

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA

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<p>FEDERAL TRADE COMMISSION,</p> <p>Plaintiff,</p> <p>v.</p> <p>WISE MEDIA, LLC, a limited liability company,</p> <p>BRIAN M. BUCKLEY, individually and as an officer of WISE MEDIA, LLC, and</p> <p>WINSTON J. DELONEY, individually and as a member of WISE MEDIA, LLC,</p> <p>Defendants, and</p> <p>CONCRETE MARKETING RESEARCH, LLC, a limited liability company,</p> <p>Relief Defendant.</p>	<p><b>Case No. 1:13-cv-1234-WSD</b></p>
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**STIPULATED SUPPLEMENTAL PRELIMINARY INJUNCTION  
REGARDING ASSET FREEZE**

Plaintiff Federal Trade Commission (“FTC” or “Commission”) commenced this civil action on April 16, 2013, pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), to obtain preliminary and

permanent injunctive and other equitable relief for Defendants' violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and moved for issuance of a Temporary Restraining Order and for an order to show cause why a preliminary injunction should not issue, pursuant to Rule 65(b) of the Federal Rules of Civil Procedure ("TRO Motion").

On April 18, 2013, the Court entered a Stipulated Temporary Restraining Order with Asset Freeze and Order to Show Cause Why Preliminary Injunction Should Not Issue, and Partial Preliminary Injunction with Receivership and Other Equitable Relief (the "April 18 Injunction Order"). As set forth in Section XX of the April 18 Injunction Order, all sections of that Order other than Sections III and IV (regarding Defendants' assets) remain in full force and effect.

The FTC and Defendants Wise Media, LLC, Brian M. Buckley, and Winston J. Deloney and Relief Defendant Concrete Marketing Research, LLC, through counsel, have now stipulated and agreed to entry of a Preliminary Injunction regarding Defendants' and Relief Defendants' assets with the terms set forth below. The Court, having considered the Complaint, the FTC's TRO Motion, the declarations and exhibits filed in support thereof, and other documents filed in the Court's docket as of the date of this Order, and having heard representations by counsel for the parties at a hearing on April 18, 2013, finds that:

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

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

3. There is good cause to believe that Defendants Wise Media, LLC (“Wise Media”), Brian M. Buckley, and Winston J. Deloney (collectively, “Defendants”) have engaged in and are likely to engage in acts or practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), that Relief Defendant Concrete Marketing Research, LLC, has received funds from Defendants that are traceable to funds obtained from Defendants’ unfair and deceptive acts and practices and has no legitimate claim to the funds, and that Plaintiff therefore is likely to prevail on the merits of this action;

4. There is good cause to believe that consumers will suffer immediate and continuing harm unless Defendants are restrained and enjoined by Order of this Court. The FTC’s memorandum in support of its TRO Motion and the accompanying declarations and exhibits demonstrate that it is highly likely that FTC will succeed on its claim that Defendants have violated Section 5(a) of the FTC Act, 15 U.S.C. § 45(a) by placing unauthorized charges on consumers’ mobile phone bills in a practice known as “cramming”;

5. Good cause exists for freezing Defendants' assets;
6. Weighing the equities and considering the FTC's likelihood of ultimate success, a partial preliminary injunction with asset freeze and other equitable relief is in the public interest;
7. Stipulating Defendants, without waiving their rights and defenses in this action, agree to the entry of this Order; and
8. No security is required of any agency of the United States for issuance of this Order. Fed. R. Civ. P. 65(c).

#### **DEFINITIONS**

For the purposes of this Order, the following definitions shall apply:

1. "Assets" means any legal or equitable interest in, right to, or claim to, any and all real and personal property of Defendants or Relief Defendant, or held for the benefit of Defendants or Relief Defendant, 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 (as those terms are defined in the Uniform Commercial Code), shares of stock, futures, and all cash and currency, and trusts, including but not limited to any trust held for the benefit of any Defendant or Relief Defendant, any of the Individual Defendants'

minor children, or any of the Individual Defendants' spouses, and shall include both existing assets and assets acquired after the date of entry of this Order.

