

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

FEDERAL TRADE COMMISSION; and  
STATE OF FLORIDA, OFFICE OF THE  
ATTORNEY GENERAL, DEPARTMENT  
OF LEGAL AFFAIRS,

Plaintiffs,

vs.

Case No. 6:13-cv-789-Orl-37DAB

VACATION COMMUNICATIONS  
GROUP, LLC, a Nevada limited liability  
company; GARDNER CLINE L.L.C., a  
Florida limited liability company;  
SHELDON LEE COHEN, individually  
and as an owner, officer, or manager of  
Vacation Communications Group, LLC,  
and d/b/a Universal Timeshare Sales  
Associates and M.G.M. Universal  
Timeshares; MARK RUSSELL  
GARDNER, individually and as  
manager/member of Gardner Cline  
L.L.C.; and TAMMIE LYNN CLINE,  
individually and as manager/member of  
Gardner Cline L.L.C.,

Defendants.

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**ORDER AND PRELIMINARY INJUNCTION AS TO DEFENDANTS MARK  
RUSSELL GARDNER, TAMMIE LYNN CLINE, AND GARDNER CLINE L.L.C.**

This cause is before the Court on Plaintiffs' Motion for Preliminary Injunction (Doc. 20), filed June 5, 2013. Defendants Mark Russell Gardner, Tammie Lynn Cline, and Gardner Cline L.L.C., who have appeared with counsel in this matter, have stipulated and agreed to the requested relief. (*Id.*) The Court heard argument on Plaintiff  ti  P ti . at which Defendants Mark Russell Gardner and Tammie Lynn Cline appeared. (Doc. 23.)

## INTRODUCTION

On May 20, 2013, Plaintiffs, the Federal Trade Commission (“FTC”), and the State of Florida, Office of the Attorney General, Department of Legal Affairs (“the State of Florida”), filed a Complaint for Permanent Injunction and Other Equitable Relief in this matter, pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b) and 57b, the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101-6108, the Florida Decep4866hW3@0e Trm

party; and (4) if issued, the injunction would not be adverse to the public interest.” *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000) (en banc). Section 13 of the FTC Act, however, provides that upon “a proper showing that, weighing the equities and considering the Commission’s likelihood of ultimate success, such action would be in the public interest, and after notice to the defendant, a temporary restraining order or a preliminary injunction may be granted without bond.” 15 U.S.C. § 53(b). The “ultimate

Notwithstanding their agreement to entry of a preliminary injunction, the Court also finds that Defendants Mark Russell Gardner, Tammie Lynn Cline, and Gardner Cline L.L.C., who are in the business of telemarketing, have not provided any assurances against future violations and have not admitted to the wrongful nature of their conduct. Therefore, upon weighing these factors, the Court concludes that it is the public interest to enjoin Defendants Mark Russell Gardner, Tammie Lynn Cline, and Gardner Cline L.L.C.

Accordingly, it is hereby **ORDERED, ADJUDGED, AND DECREED** the Court **GRANTS**



8. “Material” means likely to affect a Person’s choice of, or conduct regarding, goods or services.

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

10. “Plaintiffs” means the Federal Trade Commission (“Commission” or “FTC”) and the State of Florida, Office of the Attorney General (“State of Florida”).

11. “Receivership Defendants” means Vacation Communications Group, LLC,

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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, automobiles, accounts, contracts, consumer lists, coins, precious metals, artwork, shares of stock, uncashed checks, or other Assets, or any interest therein, wherever located, including any Assets outside the territorial United States, that are:

1. Owned, controlled or held by, in whole or in part, for the benefit of, or subject to access by, or belonging to, any Stipulating Defendant;
2. In the actual or constructive possession of any Stipulating Defendant,

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Defendant or of any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by any Stipulating Defendant.

