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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

FEDERAL TRADE COMMISSION,
Plaintiff,

v.

TARR INC., et al.

Defendants.

Case No. 17CV2024 LAB KSC

**STIPULATED ORDER FOR
PERMANENT INJUNCTION
AND MONETARY JUDGMENT
AGAINST ALL DEFENDANTS**

Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), filed its Complaint for Permanent Injunction and Other Equitable Relief (“Complaint”) for a permanent injunction and other equitable relief in this matter, pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), Section 5 of the Restore Online Shoppers’ Confidence Act (“ROSCA”), 15 U.S.C. § 8404, and Section 918(c) of the Electronic Fund Transfer Act (“EFTA”), 15

1 U.S.C. § 1693o(c). The Commission and Defendants Tarr Inc., Ad Kings LLC,
2 Apex Advertising LLC, Brand Development Corp., Coastal Ads LLC, Delux
3 Advertising LLC, Diamond Ads LLC, Digital Nutra LLC, Exclusive Advertising
4 LLC, Iron Ads, LLC, LeadKing Advertising LLC, Lead Seeker LLC, Mints
5 Marketing LLC, Onyx Ads, LLC, Product Center, LLC, Rebem, LLC, Supertiser
6 LLC, Verticality Advertising, LLC, White Dog Marketing, LLC, Richard Fowler,
7 Ryan Fowler, and Nathan Martinez stipulate to the entry of this Stipulated Order
8 for Permanent Injunction and Monetary Judgment Against All Defendants
9 (“Order”) to resolve all matters in dispute in this action among them.

10 THEREFORE, IT IS ORDERED as follows:

11 **FINDINGS**

12 1. This Court has jurisdiction over this matter.

13 2. The Complaint charges that Defendants participated in deceptive and
14 unfair acts or practices in violation of Sections 5(a) and 12 of the FTC Act, 15
15 U.S.C. §§ 45 and 52; Section 4 of ROSCA, 15 U.S.C. § 8403; Section 907(a) of
16 EFTA, 15 U.S.C. § 1693e(a); and Section 1005.10(b) of Regulation E, 12 C.F.R.
17 § 1005.10(b), in connection with the deceptive labeling, advertising, marketing,
18 promotion, offering for sale, or sale of Dietary Supplements, skin creams, Add-On
19 products, and other products, services, and programs.

20 3. Defendants neither admit nor deny any of the allegations in the
21 Complaint, except as specifically stated in this Order. Only for purposes of this
22 action, Defendants admit the facts necessary to establish jurisdiction.

23 4. Defendants waive any claim that they may have under the Equal
24 Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action
25 through the date of this Order, and agree to bear their own costs and attorney fees.

26 5. Defendants and the Commission waive all rights to appeal or
27 otherwise challenge or contest the validity of this Order.

1 **DEFINITIONS**

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

3 A. **“Add-On”** means any additional product, service, or program that is
4 offered to the consumer for purchase immediately preceding, at the time of, or
5 closely proximate in time after the consumer’s purchase of a different product,
6 service, or program, where the different product, service, or program is or was
7 advertised, marketed, promoted, or offered for sale by Defendants, whether
8 directly or through an intermediary, including by consulting, planning,
9 participating, facilitating, or advising.

10 B. **“Affiliate”** means any person, including any third-party marketer,
11 who participates in an Affiliate Program.

12 C. **“Affiliate Network”** means any person who provides another person
13 with Affiliates for an Affiliate Program or with whom any person contracts as an
14 Affiliate to promote any product, service, or program.

15 D. **“Affiliate Program”** means any arrangement under which any
16 Defendant pays, or offers to pay, or provides, or offers to provide, any form of
17 consideration to any third party, either directly or through an Affiliate Network
18 (i) to provide any Defendant with, or refer to any Defendant, potential or actual
19 customers; or (ii) otherwise to market, advertise, or offer for sale any product,
20 service, or program on behalf of any Defendant.

21 E. **“Billing Information”** means any data that enables any person to
22 access a customer’s account, such as a credit card, checking, savings, share, or
23 similar account, utility bill, mortgage loan account, or debit card.

24 F. **“Charge,” “charged,” or “charging”** means any attempt to collect
25 money or other consideration from a consumer, including causing Billing
26 Information to be submitted for payment, including against the consumer’s credit
27 card, debit card, bank account, telephone bill, or other account.

1 Garcinia Cambogia, Miracle Green Coffee, Miracle Muscle, Miracle
2 Phytoceramides, Miracle Saffron, Perfect Age Skin Care, Ripped Muscle X,
3 Superior Muscle X, Superior Test X, The Memory Plus, Try Miracle Cleanse, and
4 Ultimate Muscle Black Edition.

5 L. “**Defendants**” means all of the Individual Defendants and the
6 Corporate Defendants, individually, collectively, or in any combination.

7 M. “**Dietary Supplement**” means:

- 8 1. any product labeled as a dietary supplement or otherwise
9 represented as a dietary supplement; or
- 10 2. any pill, tablet, capsule, powder, softgel, gelcap, liquid, or other
11 similar form containing one or more ingredients that are a vitamin, mineral, herb or
12 other botanical, amino acid, probiotic, or other dietary substance for use by humans
13 to supplement the diet by increasing the total dietary intake, or a concentrate,
14 metabolite, constituent, extract, or combination of any ingredient described above,
15 that is intended to be ingested, and is not represented to be used as a conventional
16 Food or as a sole item of a meal or the diet.

17 N. “**Drug**” means:

- 18 1. articles recognized in the official United States Pharmacopoeia,
19 official Homeopathic Pharmacopoeia of the United States, or official National
20 Formulary, or any supplement to any of them;
- 21 2. articles intended for use in the diagnosis, cure, mitigation,
22 treatment, or prevention of disease in humans or other animals;
- 23 3. articles (other than Food) intended to affect the structure or any
24 function of the body of humans or other animals; and
- 25 4. articles intended for use as a component of any article specified
26 in Subsection (1), (2), or (3); but does not include devices or their components,
27 parts, or accessories.

