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1 affiliate network and shall not engage services
 2 of any other online marketing company and to
 3 promote or sell the products during the term of
 4 this agreement.
 5 Similarly in paragraph 3-B of the agreement
 6 ZaaZoom will not market or promote any products
 7 or services directly competitive with the
 8 products during the term of this agreement.
 9 Exhibit 22 reflects that RMCR attempted to
 10 terminate the agreement on April 5, 2007. There
 11 was subsequent correspondence between counsel
 12 relating to the appropriateness of the
 13 termination letter. While these letters were
 14 provided to the Court, they were not admitted
 15 into evidence.
 16 ZaaZoom argues that RMCR repudiated the
 17 contract by terminating it without providing the
 18 necessary 60 days' notice set forth in paragraph
 19 four of the agreement, and thus the contract was
 20 in effect for a period of one year or until
 21 October 13, 2006.
 22 Further, the plaintiff argues that the
 23 six-month trigger period had not expired under
 24 the addendum to the agreement.
 25 Plaintiff relies upon the legal principle

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1 as set out in Ordonez versus American Interstate
 2 Insurance Company at 950 So.2d. 427 Florida 4th
 3 DCA 2006, that sets forth the legal principle
 4 that when one party repudiates a contract, the
 5 nonbreaching party is relieved of all
 6 obligations to tender performance under the
 7 contract and has an immediate cause of action
 8 for breach.
 9 It is on this basis that plaintiff argues
 10 that it should not be obligated to abide by
 11 paragraph 3-B of the agreement, but that
 12 defendant should be held to its obligations
 13 under paragraph 3-A of the agreement.
 14 The Court agrees with the plaintiff that
 15 the language of the agreement clearly provides a
 16 60-day notice. Had the defendant not repudiated
 17 the contract, it would have been obligated to
 18 provide by the agreement including the
 19 exclusivity provision in the contract.
 20 As a practical matter, the Court believes
 21 that in order for the defendant to be able to
 22 comply with the Court's injunction, that it, by
 23 having to return all of the proprietary
 24 information to the plaintiff and from refraining
 25 from using the cloned Web sites to market or

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1 sell the credit reporting or monitoring
 2 products.
 3 RMCR will be precluded from allowing the
 4 product as defined in Schedule A of the
 5 agreement to be sold or marketed by any other
 6 third party affiliate network and from engaging
 7 services of any other online marketing company
 8 to promote or sell the products.
 9 In other words, the Court does not see how
 10 RMCR can market its products through the third
 11 party affiliate network and engage services of
 12 any other online marketing company to promote
 13 the sale of the product without inevitably
 14 having to use the proprietary information that
 15 has been misappropriated.
 16 Further, there is no evidence that RMCR has
 17 developed its own customer base or technology to
 18 carry out the marketing of the services provided
 19 in the agreement through this particularized
 20 means of marketing through the online system
 21 through the affiliate network.
 22 Thus, the Court will enjoin RMCR from
 23 violating paragraph 3-A of the marketing
 24 agreement until October 13, 2007.
 25 Are there any questions or need for

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1 clarification as to the Court's finding or
 2 ruling?
 3 MR. SCHWARTZ: Your Honor, under the
 4 Florida Rules of Procedure and case law that is
 5 cited, the Court is going to have to require an
 6 injunction bond which should be significant in
 7 order to protect the defendant from the
 8 potential damages that it may suffer based upon
 9 a possible erroneous issuance of an injunction
 10 which --
 11 MR. HAYDEN: Your Honor, if I may, I can
 12 address the bond issue, as well.
 13 THE COURT: Yes.
 14 MR. SCHWARTZ: I think I'd rather use
 15 between \$100,000 and \$200,000 a month and now
 16 you've apparently enjoined him from marketing
 17 through October, I think a bond of \$800,000
 18 should be posted by the plaintiff.
 19 THE COURT: Okay. What is plaintiff's
 20 response?
 21 MR. HAYDEN: Your Honor, if I may respond,
 22 those are gross revenue numbers. The average
 23 profits that would be obtained by the Internet
 24 marketing company that my client obtained would
 25 be ten percent of the amount of the monthly

