

1 **MARK BRNOVICH**
 2 **ATTORNEY GENERAL**
 (Firm State Bar No. 14000)
 3 MITCHELL ALLEE (Bar No. 031815)
 4 ASSISTANT ATTORNEY GENERAL
 Telephone: (602) 542-3725
 5 Consumer@azag.gov
 6 1275 West Washington Street
 Phoenix, AZ 85007-2926
Attorneys for Plaintiff

7
 8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
 9 **IN AND FOR THE COUNTY OF MARICOPA**

10 STATE OF ARIZONA, *ex rel.* MARK
 11 BRNOVICH, Attorney General,
 Plaintiff,
 12 vs.
 13 RUBEN DIAZ, et al.,
 14 Defendants.

Case No.: CV2016-002019

PRELIMINARY INJUNCTION

15 This matter came before the Court on the Civil Complaint and Application for (1) a
 16 Temporary Restraining Order, and (2) a Preliminary Injunction filed by Plaintiff, State of
 17 Arizona, *ex rel.* Mark Brnovich (the “State”), against Defendants ProSolutions, LLC,
 18 Rancho Grande, LLC, Desert Tri-Star, LLC, Golem, LLC, Ilya Kuriaki and Associates,
 19 LLC, Michab West, LLC, Mozart Clan, LLC, Quinsey, LLC, and Saguaro Desert
 20 Solutions, LLC, Ruben Diaz and Jane Doe Diaz, husband and wife, and Rodrigo Diaz and
 21 Jane Doe Diaz II, husband and wife.

22 Court has received and considered the following documents:

- 23 • The Civil Complaint setting forth the State’s allegations in support of
 24 the State’s request for a temporary restraining order and permanent injunction;

25
26

1 3. In its Complaint, the State alleges that all of the defendants engaged in a
2 pattern and practice of consumer fraud, in violation of the CFA.

3 4. Evidence presented during the May 6, 2016, evidentiary hearing supports
4 the application of a preliminary injunction pertaining to Defendants Ruben Diaz,
5 ProSolutions, Rancho Grande, Desert Tri-Star and Michab West (collectively “Diaz
6 Defendants”).

7 5. The Diaz Defendants deceptively misrepresented the terms of real estate
8 contracts and misrepresented how consumer monies would be used or refunded.

9 6. These deceptive practices forced many consumers to either pay more than
10 agreed to purchase real property or abandon their homes after making substantial down
11 payments, monthly payments, and improvements to the properties.

12 7. Consumer testimony shows that Ruben Diaz presented himself as the owner
13 and operator of ProSolutions when entering service agreements with the consumers.

14 8. Through the service agreements, the Diaz Defendants offered to assist
15 consumers in purchasing homes and securing private financing.

16 9. The Diaz Defendants advertise in Spanish and provide services to
17 consumers who are often unable to speak or read English, forcing many consumers to rely
18 solely on the Diaz Defendants’ representations of the agreements.

19 10. The service agreements state that deposit monies are refundable, and Ruben
20 Diaz frequently affirmed consumers’ entitlement to refunds orally and in writing.

21 11. Consumers paid the Diaz Defendants thousands of dollars to purchase
22 property or secure private loans and have waited years for the refunds they were promised
23 and to which they are entitled.

24 12. In the service agreements, the Diaz Defendants also agreed to keep deposits
25 in “separate trust accounts,” but the failure to fulfill refunds, the requests for more time,
26 the admissions that the money was gone, and even the partial refunds paid from separate

1 bank accounts indicate that Defendants did not put the deposits into separate trust
2 accounts, and spent consumer deposits without consent.

3 13. In April of 2014, Patricia Sanchez Vega entered into a Consulting Services
4 Agreement with Ruben Diaz on behalf of ProSolutions.

5 14. Ms. Vega paid \$10,000 to Ruben Diaz and ProSolutions to purchase a home
6 on her behalf.

7 15. In August of that same year, following the failed purchase of a home for
8 Ms. Vega, she cancelled the agreement with Ruben Diaz and requested a refund of the
9 \$10,000.00 from Ruben Diaz and ProSolutions in order to assist with payments for cancer
10 treatment.

11 16. Ruben Diaz thereafter orally agreed to refund Ms. Vega's money in 30 days.

12 17. Ruben Diaz failed to provide the refund within 30 days as promised.

13 18. Over a year after agreeing to refund Ms. Vega's \$10,000.00, Ruben Diaz
14 finally made a few payments to Ms. Vega through one of his companies, Rancho Grande,
15 but still owes her over \$9,000.00.