1 O. “**Essentially Equivalent Product**” means a product that contains the
2 identical ingredients, except for inactive ingredients (*e.g.*, binders, colors, fillers,
3 excipients), in the same form and dosage, and with the same route of
4 administration (*e.g.*, orally, sublingually), as the Covered Product; *provided that*
5 the Covered Product may contain additional ingredients if reliable scientific
6 evidence generally accepted by experts in the field indicates that the amount and
7 combination of additional ingredients is unlikely to impede or inhibit the
8 effectiveness of the ingredients in the Essentially Equivalent Product.

9 P. “**Food**” means:

- 10 1. any article used for food or drink for humans or other animals;
- 11 2. chewing gum; and
- 12 3. any article used for components of any such article.

13 Q. “**Including**” means including but not limited to.

14 R. “**Individual Defendants**” means Richard Fowler, Ryan Fowler, and
15 Nathan Martinez.

16 S. “**Negative Option Feature**” means, in an offer or agreement to sell or
17 provide any product, service, or program, a provision under which the consumer’s
18 silence or failure to take affirmative action to reject a product, service, or program,
19 or to cancel the agreement, is interpreted by the seller or provider as acceptance or
20 continuing acceptance of the offer.

21 T. “**Plaintiff,**” “**Commission,**” or “**FTC**” means the Federal Trade
22 Commission.

23 U. “**Related Companies**” means American Homerise LLC, Ball
24 Enterprises LLC, Black Series, LLC, Corsa LLC, Creative Ads Inc., Electra Media
25 LLC, FFM LLC, Force of Nature LLC, Gimme Enterprises LLC, Inferno LLC,
26 Luxlense LLC, Martinex Motors, LLC, MK55 Tactical LLC, New Paradigm Inc.,
27 and Shadowhawk Tactical, LLC, and their successors and assigns.

1 V. **“Reliably Reported,”** for a human clinical test or study (“test”),
2 means a report of the test has been published in a peer-reviewed journal, and such
3 published report provides sufficient information about the test for experts in the
4 relevant field to assess the reliability of the results.

5 W. **“Telemarketing”** means any plan, program, or campaign which is
6 conducted to induce the purchase of any product, service, plan, or program by use
7 of one or more telephones, and which involves a telephone call, whether or not
8 covered by the Telemarketing Sales Rule, 16 C.F.R. Part 310.

9 **ORDER**

10 **I.**

11 **BAN ON CERTAIN NEGATIVE OPTION SALES**

12 **IT IS ORDERED** that Defendants are permanently restrained and enjoined
13 from advertising, marketing, promoting, or offering for sale, whether directly or
14 through an intermediary, including by consulting, planning, participating,
15 facilitating, or advising, any product, service, or program with a Negative Option
16 Feature in the following circumstances:

17 A. Where the product, service, or program is or relates to a Cosmetic,
18 Food, Dietary Supplement, or Drug, or is for a diet or weight-loss service or
19 program;

20 B. Where the product, service, or program is or relates to an Add-On
21 product, service, or program; or

22 C. Where the product, service, or program is advertised, marketed,
23 promoted, or offered for sale as either “free,” a “trial,” a “sample,” a “bonus,” a
24 “gift,” “no obligation,” or using any other words, depictions, or illustrations that
25 denote or imply the absence of an obligation on the part of the recipient of the offer
26 to affirmatively act in order to avoid Charges.

1 **II.**

2 **PROHIBITED BUSINESS ACTIVITIES**

3 **IT IS FURTHER ORDERED** that Defendants, Defendants' officers,
4 agents, employees, and attorneys, and all other persons in active concert or
5 participation with any of them, who receive actual notice of this Order, whether
6 acting directly or indirectly, in connection with the advertising, marketing,
7 promotion, offering for sale, or sale of any product, service, or program are
8 permanently restrained and enjoined from:

9 A. Before a consumer consents to pay for such product, service, or
10 program, failing to disclose, or assisting others in failing to disclose in a Clear and
11 Conspicuous manner, expressly or by implication, all material terms and
12 conditions of any offer, including:

13 1. the total cost or price of the product, service, or program, as
14 well as the price per unit;

15 2. the amount, timing, and manner of all fees, Charges, or other
16 amounts that a consumer will be charged or billed, including the date of the Charge
17 and whether it will be a credit card or checking account Charge; and

18 3. the mechanism for consumers to stop a Charge.

19 B. Before a consumer consents to pay for such product, service, or
20 program, failing to disclose, or assisting others in failing to disclose in a Clear and
21 Conspicuous manner, expressly or by implication, all material terms and
22 conditions of any refund or cancellation policy, including:

23 1. the specific steps and means by which such requests must be
24 submitted;

25 2. the customer service telephone number or numbers that a
26 customer must call to cancel and/or return products, services, or programs;

1 1. Require each Affiliate and/or Affiliate Network to provide to
2 Defendants the following identifying information:

3 a. In the case of a natural person, the Affiliate's or Affiliate
4 Network's first and last name, physical address, country, telephone number, email
5 address, and complete bank account information as to where payments are to be
6 made to that person;

7 b. In the case of a business entity, the Affiliate's or Affiliate
8 Network's name and any and all names under which it does business, state of
9 incorporation, registered agent, and the first and last name, physical address,
10 country, telephone number, and email address for at least one natural person who
11 owns, manages, or controls the Affiliate or Affiliate Network, and the complete
12 bank account information as to where payments are to be made to the Affiliate or
13 Affiliate Network;

14 c. If Defendants only have access to certain Affiliates
15 through an Affiliate Network, then Defendants shall contractually require each
16 Affiliate Network to obtain and maintain from those Affiliates the identifying
17 information set forth in Subsections D.1.a and D.1.b of this Section prior to the
18 Affiliate's or Affiliate Network's participation in the Defendants' Affiliate
19 Program.