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1 revenues. Which would be if they're claiming
 2 \$800,000 over the course of a period, we'd be
 3 talking about \$80,000 in profits.
 4 The other issue that needs to be taken
 5 up --
 6 THE COURT: From what period of time?
 7 MR. HAYDEN: They're indicating \$100,000 a
 8 month, that they are anticipating \$100,000 a
 9 month in revenue.
 10 MR. SCHWARTZ: I said \$100,000 to \$200,000.
 11 The marketing agreement requires that ZaaZoom
 12 provide at a minimum of \$100,000 a month. So at
 13 a minimum, it should be at least -- we are going
 14 to go another four months -- it's at least
 15 \$400,000. That's at a minimum.
 16 And, you know, the Court, we obviously take
 17 issue with some of the findings of the Court,
 18 but he markets other products and services
 19 offered by the defendant that are unrelated to
 20 the products and services in connection with the
 21 marketing agreement.
 22 And so I don't think those products and
 23 services should be limited in any way in terms
 24 of the marketing.
 25 THE COURT: Okay. Well, let's address

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1 that. Let's go back to the bond issue.
 2 So gross revenues at a minimum is
 3 anticipated for the next four months, that
 4 meaning through October, is \$400,000.
 5 MR. SCHWARTZ: At a minimum because that's
 6 what the contract contemplated.
 7 THE COURT: Right. So to that plaintiff's
 8 counsel has responded profits are ten percent;
 9 do you agree with that?
 10 MR. SCHWARTZ: No, I disagree with that.
 11 This was gross profits to the company RMCR, not
 12 anything less than that. This is the amount of
 13 money that was supposed to be driven by ZaaZoom
 14 to RMCR.
 15 MR. HAYDEN: Actually, your Honor, two
 16 comments.
 17 Under the original understanding with
 18 regard take, for example, our program, the
 19 understanding initially was that there was a
 20 90-day threshold requirement of \$100,000 in
 21 gross receipts per month and it should be
 22 obtained within 90 days.
 23 Given the fact that there was a delay of
 24 the program going live, you will see that there
 25 was an amendment to the agreement that at the

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1 back end that moved the 90 days to 180 days, six
 2 months.
 3 That's based on the fact that the party's
 4 understanding and the industry that it is common
 5 for a ramp-up period -- I will use some lingo
 6 that maybe you and I aren't familiar with -- a
 7 burn period of three months before you're going
 8 to see profits in an Internet marketing program.
 9 So for the first three months, they were
 10 not seeing any profits, but then they were
 11 seeing substantial profit of gross of 150 to 200
 12 percent gross per month.
 13 MR. SCHWARTZ: I don't know where these
 14 numbers are coming from.
 15 THE COURT: Let's look at 2-B in the
 16 agreement. Within 90 days of execution hereof,
 17 the gross monthly receipts to RMCR from ZaaZoom
 18 under this agreement are targeted to be not less
 19 than \$100,000 per month.
 20 Would you agree that is construed as
 21 \$100,000 to the defendant?
 22 MR. HAYDEN: \$100,000 in gross receipts
 23 received by the -- no, by the -- under the
 24 program, not to the defendant, I disagree.
 25 MR. SCHWARTZ: No, that's not the

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1 interpretation.
 2 MR. HAYDEN: It was gross receipts received
 3 under the program, your Honor, not gross
 4 receipts by the defendant.
 5 MR. SCHWARTZ: That is absolutely --
 6 THE COURT: Okay. So clearly in your case
 7 in chief that will be an issue it sounds like,
 8 and I understand what the difference of opinion
 9 is.
 10 But in any event, there is an addendum
 11 which changes the 90 to 180; is that correct?
 12 So six months after the execution of the
 13 agreement which was in October, which we're
 14 beyond that six-month period, it was
 15 contemplated the \$100,000, whether it was gross
 16 or net, I think one is talking gross and the
 17 other is talking --
 18 MR. HAYDEN: Right. But the agreement is
 19 gross.
 20 THE COURT: It says gross monthly receipts
 21 to RMCR from ZaaZoom.
 22 MR. SCHWARTZ: There's no wiggle room
 23 there. It's \$100,000 gross receipts to RMCR.
 24 THE COURT: Okay. I understand that. And
 25 the Court is not going to make any

