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 14 FEDERAL TRADE COMMISSION

15 UNITED STATES DISTRICT COURT
 16 FOR THE CENTRAL DISTRICT OF CALIFORNIA

17 FEDERAL TRADE COMMISSION,
 18

19 Plaintiff,

20 v.

21 AURA LABS, INC., a corporation, also
 d/b/a AuraLife and AuraWare, and

22 RYAN ARCHDEACON, individually and
 as an officer of AURA LABS, INC.,

23 Defendants.
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Case No. 8:16-cv-2147-DOC
 (KESx)_

ORDER FOR PERMANENT
 INJUNCTION AND
 MONETARY JUDGMENT [3]

1 Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), filed
2 its Complaint for Permanent Injunction and Other Equitable Relief in this matter,
3 pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”),
4 15 U.S.C. § 53(b). The Commission and Defendants Aura Labs, Inc. and Ryan
5 Archdeacon stipulate to the entry of this Stipulated Order for Permanent
6 Injunction and Monetary Judgment (“Order”) to resolve all matters in dispute in
7 this action between them.
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10 **THEREFORE, IT IS ORDERED** as follows:

11 **FINDINGS**

- 12
- 13 1. This Court has jurisdiction over this matter.
 - 14 2. The Complaint charges that Defendants participated in deceptive acts or
15 practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, and
16 disseminated false advertisements in or affecting commerce for the purpose of
17 inducing, or which is likely to induce, the purchase of food, drugs, devices,
18 services, or cosmetics in violation of Section 12 of the FTC Act, 15 U.S.C. § 52,
19 in connection with the advertising, marketing, distribution, and sale of a mobile
20 device software application called Instant Blood Pressure.
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1 3. Defendants neither admit nor deny any of the allegations in the Complaint,
2 except as specifically stated in this Order. Only for purposes of this action,
3 Defendants admit the facts necessary to establish jurisdiction.
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5 4. Defendants waive any claim that they may have under the Equal Access to
6 Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through
7 the date of this Order, and agree to bear their own costs and attorney fees.
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9 5. Defendants waive all rights to appeal or otherwise challenge or contest the
10 validity of this Order.
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12 **DEFINITIONS**

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

14 A. **“Clear(ly) and Conspicuous(ly)”** means that a required disclosure is
15 difficult to miss (*i.e.*, easily noticeable) and easily understandable by ordinary
16 consumers, including in all of the following ways:
17

18 1. In any communication that is solely visual or solely audible, the
19 disclosure must be made through the same means through which the
20 communication is presented. In any communication made through both
21 visual and audible means, such as a television advertisement, the disclosure
22 must be presented simultaneously in both the visual and audible portions of
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1 the communication even if the representation requiring the disclosure is
2 made in only one means.

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

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

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

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

19
20 6. The disclosure must comply with these requirements in each medium
21 through which it is received, including all electronic devices and
22 face-to-face communications.

1 1. Recognized in the official National Formulary, or the United States
2 Pharmacopeia, or any supplement to them,

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4 2. Intended for use in the diagnosis of disease or other conditions, or in
5 the cure, mitigation, treatment, or prevention of disease, in man or other
6 animals, or

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8 3. Intended to affect the structure or any function of the body of man or
9 other animals, and which does not achieve any of its principal intended
10 purposes through chemical action within or on the body of man or other
11 animals and which is not dependent upon being metabolized for the
12 achievement of any of its principal intended purposes.

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14 E. “**Endorsement**” means, as defined in 16 C.F.R. § 255.0(b), any advertising
15 message (including verbal statements, demonstrations, or depictions of the name,
16 signature, likeness or other identifying personal characteristics of an individual or
17 the name or seal of an organization) that consumers are likely to believe reflects
18 the opinions, beliefs, findings, or experiences of a party other than the sponsoring
19 advertiser, even if the views expressed by that party are identical to those of the
20 sponsoring advertiser. The party whose opinions, beliefs, findings, or experience
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1 the message appears to reflect will be called the endorser and may be an
2 individual, group, or institution.

