

1 WILLARD K. TOM
2 General Counsel
3 GREGORY A. ASHE
4 LISA A. ROTHFARB
5 JASON M. ADLER
6 Federal Trade Commission
7 600 Pennsylvania Ave., N.W.
8 Washington, D.C. 20580
9 Telephone: 202-326-3719 (Ashe)
10 Telephone: 202-326-2602 (Rothfarb)
11 Telephone: 202-326-3231 (Adler)
12 Facsimile: 202-326-3768
13 Email: gashe@ftc.gov, lrothfarb@ftc.gov, jadler@ftc.gov

14 RAYMOND E. MCKOWN (CA Bar No. 150975)
15 Federal Trade Commission
16 10877 Wilshire Blvd, Suite 700
17 Los Angeles, CA 90024
18 Telephone: 310-824-4325
19 Facsimile: 310-824-4380
20 Email: rmckown@ftc.gov

21 Attorneys for Plaintiff

22 **UNITED STATES DISTRICT COURT**
23 **CENTRAL DISTRICT OF CALIFORNIA**

24
25
26
27
28
BY _____
2012 SEP 10 PM 12:20
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
SANTA ANA

FILED

20 **FEDERAL TRADE COMMISSION,**
21
22 Plaintiff,
23
24 v.
25 **NELSON GAMBLE & ASSOC.**
26 **LLC, et al.,**
27
28 Defendants.

Case No. SACV12 - 1504 JST (JPRx)

**MEMORANDUM IN SUPPORT OF
PLAINTIFF'S EX PARTE
APPLICATION FOR
TEMPORARY RESTRAINING
ORDER WITH AN ASSET
FREEZE AND OTHER
EQUITABLE RELIEF, AND
ORDER TO SHOW CAUSE WHY
A PRELIMINARY INJUNCTION
SHOULD NOT ISSUE**

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- I. INTRODUCTION 1
- II. FACTS 2
 - A. The Parties 2
 - 1. The Federal Trade Commission 2
 - 2. The Defendants 3
 - B. Defendants’ Deceptive Business Practices 6
 - 1. Internet Marketing Activities 7
 - 2. Telemarketing Activities 10
 - a. The Robocall 11
 - b. The Prequalification Sales Pitch 11
 - c. The Enrollment Sales Pitch 12
 - 3. Fulfillment 13
 - C. Consumer Injury 16
- III. A TEMPORARY RESTRAINING ORDER SHOULD ISSUE AGAINST DEFENDANTS 16
 - A. This Court Has the Authority to Grant the Requested Relief 16
 - B. The FTC Meets the Standard for Granting a Government Agency’s Request for a Preliminary Injunction 18
 - 1. The FTC Has Demonstrated its Likelihood to Succeed on the Merits 19
 - a. Defendants Have Made Material Misrepresentations Regarding Their Debt Relief Services in Violation of Section 5 of the FTC Act and the TSR 23
 - b. Defendants Have Made Unauthorized Withdrawals from Consumer Accounts in Violation of Section 5 of the FTC Act, the TSR, the EFTA, and Regulation E 26
 - c. Defendants’ Telemarketing Activities Have Violated Many Other Provisions of the TSR 29
 - d. Defendants Are a Common Enterprise and Jointly and Severally Liable for the Law Violations 34
 - e. The Individual Defendant is Liable for Injunctive and Monetary Relief 36
 - 2. The Equities Weigh in Favor of Granting Injunctive Relief .. 38

1 IV. THE SCOPE OF THE PROPOSED *EX PARTE* TRO IS APPROPRIATE IN
2 LIGHT OF DEFENDANTS' CONDUCT 40
3 A. Conduct Relief 40
4 B. Temporary Disabling of Websites 41
5 C. An Asset Preservation Order Is Necessary to Preserve the Possibility
6 of Final Effective Relief 42
7 D. Preservation of Records 45
8 E. Expedited Discovery 45
9 F. The Temporary Restraining Order Should Be Issued *Ex Parte* To
10 Preserve The Court's Ability To Fashion Meaningful Relief And To
11 Prevent Irreparable Injury To Victims Of Defendants' Deceptive
12 Business Activities 46
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28 V. CONCLUSION 49

1 **TABLE OF AUTHORITIES**

2 **REPORTED CASES**

3

4 *Am. Can Co. v. Mansukhani*,
5 742 F.2d 314 (7th Cir. 1984) 47

6 *Benham Jewelry Corp. v. Aron Basha Corp.*,
7 1997 U.S. Dist. LEXIS 15957 (S.D.N.Y. July 18, 1997) 46

8 *Cenergy Corp. v. Bryson Oil & Gas P.L.C.*,
9 657 F.Supp. 867 (D. Nev. 1987) 47

10 *CFTC v. British American Commodity Options Corp.*,
11 560 F.2d 135 (2d Cir. 1977) 38

12 *CFTC v. Hunt*,
13 591 F.2d 1211 (7th Cir.), *cert. denied*, 442 U.S. 921 (1979) 39

14 *Deckert v. Independence Shares Corp.*,
15 311 U.S. 282 (1940) 41

16 *Delaware Watch Co. v. FTC*,
17 332 F.2d 745 (2d Cir. 1964) 34

18 *Federal Express Corp. v. Federal Expresso, Inc.*,
19 1997 U.S. Dist. LEXIS 19144 (N.D.N.Y. Nov. 24, 1997) 46

20 *Flynt Distrib. Co., Inc. v. Harvey*,
21 734 F.2d 1389 (9th Cir. 1984) 19

22 *FSLIC v. Dixon*,
23 835 F.2d 554 (5th Cir. 1987) 46

24 *FTC v. Accusearch Inc.*,
25 570 F.3d 1187 (10th Cir. 2009) 20

26 *FTC v. Accusearch Inc.*,
27 2007 U.S. Dist. LEXIS 74905 (D. Wyo. Sep. 28, 2007) 20

