

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

Case No. 4:14-

BF LABS, INC., *et al.*,

Defendants.

DEFINITIONS

- A. **“Corporate Defendant”** means BF Labs, Inc., and its successors, assigns, affiliates, or subsidiaries, and each of them by whatever names each might be known.
- B. **“Defendants”** means the Individual Defendants and the Corporate Defendants, individually, collectively, or in any combination, and each of them by whatever names each might be known.
- C. **“Exhibits”** and **“Documents”** are synonymous in meaning and equal in scope to the usage of the terms in Rule 34(a) of the Federal Rules of Civil Procedure, and include writings, drawings, graphs, charts, photographs, audio and video recordings, computer and database records, and any other data compilations from which information can be obtained. A draft or non-identical copy is a separate document within the meaning of the term.
- D. **“Service Provider”** means any person or entity in the business of storing, hosting, or otherwise maintaining electronically stored information.
- E. **“Financial Institution”** means any bank, savings and loan institution, credit union, or any financial depository of any kind, including, but not limited to, any brokerage house, trustee, broker-dealer, escrow agent, title company, commodity trading company, or precious metal dealer.
- F. **“Individual Defendants”** means Darla Drake, Nasser Ghoseiri, and Sonny Vleisides.
- G. **“Person”** means a natural person, an organization or other legal entity, including a corporation, partnership, sole proprietorship, association, cooperative, or any other group or combination acting as an entity.

H. Receivership Defendants PHD & Corporate Defendants well as any other
EXVLQHVV UHODWH Bitcoin Mining Hardware and which the
Receiver has reason to believe owned or controlled in whole or in part by any of the
Defendants.

ORDER

I.

PROHIBITED REPRESENTATIONS AND PRACTICES

IT IS THEREFORE ORDERED that Defendants and their successors, assigns, officers, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with any of them who receive actual notice of this Order, whether acting directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, marketing, proposed sale, or sale of products or services are hereby enjoined from misrepresenting, expressly or by implication, directly or indirectly:

1. The amount of Bitcoins or any other YLUWXDO FXUUHQFLHV products or services will generate
2. When products or services will be delivered to consumers

II.

ASSET FREEZE

IT IS FURTHER ORDERED that Defendants and their successors, assigns, officers, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with any of them who receive actual notice of this Order each are hereby temporarily restrained and enjoined from directly or indirectly:

G. The funds, property, and assets affected by this Section shall include: (a) all assets of each Defendant as of the time this Order is entered, and (b) those assets obtained after entry of this Order that are derived from activity prohibited by this Order. This Section II does not prohibit transfers to the Temporary Receiver, as specifically required in Section (Delivery of Receivership Property), nor does it prohibit the Repatriation of Foreign Assets, as specifically required in Section III of this Order.

III.

REPATRIATION OF FOREIGN ASSETS

IT IS FURTHER ORDERED that, within five (5) business days following the service of this Order, each Defendant shall:

A. Provide counsel for Plaintiff and the Temporary Receiver with a full accounting of all assets, accounts, funds, and documents outside of the territory of the United States that are held either: (1) by them; (2) for their benefit; (3) in trust by or for them, individually or jointly; or (4) under their direct or indirect control individually or jointly;

B. Transfer to the territory of the United States all assets, accounts, funds, and documents in foreign countries held either: (1) by them; (2) for their benefit; (3) in trust by or for them, individually or jointly; or (4) under their direct or indirect control, individually or jointly;

C. Hold and retain all repatriated assets, accounts, funds, and documents, and

D. Provide Plaintiff access to all records of accounts or assets of Defendant held by financial institutions located outside the territorial United States by signing the Consent to Release of Financial Records attached to this Order Attachment C.

IT IS FURTHER ORDERED THAT all repatriated assets, accounts, funds, and documents are subject to Section of this Order.

IV.

NON-INTERFERENCE WITH REPATRIATION

IT IS FURTHER ORDERED that Defendants, and each of their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of this Order, whether acting directly or through any entity, corporation, subsidiary, division, affiliate or other device, are hereby temporarily restrained and enjoined from taking any action, directly or indirectly, which may result in the encumbrance or dissipation of foreign assets, or in the hindrance of the repatriation required by Section III of this Order, including but not limited to:

A. Sending any statement, letter, fax, mail or wire transmission, telephoning or engaging in any other act, directly or indirectly, that results in a determination by a foreign W U X V W H H R U R W K H U H Q W L W \ W K D W D 3 G X U foreign trust Y H Q W K agreement, until such time that all assets have been fully repatriated pursuant to Section this Order; and

B. Notifying any trustee, protector or other agent of any foreign trust or other related entities of either the existence of this Order, or of the fact that repatriation is required pursuant to a Court Order, until such time that all assets have been fully repatriated pursuant to Section

V.