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1 determinations on that. The Court merely needs
 2 to consider certain factors for purposes of the
 3 bond.
 4 So to that extent it's relevant, there will
 5 be no actual determination on the interpretation
 6 of that provision.
 7 So, Mr. Schwartz, you were taking the
 8 position that that's \$100,000 a month to your
 9 client, four months is \$400,000, and you doubled
 10 it to \$800,000, is that how you --
 11 MR. SCHWARTZ: I was taking the four at a
 12 minimum because clearly --
 13 THE COURT: Or you're taking \$200,000 and
 14 multiplied it by four?
 15 MR. SCHWARTZ: I went for an average of 100
 16 to 200 times four months.
 17 THE COURT: Okay. So what would the
 18 plaintiff's position be?
 19 MR. HAYDEN: The plaintiff's position is
 20 first that in any of these programs there's a
 21 90-day burn rate in these types of programs.
 22 And that there are only profits obtained like
 23 the \$100,000 gross receipts in the fourth, fifth
 24 and sixth months.
 25 In this case, in the fourth month of our

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1 program, the receipts were \$172,000 or
 2 thereabouts, but that wasn't what was paid to
 3 RMCR. What was paid to RMCR was approximately
 4 ten percent of that.
 5 MR. SCHWARTZ: I don't know where Mr.
 6 Hayden keeps coming up with these figures, but
 7 was \$100,000. The ramp-up period expired, and
 8 April 13, your Honor, was the 180th day. So on
 9 that day from that moment forward for that
 10 30-day cycle, it was at a minimum of \$100,000.
 11 That was expressed in my letter of April 11, and
 12 it was clear. And that's what Mr. Tassoudji
 13 said we were not going to meet.
 14 And so if the Court is going from this date
 15 to October, that's where the \$400,000 --
 16 MR. HAYDEN: The \$400,000, your Honor, is
 17 revenues. But what is the profit that he is
 18 going to obtain, what is the damage. The damage
 19 isn't gross revenues because he has expenses.
 20 This is a program that has research and
 21 development. And obviously there was \$375,000
 22 in up-front monies that were paid by my client.
 23 If his client were to actually do that same
 24 research and development of \$375,000, I don't
 25 believe that they would be obtaining the same

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1 profitability numbers that my client would be
 2 receiving.
 3 MR. SCHWARTZ: I don't know what Mr. Hayden
 4 is talking about.
 5 THE COURT: Why don't you tell me the
 6 number you're proposing on behalf of the
 7 plaintiff as the bond.
 8 MR. HAYDEN: Your Honor, may I approach, I
 9 have two cases that might be helpful. They are
 10 4th DCA cases.
 11 THE COURT: Relating to amount?
 12 MR. HAYDEN: Relating to amount of bond and
 13 how it should be determined.
 14 THE COURT: Okay. Have you provided
 15 counsel with copies?
 16 MR. HAYDEN: I am going to right now.
 17 MR. HAYDEN: For the record two cases that
 18 I provided the Court are Montville versus Mobile
 19 Medical which is 855 So.2d. 212 out of the 4th
 20 District.
 21 And Cushman & Wakefield versus Cozart which
 22 is actually out of the 2nd District, your Honor,
 23 561 So.2d. 368 1990 opinion.
 24 THE COURT: And how is plaintiff relying
 25 upon these two cases?

