

NO JS-6/TERM PTYS

1 adds several defendants as a relief defendant court Plaintiff's Complaint and  
2 Amended Complaint allege that Defendants, acting as a common enterprise,  
3 violated Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C.  
4 § 45; Section 4 of the Restore Online Shoppers' Confidence Act ("ROSCA"), 15  
5 U.S.C. § 8404; and Section 917(c) of the Electronic Funds Transfer Act  
6 ("EFTA"), 15 U.S.C. § 1693o(c).

7 The FTC having filed its Second Motion for Entry of Default Judgment and  
8 Order for Permanent Injunction and Other Equitable Relief (Motion), and the  
9 Court having considered the FTC's Motion, supporting exhibits, and the  
10 Supplement to these filings (Dkt. 486) the FTC's Motion is hereby granted.

11 THEREFORE, IT IS ORDERED as follows:

12 FINDINGS

13 1. "The general rule of law is that upon default the factual allegations of the  
14 complaint, except those relating to the amount of damages, will be taken as true."

15 *See* *Visy, Inc. v. Hill*, 826 F.2d 915, 917-18 (9th Cir. 1987).

16 2. This Court is satisfied that Defendant Defendants were properly served  
17 with the First Amended Complaint:

- 18 a. Defendants AMD Financial Network, Inc.; Focus Media Solutions, Inc.;
- 19 Secured Commerce LLC; USM Products, Inc.; Merchant Leverage
- 20 Group, Inc.; DMA Media Holdings, Inc.; Shalita Holdings, Inc.; and All

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Star Beauty Products, Inc. were served as described in the Proofs of Service filed with the Clerk of the Court. (Dkts. 406, 373, 376, 379, 374, 372, 378, 371); and

b. Defendants BunZai Media Group, Inc.; Pinnacle Logistics, Inc.; DSA Holdings, Inc.; Lifestyle Media Brands, Inc.; Agoa Holdings, Inc.; Safehaven Ventures, Inc.; Heritage Alliance Group, Inc.; AMD Financial Network, Inc.; SBM Management, Inc.; Kai Media, Inc.; and Insight Media, Inc. were served through their officer, managing or general agent, or other agent authorized by appointment or by law, as acknowledged at Dkt. 486.

3. None of the Defaulting Defendants has answered or otherwise appeared in this action.

a. The Clerk of the Court has entered a Default against Secured Commerce, LLC, on May 5, 2016 (Dkt. 418).

b. The Clerk of the Court has entered Defaults against BunZai Media Group, Inc.; Pinnacle Logistics, Inc.; DSA Holdings, Inc.; Lifestyle Media Brands, Inc.; Agoa Holdings, Inc.; Safehaven Ventures, Inc.; Heritage Alliance Group, Inc.; SBM Management, Inc.; Kai Media, Inc.; Media Urge, Inc.; and Insight Media, Inc. on July 18, 2016. (Dkts. 504, 505, and 506).

[PROPOSED] DEFAULT JUDGMENT AND

[PROPOSED] DEFAULT JUDGMENT AND

1 Complaint (Dkt. 486 at 2) but failed to appear or defend. The Clerk of the Court  
2 entered a Default against this Defendant on July 18, 2016. (Dkt. 504).

3 12. Pinnacle Logistics, Inc. was a California corporation with its principal  
4 place of business at the same location as BunZai Media Group, Inc. (Dkt. 235 at  
5 p.8 ¶10). This Defendant was properly served with Plaintiff's Summons and  
6 Amended Complaint (Dkt. 486 at 2) but failed to appear or defend. The Clerk of  
7 the Court entered a Default against this Defendant on July 18, 2016. (Dkt. 506).

8 13. DSA Holdings, Inc. was a California corporation with its principal place of  
9 business at the same location as Pinnacle Logistics, Inc. (Dkt. 235 at p.8 ¶11).  
10 This Defendant was properly served with Plaintiff's Summons and Amended  
11 Complaint (Dkt. 486 at 2) but failed to appear or defend. The Clerk of the Court  
12 entered a Default against this Defendant on July 18, 2016. (Dkt. 504).

