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 15 FEDERAL TRADE COMMISSION

16 **UNITED STATES DISTRICT COURT**
 17 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

18 _____)
 19 **FEDERAL TRADE COMMISSION,**)

20)
 21 Plaintiff,)

22 v.)

Case No. LACV11-7484 (RGK)

23)
 24 **FORENSIC CASE MANAGEMENT**)
SERVICES, INC., et al.,)

25)
 26 Defendants,)

27 and)

28 **KESTER-ARCHWOOD, LLC, et al.,**)

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Relief Defendants.)
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[Proposed] FINAL JUDGMENT AND ORDER FOR PERMANENT INJUNCTION AND MONETARY RELIEF AS TO DEFENDANTS FORENSIC CASE MANAGEMENT SERVICES, INC., SPECIALIZED RECOVERY, INC., COMMERCIAL RECEIVABLES ACQUISITION, INC., DAVID M. HYNES II, LORENA QUIROZ-HYNES, JAMES S. HYNES, AND HEATHER TRUE

Plaintiff Federal Trade Commission (“FTC” or “Commission”) commenced this civil action on September 12, 2011, pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and Section 814 of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692l, to obtain preliminary and permanent injunctive and other equitable relief for Defendants’ violations of Section 5 of the FTC Act, 15 U.S.C. § 45, and the FDCPA, 15 U.S.C. § 1692-1692p, in connection with the marketing and sale of debt collection services, and the collection of debts. The FTC’s Complaint named three corporate defendants (Forensic Case Management Services, Inc.; Specialized Recovery, Inc.; and Commercial Receivables Acquisition, Inc.), and six individual defendants (David M. Hynes II; Lorena Quiroz-Hynes; James S. Hynes; Heather True; Frank E. Lindstrom, Jr.; and Kevin Medley). On September 13, 2011, the Court entered a temporary restraining order against Defendants. On September 27, 2011, the Court entered a preliminary injunction against Defendants.

1 On March 14, 2012, the Court entered a Final Judgment and Order for
2 Permanent Injunction and Mone
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- 1 1. This is an action by the FTC instituted under Sections 13(b) and 19 of the
2 FTC Act, 15 U.S.C. §§ 53(b) and 57b, and Section 814 of the FDCPA, 15
3 U.S.C. § 1692*l*. The First Amended Complaint seeks both permanent
4 injunctive relief and equitable monetary relief for Defendants’ deceptive and
5 abusive acts or practices as alleged therein.
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- 7 2. The FTC has the authority under Sections 13(b) and 19 of the FTC Act, and
8 Section 814 of the FDCPA, to seek the relief it has requested, and the
9 Complaint states a claim upon which relief can be granted.
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- 11 3. This Court has jurisdiction over the subject matter of this case and has
12 jurisdiction over Settling Defendants. Venue in the Central District of
13 California is proper.
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- 15 4. The activities of Settling Defendants, as alleged in the First Amended
16 Complaint, are in or affecting commerce, as defined in Section 4 of the FTC
17 Act, 15 U.S.C. § 44.
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- 19 5. Settling Defendants neither admit nor deny any of the allegations in the First
20 Amended Complaint, except as specifically stated in this Order. Only for
21 purposes of this action, Settling Defendants admit the facts necessary to
22 establish jurisdiction.
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- 24 6. Settling Defendants waive all rights to seek judicial review or otherwise
25 challenge or contest the validity of this Order. Settling Defendants forever
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1 waive, release, and discharge all claims, known or unknown, that they have
2 in any capacity against the FTC or any of its agents for conduct undertaken
3 through the date of entry of this Order. Settling Defendants also waive any
4 claim that they may have held under the Equal Access to Justice Act, 28
5 U.S.C. § 2412, concerning the prosecution of this action to the date of this
6 Order. Each settling party shall bear its own of
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- A. performing customer service functions, including, but not limited to, receiving or responding to consumer complaints;
- B. performing debt collection or debt collection marketing services of any kind;
- C. formulating or providing, or arranging for the formulation or provision of, any advertising or maC. f9 0 (i -2.3047m)6.telephont or m751(ulat provi-1407.8(p1sponding to consing or m)

1 F. providing names of, or assisting in the generation of, potential
2 customers;

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4 G. performing marketing, billing, or payment services of any kind; and

5 H. acting or serving as an owner, officer, director, manager, or principal
6 of any entity.
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8 3. "Consumer" means any natural person.