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1 MR. HAYDEN: First, your Honor, I believe
 2 that with regard to these two cases, the bond
 3 amount is certainly at the wide discretion of
 4 the Court. The Court's bond amount will be
 5 reviewed under an abuse of discretion standard.
 6 The Montville versus Mobile Medical is
 7 particularly helpful. The Court found no clear
 8 abuse of discretion where the Court set a
 9 \$50,000 bond, although defendant's damages if
 10 the injunction were overturned were much higher.
 11 The Court found that while foreseeable damages
 12 are considered as a major factor setting a
 13 temporary injunction bond, the Court is
 14 permitted to consider other mitigating factors
 15 including the adverse party's chance overturning
 16 the injunction.
 17 And also we would indicate in this case the
 18 fact that any profits that they've obtained in
 19 this matter would be offset by the \$172,000 that
 20 they converted from our bank account, the
 21 merchant account, to bank roll their activities.
 22 Now, the Court in Montville concluded
 23 finally in weighing heavily and adding deference
 24 to discretion of these matters is the
 25 recognition that the trial court's initial

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1 determination is often necessarily based on
 2 speculative matters and should subsequent events
 3 prove the bond amount to be either insufficient
 4 or excessive, the party is free to move for
 5 modification.
 6 Here there's several matters that weigh in
 7 favor of a lower bond than the bond being
 8 proposed by Mr. Schwartz.
 9 First, as I've already indicated, our
 10 \$172,000 bank rolled their new project, and that
 11 would be offset.
 12 This case, I also refer to Cushman &
 13 Wakefield versus Cozart, and in that case the
 14 plaintiff had a very strong likelihood of
 15 success on the merits. In that case there had
 16 been a posting of only a \$10 bond, and the
 17 appellate court left it even in that case to the
 18 discretion of the trial court to set the bond at
 19 an amount below the anticipated cost and damages
 20 that would have been incurred.
 21 In a footnote in that case they also
 22 indicate that the defendant should be careful in
 23 asking too much for their bond because the bond
 24 cost will be a taxable cost that will be
 25 incurred by the defendant if they're wrong.

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1 THE COURT: What's the plaintiff's position
 2 as to either based on past history or any
 3 projections that the plaintiff has undertaken as
 4 a percentage of profit based on gross revenues.
 5 MR. THOMAS: May I address the Court?
 6 THE COURT: You can tell counsel and he can
 7 relay it.
 8 MR. HAYDEN: Your Honor, the number that
 9 Mr. Thomas has indicated is that it's a ten
 10 percent profitability net profit that he would
 11 obtain.
 12 But the other thing that needs to be taken
 13 into consideration is during this 90-day burn
 14 period or ram--up period, this is the period
 15 where they are paying the affiliate marketers
 16 \$25 for each hit bringing in the traffic into
 17 the program. And so there is a lot of up-front
 18 money being paid by our program ZaaZoom if in
 19 fact Mr. Applebaum were to proceed with his
 20 program by Mr. Applebaum in paying the affiliate
 21 marketers and paying the vendor who would be
 22 providing the service.
 23 So there's a lot of up-front money that is
 24 recouped at a later date.
 25 THE COURT: And what is the defense's

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1 position with respect to percentage of these
 2 gross receipts or gross revenues that are
 3 profit?
 4 MR. SCHWARTZ: Your Honor, after I guess
 5 the commission is paid to the affiliate and
 6 everything after that is pure profit.
 7 THE COURT: So what percentage is that?
 8 MR. SCHWARTZ: A hundred percent.
 9 THE COURT: Of the \$100,000 estimated let's
 10 say gross revenue in a month, what percentage
 11 would be pure profit to RMCR after it has paid
 12 assuming it's now in a position it is today
 13 that ZaaZoom was in prior, that is, marketing
 14 and servicing, marketing the product through the
 15 affiliate network. I am talking about, do you
 16 understand what I'm saying, not under the
 17 agreement.
 18 But if RMCR were doing as it is today, its
 19 own business venture, what is the profit?
 20 MR. SCHWARTZ: 60 percent.
 21 THE COURT: That's after paying the bounty
 22 and --
 23 MR. APPLEBAUM: I don't pay the bounty.
 24 MR. SCHWARTZ: Currently if you're doing it
 25 today?

