

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
ROCK HILL DIVISION

Equitable Relief pursuant to Rule 65(b) of the Federal Rules of Civil Procedure. (ECF No. 5.) For the reasons set forth below, the court **GRANTS** the FTC's TRO Motion.

## **I. JURISDICTION**

This court has jurisdiction over the FTC's claims via 28 U.S.C. § 1331, as they arise under a law of the United States, and specifically via 15 U.S.C. § 53(b), which empowers district courts to hear claims brought by the FTC, 15 U.S.C. § 1692k(d), which empowers district courts to hear actions under the FDCPA. Additionally, the court has jurisdiction over the subject matter under 28 U.S.C. §§ 1337 and 1345.

## **II. RELEVANT BACKGROUND TO PENDING MOTION**

The FTC is an independent agency of the United States Government created by the FTC Act, 15 U.S.C. §§ 48–51. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair and deceptive acts and practices in or affecting commerce, and the FDCPA, 15 U.S.C. §§ 1692–1692p, which prohibits unfair, deceptive, and abusive debt collection practices. The FTC alleges that “[s]ince at least January 2012, . . . Defendants have engaged in a scheme to collect and process payments for debts that consumers do not actually owe or that Defendants do not have authority to collect.” (ECF No. 2 at 5 ¶ 16.) More specifically, the FTC alleges that Defendants have collected more than \$12,000,000.00 since 2016 using a two-step collection process that misrepresents to consumers that they “owe [] debts and that legal action against consumers has begun or is imminent.” (*Id.* at 6 ¶ 17, 8 ¶ 32.) The FTC alleges that “[i]n the first

numbers that Defendants provide in the initial robocalls and are connected with collectors whose

Fed. R. Civ. P. 65(b)(1). Motions for temporary restraining order are governed by the same general standards that govern the issuance of a preliminary injunction. *Hoechst Diafoil Co. v. Nan Ya Plastics Corp.*, 174 F.3d 411, 422 (4th Cir. 1999). In this regard, a party seeking a temporary restraining order must establish all four of the following elements: (1) it is likely to succeed on the merits; (2) it is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in its favor; and (4) an injunction is in the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *The Real Truth About Obama, Inc. v. Fed. Election Comm’n*, 575 F.3d 342, 346–47 (4th Cir. 2009). The Fourth Circuit no longer recognizes a “flexible interplay among the four criteria” for a temporary restraining order. *Real Truth*, 575 F.3d at 347. Each of the four requirements “must be fulfilled as articulated.”<sup>1</sup> *De la Fuente v. S.C. Dem. Party*, C/A No. 3:16-cv-00322-CMC, 2016 WL 741317, at \*2 (D.S.C. Feb. 25, 2016).

The court may only grant a temporary restraining order, which is issued “without written or oral notice to the adverse party,” under the strict conditions set forth above. Fed. R. Civ. P. 65.

#### IV. ANALYSIS

##### A. The FTC’s Arguments

FTC moves for a temporary restraining order arguing that the ample evidence it has submitted demonstrates it is likely to succeed on the merits. (ECF No. 5-1 at 32 (citing *FTC v. Beatrice Foods Co.*, 587 F.2d 1225, 1229 (D.C. Cir. 1978) (Generally, the FTC “meets its burden

~~De la Fuente v. S.C. Dem. Party, C/A No. 3:16-cv-00322-CMC, 2016 WL 741317, at \*2 (D.S.C. Feb. 25, 2016) (citing 200) § 53 Motiv12. § 13 Moti requires As s~~

a fair and tenable chance of ultimate success on the merits.”)).) The FTC next argues that “irreparable injury exists simply because a federal statute is violated” and “vulnerable consumers will continue to be injured by Defendants’ deceptive and abusive collection practices” and “from the continuation of Defendants’ scheme and the likely destruction of evidence and dissipation of assets.” (*Id.* at 31–32 n.18.) Moreover, in considering the balance of the equities, the FTC asserts that “the public equities—protection of consumers from Defendants’ deceptive and abusive debt collection practices, effective enforcement of the law, and the preservation of Defendants’ assets for final relief—weigh heavily in favor of granting the requested injunctive relief . . . because Defendants’ conduct indicates that they will likely continue to deceive the public.” (ECF No. 5-1 at 33 (citing *FTC v. Five-Star Auto Club*, 97 F. Supp. 2d 502, 536 (S.D.N.Y. 2000) (“[P]ast illegal

