

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 09-23507-CIV-GOLD/MCALILEY

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

Kirkland Young, LLC, a limited liability
company, and

David Botton, individually and as manager of
Kirkland Young, LLC,

Defendants.

[SEALED ORDER]

**ORDER TO SHOW CAUSE AND
EX PARTE TEMPORARY RESTRAINING ORDER
WITH ASSET FREEZE AND OTHER EQUITABLE RELIEF**

Plaintiff, Federal Trade Commission (“FTC” or the “Commission”), has filed a Complaint for Injunctive and other Equitable Relief pursuant to Section 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101-6108, and an emergency motion for an *ex parte* temporary restraining order with asset freeze and other equitable relief, and order to show cause, pursuant to Rule 65(b) of the Federal Rules of Civil Procedure. This Court has considered Plaintiff’s Complaint, Motion, and the declarations, exhibits, and memoranda submitted in support thereof, and finds as follows:

1. 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;

2. There is good cause to believe that venue lies properly with this Court;

3. There is good cause to believe that Kirkland Young, LLC, and David Botton (herein collectively referred to as "Defendants") have engaged, and are likely to continue to engage, in acts or practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), as well as various provisions of the Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310, and that the FTC is therefore likely to prevail on the merits of this action.

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 their assets or corporate records unless Defendants are immediately restrained and enjoined by Order of this Court. There is thus good cause for an asset freeze, the appointment of a temporary receiver over the Receivership Defendant, as defined herein, immediate access to Defendants' business premises, and for relieving Plaintiff of the duty to provide Defendants with prior notice of Plaintiff's motion. Based on the foregoing, there is good cause to issue this order on an *ex parte* basis.

5. The Court has considered the FTC's likelihood of ultimate success and weighed the equities, and finds that a temporary restraining order providing for an asset freeze, the appointment of a temporary receiver, the preservation of business records, financial disclosures, and other equitable relief is in the public interest.

6. Fed. R. Civ. P. 65(c) does not require security of the United States or an officer or agency thereof.

DEFINITIONS

For the purposes of this Temporary Restraining Order, the following definitions apply:

1. **“Assets”** means any legal or equitable interest in, right to, or claim to, any and all real and personal property of Defendants, or held for the benefit of Defendants, including but not limited to chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, inventory, checks, notes, accounts, credits, receivables, shares of stock, contracts, and all cash and currency, or other assets, or any interest therein, wherever located.
2. **“Corporate Defendant”** means Kirkland Young, LLC, and its successors and assigns, and d/b/a's.
3. **“Defendants”** means the Individual Defendant and Corporate Defendant, individually or collectively.
4. **“Document”** is synonymous in meaning and equal in scope to the terms “document” and “electronically stored information,” as described and used in Federal Rule of Civil Procedure 34(a)(1)(A).
5. **“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.
6. **“Individual Defendant”** means David Botton and by whatever other names he may be known.
7. **“Mortgage loan modification service”** means any service, product, or program that is represented, expressly or by implication, to assist a homeowner in any manner to: (A) obtain or arrange a modification of any term of a home loan, deed of trust, or mortgage; (B)

obtain or arrange a refinancing, recapitalization, or reinstatement of a home loan, deed of trust, or mortgage; (C) obtain or arrange a pre-foreclosure sale, short sale, or deed-in-lieu of foreclosure; (D) stop, prevent, or postpone any home mortgage or deed of trust foreclosure sale; (E) obtain any forbearance from any beneficiary or mortgagee; (F) obtain a loan or advance of funds that is connected to the consumer's home ownership; (G) avoid or ameliorate the impairment of the owner's credit standing, credit rating or credit profile; (H) examine, audit or evaluate any term of a home loan, deed of trust or mortgage; or (I) save the consumer's residence from foreclosure.

8. "Plaintiff" means the Federal Trade Commission ("Commission" or "FTC").