20 2. As a condition of doing business with any Affiliate or Affiliate
21 Network or such Affiliate or Affiliate Network's acceptance into Defendants'
22 Affiliate Program: (a) provide each such Affiliate or Affiliate Network a copy of
23 this Order; (b) obtain from each such Affiliate or Affiliate Network a signed and
24 dated statement acknowledging receipt of this Order and expressly agreeing to
25 comply with this Order; and (c) clearly and conspicuously disclose in writing that
26 engaging in acts or practices prohibited by this Order will result in immediate
27 termination of any Affiliate or Affiliate Network and forfeiture of all monies owed
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1 c. Fully refund, or cause to be refunded, within five (5)
2 business days, each consumer charged by Defendants whose sale originated from
3 the Affiliate or Affiliate Network on or after the date the Affiliate or Affiliate
4 Network engaged in acts or practices prohibited by this Order; and

5 d. Immediately terminate the Affiliate or Affiliate Network;
6 *provided, however*, Defendants shall not be in violation of this subsection if
7 Defendants fail to terminate an Affiliate Network in a case where Defendants' only
8 access to an Affiliate who has engaged in acts or practices prohibited by this Order
9 is through an Affiliate Network and Defendants receive notice that the Affiliate
10 Network immediately terminated the Affiliate violating this Order from any
11 Affiliate Program maintained by the Defendants.

12 III.

13 REQUIRED DISCLOSURES RELATING TO 14 NEGATIVE OPTION FEATURES

15 **IT IS FURTHER ORDERED** that Defendants, Defendants' officers,
16 agents, employees, and attorneys, and all other persons in active concert or
17 participation with any of them, who receive actual notice of this Order, whether
18 acting directly or indirectly, in connection with promoting or offering for sale any
19 product, service, or program with a Negative Option Feature, other than any
20 product, service, or program covered under the Section of this Order entitled "Ban
21 on Certain Negative Option Sales," are permanently restrained and enjoined from:

22 A. Obtaining Billing Information from a consumer for any transaction
23 involving a product, service, or program that includes a Negative Option Feature,
24 without first disclosing Clearly and Conspicuously, and in Close Proximity to
25 where a consumer provides Billing Information:

26 1. The extent to which the consumer must take affirmative
27 action(s) to avoid any Charges on a recurring basis;

1 product, service, or program and no additional information other than the
2 consumer's address, the seller's return address, and postage.

3 **IV.**

4 **OBTAINING EXPRESS INFORMED CONSENT**

5 **IT IS FURTHER ORDERED** that Defendants, Defendants' officers,
6 agents, employees, and attorneys, and all other persons in active concert or
7 participation with any of them, who receive actual notice of this Order, whether
8 acting directly or indirectly, in connection with promoting or offering for sale any
9 product, service, or program with a Negative Option Feature, other than any
10 product, service, or program covered under the Section of this Order entitled "Ban
11 on Certain Negative Option Sales," are permanently restrained and enjoined from
12 using, or assisting others in using, Billing Information to obtain payment from a
13 consumer, unless Defendants first obtain the express informed consent of the
14 consumer to do so. To obtain express informed consent, Defendants must:

15 A. For all written offers (including over the Internet or other web-based
16 applications or services), obtain consent through a check box, signature, or other
17 substantially similar method, which the consumer must affirmatively select or sign
18 to accept the Negative Option Feature, and no other portion of the offer.

19 Defendants shall disclose Clearly and Conspicuously, and in Close Proximity to
20 such check box, signature, or substantially similar method of affirmative consent,
21 only the following, with no additional information:

22 1. The extent to which the consumer must take affirmative
23 action(s) to avoid any Charges on a recurring basis;

24 2. The total cost (or range of costs) the consumer will be Charged
25 and, if applicable, the frequency of such Charges unless the consumer timely takes
26 affirmative steps to prevent or stop such Charges; and

1 on Certain Negative Option Sales,” are permanently restrained and enjoined from
2 failing to provide a simple mechanism for the consumer to immediately stop any
3 recurring Charges. Such mechanism must not be difficult, costly, confusing, or
4 time consuming, and must be at least as simple as the mechanism the consumer
5 used to initiate the Charge(s). In addition:

6 A. For consumers who entered into the agreement to purchase a product,
7 service, or program including a Negative Option Feature over the Internet or
8 through other web-based applications or services, Defendants must provide a
9 mechanism, accessible over the Internet or through such other web-based
10 application or service that consumers can easily use to cancel the product, service,
11 or program and to immediately stop all further Charges.

12 B. For consumers who entered into the agreement to purchase a product,
13 service, or program, including a Negative Option Feature through an oral offer and
14 acceptance, Defendants must maintain a telephone number and a postal address
15 that consumers can easily use to cancel the product, service, or program and to
16 immediately stop all further Charges. Defendants must assure that all calls to this
17 telephone number shall be answered during normal business hours and that mail to
18 the postal address is retrieved regularly.