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4 F. **“Material Connection”** means any relationship that materially affects the
5 weight or credibility of any Endorsement and that would not be reasonably
6 expected by consumers.

7
8 G. **“Measure”** or **“Measures”** means to calculate, approximate, estimate,
9 predict, or otherwise ascertain the value, number, quantity, amount, or degree of
10 something.

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12 H. **“Person”** means a natural person, an organization, or other legal entity,
13 including a corporation, partnership, sole proprietorship, limited liability
14 company, association, cooperative, or any other group or combination acting as an
15 entity.
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17 I. **“Reliably Reported,”** for a human clinical test or study, means a report of
18 the test or study has been published in a peer-reviewed journal, and such
19 published report provides sufficient information about the test or study for experts
20 in the relevant field to assess the reliability of the results.
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1 **ORDER**

2 **I. PROHIBITED REPRESENTATIONS REGARDING**
3 **BLOOD PRESSURE**

4 **IT IS ORDERED** that Defendants, Defendants' officers, agents,
5 employees, and attorneys, and all other Persons in active concert or participation
6 with any of them, who receive actual notice of this Order, whether acting directly
7 or indirectly, in connection with the manufacturing, labeling, advertising,
8 promotion, offering for sale, sale, or distribution of any Covered Product, are
9 permanently restrained and enjoined from making, or assisting others in making,
10 expressly or by implication, including through the use of a product or program
11 name, Endorsement, depiction, or illustration, any representation that such
12 product:
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16 A. Serves as a replacement for a traditional blood pressure cuff;
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18 B. Measures blood pressure;
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20 C. Measures blood pressure as accurately as a traditional blood pressure cuff;
21 or
22 D. Measures blood pressure with a specified degree of accuracy,
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1 unless the representation is non-misleading and, at the time of making such
2 representation, Defendants possess and rely upon competent and reliable scientific
3 evidence to substantiate that the representation is true.
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5 For purposes of this Section, competent and reliable scientific evidence
6 shall consist of human clinical testing of such product that is sufficient in quality
7 and quantity, based on standards generally accepted by experts in the relevant
8 field, when considered in light of the entire body of relevant and reliable scientific
9 evidence, to substantiate that the representation is true. Such testing shall
10 conform to actual use conditions, include a representative range of blood
11 pressures and representative groups of subjects, and be conducted by researchers
12 qualified by training and experience to conduct such testing. In addition, all
13 underlying or supporting data and documents generally accepted by experts in the
14 relevant field as relevant to an assessment of such testing as described in the
15 Section entitled “Preservation of Records Relating to Competent and Reliable
16 Human Clinical Tests or Studies” must be available for inspection and production
17 to the Commission.
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1 evaluated in an objective manner by qualified experts; (2) that are generally
2 accepted by qualified experts to yield accurate and reliable results; and (3) that are
3 randomized, double-blind, and placebo-controlled human clinical testing of the
4 Device, when qualified experts would generally require such human clinical
5 testing to substantiate that the representation is true. In addition, when such tests
6 or studies are human clinical tests or studies, all underlying or supporting data and
7 documents generally accepted by experts in the field as relevant to an assessment
8 of such testing as set forth in the Section entitled “Preservation of Records
9 Relating to Competent and Reliable Human Clinical Tests or Studies” must be
10 available for inspection and production to the Commission.
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12 **III. DECEPTIVE USE OF ENDORSEMENTS**

13 **IT IS FURTHER ORDERED** that Defendants, Defendants’ officers,
14 agents, employees, and attorneys, and all other Persons in active concert or
15 participation with any of them, who receive actual notice of this Order, whether
16 acting directly or indirectly, in connection with the manufacturing, labeling,
17 advertising, promotion, offering for sale, sale, or distribution of any Device, must
18 not:
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1 A. Misrepresent, in any manner, expressly or by implication, the status of any
2 user or endorser of a Device, including, but not limited to, misrepresenting that
3 the user or endorser is an independent user or ordinary consumer of the Device; or
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5 B. Make any representation, in any manner, expressly or by implication, about
6 any user or endorser of such Device unless they disclose, Clearly and
7
8 Conspicuously, a Material Connection, when one exists, between such user or
9 endorser and Defendants or any other individual or entity manufacturing, labeling,
10 advertising, promoting, offering for sale, selling, or distributing such Device.
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12 **IV. PRESERVATION OF RECORDS RELATING TO COMPETENT**
13 **AND RELIABLE HUMAN CLINICAL TESTS OR STUDIES**