9 4. "Customer" means any person who has paid, or may be required to pay, for
10 products, services, plans, or programs offered for sale or sold by any other
11 person.
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13 5. "Creditor" means any person or entity who offers or extends credit creating
14 a debt or to whom a debt is owed, but such term does not include any person
15 or entity to the extent such person or entity receives an assignment or
16 transfer of a debt in default solely for the purpose of facilitating collection of
17 such debt.
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19 6. "Credit" means the right granted by a creditor to a debtor to defer payment
20 of debt or to incur debt and defer its payment.
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22 7. "Credit repair services" means using any instrumentality of interstate
23 commerce or the mails to sell, provide, or perform any service, in return for
24 the payment of money or other valuable consideration, for the express or
25 implied purpose of: (i) improving any consumer's credit record, credit
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11. “Extension of consumer credit” means credit offered or extended to a consumer primarily for personal, family, or household purposes.

12. “Financial-related product or service” means any product, service, plan, or program represented, expressly or by implication, to:

- A. provide any consumer, arrange for any consumer to receive, or assist any consumer in receiving, an extension of consumer credit;
- B. provide any consumer, arrange for any consumer to receive, or assist any consumer in receiving, credit repair services;
- C. provide any consumer, arrange for any consumer to receive, or assist any consumer in receiving, mortgage assistance relief services;
- D. provide any consumer, arrange for any consumer to receive, or assist any consumer in receiving, debt relief services; or
- E. provide, or arrange for a customer to receive, assistance in the collection of any outstanding debt or financial obligation owed to that customer by a third party.

13. “Material fact” means any fact that is likely to affect a person’s choice of, or conduct regarding, goods or services.

14. “Mortgage assistance relief services” means any service, plan, or program, offered or provided to a consumer in exchange for consideration, that is represented, expressly or by implication, to assist or attempt to assist the

1 consumer with any of the following: (a) stopping, preventing, or postponing
2 any mortgage or deed of trust foreclosure sale for the consumer's dwelling,
3 any repossession of the consumer's dwelling, or otherwise saving the
4 consumer's dwelling from foreclosure or repossession; (b) negotiating,
5 obtaining, or arranging a modification of any term of a dwelling loan,
6 including a reduction in the amount of interest, principal balance, monthly
7 payments, or fees; (c) obtaining any forbearance or modification in the
8 timing of payments from any dwelling loan holder or servicer on any
9 dwelling loan; (d) negotiating, obtaining, or arranging any extension of the
10 period of time within which the consumer may cure his or her default on a
11 dwelling loan, reinstate his or her dwelling loan, redeem a dwelling, or
12 exercise any right to reinstate a dwelling loan or redeem a dwelling; (e)
13 obtaining any waiver of an acceleration clause or balloon payment contained
14 in any promissory note or contract secured by any dwelling; or (f)
15 negotiating, obtaining, or arranging a short sale of a dwelling, a deed-in-lieu
16 of foreclosure, or any other disposition of a dwelling other than a sale to a
17 third party who is not the dwelling loan holder.