16 19. In November of 2013, Nancy Blancas entered into a Consulting Services
17 Agreement with Ruben Diaz on behalf of ProSolutions, pursuant to which Ms. Blancas
18 paid Ruben Diaz \$1,500.00.

19 20. Ruben Diaz represented to Ms. Blancas that the \$1,500.00 would be used
20 toward the purchase of a home.

21 21. On July 21, 2014, Ms. Blancas and her husband, Leonardo Raymundo,
22 signed both a Residential Lease Agreement and a Residential Real Estate Purchase
23 Contract with Ruben Diaz on behalf of Desert Tri Star for the home located at 5230 W.
24 Roanoke Ave. in Phoenix, Arizona.

25 22. Ruben Diaz represented to Ms. Blancas and her husband that the Residential
26 Lease Agreement was a contract to purchase the house.

1 23. Ruben Diaz never told Ms. Blancas and her husband that they would be
2 leasing the home.

3 24. Leonardo Raymundo does not speak English and could not read the
4 Residential Lease Agreement because it was in English.

5 25. At the time of signing the Residential Lease Agreement and a Residential
6 Real Estate Purchase Contract, Ruben Diaz represented to Ms. Blancas and her husband
7 that they were purchasing the home.

8 26. At the time of signing the Residential Lease Agreement and a Residential
9 Real Estate Purchase Contract, Ruben Diaz represented to Ms. Blancas and her husband
10 that they had one (1) year to make the \$10,000.00 down payment on the home.

11 27. After having signed the agreement and after having moved into the home,
12 Ruben Diaz represented to Ms. Blancas and her husband that the timeframe for the down
13 payment had changed and they had only six (6) months to make the \$10,000.00 down
14 payment on the home.

15 28. Ms. Blancas and her husband paid approximately \$7,500.00 to Ruben Diaz
16 but could not pay the full \$10,000.00 in the shortened six (6) month timeframe so they
17 had to leave their home.

18 29. Both at the time of signing the Residential Lease Agreement and Residential
19 Real Estate Purchase Contract and after having to leave the home, Ruben Diaz
20 represented to Ms. Blancas and her husband that he would refund their deposit money if
21 the contract was cancelled.

22 30. Ruben Diaz failed to provide the refund as promised.

23 31. In June of 2014, Jose Rubio entered into a Consulting Services Agreement
24 with Ruben Diaz on behalf of ProSolutions, pursuant to which Mr. Rubio for purposes of
25 Ruben Diaz assisting Mr. Rubio in obtaining a loan to purchase the building where Mr.
26 Rubio's restaurant was located.

1 32. Ruben Diaz represented to Mr. Rubio that he could get a loan with an 8%
2 interest rate.

3 33. Ruben Diaz represented to Mr. Rubio that he needed \$3,000.00 to get
4 started with the process of obtaining the loan.

5 34. Ruben Diaz did not obtain a loan with an 8% rate but only found investors
6 willing to provide a loan at an interest rate of 12%-14%.

7 35. Mr. Rubio thereafter cancelled the contract with Ruben Diaz and
8 ProSolutions.

9 36. Ruben Diaz orally agreed to provide a refund to Mr. Rubio.

10 37. Ruben Diaz failed to provide the refund as promised.

11 38. Mr. Rubio was forced to file a lawsuit against Ruben Diaz and received a
12 judgment for the full amount of the money paid by Mr. Rubio to Ruben Diaz and
13 ProSolutions.

14 39. In November of 2014, Jose Urbieto entered into a Consulting Services
15 Agreement with Ruben Diaz on behalf of ProSolutions, pursuant to which Mr. Urbieto
16 paid Ruben Diaz \$1,500.00.

17 40. Ruben Diaz represented to Mr. Urbieto that the \$1,500.00 would be used to
18 help Mr. Urbieto obtain a loan for his home with a lower interest rate.

19 41. All of the documents were provided to Mr. Urbieto in English but Mr.
20 Urbieto could read approximately 50% English or less.

21 42. Ruben Diaz did not translate the Consulting Services Agreement and only
22 told Mr. Urbieto a little of what the document said.

23 43. Upon signing the Consulting Services Agreement, the parties crossed out
24 and initialed the language which stated the \$1,500.00 was “non-refundable” and Ruben
25 Diaz represented to Mr. Urbieto that the \$1,500.00 was refundable upon cancellation.
26

1 44. Mr. Urbieta later cancelled the contract and asked Ruben Diaz for a refund
2 of the \$1,500.00.

3 45. Ruben Diaz thereafter orally agreed to refund Mr. Urbieta's money in 30
4 days.

5 46. Ruben Diaz failed to provide the refund within 30 days as promised.