TRO Motion. Therefore, upon consideration of the Complaint, the twenty-two (22) Declarations, Exhibits, the TRO Motion, and Memorandum in Support, the court makes the following findings as to the FTC's TRO Motion:

A. This court has jurisdiction over the subject matter of this case, and there is good cause to believe that it will have jurisdiction over all parties hereto and that venue in the District of South Carolina is proper.

B. The FTC alleges that Defendants have engaged in a scheme to collect and process payments for debts that consumers do not actually owe or that Defendants do not have authority to collect. Specifically, the FTC asserts that "Defendants' unlawful practices fall into three main categories: (1) using false and misleading representations to collect debts consumers do not owe; (2) failing to make required disclosures during their collection calls; and (3) failing to provide consumers with required validation notices." (ECF No. 5-1 at 17.)

C. There is good cause to believe that Defendants have engaged in and are likely to engage in acts or practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and multiple provisions of the FDCPA, 15 U.S.C. §§ 1692–1692p, and that the FTC is therefore likely to prevail on the merits of this action. As demonstrated by consumer declarations, consumer complaints, and the additional documentation filed by the FTC, the FTC has established a likelihood of success in showing that Defendants have made misrepresentations about consumers owing debt and certain legal actions, that Defendants have engaged in abusive debt collection practices and failed to provide validation notices, and that Defendants have taken in gross revenues of approximately \$13,701,614 as a result of their unlawful practices.

D. There is good cause to believe that immediate and irreparable harm will result from Defendants' ongoing violations of the FTC Act and the FDCPA unless Defendants are restrained



## **V. DEFINITIONS**

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

- A. “Asset” means any legal or equitable interest



directly or, if necessary, after translation into a reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

G. “Electronic Data Host” means any person or entity in the business of storing, hosting, or otherwise maintaining electronically stored information. This includes, but is not limited to, any entity hosting a website or server, and any entity providing “cloud based” electronic storage.

H. “Individual Defendant(s)” means Jean Cellent, James Dennison, and Eric Dennison, individually, collectively, or in any combination.

I. “Person” means a natural person, an organization or other legal entity, including a corporation, partnership, sole proprietorship, limited liability company, association, cooperative, or any other group or combination acting as an entity.

J. “Public Health and Safety Event” means (1) any public health or safety emergency announced or declared by any federal, state, or local governmental authority or (2) the existence of any order, regulation, or action by any federal, state, or local government authority relating to public health or safety governing or otherwise restricting public or commercial activity, such as a quarantine or stay-at-home order.

K. “Receiver” means the temporary receiver appointed by the court and any deputy receivers that shall be named by the temporary receiver.

L. “Receivership Entities” means Corporate Defendants as well as any other entity that has conducted any business related to Defendants’ debt collection, including receipt of Assets derived from any activity that is the subject of the Complaint in this matter, and that the Receiver determines is controlled or owned by any Defendant.

## VI. PROHIBITED BUSINESS ACTIVITIES

**IT IS THEREFORE ORDERED** that Defendants, Defendants' officers, agents, employees, and attorneys, and all other persons in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or indirectly, in connection with the collection or attempted collection of any Debt, are temporarily restrained and enjoined from:

A. Misrepresenting or assisting others in misrepresenting, expressly or by implication, orally or in writing:

1. that any Consumer is delinquent on a credit card, payday loan, or other Debt that any Defendant or any other Person has authority to collect;
2. that any Consumer has a legal obligation to pay any Defendant or any other Person;
3. that non-payment of a purported Debt will result in a Consumer's arrest, criminal or civil prosecution, imprisonment, or in seizure, garnishment, or attachment of a Consumer's property or wages;
4. that any Defendant or any other Person has taken, intends to take, or has authority to take formal legal action against a Consumer who fails to pay any Debt;
5. that any Defendant or any Person will serve, or arrange for a third party to serve, documents on a consumer;
6. that any Defendant or any other Person is an attorney or affiliated or associated with an attorney;
7. that any Defendant or any other Person is a law firm; or

8. the character, amount, or legal status of a debt;

B. Placing telephone calls without meaningfully disclosing the caller's identity;

C. Failing to disclose or disclose adequately (1) in the initial communication with a consumer that any Defendant or any other Person is a debt collector attempting to collect a debt and that any information obtained will be used for that purpose; or (2) in subsequent communications with consumers that any Defendant or any other Person is a debt collector.