- 18 15. "Permanent Receiver" means Thomas W. McNamara, Esq., appointed as
19 Permanent Receiver in the Preliminary Injunction in this matter (DE 47-1).
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1 16. "Person

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- 1 E. That the Settling Defendants, whether acting directly or through any
2 other person, will file a lawsuit, garnish wages, seize assets, negotiate
3 a debt settlement plan or mortgage foreclosure relief plan, or take any
4 other action to help a consumer either receive a loan, satisfy or settle a
5 debt, collect a debt, improve their credit record, credit score, credit
6 history, or credit rating, or achieve any other desired financial goal, if
7 the consumer pays the Settling Defendants a fee;
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11 F. That any particular outcome or result from the product or service
12 being provided is guaranteed, assured, highly likely or probable, or
13 very likely or probable;
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15 G. That a consumer will receive legal representation;
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17 H. The nature or terms of any refund, cancellation, exchange, or
18 repurchase policy, including, but not limited to, the likelihood of a
19 consumer obtaining a full or partial refund, or the circumstances in
20 which a full or partial refund will be provided to the consumer;
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22 I. The total costs to purchase, receive, or use, or the quantity of, a
23 product, service, plan, or program;
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25 J. Any restriction, limitation, or condition on purchasing, receiving, or
26 using a product, service, plan, or program;
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1 K. Any aspect of the performance, efficacy, nature, or characteristics of a
2 product, service, plan, or program; or

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4 L. Any other material fact.

5 **PROHIBITION AGAINST DISCLOSING CONSUMER INFORMATION**

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7 **III. IT IS FURTHER ORDERED** that the Settling Defendants, and their
8 successors and assigns, whether acting directly or through their officers,
9 directors, agents, servants, employees, representatives, divisions, attorneys,
10 subsidiaries, or other entities, and all other persons or entities in active
11 concert or participation with them who receive actual notice of this Order by
12 personal service, facsimile transmission, email, or postal delivery, are hereby
13 permanently restrained and enjoined from:
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16 A. Disclosing, using, or benefitting from consumer information,
17 including the name, address, telephone number, email address, social
18 security number, other identifying information, or any data that
19 enables access to a consumer's account (including a credit card, bank
20 account, or other financial account) of any person that any Settling
21 Defendant obtained prior to entry of this Order in connection with the
22 advertising, marketing, promotion, offering for sale, sale, or provision
23 of any financial-related product or service, and
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B. Failing to dispose of such consumer information in all forms in their possession, custody, or control within thirty (30) days after entry of this Order. Disposal must be by means that protect against unauthorized access to the consumer information, such as by burning, pulverizing, or shredding any papers, and by erasing or destroying any electronic media, to ensure that the consumer information cannot practicably be read or reconstructed.

Provided, however, that consumer information need not be disposed of, and may be disclosed, to the extent requested by a government request.

1 Hynes II and Lorena Quiroz-Hynes, subject to Section VI of this
2 Order, upon payment to the FTC or its designated agent of SEVEN
3 HUNDRED THOUSAND DOLLARS (\$700,000) in a timely manner
4 as set forth in subparagraphs IV.A.1 through IV.A.4 below:
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7 1. Settling Defendants hereby grant to the Commission all rights
8 and claims they currently have to their frozen assets currently in
9 the possession, custody, or control of the Permanent Receiver,
10 including, but not limited to, any cash assets held in the
11 Permanent Receiver's trust account on behalf of the Corporate
12 Settling Defendants, and the net proceeds, if any, from the sale
13 of the remaining assets belonging to the Corporate Settling
14 Defendants. Specifically, the following institutions shall,
15 within ten (10) business days from receipt of a copy of this
16 Order, transfer to the FTC or its designated agent all funds held
17 in the designated accounts below as follows:
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22 a. Torrey Pines Bank shall transfer to the FTC or its
23 designated agent all funds held in account number ending
24 in 9762, in the name of FCMS Receivership, Thomas W.
25 McNamara, Receiver, which amount is approximately
26 \$24,370.30;
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- b. Comerica Bank shall transfer to the FTC or its designated agent all funds held in account number xxxxxx7383 in the name of Jackson Gunner & Wolfe LLC, which amount is approximately \$458;
- 2. The following institutions shall, within ten (10) business days from receipt of a copy of this Order, transfer to the FTC or its designated agent all funds held in the designated accounts below as follows:
 - a. Comerica Bank shall transfer to the FTC or its designated agent all funds held in: (a) account number xxxxxx7712 in the name of David M. Hynes Trust, which amount is approximately \$14,543; and (b) account number xxxxxx8068 in the name of David M. Hynes, which amount is approximately \$1,001;
 - b. Charles Schwab shall transfer to the FTC or its designated agent all funds held in: (a) account number xxxx0863 in the name of David M. Hynes, which amount is approximately \$70,758; (b) account number xxxxxxxx2808 in the name of David M. Hynes, which amount is approximately \$164,634;