14 **IT IS FURTHER ORDERED** that, with regard to any human clinical test
15 or study (“test”) upon which Defendants rely to substantiate any claim covered by
16 this Order, Defendants must secure and preserve all underlying or supporting data
17 and documents generally accepted by experts in the field as relevant to an
18 assessment of the test, including, but not necessarily limited to:
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20 A. All protocols and protocol amendments, reports, articles, write-ups, or other
21 accounts of the results of the test, and drafts of such documents reviewed by the
22 test sponsor or any other Person not employed by the research entity;
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1 B. All documents referring or relating to recruitment; randomization;
2 instructions, including oral instructions, to participants; and participant
3 compliance;
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5 C. Documents sufficient to identify all test participants, including any
6 participants who did not complete the test, and all communications with any
7 participants relating to the test; all raw data collected from participants enrolled in
8 the test, including any participants who did not complete the test; source
9 documents for such data; any data dictionaries; and any case report forms;
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11 D. All documents referring or relating to any statistical analysis of any test
12 data, including, but not limited to, any pretest analysis, intent-to-treat analysis, or
13 between-group analysis performed on any test data; and
14

15 E. All documents referring or relating to the sponsorship of the test, including
16 all contracts and communications between any sponsor and the test's researchers.
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18 *Provided, however,* the preceding preservation requirement shall not apply
19 to a Reliably Reported test, unless the test was conducted, controlled, or
20 sponsored, in whole or in part by: (1) any Defendant; (2) any Defendant's
21 officers, agents, representatives, or employees; (3) any other Person or entity in
22 active concert or participation with any Defendant; (4) any Person or entity
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1 affiliated with or acting on behalf of any Defendant; (5) any supplier of any
2 ingredient contained in the product at issue to any of the foregoing or to the
3 product's manufacturer; or (6) the supplier or manufacturer of such product.
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5 For any test conducted, controlled, or sponsored, in whole or in part, by
6 Defendants, Defendants must establish and maintain reasonable procedures to
7 protect the confidentiality, security, and integrity of any personal information
8 collected from or about participants. These procedures shall be documented in
9 writing and shall contain administrative, technical, and physical safeguards
10 appropriate to Corporate Defendant's size and complexity, the nature and scope of
11 Defendants' activities, and the sensitivity of the personal information collected
12 from or about the participants.
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15 **V. MONETARY JUDGMENT AND SUSPENSION**

16 **IT IS FURTHER ORDERED** that:

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18 A. Judgment in the amount of Five Hundred Ninety-Five Thousand, Nine
19 Hundred Forty-Five Dollars and Twenty-Seven Cents (\$595,945.27) is entered in
20 favor of the Commission against Defendants, jointly and severally, as equitable
21 monetary relief.
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23 B. The judgment is suspended subject to the Subsections below.
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1 C. The Commission’s agreement to the suspension of the judgment is
2 expressly premised upon the truthfulness, accuracy, and completeness of
3 Defendants’ sworn financial statements and related documents (collectively,
4 “financial representations”) submitted to the Commission, namely:
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- 6 1. the Financial Statement of Individual Defendant Ryan Archdeacon,
7 signed on June 23, 2016, including the attachments;
- 8 2. the Financial Statement of Corporate Defendant Aura Labs, Inc.,
9 signed on June 20, 2016, including the attachments.
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12 D. The suspension of the judgment will be lifted as to any Defendant if, upon
13 motion by the Commission, the Court finds that Defendant failed to disclose any
14 material asset, materially misstated the value of any asset, or made any other
15 material misstatement or omission in the financial representations identified
16 above.
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18 E. If the suspension of the judgment is lifted, the judgment becomes
19 immediately due as to that Defendant in the amount specified in Subsection A
20 above (which the parties stipulate only for purposes of this Section represents the
21 consumer injury alleged in the Complaint), less any payment previously made
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1 pursuant to this Section, plus interest computed from the date of entry of this
2 Order.