Notwithstanding the asset freeze provisions of Section III.A—F above, and upon prior written agreement with Plaintiffs and compliance with Section XV (Financial Statements), *infra*

C. Provide to counsel for the Plaintiffs, within five (5) business days of notice of this Order, a sworn statement setting forth:

1. The identification of each account or Asset titled in the name, individually or jointly, of any Stipulating Defendant; held on behalf of, or for the benefit or use of, any Stipulating Defendant; subject to any Stipulating Defendant's control, including all trust accounts on behalf of any Stipulating Defendant; or to which any Stipulating Defendant is a signatory;
2. The balance of each such account, or a description and appraisal of the value of each such Asset, as of the close of business on the day on which notice of this Order is received, and, if the account or Asset has been closed or removed, or more than \$500 withdrawn or transferred from it within the last one hundred and twenty (120) days, the date of the closure or removal of funds, the total funds removed or transferred, and the name

of any records or other Documents pertaining to each such account or Asset, including, but not limited to, originals or copies of account applications, corporate resolutions, 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.

Plaintiffs may properly serve this Order on any financial or brokerage institution, business entity or Person that holds, controls or maintains custody of any account or Asset of any Stipulating Defendant or has held, controlled or maintained custody of any account or Asset of any Stipulating Defendant at any time since January 1, 2008, by facsimile transmission, hand delivery, or overnight carrier.

#### **V. APPOINTMENT OF TEMPORARY RECEIVER**

**IT IS FURTHER ORDERED** that Brian McDowell is appointed to continue as a temporary receiver (“Receiver”) for Receivership Defendants and any of their affiliates, subsidiaries, divisions, or sales operations, wherever located, with the full power of an equity receiver. The Receiver is directed and authorized to accomplish the following:

A. Assume full control of the Receivership Defendants by removing, as the Receiver deems necessary or advisable, any director, officer, independent contractor, employee, or agent of the Receivership Defendants, including the Individual Defendants, from control of, management of, or participation in the affairs of the Receivership Defendants. The Receiver shall, however, not interfere with or be privy to the defense of this action;

B. Take custody, control, and possession of all Assets and Documents of, or in the possession or custody or under the control of, the Receivership Defendants



the Receiver in implementing these provisions in order to keep the peace and maintain security. The Receiver is authorized to provide continued access to any business premises of the Receivership Defendants to law enforcement officers, as he deems fit; and to refer to those law enforcement officers any documents or information that may appear to be relevant to their duties.

D. Conserve, hold, and manage all Assets of the Receivership Defendants 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 or creditors of the Receivership Defendants, including, but not limited to, obtaining an accounting of the assets and preventing unauthorized transfer, withdrawal, or misapplication of Assets, and including the authority to liquidate or close out any open securities or commodities futures positions of the Receivership Defendants;

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

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

G. Manage and administer the business of the Receivership Defendants until further order of this Court by performing all incidental acts that the Receiver deems to be advisable or necessary;

H. Choose, engage, and employ attorneys, accountants, appraisers, and other independent contractors and technical specialists, as the Receiver deems advisable or necessary, in the performance of duties and responsibilities under the authority granted by this Order;

I. Make payments and disbursements from the receivership estate that are





such actions or proceedings in state, federal, or foreign courts that the Receiver deems necessary and advisable to preserve or recover the Assets of the Receivership Defendants or that the Receiver deems necessary and advisable to carry out the Receiver's mandate under this Order;

M. Defend, compromise, adjust, or otherwise dispose of any or all actions or proceedings instituted in the past or in the future against the Receiver in his role as Receiver, or against the Receivership Defendants, as the Receiver deems necessary and advisable to preserve the Assets of the Receivership Defendants(e)-e TJET 3(91(th)-5(e)-3

Receiver;

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entities 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 trust, corporation, subsidiary, division or other device, or any of them, and all other persons or entities served with a copy of this Order, are hereby restrained and enjoined from directly or indirectly:

1. Transacting any of the business of the Receivership Defendants;
2. Destroying, secreting, defacing, mutilating, concealing, altering, transferring, or otherwise disposing of any Document of the Receivership Defendants, including, but not limited to books, records, tapes, discs, accounting data, checks (fronts and backs), correspondence, forms, advertisements, website designs and texts, telemarketing scripts or outlines, brochures, manuals, banking records, customer lists, customer files, customer payment histories, invoices, telephone records, ledgers, payroll records, or other Documents of any kind, including electronically stored information;
3. Transferring, receiving, altering, selling, encumbering, pledging, assigning, liquidating, or otherwise disposing of any Asset owned, controlled, or in the possession or custody of, or in which an interest is held or claimed by, the Receivership Defendants, or the Receiver;
4. Excusing debts owed to the Receivership Defendants;
5. Failing to notify the Receiver of any Asset, including accounts, of the Receivership Defendants held in any name other than the name of the Receivership Defendants, or by any person or entity other than the Receivership Defendants, or failing to provide any assistance or

information requested by the Receiver in connection with obtaining

### **VIII. BOND**

**IT IS FURTHER ORDERED** that pursuant to Fed. R. Civ. P. 65(c), the Receiver is not required to post a bond with the Clerk of this Court.

### **IX. ACCESS TO BUSINESS OFFICES AND RECORDS**

**IT IS FURTHER ORDERED** that the Stipulating Defendants, and their officers, agents, servants, employees, and attorneys, and all other Persons in active concert or participation with any of them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, and the Receiver, shall allow the Commission's representatives, agents, and assistants, as well as the Receivership Defendants' representatives, and the Individual Defendants themselves or their

possession, custody and control of the following to the Receiver:

A. All Assets of the Receivership Defendants (including, but not limited to, Desktop and laptop computers and network servers), including Assets subject to repatriation pursuant to Section XIII, infra;

B. All Documents of the Receivership Defendants, including, but not limited to, all financial and accounting records, balance sheets, income statements, bank records (including monthly statements, canceled checks, records of wire transfers, and check registers), customer lists, title documents, contracts, accounting data, written or electronic correspondence, advertisements, computer tapes, disks, or other computerized records, books, written or printed records, handwritten notes, telephone logs, telephone scripts, membership records and lists, refund records, receipts, ledgers, personal and business canceled checks and check registers, appointment books, copies of federal, state, or local business, personal income, or property tax returns, and other Documents or records of any kind that relate to the Receivership Defendants' business practices;

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

D. All keys, codes, and passwords, entry codes, combinations to locks, and information or devices required to open or gain access to any Asset or Document, including, but not limited to, access to their business premises, means of communication, accounts, computer systemn m/gsystemn l incots,ac13(a)-3(c)]o21a9y

requiring the delivery of Assets, Documents or other things, the Receiver may file *ex parte* an affidavit of non-compliance regarding the failure. Upon filing of the affidavit, the Court may authorize, without additional process or demand, writs of possession or sequestration or other equitable writs requested by the Receiver. The writs shall authorize and direct the United States Marshal or any sheriff or deputy sheriff of any county, or any other federal or state law enforcement officer, to seize the Asset, Document, or other thing and to deliver it to the Receiver.

## **XII. STAY OF ACTIONS**

**IT IS FURTHER ORDERED** that except by leave of this Court, during the















complied with this provisions of this Order, which statement shall include the names and addresses of each such Person or entity who has received a copy of the Order.

**XXI. SERVICE OF THIS ORDER**

**IT IS FURTHER ORDERED** that copies of this Order may be distribu2 ref\$ ORD 626.74 T 70

Notice may be provided by email to Denise.Kim@myfloridalegal.com

**XXIII. RETENTION OF JURISDICTION**

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

**DONE AND ORDERED** in Chambers in Orlando, Florida, on June 6, 2013.

A handwritten signature in blue ink is written over a solid blue horizontal line. The signature is cursive and appears to be 'A. Kim'. Below the blue line, there is a dark blue rectangular area containing some faint, illegible text or a watermark.

Copies:  
Counsel of Record