28

| | | |
|----|---|------------------------|
| 1 | <i>FTC v. Affordable Media, LLC,</i> | |
| 2 | 179 F.3d 1228 (9th Cir. 1999) | 18, 36, 37, 38, 43 |
| 3 | <i>FTC v. Am. Cellular, Inc.,</i> | |
| 4 | 810 F.2d 1511 (9th Cir. 1987) | 18 |
| 5 | <i>FTC v. Amy Travel Service, Inc.,</i> | |
| 6 | 875 F.2d 564 (7th Cir.), <i>cert. denied</i> , 493 U.S. 954 (1989) | |
| 7 | | 22, 24, 36, 37, 41, 43 |
| 8 | <i>FTC v. Beatrice Foods Co.,</i> | |
| 9 | 587 F.2d 1225 (D.C. Cir. 1978) | 19 |
| 10 | <i>FTC v. Cyberspace.com, LLC,</i> | |
| 11 | 453 F.3d 1196 (9th Cir. 2006) | 20, 21 |
| 12 | <i>FTC v. Direct Mktg. Concepts, Inc.,</i> | |
| 13 | 2010 U.S. App. LEXIS 21743 (1st Cir. Oct. 21, 2010) | 22 |
| 14 | <i>FTC v. Figgie Int'l, Inc.,</i> | |
| 15 | 994 F.2d 595 (9th Cir. 1993), <i>cert. denied</i> , 510 U.S. 1110 (1994) | 21, 22 |
| 16 | <i>FTC v. Five-Star Auto Club,</i> | |
| 17 | 97 F. Supp. 2d 502 (S.D.N.Y. 2000) | 21, 36, 39, 41 |
| 18 | <i>FTC v. Gem Merchandising Corp.,</i> | |
| 19 | 87 F.3d 466 (11th Cir. 1996) | 36 |
| 20 | <i>FTC v. H.N. Singer, Inc.,</i> | |
| 21 | 668 F.2d 1107 (9th Cir. 1982) | 17, 18, 41, 42 |
| 22 | <i>FTC v. J.K. Publ'ns, Inc.,</i> | |
| 23 | 99 F. Supp. 2d 1176 (C.D. Cal. 2000) | 34 |
| 24 | <i>FTC v. Pantron I Corp.,</i> | |
| 25 | 33 F.3d 1088 (9th Cir. 1994), <i>cert. denied</i> , 514 U.S. 1083 (1995) .. | 3, 17, 20 |
| 26 | <i>FTC v. Publ'g Clearing House, Inc.,</i> | |
| 27 | 104 F.3d 1168 (9th Cir. 1997) | 18 |
| 28 | | |

| | | |
|----|---|------------|
| 1 | <i>FTC v. Security Rare Coin & Bullion Corp.</i> , | |
| 2 | 931 F.2d 1312 (8th Cir. 1991) | 22 |
| 3 | <i>FTC v. SlimAmerica, Inc.</i> , | |
| 4 | 77 F. Supp. 2d 1263 (S.D. Fla. 1999) | 22 |
| 5 | <i>FTC v. Stefanchik</i> , | |
| 6 | 559 F.3d 924 (9th Cir. 2009) | 20 |
| 7 | <i>FTC v. Think Achievement Corp.</i> , | |
| 8 | 144 F. Supp. 2d 993 (N.D. Ind. 2000), <i>aff'd</i> 312 F.3d 259 (7th Cir. 2002) | 34 |
| 9 | <i>FTC v. Thomsen-King & Co.</i> , | |
| 10 | 109 F.2d 516 (7th Cir. 1940) | 38 |
| 11 | <i>FTC v. U.S. Oil & Gas Corp.</i> , | |
| 12 | 748 F.2d 1431 (11th Cir. 1984) | 17 |
| 13 | <i>FTC v. Warner Comme'ns, Inc.</i> , | |
| 14 | 742 F.2d 1156 (9th Cir. 1984) | 18 |
| 15 | <i>FTC v. Windward Mktg. Ltd.</i> , | |
| 16 | 1997 U.S. Dist. LEXIS 17114 (N.D. Ga. Sep. 30, 1997) | 20 |
| 17 | <i>FTC v. World Travel Vacation Brokers</i> , | |
| 18 | 861 F.2d 1020 (7th Cir. 1988) | 21, 42 |
| 19 | <i>FTC v. World Wide Factors, Ltd.</i> , | |
| 20 | 882 F.2d 344 (9th Cir. 1989) | 18, 19, 39 |
| 21 | <i>Granny Goose Foods, Inc. v. Bhd. of Teamsters</i> , | |
| 22 | 415 U.S. 423 (1974) | 47 |
| 23 | <i>Heideman v. S. Salt Lake City</i> , | |
| 24 | 348 F. 3d 1182 (10th Cir. 2003) | 19 |
| 25 | <i>In re Int'l Harvester</i> , | |
| 26 | 104 F.T.C. 949 (1984) | 20 |
| 27 | | |
| 28 | | |

| | | |
|----|---|--------|
| 1 | <i>Johnson v. Couturier,</i> | |
| 2 | 572 F.3d 1067 (9th Cir. 2009) | 42, 43 |
| 3 | <i>Kraft, Inc. v. FTC,</i> | |
| 4 | 970 F.2d 311 (7th Cir. 1992), <i>cert. denied</i> , 507 U.S. 909 (1993) | 21 |
| 5 | <i>National Soc'y of Prof. Eng'rs. v. United States,</i> | |
| 6 | 435 U.S. 679 (1978) | 39 |
| 7 | <i>Novartis Corp. v. FTC,</i> | |
| 8 | 223 F.3d 783 (D.C. Cir. 2000) | 21 |
| 9 | <i>Orkin Exterminating Co., Inc. v. FTC,</i> | |
| 10 | 849 F.2d 1354 (11th Cir. 1988) | 20 |
| 11 | <i>Porter v. Warner Holding Co.,</i> | |
| 12 | 328 U.S. 395 (1946) | 46 |
| 13 | <i>Reebok Int'l, Ltd. v. McLaughlin,</i> | |
| 14 | 49 F.3d 1387 (9th Cir. 1995) | 41 |
| 15 | <i>Removatron Int'l Corp. v. FTC,</i> | |
| 16 | 884 F.2d 1489 (1st Cir. 1989) | 21, 22 |
| 17 | <i>SEC v. Manor Nursing Ctrs., Inc.,</i> | |
| 18 | 458 F.2d 1082 (2d Cir. 1972) | 43, 44 |
| 19 | <i>SEC v. R.J. Allen & Assoc., Inc.,</i> | |
| 20 | 386 F. Supp. 866 (S.D. Fla. 1974) | 39, 43 |
| 21 | <i>SEC v. Unifund SAL,</i> | |
| 22 | 910 F.2d 1028 (2d Cir. 1990) | 45 |
| 23 | <i>In re Southwest Sunsites, Inc.,</i> | |
| 24 | 105 F.T.C. 7, 149 (1985), <i>aff'd</i> , 785 F.2d 1431 (9th Cir. 1986). | 21 |
| 25 | <i>Standard Educators, Inc. v. FTC,</i> | |
| 26 | 475 F.2d 401 (D.C. Cir.), <i>cert. denied</i> , 414 U.S. 828 (1973) | 36 |
| 27 | | |
| 28 | | |

1 *United States v. Diapulse Corp. of Am.*,
2 457 F.2d 25 (2d Cir. 1972) 38

3 *United States v. First National City Bank*,
4 379 U.S. 378 (1965) 41, 43

5 *In re Vuitton et Fils, S.A.*,
6 606 F.2d 1 (2d. Cir. 1979) 47

7 *Waffenschmidt v. Mackay*,
8 763 F.2d 711 (5th Cir. 1985) 41

9

10 **UNREPORTED CASES**

11 *FTC v. 1268957 Ontario Inc.*,
12 Case No. 1:01-cv-00423-JEC (N.D. Ga. Feb. 13, 2001) 42