13 14. Lifestyle Media Brands, Inc. was a California corporation with its  
14 principal place of business at the same location as BunZai Media Group, Inc.  
15 (Dkt. 235 at p.9 ¶12). This Defendant was properly served with Plaintiff's  
16 Summons and Amended Complaint (Dkt. 486 at 2) but failed to appear or defend.  
17 The Clerk of the Court entered a Default against this Defendant on July 18, 2016.  
18 (Dkt. 505).

19 15. Agoa Holdings, Inc. was a California corporation with its principal place  
20 of business at the same location as BunZai Media Group, Inc. (Dkt. 235 at p.9

1 ¶13). This Defendant was properly served with Plaintiff's Summons and  
2 Amended Complaint (Dkt. 486 at 2) but failed to appear or defend. The Clerk of  
3 the Court entered a Default against Defendant on July 18, 2016. (Dkt. 504).

4 16. Safehaven Ventures, Inc. was a California corporation with its principal  
5 place of business at the same location as BunZai Media Group, Inc. (Dkt. 235 at  
6 p.10 ¶15). This Defendant was properly served with Plaintiff's Summons and  
7 Amended Complaint (Dkt. 486 at 2) but failed to appear or defend. The Clerk of  
8 the Court entered a Default against Defendant on July 18, 2016. (Dkt. 505).

9 17. Heritage Alliance Group, Inc. also doing business as AuraVie  
10 Distribution, was a California corporation with its principal place of business at  
11 the same location as BunZai Media Group, Inc. (Dkt. 235 at p.10 ¶16). This  
12 Defendant was properly served with Plaintiff's Summons and Amended  
13 Complaint (Dkt. 486 at 2) but failed to appear or defend. The Clerk of the Court  
14 entered a Default against this Defendant on July 18, 2016. (Dkt. 504).

15 18. AMD Financial Network, Inc. was a California corporation with its  
16 principal place of business at the same location as BunZai Media Group, Inc.  
17 (Dkt. 235 at p.11 ¶17). This Defendant was properly served with Plaintiff's  
18 Summons and Complaint (Dkt. 406) but failed to appear or defend. The Clerk of  
19 the Court entered a Default against Defendant on August 9, 2016. (Dkt. 525).

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1 19. SBM Management, Inc. was a California corporation. (Dkt. 235 at p.11

2 ¶2mJet p.11 10

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[PROPOSED] DEFAULT JUDGMENT AND ORDER FOR PERMANENT INJUNCTION  
AND OTHER EQUITABLE RELIEF

1 the Court entered a Default against Defendant on August 9, 2016. (Dkt. 526).

2 28. Shalita Holdings, Inc. was a California corporation with its principal place  
3 of business at the same location as BunZai Media Group, Inc. (Dkt. 235 at p.16  
4 ¶30). This Defendant was properly served with Plaintiff's Summons and

5 Amended Complaint (Dkt. 486 at 3) but failed to appear or defend. The Clerk of

6 the Court entered a Default against Defendant on August 10, 2016. (Dkt.  
7 527).

8 29. All Star Beauty Products, Inc. was a California corporation with its  
9 principal place of business at the same location as BunZai Media Group, Inc.

10 (Dkt. 235 at p.16 ¶31). This Defendant was properly served with Plaintiff's

11 Summons and Amended Complaint (Dkt. 486) but failed to appear or defend.

12 The Clerk of the Court entered a Default against this Defendant on August 10,  
13 2016. (Dkt. 527).

14 COMMERCE

15 30. At all times material to this Complaint, Defendants maintained a substantial

16 course of trade in or affecting commerce, "commerce" is defined in Section 4

17 of the FTC Act, 15 U.S.C. § 44. (Dkt. 235 at p.23 ¶44). Defendants' Internet

18 skincare product business was marketed and sold products, to consumers

19 nationwide. (Dkt. 235 at p.5 ¶2).