6 47. In May of 2012, Maria Sanchez retained Ruben Diaz and ProSolutions to
7 assist her in purchasing a home and made an initial payment to Ruben Diaz in the amount
8 of \$1,500.00.

9 48. Shortly thereafter, Ruben Diaz showed Ms. Sanchez a home located at 4807
10 W. Earll Dr. in Phoenix, Arizona.

11 49. Ms. Sanchez agreed to pay \$70,000.00 for the purchase of the home and
12 was required to pay the entire amount up front.

13 50. The payments for the purchase of the home were in May and June of 2012.

14 51. Ruben Diaz went with Ms. Sanchez to the bank and instructed her to have
15 "FBO Michab West, LLC" put onto the cashier's checks being provided to the title
16 agency.

17 52. Ms. Sanchez did not authorize the purchase of the property in the name of
18 someone else.

19 53. Ruben Diaz represented to Ms. Sanchez that they needed to wait six (6)
20 months to put the property into her name.

21 54. In March of 2013, Ms. Sanchez entered into a Residential Resale Real
22 Estate Purchase Contract with Michab West for the home located at 4807 W. Earll Dr. in
23 Phoenix, Arizona.

24 55. Ms. Sanchez cannot read English and therefore could not read the
25 Residential Resale Real Estate Purchase Contract.

26

1 56. Ruben Diaz represented to Ms. Sanchez that the Residential Resale Real
2 Estate Purchase Contract was a contract to purchase the home located at 4807 W. Earll
3 Dr. in Phoenix, Arizona, and that after signing, Ms. Sanchez owned the home.

4 57. Ms. Sanchez discovered in August of 2014 that she did not own the home.

5 58. At that time, the home was in the name of Rodrigo Diaz.

6 59. Ruben Diaz also did not tell Ms. Sanchez that there was a \$20,000.00 lien
7 on the property.

8 60. After retaining an attorney, Ms. Sanchez entered into a settlement with
9 Ruben Diaz and Michab West whereby they agreed to title the property to Ms. Sanchez,
10 and Michab West, as guaranteed by Ruben Diaz, agreed to pay off the \$20,000.00 lien.

11 61. Ms. Sanchez finally obtained title to the home in October of 2014.

12 62. Sometime prior to April of 2011, Eduardo Parente paid Ruben Diaz
13 \$1,500.00 to assist in getting Mr. Parente a loan modification on his home.

14 63. Ruben Diaz represented to Mr. Parente that Ruben Diaz would get the loan
15 modification but he did not obtain the loan modification.

16 64. After that, Mr. Parente was forced to do a short sale of his home.

17 65. Mr. Parente then asked Ruben Diaz to find Mr. Parente another home.

18 66. Ruben Diaz represented that he would sell Mr. Parente a house located at
19 3017 W. Mackenzie Dr. in Phoenix, Arizona, for the sum of \$75,000.00 with a \$5,000.00
20 deposit.

21 67. On April 1, 2011, Mr. Parente signed both a Residential Lease Agreement
22 and a Residential Resale Real Estate Purchase Contract with Ruben Diaz on behalf of
23 ProSolutions for the home located at 3017 W. Mackenzie Dr. in Phoenix, Arizona.

24 68. Mr. Parente cannot read English and therefore could not read the Residential
25 Lease Agreement or Residential Resale Real Estate Purchase Contract.

26

1 69. Ruben Diaz represented to Mr. Parente that he owned the home as a result
2 of the agreement.

3 70. Ruben Diaz never told Mr. Parente that he would be leasing the home.

4 71. Ruben Diaz represented to Mr. Parente that the payments being made on the
5 home were mortgage payments.

6 72. At the time of signing the Residential Lease Agreement and Residential
7 Resale Real Estate Purchase Contract, Ruben Diaz represented to Mr. Parente what the
8 specific amount of the monthly payments would be and then later increased that amount,
9 threatening eviction or foreclosure if not paid.

10 73. After finding Ruben Diaz through an advertisement in a magazine, Maria
11 Piñon entered into a Consulting Services Agreement with Ruben Diaz on behalf of
12 ProSolutions in May of 2014.

13 74. Ms. Piñon cannot read English and therefore could not read the Consulting
14 Services Agreement.

15 75. Ruben Diaz represented to Ms. Piñon that she had to pay \$3,000.00 as a
16 deposit to purchase a home.

17 76. Approximately one month later, Ruben Diaz represented that he needed an
18 additional \$2,000.00 in order to facilitate the home purchase.

19 77. Ruben Diaz represented to Ms. Piñon that the money she paid to him would
20 be refunded if she cancelled and did not purchase a home.