D. Threatening to take action that is not lawful or that any Defendant or any other Person does not intend to take;

E. Using any false representation or deceptive means to collect or attempt to collect a Debt, or to obtain information concerning a Consumer;

F. Using a business, company, or organization name other than the true name of Defendants' business, company, or organization;

G. Failing to provide Consumers, within five days after the initial communication with Consumer, a written notice containing: (1) the amount of the Debt; (2) the name of the creditor to whom the Debt is owed; (3) a statement that unless the Consumer, within thirty days after receipt of the notice, disputes the validity of the Debt, or any portion thereof, the Debt will be assumed to be valid by Defendants; (4) a statement that if the Consumer notifies Defendants in writing within the thirty-day period that the Debt, or any portion thereof, is disputed, Defendants will obtain verification of the Debt or a copy of a judgment against the Consumer and a copy of such verification or judgment will be mailed to the Consumer by Defendants; and (5) a statement that, upon the Consumer's written request within the thirty-day period, Defendants will provide the Consumer with the name and address of the original creditor, if different from the current creditor; and



A. Transferring, liquidating, converting, encumbering, pledging, loaning, selling, concealing, dissipating, disbursing, assigning, relinquishing, spending, withdrawing, granting a lien or security interest or other interest in, or otherwise disposing of any Assets that are:

1. owned or controlled, directly or indirectly, by any Defendant;
2. held, in part or in whole, for the benefit of any Defendant;
3. in the actual or constructive possession of any Defendant; or
4. owned or controlled by, in the actual or constructive possession of, or otherwise held for the benefit of, any corporation, partnership, asset protection trust, or other entity that is directly or indirectly owned, managed or controlled by any Defendant.

B. Opening or causing to be opened any safe deposit boxes, commercial mailboxes, or storage facilities titled in the name of any Defendant or subject to access by any Defendant, except as necessary to comply with written requests from the Receiver acting pursuant to its authority under this Order;

C. Incurring charges or cash advances on any credit, debit, or ATM card issued in the name, individually or jointly, of any Corporate Defendant or any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by any Defendant or of which any Defendant is an officer, director, member, or manager. This includes any corporate bankcard or corporate credit card account for which any Defendant is, or was on the date that this Order was signed, an authorized signor; or

D. Cashing any checks or depositing any money orders or cash received from consumers, clients, or customers of any Defendant.

E. The Assets affected by this Section shall include: (1) all Assets of Defendants as of

the time this Order is entered; and (2) Assets obtained by Defendants after this Order is entered if those Assets are derived from any activity that is the subject of the Complaint in this matter or that is prohibited by this Order. This Section does not prohibit any transfers to the Receiver or repatriation of foreign Assets specifically required by this order.

#### **IX. DUTIES OF ASSET HOLDERS AND OTHER THIRD PARTIES**

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

A. Hold, preserve, and retain within its control and prohibit the withdrawal, removal, alteration, assignment, transfer, pledge, encumbrance, disbursement, dissipation, relinquishment,

conversion, sale, or other disposal of any such Document or Asset, as well as all Documents or other property related to such Assets, except by further order of this court or as directed in writing by the Receiver regarding Assets or Documents owned by, held in the name of, for the benefit of, or otherwise controlled by any Receivership Entity; provided, however, that this provision does not prohibit an Individual Defendant from incurring charges on a personal credit card established prior to entry of this Order, up to the pre-existing credit limit;

B. Deny any Person, except the Receiver, access to any safe deposit box, commercial mailbox, or storage facility that is titled in the name of any Defendant, either individually or jointly, or otherwise subject to access by any Defendant;

C. Provide FTC counsel and the Receiver, within three (3) days of receiving a copy of this Order, a sworn statement setting forth, for each Asset or account covered by this Section:

1. The identification number of each such account or Asset;
2. The balance of each such account, or a description of the nature and value of each such Asset as of the close of business on the day on which this Order is served, 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
3. The identification of any safe deposit box, commercial mailbox, or storage facility that is either titled in the name, individually or jointly, of any Defendant, or is otherwise subject to access by any Defendant; and

D. Upon the request of FTC counsel or the Receiver, promptly provide FTC counsel and the Receiver with copies of all records or other Documents pertaining to such account or Asset,

including originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, including wire transfers and wire transfer instructions, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and all logs and records pertaining to safe deposit boxes, commercial mail boxes, and storage facilities.

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

#### **X. FINANCIAL DISCLOSURES**

**IT IS FURTHER ORDERED** that each Defendant, within five (5) days of service of this Order upon them, shall prepare and deliver to FTC counsel and the Receiver:

A. completed financial statements on the forms attached to this Order as Attachment A (Financial Statement of Individual Defendant) for each Individual Defendant,

B. and Attachment B (Financial Statement of Corporate Defendant) for each Corporate Defendant; and

C. completed Attachment C (IRS Form 4506, Request for Copy of a Tax Return) for each Individual and Corporate Defendant.

#### **XI. FOREIGN ASSET REPATRIATION**

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

A. Provide FTC counsel and the Receiver with a full accounting, verified under oath and accurate as of the date of this Order, of all Assets, Documents, and accounts outside of the United States which are: (1) titled in the name, individually or jointly, of any Defendant; (2) held by any person or entity for the benefit of any Defendant or for the benefit of, any corporation,



partnership, asset protection trust, or other entity that is directly or indirectly owned, managed or controlled by any Defendant; or (3) under the direct or indirect control, whether jointly or singly, of any Defendant;

B. Take all steps necessary to provide FTC counsel and Receiver access to all Documents and records that may be held by third parties located outside of the territorial United States of America, including signing the Consent to Release of Financial Records appended to this Order as Attachment D.

C. Transfer to the territory of the United States all Documents and Assets located in foreign countries which are: (1) titled in the name, individually or jointly, of any Defendant; (2) held by any person or entity for the benefit of any Defendant or for the benefit of, any corporation, partnership, asset protection trust, or other entity that is directly or indirectly owned, managed or controlled by any Defendant; or (3) under the direct or indirect control, whether jointly or singly, of any Defendant; and

D. The same business day as any repatriation, (1) notify the Receiver and counsel for the FTC of the name and location of the financial institution or other entity that is the recipient of such Documents or Assets; and (2) serve this Order on any such financial institution or other entity.

## **XII. NON-INTERFERENCE WITH REPATRIATION**

**IT IS FURTHER ORDERED** that Defendants, Defendants' officers, agents, employees, and attorneys, and all other Persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, 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 this Order, including, but not limited to:

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

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 Defendants’ Assets have been fully repatriated pursuant to this Order.

### **XIII. CONSUMER CREDIT REPORTS**

**IT IS FURTHER ORDERED** that the FTC may obtain credit reports concerning any Defendants pursuant to Section 604(a)(1), atha

control with any other Defendant; and

B. Failing to create and maintain Documents that, in reasonable detail, accurately, fairly, and completely reflect Defendants' incomes, disbursements, transactions, and use of Defendants' Assets.

#### **XV. REPORT OF NEW BUSINESS ACTIVITY**

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

#### **XVI. APPOINTMENT OF TEMPORARY RECEIVER**

**IT IS FURTHER ORDERED** that, by separate order, the court will appoint a temporary receiver of the Receivership Entities who shall have the full powers of an equity receiver and who is eminently qualified to be appointed as Receiver of all the assets, properties, books and records, and other items of Defendants. The Receiver shall be solely the agent of this court in acting as Receiver under this Order.