9. "Receivership Defendant" means Kirkland Young, LLC, and its successors, assigns, and d/b/a's.

10. "Telemarketing" means any plan, program or campaign (whether or not covered by the TSR, 16 C.F.R. Part 310) that is conducted to induce the purchase of goods or services by means of the use of one or more telephones.

11. "Temporary Receiver" means the Temporary Receiver appointed in Section X of this Order. The term "Temporary Receiver" also includes any deputy receivers or agents as may be named by the Temporary Receiver.

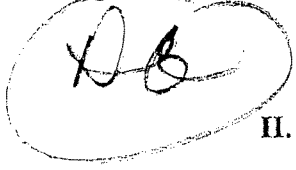
I.

ORDER TO SHOW CAUSE AND PROCEDURES

Accordingly, Plaintiffs' Application for the Issuance of a Temporary Restraining Order without notice is **GRANTED in part** and it is **ORDERED AND ADJUDGED** that:

- (1) A Preliminary Injunction Hearing shall be held before the Honorable Alan S. Gold at the United States District Court, 400 N. Miami Avenue, Courtroom 11-1, Eleventh Floor, Miami, Florida, 33128 on **Monday, November 30, 2009 at 1:30 p.m.**
- (2) Prior to the hearing, the parties shall present all direct testimony of witnesses by affidavit. These affidavits shall be filed with the court and served upon defendants.
- (3) At the hearing, counsel will be permitted to cross-examine witnesses.
- (4) Each party shall file, **by 4:30 p.m. on or before November 23, 2009** a comprehensive memorandum containing findings of fact and conclusions of law that addresses the requirements for a preliminary injunction and applies the facts contained in the supporting affidavits to those facts. Specifically, they must discuss the ability of the plaintiffs to demonstrate (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable harm if the injunction is not granted; (3) the threatened injury to the plaintiff outweighs any potential harm to the defendant; and (4) granting the injunction would not be adverse to the public interest. *Warren Publishing Inc. v. Microdos Data Corp.*, 115 F.3d 1509 (11th Cir. 1997); *Tepper v. Miller*, 82 F.3d 989, 992-93 n.3 (11th Cir. 1996); *Haitian Refugee Center, Inc. v. Nelson*, 872 F.2d 1555, 1561-62 (11th Cir. 1989); *Canal Auth. v. Calloway*, 489 F.2d 567, 572 (5th Cir. 1974).
Counsel's memoranda shall include citations to, and discussion of, the relevant case law. The memoranda filed with the Court shall also be sent to the Court's ECF E-mail at AGOLD@FLSD.USCOURTS.GOV
- (6) Plaintiffs immediately shall serve this Order, as well as all the papers upon which it is based, upon the Defendants and/or their attorney(s).

This Temporary Restraining Order is entered this 19 day of November, 2009 at

5:15 p.m. 

II.

DURATION OF ORDER

IT IS FURTHER ORDERED that the Temporary Restraining Order granted herein shall expire on the 1st day of December, 2009, at 12:00 noon ~~o'clock a.m./p.m.~~, unless within such time, the Order, for good cause shown, is extended for an additional period not to exceed ten (10) calendar days, or unless it is further extended pursuant to Federal Rule of Civil Procedure 65.

III.

INJUNCTION AGAINST MISREPRESENTATIONS

IT IS FURTHER ORDERED that, in connection with the advertising, marketing, promotion, offering for sale or sale of any mortgage loan modification service, Defendants, and each of their successors, assigns, members, officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate or other device, are hereby temporarily restrained and enjoined from misrepresenting, or from assisting others who are misrepresenting, either orally or in writing, expressly or by implication:

- A. That any Defendant or any other person will:
 - 1. obtain or arrange for consumers mortgage loan modifications that will make consumers' mortgage payments substantially more affordable;

2. guarantee a loan modification or obtain a loan modification with a high likelihood of success;
3. obtain or arrange a modification of any term of a home loan, deed of trust, or mortgage;
4. stop, prevent, or postpone any home mortgage foreclosure sale or save any consumer's residence from foreclosure;