13 *FTC v. Dinamica Financiera LLC*,
14 Case No. CV-03554-MMM-PJW (C.D. Cal. May 19, 2009) 18

15 *FTC v. Fed. Loan Modification Law Ctr., LLP*,
16 Case No. CV-00401-CJC-MLG (C.D. Cal. Apr. 6, 2009) 18

17 *FTC v. Forensic Case Mgmt. Servs., Inc.*,
18 Case No. CV-11-07484-RGK-SS (C.D. Cal. Sep. 12, 2011) 18

19 *FTC v. In Deep Servs., Inc.*,
20 CV-01193-SGL-PJW (C.D. Cal. Jun. 23, 2009) 18

21 *FTC v. Mountain View Systems, Ltd., et al.*,
22 Case No. 1:03-cv-0021-RMC (D.D.C. Jan. 9, 2003) 42

23 *FTC v. Pereira*,
24 Case No. 1:99-cv-01367-AVB (E.D. Va. Sep. 14, 1999) 42

25 *FTC v. Rincon Mgmt. Servs. LLC*,
26 Case No. CV-11-01623-VAP-SP (C.D. Cal. Oct. 11, 2011) 17

27

28

1 *FTC v. Stuffingforcash.com Corp.*,
2 Case No. 1:02-cv-05022-CRN (N.D. Ill. July 16, 2002) 42

3 *FTC v. TLD Network Ltd.*,
4 Case No. 1:02-cv-01475-JFH (N.D. Ill. Feb. 28, 2002) 42

5 *FTC v. US Homeowners Relief, Inc.*,
6 Case No. CV-10-01452-JST-PJW (C.D. Cal. Sep. 28, 2010) 18

7

8 **STATUTES AND REGULATIONS**

9 15 U.S.C. § 41 *et seq.* 2

10

11 15 U.S.C. § 45 1, 19

12 15 U.S.C. §45(a) 2

13 15 U.S.C. § 45(n) 20

14

15 15 U.S.C. § 53(b) 3, 16

16 15 U.S.C. § 56(a)(2)(A) 3

17 15 U.S.C. § 56(a)(2)(B) 3

18

19 15 U.S.C. § 57b 3

20 15 U.S.C. § 6101 *et seq.* 2

21

22 15 U.S.C. § 6102(c) 3

23 15 U.S.C. § 6105(b) 3

24 15 U.S.C. § 1693 *et seq.* 2

25

26 15 U.S.C. § 1693e(a) 1, 28

27 15 U.S.C. § 1693o(c) 3

28

| | | |
|----|---|-------|
| 1 | 12 C.F.R. Part 205 | 2 |
| 2 | | |
| 3 | 12 C.F.R. § 205.10(b) | 1, 28 |
| 4 | 12 C.F.R. Part 1005 | 3 |
| 5 | 12 C.F.R. § 1005.10(b) | 1, 28 |
| 6 | | |
| 7 | 16 C.F.R. Part 310 | 1, 2 |
| 8 | 16 C.F.R. § 310.2(m) | 22 |
| 9 | 16 C.F.R. § 310.2(v) | 22 |
| 10 | | |
| 11 | 16 C.F.R. § 310.2(aa) | 22 |
| 12 | 16 C.F.R. § 310.2(cc) | 22 |
| 13 | 16 C.F.R. § 310.2(dd) | 22 |
| 14 | | |
| 15 | 16 C.F.R. § 310.3(a)(2)(iii) | 25 |
| 16 | 16 C.F.R. § 310.3(a)(2)(x) | 25 |
| 17 | | |
| 18 | 16 C.F.R. § 310.4(a)(5)(i) | 30 |
| 19 | 16 C.F.R. § 310.4(a)(7) | 28 |
| 20 | 16 C.F.R. § 310.4(a)(8) | 32 |
| 21 | | |
| 22 | 16 C.F.R. § 310.4(b)(1)(i) | 34 |
| 23 | 16 C.F.R. § 310.4(b)(1)(iii)(A) | 31 |
| 24 | 16 C.F.R. § 310.4(b)(1)(iii)(B) | 31 |
| 25 | | |
| 26 | 16 C.F.R. § 310.4(b)(1)(v)(A) | 32 |
| 27 | 16 C.F.R. § 310.4(b)(1)(v)(B)(ii) | 33 |
| 28 | | |

1 16 C.F.R. § 310.4(d) 33
2
3 16 C.F.R. § 310.6(b)(5) 23
4 P.L. 111-203, 124 Stat. 1376 (2010) 2

5 **MISCELLANEOUS**

6
7 S. Rep. No. 130, 103rd Cong., 2d Sess. 15-16, reprinted in 1994 U.S. Code Cong.
& Admin. News 1776, 1790-91 47
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **I. INTRODUCTION**

2 Defendants callously take advantage of consumers who are struggling to
3 make ends meet and seek relief from their burdensome debt. Defendants convince
4 consumers to enroll in their debt relief program by promising them lawyers will
5 settle their debts for substantially less than they owe. Defendants' program,
6 however, is nothing more than a dead end for consumers in financial distress.
7 Defendants settle none or few debts for consumers, and extract substantial fees
8 from consumers. For many consumers, Defendants do not even contact their
9 creditors, yet refuse to refund hundreds or thousands of dollars that consumers pay.
10 In addition, Defendants make unauthorized robocalls, harass consumers through
11 their telemarketing, and engage in unauthorized billing. Defendants' egregious
12 conduct violates Section 5 of the Federal Trade Commission Act ("FTC Act"), 15
13 U.S.C. § 45, the Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310, the
14 Electronic Fund Transfers Act ("EFTA"), 15 U.S.C. § 1693e(a), the Federal
15 Reserve Board's Regulation E, 12 C.F.R. § 205.10(b), and the Consumer Financial
16 Protection Bureau's Regulation E, 12 C.F.R. § 1005.10(b).

