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IN THE UNITED STATES DIST-9.73696 TD .002 Tc 94.44 o602 Tc

1 FTC and Stipulating Defendant Stephanie Bateluna file a Joint Stipulation Regarding
2 Proposed Stipulated Preliminary Injunction As To Stephanie Bateluna. (Doc. 54.)

3 Having considered the parties' pleadings, papers, and argument, the Court hereby
4 GRANTS the FTC and Stipulating Defendant's application for a preliminary injunction
5 against Stipulating Defendant (Doc. 54) as follows.

6 FINDINGS OF FACT AND CONCLUSIONS OF LAW

7 This Court, having considered the FTC's Complaint, ex parte motion for TRO and
8 supporting papers, supplemental filing in support of the issuance of a preliminary
9 injunction, and the evidence presented, finds that:

10 1. This Court has jurisdiction over the subject matter of this case, and there is
11 good cause to believe it will have jurisdiction over all parties hereto;

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

13 3. On October 6, 2016, the FTC filed its Complaint; Memorandum in Support
14 of FTC's Ex Parte Motion for TRO; and related papers (Docs. 1-10);

15 4. On October 11, 2016, the Court entered the TRO (Doc. 22);

16 5. The TRO and all related papers were served on the Stipulating Defendant
17 (Docs. 25-30, 32, and 37);

18 6. Stipulating Defendant has consented to the entry of this Preliminary
19 Injunction;

20 7. The FTC has shown it is likely to succeed on the merits of its claims
21 pursuant to Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the TSR, 16 C.F.R. §§
22 310.3(a)(2)(iii) and 310.3(a)(4);

23 8. There is good cause to believe that the Court's ability to grant effective
24 final relief for consumers in the form of monetary restitution is best served by the
25 appointment of a Receiver;

26 9. Good cause exists to permit the FTC to take limited expedited discovery
27 from third parties as to the existence and location of Assets and Documents;

28 10. Good cause exists to appoint a Receiver;

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11. A preliminary injunction order with an Asset freeze, appointment of a Receiver, limited expedited discovery as to the existence and location of Assets and Documents, and other equitable relief in the public interest; and

12. No security is required of any agency of the United States for the issuance of a preliminary injunction. Fed. R. Civ. P. 65(c).

DEFINITIONS

For the purposes of this Preliminary Injunction, the following definitions apply:

1. "Asset" or "Assets" means any legal or equitable interest in, right to, or claim to, any and all real and personal property of Defendants, held for the benefit of Defendants, wherever located, whether in the United States or abroad, including but not limited to chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, contracts, mail or other deliveries, inventory, checks, notes, accounts, credits, receivables (7800Lises r

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- g. Purple Bulldog LLC, BBVA Compass, 2401;
- h. Cenex Hub Distribution, Bank of America, 0396;
- i. Max Results Marketing LLC, Chase Bank, 9625;
- j. Oro Canyon Marketing LLC, BBVA Compass, 1055;
- k. Southwest Billing & Payments, Chase Bank, 2226;
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1 with any of them, who receive actual notice of this Order, whether acting directly or
2 indirectly, in connection with the advertising, marketing, promotion, offering for sale,
3 sale, or performance of any service or product are temporarily restrained and enjoined
4 from making or assisting others in making, expressly or by implication:

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1 IT IS FURTHER ORDERED that, immediately upon service of this Order upon
2 them (1) any Electronic Data Host and (2) Stipulating Defendant, her officers, agents,
3 servants, employees, and attorneys, and all other persons in active concert or participation
4 with any of them, who receive actual notice of this Order, whether acting directly or
5 indirectly, shall:

6 A. Immediately take all necessary steps to ensure that any Internet website
7 used by Stipulating Defendant for the advertising, marketing, promotion, offering for
8 sale, sale, or provision of services or products prohibited by Section I of this Order
9 cannot be accessed by the public; and

10 B. Prevent the alteration, destruction or erasure of any (1) Internet website
11 used by Stipulating Defendant for the advertising, marketing, promotion, offering for
12 sale, sale, or provision of services or products prohibited by Section I of this Order by
13 preserving such websites in the format in which they are maintained currently and (2) any
14 electronically stored information stored on behalf of Stipulating Defendant.

15 IV. SUSPENSION OF INTERNET DOMAIN NAME REGISTRATIONS

16 IT IS FURTHER ORDERED that, any domain name registrar shall suspend the
17 registration of any Internet website used by Stipulating Defendant for the advertising,
18 marketing, promotion, offering for sale, sale or provision of services or products
19 prohibited by Section I of this Order and provide immediate notice to counsel for the
20 FTC of any other Internet domain names registered by Stipulating Defendant, Stipulating
21 Defendant's officers, agents, servants, employees, and attorneys, and all other persons in
22 active concert or participation with any of them who receive actual notice of this Order
23 by personal service or otherwise.