19 VI.

20 BANNED WEIGHT-LOSS CLAIMS

21 **IT IS FURTHER ORDERED** that Defendants, whether acting directly or
22 indirectly, in connection with the manufacturing, labeling, advertising, promotion,
23 offering for sale, sale, or distribution of any Dietary Supplement, over-the-counter
24 Drug, patch, cream, wrap, or other product worn on the body or rubbed into the
25 skin, are permanently restrained and enjoined from representing, or assisting others
26 in representing, in any manner, expressly or by implication, including through the
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1 use of a product name, endorsement, depiction, illustration, trademark, or trade
2 name, that such product:

- 3 A. Causes weight loss of two pounds or more a week for a month or more
4 without dieting or exercise;
- 5 B. Causes substantial weight loss no matter what or how much the
6 consumer eats;
- 7 C. Causes permanent weight loss even after the consumer stops using the
8 product;
- 9 D. Blocks the absorption of fat or calories to enable consumers to lose
10 substantial weight;
- 11 E. Safely enables consumers to lose more than three pounds per week for
12 more than four weeks;
- 13 F. Causes substantial weight loss for all users; or
- 14 G. Causes substantial weight loss by wearing a product on the body or
15 rubbing it into the skin.

16 **VII.**

17 **PROHIBITED REPRESENTATIONS:**

18 **WEIGHT-LOSS CLAIMS**

19 **IT IS FURTHER ORDERED** that Defendants, Defendants' officers,
20 agents, employees, and attorneys, and all other persons in active concert or
21 participation with any of them, who receive actual notice of this Order, whether
22 acting directly or indirectly, in connection with the manufacturing, labeling,
23 advertising, promotion, offering for sale, sale, or distribution of any Covered
24 Product, are permanently restrained and enjoined from making, or assisting others
25 in making, expressly or by implication, including through the use of a product
26 name, endorsement, depiction, or illustration, any representation, other than
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1 representations covered under the Section of this Order entitled “Banned Weight-
2 Loss Claims,” that, in humans, such Covered Product:

- 3 A. Causes, or assists in causing, weight loss or any specific amount of
4 weight loss;
- 5 B. Causes, or assists in causing, rapid or sustained weight loss;
- 6 C. Causes, or assists in causing, loss of belly fat; or
- 7 D. Cures, mitigates, or treats any disease;

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9 unless the representation is non-misleading and, at the time of making such
10 representation, they possess and rely upon competent and reliable scientific
11 evidence substantiating that the representation is true. For purposes of this
12 Section, competent and reliable scientific evidence shall consist of human clinical
13 testing of the Covered Product, or of an Essentially Equivalent Product, that is
14 sufficient in quality and quantity, based on standards generally accepted by experts
15 in the relevant disease, condition, or function to which the representation relates,
16 when considered in light of the entire body of relevant and reliable scientific
17 evidence, to substantiate that the representation is true. Such testing must be:
18 (1) randomized, double-blind, and placebo-controlled; and (2) conducted by
19 researchers qualified by training and experience to conduct such testing. In
20 addition, all underlying or supporting data and documents generally accepted by
21 experts in the field as relevant to an assessment of such testing as described in the
22 Section of this Order entitled “Preservation of Records Relating to Competent and
23 Reliable Human Clinical Tests or Studies” must be available for inspection and
24 production to the Commission. Persons covered by this Section shall have the
25 burden of proving that a product satisfies the definition of Essentially Equivalent
26 Product.

1 **VIII.**

2 **PROHIBITED REPRESENTATIONS:**
3 **OTHER STRUCTURE OR FUNCTION AND**
4 **HEALTH-RELATED CLAIMS**

5 **IT IS FURTHER ORDERED** that Defendants, Defendants’ officers,
6 agents, employees, and attorneys, and all other persons in active concert or
7 participation with any of them, who receive actual notice of this Order, whether
8 acting directly or indirectly, in connection with the manufacturing, labeling,
9 advertising, promotion, offering for sale, sale, or distribution of any Covered
10 Product, are permanently restrained and enjoined from making, or assisting others
11 in making, expressly or by implication, including through the use of a product
12 name, endorsement, depiction, or illustration, any representation, other than
13 representations covered under the Sections of this Order entitled “Banned Weight-
14 Loss Claims” and “Prohibited Representations: Weight-Loss Claims,” about the
15 health benefits, performance, efficacy, safety, or side effects of any Covered
16 Product, including that the Covered Product (1) causes, or assists in causing,
17 increased muscle growth or muscle mass, or (2) permanently, significantly, and/or
18 dramatically eliminates or lessens sagging skin, wrinkles or age spots, unless the
19 representation is non-misleading, and, at the time of making such representation,
20 they possess and rely upon competent and reliable scientific evidence that is
21 sufficient in quality and quantity based on standards generally accepted by experts
22 in the relevant disease, condition, or function to which the representation relates,
23 when considered in light of the entire body of relevant and reliable scientific
24 evidence, to substantiate that the representation is true.

25 For purposes of this Section, competent and reliable scientific evidence
26 means tests, analyses, research, or studies (1) that have been conducted and
27 evaluated in an objective manner by experts in the relevant disease, condition, or
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1 function to which the representation relates; (2) that are generally accepted by such
2 experts to yield accurate and reliable results; and (3) that are randomized, double-
3 blind, and placebo-controlled human clinical testing of the Covered Product, or of
4 an Essentially Equivalent Product, when such experts would generally require such
5 human clinical testing to substantiate that the representation is true. In addition,
6 when such tests or studies are human clinical tests or studies, all underlying or
7 supporting data and documents generally accepted by experts in the field as
8 relevant to an assessment of such testing as set forth in the Section of this Order
9 entitled “Preservation of Records Relating to Competent and Reliable Human
10 Clinical Tests or Studies” must be available for inspection and production to the
11 Commission. Persons covered by this Section have the burden of proving that a
12 product satisfies the definition of Essentially Equivalent Product.