2. **"Buckley Operational Companies"** means the following entities: Gold Buyers Trust, LLC; Dot Com Evolution, LLC; and X Rev Media LLC.

3. **"Corporate Defendant"** means Wise Media, LLC, and its d/b/a's, successors, and assigns.

4. **"Defendants"** means Individual Defendants and Corporate Defendant, but not the Relief Defendant.

5. **"Deloney Operational Companies"** means the following entities: 2294 Polar Rock, LLC; 53 Braselton Investments, LLC; BMB Land Holdings & Finance, LLC; Concrete Services & Materials, LLC; FMC Properties, LLC; HPFC Holdings, LLC; Marina Del Sol, LLC; MBJ, LLC; Panola Crossings, LLC; Quality Poured Concrete Services, Inc.; SemVen Holdings, LLC; Seminole Ventures, LLC; Southern Home Construction & Renovation, LLC; Tactical Advantage Ammunition Company, LLC; TAC Holdings, LLC; and The Shoppes at Rivers Station, LLC.

6. **"Document"** and **"Electronically Stored Information"** are synonymous in meaning and equal in scope to the usage of the terms in Rule 34(a) of the Federal Rules of Civil Procedure and include but are not limited to:

- a. The original or a true copy of any written, typed, printed, electronically stored, transcribed, taped, recorded, filmed, punched, or graphic matter or other data compilations of any kind, including, but not limited to, letters, email or other correspondence, messages, memoranda, interoffice communications, notes, reports, summaries, manuals, magnetic tapes or discs, tabulations, books, records, checks, invoices, work papers, journals, ledgers, statements, returns, reports, schedules, or files; and
- b. Any electronically stored information stored on any server, Blackberrys or any type of mobile device, flash drives, personal digital assistants (“PDAs”), desktop personal computer and workstations, laptops, notebooks, and other portable computers, or other electronic storage media, whether assigned to individuals or in pools of computers available for shared use, or personally owned but used for work-related purposes; backup disks and tapes, archive disks and tapes, and other forms of offline storage, whether stored onsite with the computer used to generate them, stored offsite in another company facility, or stored, hosted, or otherwise maintained offsite by a third-party; and computers and related offline storage used by

Defendants, Relief Defendant, or Defendants' participating associates, which may include persons who are not employees of the company or who do not work on company premises.

7. **"Electronic Data Host"** means any person or entity in the business of storing, hosting, or otherwise maintaining electronically stored information.

8. **"Financial Institution"** means any bank, savings and loan institution, credit union, or any financial depository of any kind, including, but not limited to, any brokerage house, trustee, broker-dealer, escrow agent, title company, commodity trading company, or precious metal dealer.

9. **"Individual Defendants"** means Brian M. Buckley and Winston J. Deloney.

10. **"Operational Companies"** means the Buckley Operational Companies and the Deloney Operational Companies.

11. **"Person"** means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

12. **"Relief Defendant"** means Concrete Marketing Research, LLC.

## **ORDER**

### **I. ASSET FREEZE**

**A. IT IS HEREBY ORDERED** that Defendants and Relief Defendant and their officers, agents, servants, employees, and attorneys, and all other persons

or entities in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise each are hereby preliminarily restrained and enjoined from directly or indirectly:

1. Selling, liquidating, assigning, transferring, converting, loaning, hypothecating, disbursing, gifting, conveying, encumbering, pledging, concealing, dissipating, spending, withdrawing, granting a lien or security interest or other interest in, or otherwise disposing of any funds, real or personal property, contracts, consumer lists or other assets or any interest therein, wherever located, including any assets outside the territorial United States that are:

- a) In the actual or constructive possession of any Defendant or Relief Defendant;
- b) Owned or controlled by, or held, in whole or in part for the benefit of, or subject to access by, or belonging to, any Defendant or Relief Defendant; or
- c) In the actual or constructive possession of, or owned or controlled by, or subject to access by, or belong to, any corporation, partnership, trust or other entity directly or indirectly owned, managed, or under the control of any Defendant or Relief Defendant, excluding any Operational



Company;

2. Opening, or causing to be opened, any safe deposit boxes titled in the name of or subject to access by any Defendant or Relief Defendant;

3. Incurring charges on any credit card, stored value card, debit card, or charge card issued in the name, singly or jointly, of any Defendant or Relief Defendant or any other entity directly or indirectly owned, managed, or controlled by any Defendant or Relief Defendant, other than an Operational Company;

4. Obtaining a personal or secured loan; and

5. Cashing any checks from consumers, clients, or customers of any Defendant.

**B. IT IS FURTHER ORDERED** that the funds, property, and assets affected by this Section shall include (a) all assets of each Defendant or Relief Defendant as of the time this Order is entered, and (b) those assets obtained or received after entry of this Order that are derived from the actions alleged in Plaintiff's Complaint.

**C. IT IS FURTHER ORDERED** that, notwithstanding any other provision of this section, each Individual Defendant may sell any vehicle he owns ("Vehicle") provided that such sales follow the procedures described herein:

1. Any sale of a Vehicle by a Defendant shall be upon terms and conditions acceptable to the FTC;
2. Defendants shall notify undersigned FTC counsel of the amount of any offer to purchase any Vehicle immediately upon receiving each such offer. Acceptance of any such offer shall be in the sole discretion of FTC counsel;
3. All net proceeds from any sale shall be transferred to the Preliminary Receiver ("Receiver") within three (3) days of the sale of any Vehicle;
4. The Receiver shall hold all funds transferred pursuant to this Section in escrow (the "Vehicle Escrow") until final resolution of this case, and such escrow shall be separate from the escrows as defined in Section II;
5. As long as any Vehicles are owned by Individual Defendants, they shall maintain the Vehicles in good working order and in the same condition as of April 24, 2013, which is the date each Individual Defendant signed his sworn financial statement, and Defendants shall take no action to diminish their value;
6. Until Individual Defendants transfer the proceeds of any sale to the Receiver, they shall remain current on all amounts due and payable on the Vehicles, including but not limited to tax, insurance, reasonable and necessary maintenance, and similar fees. Defendants shall cause existing insurance coverage for the properties to remain in force until a sale is completed;

7. Individual Defendants shall in no way profit from the sale of the Vehicles, including by sharing in any sales commission or fee, or by receiving anything of value of any kind.

## **II. OPERATIONAL COMPANY ASSETS**

**IT IS FURTHER ORDERED** that:

A. For any action taken on behalf of or in the course of business of an Operational Company, Defendants are hereby restrained and enjoined from:

1. Transferring, selling, alienating, liquidating, encumbering, pledging, leasing, loaning, assigning, concealing, dissipating, converting, withdrawing, or otherwise disposing of any Operational Company; and

2. Transferring, selling, alienating, liquidating, encumbering, pledging, leasing, loaning, assigning, concealing, dissipating, converting, withdrawing, or otherwise disposing of any assets of an Operational Company, wherever located, including assets held outside the United States, or incurring charges or cash advances on any credit or debit card issued in the name of the Operational Company, if any of these activities are done outside the ordinary course of normal business activities of the Operational Company (including any transfer or sale for less than full market value). The assets affected by this

paragraph shall include both existing assets and assets acquired after the effective date of this Preliminary Injunction wherever located;

*Provided that* Defendants shall produce, within ten (10) business days of the close of any calendar month, an accounting of all transfers made in that month in the ordinary course of business for each Operational Company, and upon request of the FTC, shall provide, within a reasonable period of time, copies of documents showing such expenses (e.g., books and records of accounts, financial and accounting records, balance sheets, income statements and bank records (including monthly statements, cancelled checks, records of wire transfers and check registers)) for any Operational Company;