COMMON ENTERPRISE

31. The Court finds that Defaulting Defendants participated as members of a common enterprise and:

- a. conducted the business practices ~~same~~ through an interrelated network of companies with common owners, officers, managers, business functions, employees and office locations (Dkt. 235 at p.22 ¶42); and
- b. the companies commingled funds, used the same deceptive sales techniques, and had centralized record keeping. (Dkt. 235 at p.22 ¶50).

32. These allegations, taken as true, establish that, as members of a common enterprise, Defaulting Defendants violated Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), Section 4 of ROSCA, 15 U.S.C. § 8403, and Section 907(a) of EFTA, 15 U.S.C. § 1693e(a). (Dkt. 235 at p.6 ¶3 and p.22 ¶42).

DEFAULTING DEFENDANTS' LAW VIOLATIONS

33. The Court finds that, in connection with the online sale of skincare products through a negative option continuity plan and as members of a common enterprise, Defaulting Defendants violated Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), by failing to disclose, or disclose adequately, material terms and conditions of their offer, including:

- a. that Defendants would use consumers' credit and debit card information to charge consumers the full cost of the trial products upon expiration of

- 1 a limited trial period (Dkt. 235 at p.36 ¶71(a));
- 2 b. the dates on which the trial period began and ended (Dkt. 235 at p.36
- 3 ¶71(b));
- 4 c. that Defendants would automatically enroll consumers in a negative
- 5 option continuity plan with additional charges (Dkt. 235 at p.36 ¶71(c));
- 6 d. the cost of the continuity plan and the frequency and duration of the
- 7 recurring charges (Dkt. 235 at p.36 ¶71(d));
- 8 e. the means consumers must use to cancel the negative option program to

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1 37. The Court finds that, in connection with the online sale of skincare products  
2 through a negative option continuity plan and as members of a common  
3 enterprise, Defaulting Defendants violated Section 5(a) of the FTC Act, 15 U.S.C.  
4 § 45(a), by falsely representing, expressly or by implication, that Defendants are  
5 accredited by and have a rating of "A" with the Better Business Bureau. (Dkt.  
6 235 at p.37-38 ¶¶76-78).

7 38. Accordingly, the Court finds Defaulting Defendants liable under Count 3 of  
8 the Amended Complaint. (Dkt. 235 at 37).

9 39. The Court finds that, in connection with the online sale of skincare products  
10 through a negative option continuity plan and as members of a common  
11 enterprise, Defaulting Defendants violated Section 5(a) of the FTC Act, 15 U.S.C.  
12 §§ 45(a) and (n) by having caused charges to be submitted for payment to the credit  
13 and debit cards of consumers without their express informed consent. (Dkt. 235 at  
14 p.38 ¶¶79-81).

15 40. Accordingly, the Court finds Defaulting Defendants liable under Count 4 of  
16 the Amended Complaint. (Dkt. 235 at 38).

17 41. The Court finds that, in connection with the online sale of skincare products  
18 through a negative option continuity plan and as members of a common  
19 enterprise, Defaulting Defendants violated Section 4 of ROSCA, 15 U.S.C.  
20 § 8403, by failing to:

[PROPOSED]P

1 b. debiting consumers' bank accounts on a recurring basis without  
2 providing a copy of a written authorization signed or similarly  
3 authenticated by the consumer for preauthorized electronic fund  
4 transfers from the consumer's account. (Dkt. 235 at p.42 ¶194).

5 44. Accordingly, the Court finds Defining Defendants liable under Count 6 of  
6 the Amended Complaint. (Dkt. 235 at 42).

7 PERMANENT INJUNCTIVE RELIEF

8 45. Section 13(b) of the FTC Act authorizes courts to issue a permanent  
9 injunction whenever a defendant violates the laws enforced by the Commission  
10 and is likely to continue to violate them. *FTC v H.N. Sigin* ., 668 F.2d 1107,  
11 1111 (9th Cir. 1982);

[PROPOSED]



[PROPOSED] DEFAULT JUDGMENT AND

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1 B. "Charge" or "Charging" means causing billing information to be  
2 submitted for payment, including against a consumer's credit card, debit card,  
3 bank account, phone bill, or other account, or otherwise attempting to collect  
4 money or other consideration.