21 78. On January 21, 2015, Ms. Piñon cancelled her agreement with Ruben Diaz
22 because her daughter had an accident and she needed the money for related expenses.

23 79. Upon cancelling, Ruben Diaz represented to Ms. Piñon that she would
24 receive a refund.

25 80. Ruben Diaz failed to provide the refund as promised.

26

1 81. Prior to August of 2011, Amada Garcia and her husband met Ruben Diaz
2 and paid Ruben Diaz \$3,500.00 for purposes of down payment on a home that he would
3 find them.

4 82. In August of 2011, Amada Garcia signed both a Residential Lease
5 Agreement and a Residential Resale Real Estate Purchase Contract with Ruben Diaz on
6 behalf of ProSolutions for the home located at 3112 W. Taylor St. in Phoenix, Arizona.

7 83. Ms. Garcia cannot speak or read English and therefore could not read the
8 Residential Lease Agreement or Residential Resale Real Estate Purchase Contract.

9 84. Ruben Diaz translated the Residential Lease Agreement and Residential
10 Resale Real Estate Purchase Contract for Ms. Garcia.

11 85. Ruben Diaz represented that the Residential Lease Agreement was entered
12 into for the purpose of making sure that payments were on time for a year and that after
13 that time she would own the home.

14 86. Ms. Garcia made all payments on time for the first year.

15 87. After the first year was over, Ms. Garcia continued to make the payments to
16 ProSolutions pursuant to monthly statements received from ProSolutions.

17 88. The monthly statements from ProSolutions were in the form of mortgage
18 statements and not lease statements, as these statements included “principal” and
19 “interest” amounts.

20 89. Ms. Garcia and her husband made numerous improvements to the home,
21 including, but not limited to: sprinklers, tile, plumbing, air conditioning, fencing, and
22 paint.

23 90. Despite having made payments on the home for over four (4) years, Ms.
24 Garcia’s home was subsequently sold and they had to leave the home.

25 91. On October 25, 2016, the U.S. Bankruptcy Court for the District of Arizona
26 issued a comfort order confirming that this State Action against Debtors and other

1 Defendants may continue up to and including the entry of monetary awards and the award
2 and enforcement of injunctive relief pursuant to the 11 U.S.C 362(b)(4).

3 **CONCLUSIONS OF LAW**

4 1. A party seeking a preliminary injunction has the burden of proof to show:
5 (1) a strong likelihood of success on the merits, (2) a possibility of irreparable injury if the
6 injunction is not granted, (3) a balance of hardships weighing in his favor, and (4) public
7 policy favoring the requested relief. *TP Racing, L.L.P. v. Simms*, 232 Ariz. 489, 495, ¶
8 21, 307 P.3d 56, 62 (App. 2013) (citing *Shoen v. Shoen*, 167 Ariz. 58, 63, 804 P.2d 787,
9 792 (App. 1990)).

10 2. The State has shown a “strong likelihood” that it will succeed on the merits
11 against the Diaz Defendants.

12 a. The CFA provides in pertinent part:

13 A. The act, use or employment by any person of any deception,
14 deceptive or unfair act or practice, fraud, false pretense, false
15 promise, misrepresentation, or concealment, suppression or omission
16 of any material fact with intent that others rely on such concealment,
17 suppression or omission, in connection with the sale or
18 advertisement of any merchandise whether or not any person has in
fact been misled, deceived or damaged thereby, is declared to be an
unlawful practice.

19 A.R.S. § 44-1522(A) (2016).

20 b. “Merchandise” is defined by the statute as “any objects, wares,
21 goods, commodities, intangibles, real estate or services, including direct primary
22 care provider plans as defined in § 20-123.” A.R.S. § 44-1521(5) (2016).

23 c. The CFA “is designed to root out and eliminate ‘unlawful practices’
24 in merchant-consumer transactions,” *People ex rel. Babbitt v. Green Acres Trust*,
25 127 Ariz. 160, 164, 618 P.2d 1086, 1090 (App. 1980), *superseded by statute on*
26 *other grounds*, 1981 Ariz. Sess. Laws, Ch. 295, § 5, *as recognized in State ex rel.*

1 *Corbin v. Pickrell*, 136 Ariz. 589, 667 P.2d 1304 (1983), and the cause of action
2 for consumer fraud under the CFA is considerably different from a common-law
3 fraud claim. *Cearley v. Wieser*, 151 Ariz. 293, 295, 727 P.2d 346, 348 (App. 1986)
4 (holding that the CFA is broader in scope than common-law fraud); *Peery v.*
5 *Hansen*, 120 Ariz. 266, 269, 585 P.2d 574, 577 (App. 1978) (observing that a
6 violation of the CFA “more easily shown” than common-law fraud).