17 To put an immediate stop to Defendants' illegal activities, Plaintiff Federal
18 Trade Commission ("FTC") seeks an *ex parte* temporary restraining order ("TRO")
19 and an order to show cause why a preliminary injunction should not issue. The
20 proposed TRO would enjoin Defendants' illegal practices, freeze assets, and
21

1 suspend Defendants' websites and domain registrations. Because Defendants
2 operate a business permeated by fraud, the FTC seeks the TRO on an *ex parte*
3 basis. These measures are necessary to prevent continued consumer injury,
4 dissipation of assets, and destruction of evidence, and thereby to preserve the
5 Court's ability to provide effective final relief.
6

7 **II. FACTS**

8 **A. The Parties**

9 **1. The Federal Trade Commission**

10 The FTC is an independent agency of the United States government created
11 by statute. 15 U.S.C. § 41 *et seq.* The FTC enforces Section 5(a) of the FTC Act,
12 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or
13 affecting commerce. The FTC enforces the Telemarketing Act, 15 U.S.C. § 6101
14 *et seq.* Pursuant to the Telemarketing Act, the FTC promulgated and enforces the
15 TSR, 16 C.F.R. Part 310, which prohibits deceptive or abusive telemarketing acts
16 or practices. The FTC enforces the EFTA, 15 U.S.C. § 1693 *et seq.*, which
17 regulates the rights, liabilities, and responsibilities of participants in electronic
18 funds transfer systems. The FTC also enforces Regulation E, 12 C.F.R. Part 205,
19 which the Federal Reserve Board originally promulgated. The Bureau of
20 Consumer Financial Protection promulgated a new Regulation E, pursuant to the
21 EFTA and the Dodd-Frank Act, P.L. 111-203, 124 Stat. 1376 (2010), and the FTC
22
23
24
25
26
27
28

1 also enforces the new Regulation E, 12 C.F.R. Part 1005. The FTC is authorized to
2 initiate United States District Court proceedings, by its own attorneys, to enjoin
3
4 violations of the FTC Act, the TSR, the EFTA, and Regulation E and to secure
5 such equitable relief as may be appropriate in each case, including consumer
6
7 redress. 15 U.S.C. §§ 53(b), 56(a)(2)(A), 56(a)(2)(B), 57b, 6102(c), 6105(b), and
8 1693o(c). *See, e.g., FTC v. Pantron I Corp.*, 33 F.3d 1088, 1102 (9th Cir. 1994),
9 *cert. denied*, 514 U.S. 1083(1995).

10 11 2. The Defendants

12 Defendants **Nelson Gamble & Associates LLC** (“Nelson Gamble”),
13 **Jackson Hunter Morris & Knight LLC** (“Jackson Hunter”), and **BlackRock**
14 **Professional Corporation** (“BlackRock”) operate their business at 8001 Irvine
15 Center Drive in Irvine, California. (PX17 at 344 ¶ 16; PX20 at 681.) Until
16
17 recently, their principal place of business was at 30221 Aventura, 2nd Floor,
18
19 Rancho Santa Margarita, California. (PX08 at 151 ¶ 3; PX20 at 667 ¶ 15.)
20 Corporate papers as well as documents provided to consumers list a different
21
22 address for Nelson Gamble in Irvine, California. (PX17 Att. F at 437; PX02 Att. A
23 at 16.) Jackson Hunter’s website and documents provided to consumers list an
24
25 address in Newport Beach, California. (PX17 Att. A at 352; PX13 Att. A at 303.)
26 BlackRock’s corporate documents and website list an address in San Diego,
27
28

1 California. (PX17 Att. I at 455, Att. E at 425.) These addresses, however, are
2 virtual offices. (PX17 at 338 ¶ 7, Att. O at 610, 623.)
3

4 Defendant Nelson Gamble is a Colorado corporation, incorporated on
5 October 25, 2010. Defendant Jackson Hunter is a Nevada corporation,
6 incorporated on September 24, 2011. Defendant BlackRock is a Colorado
7 professional corporation, incorporated on May 3, 2012. Defendants operated under
8 the name Nelson Gamble until approximately September 2011, when they began
9 using the name Jackson Hunter. Consumers who attempted to contact Nelson
10 Gamble heard a recording stating that the company had filed for bankruptcy. The
11 message directed consumers who had previously purchased services from Nelson
12 Gamble to contact Jackson Hunter, stating that Jackson Hunter was now handling
13 the consumers' accounts. (PX09 at 162 ¶ 12; PX12 at 258 ¶ 8; PX18 at 660 ¶ 6.)
14
15 Jackson Hunter continued to debit consumers' accounts – sometimes through a
16 third party payment processor and sometimes directly. In or around May 2012,
17 Defendants began operating under the name BlackRock as well.
18
19
20
21

22 Defendant **Mekhia Capital LLC** is a California limited liability company,
23 and its principal place of business has also been at the Rancho Santa Margarita
24 address. According to bank records, Mekhia Capital works with a third party
25 payment processor, Global Client Solutions (“GCS”), which acts as an escrow
26 agent for funds collected from consumers. Mekhia Capital's function appears to be
27
28

1 as owner of several merchant accounts through which Defendants collect their fees.
2 (PX17 at 343- 44 ¶ 14- 15.) Documents Defendants sent to consumers indicate
3 that consumers' monthly payments towards their debts will be made to a third
4 party payment processor, GCS, and will remain in the third party account while
5 Defendants work to negotiate consumers' debts. (PX02 at 3 ¶ 3; PX03 at 55 ¶ 2;
6 PX05 at 95 ¶ 3.) Bank records show that in fact defendants receive frequent wire
7 transfers to a Mekhia Capital bank account. (Cite PX17 at 343 ¶ 14.) Most of the
8 money in the Mekhia Capital account is subsequently transferred to Defendants'
9 other bank accounts, including accounts in the names of Nelson Gamble, Jackson
10 Hunter, and BlackRock. (PX17 at 343- 44 ¶ 14- 15.)

11
12
13
14
15 Defendant **Jeremy R. Nelson** is the principal and sole officer of Nelson
16 Gamble, Jackson Hunter, and Mekhia Capital, and the principal and president of
17 BlackRock. (PX17 Att. J at 463, 468, 473, 484, 487, Att O at 613, 626, Att. P at
18 635, Att. R at 657.) He runs the business on a day-to-day basis, manages the staff,
19 and even directly instructs employees to engage in fraudulent behavior. (PX08 at
20 152 ¶ 4, 6, 154 ¶ 12-13, 155-56 ¶ 16.) He also has signatory authority over
21 Defendants' bank accounts. (PX17 Att. J at 461-63, 468, 480, 484.) Nelson
22 maintains the domain names and is the registrant and technical, billing, and
23 administrative contact for many of Defendants' Internet websites. (PX17 Att. K at
24 493-95, 524 - 530.) The GoDaddy.com and Domains by Proxy documents also list
25
26
27
28

1 various aliases of Nelson in place of his name (including Nelson Gamble, Check
2 Mate, Hush Holdings, and Jackson Hunter) as the registrant and contact for some
3 of Defendants' websites. (PX17 Att. K at 493, 499, 519, 524, Att. L 595-95.)
4 Nelson is listed as the subscriber for telephone numbers used by Nelson Gamble,
5 Jackson Hunter, and BlackRock. (PX17 Att. N at 605-608.) Nelson's signature
6 with the title "President" also appears on the Nelson Gamble lease agreement for
7 its Irvine mailing address and the Jackson Hunter lease agreement for its Newport
8 Beach mailing address. (PX17 Att. O at 613, 622-23.)