13 **IX.**

14 **PROHIBITED REPRESENTATIONS REGARDING TESTS OR STUDIES**

15 **IT IS FURTHER ORDERED** that Defendants, Defendants’ officers,
16 agents, employees, and attorneys, and all other persons in active concert or
17 participation with any of them, who receive actual notice of this Order, whether
18 acting directly or indirectly, in connection with the manufacturing, labeling,
19 advertising, promotion, offering for sale, sale, or distribution of any Covered
20 Product, are permanently restrained and enjoined from misrepresenting, or
21 assisting others in misrepresenting, in any manner, expressly or by implication,
22 including through the use of any product name, endorsement, depiction, or
23 illustration:

24 A. That any Covered Product is clinically proven to cause weight loss,
25 muscle growth, or wrinkle reduction;

26 B. The existence, contents, validity, results, conclusions, or
27 interpretations of any test, study, or research; or

1 C. That the performance or benefits of any product are scientifically or
2 clinically proven or otherwise established.

3 **X.**

4 **FDA APPROVED CLAIMS**

5 **IT IS FURTHER ORDERED** that nothing in this Order prohibits
6 Defendants, Defendants' officers, agents, employees, and attorneys, and all other
7 persons in active concert or participation with any of them, from:

8 A. For any Drug, making a representation that is approved in labeling for
9 such Drug under any tentative or final monograph promulgated by the Food and
10 Drug Administration, or under any new drug application approved by the Food and
11 Drug Administration; and

12 B. For any product, making a representation that is specifically
13 authorized for use in labeling for such product by regulations promulgated by the
14 Food and Drug Administration pursuant to the Nutrition Labeling and Education
15 Act of 1990 or permitted under Sections 303-304 of the Food and Drug
16 Administration Modernization Act of 1997.

17 **XI.**

18 **PRESERVATION OF RECORDS RELATING TO COMPETENT AND**
19 **RELIABLE HUMAN CLINICAL TESTS OR STUDIES**

20 **IT IS FURTHER ORDERED** that, with regard to any human clinical test
21 or study ("test") upon which Defendants rely to substantiate any claim covered by
22 this Order, Defendants shall secure and preserve all underlying or supporting data
23 and documents generally accepted by experts in the field as relevant to an
24 assessment of the test, including:

25 A. All protocols and protocol amendments, reports, articles, write-ups, or
26 other accounts of the results of the test, and drafts of such documents reviewed by
27 the test sponsor or any other person not employed by the research entity;

1 B. All documents referring or relating to recruitment; randomization;
2 instructions, including oral instructions, to participants; and participant
3 compliance;

4 C. Documents sufficient to identify all test participants, including any
5 participants who did not complete the test, and all communications with any
6 participants relating to the test; all raw data collected from participants enrolled in
7 the test, including any participants who did not complete the test; source
8 documents for such data; any data dictionaries; and any case report forms;

9 D. All documents referring or relating to any statistical analysis of any
10 test data, including any pretest analysis, intent-to-treat analysis, or between-group
11 analysis performed on any test data; and

12 E. All documents referring or relating to the sponsorship of the test,
13 including all communications and contracts between any sponsor and the test's
14 researchers.

15 *Provided, however,* the preceding preservation requirement does not apply to
16 a Reliably Reported test, unless the test was conducted, controlled, or sponsored, in
17 whole or in part by: (1) any Defendant; (2) any of Defendants' officers, agents,
18 representatives, or employees; (3) any other person or entity in active concert or
19 participation with any Defendant; (4) any person or entity affiliated with or acting
20 on behalf of any Defendant; (5) any supplier of any ingredient contained in the
21 product at issue to any of the foregoing or to the product's manufacturer; or (6) the
22 supplier or manufacturer of such product.

23 For any test conducted, controlled, or sponsored, in whole or in part, by
24 Defendants, Defendants must establish and maintain reasonable procedures to
25 protect the confidentiality, security, and integrity of any personal information
26 collected from or about participants. These procedures must be documented in
27 writing and must contain administrative, technical, and physical safeguards

1 appropriate to Corporate Defendants’ size and complexity, the nature and scope of
2 Defendants’ activities, and the sensitivity of the personal information collected
3 from or about the participants.

4 **XII.**

5 **PROHIBITIONS AGAINST VIOLATION OF THE ELECTRONIC**
6 **FUND TRANSFER ACT**

7 **IT IS FURTHER ORDERED** that Defendants and Defendants’ officers,
8 agents, employees, and attorneys, and all other persons in active concert or
9 participation with any of them, who receive actual notice of this Order, whether
10 acting directly or indirectly, in connection with the sale of any product, service, or
11 program are hereby permanently restrained and enjoined from:

12 A. Engaging in any recurring debiting of a consumer’s account without
13 first obtaining a valid written pre-authorization for preauthorized electronic fund
14 transfers from the consumer’s account, which pre-authorization is clear and readily
15 understandable, identifiable as a pre-authorization, and reflects the consumer’s
16 assent, as required by Section 907(a) of the Electronic Fund Transfer Act, 15
17 U.S.C. § 1693e(a), and Section 1005.10(b) of Regulation E, as more fully set out in
18 Section 1005.10(b) of the Consumer Financial Protection Bureau’s Official Staff
19 Commentary to Regulation E (“Official Staff Commentary to Regulation E”), 12
20 C.F.R. § 1005.10(b), cmts. 5 and 6, Supp. I;

21 B. Engaging in any recurring debiting of a consumer’s account without
22 first providing a copy of a valid written pre-authorization to the consumer for
23 preauthorized electronic fund transfers from the consumer’s account, which copy is
24 clear and readily understandable, identifiable as a pre-authorization, and reflects
25 the consumer’s assent, as required by Section 907(a) of EFTA, 15 U.S.C.
26 § 1693e(a), and Section 1005.10(b) of Regulation E, as more fully set out in
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1 Section 1005.10(b) of the Official Staff Commentary to Regulation E, 12 C.F.R.
2 § 1005.10(b), cmts. 5 and 6, Supp. I; and

3 C. Failing to maintain procedures reasonably adapted to avoid an
4 unintentional failure to obtain a written authorization for preauthorized electronic
5 fund transfers, as required in Section 1005.10(b) of the Official Staff Commentary
6 to Regulation E, 12 C.F.R. § 1005.10(b), cmt. 7, Supp. I.