#### **XVII. DUTIES AND AUTHORITY OF RECEIVER**

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

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

B. Take exclusive custody, control, and possession of all Assets and Documents of, or in the possession, custody, or under the control of, any Receivership Entity, wherever situated;

C. Take exclusive custody, control, and possession of all Documents or Assets associated with credits, debits, or charges made on behalf of any Receivership Entity, wherever situated, including reserve funds held by payment processors, credit card processors, merchant banks, acquiring banks, independent sales organizations, third party processors, payment gateways, insurance companies, or other entities;

D. Conserve, hold, manage, and prevent the loss of all Assets of the Receivership Entities, and perform all acts necessary or advisable to preserve the value of those Assets. 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 Entities. The Receiver shall have full power to sue for, collect, and receive, all Assets of the Receivership Entities and of other persons or entities whose interests are now under the direction, possession, custody, or control of, the Receivership Entities. Provided, however, that the Receiver shall not attempt to collect any amount from a consumer if the Receiver believes the consumer's debt to the Receivership Entities has resulted from the deceptive acts or practices or other violations of law alleged in the Complaint in this matter, without prior court approval;

E. Obtain, conserve, hold, manage, and prevent the loss of all Documents of the Receivership Entities, and perform all acts necessary or advisable to preserve such Documents.

The Receiver shall: divert mail; preserve all Documents of the Receivership Entities that are accessible via electronic means such as online access to financial accounts and access to electronic documents held onsite or by Electronic Data Hosts, by changing usernames, passwords or other log-in credentials; take possession of all electronic Documents of the Receivership Entities stored onsite or remotely; take whatever steps necessary to preserve all such Documents; and obtain the assistance of the FTC's Digital Forensic Unit for the purpose of obtaining electronic documents stored onsite or remotely.

F. 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;

G. 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, and to incur, or authorize the making of, such agreements as may be necessary and advisable in discharging his or her duties as Receiver. The Receiver shall apply to the court for prior approval of any payment of any debt or obligation incurred by the Receivership Entities prior to the date of entry of this Order, except payments that the Receiver deems necessary or advisable to secure Assets of the Receivership Entities, such as rental payments;

H. Take all steps necessary to secure and take exclusive custody of each location from which the Receivership Entities operate their businesses. Such steps may include, but are not limited to, any of the following, as the Receiver deems necessary or advisable: (1) securing the location by changing the locks and alarm codes and disconnecting any internet access or other means of access to the computers, servers, internal networks, or other records maintained at that

Receiver with proof of identification, and/or to demonstrate to the satisfaction of the Receiver that such persons are not removing from the premises Documents or Assets of the Receivership Entities. Law enforcement personnel, including, but not limited to, the United States Postal Inspection Service, 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 Marshal will provide appropriate and necessary assistance to the Receiver to implement this Order and is authorized to use any necessary and reasonable force to do so;

I. Take all steps necessary to prevent the modification, destruction, or erasure of any web page or website registered to and operated, in whole or in part, by any Defendants, and to provide access to all such web page or websites to FTC representatives, agents, and assistants, as well as Defendants and their representatives;

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

K. Prevent the inequitable distribution of Assets and determine, adjust, and protect the interests of consumers who have transacted business with the Receivership Entities;

L. Make an accounting, as soon as practicable, of the Assets and financial condition of the receivership and file the accounting with the court and deliver copies thereof to all parties;

M. Institute, compromise, adjust, appear in, intervene in, defend, dispose of, or otherwise become party to any legal action 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 Entities, or to carry out the Receiver's mandate under this Order, including but not limited to, actions challenging fraudulent or voidable transfers;

N. Issue subpoenas to obtain Documents and records pertaining to the Receivership, and conduct discovery in this action on behalf of the receivership estate, in addition to obtaining



and records, if the Receiver determines that notice to the entity or the parties before the Receiver



of any Receivership Entity, wherever situated, including reserve funds held by payment processors, credit card processors, merchant banks, acquiring banks, independent sales organizations, third party processors, payment gateways, insurance companies, or other entities;

C. All Documents of or pertaining to the Receivership Entities;

D. All computers, electronic devices, mobile devices and machines used to conduct the business of the Receivership Entities;

E. All Assets and Documents belonging to other persons or entities whose interests are under the direction, possession, custody, or control of the Receivership Entities; and

F. All keys, codes, usernames and passwords necessary to gain or to secure access to any Assets or Documents of or pertaining to the Receivership Entities, including access to their business premises, means of communication, accounts, computer systems (onsite and remote), Electronic Data Hosts, or other property.