12 **B. Defendants' Deceptive Business Practices**

13 Defendants market debt relief services via the Internet and telemarketing.
14 Their websites direct consumers to contact Defendants on their toll-free numbers.
15 Defendants also engage in outbound telemarketing to consumers using automated
16 dialers ("robocalls"). When consumers call – or receive robocalls from –
17 Defendants, telemarketers promise to negotiate settlements of consumers' debts so
18 that consumers will owe substantially less – usually 50% less – than their current
19 debt amount. As discussed below, in most cases Defendants do not settle any of
20 the consumers' debts or settle only a few small debts. Many consumers discover
21 that Defendants take all of the money intended for debt settlement as fees. Many
22 consumers who provide the telemarketers with personal information, such as their
23 bank account information, but turn down the debt relief services during the course
24
25
26
27
28

1 of the phone call, discover that Defendants use their personal information to enroll
2 them anyway and make unauthorized charges to their bank accounts.
3

4 **1. Internet Marketing Activities**

5 Defendants have solicited consumers who seek debt relief services through a
6 number of Internet websites. Since at least January 2009, Defendants have
7 registered several websites, including nelsongamble.com, jhmklaw.com,
8 jhmklaw.org, and blackrocklaw.com.¹ Nelsongamble.com is now inactive, but
9 was active while Defendants operated under the Nelson Gamble name. The
10 Jackson Hunter websites, jhmklaw.com and jhmklaw.org, and BlackRock website,
11 blackrocklaw.com, are currently active.
12
13
14

15 Defendants' websites have made the following statements regarding the
16 company's ability to reduce consumers' unsecured debt:
17

18 a. Our business model is based on the premise that all clients be
19 completely satisfied while providing them the following in
20 expectations:
21

- 22 • SAVINGS amounting to Hundreds of Dollars a month;
- 23 • DEBT FREE usually in three years or less;
- 24
- 25

26 Documents from GoDaddy.com and Domains by Proxy show that Defendants
27 have registered a number of other websites that are currently inactive. (PX17 Att.
28 K at 494-95, Att. L at 594.)

1 • REDUCTION of your principal balance by up to 80%; (PX15
2 Att. A at 320.)

3
4 b. **Nelson Gamble & Associates employs proven tactical methods to**
5 **settle debt** by 50% to 80% of your total outstanding balances. Our
6 process is extremely effective and has helped nearly seventy thousand
7 people resolve their unsecured debts. (Emphasis in original) (*Id.* at
8 321.)

9
10
11 c. Typically we attempt to reduce your debts by at least 50% of your
12 original balances. (PX17 Att. A at 357, Att.E at 420.)

13
14 d. Nelson Gamble may SETTLE YOUR DEBTS in as little as 12-36
15 months. (PX15 Att. A at 326.)

16 e. Record breaking history cutting clients[sic] debt by more than half of
17 their total debt. (PX17 Att. A at 351.)

18
19 f. In fact, the typical savings we've consistently provided clients average
20 savings of 74% and often up to 85% (plus, your payments are
21 interest-free). Best of all, our corporate debt negotiation services are
22 most often provided on a risk-free, results-only basis. (PX17 Att. E at
23 435.)

24
25
26 To give credence to their claim that they will reduce consumers' debt,
27 defendants purport to be a law firm or to have lawyers on staff. Defendants use
28

1 names that mimic those of law firms, such as Nelson Gamble & Associates,
2
3 Jackson, Hunter, Morris & Knight LLP, BlackRock Professional Corporation, and
4 blackrocklaw.com. Defendants' websites further state:

- 5 a. Why not be represented by a team of legal professionals? **Our team**
6 **of Legal Professionals will work with you every step of the way** to
7 custom tailor a program that fits within your budget as well as your
8 overall financial situation.... *A Certified Debt Specialist from our legal*
9 *team will discuss with you the options available and work with you to*
10 *formulate a program that will lower your current monthly burden and*
11 *convert it into one single monthly payment!* (Emphasis in original)
12 (PX15 Att. A at 321.)
13
14
15
16 b. Jackson Hunter Morris & Knight LLP is committed to remaining one
17 of the largest providers of Consumer and Business debt related Legal
18 Services in the nation. (PX17 Att. A at 351.)
19
20 c. Our services and attorneys have been featured on: Fox News, CBS,
21 ABC, MSNBC, NBC, ESPN, and Fox. (PX17 Att. A at 350, 352-54,
22 356, 358-64.)
23
24 d. BlackRock Professional Corporation is committed to remaining one of
25 the largest providers of Consumer and Business Debt related Legal
26 Services in the nation[.] (PX17 Att. E at 424.)
27
28

1 Defendants' websites also display a chart that contains various settlement
2 examples Defendants purportedly have achieved for their clients with the heading:
3 "Please review a few of our recent settlements to see the results of our past
4 performance." (PX15 Att. A at 330-31; PX17 Att. A at 355-56.) The chart
5 displays information about the settlements including the creditor involved, the debt
6 balance, the settlement achieved, the amount of money saved, and the percentage
7 of the debt balance saved (purportedly ranging from 50.01% to 89.94%). (PX15
8 Att. A at 330-31; PX17 Att. A at 355-56.) The chart on nelsongamble.com is
9 identical to the chart on jhmklaw.com and jhmklaw.org.
10
11
12

13 Defendants' websites invite consumers to submit their contact information
14 and debt amount to receive a call from a debt specialist. (PX15 Att. A at 329;
15 PX17 Att. A at 353, Att. E at 426.) The websites also invite consumers to call a
16 toll-free number. (PX15 Att. A at 320-21, 323; PX17 Att. A at 351, 353-55, 357,
17 359-64, Att. E at 425, 427.)
18
19

20 2. Telemarketing Activities

21 Defendants' outbound telemarketing campaign typically consists of three
22 phases: a robocall, a prequalification sales pitch, and an enrollment sales pitch.
23 (PX08 at 151 ¶ 4.) Consumers do not always recall the separate phases of the
24 phone calls; however, consumers report hearing certain central representations
25 about Defendants' debt relief services in the calls.
26
27
28

1 **a. The Robocall**

2 Defendants use robocalls in their initial telemarketing to consumers. (PX08
3
4 at 152 ¶ 6; PX20 at 665 ¶ 6-7) When consumers answer these calls, they hear a
5 prerecorded message informing them that this is a “public service announcement”
6
7 and that you may be eligible under President Obama’s stimulus plan for debt
8 dismissal. (PX08 at 152 ¶ 7; PX20 at 665 ¶ 7. *See also* PX01 at 1 ¶ 2; PX04 at 93
9 ¶ 2; Dunning dec. 1.) The prerecorded message instructs consumers to press 1 on
10
11 their phones if they would like to hear more. (PX08 at 152 ¶ 7; PX20 at 665 ¶ 7-8.)

12 **b. The Prequalification Sales Pitch**

13 Consumers who press 1 on their phones after hearing the robocall, or who
14
15 call Defendants’ toll-free number in response to their Internet websites, are
16
17 connected to one of Defendants’ telemarketers. (PX06 at 127 ¶ 2; PX05 at 95 ¶ 2.)
18
19 The telemarketers often identify themselves during the calls using the phrase “Debt
20
21 Relief Services” or some similar generic phrase that does not identify Defendants
22
23 by name. (PX20 at 667 ¶ 12.)

