, selling, encumbering, pledging, assigning, liquidating, or otherwise disposing of any assets owned, controlled, or in the

possession or custody of, or in which an interest is held or claimed by, the Receivership Defendants or the Receiver; and

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

#### **XV. STAY OF ACTIONS AGAINST RECEIVERSHIP DEFENDANTS**

**IT IS FURTHER ORDERED** that, except by leave of this Court, during pendency of the receivership ordered herein, Defendants, and all investors, creditors, stockholders, lessors, customers and other persons seeking to establish or enforce any claim, right, or interest against or on behalf of a Receivership Defendant, and all others acting for or on behalf of such persons, are hereby enjoined from taking action that would interfere with the exclusive jurisdiction of this Court over the assets or documents of the Receivership Defendants, including, but not limited to:

1. Petitioning, or assisting in the filing of a petition, that would cause any Receivership Defendant to be placed in bankruptcy;
2. Commencing, prosecuting, or continuing a judicial, administrative, or other action or proceeding against the Receivership Defendants, including the issuance or employment of process against the Receivership Defendants, *except* that such

actions may be commenced if necessary to toll any applicable statute of limitations;

3. Filing or enforcing any lien on any asset of the Receivership Defendants; taking or attempting to take possession, custody, or control of any asset of the Receivership Defendants; or attempting to foreclose, forfeit, alter, or terminate any interest in any asset of the Receivership Defendants, whether such acts are part of a judicial proceeding, are acts of self-help, or otherwise;
4. Initiating any other process or proceeding that would interfere with the Receiver managing or taking custody, control, or possession of, the assets or documents subject to this receivership.

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

## XVI. RECEIVER'S REPORTS

**IT IS FURTHER ORDERED** that the Receiver shall report to this Court three days before the show cause hearing: (1) the steps taken by the Receiver to implement the terms of this Order; (2) the value of all liquidated and unliquidated assets of the Receivership Defendant; (3) the sum of all liabilities of the Receivership Defendant; (4) the steps the Receiver intends to take in the future to: (a) prevent any diminution in the value of assets of the Receivership Defendant; (b) pursue receivership assets from third parties; and (c) adjust the liabilities of the Receivership Defendant, if appropriate; and (5) any other matters which the Receiver believes should be brought to the Court's attention. Provided, however, if any of the required information would hinder the Receiver's ability to pursue receivership assets, the portions of the Receiver's report containing such information may be filed under seal and not served on the parties.

## XVII. COMPENSATION OF RECEIVER

**IT IS FURTHER ORDERED** that the Receiver, and all persons or entities retained or hired by the Receiver as authorized under this Order, shall be entitled to reasonable compensation for the performance of duties undertaken pursuant to this Order and for the cost of actual out-of-pocket expenses incurred by them,

from the assets now held by or in the possession or control of, or which may be received by, the Receivership Defendant. The Receiver shall file with the Court and serve on the parties on or before the time of the show cause hearing a request for the payment of such reasonable compensation. The Receiver shall not increase the fees or rates used as the bases for such fee applications without prior approval of the Court.

#### **XVIII. RECEIVER'S BOND**

**IT IS FURTHER ORDERED** that the Receiver shall file with the Clerk of this Court a bond in the sum of \$ 10,000.00 with sureties to be approved by the Court, conditioned that the Receiver will well and truly perform the duties of the office and abide by and perform all acts the Court directs.

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

**IT IS FURTHER ORDERED** that, in order to allow the Commission and the Receiver to preserve assets and evidence relevant to this action, and to expedite discovery, Defendants shall give the Commission and the Receiver, and their representatives, agents, and assistants, immediate access to the business premises of the Receivership Defendants, including, but not limited to, 1395 Marietta Parkway, Suite 105, Marietta, Georgia 30065. The Commission and the

Receiver, and their representatives, agents, and assistants, are authorized to employ the assistance of law enforcement officers as they deem necessary to effect service and to implement peacefully the provisions of this Order. The Commission and the Receiver, and their representatives, agents, and assistants, are authorized to remove documents from the Receiver Defendants' premises in order that they may be inspected, inventoried, and copied for the purpose of preserving discoverable material in connection with this action. Furthermore, the Receiver shall allow the Corporate Defendants and Individual Defendants reasonable access to the premises and business records of the Receivership Defendants within the Receiver's possession for the purpose of inspecting and copying materials relevant to this action. The Receiver shall have the discretion to determine the time, manner, and reasonable conditions of such access.