A. The terms that any beneficiary, mortgagee, or other home-loan holder will or is likely to offer or accept to cure any delinquency or default on, or to reinstate or modify, any mortgage, deed of trust, or other home loan;

B. The amount of time it will take or is likely to take to obtain or arrange a modification of any term of a consumer's home loan, deed of trust, or mortgage, including any recapitalization or reinstatement agreement;

C. The degree of success that any Defendant or any other person has had in performing mortgage loan modification or foreclosure relief services;

D. The nature of Defendants' or any other person's relationship with any mortgage loan holder or servicer, or other lender;

E. That any Defendant has received a request or application for loan modification from a consumer;

F. That any Defendant has the ability to approve a request or application for loan modification;

G. That any Defendant is a loan modification department or modification department or works for such a department; or

H. Any material fact.

IV.

**PROHIBITED BUSINESS ACTIVITIES
PURSUANT TO THE TELEMARKETING SALES RULE**

IT IS FURTHER ORDERED that, in connection with the advertising, marketing, promotion, offering for sale or sale of any mortgage, credit repair service, credit-related product, program, or service, or mortgage loan modification service to consumers, Defendants, and each of their successors, assigns, members, officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate or other device, are hereby temporarily restrained and enjoined from violating, or assisting others in violating, any provision of the TSR, 16 C.F.R. Part 310, as presently promulgated or as it may hereinafter be amended, by, including, but not limited to:

- A. Misrepresenting, directly or by implication, a material aspect of the performance, efficacy, nature or central characteristic of such services, including that Defendants will obtain mortgage loan modifications for consumers in all or virtually all instances that will make their mortgage payments substantially more affordable in violation of Section 310.3(a)(2)(iii) of the TSR, 16 C.F.R. § 310.3(a)(2)(iii); or
- B. Misrepresenting, directly or by implication, their affiliation with or endorsement or sponsorship by, a person or government entity, including that Defendants are part of, affiliated with or endorsed by lenders of consumers to whom they offer their loan modification or foreclosure relief services in violation of Section 310.3(a)(2)(vii) of the TSR, 16 C.F.R. § 310.3(a)(2)(vii).

V.

ASSET FREEZE

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

A. 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, or any other assets, or any interest therein, wherever located, including outside the United States, that are (1) owned or controlled, directly or indirectly, by any Defendant(s), in whole or in part, or held, in whole or in part for the benefit of any Defendant(s); (2) in the actual or constructive possession of any Defendant(s); 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, or under common control with any Defendant(s), including, but not limited to, any assets held by, for, or under the name of any Defendant(s) at any bank, savings and loan institution, or bank of any Defendant(s), or with any broker-dealer, escrow agent, title company, commodity trading company, precious metal dealer, or other financial institution or depository of any kind;

B. Opening or causing to be opened any safe deposit boxes titled in the name of any Defendant(s), or subject to access by any Defendant(s);

C. Incurring charges or cash advances on any credit card, debit card, or checking card issued in the name, singly or jointly, of any Defendants;

D. Obtaining a personal or secured loan;

E. Incurring liens or encumbrances on real property, personal property or other assets in the name, singly or jointly of any Defendant(s); and

F. Cashing any checks from consumers, clients, or customers of any Defendant(s). The assets affected by this Section shall include (a) all assets of the Defendants as of the time this Order is entered; and (b) only those assets of Defendants that are derived from the actions alleged in Plaintiff's Complaint. This Section does not prohibit transfers to the Temporary Receiver, as specifically required in Section XIII (Delivery of Receivership Property), nor does it prohibit the Repatriation of Foreign Assets, as specifically required in Section VIII of this Order.

VI.