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1 MR. APPLEBAUM: I'm sorry, I misunderstood.
 2 THE COURT: Just as I asked them, I'm going
 3 to ask that you direct your comments to Mr.
 4 Schwartz. But I'm happy to give you the time
 5 that you need.
 6 Paying the bounty and all the overhead
 7 necessary?
 8 MR. SCHWARTZ: Your Honor, what period of
 9 time are we talking about? I mean, an annual,
 10 profit on an annual? I say that because he paid
 11 a commission to the network and then after that,
 12 that's the biggest expense, and then everything
 13 after that --
 14 THE COURT: Annualized?
 15 MR. APPLEBAUM: It's got to be 60 to 70
 16 percent of profit.
 17 THE COURT: Okay. And the plaintiff's
 18 percentage is different than the ten percent if
 19 I were to ask that question as an annualized
 20 profit recognizing that there are certain one
 21 time and up-front costs, what would that
 22 percentage be?
 23 MR. HAYDEN: It would improve somewhat,
 24 your Honor, because the 5.95 is the initial
 25 up-front payment that is paid whether or not

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1 they go forward with the credit monitoring
 2 service.
 3 THE COURT: So how much would it improve?
 4 MR. HAYDEN: There is also a 25 --
 5 THE COURT: If it's not ten percent, what
 6 might it be on an annualized base?
 7 MR. HAYDEN: Your Honor, it would be 15
 8 percent.
 9 MR. SCHWARTZ: What?
 10 MR. HAYDEN: 15 percent.
 11 MR. SCHWARTZ: Your Honor, I don't see how
 12 that could be the number if you pay
 13 approximately \$30 as a cost to get to the
 14 customer, and then they're billed at \$22 a month
 15 for 12 months, that's about \$264, so it costs
 16 about \$30. So that leaves \$235 of profit given,
 17 and I guess there's some expenses for a handful
 18 of people, but everything pretty much I guess
 19 runs itself. So 235 at 264 is closer to 70 or
 20 80 percent of profit.
 21 Also, if the Court wishes to comment on the
 22 two cases that were offered up by plaintiff's
 23 counsel. The ten dollar case, the party did not
 24 challenge the bond. That's why it was \$10 and
 25 left there. That has nothing to do with this

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1 case.
 2 And the other case which was the Montville
 3 case, the party testified she was earning
 4 \$75,000 a year in her position, and the Court
 5 set the bond at \$50,000, which is two-thirds or
 6 66 percent of what her potential damages could
 7 be.
 8 So clearly, this is a situation where I
 9 don't think it's unreasonable to be in the 60 to
 10 75 percent range.
 11 THE COURT: Okay. The Court is going to
 12 set a bond in the amount of \$150,000. The Court
 13 has taken into consideration the figures that
 14 have been set forth in the agreement in
 15 paragraph 2-B where the target was \$100,000 per
 16 month based on gross monthly receipts to RMCR --
 17 well, I'll read it exactly -- within 90 days of
 18 execution thereof and that was amended to 180
 19 days, which we are now past that time.
 20 The gross monthly receipts to RMCR from
 21 ZaaZoom under this agreement are targeted to be
 22 not less than \$100,000 per month. There seems
 23 to be a dispute whether that's gross or net, but
 24 that will be litigated as the case goes on.
 25 The Court has also taken into account

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1 representations from both defense and plaintiff
 2 with respect to each respective estimate of
 3 percentage of the gross revenues that would
 4 result in profit and there seems to be a
 5 difference of opinion.
 6 The plaintiff viewing it in the 15 percent
 7 range annualized, and the defendant viewing it
 8 in the 60 to 70 percent range.
 9 So taking into account both of those
 10 estimates and working off perhaps an estimated
 11 gross revenues of \$100,000 a month for the next
 12 four months is \$400,000, 50 percent of that
 13 would be \$200,000.
 14 So the \$150,000 represents slightly less
 15 than the 50 percent, and that's how the Court
 16 arrives at the \$150,000, which as the Court
 17 notes is the purpose of the bond is to provide
 18 sufficient funds to recover the adverse party's
 19 costs and damages if the injunction is
 20 wrongfully issued.
 21 And at least some attorney's fees are a
 22 proper element of damages in a suit on an
 23 injunction bond.
 24 MR. SCHWARTZ: Your Honor, if I may, under
 25 the case law, I believe that the requirements of