5 C. "Clear and conspicuous" means that a required disclosure is difficult to  
6 miss (i.e., easily noticeable) and easily understandable by ordinary consumers,  
7 including in all of the following ways:

8 1. In any communication that is solely visual or solely audible, the  
9 disclosure must be made through the same means through which the  
10 communication is presented. In any communication made through both visual and  
11 audible means, such as a television advertisement, the disclosure must be  
12 presented simultaneously in both the visual and audible portions of the  
13 communication even if the representation requiring the disclosure is made in only  
14 one means.

15 2. A visual disclosure, by its size, contrast, location, the length of time it  
16 appears, and other characteristics, must stand out from any accompanying text or  
17 other visual elements so that it is easily noticed, read, and understood.

18 3. An audible disclosure, including by telephone or streaming video,  
19 must be delivered in a volume, speed and cadence sufficient for ordinary  
20 consumers to easily hear and understand it.

1 4. In any communication using an interactive electronic medium, such  
2 as the Internet or software, this disclosure must be unavoidable.

3 5. On a product label, the disclosure must be presented on the principal  
4 display panel.

5 6. The disclosure must use diction and syntax understandable to  
6 ordinary consumers and must appear in each language which the representation  
7 that requires the disclosure appears.

8 7. The disclosure must comply with these requirements in each medium  
9 through which it is received, including all electronic devices and face-to-face  
10 communications.

11 8. The disclosure must not be contradicted or mitigated by, or  
12 inconsistent with, anything else in the communication.

13 9. When the representation or sales pitch targets a specific audience,  
14 such as children, the elderly, or the mentally ill, "ordinary consumers" includes  
15 reasonable members of that group.

16 D. "Credit Card Laundering" means:

17 1. Presenting or depositing into, or causing or allowing another to  
18 present or deposit into, the credit card system for payment, Credit Card Sales  
19 Draft generated by a transaction that is the result of a credit card transaction  
20 between the cardholder and any Defendant;

1           2.     Employing, soliciting, or otherwise causing or allowing a Merchant  
2 or an employee, representative, or agent of a Merchant, to present to or deposit  
3 into the credit card system for payment a Credit Card Sales Draft generated by a  
4 transaction that is not the result of a credit card transaction between the cardholder  
5 and the Merchant; or

6           3.     Obtaining access to the credit card system through the use of a  
7 business relationship or an affiliation with a Merchant, when such access is not  
8 authorized by the Merchant Account agreement or the applicable credit card  
9 system.

10 E.     “Credit Card Sales Draft” means any record or evidence of a credit card  
11 transaction.

12 F.     “Continuity Plan” means any plan, arrangement, or system in  
13 which a consumer is periodically charged for products or services prior  
14 notification by the seller before each charge.

15 G.     “Defendants” means Defaulting Defendants and Alon Nottea, Motti  
16 Nottea, Doron Nottea, Igor Latsanovskiy, Mizrahi, Roi Reveni, Paul Medina,  
17 Alan Argaman, and CalEnergy, Inc.

18 H.     “Defaulting Defendants” means all of the Defaulting Corporate  
19 Defendants, individually, collectively, or in any combination.

20           1.     “Defaulting Corporate Defendants” means BunZai Media Group,

1 Inc.; Pinnacle Logistics, Inc.; DSA Holdings, Inc.; Lifestyle Media Brands, Inc.  
2 Agoa Holdings, Inc.; Safehaven Ventures, Inc.; Heritage Alliance Group, Inc.;  
3 SBM Management, Inc.; Medlarge, Inc.; Kai Media, Inc.; Insight Media, Inc.;  
4 Secured Commerce, LLC; Shalita Holdings, Inc.; USM Products, Inc.; All Star  
5 Beauty Products, Inc.; AMD Financial Network, Inc.; DMA Media Holdings,  
6 Inc.; Focus Media Solutions, Inc.; and Meant Leverage Group, Inc.; and their  
7 successors and assigns.