FINANCIAL REPORTS AND ACCOUNTING

IT IS FURTHER ORDERED that each Defendant shall:

A. Prepare and serve on counsel for Plaintiff and the Temporary Receiver, within three (3) business days after service of this Order, completed financial statements fully disclosing the Defendants' finances and those of all corporations, partnerships, trusts or other entities that each Defendant owns, controls, or is associated with in any capacity, jointly or individually, on the forms attached to this Order as Attachments A and B, accurate as of the date of service of this Order upon Defendants;

B. Prepare and serve on counsel for Plaintiff and the Temporary Receiver, within three (3) business days after service of this Order, copies of signed and completed federal and state income tax forms, including all schedules and attachments for the three most recent filing years;

C. Provide access to records and documents held by financial institutions outside the territory of the United States, by signing the Consent to Release of Financial Records attached to this Order as Attachment C, immediately upon service of this Order upon them, or within such time as permitted by the Temporary Receiver or counsel for Plaintiff in writing; and

D. Provide copies of such other financial statements as the Temporary Receiver or Plaintiff may request in order to monitor Defendants' compliance with the provisions of this Order.

VII.

RETENTION OF ASSETS AND RECORDS BY FINANCIAL INSTITUTIONS AND OTHER THIRD PARTIES

IT IS FURTHER ORDERED that any financial or brokerage institution or depository, escrow agent, title company, commodity trading company, trust, entity, or person that holds, controls, or maintains custody of any account or asset owned or controlled by any Defendant(s), or has held, controlled, or maintained any account or asset of, or on behalf of, any Defendant(s) at any time since December 11, 2007, upon service with a copy of this Order, shall:

A. Hold and retain within its control and prohibit Defendants from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling, gifting, or otherwise disposing of any of the assets, funds, or other property held by or on behalf of any Defendant(s) in any account maintained in the name of or for the benefit of any Defendant(s), in whole or in part, except:

1. as directed by further order of the Court; or
2. as directed in writing by the Temporary Receiver (regarding assets held in the name or for the benefit of the Receivership Defendant).

B. Deny the Defendants access to any safe deposit box titled in the name of any Defendant(s), individually or jointly, or subject to access by any Defendant(s), whether directly or indirectly.

C. Provide counsel for Plaintiff and the Temporary Receiver, within three (3) business days after being served with a copy of this Order, a certified statement setting forth:

1. the identification number of each such account or asset titled (1) in the name, individually or jointly, of the Individual Defendant or the Receivership Defendant; (2) held on behalf of, or for the benefit of, the Individual Defendant or the Receivership Defendant; (3) owned or controlled by the Individual Defendant or the Receivership Defendant; or (4) otherwise subject to access by the Individual Defendant or the Receivership Defendant, directly or indirectly;
2. the balance of each such account, or a description of the nature and value of 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;
3. the identification of any safe deposit box that is either titled in the name of any Defendant(s), or is otherwise subject to access by any Defendant(s);
and

4. if an account, safe deposit box, or other asset has been closed or removed, the date closed or removed, the balance on such date, and the manner in which such account or asset was closed or removed.

D. Provide counsel for Plaintiff 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 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; provided that such institution or custodian may charge a reasonable fee.

E. Cooperate with all reasonable requests of the Temporary Receiver relating to this Order's implementation.

VIII.

REPATRIATION OF FOREIGN ASSETS

IT IS FURTHER ORDERED that, within three (3) 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 funds and assets outside of the territory of the United States which are held either: (1) by Defendant(s); (2) for the benefit of any Defendant(s); or (3) under direct or indirect control, individually or jointly, of any Defendant(s), as required by the forms included in Attachments A and B;

B. Transfer to the territory of the United States all such funds and assets in foreign countries; and

C. Hold and retain all repatriated funds and assets, and prevent any disposition, transfer, or dissipation whatsoever of any such assets or funds, except as required by this Order.

IX.