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1 your order are not -- they don't -- the clock
 2 does not start until the bond is actually
 3 posted.
 4 THE COURT: That is correct. When a bond
 5 is required, the temporary injunction cannot
 6 become effective until the bond is filed, that
 7 is correct.
 8 MR. SCHWARTZ: I also have a point of
 9 clarification on behalf of the my client
 10 pursuant to paragraph three of the marketing
 11 agreement which reflected the exclusivity.
 12 Paragraph 3-A says products will not be
 13 marketed through an online marketing company.
 14 Is the Court's order -- I'm asking you to
 15 clarify that -- the products that the parties
 16 here were actually offering for sale and that
 17 any other products my client had before he --
 18 and are unrelated to the ZaaZoom products can be
 19 market in any fashion including affiliate
 20 marketing because they were no restrictions in
 21 that regard.
 22 THE COURT: The Court does not interpret
 23 products to mean anything other than under the
 24 marketing agreement where it first refers to
 25 Schedule A in paragraph 1-C. That's the first

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1 time Schedule A is referred to. I'm sorry, 1-A,
 2 that is where it's first referred to.
 3 And then it's referred to, as you pointed
 4 out, in 3-A. And when you go to Schedule A, the
 5 products listed are credit report, identity
 6 theft protection, and credit monitoring service.
 7 I can't see that plaintiff would have a
 8 position that the injunction would include any
 9 products outside of the three products listed in
 10 Schedule A; is that correct?
 11 MR. HAYDEN: No problem with that, your
 12 Honor, as long as our proprietary information,
 13 and the network technology, that was also
 14 provided to him has been returned and no copies
 15 are kept thereof so that he's not using our
 16 technology for affiliate marketing and Internet
 17 marketing of another product.
 18 THE COURT: Right. Well, the first part of
 19 the injunction is that all proprietary
 20 information is returned.
 21 And defendant is free to market in whatever
 22 way it chooses products are not encompassed by
 23 the marketing agreement in ways that do not rely
 24 upon the use of the proprietary information that
 25 the Court found was in fact proprietary.

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1 MR. HAYDEN: Which would include customer
 2 lists.
 3 THE COURT: I think I was pretty clear in
 4 what this proprietary information was.
 5 MR. HAYDEN: Thank you, your Honor.
 6 MR. SCHWARTZ: So that there's no
 7 misunderstanding because Schedule A just
 8 identifies credit report. It would be the
 9 product that was provided during the course and
 10 scope of the relationship that the parties are
 11 exactly aware of. Each side knows what type
 12 because there's different types of credit
 13 reports, as my client explained, one bureau with
 14 scores, without, there was a specific one
 15 provided under ZaaZoom. That's the one that --
 16 MR. HAYDEN: Your Honor, I think we're
 17 narrowing it here.
 18 I have some concern with, because I am not
 19 sure what they're trying to do, is they're
 20 trying to somehow tweak the product that is
 21 being provided in a minuscule way. The products
 22 that are being offered are the products of
 23 credit monitoring through the credit bureau
 24 information, the credit bureau reports, and to
 25 the extent that we're trying to find sort of a

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1 side step around this injunction, I think that's
 2 inappropriate.
 3 THE COURT: Well, I think that I'm going to
 4 leave the order as it stands. Perhaps as you
 5 give it more thought without the pressure of
 6 being in the courtroom and discuss with your
 7 client the full parameters of prospective
 8 business ventures.
 9 I would suggest that you first call
 10 opposing counsel and discuss it with him, and it
 11 may be that you all will be able to agree to it,
 12 and be in a better position than the Court to
 13 understand the nuances.
 14 But to the extent there is ever a question
 15 as to whether certain activity, more
 16 particularized activity, I really don't want to
 17 be to in a position to rule on hypothetical or
 18 projected generalized forms of business
 19 activity.
 20 I am certainly amenable to and would
 21 encourage defendant to come before the Court and
 22 seek a proactive and preemptive clarification or
 23 style the motion as you deem appropriate to get
 24 specific clarification on something specific you
 25 can present to the Court.