1 h. Bank of America shall transfer to the FTC or its
2 designated agent all funds held in: (a) account number
3 xxxxx1152 in the name of Lorena Q. Hynes, which
4 amount is approximately \$78; and (b) account number
5 xxxxx6849 in the name of Lorena Q. Hynes, which
6 amount is approximately \$35.
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10 3. Following completion of the transfer of funds ordered above in
11 Sections IV.A.1-2 above, the FTC shall, within ten (10) days
12 from the receipt of all funds, provide Settling Defendants,
13 through their undersigned counsel, with notice of how much
14 money in total has been transferred to the FTC and how much
15 money Settling Defendants still need to pay to satisfy the
16 unsuspended \$700,000 payment that Defendants David M.
17 Hynes II and Lorena Quiroz-Hynes are required to pay under
18 this Order. The notice from the FTC to the Settling Defendants
19 required under this paragraph may be effectuated by electronic
20 mail message from undersigned counsel for the FTC to
21 undersigned counsel for the Settling Defendants.
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26 4. Defendants David M. Hynes II and Lorena Quiroz-Hynes shall
27 also pay to the FTC or its designated agent in the following
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1 of David M. Hynes, with an approximate balance of
2 \$147,772, shall remain frozen. In the event that
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4 Defendants David M. Hynes II and Lorena Quiroz-Hynes
5 default on any of the payments required under Sections
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7 IV.A.1 through IV.A.4 described above, Charles Schwab
8 shall, upon service by the FTC of a notice that Settling
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10 Defendants have defaulted, turn over to the FTC all funds
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12 then available in account number xxxx5353 in the name
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14 of David M. Hynes.

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B. Judgment is hereby entered, shall

1 E. Settling Defendants relinquish all dominion, control, and title to the
2 assets and funds paid to the fullest extent permitted by law. Settling
3 Defendants shall make no claim to or demand for return of the assets
4 or funds, directly or indirectly, through counsel or otherwise.
5

6 F. Settling Defendants agree that the facts as alleged in the First
7 Amended Complaint filed in this action shall be taken as true without
8 further proof in any bankruptcy case or subsequent civil litigation
9 pursued by the Commission to enforce its rights to any payment or
10 money judgment pursuant to this Order, including but not limited to a
11 nondischargeability complaint in any bankruptcy case. Settling
12 Defendants further stipulate and agree that the facts alleged in the
13 First Amended Complaint establish all elements necessary to sustain
14 an action by the Commission pursuant to Section 523(a)(2)(A) of the
15 Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and that this Order shall
16 have collateral estoppel effect for such purposes.
17