B. Defendant Deloney shall transfer all profits, payment, salary, dividends, or other funds received as compensation from the Deloney Operational Companies to the Receiver, who shall hold such funds in escrow for Defendant Deloney's expenses as set forth below (the "Deloney Expense Escrow");

*Provided that* all profits, payment, salary, dividends, or other funds received as compensation and all assets removed from Tactical Advantage Ammunition Company, LLC or TAC Holdings, LLC by Mr. Deloney shall be provided to the Receiver to hold such funds in separate escrow from the Deloney Expense Escrow;

C. Defendant Buckley shall transfer all profits, payment, salary, dividends, or other funds received as compensation from the Buckley Operational Companies to the Receiver, who shall hold such funds in escrow for Defendant Buckley's expenses as set forth below (the "Buckley Expense Escrow");

D. Defendant Deloney may withdraw from the Deloney Expense Escrow \$9500 per month to use for living expenses and an additional \$5,000 a month to use for his dependents' college education-related expenses;

E. Defendant Buckley may withdraw from the Buckley Expense Escrow \$9000 per month to use for living expenses, *provided that* this monthly amount shall be reduced in any month after which Mr. Buckley sells a vehicle by the amount of the monthly insurance premium payment for that vehicle; and

F. Notwithstanding the provisions of Section I, Defendant Buckley may make a single, one-time transfer of \$9000 from JP Morgan Chase Bank account xxxx0080 to the Buckley Expense Escrow.

### **III. RETENTION OF ASSETS AND DOCUMENTS BY THIRD PARTIES**

**IT IS FURTHER ORDERED** that, pending further order of this Court, any financial or brokerage institution, business entity, electronic data host, or person served with a copy of this Order that holds, controls, or maintains custody of any account, document, electronically stored information, or asset of, on behalf of, in

the name of, for the benefit of, subject to withdrawal by, subject to access or use by, or under the signatory power of any Defendant or Relief Defendant or other party subject to Section I above, or has held, controlled, or maintained any such account, document, electronically stored information, or asset at any time since August 1, 2011, shall:

A. Hold, preserve, and retain within such entity's or person's control, and prohibit the withdrawal, removal, alteration, assignment, transfer, pledge, hypothecation, encumbrance, disbursement, dissipation, conversion, sale, liquidation, or other disposal of such account, document, electronically stored information, or asset held by or under such entity's or person's control, except as directed by further order of the Court, or as directed in writing by the Receiver regarding accounts, documents, or assets held in the name of or benefit of Defendant Wise Media;

*Provided that* preceding Subsection III.A. shall not apply to any account, document, electronically stored information, or asset held in the name of a Buckley Operational Company or Deloney Operational Company.

B. Provide the Receiver or the Receiver's agents access to electronically stored information stored, hosted, or otherwise maintained on behalf of Defendant Wise Media for forensic imaging;

C. Deny access to any safe deposit boxes that are either titled in the name, individually or jointly, or subject to access by, any Defendant or Relief Defendant or other party subject to Section I above;

D. Provide counsel for the FTC and the Receiver, within three (3) business days after being served with a request, copies of all documents pertaining to such account or asset, including but not limited to originals or copies of account applications, 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; provided that such institution or custodian may charge a reasonable fee; and

E. Cooperate with all reasonable requests of the Receiver relating to this Order's implementation.

**IT IS FURTHER ORDERED** that the accounts subject to this provision include existing assets and assets deposited after the effective date of this Order. This Section shall not prohibit transfers in accordance with any provision of this Order, or any further order of the Court.