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4 F. Defendants relinquish dominion and all legal and equitable right, title, and
5 interest in all assets transferred pursuant to this Order and may not seek the return
6 of any assets.

7
8 G. The facts alleged in the Complaint will be taken as true, without further
9 proof, in any subsequent civil litigation by or on behalf of the Commission in a
10 proceeding to enforce its rights to any payment or monetary judgment pursuant to
11 this Order, such as a nondischargeability complaint in any bankruptcy case.

12
13 H. The facts alleged in the Complaint establish all elements necessary to
14 sustain 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 this Order will have collateral
16 estoppel effect for such purposes.

17
18 I. Defendants acknowledge that their Taxpayer Identification Numbers
19 (Social Security Numbers or Employer Identification Numbers), which must be
20 submitted to the Commission, may be used for collecting and reporting on any
21 delinquent amount arising out of this Order, in accordance with 31 U.S.C. § 7701.
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1 J. All money paid to the Commission pursuant to this Order may be deposited
2 into a fund administered by the Commission or its designee to be used for
3 equitable relief, including consumer redress and any attendant expenses for the
4 administration of any redress fund. If a representative of the Commission
5 decides that direct redress to consumers is wholly or partially impracticable or
6 money remains after redress is completed, the Commission may apply any
7 remaining money for such other equitable relief (including consumer information
8 remedies) as it determines to be reasonably related to Defendants' practices
9 alleged in the Complaint. Any money not used for such equitable relief is to be
10 deposited to the U.S. Treasury as disgorgement. Defendants have no right to
11 challenge any actions the Commission or its representatives may take pursuant to
12 this Subsection.
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17 VI. CUSTOMER INFORMATION

18 **IT IS FURTHER ORDERED** that Defendants, Defendants' officers,
19 agents, employees, and attorneys, and all other Persons in active concert or
20 participation with any of them, who receive actual notice of this Order, whether
21 acting directly or indirectly, are permanently restrained and enjoined from failing
22 to provide sufficient customer information to enable the Commission to efficiently
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1 administer consumer redress. Defendants represent that they have provided this
2 redress information to the Commission. If a representative of the Commission
3 requests in writing any information related to redress, Defendants must provide it,
4 in the form prescribed by the Commission, within 14 days.
5

6 **VII. ORDER ACKNOWLEDGMENTS**

7 **IT IS FURTHER ORDERED** that Defendants obtain acknowledgments of
8 receipt of this Order:
9

10 A. Each Defendant, within 7 days of entry of this Order, must submit to the
11 Commission an acknowledgment of receipt of this Order sworn under penalty of
12 perjury.
13

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

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

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8 **VIII. COMPLIANCE REPORTING**

9 **IT IS FURTHER ORDERED** that Defendants make timely submissions
10 to the Commission:

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12 A. Sixty days after entry of this Order, each Defendant must submit a
13 compliance report, sworn under penalty of perjury:

- 14 1. Each Defendant must: (a) identify the primary physical, postal, and
15 email address and telephone number, as designated points of contact, which
16 representatives of the Commission may use to communicate with
17 Defendant; (b) identify all of that Defendant's businesses by all of their
18 names, telephone numbers, and physical, postal, email, and Internet
19 addresses; (c) describe the activities of each business, including the goods
20 and services offered, the means of advertising, marketing, and sales, and the
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1 involvement of any other Defendant (which Individual Defendant must
2 describe if he knew or should know due to his own involvement);

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4 (d) describe in detail whether and how that Defendant is in compliance with
5 each Section of this Order; and (e) provide a copy of each Order