7 d. In order to succeed on a claim of consumer fraud under the CFA, a
8 plaintiff must show two elements: “[1] a false promise or misrepresentation made
9 in connection with the sale or advertisement of merchandise and [2] consequent
10 and proximate injury resulting from the promise.” *Kuehn v. Stanley*, 208 Ariz. 124,
11 129, ¶ 16, 91 P.3d 346, 351 (App. 2004) (Citations Omitted).

12 e. “[A] person or entity need not intend to deceive to violate the
13 statute.” *Murray*, 239 Ariz. 58, 366 P.3d at 127, ¶ 36 (quoting *Powers v. Guar.*
14 *RV, Inc.*, 229 Ariz. 555, ¶ 17, 278 P.3d 333, 338 (App. 2012)).

15 f. A statement is “deceptive” if it has the “tendency and capacity to
16 convey misleading impressions to consumers,” even if “interpretations that would
17 not be misleading also are possible.” *Madsen v. W. Am. Mortgage Co.*, 143 Ariz.
18 614, 618, 694 P.2d 1228, 1232 (App. 1985) (quotation marks and citations
19 omitted).

20 g. Whether a statement has the tendency to mislead is determined from
21 the perspective of the “least sophisticated reader,” in light of “all that is reasonably
22 implied, not just from what is said.” *Madsen*, 143 Ariz. at 618, 694 P.2d at 1232
23 (citations omitted).

24 h. “An injury occurs when a consumer relies, even unreasonably, on
25 false or misrepresented information.” *Kuehn*, 208 Ariz. at 129, ¶ 16, 91 P.3d at
26 351.

1 i. The evidence presented at the hearing, and as set forth in this Court’s
2 Findings of Fact above, shows that the Diaz Defendants made numerous deceptive
3 misrepresentations in connection with the sale or advertisement of merchandise
4 (i.e., real estate and related services) upon which consumers relied and that
5 consequent and proximate injury to many consumers resulted from these
6 misrepresentations including loss of money and homes.

7 j. The State has therefore shown a “strong likelihood” that it will
8 succeed on the merits of its claim under the CFA as against the Diaz Defendants.

9 4. The State has shown irreparable injury not remediable by damages if the
10 requested relief is not granted.

11 a. In making the determination of whether the remedy in damages
12 would be adequate, the following circumstances are significant: “(a) the difficulty
13 of proving damages with reasonable certainty, (b) the difficulty of procuring a
14 suitable substitute performance by means of money awarded as damages, and (c)
15 the likelihood that an award of damages could not be collected.” Restatement
16 (Second) of Contracts § 360 (1981).

17 b. The Court finds that a remedy in damages would not be adequate in
18 this case.

19 c. The evidence shows that several consumers have lost their homes as
20 a result of the conduct of Defendants, a loss for which damages are exceedingly
21 difficult to quantify and for which money damages are typically not adequate.

22 d. Further, based upon the numerous instances of Defendants’ practices
23 and the pattern of conduct shown by these instances, the Court finds that it is likely
24 the Defendant will engage in the same conduct in the future. *TP Racing, L.L.L.P. v.*
25 *Simms*, 232 Ariz. 489, 495, 307 P.3d 56, 62 (Ct. App. 2013) (“If seeking to enjoin
26 future conduct, the movant must also show that it is likely the defendant will

1 engage in the conduct, an inquiry for which the defendant's past conduct is
2 relevant.”).

3 e. Damages based upon this probable future conduct also cannot be
4 easily quantified and money damages would not be adequate.

5 5. Plaintiff has shown that a balance of hardship favors it.

6 a. To meet the burden showing that the balance of hardships favors it,
7 Plaintiff “may establish either 1) probable success on the merits and the possibility
8 of irreparable injury; or 2) the presence of serious questions and ‘the balance of
9 hardships tip sharply’” in his favor.” *Shoen v. Shoen*, 167 Ariz. 58, 63, 804 P.2d
10 787, 792 (Ct. App. 1990) (quoting *Justice v. Nat'l Collegiate Athletic Ass'n*, 577
11 F.Supp. 356, 363 (D.Ariz. 1983)).

12 b. Plaintiff has shown both a strong likelihood that it will succeed on
13 the merits against the Diaz Defendants and that irreparable injury will occur, as set
14 forth above.

15 c. Therefore, Plaintiff has established that the balance of hardships
16 favors it.

17 6. Public policy favors the requested relief.