#### **IV. DEFENDANTS' DUTY TO DISTRIBUTE ORDER**

**IT IS FURTHER ORDERED** that Defendants shall immediately provide a copy of this Order to Defendants' and the Operational Companies' officers, agents,

servants, employees, and attorneys, and all other persons or entities in active concert or participation with any of them, and shall, within three (3) calendar days from the date of entry of this Order, provide counsel for the FTC with a sworn statement that: (1) confirms that Defendants have provided copies of the Order as required by this Section and (2) lists the names and addresses of each entity or person to whom Defendants provided a copy of the Order. Furthermore, Defendants shall not take any action that would encourage officers, agents, directors, employees, salespersons, independent contractors, attorneys, subsidiaries, affiliates, successors, assigns, or other persons or entities in active concert or participation with Defendants to disregard this Order.

**V. SERVICE OF THIS ORDER**

**IT IS FURTHER ORDERED** that copies of this Order may be served by any means, including facsimile transmission, email, personal or overnight delivery, or U.S. Mail, by agents and employees of the FTC or any state or federal law enforcement agency or by private process server, upon any financial institution or other entity or person that may have possession, custody, or control of any documents or assets of any Defendant or Relief Defendant, or that may otherwise be subject to any provision of this Order. Service upon any branch or office of any financial institution shall effect service upon the entire financial institution.



**VI. SERVICE UPON THE COMMISSION**

**IT IS FURTHER ORDERED**, with regard to any correspondence or pleadings related to this Order, that service on the Commission's counsel shall be performed by commercial overnight mail delivery, facsimile, or email to the attention of: Duane Pozza, Division of Financial Practices, Federal Trade Commission, 600 Pennsylvania Ave., NW, Mailstop NJ-3158, Washington, DC, 20580, [dpozza@ftc.gov](mailto:dpozza@ftc.gov), (202) 326-3629 (fax).

**VII. RETENTION OF JURISDICTION**

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

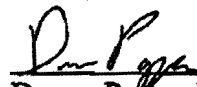
**VIII. EFFECT OF PREVIOUS PRELIMINARY INJUNCTION ORDER**

All of the provisions of the April 18 Injunction Order, other than Sections III and IV of that Order, remain in full force and effect.

**SO STIPULATED.**

**FOR PLAINTIFF FEDERAL TRADE COMMISSION**

David C. Shonka  
Acting General Counsel



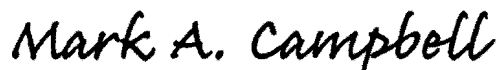
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Duane Pozza, DC Bar No. 490167  
Phone: 202-326-2042  
Fax: 202-326-3629  
Email: [dpozza@ftc.gov](mailto:dpozza@ftc.gov)

Robin Thurston, IL Bar No. 6293950  
Phone: 202-326-2752  
Fax: 202-326-3629  
Email: [rthurston@ftc.gov](mailto:rthurston@ftc.gov)  
Federal Trade Commission  
600 Pennsylvania Avenue, NW, NJ-3158  
Washington, DC 20580



Robin Rock, GA Bar No. 629532 (Local Counsel)  
Phone: 404-656-1368  
Fax: 404-656-1379  
Email: [rrock@ftc.gov](mailto:rrock@ftc.gov)  
Federal Trade Commission  
225 Peachtree St., NE, Suite 1500  
Atlanta, GA 30303  
Counsel for Federal Trade Commission

**FOR DEFENDANTS WISE MEDIA, LLC, BRIAN  
M. BUCKLEY, WINSTON J. DELONEY, AND FOR  
RELIEF DEFENDANT CONCRETE MARKETING  
RESEARCH, LLC**



MARK A. CAMPBELL  
Changus Campbell, LLP  
3340 Peachtree Road NE  
Suite 1780  
Atlanta, Georgia 30326  
Phone: 404-902-6060  
Fax: 404-996-0565  
Email: [mark@changuscampbell.com](mailto:mark@changuscampbell.com)

SO ORDERED this 29<sup>th</sup> day of April, 2013, at 1:05 p..m.

William J. Tappan  
UNITED STATES DISTRICT JUDGE