18 G. Settling Defendants agree that they will not, whether acting directly or
19 through any corporation, partnership, subsidiary, division, trade name,
20 device, or other entity, submit to any federal or state tax authority any
21 return, amended return, or other official document that takes a
22 deduction for, or seeks a tax refund or other favorable treatment for,
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1 any payment by a Settling Defendant pursuant to this Order. Settling
2 Defendants further agree that they will not seek a credit or refund of
3 any kind for federal or state taxes or penalties for tax years 2006-2012
4 for any payment by Settling Defendants pursuant to this Order. If any
5 Settling Defendant obtains any such credit or refund of any federal or
6 state taxes or penalties paid for tax years 2006-2012, then the Settling
7 Defendant shall promptly pay the Commission the amount of such
8 credit or refund, together with any interest the Settling Defendant
9 earned in connection with any such credit or refund.
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14 H. The judgment entered pursuant to this Section is equitable monetary
15 relief, solely remedial in nature, and not a fine, penalty, punitive
16 assessment or forfeiture.
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18 I. In accordance with 31 U.S.C. §
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1 used for purposes of collecting and reporting on any delinquent
2 amount arising out of this Order.
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4 **ASSET FREEZE**

5 **V. IT IS FURTHER ORDERED** that, upon entry of this Order and the
6 satisfaction of all payments identified in Section IV.A.1-2 above, the freeze
7 of the Settling Defendants' assets shall be dissolved.
8

9 **RIGHT TO REOPEN**

10 **VI. IT IS FURTHER ORDERED** that:
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12 A. The Commission's agreement to, and the Court's approval of this
13 Order is expressly premised upon the truthfulness, accuracy, and
14 completeness of Settling Defendants' financial condition, as
15 represented in the financial statements previously provided to the
16 FTC, including all attachments and supplemental materials, copies of
17 tax returns for Settling Defendants, deposition testimony, and
18 correspondence (collectively, "Financial Statements"), all of which
19 the Commission relied upon in negotiating and agreeing to the terms
20 of this Order, which are identified in Attachment A.
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22 B. The suspension of judgment shall be lifted as to any Settling
23 Defendant, if upon motion by the Commission, the Court finds:
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- 1 1. that Settling Defendant failed to disclose any material asset,
2 materially misstated the value of any asset, or made any other
3 material misstatement or omission in the financial
4 representations identified above; or
- 5 2. that Settling Defendant is in default on any obligation under
6 this Section.
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9 C. If the suspension of the judgment is lifted as to any Settling
10 Defendant, the judgment amount specified in Section IV (Monetary
11 Relief) becomes immediately payable as to that Settling Defendant,
12 less any payments already made to the Commission pursuant to this
13 Order.
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16 Provided, however, that in all other respects, this Order shall remain in full
17 force and effect, unless otherwise ordered by the Court.
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19 **ORDER ACKNOWLEDGMENTS**

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21 **VII. IT IS FURTHER ORDERED** that the Settling Defendants obtain
22 acknowledgments of receipt of this Order:
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- 24 A. Each Settling Defendant, within 7 days of entry of this Order, must
25 submit to the FTC an acknowledgment of receipt of this Order sworn
26 under penalty of perjury.
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- 1 1. Each Settling Defendant must: (a) designate at least one
2 telephone number and an email, physical, and postal address as
3 points of contact, which representatives of the FTC may use to
4 communicate with such Settling Defendant; (b) identify all of
5 that Individual Settling Defendant's or Corporate Settling
6 Defendant's businesses by all of their names, telephone
7 numbers, and physical, postal, email, and Internet addresses; (c)
8 describe the activities of each business, including the products
9 and services offered, the means of advertising, marketing, and
10 sales, and the involvement of any other Defendant (which each
11 Individual Settling Defendant must describe if he or she knows
12 or should know due to his or her own involvement); (d)
13 describe in detail whether and how that Settling Defendant is in
14 compliance with each Section of this Order; and (e) provide a
15 copy of each Order Acknowledgment obtained pursuant to this
16 Order, unless previously submitted to the FTC;
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18 2. Additionally, each Individual Settling Defendant must: (a)
19 identify all telephone numbers and all email, Internet, physical,
20 and postal addresses, including all residences; (b) identify all
21 titles and roles in all business activities, including any business
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1 for which such Individual Settling Defendant performs services
2 whether as an employee or otherwise and any entity in which
3 such Individual Settling Defendant has any ownership interest;
4 and (c) describe in detail such Individual Settling Defendant's
5 involvement in each such business, including title, role,
6 responsibilities, participation, authority, control, and any
7 ownership.
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11 B. For 20 years following entry of this Order, each Settling Defendant
12 must submit a compliance notice, sworn under penalty of perjury,
13 within 14 days of any change in the following:
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15 1. Each Settling Defendant must report any change in: (a) any
16 designated point of contact; or (b) the structure of the Corporate
17 Settling Defendant or any entity that any Individual Settling
18 Defendant or Corporate Settling Defendant has any ownership
19 interest in or directly or indirectly controls that may affect
20 compliance obligations arising under this Order, including:
21 creation, merger, sale, or dissolution of the entity or any
22 subsidiary, parent, or affiliate that engages in any acts or
23 practices subject to this Order.
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1 Debrief@ftc.gov or sent by overnight courier (not the U.S. Postal
2 Service) to: Associate Director for Enforcement, Bureau of Consumer
3 Protection, Federal Trade Commission, 600 Pennsylvania Avenue
4 NW, Washington, DC 20580. The subject line must begin: *FTC v.*
5 *Forensic Case Management Services, Inc., et al.*, X110053.
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8 **RECORDKEEPING**