G.

done business with the Receivership Entities; and

C. A description of any documents covered by attorney-client privilege or attorney work product, including files where such documents are likely to be located, authors or recipients of such documents, and search terms likely to identify such electronic documents.

## **XX. COOPERATION WITH THE RECEIVER**

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

## **XXI. NON-INTERFERENCE WITH THE RECEIVER**

**IT IS FURTHER ORDERED** that Defendants; Receivership Entities; Defendants' or Receivership Entities' officers, agents, employees, attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, and any other person served with a copy of this Order, are hereby restrained and enjoined from directly or

indirectly:

or proceeding against the Receivership Entities, including the issuance or employment of process against the Receivership Entities, except that such actions may be commenced if necessary, to toll any applicable statute of limitations;

C. Filing or enforcing any lien on any asset of the Receivership Entities, taking or attempting to take possession, custody, or control of any Asset of the Receivership Entities; or attempting to foreclose, forfeit, alter, or terminate any interest in any Asset of the Receivership Entities, whether such acts are part of a judicial proceeding, are acts of self-help, or otherwise;

D. Provided, however, that this Order does not stay: (1) the commencement or continuation of a criminal action or proceeding; (2) the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power; or (3) 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.

### **XXIII. COMPENSATION OF RECEIVER**

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

#### **XXIV. 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 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. 28 U.S.C. §754.

#### **XXV. RECEIVER'S REPORTS**

**IT IS FURTHER ORDERED** that the Receiver shall report to this court on or before the date set for the preliminary injunction hearing regarding (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 Entities; (3) the sum of all liabilities of the Receivership Entities; (4) the steps the Receiver intends to take in the future to (a) prevent any diminution in the value of assets of the Receivership Entities, (b) pursue receivership assets from third parties, and (c) adjust the liabilities of the Receivership Entities, if appropriate; (5) whether the business of the Receivership Entities can be operated lawfully and profitably; and (6) any other matters that the Receiver believes should be brought to the court's attention. Provided, however, that 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.

#### **XXVI. IMMEDIATE ACCESS TO BUSINESS PREMISES AND RECORDS**

**IT IS FURTHER ORDERED** that:

A. In order to allow the FTC and the Receiver to preserve Assets and evidence relevant to this action and to expedite discovery and unless the FTC or the Receiver determines that a Public Health or Safety Event makes it unsafe for the FTC or the Receiver to do so, the FTC and the Receiver, and their representatives, agents, contractors, and assistants, shall have immediate access

to the business premises and storage facilities, owned, controlled, or used by the Receivership Entities. Such locations include, but are not limited to: 2203 Deerfield Drive, Suite A, Fort Mill, South Carolina and 1974 Carolina Place, Fort Mill, South Carolina, and 800 West Olney Avenue, Philadelphia, Pennsylvania; and any offsite location or commercial mailbox used by the Receivership Entities. The Receiver may exclude Defendants, Receivership Entities, and their employees from the business premises during the immediate access. In the event of a Public Health or Safety Event, the Receiver may, if the Receiver determines it safe to do so, enter any of Defendants' business premises after business hours. Any landlord, management office, security office, or any other Person that controls access to any such business premises, including but not limited to Stajos Development, SMI Partners, and 800 West Olney Association, shall, immediately upon receiving notice of this order, cooperate with the Receiver and take whatever steps necessary to allow the Receiver access to such business premises after business hours; and such Persons are prohibited from notifying Defendants of the existence of this Order or the Receiver's entry into the business premises until the Receiver has notified such Persons in writing that the Receiver has secured such business premises.

B. The FTC and the Receiver, and their representatives, agents, contractors, and assistants, are authorized to remove Documents from the Receivership Entities' premises in order that they may be inspected, inventoried, and copied. The FTC shall return any removed materials to the Receiver within five (5) business days of completing inventorying and copying, or such time as is agreed upon by the FTC and the Receiver.

C. The FTC's access to the Receivership Entities' documents pursuant to this Section shall not provide grounds for any Defendant to object to any subsequent request for documents served by the FTC.