24 The telemarketers typically ask consumers three questions in the
25
26 prequalification stage: whether they have \$10,000 or more in debt, whether the
27
28 debt is unsecured, and whether they have an active bank account. (PX08 at 152-53
¶ 8; PX20 at 666 ¶ 10.) The telemarketers then ask consumers whether they are
interested in hearing more about Defendants’ debt relief services. In numerous

1 instances, after a consumer answers in the affirmative to the second and third
2 questions, the telemarketers declare the consumer to be prequalified for Defendants'
3 services and transfer the consumer to another telemarketer. (PX08 at 152-53 ¶ 8.)

4
5 **c. The Enrollment Sales Pitch**

6 After consumers are transferred from the initial telemarketers, the
7 telemarketers in enrollment sales explain the services to consumers. (PX08 at 153 ¶
8 10.) They ask consumers for their social security numbers, bank account numbers,
9 and security information such as maiden name or sibling's middle name, all under
10 the pretext of needing the information to obtain consumers' credit reports or to
11 confirm consumers' debt-to-income ratio. (PX08 at 154 ¶ 11; PX01 at 1 ¶ 2; PX18
12 at 659 ¶ 4; PX23 at 831 ¶ 11.)

13 The telemarketers typically tell consumers that they can settle their debts for
14 50% or less of the amount consumers owe – in other words, that consumers will
15 receive a reduction of 50% or more. (PX08 at 153 ¶ 10; PX07 at 129 ¶ 3 and PX13
16 at 293 ¶ 2 (promised reduction of approximately 50% of the debt amount); PX09 at
17 159 ¶ 2 (told she would receive reduction of up to 60% or 80%); and PX02 at 3 ¶ 3
18 (promised debt reduction of about 60%)). In addition, defendants' telemarketers
19 frequently tell consumers that Defendants are a law firm or have attorneys across
20 the country. (PX08 at 153 ¶ 10.) Indeed, many consumers, understood that
21
22
23
24
25
26
27
28

1 Defendants were lawyers or employed lawyers to settle their debts. (PX03 at 55 ¶
2 2; PX01 at 1 ¶ 2, PX04 at 93 ¶ 3.)

3
4 In numerous instances, the telemarketers tell consumers that Defendants will
5 charge a fee for their services – for example, 15% of the settlement amount or an
6 initial fee of \$199 or \$200. (PX08 at 153 ¶ 10; PX02 at 3 ¶ 3; PX03 Att. B at 71.)
7
8 However, what consumers are told about fees varies substantially. Consumer Zecca
9 was told he would be charged an initial fee of \$750; in contrast, consumers Warren
10 and Swearingen were told there would be no initial fees. (PX23 at 830 ¶ 11; PX13
11 at 293 ¶ 2; PX23 at 834 ¶ 34.) Many consumers do not recall whether the
12 telemarketers mentioned anything about fees.
13

14
15 After the enrollment sales pitch, some consumers agree to enroll in
16 Defendants' services. Other consumers decline to enroll.

17 18 **3. Fulfillment**

19 After the initial phone call, Defendants use consumers' security information
20 provided by consumers during the call to begin debiting money from their bank
21 accounts on a monthly basis. (PX08 at 154 ¶ 12.) Enrollment agents are instructed
22 to send all of the security information they collect from consumers to Jeremy
23 Nelson at the end of the day. (*Id.*) Jeremy Nelson uses this information to
24 "DocuSign" contracts enabling Defendants to debit consumers' bank accounts. (*Id.*)
25
26 Even when consumers decline to enroll in the services at the end of the telephone
27
28

1 call, Defendants nevertheless use consumers' security information to begin debiting
2 money from their bank accounts. (PX08 at 154-55 ¶ 13-14.) For example, one
3 consumer reported that she did not agree to enroll after speaking with a
4 telemarketer, but instead wanted to think it over first. (PX06 at 127 ¶ 2.) Two days
5 later, the Defendants debited her account despite the fact that she had not enrolled.
6
7 (Id. ¶ 3.) Other consumers similarly report that their bank accounts were debited by
8 Defendants despite the fact that they did not enroll in Defendants' services. (PX16
9 at 335 ¶ 3-4.) Some consumers report that Defendants debited their accounts on
10
11 more than one occasion. (PX16 at 335 ¶ 3-4.)
12

13 In numerous instances, Defendants do not settle any of the consumers' debts,
14 but continue to debit monthly payments from the consumers' bank accounts. A few
15 consumers report that a small percentage of the debt they owe is settled by
16 Defendants. In these cases, Defendants appear to settle only the smallest of
17 consumers' debts, typically a few hundred dollars in value, presumably to lull
18 consumers into continuing with the program. Most consumers report that
19 Defendants settled none of their debts. (PX11 at 223-24 ¶ 9-10; PX07 at 131 ¶ 10;
20 PX04 at 93-94 ¶ 4-6; PX10 at 191 ¶ 12; PX05 at 98-99 ¶ 16; PX14 at 316 ¶ 9; PX08
21 at 155 ¶ 15; PX21 at 756 ¶ 47-48.)²
22
23
24
25

26 ² Former employee Hocking stated that at the time of his employment with Nelson
27 Gamble, the company had only one debt negotiator whose job it was to negotiate

(continued...)

1 Numerous consumers who grew frustrated with Defendants' lack of
2 responsiveness to their inquiries and failure to settle their accounts attempted to
3 obtain refunds. Most of these consumers were unsuccessful, and next contacted
4 GCS to obtain refunds of the money they deposited. The consumers learned from
5 GCS that a substantial amount of money –anywhere from hundreds to thousands of
6 dollars – deposited in their GCS accounts had been withdrawn by Defendants to
7 cover fees. (PX10 at 190 ¶ 9; PX23 at 835 ¶ 36; PX20 at 673-74 ¶ 33-34.) Many
8 consumers had been informed of a \$199 start-up fee in the initial phone call, but not
9 of any additional fees that would be charged. Some consumers subsequently called
10 Defendants to inquire about the money missing from their GCS accounts and were
11 told by telemarketers that Defendants had removed the money from their accounts
12 in order to hide it from the consumers' creditors because otherwise the creditors
13 could see the money in the consumers' GCS accounts. (PX20 at 674 ¶ 36; PX04 at
14 93-94 ¶ 4.) Other consumers were told by Defendants that the money was taken to
15 cover fees. (PX09 at 161 ¶ 9-10.)

16
17
18
19
20
21
22 In numerous instances, when consumers attempted to cancel Defendants'
23 services and discontinue the monthly debits, Defendants failed to honor such

24
25 (…continued)

26 the debts of what Hocking estimated amounted to thousands of consumers.
27 (Hocking dec. 5- 6.) The debt negotiator told Hocking that all he could do was to
28 send copies of powers of attorney for consumers to sign and send back. (Hocking
dec. 5.)