RETENTION OF ASSETS AND DOCUMENTS BY THIRD PARTIES

IT IS FURTHER ORDERED THAT any person, partnership, corporation, trust, or other entity, including any financial or brokerage institution, business entity, electronic data host, or person who receives actual notice of this Order that holds, controls, or maintains custody of any account, document, electronically stored information, or asset of, on behalf of, in the name of, for the benefit of, subject to withdrawal by, subject to access or use by, or under the signatory power of any Defendant or other party subject to Section II above, or has held, controlled, or maintained any such account, document, electronically stored information, or asset at any time since June 1, 2012 shall:

A. Hold, preserve, and retain within the withdrawal, removal, alteration, assignment, transfer, pledge, hypothecation, encumbrance, disbursement, dissipation, conversion, sale, liquidation, or other disposal of such account, document, electronically stored information, or asset, except as directed by further order of the Court or as directed in writing by the Temporary Receiver regarding accounts, documents, or assets held in the name of or for the benefit of any Receivership Defendant;

B. Preserve any documents, electronically stored information, or other assets otherwise maintained on behalf of any Defendant for forensic imaging;

C. Deny access to any safe deposit boxes that are either titled in the name, individually or jointly, or subject to access by, any Defendant or other party subject to Section II above; and

D. Provide to counsel for the FTC and the Temporary Receiver, within one (1) business day of receipt of this Order a sworn statement setting forth:

1. the identification of each account or asset titled in the name, individually or jointly, or held on behalf of or for the benefit of, subject to withdrawal by, subject to access or use by, or under the signatory power of any Defendant or other party subject to Section II above, whether in whole or in part;

2. the balance of each such account, or a description of nature and value of such asset, as of the close of business on the day on which this Order is served;

3. the identification of any safe deposit box that is either titled in the name of, individually or jointly, or is otherwise subject to access or control by, any Defendant or other party subject to Section I above, whether in whole or in part; and

4. if the account, safe deposit box, or other asset has been closed or removed, the date closed or removed, the balance on said date, and the name or the person or entity to whom such account or other asset was remitted;

E. Provide counsel for the FTC and the Temporary Receiver, within three (3) business days after being served with a request, copies of all documents pertaining to such account or asset including but not limited to account statements, account applications, signature cards, checks, deposit tickets, transfers to and from the accounts, transfers, all other debit and credit instruments or slips, 1099 forms, and safe deposit box logs; and

F. Cooperate with all reasonable requests of the FTC and the Temporary Receiver
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IT IS FURTHER ORDERED that, in addition to the information and documents required to be produced pursuant to Subsections (D), (E), and Section II, the FTC is granted

leave, pursuant to Fed. R. Civ. P. 45, to subpoena documents immediately from any financial or brokerage institution, business entity, electronic data host, or person served with a copy of this Order that holds, controls, or maintains custody of any account, document, electronically stored information, or asset of, on behalf of, in the name of, for the benefit of, subject to withdrawal by, subject to access or use by, or under the signatory power of any Defendant party, subject to Section II above, or has held, controlled, or maintained any such account, document, electronically stored information, or asset at any time since June 2012, and such financial or brokerage institution, business entity, electronic data host or person shall respond to such subpoena within three (3) business days after service.

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disposing of, in any manner, directly or indirectly, any documents or records that relate to the business practices, or business and personal finances of Defendant, or an entity directly or indirectly under the control of any Defendants.

IX.

APPOINTMENT OF TEMPORARY RECEIVER

IT IS FURTHER ORDERED that Eric L. Johnson of the law firm of Spencer Fane Britt & Browne LLP is appointed Temporary Receiver for the business activities of the Receivership Defendant with the full power of an equity receiver. The Temporary Receiver shall be the agent of this Court and solely the agent of this Court in acting as Receiver under this Order. The Temporary Receiver shall be accountable directly to this Court. The Temporary Receiver shall comply with any laws and Local Rules of this Court governing receivers.

X.