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10 **IX. IT IS FURTHER ORDERED** that the Settling Defendants must create
11 certain records for 20 years after entry of the Order, and retain each such
12 record for 5 years. Specifically, the Corporate Settling Defendants and the
13 Individual Settling Defendants for any business in which that Settling
14 Defendant, individually or collectively with any other Settling Defendants, is
15 a majority owner or directly or indirectly controls, must maintain the
16 following records:
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19 A. Accounting records showing the revenues from all goods or services
20 sold, all costs incurred in generating those revenues, and the resulting
21 net profit or loss;
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23 B. Personnel records showing, for each person providing services,
24 whether as an employee or otherwise, that person's: name, addresses,
25 and telephone numbers; job title or position; dates of service; and, if
26 applicable, the reason for termination;
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- 1 C. Customer files obtained after entry of this Order showing the names,
2 addresses, telephone numbers, dollar amounts paid, and the quantity
3 and description of goods or services purchased, to the extent such
4 information is obtained in the ordinary course of business;
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6 D. Complaints and refund requests, whether received directly or
7 indirectly, such as through a third party, and any response;
8
9 E. All records necessary to demonstrate full compliance with each
10 provision of this Order, including all submissions to the FTC.
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12 **COMPLIANCE MONITORING**

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14 **X. IT IS FURTHER ORDERED** that, for the purpose of monitoring the
15 Settling Defendants' compliance with this Order, including the financial
16 representations upon which part of the judgment was suspended and any
17 failure to transfer any assets as required by this Order:
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- 19 A. Within 14 days of receipt of a written request from a representative of
20 the FTC, each Settling Defendant must: submit additional compliance
21 reports or other requested information, which must be sworn under
22 penalty of perjury; appear for depositions; and produce documents, for
23 inspection and copying. The FTC is also authorized to obtain
24 discovery, without further leave of court, using any of the procedures
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1 prescribed by Federal Rules of Civil Procedure 29, 30 (including
2 telephonic depositions), 31, 33, 34, 36, 45, and 69.

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4 B. For matters concerning this Order, the FTC is authorized to
5 communicate directly with each Settling Defendant. Settling
6 Defendants must permit representatives of the FTC to interview any
7 employee or other person affiliated with any Individual Settling
8 Defendant or Corporate Settling Defendant who has agreed to such an
9 interview. The person interviewed may have counsel present.

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12 C. The FTC may use all other lawful means, including posing, through
13 its representatives, as consumers, suppliers, or other individuals or
14 entities, to Settling Defendants or any individual or entity affiliated
15 with them, without the necessity of identification or prior notice.
16 Nothing in this Order limits the FTC's lawful use of compulsory
17 process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§
18 49, 57b-1.
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