NON-INTERFERENCE WITH REPATRIATION

IT IS FURTHER ORDERED that Defendants, and each of their successors, assigns, members, officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, 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 VIII of this Order, including but not limited to:

A. Sending any statement, letter, fax, e-mail or wire transmission, telephoning 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 assets have been fully repatriated pursuant to Section VIII of 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 VIII of this Order.

X.

APPOINTMENT OF TEMPORARY RECEIVER

DB

IT IS FURTHER ORDERED that Mark Raymond *Signature* is appointed

Temporary Receiver for the Receivership Defendant, and any affiliates or subsidiaries thereof controlled by 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 Temporary Receiver under this Order. The Temporary Receiver shall be accountable directly to this Court. The Temporary Receiver shall comply with all local rules and laws governing federal equity receivers.

Mr. Raymond's qualifications are attached to this Order; SEE ATTACHMENT "D."

DB

XI.

COOPERATION WITH THE TEMPORARY RECEIVER

IT IS FURTHER ORDERED that Defendants shall fully cooperate with and assist the Temporary Receiver. Defendants' cooperation and assistance shall include, but not be limited to, providing any information to the Temporary Receiver that the Temporary Receiver deems necessary to exercise the authority and discharge the responsibilities of the Temporary Receiver under this Order; providing any login and password required to access any computer or electronic files or information in any medium; and advising all persons who owe money to the the Receivership Defendant that all debts should be paid directly to the Temporary Receiver.

Defendants are hereby restrained and enjoined from directly or indirectly:

- A. Transacting any of the business of the Receivership Defendant;
- B. Excusing debts owed to the Receivership Defendant;
- C. Destroying, secreting, defacing, transferring, or otherwise altering or disposing of any documents of the Receivership Defendant;

D. 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 Defendant, or the Temporary Receiver;

E. Failing to notify the Temporary Receiver of any asset, including accounts, of the Receivership Defendant held in any name other than the name of the Receivership Defendant, or by any person or entity other than the Receivership Defendant, or failing to provide any assistance or information requested by the Temporary Receiver in connection with obtaining possession, custody, or control of such assets; or

F. Doing any act or thing whatsoever to interfere with the Temporary Receiver's taking and keeping custody, control, possession, or managing 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 Defendant; or to refuse to cooperate with the Temporary Receiver or the Temporary Receiver's duly authorized agents in the exercise of their duties or authority under any Order of this Court.

This Section does not prohibit transfers to the Temporary Receiver, as specifically required in Section XIII (Delivery of Receivership Property), nor does it prohibit the Repatriation of Foreign Assets, as specifically required in Section VIII of this Order.

XII.

DUTIES AND AUTHORITY 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, attorney, or agent of the Receivership Defendant, including any 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 and documents of, or in the possession, custody, or under the control of, the Receivership Defendant, wherever situated. The Temporary Receiver shall have full 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, or control of the Receivership Defendant.

C. Take all steps necessary to secure the business premises of the Receivership Defendant, which may include, but are not limited to, taking the following steps as the Temporary Receiver deems necessary or advisable: (1) serving and filing this Order; (2) completing a written inventory of all receivership assets; (3) obtaining pertinent information from all employees and other agents of the Receivership Defendant, including, but not limited to, the name, home address, social security number, job description, method of compensation, and all accrued and unpaid commissions and compensation of each such employee or agent; (4) video-recording all portions of the location; (5) changing the locks and disconnecting any computer networks or other means of access to electronically stored information or other documents maintained at that location; or (6) requiring any persons present on the premises at the time this Order is served to leave the premises, to provide the Temporary Receiver with proof of identification, and/or to demonstrate to the satisfaction of the Temporary Receiver that such persons are not removing from the premises documents or assets of the Receivership

Defendant. Such authority shall include, but not be limited to, the authority to order any owner, director, or officer of the Receivership Defendant to remove him or herself from the business premises.

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

E. Enter into contracts and purchase insurance as advisable or necessary.

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

G. 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.

H. Choose, engage, and employ attorneys, accountants, appraisers, investigators, and other independent contractors and technical specialists, as the Temporary Receiver deems advisable or necessary in the performance of duties and responsibilities.