D. The FTC and the Receiver, and their representatives, agents, contractors, and assistants, are authorized to obtain the assistance of federal, state and local law enforcement officers as they deem necessary to effect service and to implement peacefully the provisions of this Order.

E. If any Documents, computers, or electronic storage devices containing information related to the business practices or finances of the Receivership Entities are at a location other than those listed herein, including personal residence(s) of any Defendant, then, immediately upon the written or oral instruction of the Receiver, Defendants and Receivership Entities shall produce to the Receiver all such Documents, computers, and electronic storage devices, along with any codes or passwords needed for access. In order to prevent the destruction of computer data, upon service of this Order, any such computers or electronic storage devices shall be powered down in the normal course of the operating system used on such devices and shall not be powered up or used until produced for copying and inspection. Defendants are precluded from introducing in any proceeding in this case any Document not so produced.

F. If any communications or records of any Receivership Entity are stored with an Electronic Data Host, such Entity shall, immediately upon receiving notice of this order, provide the Receiver with the username, passwords, and any other login credential needed to access the communications and records, and shall not attempt to access, or cause a third-party to attempt to access, the communications or records.

**XXVII. DISTRIBUTION OF ORDER BY DEFENDANTS**

**IT IS FURTHER ORDERED** that Defendants shall immediately provide a copy of this Order to each affiliate, telemarketer, marketer, sales entity, successor, assign, member, officer, director, employee, agent, independent contractor, client, attorney, spouse, subsidiary, division,

and representative of any Defendant, and shall, within ten (10) days from the date of entry of this Order, and provide the FTC and the Receiver with a sworn statement that this provision of the Order has been satisfied, which statement shall include the names, physical addresses, phone number, and email addresses of each such person or entity who received a copy of the Order. Furthermore, Defendants shall not take any action that would encourage officers, agents, members, directors, employees, salespersons, independent contractors, attorneys, subsidiaries, affiliates, successors, assigns or other persons or entities in active concert or participation with them to disregard this Order or believe that they are not bound by its provisions.

**XXVIII. EXPEDITED DISCOVERY**

**IT IS FURTHER ORDERED** that, notwithstanding the provisions of the Rule 26(d) and (f) and 30(a)(2)(c), and pursuant to Rule 30(a), 34, and 45, the FTC and the Receiver are granted leave, at any time after service of this Order, to conduct limited expedited discovery for the purpose of discovering: (1) the nature, location, status, and extent of Defendants' Assets; (2) the nature, location, and extent of Defendants' business transactions and operations; (3) Documents reflecting Defendants' business transactions and operations; or (4) compliance with this Order. The limited expedited discovery set forth in this Section shall proceed as follows:

A. The FTC and the Receiver may take the deposition of parties and non-parties. Forty- eight (48) hours' notice shall be sufficient notice for such depositions. The limitations and conditions set forth in Rules 30(a)(2)(B) and 31(a)(2)(B) of the Federal Rules of Civil Procedure regarding subsequent depositions of an individual shall not apply to depositions taken pursuant to this Section. Any such deposition taken pursuant to this Section shall not be counted towards the deposition limit set forth in Rules 30(a)(2)(A) and 31(a)(2)(A) and depositions may be taken by telephone or other remote electronic means;





65(d)(2) of the Federal Rules of Civil Procedure. For purposes of this Section, service upon any branch, subsidiary, affiliate or office of any entity shall effect service upon the entire entity.

**XXX. CORRESPONDENCE AND SERVICE ON THE FTC**

the parties.

**XXXIII. DURATION OF THE ORDER**

**IT IS FURTHER ORDERED** that this Order shall expire fourteen (14) days from the date of entry noted below, unless within such time, the Order is extended for an additional period pursuant to Rule 65(b)(2).

**XXXIV. RETENTION OF JURISDICTION**

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

**XXXV. CONCLUSION**

Upon careful consideration of the entire record as specified above, the court hereby **GRANTS** the Federal Trade Commission's Ex Parte Motion for Temporary Restraining Order with an Asset Freeze, Appointment of Receiver, and Other Equitable Relief. (ECF No. 5.).

**IT IS SO ORDERED.**



United States District Judge

July 17, 2020  
Columbia, South Carolina