24 V. PROHIBITION ON USE OF

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managed, or controlled by, or under common control with any Defendant,
including any entity acting under a fictitious name owned by or controlled
by any Defendant, and any Assets held for, or under the name of any
Defendant at any bank or savings and loan institution, or with any broker-
dealer, escrow agent, title company, commodity trading company, payment
processing company, or previous or present or future business or firm.

1 maintains custody of any account, Document, Asset of, on behalf of, in the name of,
2 for the benefit of, subject to withdrawal by, subject to access or use by, or under the
3 signatory power of the Stipulating Defendant, other party subject to the Asset Freeze
4 above, or has held, controlled, or maintained any such account, Document, or Asset,
5 shall:

6 A. Hold, preserve, and retain within such entity's or person's control, and
7 prohibit the withdrawal, removal, alteration, assignment, transfer, pledge, hypothecation,
8 encumbrance, disbursement, dissipation, conveyance, sale, liquidation or other disposal
9 of such account, Document, or Asset held by under such entity's or person's control,
10 except as directed by further order of the Court;

11 B. Provide the Receiver immediate access to electronically stored information
12 stored, hosted, or otherwise maintained on behalf of the Stipulating Defendant for
13 forensic imaging;

14 C. Deny access to any safe deposit boxes that are either titled in the name of,
15 individually or jointly, or subject to access by the Stipulating Defendant or other party
16 subject to the Asset Freeze above;

17 D. To the extent it does not violate her Fifth Amendment right not to be
18 compelled to incriminate herself, Stipulating Defendant shall provide to counsel for the
19 FTC, within one (1) business days, sworn statement setting forth:

- 20 1. the identification of each account or Asset titled in the name
21 individually or jointly, or held on behalf of or for the benefit of, subject to
22 withdrawal by, subject to access or use by, or under the signatory power of
23 the Stipulating Defendant or other party subject to the Asset Freeze above;
- 24 2. the balance of each such account a description of the nature and
25 value of such Asset, as of the close of business on the day on which this
26 Order was served, the day before the Order was served, and the average
27 daily balance for the six months before the Order was served;

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3. the identification of any safe deposit box that is either titled in the name of, individually or jointly, or otherwise subject to access or control by the Stipulating Defendant or other party subject to the Asset Freeze above; and

4. if the account, safe deposit box, or other Asset has been closed or removed, the date closed or removed, the balance on said date, and the name or the person or entity to whom such account or other Asset was remitted;

E. To the extent it does not violate the Fifth Amendment right not to be compelled to incriminate ~~himself~~, Stipulating Defendant ~~shall~~ provide counsel for the FTC, within three (3) business days after ~~being~~ served with a request, copies of all Documents pertaining to such account ~~asset~~, including but not limited to: account statements, account applications, signatures, ~~and~~ underwriting file, checks, deposit tickets, transfers to and from the accounts, ~~and~~ transfers, all other debit and credit instruments or slips, 1099 forms, and safe deposit box logs; and

F. To the extent it does not violate the Fifth Amendment right not to be compelled to incriminate ~~himself~~, Stipulating Defendant shall cooperate with all reasonable requests of the FTC ~~related~~ to this Order's implementation.

IT IS FURTHER ORDERED that this Section shall apply to both existing Documents, records, and Assets

1 within one (1) business day of service of this Order, shall prepare and deliver to counsel
2 for the FTC a completed financial statement, ~~not~~ as of the date of service of this
3 Order upon such Stipulating Defendant, in the form of Attachment A to this Order
4 captioned "Financial Statement of Individual Defendant," to the extent it does not violate
5 her Fifth Amendment right not to be compelled to incriminate herself.

6 IX. CREDIT REPORTS

7 IT IS FURTHER ORDERED that the FTC may obtain credit reports concerning
8 the Stipulating Defendant pursuant to Section 604(a)(1) of the Fair Credit Reporting Act,
9 15 U.S.C. § 1681b(a)(1), and that, upon written request, any credit reporting agency from
10 which such reports are requested shall provide them to the FTC.

11 X. REPATRIATION OF FOREIGN ASSETS

12 IT IS FURTHER ORDERED that, within three (3) days following the service of
13 this Order, the Stipulating Defendant shall:

14 A. Transfer to the territory of the United States and provide the FTC and the
15 Receiver with a full accounting of all Assets, Documents, and records outside of the
16 territory of the United States that are:

- 17 1. owned or controlled by;
- 18 2. subject to access by;
- 19 3. held in whole or in part for the benefit of;
- 20 4. belonging to any entity that is directly or indirectly owned, managed,
21 or under the control of; or
- 22 5. belonging to a person under the control of the Stipulating Defendant;

23 B. Hold all repatriated Assets, Documents, and records as required by the
24 Asset Freeze imposed by this Order; and

25 C. Provide the FTC access to all records of accounts or Assets of the
26 Stipulating Defendant held by any Financial Institution or other person located outside
27 the territorial United States by signing the Consent to Release of Financial Records
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1 attached to this Order as Attachment C and by signing any other Documents required by
2 any person, including any Financial Institution, or other person holding any such Asset.