I. 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 Temporary Receiver shall apply to the Court for prior approval of any payment of any debt or obligation incurred by the Receivership Defendant prior to the date of entry of this Order,

except payments that the Temporary Receiver deems necessary or advisable to secure assets of the Receivership Defendant, such as rental payments.

J. Collect any money due or owing to the Receivership Defendant.

K. Institute, compromise, adjust, appear in, intervene in, or become party to such actions or proceedings in state, federal or foreign courts that the Temporary Receiver deems necessary and advisable to preserve or recover the assets of the Receivership Defendant or to carry out the Temporary Receiver's mandate under this Order.

L. Defend, compromise, adjust, or otherwise dispose of any or all actions or proceedings instituted against the Receivership Defendant or the Temporary Receiver, that the Temporary Receiver deems necessary and advisable to preserve the assets of the Receivership Defendant or to carry out the Temporary Receiver's mandate under this Order.

M. Continue and conduct the businesses of the Receivership Defendant in such manner, to such extent, and for such duration as the Temporary Receiver may in good faith deem to be necessary or appropriate to operate the businesses profitably, using the assets of the receivership estate, and lawfully, if at all.

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

O. Open one or more bank accounts as 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 an account.

P. Maintain accurate records of all receipts and expenditures made by the Temporary Receiver.

XIII.

DELIVERY OF RECEIVERSHIP PROPERTY

IT IS FURTHER ORDERED that immediately upon service of this Order upon them, the Defendants, including the Receivership Defendant, shall forthwith or within such time as permitted by the Temporary Receiver in writing, deliver to the Temporary Receiver possession and custody of:

A. All funds, assets, and property of the Receivership Defendant, whether situated within or outside the territory of the United States, which are: (1) held by the Receivership Defendant, individually or jointly, (2) held for the benefit of the Receivership Defendant, or (3) under the direct or indirect control, individually or jointly, of the Receivership Defendant;

B. All documents of the Receivership Defendant, including but not limited to all books and records of assets including funds and property, 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), corporate minutes, contracts, customer and consumer lists, title documents, and electronic records;

C. All funds and other assets belonging to members of the public now held by the Receivership Defendant;

D. All keys, computer and other passwords, entry codes, combinations to locks required to open or gain access to any of the property or effects, and all monies in any bank deposited to the credit of the Receivership Defendant, wherever situated; and

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

XIV.

TRANSFER OF FUNDS TO THE TEMPORARY RECEIVER BY FINANCIAL INSTITUTIONS AND OTHER THIRD PARTIES

IT IS FURTHER ORDERED that, upon service of a copy of this Order, any financial or brokerage institution or depository, escrow agent, title company, commodity trading company, or trust shall cooperate with all reasonable requests of counsel for Plaintiff and the Temporary Receiver relating to implementation of this Order, including transferring funds at the Temporary Receiver's direction and producing records related to the assets and sales of the Receivership Defendant.

XV.

TEMPORARY RECEIVER'S REPORTS

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 Defendant, if appropriate; and (5) any other matters which the Temporary Receiver believes should be brought to the Court's attention. Provided, however, if any of the required information would hinder the Temporary Receiver's ability to pursue receivership assets, the

portions of the Temporary Receiver's report containing such information may be filed under seal and not served on the parties.

XVI.

TEMPORARY RECEIVER'S BOND

IT IS FURTHER ORDERED that the Temporary Receiver shall file with the Clerk of this Court a bond in the sum of \$ 25,000.00 with sureties to be approved by the Court, conditioned that the Temporary Receiver will well and truly perform the duties of the office and abide by and perform all acts the Court directs,

subject to further order of Court increasing or decreasing the amount.

XVII.