1 requests and continued debiting consumers' bank accounts. (PX08 at 156 ¶ 17-18.)
2
3 In some instances, if the customers insisted on canceling or a refund, the customer
4 service representatives promised to provide a cancellation or refund in order to
5 appease them, but continuously stalled so that Defendants would receive another
6 monthly installment from the customer. (PX08 at 156 ¶ 18.) In order to avoid
7 trouble, Nelson Gamble typically gave refunds or allowed cancellation for
8 consumers who lived in states whose Attorneys General had complained to Nelson
9 Gamble. (*Id.* ¶ 17.)

12 **C. Consumer Injury**

13 Bank documents suggest that Defendants have taken in gross revenues of at
14 least \$4.1 million between February 2010 and March 2012. (PX17 at 343 ¶ 13.)

16 **III. A TEMPORARY RESTRAINING ORDER SHOULD ISSUE AGAINST DEFENDANTS**

18 **A. This Court Has the Authority to Grant the Requested Relief**

19 The second proviso of Section 13(b) of the FTC Act authorizes the FTC to
20 seek, and gives the Court the authority to grant, permanent injunctive relief to
21 enjoin practices that violate any law enforced by the FTC.³ 15 U.S.C. § 53(b); *H.N.*

24 ³ This action is not brought pursuant to the first proviso of Section 13(b), which
25 addresses the circumstances under which the FTC can seek preliminary injunctive
26 relief before or during the pendency of an administrative proceeding. Because the
27 FTC brings this case pursuant to the second proviso of Section 13(b), its complaint
28 is not subject to the procedural and notice requirements in the first proviso. *FTC v.*

(continued...)

1 *Singer, Inc.*, 668 F.2d at 1111-13. Incident to its authority to issue permanent
2 injunctive relief, this Court has the inherent equitable power to grant all temporary
3 and preliminary relief necessary to effectuate final relief, including a TRO, an asset
4 freeze, expedited discovery, a preliminary injunction, and other necessary remedies.
5
6 *Pantron I Corp.*, 33 F.3d at 1102 (holding that section 13(b) “gives the federal
7 courts broad authority to fashion appropriate remedies for violations of the [FTC]
8 Act”); *H.N. Singer*, 668 F.2d at 1113 (“We hold that Congress, when it gave the
9 district court authority to grant a permanent injunction against violations of any
10 provisions of law enforced by the Commission, also gave the district court authority
11 to grant any ancillary relief necessary to accomplish complete justice . . .”).

12 Ancillary relief may include asset freezes and expedited discovery. *H.N. Singer*,
13 668 F.2d at 1112.⁴
14

15 (...continued)

16
17
18
19 *H.N. Singer, Inc.*, 668 F.2d 1107, 1111 (9th Cir. 1982) (holding that routine fraud
20 cases may be brought under second proviso, without being conditioned on first
21 proviso requirement that the FTC institute an administrative proceeding); *FTC v.*
22 *U.S. Oil & Gas Corp.*, 748 F.2d 1431, 1434 (11th Cir. 1984) (Congress did not
23 limit the court’s powers under the [second and] final proviso of § 13(b) and as a
24 result this Court’s inherent equitable powers may be employed to issue a
preliminary injunction, including a freeze of assets, during the pendency of an
action for permanent injunctive relief).

25 Numerous courts in this district have granted or affirmed injunctive relief similar
26 to that requested here. *See, e.g., FTC v. Rincon Mgmt. Servs. LLC*, CV-11-01623-
27 VAP-SP (Oct. 11, 2011) (*ex-parte* TRO with asset freeze, appointment of
Receiver, immediate access to business premises); *FTC v. Forensic Case Mgmt.*

(continued...)

1 **B. The FTC Meets the Standard for Granting a Government**
2 **Agency’s Request for a Preliminary Injunction**

3 In determining whether to grant a preliminary injunction under Section 13(b),
4 a court “must 1) determine the likelihood that the Commission will ultimately
5 succeed on the merits and 2) balance the equities.” *FTC v. Affordable Media, LLC*,
6 179 F.3d 1228, 1233 (9th Cir. 1999) (quoting *FTC v. Warner Commc’ns, Inc.*, 742
7 F.2d 1156, 1160 (9th Cir. 1984)). *See also World Wide Factors*, 882 F.2d at 346
8 (holding same). Unlike private litigants, the FTC need not prove irreparable injury.
9 *Affordable Media*, 179 F.3d at 1233. Moreover, in balancing the equities, the
10 public interest should receive greater weight than private interests. *World Wide*

14
15

16 (...continued)

17 *Servs., Inc.*, CV-11-07484-RGK-SS (Sept. 12, 2011) (*ex-parte* TRO with asset
18 freeze, appointment of Receiver, and other equitable relief); *FTC v. US*
19 *Homeowners Relief, Inc.*, CV-10-01452-JST-PJW (Sept. 28, 2010) (*ex-parte* TRO
20 with asset freeze, appointment of Receiver, and immediate access to business
21 premises); *FTC v. In Deep Servs., Inc.*, CV-01193-SGL-PJW (June 23, 2009)
22 (noticed TRO with asset freeze, financial disclosure, expedited discovery); *FTC v.*
23 *Dinamica Financiera LLC*, CV-03554-MMM-PJW (May 19, 2009) (noticed TRO
24 with asset freeze, financial disclosure, limited expedited discovery, granted after
25 notice to defendant); *FTC v. Fed. Loan Modification Law Ctr., LLP*, CV-00401-
26 CJC-MLG (April 6, 2009) (noticed TRO with corporate asset freeze). *See also*
27 *FTC v. Affordable Media, LLC*, 179 F.3d 1228, 1232-33 (9th Cir. 1999) (*ex parte*
28 TRO, preliminary injunction, asset freeze, accounting); *FTC v. Publ’g Clearing*
 House, Inc., 104 F.3d 1168, 1170 (9th Cir. 1997) (*ex parte* TRO, preliminary
 injunction); *FTC v. World Wide Factors*, 882 F.2d 344, 346 (9th Cir. 1989) (TRO,
 preliminary injunction, asset freeze); *FTC v. Am. Nat’l Cellular, Inc.*, 810 F.2d
 1511, 1512-14 (9th Cir. 1987) (TRO, preliminary injunction, asset freeze,
 appointment of receiver); *H.N. Singer*, 668 F.2d at 1109-13 (preliminary injunction
 and asset freeze).