7 **XIII.**

8 **MONETARY JUDGMENT AND PARTIAL SUSPENSION**

9 **IT IS FURTHER ORDERED** that:

10 A. Judgment in the amount of one hundred seventy-nine million dollars
11 (\$179,000,000) is entered in favor of the Commission against Defendants, jointly
12 and severally, as equitable monetary relief. Upon complete payment and transfer
13 to the Commission of all assets listed in Subsections XIII.B-D below, the
14 remainder of the judgment is suspended, subject to Subsections XIII.F-H below.

15 B. In partial satisfaction of the monetary judgment set forth above,
16 Defendants hereby relinquish and assign to the Commission all legal and equitable
17 right, title, control, or interest in the assets listed below effective upon entry of this
18 Order, and the following transfers of assets shall occur within seven (7) days of
19 entry of this order by electronic fund transfer in accordance with instructions
20 provided by a representative of the Commission:

21 1. The Defendants shall transfer to the Commission four million,
22 seventy-two thousand, three hundred fifty-five dollars (\$4,072,355), which, as the
23 Defendants stipulate, their counsel holds in escrow for no purpose other than
24 payment to the Commission.

25 C. In partial satisfaction of the monetary judgment set forth above,
26 Defendants hereby relinquish and assign to the Commission all legal and equitable
27 right, title, control, or interest, in the following assets listed below (in the amount
28

1 of at least two million, three hundred eight thousand, eight hundred ninety dollars
2 (\$2,308,890)) effective upon entry of this Order, and the following transfers of
3 assets shall occur within seven (7) days of entry of this order by electronic fund
4 transfer in accordance with instructions provided by a representative of the
5 Commission:

6 1. Chase Paymentech, a division of JPMorgan Chase & Co., shall
7 transfer to the Commission all assets, including reserve funds, held in the name of
8 or for the benefit of any of the Defendants or Related Companies, including the
9 Chase Paymentech accounts identified in Appendix 1 to this Order;

10 2. Cynergy Data, LLC (“Cynergy”), now doing business as
11 Priority Payment Systems LLC, shall transfer to the Commission all assets,
12 including reserve funds, held in the name of or for the benefit of any of the
13 Defendants or Related Companies, including the Cynergy accounts identified in
14 Appendix 1 to this Order;

15 3. Elavon Inc. (“Elavon”) shall transfer to the Commission all
16 assets, including reserve funds, held in the name of or for the benefit of any of the
17 Defendants or Related Companies, including the Elavon accounts identified in
18 Appendix 1 to this Order;

19 4. Electronic Merchant Services (“EMS”) shall transfer to the
20 Commission all assets, including reserve funds, held in the name of or for the
21 benefit of any of the Defendants or Related Companies, including the EMS
22 accounts identified in Appendix 1 to this Order;

23 5. First National Bank of Omaha (“First National”) shall transfer
24 to the Commission all assets, including reserve funds, held in the name of or for
25 the benefit of any of the Defendants or Related Companies, including the First
26 National accounts identified in Appendix 1 to this Order;

1 12. Priority Payment Systems LLC (“Priority Payment”) shall
2 transfer to the Commission all assets, including reserve funds, held in the name of
3 or for the benefit of any of the Defendants or Related Companies, including the
4 Priority Payment accounts identified in Appendix 1 to this Order;

5 13. Processing.com, LLC (“Processing.com”) shall transfer to the
6 Commission all assets, including reserve funds, held in the name of or for the
7 benefit of any of the Defendants or Related Companies, including the
8 Processing.com accounts identified in Appendix 1 to this Order;

9 14. Select Bankcard shall transfer to the Commission all assets,
10 including reserve funds, held in the name of or for the benefit of any of the
11 Defendants or Related Companies, including the Select Bankcard accounts
12 identified in Appendix 1 to this Order;

13 15. Signature Processing Inc. (“Signature Processing”) shall
14 transfer to the Commission all assets, including reserve funds, held in the name of
15 or for the benefit of any of the Defendants or Related Companies, including the
16 Signature Processing accounts identified in Appendix 1 to this Order;

17 16. Synovus Financial Corp. (“Synovus”) shall transfer to the
18 Commission all assets, including reserve funds, held in the name of or for the
19 benefit of any of the Defendants or Related Companies, including the Synovus
20 accounts identified in Appendix 1 to this Order;

21 17. TransFirst shall transfer to the Commission all assets, including
22 reserve funds, held in the name of or for the benefit of any of the Defendants or
23 Related Companies, including the TransFirst accounts identified in Appendix 1 to
24 this Order;

25 18. U.S. Merchant Systems (“USMS”) shall transfer to the
26 Commission all assets, including reserve funds, held in the name of or for the
27

1 benefit of any of the Defendants or Related Companies, including the USMS
2 accounts identified in Appendix 1 to this Order;

3 19. Vantiv, Inc. (“Vantiv”) shall transfer to the Commission all
4 assets, including reserve funds, held in the name of or for the benefit of any of the
5 Defendants or Related Companies, including the Vantiv accounts identified in
6 Appendix 1 to this Order;

7 20. Woodforest National Bank (“Woodforest”) shall transfer to the
8 Commission all assets, including reserve funds, held in the name of or for the
9 benefit of any of the Defendants or Related Companies, including the Woodforest
10 accounts identified in Appendix 1 to this Order; and

11 21. Worldpay Group plc (“Worldpay”) shall transfer to the
12 Commission all assets, including reserve funds, held in the name of or for the
13 benefit of any of the Defendants or Related Companies, including the Worldpay
14 accounts identified in Appendix 1 to this Order.