DUTIES OF TEMPORARY RECEIVER

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

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

B. Take exclusive custody, control, and possession of all assets, documents, and electronically stored information of, or in the possession, custody, or under the control of, the Receivership Defendant, wherever situated. The Temporary Receiver shall have the power to divert mail and to sue for, collect, receive, take in possession, hold, and manage all assets and

documents of the Receivership Defendant and other persons or entities whose interests are now held by or under the direction, possession, custody, control of the Receivership Defendant, provided, however, that the Temporary Receiver shall not attempt to collect or receive any amount from a consumer if the Temporary Receiver believes the consumer was a victim of the

7. requiring all employees, independent contractors, and consultants of the Receivership Defendant to complete a questionnaire submitted ~~by the~~ Temporary Receiver;

D. Conserve, hold, and manage all Receivership assets, 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 to creditors of the Receivership Defendant, including, but not limited to, obtaining an accounting of the assets and preventing transfer, withdrawal, or misapplication of assets;

E. Liquidate any and all assets owned by or for the benefit of the Receivership Defendant that the Temporary Receiver deems to be advisable or necessary;

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

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

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

I. Choose, engage, and employ without prior approval of the Court attorneys, accountants, appraisers, and other independent contractors and technical specialists as the Temporary Receiver deems advisable or necessary in the performance of duties and responsibilities under the authority granted by this Order. The Temporary Receiver may engage the services of the law firm of which the Temporary Receiver is a member;

however, that the continuation and conduct of the business shall be conditioned upon the Temporary Receiver's ability to operate the business as a going concern and to generate profit using the assets of the receivership estate;

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

P. Open one or more bank accounts in the Western District of Missouri or the District of Kansas designated depositories for funds of the Receivership Defendant. The Temporary Receiver shall deposit all funds of the Receivership Defendant in such a designated account and shall make all payments and disbursements from the receivership estate from such account(s).

indirectly, in whole or in part, under their control, and all other persons in active concert or participation with them who receive actual notice of this Order, whether acting directly or through any corporation, subsidiary, division, or other entity, shall:

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2. Any non-residence premises where any Defendant conducts business, sales operations, or customer service operations;

3. Any non-residence premises where documents or electronically stored information related to the business, sales operations, or customer service operations of any Defendant are hosted, stored, or otherwise maintained, including but not limited to the name and location of any electronic data hosts; and

4. Any non-residence premises where assets belonging to any Defendant are stored or maintained;

B. Allow the FTC and the Temporary Receiver, and their respective representatives, agents, attorneys, investigators, paralegals, contractors, or assistants immediate access to:

1. All of the Defendant WV¶ EXVLQHVV SUHPLVHV LQFOXGL

10770 El Monte St., Ste 101, Overland Park, KS 66211 and such other business locations

to the business of the Receivership Defendant that are wholly or partially owned, rented, leased,

4. Any non-residence premises where assets belonging to any Defendant are stored or maintained; and

5. Any documents located at any of the locations described in Section 10.1 and

C. Provide the FTC and the Temporary Receiver, and their respective representatives, agents, attorneys, investigators, paralegals, contractors, or assistants with any necessary means of access to, copying of, and forensic imaging of documents or electronically stored information, including, ~~W K R X W O L P L W D W L R Q W K H O R F D W L R Q V~~ business premises, keys and combinations to business premises locks, computer access codes of all computers used to conduct Receivership Defendant's business, access to (including but not limited to execution of any documents necessary for access to and forensic imaging of) any data stored, hosted or otherwise maintained by an electronic data host, and storage area access information.

IT IS FURTHER ORDERED that the Temporary Receiver and the FTC shall have the ULJKW WR UHPRYH DQ\ GRFXPHQWV UHODWHGFRM'HIHQGD premises in order that they may be inspected, inventoried, and copied. The materials so removed shall be returned within five (5) business days of completing said inventory and copying. If any property, records, documents, or computer files relating to the Receivership Defendants or business practices are located in the residence of any Defendant otherwise in the custody or control of any Defendant, then such Defendant shall produce them to the Temporary Receiver within twentyfour (24) hours of service of this Order. In order to prevent the destruction of computer data, upon service of this Order upon Defendants, any such computers shall be powered down (turned off) in the normal course for the operating systems used on such computers and shall not be powered up or used again until produced for copying and inspection, along with any codes QHHGHG IRU DFFHV V 7KH)7&¶V DQG WK representatives may also photograph and videotape the inside and outside of all premises to which they are permitted access by this Order, and all documents and other items found on such premises.

IT IS FURTHER ORDERED WKDW WKH)7&¶V DFFHV V WR 'HIHQGD to this provision shall not provide grounds for any Defendant to object to any subsequent request for documents served by the FTC.

IT IS FURTHER ORDERED that the Temporary Receiver shall have the discretion to determine the time, manner, and reasonable conditions of such access.

XII.

COOPERATION WITH TEMPORARY RECEIVER

IT IS FURTHER ORDERED that:

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managers, and employees; and

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and the nature of the duties or responsibilities of the Receivership Defendant.