18 a. Public policy, as expressed through the CFA, favors rooting out and
19 eliminating unlawful practices in merchant-consumer transactions and specifically
20 provides for injunction as a remedy in such circumstances. *See Green Acres Trust*,
21 127 Ariz. at 164, 618 P.2d at 1090; A.R.S. § 44-1528 (2016).

22 b. Public policy therefore favors granting a preliminary injunction in
23 this case.

24 7. Pursuant to Arizona Rule of Civil Procedure 65(e), no security shall be
25 required of the State or of an officer or agency thereof upon the issuance of a preliminary
26 injunction.

1 **IT IS THEREFORE ORDERED:**

2 **I. PROHIBITED BUSINESS PRACTICES**

3 The Diaz Defendants, their officers, agents, servants, employees, attorneys and all
4 those in active concert or participation with them who receive actual notice of this Order,
5 by personal service or otherwise, are hereby restrained and enjoined from:

6 A. Engaging in any conduct in violation of the Arizona Consumer Fraud Act,
7 A.R.S. §§ 44-1521 – 44-1534;

8 B. Advertising, offering, or providing services to Arizona consumers in
9 connection with the sale, purchase, lease, foreclosure, or financing of real property, or the
10 modification of a loans secured by real property, unless such actions are undertaken by
11 the Bankruptcy Trustee on behalf Debtors;

12 C. Advertising, offering, or providing services within the State of Arizona in
13 connection with the sale, purchase, lease, or financing of real property, or the
14 modification of loans secured by real property;

15 D. Initiating any action to evict or remove any consumer living in real property
16 in which any of the Diaz Defendants has a legal or beneficial interest;

17 E. Modifying any term of a purchase contract or lease agreement that any of
18 the Diaz Defendants entered into with a consumer, including agreements entered by Diaz
19 Defendants as representatives of other entities, and;

20 F. Destroying, concealing, defacing or otherwise altering or disposing of any
21 electronically stored information, books, records, accounts or any other papers of any kind
22 or nature relating to any and all of the Diaz Defendants' business and financial affairs.

23 **II. PRODUCTION OF DOCUMENTS AND DATA**

24 **IT IS FURTHER ORDERED** that Diaz Defendants shall, within seventy-two
25 (72) hours of service of this Order, produce to Plaintiff at the Office of the Arizona
26 Attorney General, 1275 West Washington Street, Phoenix, Arizona, 85007, or other

1 mutually agreeable location, for inventory and copying all correspondence, e-mail,
2 financial data (including tax returns), and any other documents, computer equipment, and
3 electronically stored information in any Diaz Defendant's possession, custody, or control,
4 that contains information about the Diaz Defendants' business activities, and their
5 respective business and personal assets. Plaintiff shall return the documents or computer
6 equipment to Diaz Defendants within seven (7) business days of completing said
7 inventory and copying.

8 Diaz Defendants, to the extent they have possession, custody, or control of
9 documents described above, shall produce the documents as they are kept in the usual
10 course of business. Diaz Defendants, to the extent they have possession, custody, or
11 control of computer equipment or electronically stored information described above, shall
12 provide Plaintiff with any necessary means of access to the computer equipment or
13 electronically stored information, including, but not limited to, computer access codes and
14 passwords.

15 **For purposes of this Order, "document" or "electronically stored**
16 **information" are synonymous in meaning and equal in scope to the usage of the**
17 **terms in Arizona Rule of Civil Procedure 34(a), and include writings, drawings,**
18 **graphs, charts, photographs, sound recordings, images, and other data or data**
19 **compilations stored in any medium from which information can be obtained or**
20 **translated into reasonably usable form when translation is practicably necessary. A**
21 **draft or non-identical copy is a separate document or electronically stored**
22 **information within the meaning of the terms.**

23 **III. ASSET FREEZE OF NON-DEBTOR DEFENDANTS**

24 **IT IS FURTHER ORDERED** that Defendants Desert Tri-Star, Michab West (the
25 "Non-Debtor Defendants"), and their officers, agents, servants, employees, and attorneys,
26 and all other persons in active concert or participation with any of them, who receive

1 actual notice of this Order, by personal service or otherwise, whether acting directly or
2 through a trust, corporation, subsidiary, division, or other device, except as provided
3 herein, be temporarily restrained and enjoined from:

4 A. Transferring, liquidating, converting, encumbering, pledging, loaning,
5 selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, granting a
6 lien or security interest or other interest in, or otherwise disposing of any funds, real or
7 personal property, accounts, contracts, shares of stock, lists of consumer names, or other
8 assets, or any interest therein, wherever located, including outside the territorial United
9 States, that are:

10 1. owned, controlled, held for the benefit of, subject to access by, or
11 belonging to the Non-Debtor Defendants;

12 2. in the actual or constructive possession of the Non-Debtor
13 Defendants;

14 3. held by an agent of the Non-Debtor Defendants, or any other entity
15 held or controlled by the Non-Debtor Defendants as a retainer for the agent's
16 provision of services to the Non-Debtor Defendants, or;

17 4. in the actual or constructive possession of, or owned, controlled, or
18 held by, or subject to access by, any other corporation, partnership, trust, or any
19 other entity directly or indirectly owned, managed, or controlled by, or under
20 common control with the Non-Debtor Defendants, including, but not limited to,
21 any assets held by or for the Non-Debtor Defendants in any account at any bank or
22 savings and loan institution, or with any credit card processing agent, automated
23 clearing house processor, network transaction processor, bank debit processing
24 agent, customer service agent, commercial mail receiving agency, or mail holding
25 or forwarding company, or any credit union, retirement fund custodian, money
26 market or mutual fund, storage company, trustee, or with any broker dealer, escrow

1 agent, title company, commodity trading company, precious metal dealer, or other
2 financial institution or depository of any kind, either within or outside the
3 territorial United States.

4 C. Transferring any funds or other assets subject to this Order for attorney's
5 fees, living expenses, business expenses, or any other purpose, except by Court order
6 upon a showing of good cause;

7 D. Cashing any checks, depositing any payments, accepting any wire transfers
8 or accepting any credit card charges from any and all customers or clients of the Non-
9 Debtor Defendants or entities owned or controlled by Non-Debtor Defendants unless such
10 checks, payments, transfers, or charges are made pursuant to a preexisting contract with a
11 customer or client of the Non-Debtor Defendants and are immediately received by an
12 attorney acting on behalf of the Non-Debtor Defendants to be held in trust pending the
13 dissolution of this Order;

14 E. Incurring charges or cash advances on any prepaid debit, credit, or other
15 bank card issued in the name, singly or jointly, of any of the Non-Debtor Defendants, or
16 any corporation, partnership, or other entity directly or indirectly owned, managed, or
17 controlled by the Non-Debtor Defendants or an agent acting on their behalf, or;

18 F. Incurring liens or encumbrances on real property, personal property, or
19 other assets in the name, singly or jointly, of the Non-Debtor Defendants or any
20 corporation, partnership, or other entity directly or indirectly owned, managed, or
21 controlled by any Non-Debtor Defendants or an agent acting on their behalf.

22 **IV. ASSET FREEZE OF DIAZ DEFENDANTS**

23 **IT IS FURTHER ORDERED** that the Diaz Defendants, and their officers,
24 agents, servants, employees, and attorneys, and all other persons in active concert or
25 participation with any of them, who receive actual notice of this Order, by personal
26 service or otherwise, whether acting directly or through a trust, corporation, subsidiary,

1 division, or other device, except as provided herein, be temporarily restrained and
2 enjoined from:

3 A. Opening any safe deposit boxes, commercial mail boxes, or storage
4 facilities titled in the name of any Diaz Defendant, or subject to access by any Diaz
5 Defendant or under any Diaz Defendant's control, without providing the State prior notice
6 and an opportunity to inspect the contents in order to determine that they contain no assets
7 covered by this Section III of this order unless such action is undertaken by the
8 Bankruptcy Trustee and the above mentioned prior notice and inspection would directly
9 interfere with the administration of the bankruptcy estate;

10 **V. REPATRIATION OF ASSETS AND DOCUMENTS LOCATED IN**
11 **FOREIGN COUNTRIES**

12 **IT IS FURTHER ORDERED** that Diaz Defendants, and each of their successors,
13 assigns, members, officers, agents, servants, employees, and those persons in active
14 concert or participation with them who receive actual notice of this Order by personal
15 service or otherwise, whether acting directly or through any entity, corporation,
16 subsidiary, division, affiliate or other device, shall:

17 A. Within three (3) business days following service of this Order, take such
18 steps as are necessary to transfer to the territory of the United States of America all
19 documents and assets that are located outside such territory and are held by or for a Diaz
20 Defendant or are under Diaz Defendants' direct or indirect control, jointly, severally, or
21 individually;

22 B. Within three (3) business days following service of this Order, provide
23 Plaintiff with a full accounting of all documents and assets that are located outside of the
24 territory of the United States of America, or that have been transferred to the territory of
25 the United States of America pursuant to Subsection A above, and are held by or for any
26 Diaz Defendant or are under any Diaz Defendant's direct or indirect control, jointly,

1 severally, or individually, including the addresses and names of any foreign or domestic
2 financial institution or other entity holding the Documents and Assets, along with the
3 account numbers and balances, and;

4 C. Hold and retain all such documents and assets and prevent any transfer,
5 disposition, or dissipation whatsoever of any such Documents or Assets; this provision
6 shall not be interpreted so as to restrict the Bankruptcy Trustee's use of and access to the
7 assets of the Bankruptcy Estate or documents necessary to administer Bankruptcy Estate.