COMPENSATION OF THE TEMPORARY RECEIVER

IT IS FURTHER ORDERED that the Temporary Receiver, and all persons or entities retained or hired by the Temporary 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 Temporary Receiver shall file with the Court and serve on the parties a request for the payment of reasonable compensation at the time of the filing of any report required by Section XV of this Order. The Temporary Receiver shall not increase the fees or rates used as the bases for such fee applications without prior approval of the Court.

XVIII.**TEMPORARY RECEIVER AND COMMISSION ACCESS
TO BUSINESS PREMISES AND RECORDS**

IT IS FURTHER ORDERED that Plaintiff, the Temporary Receiver, and their respective representatives, agents, contractors, or assistants, are permitted and the Defendants shall allow immediate access to any business premises and storage facilities of the Receivership Defendant. Such locations include, but are not limited to, the offices and facilities of the Receivership Defendant at or in the vicinity of 2915 Biscayne Blvd., 30th, Miami, Florida 33137.

Plaintiff and the Temporary Receiver are authorized to employ the assistance of law enforcement officers, including, but not limited to, the United States Marshals Service, to effect service, to implement peacefully the provisions of this Order, and keep the peace. The Temporary Receiver shall allow Plaintiff into the premises and facilities described in this Section and shall allow Plaintiff and its representatives, agents, contractors, or assistants to inspect, inventory, and copy documents relevant to any matter contained in this Order. Counsel for Plaintiff and the Temporary Receiver may exclude Defendants and their agents and employees from the business premises and facilities during the immediate access.

Defendants and all agents or employees of Defendants shall provide counsel for Plaintiff and the Temporary Receiver with any necessary means of access to documents, including, without limitation, the locations of Receivership Defendant's business premises, keys and combinations to business premises locks, computer access codes of all computers used to conduct Receivership Defendant's business, and storage area access information.

The Temporary Receiver and counsel for Plaintiff shall have the right to remove any documents related to Defendants' business practices from the 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 Defendant's finances or business practices are located in the residence of any Defendant or are otherwise in the custody or control of any Defendant, then such Defendant shall produce them to the Temporary Receiver within twenty-four (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 needed for access.

XIX.

DEFENDANTS' ACCESS TO PREMISES AND RECORDS

IT IS FURTHER ORDERED that the Temporary Receiver shall allow the Defendants and their representatives reasonable access to the premises of the Receivership Defendant. The purpose of this access shall be to inspect, inventory, and copy any and all documents and other property owned by or in the possession of the Receivership Defendant, provided that those documents and property are not removed from the premises. The Temporary Receiver shall have the discretion to determine the time, manner, and reasonable conditions of such access.

XX.**PRESERVATION OF RECORDS**

IT IS FURTHER ORDERED that Defendants, and each of their successors, assigns, members, officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate or other device, are hereby temporarily restrained and enjoined from destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any documents that relate to the business practices or finances of any Defendant, including, but not limited to, any contracts, accounting data, correspondence, advertisements, computer tapes, disks or other computerized records, books, written or printed records, handwritten notes, recordings, telephone logs, telephone scripts, receipt books, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, copies of federal, state, or local business or personal income or property tax returns.

XXI.**PROHIBITION ON RELEASE OF CUSTOMER INFORMATION
OR CUSTOMER LISTS**

IT IS FURTHER ORDERED that Defendants, and each of their successors, assigns, members, officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, affiliate or other device, are temporarily restrained and enjoined from disclosing, using, or benefitting from customer information, including the name, address, telephone number, email

address, social security number, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account), of any person which any Defendant obtained prior to entry of this Order in connection with any mortgage, credit repair service, credit-related product, program, or service, or mortgage loan modification service.

XXII.

CREDIT REPORTS

IT IS FURTHER ORDERED that Plaintiff may obtain credit reports concerning any of the Defendants pursuant to Section 604(a)(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(1), and that, upon written request, any credit reporting agency from which such reports are requested shall provide them to Plaintiff.

XXIII.