XIII.

DELIVERY OF RECEIVERSHIP PROPERTY

IT IS FURTHER ORDERED that immediately upon service of this Order upon them or upon their otherwise obtaining actual knowledge of this Order, or within the period permitted by the Temporary Receiver, Defendants and any other person or entity, including but not limited to financial institutions and electronic data hosts, shall transfer or deliver access to, possession, custody, and control of the following to the Temporary Receiver:

- A. All assets of the Receivership Defendant;
- B. All documents and electronically stored information of the Receivership Defendant, 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, records of ACH transactions, and check registers), client or customer lists, title documents and other papers;
- C. All assets belonging to members of the public now held by the Receivership Defendant;
- D. All keys, computer and other passwords, user names, entry codes, combinations to locks required to open or gain or secure access to any assets or documents of the Receivership Defendant, wherever located, including, but not limited to, access to their business premises, means of communication, accounts, computer systems, or other property; and

E. Information identifying the accounts, employees, properties, or other assets or obligations of the Receivership Defendant.

XV.

TEMPORARY 5 (& (, 9 (5 ¶ 6 5 (3 2 5 7 6

IT IS FURTHER ORDERED that the Temporary Receiver shall report to this Court on or before the date set for the hearing to Show Cause regarding the Preliminary Injunction, regarding: (1) the steps taken by the Temporary 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 Temporary 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' H I H Q G D Q W L I D S S U R S U L D W H W K H 7 H P S R U D U \ 5 business can be operated in compliance with this Order; and (6) any other matters which the

XVII.

STAY OF ACTIONS

A. Except by leave of this Court, during pendency of the Receivership ordered herein, Defendant and all other persons and entities be and hereby are restrained from taking any action to establish or enforce any claim, right, or interest for, against, on behalf of, in, or in the name of, the Receivership Defendant, any of its subsidiaries, affiliates, partnerships, assets, documents, or the Temporary Receiver ~~BRU WKH 7HPSRUDU\ 5HFHLYHU\ V G X~~ acting in their capacities as such, including, but not limited to, the following actions:

1. Commencing, prosecuting, continuing, entering, or enforcing any suit or proceeding, except that such actions may be filed to toll any applicable statute of limitations;
2. Accelerating the due date of any obligation or claimed obligation; filing or enforcing any lien; taking or attempting to take possession, custody, or control of any asset; attempting to foreclose, forfeit, alter, or terminate any interest in any asset, whether such acts are part of a judicial proceeding, are acts of self-help, or otherwise;
3. Executing, issuing, serving, or causing the execution, issuance or service of, any legal process, including, but not limited to, attachments, garnishments, subpoenas, writs of replevin, writs of execution, or any other form of process whether specified in this Order or not; or
4. Doing any act or thing whatsoever to interfere with the Temporary Receiver taking custody, control, possession, or management of the assets or documents subject to this Receivership, or to harass or interfere with the Temporary Receiver in any way, or to interfere in any manner with the exclusive jurisdiction of this Court over the assets or documents of the Receivership Defendants;

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not a party, for the purpose of discovering: (1) the nature, location, status, and extent of assets of any Defendant or its affiliates or subsidiaries; (2) the nature and location of documents and business records of any Defendant or their affiliates or subsidiaries; and (3) compliance with this Order. The limitations and conditions set forth in Fed. R. Civ. P. 30(a)(2)(B) and 31(a)(2)(B) regarding subsequent depositions shall not apply to depositions taken pursuant to this Section. In addition, any such depositions taken pursuant to this Section shall not be counted toward the ten (10) deposition limit set forth in Fed. R. Civ. P. 30(a)(2)(A)(i) and 31(a)(2)(A)(i) and shall not preclude the FTC from subsequently deposing the same person or entity in accordance with the Federal Rules of Civil Procedure. Any deposition taken pursuant to this Section that has not been reviewed and signed by the deponent may be used by any party for purposes of the preliminary injunction hearing;

B. Serve interrogatories for the purpose of discovering: (1) the nature, location, status, and extent of assets of any Defendant or its affiliates or subsidiaries; (2) the nature and location of documents and business records of any Defendant or their affiliates or subsidiaries; and (3) compliance with this Order. Defendants shall respond within five (5) calendar days after Plaintiff serve such interrogatories. Provided that, notwithstanding Federal Rule of Civil Procedure 33(a)(1), this Subsection shall not preclude any future interrogatories to Plaintiff.