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1 MR. SCHWARTZ: I hear what the Court is
 2 saying, but if I can make one comment and maybe
 3 we'll be able resolve this.
 4 The credit report was Experian, one bureau,
 5 with score, report. That's how, and I think Mr.
 6 Thomas can confirm, that over the six months,
 7 and all these customers, that's the credit
 8 report. This way we don't have to worry about
 9 those things so --
 10 MR. HAYDEN: Your Honor, I would just
 11 suggest that the Court's suggestion makes a lot
 12 of sense. If you're going into those areas of
 13 credit monitoring, let us know about it, maybe
 14 we don't have a problem, maybe we do, and maybe
 15 we need clarification from the Court.
 16 But at this point in time, you've read us
 17 your order, and I am not sure of exactly, Wayne,
 18 respectfully, I'm not sure what you're getting
 19 at.
 20 MR. SCHWARTZ: What I'm getting at is my
 21 client --
 22 THE COURT: I understand.
 23 MR. SCHWARTZ: -- a dozen other different
 24 types of credit products, and I don't want to
 25 have to drag people back from Colorado or come

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1 back and bother the Court when I think Mr.
 2 Thomas knows or should know that it's the one
 3 product, the Experian, one bureau with score
 4 credit report.
 5 THE COURT: Well, you are not going to
 6 bother the Court so don't ever worry about that.
 7 And Mr. Crandell can appear by phone, I am
 8 assuming he is still there.
 9 MR. CRANDELL: Yes, I am.
 10 THE COURT: And you can all appear by phone
 11 for that matter if you want to very quickly and
 12 very easily.
 13 I would think that the more detail you can
 14 put forth with respect to the prospective
 15 business venture with the plaintiff's counsel
 16 and understanding it and hopefully cooperating
 17 and finding a compatible way to both be able to
 18 earn a livelihood quite frankly. So I am not
 19 going to go any further than that.
 20 Now, with respect to the order, it is
 21 detailed and it is lengthy and it is all
 22 contained in the transcript.
 23 As you know, orders on temporary injunction
 24 need to be detailed and set forth with
 25 particularity so we need to discuss the best way

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1 for the actual form of the order to make its way
 2 into an official order that is in the court
 3 file.
 4 I am going to ask plaintiff's counsel to
 5 take responsibility in doing that. And one
 6 suggestion may be to order the court transcript
 7 and to attach it to any proposed order that you
 8 submit to the Court because there does need to
 9 be a written order that we want to be part of
 10 the court file.
 11 Clearly, I ask that you confer and in fact
 12 require that you confer with Mr. Schwartz and
 13 not that I expect him to agree with the content
 14 of the order, but to agree to the submission,
 15 the form in which you're submitting it, and that
 16 it be submitted to the Court for entry.
 17 The order is in effect as of today so let's
 18 be clear about that, but I need something that
 19 we put in the court file.
 20 MR. HAYDEN: Your Honor, I have draft
 21 orders, but to the extent you want a much more
 22 extensive order, we could, which goes through
 23 the elements of the temporary injunction
 24 requirements and the findings of the Court, it
 25 sounds like you want a much more detail -- I

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1 have seen it done where you have a preliminary
 2 order the transcript attached to it, or I could
 3 take the transcript and --
 4 THE COURT: No, no, you should -- I would
 5 think it may be easiest on everyone and nothing
 6 gets lost in the translation to order the
 7 transcript, to attach it to a proposed order,
 8 the proposed order can be quite simple and
 9 straightforward so it doesn't lend itself to any
 10 dissension between the parties.
 11 And at the time you have the transcript,
 12 submit both to the Court so the Court can enter
 13 it, but the order is effective as of today.
 14 MR. HAYDEN: Your Honor, I have a draft
 15 order and I can provide it to counsel so at
 16 least it's a starting point.
 17 MR. SCHWARTZ: Your Honor, this is a four
 18 page with a lot of detail. I think it would be
 19 best since it was announced on the record, and
 20 I'd like to see the transcript, I don't want to
 21 do it this way.
 22 THE COURT: Well, here's what we're going
 23 to do. I am going to issue the order and I'm
 24 going to ask you for your envelopes. And I'm
 25 going to ask that you order the transcript and