NOTIFICATION OF BUSINESS ACTIVITIES

IT IS FURTHER ORDERED that:

A. The Individual Defendant is temporarily restrained and enjoined from directly or indirectly creating, operating, or exercising any control over any business entity, including any partnership, limited partnership, joint venture, sole proprietorship or corporation, without first serving on counsel for Plaintiff a written statement disclosing the following: (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 or actual activities.

B. The Individual Defendant shall notify Plaintiff at least seven (7) days prior to affiliating with, becoming employed by, or performing any work for any business that is not a

named Defendant in this action. Each notice shall include the Individual Defendant's new business address and a statement of the nature of the business or employment and the nature of his duties and responsibilities in connection with that business or employment.

XXIV.

BANKRUPTCY PETITIONS

IT IS FURTHER ORDERED that, in light of the appointment of the Temporary Receiver, the Receivership Defendant is hereby prohibited from filing a petition for relief under the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, without prior permission from this Court.

XXV.

STAY OF ACTIONS

IT IS FURTHER ORDERED that:

A. Except by leave of this Court, during the pendency of the Receivership ordered herein, the Receivership Defendant and all customers, principals, investors, creditors, stockholders, lessors, and other persons seeking to establish or enforce any claim, right, or interest against or on behalf of the Receivership Defendant, and all others acting for or on behalf of such persons, including attorneys, trustees, agents, sheriffs, constables, marshals, and other officers and their deputies, and their respective attorneys, servants, agents, and employees be and are hereby stayed from:

B. Commencing, prosecuting, continuing, entering, or enforcing any suit or proceeding, except that such actions may be filed to toll any applicable statute of limitations;

C. 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;

D. 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

E. Doing any act or thing whatsoever to interfere with the Temporary Receiver's 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 Defendant.

F. This Section 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;
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;
4. The commencement of any action by the Secretary of the United States Department of Housing and Urban Development to foreclose a mortgage

or deed of trust in any case in which the mortgage or deed of trust held by the Secretary is insured or was formerly insured under the National Housing Act and covers property, or combination of property, consisting of five (5) or more living units; or

5. The issuance to a Receivership Defendant of a notice of tax deficiency.

XXVI.

SERVICE OF ORDER

IT IS FURTHER ORDERED that copies of this Order may be served by any means, including facsimile transmission or email, by employees or agents of the Plaintiff or the Temporary Receiver, upon any financial institution or other entity or person that may have possession, custody, or control of any documents or assets of Defendants, 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.

XXVII.

ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that each Defendant, within three (3) business days of receipt of this Order, must submit to counsel for Plaintiff a truthful sworn statement acknowledging receipt of this Order.

XXVIII.

PROOF OF DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that Defendants shall immediately provide a copy of this Order to their agents, servants, employees, consultants, and any affiliated businesses, and other persons and entities subject in any part to their direct or indirect control. Within five (5)

business days of receipt of this Order, Defendants must submit to counsel for Plaintiff a truthful sworn statement identifying those persons and entities to whom this Order has been distributed.

XXIX.

CORRESPONDENCE

IT IS FURTHER ORDERED that, for the purposes of this Order, all correspondence and service of pleadings on Plaintiff shall be addressed to:

Chris M. Couillou, Esq.
Sana C. Chriss, Esq.
Federal Trade Commission
225 Peachtree Street, Suite 1500
Atlanta, Georgia 30303
facsimile number (404) 656-1379
Email: ccouillou@ftc.gov; schriss@ftc.gov

XXX.


RETENTION OF JURISDICTION

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

IT IS SO ORDERED, this 19 day of November 2009, at 5:50 o'clock ~~a.m.~~/p.m.



UNITED STATES DISTRICT JUDGE
ALAN S. GOLD

Certified to be a true and correct copy of the document on file
Steven M. Larimore, Clerk,
U.S. District Court
Southern District of Florida
By  Deputy Clerk
Date 11/19/09