8 I. "Electronic Fund Transfer" means any transfer of funds, other than a  
9 transaction originated by check, draft, similar paper instrument, which is  
10 initiated through an electronic terminal, telephonic instrument, or computer or  
11 magnetic tape so as to order, instruct, or authorize a financial institution to debit or  
12 credit an account. Such term includes point-of-sale transfers, automated teller  
13 machine transactions, direct deposits, and withdrawals of funds, and transfers  
14 initiated by telephone. Such term does not include:

- 15 1. Any check guarantee or authorization service that does not directly  
16 result in a debit or credit to a consumer's account;
- 17 2. Any transfer of funds, other than those processed by automated  
18 clearinghouse, made by a financial institution on behalf of a consumer by means  
19 of a service that transfers funds held either Federal Reserve banks or other  
20 depository institutions and that is not designed primarily to transfer funds on

1 behalf of a consumer;

2 3. Any transaction the primary purpose of which is the purchase or sale  
3 of securities or commodities through a broker-dealer registered with or regulated  
4 by the Securities and Exchange Commission;

5 4. Any automatic transfer from a savings account to a demand deposit  
6 account pursuant to an agreement between a consumer and a financial institution  
7 for the purpose of covering an overdraft or maintaining an agreed upon minimum  
8 balance in the consumer's demand deposit account; or

9 5. Any transfer of funds which is initiated by a telephone conversation  
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1 charitable contribution.

2 M. “Negative Option Feature” means, in an offer or agreement to sell or  
3 provide any good or service, a provision under which the consumer’s silence or  
4 failure to take an affirmative action to reject a good or service or to cancel the  
5 agreement is interpreted by the seller or provider as acceptance or continuing  
6 acceptance of the offer or agreement.

7 N. “Preauthorized Electronic Fund Transfer” as defined by the Electronic  
8 Fund Transfer Act, 15 U.S.C. § 1693a(10) means an electronic fund transfer  
9 authorized in advance to recur at substantially regular intervals.

10 O. “Receiver” means Charlene Koonce, the person appointed by the Court in  
11 this matter pursuant to the Temporary Restraining Order and the Preliminary  
12 Injunction.

13 ORDER

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1                                    II.    PROHIBITED BUSINESS ACTIVITY

2                    IT IS FURTHER ORDERED that Defaulting Defendants and their  
3 officers, agents, employees, and attorneys, all other persons in active concert  
4 or participation with any of them, who receive actual notice of this Order, whether  
5 acting directly or indirectly, in connection

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- 1 1. That a good or service is free, a ~~bona~~ gift, a trial, without cost;
- 2 2. That a good or service is available ~~for~~ a minimal processing, service,  
3 or administrative fee or without further obligation;
- 4 3. That a purchase is “risk free” or offered with a satisfaction guarantee  
5 or money-back guarantee;
- 6 4. That the seller is accredited ~~or~~ favorably by ~~the~~ Better Business  
7 Bureau;
- 8 5. A seller’s affiliation with, or endorsement or sponsorship by, any  
9 person or entity;
- 10 6. The amount that a consumer’s ~~credit~~ debit card will be charged  
11 and the timing of the charge(s);
- 12 7. That a transaction has been ~~authorized~~ authorized by a consumer;
- 13 8. The dates that any limited time ~~sales~~ sales offer begins and ends;
- 14 9. The requirements or terms of the seller’s refund or cancellation  
15 policies;
- 16 10. The identity of the seller, including the seller’s name, physical  
17 address, and customer ~~service~~ service telephone number;
- 18 11. The total costs to purchase, receive ~~use~~, and the quantity of, any  
19 goods or services that are the subject of the sales offer;
- 20 12. Any material restriction, limitation ~~or~~ condition to purchase, receive,



1 the seller's name, physical address, telephone number; (vii) the date of the  
2 customer's oral authorization.;

3 F. Failing to obtain written authorization signed or similarly authenticated  
4 from consumers for Preauthorized Electronic Fund Transfers from the consumer's  
5 account; or

6 G. Failing to provide a copy of a written authorization signed or similarly  
7 authenticated by a consumer for Preauthorized Electronic Fund Transfers from the  
8 consumer's account.