15 D. If the aggregate amount held in the reserve accounts of the entities
16 listed in Subsection XIII.C above as of the date of entry of this Order (“the
17 Aggregate Reserve Amount”) is less than two million, three hundred eight
18 thousand, eight hundred ninety dollars (\$2,308,890), then Defendants are ordered
19 to pay to the Commission the difference between such amount and two million,
20 three hundred eight thousand, eight hundred ninety dollars (\$2,308,890) within 30
21 days of entry of this Order by electronic fund transfer in accordance with
22 instructions previously provided by a representative of the Commission.

23 E. Defendants shall execute, or cause to be executed, within three (3)
24 days of written notice of this Order, all documents necessary to effectuate the
25 transfer of the Aggregate Reserve Amount, including providing any documents
26 necessary to determine the Aggregate Reserve Amount.

1 F. The Commission's agreement to the suspension of part of the
2 judgment is expressly premised upon the truthfulness, accuracy, and completeness
3 of Defendants' sworn financial statements and related documents (collectively,
4 "financial representations") submitted to the Commission, namely:

5 1. the Financial Statement of Individual Defendant Richard
6 Fowler signed on June 29, 2017, including all documents attached or incorporated
7 by reference therein;

8 2. the Financial Statement of Individual Defendant Ryan Fowler
9 signed on June 29, 2017, including all documents attached or incorporated by
10 reference therein;

11 3. the Financial Statement of Individual Defendant Nathan
12 Martinez signed on June 29, 2017, including all documents attached or
13 incorporated by reference therein;

14 4. the Financial Statement of Corporate Defendant Ad Kings LLC
15 signed by Sean Colwell, Chief Executive Officer, on June 27, 2017, including all
16 documents attached or incorporated by reference therein;

17 5. the Financial Statement of Corporate Defendant Apex
18 Advertising LLC signed by Adrian Skibine, Chief Executive Officer, on June 27,
19 2017, including all documents attached or incorporated by reference therein;

20 6. the Financial Statement of Corporate Defendant Brand
21 Development Corp. signed by Rodney Fetaya, Chief Executive Officer, on June
22 27, 2017, including all documents attached or incorporated by reference therein;

23 7. the Financial Statement of Corporate Defendant Coastal Ads
24 LLC signed by Oscar Maria, Chief Executive Officer, on June 27, 2017, including
25 all documents attached or incorporated by reference therein;

1 Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral
2 estoppel effect for such purposes.

3 D. Defendants acknowledge that their Taxpayer Identification Numbers
4 (Social Security Numbers or Employer Identification Numbers), which Defendants
5 previously submitted to the Commission, may be used for collecting and reporting
6 on any delinquent amount arising out of this Order, in accordance with 31 U.S.C.
7 § 7701.

8 E. All money paid to the Commission pursuant to this Order may be
9 deposited into a fund administered by the Commission or its designee to be used
10 for equitable relief, including consumer redress and any attendant expenses for the
11 administration of any redress fund. If a representative of the Commission decides
12 that direct redress to consumers is wholly or partially impracticable or money
13 remains after redress is completed, the Commission may apply any remaining
14 money for such other equitable relief (including consumer information remedies)
15 as it determines to be reasonably related to Defendants' practices alleged in the
16 Complaint. Any money not used for such equitable relief is to be deposited to the
17 U.S. Treasury as disgorgement. Defendants have no right to challenge any actions
18 the Commission or its representatives may take pursuant to this Subsection.

19 **XV.**

20 **CUSTOMER INFORMATION**

21 **IT IS FURTHER ORDERED** that Defendants and Defendants' officers,
22 agents, employees, and attorneys, and all other persons in active concert or
23 participation with any of them, who receive actual notice of this Order, whether
24 acting directly or indirectly, are hereby permanently restrained and enjoined from
25 directly or indirectly:

26 A. failing to provide sufficient customer information to enable the
27 Commission to efficiently administer consumer redress. If a representative of the

1 Commission requests in writing any information related to redress, Defendants
2 must provide it, in the form prescribed by the Commission, within 14 days;

3 B. disclosing, using, or benefitting from customer information, including
4 the name, address, telephone number, email address, social security number, other
5 identifying information, or any data that enables access to a customer's account
6 (including a credit card, bank account, or other financial account), that any
7 Defendant obtained prior to entry of this Order in connection with the sale of any
8 Covered Product or Add-On product, service, or program; and

9 C. failing to destroy such customer information in all forms in their
10 possession, custody, or control within 30 days after receipt of written direction to
11 do so from a representative of the Commission.

12 *Provided, however,* that customer information need not be disposed of, and
13 may be disclosed, to the extent requested by a government agency or required by
14 law, regulation, or court order.

15 XVI.

16 COOPERATION

17 **IT IS FURTHER ORDERED** that Defendants must fully cooperate with
18 representatives of the Commission in this case and in any investigation related to
19 or associated with the transactions or occurrences that are the subject of the
20 Complaint. Such Defendants must provide truthful and complete information,
21 evidence, and testimony. Such Individual Defendants must appear and such
22 Corporate Defendants must cause Defendants' officers, employees,
23 representatives, or agents to appear for interviews, discovery, hearings, trials, and
24 any other proceedings that a Commission representative may reasonably request
25 upon 5 days written notice, or other reasonable notice, at such places and times as a
26 Commission representative may designate, without the service of a subpoena.

1 **XVII.**

2 **ORDER ACKNOWLEDGMENTS**

3 **IT IS FURTHER ORDERED** that Defendants obtain acknowledgments of
4 receipt of this Order:

5 A. Each Defendant, within 7 days of entry of this Order, must submit to
6 the Commission an acknowledgment of receipt of this Order sworn under penalty
7 of perjury.