3 XI. NON-INTERFERENCE WITH REPATRIATION

4 IT IS FURTHER ORDERED that Stipulating Defendant, and each of her
5 successors, assigns, members, officers, agents, employees, and attorneys, and
6 those persons in active concert or participation with them who receive actual notice of
7 this Order by personal service or otherwise, whether acting directly or through any entity,
8 corporation, subsidiary, division, affiliate or other device, are hereby temporarily
9 restrained and enjoined from taking any action, directly or indirectly, that may result in
10 the encumbrance or dissipation of foreign Assets in the hindrance of the repatriation
11 required by the preceding "Repatriation of Assets" Section of this Order, including, but
12 not limited to:

13 A. Sending any statement, letter, fax, email or wire transmission, or
14 telephoning or engaging in any other act, directly or indirectly, that results in a
15 determination by a foreign trustee or other party that a "duress" event has occurred under
16 the terms of a foreign trust agreement until such time that all Assets have been fully
17 repatriated pursuant to the "Repatriation of Assets" Section of this Order; or

18 B. Notifying any trustee, protector, or other agent of any foreign trust or other
19 related entities of either the existence of this Order, or of the fact that repatriation is
20 required pursuant to a court order, until such time that all Assets have been fully
21 repatriated pursuant to "Repatriation of Assets" Section of this Order.

22 XII. RECORDKEEPING AND BUSINESS OPERATIONS

23 IT IS FURTHER ORDERED that Stipulating Defendant is hereby temporarily
24 restrained and enjoined from:

25 A. Failing to create and maintain Documents that, in reasonable detail,
26 accurately, fairly, and completely reflect her income, disbursements, transactions, and use
27 of money;

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1 B. Creating, operating, or exercising control over any business entity,
2 including any partnership, limited partnership, joint venture, sole proprietorship, limited
3 liability company or corporation, without first providing the Commission with a written
4 statement disclosing: (1) the name of the business entity; (2) the address and telephone
5 number of the business entity; (3) the names of the business entity's officers, directors,
6 principals, managers, and employees; and (4) a detailed description of the business
7 entity's intended activities; and

8 C. Affiliating with, becoming employed by, or performing any work for any
9 business that is not a named Stipulating Defendant in this action without first providing
10 the Commission with a written statement disclosing: (1) the name of the business; (2) the
11 address and telephone number of the business; (3) a detailed description of the nature
12 of the business or employment and the nature of the Stipulating Defendant's duties and
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1 premises, to provide the Receivers with proof of identification, and/or to demonstrate to
2 the satisfaction of the Receiver that such persons are not removing from the premises
3 Documents or Assets of the Receivership Entities. Such authority shall include, but not
4 be limited to, the authority to order any owner, director, officer, employee, or agent of the
5 Receivership Entities to leave the business premises;

6 D. Conserve, hold, and manage all receivership Assets, and perform all acts
7 necessary or advisable to preserve the value of those Assets, in order to prevent any
8 irreparable loss, damage, or injury to consumers, including, but not limited to, obtaining
9 an accounting of the Assets and preventing the transfer, withdrawal, or misapplication of
10 Assets;

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

12 F. Prevent the inequitable distribution of Assets and determine, adjust, and
13 protect the interests of consumers and creditors who have transacted business with the
14 Receivership Entities;

15 G. Manage and administer the business of the Receivership Entities until
16 further order of this Court by performing all incidental acts that the Receiver deems to be
17 advisable or necessary, which includes rehiring, or dismissing any employees,
18 independent contractors, or agents;

19 H. Continue and conduct the businesses of the Stipulating Defendants in such
20 manner, to such extent, and for such duration as the Receiver may in good faith deem to
21 be necessary or appropriate to operate the businesses profitably, using the Assets of the
22 receivership estate, and lawfully, if at all;

23 I. Choose, engage, and employ attorneys, accountants, appraisers,
24 investigators, and other independent contractors and technical specialists, as the Receiver
25 deems advisable or necessary in the performance of their duties and responsibilities,
26 including but not limited to the law firm in which the Receiver is a partner;

27 J. Make payments and disbursements from the receivership estate that are
28 necessary or advisable for carrying out the directions of, or exercising the authority

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payment of reasonable compensation at the time of the filing of any report released by the