9 III. PROHIBITIONS RELATED TO MERCHANT ACCOUNTS

10 IT IS FURTHER ORDERED that Defaulting Defendants, Defaulting  
11 Defendants' officers, agents, employees, attorneys, and all other persons in  
12 active concert or participation with any of them, who receive actual notice of this  
13 Order, whether acting directly or indirectly, in connection with promoting or  
14 offering for sale any good or service, are permanently restrained and enjoined  
15 from Credit Card Laundering.

16 IV. MONETARY JUDGMENT

17 IT IS FURTHER ORDERED that:

18 A. Judgment in the amount SEVENTY-TWO MILLION SIX HUNDRED  
19 AND NINETY-TWO THOUSAND EIGHT HUNDRED AND TWELVE

20 Dollars (\$72,692,812)s entered in favor of the Commission against Defaulting  
[PROPOSED] DEFAULT JUDGMENT AND ORDER FOR PERMANENT INJUNCTION  
AND OTHER EQUITABLE RELIEF

1 Tc -.0.04 re64j T\* ( 2 -.0024US7 ( 17 )Tj T\*ENT)TiUNCTION 17







1 VIII. ORDER ACKNOWLEDGMENTS

2 IT IS FURTHER ORDERED that Defaulting Defendants obtain  
3 acknowledgments of receipt of this Order:

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

7 B. For 20 years after entry of this Order each Defaulting Defendant, for any  
8 business that he, individually or collectively with any other Defendant, is the  
9 majority owner or controls directly or indirectly, must deliver a copy of this Order

IX. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Defaulting Defendants make timely submissions to the Commission:

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

1. Each Defaulting Defendant must (a) identify the primary physical, postal, and email addresses and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with such Defaulting Defendant; (b) identify all of such Defaulting Defendant's businesses by all of their names, telephone numbers, and physical, postal, and Internet addresses; (c) describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sale and the involvement of any other Defendant which Defaulting Defendants must



1 name, physical address, and any Internet address of the business or entity.

2 C. Each Defaulting Defendant must submit to the Commission notice of the  
3 filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by

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1 Commission, each Defaulting Defendant must: submit additional compliance

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1 Defaulting Defendant, pursuant to Section 604(1) of the Fair Credit Reporting  
2 Act, 15 U.S.C. §1681b(a)(1).

3 XIII. RECEIVERSHIP TERMINATION

4 IT IS FURTHER ORDERED that Charlene Koonce of Scheef & Stone,  
5 LLP shall continue to serve as the Court Receiver and is hereby directed and  
6 authorized to accomplish the following:

7 A. Complete the transfer, liquidation, or other disposition of the  
8 assets of the Defaulting Corporate Defendants and any other assets ordered to be  
9 transferred to the Receiver under the provisions of this Order;

10 B. Prepare, file, and pay any payroll tax obligations due on or before  
11 the date of the Receiver's reports submitted in Subsection C below, for the  
12 Defaulting Corporate Defendants;

13 C. Prepare and file with the Court a

1 E. Any money that the Court finds should be awarded to the  
2 Receiver shall be paid only from the monies or other assets in the possession of,  
3 or under the control of, the Receiver. Notwithstanding, the Debtor shall have an obligation to pay any  
4 money to the Receiver for compensation or expenses;

5 F. Upon the Court's approval of the Receiver's final application for  
6 compensation and expenses, distributed to the Commission all remaining funds in  
7 partial satisfaction of the judgment. Such payment must be made by electronic  
8 fund transfer in accordance with instructions to be provided by a representative of  
9 the Commission.

10 The Receiver must complete all duties within 120 days after the entry of  
11 this Order, but any party or the Receiver may request that the Court extend the  
12 Receiver's term for good cause. Upon completion of the above tasks, the duties of  
13 the Receivership shall terminate, and the Receiver shall be discharged.

14 XIV. RETENTION OF JURISDICTION

15 IT IS FURTHER ORDERED that this Court retains jurisdiction of this  
16 matter for purposes of construction, modification, and enforcement of this Order.

17 SO ORDERED this 22<sup>nd</sup> day of August, 2016.

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20 GEORGE H. WU, U.S. DISTRICT JUDGE