C. Serve upon parties requests for production of documents or things that require production or inspection within three (3) calendar days of service, and may serve subpoenas upon nonparties that direct production or inspection within five (5) calendar days of service, for the purpose of discovering: (1) the nature, location, status, and extent of assets of any Defendant or its affiliates or subsidiaries; (2) the nature and location of documents and business records of

any Defendant or its affiliates or subsidiaries; and (3) compliance with this Order provided that

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documents that are maintained or stored only as electronic data;

D. Serve deposition notices and other discovery requests upon the parties to this action by facsimile, email or overnight courier, and take depositions by telephone or other remote electronic means; and

E. Seek to prohibit any Defendant who fails to appear for a properly noticed deposition or fails to comply with a request for production or inspection, introducing the evidences sought by the FTC at any subsequent hearing.

XIX.

SERVICE OF THIS ORDER

IT IS FURTHER ORDERED that copies of this Order as well as the motion for the temporary restraining order and all other pleadings, documents, and exhibits filed contemporaneously with that motion (other than the complaint and summary) may be served by facsimile, email, personal or overnight delivery, or U.S. Mail or FedEx by agents and employees of the FTC or any state or federal law enforcement agency or by process server, upon any financial institution or other entity or person that may have possession, custody, or control of any documents or assets of any Defendant or Relief Defendant or that may otherwise be subject to any provision of this Order

Order to each affiliate, subsidiary, division, sales entity, successor, assign, officer, director, employee, independent contractor, client company, electronic data host, agent, attorney, spouse, and representative of any Defendant and shall, within three (3) calendar days from the date of entry of this Order, provide counsel for the FTC with a sworn statement that confirms that Defendants have provided copies of the Order as required by Section and (b) lists the names and addresses of each entity or person whom Defendants provided a copy of the Order. Furthermore, Defendants shall not take any action that would encourage officers, agents, directors, employees, salespersons, independent contractors, attorneys, subsidiaries, affiliates, successors, assign 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.

XXI.

CORRESPONDENCE WITH PLAINTIFF

IT IS FURTHER ORDERED that, for the purposes of this Order, because mail addressed to the FTC is subject to delay due to heightened security screening, all correspondence and service of pleadings on Plaintiff Federal Trade Commission shall be sent either via electronic transmission to Helen Wong at hwong@ftc.gov or via Federal Express to Helen Wong Federal Trade Commission, 600 Pennsylvania Avenue, NW, Mail Drop CC-10232, Washington, DC 20580.

XXII.

ORDER TO SHOW CAUSE AND PRELIMINARY INJUNCTION HEARING

IT IS FURTHER ORDERED that, pursuant to Federal Rule of Civil Procedure 65(b), each of the Defendants shall appear before this Court on 12th day of September 2014, at

RIGHT FOR FOND cause, if there is any, why this Court should not enter a preliminary

injunction HQMRLQLQJ WKH YLRDWRQV RI ODZ DOOHJHG LQ W
of their assets, and imposing such additional relief as may be appropriate.

XXIII.

SERVICE OF PLEADINGS, EVIDENCE, WITNESS LISTS

IT IS FURTHER ORDERED that:

A. Defendants shall file any answering affidavits, pleadings, or legal memoranda with the Court and serve the same on counsel for Plaintiff no later than five (5) business days prior to the preliminary injunction hearing in this matter. Plaintiff may file responsive or supplemental pleadings, materials, affidavits, or memoranda with the Court and serve the same on counsel for Defendants no later than one (1) business day prior to the preliminary injunction hearing in this matter provided that service shall be performed by personal or overnight delivery, facsimile, or email, and documents shall be delivered so that they shall be received by the other parties no later than 4 p.m. (EST) on the appropriate dates listed in this Subsection;

B. The question of whether this Court should enter a preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure enjoining the Defendants during the pendency of this action shall be resolved on the pleadings, declarations, exhibits, and memoranda filed by, and, if necessary, oral argument of, the parties. Live testimony shall be heard only on further order of this Court on motion filed with the Court and served on counsel for the other parties at least five (5) business days prior to the preliminary injunction hearing in this matter. Such motion shall set forth the name, address, and telephone number of each proposed witness, a GHWDLOHG VXPPDU\ RU DIILGDYLW GLVFORVLQJ WKH VXE testimony, and an explanation of why the taking of live testimony would be helpful to this Court. Any papers opposing a timely motion to present live testimony or to present live testimony in

response to live testimony presented by another party

XXVI.

RETENTION OF JURISDICTION

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

IT IS SO ORDERED.

DATE: September 18, 2014

/s/Brian C. Wimes
JUDGE BRIAN C. WIMES
UNITED STATES DISTRICT COURT