8 **VI. INTERFERENCE WITH REPATRIATION**

9 **IT IS FURTHER ORDERED** that Diaz Defendants, and each of their successors,
10 assigns, members, officers, agents, servants, employees, attorneys, and those persons in
11 active concert or participation with them who receive actual notice of this Order by
12 personal service or otherwise, whether acting directly or through any entity, corporation,
13 subsidiary, division, affiliate or other device, are hereby temporarily restrained and
14 enjoined from taking any action, directly or indirectly, which may result in the
15 encumbrance or dissipation of foreign assets, or in the hindrance of the repatriation
16 thereof, as required by this Order, including, but not limited to:

17 A. Sending any statement, facsimile, letter, e-mail or wire transmission,
18 telephoning, or engaging in any act, directly or indirectly, that results in a determination
19 by a foreign trustee or other entity that a "duress" event has occurred under the terms of a
20 foreign trust agreement until such time as all assets have been fully repatriated pursuant to
21 this Order, or;

22 B. Notifying any foreign trustee, protector or other agent of any Diaz
23 Defendant of the existence of this Order, or of the repatriation ordered thereby, until such
24 time as all assets have been fully repatriated pursuant to this Order, and;

25 C. Nothing in this section shall be interpreted so as to prevent any notification
26 to the Bankruptcy Trustee.

1 **VII. FINANCIAL STATEMENTS**

2 **IT IS FURTHER ORDERED** that no later than ten (10) business days after
3 having been served with this Order, the Diaz Defendants shall provide the Plaintiff with
4 completed financial statements, on the forms attached to this Order as Attachments A and
5 B, for each Diaz Defendant individually and for each corporation or other entity of which
6 a Diaz Defendant is an officer, member, or otherwise directs and/or controls, as of the
7 date of service upon the Diaz Defendant.

8 **VIII. MAINTENANCE OF BUSINESS RECORDS**

9 **IT IS FURTHER ORDERED** that the Diaz Defendants, and each of their
10 successors, assigns, members, officers, agents, servants, employees, and those persons in
11 active concert or participation with them who receive actual notice of this Order by
12 personal service or otherwise, whether acting directly or indirectly through any entity,
13 corporation, subsidiary, division, affiliate or other device, are hereby temporarily
14 restrained and enjoined from:

15 A. Failing to create and maintain documents that, in reasonable detail,
16 accurately, fairly, and completely reflect Diaz Defendants' incomes, disbursements,
17 transactions, and use of money, and;

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

1 **IX. ACCESS BY THE BANKRUPTCY TRUSTEE**

2 **IT IS FURTHER ORDERED** that no provision of this Order shall be interpreted
3 or enforced so as to interfere with the administration of the bankruptcy estate by the
4 Bankruptcy Court or the Bankruptcy Trustee, including, but not limited to, restricting the
5 Trustee's access to and disposition of the assets of the bankruptcy estate.

6 **X. NOTICE**

7 **IT IS FURTHER ORDERED** that Plaintiff shall file this Order with the Clerk of
8 the Court and serve copies of said Order on the Diaz Defendants and all others who the
9 State has reason to believe may possess any of the records or property covered by this
10 Order or may otherwise be affected by this Order.

11 **XI. LENGTH OF INJUNCTION**

12 **IT IS FURTHER ORDERED** that, notwithstanding future orders of this Court,
13 this Preliminary Injunction shall remain in effect pending the disposition of the lawsuit.

14 **DONE IN OPEN COURT** this ____ day of _____, 2016,
15 at ____ o'clock __.m.

16
17
18 _____
19 JUDGE OF THE SUPERIOR COURT
20
21
22
23
24
25
26

eSignature Page 1 of 1

Filing ID: 7964068 Case Number: CV2016-002019
Original Filing ID: 7866784

Granted with Modifications



/S/ Joshua Rogers Date: 12/20/2016
Judicial Officer of Superior Court

ENDORSEMENT PAGE

CASE NUMBER: CV2016-002019

SIGNATURE DATE: 12/20/2016

E-FILING ID #: 7964068

FILED DATE: 12/21/2016 8:00:00 AM

MICHAEL G HELMS

MITCHELL WARD ALLEE