8 B. For 5 years after entry of this Order, each Individual Defendant for
9 any business that such Defendant, individually or collectively with any other
10 Defendant, is the majority owner or controls directly or indirectly, and each
11 Corporate Defendant, must deliver a copy of this Order to: (1) all principals,
12 officers, directors, and LLC managers and members; (2) all employees, agents, and
13 representatives who participate in conduct related to the subject matter of the
14 Order; and (3) any business entity resulting from any change in structure as set
15 forth in the Section titled Compliance Reporting. Delivery must occur within 7
16 days of entry of this Order for current personnel. For all others, delivery must
17 occur before they assume their responsibilities.

18 C. From each individual or entity to which a Defendant delivered a copy
19 of this Order, that Defendant must obtain, within 30 days, a signed and dated
20 acknowledgment of receipt of this Order.

21 **XVIII.**

22 **COMPLIANCE REPORTING**

23 **IT IS FURTHER ORDERED** that Defendants make timely submissions to
24 the Commission:

25 A. One year after entry of this Order, each Defendant must submit a
26 compliance report, sworn under penalty of perjury:

1 1. Each Defendant must: (a) identify the primary physical, postal,
2 and email address and telephone number, as designated points of contact, which
3 representatives of the Commission may use to communicate with Defendant;
4 (b) identify all of that Defendant's businesses by all of their names, telephone
5 numbers, and physical, postal, email, and Internet addresses; (c) describe the
6 activities of each business, including the products, services, and programs offered,
7 the means of advertising, marketing, and sales, and the involvement of any other
8 Defendant (which Individual Defendants must describe if they know or should
9 know due to their own involvement); (d) describe in detail whether and how that
10 Defendant is in compliance with each Section of this Order; and (e) provide a copy
11 of each Order Acknowledgment obtained pursuant to this Order, unless previously
12 submitted to the Commission.

13 2. Additionally, each Individual Defendant must: (a) identify all
14 telephone numbers and all physical, postal, email and Internet addresses, including
15 all residences; (b) identify all business activities, including any business for which
16 such Defendant performs services whether as an employee or otherwise and any
17 entity in which such Defendant has any ownership interest; and (c) describe in
18 detail such Defendant's involvement in each such business, including title, role,
19 responsibilities, participation, authority, control, and any ownership.

20 B. For 15 years after entry of this Order, each Defendant must submit a
21 compliance notice, sworn under penalty of perjury, within 14 days of any change
22 in the following:

23 1. Each Defendant must report any change in: (a) any designated
24 point of contact; or (b) the structure of any Corporate Defendant or any entity that
25 Defendant has any ownership interest in or controls directly or indirectly that may
26 affect compliance obligations arising under this Order, including: creation,
27
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1 Specifically, Corporate Defendants and each Individual Defendant for any business
2 that such Defendant, individually or collectively with any other Defendant, is a
3 majority owner or controls directly or indirectly, must create and retain the
4 following records:

5 A. accounting records showing the revenues from all products, services,
6 and programs sold;

7 B. personnel records showing, for each person providing services,
8 whether as an employee or otherwise, that person's: name; addresses; telephone
9 numbers; job title or position; dates of service; and (if applicable) the reason for
10 termination;

11 C. records of all consumer complaints and refund requests, whether
12 received directly or indirectly, such as through a third party, and any response;

13 D. all records necessary to demonstrate full compliance with each
14 provision of this Order, including all submissions to the Commission; and

15 E. a copy of each unique advertisement or other marketing material.

16 **XX.**

17 **COMPLIANCE MONITORING**

18 **IT IS FURTHER ORDERED** that, for the purpose of monitoring
19 Defendants' compliance with this Order:

20 A. Within 14 days of receipt of a written request from a representative of
21 the Commission, each Defendant must: submit additional compliance reports or
22 other requested information, which must be sworn under penalty of perjury; appear
23 for depositions; and produce documents for inspection and copying. The
24 Commission is also authorized to obtain discovery, without further leave of court,
25 using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30
26 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

1 B. For matters concerning this Order, the Commission is authorized to
2 communicate directly with each Defendant. Defendants must permit
3 representatives of the Commission to interview any employee or other person
4 affiliated with any Defendant who has agreed to such an interview. The person
5 interviewed may have counsel present.

6 C. The Commission may use all other lawful means, including posing,
7 through its representatives as consumers, suppliers, or other individuals or entities,
8 to Defendants or any individual or entity affiliated with Defendants, without the
9 necessity of identification or prior notice. Nothing in this Order limits the
10 Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of
11 the FTC Act, 15 U.S.C. §§ 49, 57b-1.

12 D. Upon written request from a representative of the Commission, any
13 consumer reporting agency must furnish consumer reports concerning Individual
14 Defendants, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C.
15 § 1681b(a)(1).

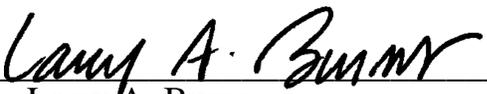
16 **XXI.**

17 **RETENTION OF JURISDICTION**

18 **IT IS FURTHER ORDERED** that this Court retains jurisdiction of this
19 matter for purposes of construction, modification, and enforcement of this Order.
20 The parties have consented to continuing jurisdiction over this case by a magistrate
21 judge. (Docket no. 4.) By a separate order, this case, including interpretation and
22 enforcement of this Order, is being referred to Magistrate Judge Karen Crawford or
23 another duly-authorized magistrate judge for all purposes.

24 **IT IS SO ORDERED.**

25 DATED: November 13, 2017

26 
27 Hon. Larry A. Burns
28 United States District Judge