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1 that you file the transcript under a notice of
 2 filing with the court.
 3 MR. HAYDEN: Should I provide the Court
 4 with this draft?
 5 THE COURT: You can give me your proposed
 6 order.
 7 MR. HAYDEN: It's at least a start, your
 8 Honor.
 9 THE COURT: It's really the transcript that
 10 speaks to the particulars of the order. And
 11 that's what the Court is going to be relying
 12 upon as the order. And so I'd like the
 13 transcript to be filed with the clerk and the
 14 order will reference that it is going to contain
 15 the findings and conclusions of the Court.
 16 MR. SCHWARTZ: I appreciate that, your
 17 Honor. I'm not trying to be difficult, but
 18 there's a record to preserve.
 19 THE COURT: Okay.
 20 MR. SCHWARTZ: Can I ask a question, your
 21 Honor, on behalf of my client?
 22 THE COURT: Yes.
 23 MR. SCHWARTZ: Is it the Court's intention
 24 to basically put the parties back to where they
 25 were because we have 5,000 customers, I mean is

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1 RMCR required to --
 2 MR. APPLEBAUM: I have 5,000 customers
 3 waiting for product.
 4 THE COURT: I think the order speaks for
 5 itself.
 6 MR. HAYDEN: Thank you, your Honor.
 7 MR. APPLEBAUM: Do I service them or do I
 8 turn them off? I am confused.
 9 THE COURT: Are you in a position to be
 10 able to help your client in explaining the
 11 Court's order or maybe when you get the
 12 transcript that will help you.
 13 MR. SCHWARTZ: The only thing, your Honor,
 14 is if ZaaZoom just does billing and my client
 15 does products and services --
 16 THE COURT: Okay. I am not -- I think
 17 we're going beyond. I think you need to give
 18 thought to the Court order and perhaps get the
 19 transcript and speak with your client about it.
 20 I tried to be detailed and give you the
 21 basis for the Court's findings and the guidance
 22 that was necessary so I am hopeful that it
 23 accomplished that or will when you have more
 24 time.
 25 MR. SCHWARTZ: I assume the Court is open

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1 to issues that need clarifying or if there's
 2 anything we can't work out.
 3 THE COURT: Yes, absolutely.
 4 MR. HAYDEN: Your Honor, we thank you for
 5 your time and indulgence.
 6 One question, these large blowups that were
 7 made part of the record, should they continue to
 8 be as part of the record or --
 9 THE CLERK: If you want them, I can give
 10 them back to you.
 11 MR. HAYDEN: We will take them.
 12 THE COURT: Mr. Crandell, we are going to
 13 say goodbye.
 14 MR. CRANDELL: I thank you and I appreciate
 15 your time.
 16 THE COURT: Okay, thank you.
 17 (Thereupon, the hearing was concluded at
 18 4:13 p.m.)
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1 REPORTER'S HEARING CERTIFICATE
 2
 3 STATE OF FLORIDA
 4 COUNTY OF PALM BEACH
 5 I, LESLIE HANAWALT, a Shorthand Reporter,
 6 certify that I was authorized to and did
 7 stenographically report the foregoing hearing; and that
 8 the transcript is a true record.
 9 I further certify that I am not a relative,
 10 employee, attorney or counsel of any of the parties,
 11 nor am I a relative or employee of any of the parties'
 12 attorney or counsel connected with the action, nor am I
 13 financially interested in the action.
 14 Dated this 14th day of June, 2007.
 15
 16 _____
 17 Leslie Hanawalt
 18 Shorthand Reporter
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