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D. If any Individual Stipulating Defendant possesses a smartphone or tablet on receivership premises, they will turn over the device to the Receiver for imaging. Within two (2) business days, the Receiver will return the device; and

E. If any Documents, computers, smartphones, tablets, or electronic data storage devices containing information related to the business practices or finances of the Receivership Entities are at a location other than those listed herein, including but not

1 toward any limit on discovery set forth in the Federal Rules of Civil Procedure or this
2 Court's Local Rules;

3 C. For purposes of this Section, service of deposition notices and other discovery
4 requests upon the parties to this action personally or by facsimile, email, certified or
5 registered mail, or private courier (including a process server) with a receipt from the
6 courier showing delivery; and

7 D. Pursuant to Fed. R. Civ. P. 45, subpoena Documents immediately from any
8 Financial Institution, business entity, Electronic Data Host, or person served with a copy
9 of this Order that holds, controls, or maintains custody of any account, Document, or
10 Asset of, on behalf of, in the name of, for the benefit of, subject to withdrawal by, subject
11 to access or use by, or under the signature of the Stipulating Defendant or other
12 party subject to the Asset Freeze above, or held, controlled, or maintained any such
13 account, Document, or Asset. The recipient shall respond to such subpoena within three
14 (3) business days after service. The CF and the Receiver may effect service by
15 electronic mail.

16 XXIII. BANKRUPTCY PETITIONS

17 IT IS FURTHER ORDERED that, in light of the appointment of the Receiver,
18 the Receivership Entities are hereby prohibited from filing petitions for relief under the
19 United States Bankruptcy Code, 11 U.S.C. § 101 et seq. without prior permission from
20 this Court.

21 XXIV. STAY OF ACTIONS

22 IT IS FURTHER ORDERED that:

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

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

6 2. Accelerating the due date of any obligation or claimed obligation;
7 filing or enforcing any lien; taking or attempting to take possession,
8 custody, or control of any Asset; attempting to foreclose, forfeit, alter, or
9 terminate any interest in an Asset, whether such acts are part of a judicial
10 proceeding, are acts of self-help, or otherwise;

11 3. Executing, issuing, serving, or causing the execution, issuance or
12 service of, any legal process, including but not limited to attachments,
13 garnishments, subpoenas, writs of sequestration, writs of execution, or any other
14 form of process, whether specified in this Order or not; or

15 4. Doing any act or thing whatsoever to interfere with the Receiver's
16 taking custody, control, possession, or management of Assets or
17 Documents subject to this receivership to harass or interfere with the
18 Receiver in any way; or to interfere in any manner with the exclusive
19 jurisdiction of this Court over the Assets or Documents of the Receivership
20 Entities.

21 B. This Section does not stay:

22 1. The commencement or continuation of a criminal action or
23 proceeding;

24 2. The commencement or continuation of action or proceeding by a
25 governmental unit to enforce such governmental unit's police or regulatory
26 power;

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3. The enforcement of a judgment, other than a money judgment, obtained in an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power; or

4. The issuance to the Receivership Entities of a notice of tax deficiency.

XXV. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY STIPULATING DEFENDANT

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

XXVI. CORRESPONDENCE WITH PLAINTIFF

IT IS FURTHER ORDERED that, for the purposes of this Order, because mail addressed to the FTC is subject to delay due to heightened security screening, all correspondence and service of pleadings on Plaintiff shall be sent via electronic submission and Federal Express to:

Elsie B. Kappler
Hong Park
Federal Trade Commission
600 Pennsylvania Ave., NW, Mail Drop CC-9528
Washington, DC 20580
Telephone: (202) 326-2466 (Kappler), -2158 (Park)
ekappler@ftc.gov, hnpark@ftc.gov

XXVII. COOPERATION WITH FTC

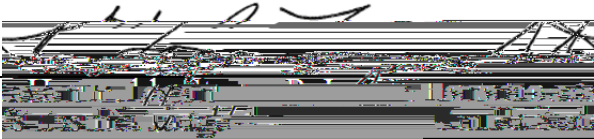
IT IS FURTHER ORDERED that Stipulating Defendant shall fully cooperate with and assist the FTC in this case. Stipulating Defendant's cooperation and assistance shall include, but not be limited to testifying at any hearing and providing any information to the FTC that the FTC deems necessary to obtain relief for consumers in this case. Nothing herein shall prevent Stipulating Defendant from asserting any privilege against self-incrimination that she may have under the Fifth Amendment.

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1 XXXI. RETENTION OF JURISDICTION

2 IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this
3 matter for all purposes of construction, modification, and enforcement of this Order.

4 Dated this 28th day of October, 2016.

5  A handwritten signature in black ink, appearing to be "L. D. M.", is written over a horizontal line. Below the line, there is a large, dense, and illegible scribble of black ink.

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