## **XX. EXPEDITED DISCOVERY**

**IT IS FURTHER ORDERED** that, in anticipation of the preliminary injunction hearing in this matter, the Commission and the Receiver are authorized to conduct expedited discovery concerning Defendants' assets and business practices in accordance with the following provisions:

1. The Commission and the Receiver may take the depositions of parties and non-parties. Forty-eight hours (48) notice shall be sufficient notice for such depositions;
2. The Commission and the Receiver may serve upon parties requests for production of documents or inspection that require production or inspection within five calendar days of service, and may serve subpoenas upon non-parties that direct production or inspection within five calendar days of service;
3. The Commission may serve deposition notices and other discovery requests upon the parties to this action by facsimile or overnight courier, and depositions may be taken by telephone or other remote electronic means; and
4. Any discovery taken pursuant to this Order is in addition to, and is not subject to, the presumptive limits on discovery set forth in the Federal Rules of Civil Procedure and Local Rules of this Court. If a Defendant fails to appear for a properly noticed deposition or fails to comply with a request for production or inspection, that Defendant may be prohibited from introducing evidence at the hearing on the Commission's request for a preliminary injunction.

**XXI. SERVICE BY FACSIMILE AUTHORIZED**

**IT IS FURTHER ORDERED** that copies of this Order may be served by any means, including facsimile transmission, upon any financial institution or other entity or person that may have possession, custody, or control of any documents or assets of any Corporate Defendant or Individual Defendant, or that may otherwise be subject to any provision of this Order. Service upon any branch or office of any financial institution shall effect service upon the entire financial institution.

**XXII. DEFENDANTS' DUTY TO DISTRIBUTE ORDER**

**IT IS FURTHER ORDERED** that the Corporate Defendants and the Individual Defendants shall immediately provide a copy of this Order to each affiliate, subsidiary, division, sales entity, successor, assign, officer, director, employee, independent contractor, client company, agent, attorney, spouse, and representative of Defendants, and shall, within ten (10) days from the date of entry of this Order, provide the Commission with a sworn statement that: (A) confirms that Defendants have provided copies of the Order as required by this paragraph; and (B) lists the names and addresses of each entity or person to whom Defendants provided a copy of the Order. Furthermore, the Corporate Defendants and



Individual Defendants shall not take any action that would encourage officers, agents, directors, employees, salespersons, independent contractors, attorneys, subsidiaries, affiliates, successors, assigns, or other persons or entities in active concert or participation with Defendants to disregard this Order or believe that they are not bound by its provisions.

### **XXIII. DURATION OF TEMPORARY RESTRAINING ORDER**

**IT IS FURTHER ORDERED** that the Temporary Restraining Order granted herein shall expire ten (10) days from the date of entry noted below unless, within such time, the Order is extended for an additional period not to exceed ten (10) days for good cause shown, or unless, as to any Corporate Defendant or Individual Defendant, such Defendant consents to an extension for a longer period.

### **XXIV. ORDER TO SHOW CAUSE REGARDING PRELIMINARY INJUNCTION**

**IT IS FURTHER ORDERED**, pursuant to Federal Rule of Civil Procedure 65(b), that each of the Defendants shall appear before this Court on the 2<sup>nd</sup> day of August, 2006, at Two o'clock p.m.<sup>v</sup> <sup>in Room 1756</sup> to show cause, if there is any, why this Court should not enter a Preliminary Injunction enjoining

the violations of law alleged in the Commission's Complaint, continuing the freeze of their assets, continuing the Receivership and imposing such additional relief as may be appropriate.

### **XXV. BRIEFS AND AFFIDAVITS CONCERNING PRELIMINARY INJUNCTION**

**IT IS FURTHER ORDERED** that Defendants must file with the Clerk's Office and deliver to the counsel for the Commission any brief responding to the order to show cause why a preliminary injunction should not be entered no later 72 hours before the time scheduled for the hearing. The parties must file with the Court and deliver to counsel that have entered an appearance along with any affidavits and other evidence upon which they intend to rely in connection with the Commission's request for a preliminary injunction no later than 24 hours before the time scheduled for the preliminary injunction hearing. If any party intends to present the testimony of any witness at the hearing on a preliminary injunction, that party shall file with the Court and deliver to counsel that have entered an appearance a statement disclosing the name, address, and telephone number of any such witness, and either a summary of the witness's expected testimony, or the witness's affidavit or declaration revealing the substance of the

witness's testimony, no later than 24 hours before the time scheduled for the preliminary injunction hearing.

**XXVI. SERVICE UPON PLAINTIFF**

**IT IS FURTHER ORDERED** that Defendants shall serve all pleadings, memoranda, correspondence, affidavits, declarations, or other documents related to this Order or Plaintiff's motion for a preliminary injunction by facsimile transmission to (202) 326-3395, by hand delivery to the offices of the Federal Trade Commission, at 600 Pennsylvania Avenue, NW, Room H-238, Washington, DC 20580, and addressed to the attention of David Spiegel, or by overnight shipment through a third-party commercial carrier for delivery at this address.

**XXVII. RETENTION OF JURISDICTION**

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

**SO ORDERED**, this 18<sup>th</sup> day of July, at 5:01 ~~P~~.m., Eastern Standard Time.

*Linnette L. Zetter*  
United States District Judge

FILED IN CLERK'S OFFICE  
AND A TRUE COPY CERTIFIED, THIS  
7/18/06  
Luther D. Thomas, Clerk

By: *J. Lee D. ...*  
Deputy Clerk