6 Acknowledgment obtained pursuant to this Order, unless previously
7 submitted to the Commission.
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9 2. Additionally, Individual Defendant must: (a) identify all telephone
10 numbers and all physical, postal, email and Internet addresses, including all
11 residences; (b) identify all business activities, including any business for
12 which such Defendant performs services, whether as an employee or
13 otherwise, and any entity in which such Defendant has any ownership
14 interest; and (c) describe in detail such Defendant's involvement in each
15 such business, including title, role, responsibilities, participation, authority,
16 control, and any ownership.
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20 B. For 10 years after entry of this Order, each Defendant must submit a
21 compliance notice, sworn under penalty of perjury, within 14 days of any change
22 in the following:
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1 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury
2 under the laws of the United States of America that the foregoing is true and
3 correct. Executed on: _____” and supplying the date, signatory’s full name,
4 title (if applicable), and signature.
5

6 E. Unless otherwise directed by a Commission representative in writing, all
7 submissions to the Commission pursuant to this Order must be emailed to
8 DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to:
9 Associate Director for Enforcement, Bureau of Consumer Protection, Federal
10 Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.
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12 The subject line must begin: *FTC v. Aura Labs, Inc., et al.*
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14 **IX. RECORDKEEPING**

15 **IT IS FURTHER ORDERED** that Defendants must create certain records
16 for 10 years after entry of the Order, and retain each such record for 5 years.
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18 Specifically, Corporate Defendant and Individual Defendant, for any business that
19 Individual Defendant, individually or collectively with Corporate Defendant, is a
20 majority owner or controls directly or indirectly, must create and retain the
21 following records:
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23 A. accounting records showing the revenues from all goods or services sold;
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1 B. personnel records showing, for each Person providing services, whether as
2 an employee or otherwise, that Person's: name; addresses; telephone numbers;
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4 job title or position; dates of service; and (if applicable) the reason for
5 termination;

6 C. records of all complaints and refund requests, whether received directly or
7
8 indirectly, such as through a third party, and any response;

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

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

13 X. COMPLIANCE MONITORING

14 **IT IS FURTHER ORDERED** that, for the purpose of monitoring
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16 Defendants' compliance with this Order, including the financial representations
17 upon which the judgment was suspended:

18 A. Within 14 days of receipt of a written request from a representative of the
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20 Commission, each Defendant must: submit additional compliance reports or
21 other requested information, which must be sworn under penalty of perjury;
22 appear for depositions; and produce documents for inspection and copying.

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24 The Commission is also authorized to obtain discovery, without further leave of
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1 court, using any of the procedures prescribed by Federal Rules of Civil Procedure
2 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69 provided that
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4 Defendants, after attempting to resolve a dispute without court action and for good
5 cause shown, may file a motion with this Court seeking an order for one or more
6 of the protections set forth in Rule 26(c).

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8 B. For matters concerning this Order, the Commission is authorized to
9 communicate directly with each Defendant. Defendant must permit
10 representatives of the Commission to interview any employee or other Person
11 affiliated with any Defendant who has agreed to such an interview. The Person
12 interviewed may have counsel present.

13
14 C. The Commission may use all other lawful means, including posing, through
15 its representatives, as consumers, suppliers, or other individuals or entities, to
16 Defendants or any individual or entity affiliated with Defendants, without the
17 necessity of identification or prior notice. Nothing in this Order limits the
18 Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of
19 the FTC Act, 15 U.S.C. §§ 49, 57b-1.
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21
22 D. Upon written request from a representative of the Commission, any
23 consumer reporting agency must furnish consumer reports concerning Individual
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1 Defendant, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C.
2 § 1681(b)(a)(1).
3

4 **XI. RETENTION OF JURISDICTION**

5 **IT IS FURTHER ORDERED** that this Court retains jurisdiction of this
6 matter for purposes of construction, modification, and enforcement of this Order.
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9 **IT IS SO ORDERED.**

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13 DATED: December 9, 2016

David O. Carter

UNITED STATES DISTRICT JUDGE