1 *Factors*, 882 F. 2d at 347. As set forth in this memorandum, the FTC has amply
2 demonstrated that it will ultimately succeed on the merits of its claims and that the
3 balance of equities favors injunctive relief.⁵
4

5 **1. The FTC Has Demonstrated its Likelihood to Succeed on the**
6 **Merits**

7 Generally, the FTC “meets its burden on the likelihood of success issue if it
8 shows preliminarily, by affidavit or other proof, that it has a fair and tenable chance
9 of ultimate success on the merits.” *FTC v. Beatrice Foods Co.*, 587 F.2d 1225,
10 1229 (D.C. Cir. 1978). Moreover, in considering an application for a TRO or
11 preliminary injunction, the Court has the discretion to consider hearsay evidence.
12
13 *Flynt Distrib. Co., Inc. v. Harvey*, 734 F.2d 1389, 1394 (9th Cir. 1984) (even
14 inadmissible evidence may be given some weight when to do so serves the purpose
15 of preventing irreparable harm before trial); *see also Heideman v. S. Salt Lake City*,
16 348 F. 3d 1182, 1188 (10th Cir. 2003) (“The Federal Rules of Evidence do not
17 apply to preliminary injunction hearings.”).
18
19
20

21 Section 5 of the FTC Act prohibits “unfair or deceptive practices in or
22 affecting commerce[.]” 15 U.S.C. § 45. An act or practice is unfair under Section 5
23
24

25 Although not required to do so, the FTC also meets the Ninth Circuit’s four-part
26 test for private litigants to obtain injunctive relief. Without the requested relief, the
27 public and the FTC will suffer irreparable harm from the continuation of
28 Defendants’ scheme and the likely destruction of evidence and dissipation of
assets.

1 of the FTC Act if it “causes or is likely to cause substantial injury to consumers
2 which is not reasonably avoidable by consumers themselves and not outweighed by
3 countervailing benefits to consumers or to competition.” 15 U.S.C. § 45(n). *See*
4 *also FTC v. Accusearch Inc.*, 570 F.3d 1187, 1193 (10th Cir. 2009).⁶

5
6 An act or practice is deceptive under Section 5(a) if it involves a material
7 representation or omission that is likely to mislead consumers, acting reasonably
8 under the circumstances. *FTC v. Stefanchik*, 559 F.3d 924, 928 (9th Cir. 2009). A
9 misrepresentation is material if it involves facts that a reasonable person would
10 consider important in choosing a course of action. *See FTC v. Cyberspace.com,*
11 *LLC*, 453 F.3d 1196, 1201 (9th Cir. 2006). Express claims are presumed material,
12 so consumers are not required to question their veracity in order to be deemed
13 reasonable. *Pantron I*, 33 F. 3d at 1095-96. Implied claims are also presumed
14 material if there is evidence that the seller intended to make the claim, *see, e.g.*,
15
16
17
18
19

20 ⁶ The FTC meets the first prong (substantial injury) by establishing, among other
21 things, that consumers were injured by a practice for which they did not bargain.
22 *Orkin Exterminating Co., Inc. v. FTC*, 849 F.2d 1354, 1363-66 (11th Cir. 1988).
23 Injury may be sufficiently substantial if it causes a small harm to a large class of
24 people, *FTC v. Windward Mktg., Ltd.*, 1997 U.S. Dist. LEXIS 17114 at *29-31
25 (N.D. Ga. Sep. 30, 1997), or severe harm to a limited number of people. *In re Int'l*
26 *Harvester*, 104 F.T.C. 949, 1064, 1070 (1984). Moreover, the injury is not limited
27 to economic injury. Courts have recognized that emotional impact harm that is
28 substantial and real can satisfy the “substantial injury” prong. *See FTC v.*
Accusearch, Inc., 2007 U.S. Dist. LEXIS 74905 at *22-24 (D. Wyo. Sep. 28, 2007)
(holding that emotional impact harm caused by invasion of privacy resulting from
the Defendants’ phone record pretexting activities was sufficient).

1 *Novartis Corp. v. FTC*, 223 F.3d 783, 786-87 (D.C. Cir. 2000); *Kraft, Inc. v. FTC*,
2 970 F.2d 311, 322 (7th Cir. 1992), or if the claims go to the heart of the solicitation
3 or the central characteristics of the produce or service offered. *FTC v. Figgie Int'l*,
4 *Inc.*, 994 F.2d 595, 604 (9th Cir. 1993) (no loophole for implied deceptive claims);
5 *In re Southwest Sunsites, Inc.*, 105 F.T.C. 7, 149 (1985), *aff'd*, 785 F.2d 1431 (9th
6 Cir. 1986).

9 In considering whether a claim is deceptive, the Court must consider the “net
10 impression” created by the representation.⁷ *Cyberspace.com*, 453 F.3d at 1200
11 (solicitation can be deceptive by virtue of its net impression even if it contains
12 truthful disclosures); *Five-Star Auto Club*, 97 F. Supp. 2d at 528 (“the Court must
13 consider the misrepresentations at issue, by viewing [them] as a whole without
14 emphasizing isolated words or phrases apart from their context”). Moreover, courts
15 have held that an unqualified performance claim implies that consumers generally
16 will receive the claimed performance and that the benefit is a significant one. *Five-*
17 *Star Auto Club*, 97 F. Supp. 2d at 528 (“at the very least, it would have been
18 reasonable for consumers to have assumed that the promised rewards were achieved
19 by the typical Five Star participant.”).

25 The FTC need not prove that Defendants’ misrepresentations were made with an
26 intent to defraud or deceive or were made in bad faith. *See, e.g., Removatron Int’l*
27 *Corp. v. FTC*, 884 F.2d 1489, 1495 (1st Cir. 1989); *FTC v. World Travel Vacation*
28 *Brokers*, 861 F.2d 1020, 1029 (7th Cir. 1988); *FTC v. Five-Star Auto Club*, 97 F.
Supp. 2d 502, 526 (S.D.N.Y. 2000).

1 A representation is also deceptive if the maker of the representation lacks a
2 reasonable basis for the claim. *FTC v. Direct Mktg. Concepts, Inc.*, 2010 U.S. App.
3 LEXIS 21743, at *11-12 (1st Cir. Oct. 21, 2010). Where the maker lacks adequate
4 substantiation evidence, they necessarily lack any reasonable basis for their claims.
5
6 *Id.*; *Removatron Int'l*, 884 F.2d at 1498.

8 The FTC need not prove reliance by each purchaser misled by Defendants.
9 *FTC v. SlimAmerica, Inc.*, 77 F. Supp. 2d 1263, 1275 (S.D. Fla. 1999). “Requiring
10 proof of subjective reliance by each individual consumer would thwart effective
11 prosecutions of large consumer redress actions and frustrate the statutory goals of
12 [Section 13(b)].” *Figgie Int'l*, 994 F.2d at 605 (citations omitted). Rather, a
13 ‘presumption of actual reliance arises once the FTC has proved that the Defendant
14 made material misrepresentations, that they were widely disseminated, and that
15 consumers purchased the Defendant’s product.” *Id.* at 605-6; *FTC v. Sec. Rare*
16 *Coin & Bullion Corp.*, 931 F.2d 1312, 1316 (8th Cir. 1991); *FTC v. Amy Travel*
17 *Serv., Inc.*, 875 F.2d 564, 573 (7th Cir. 1989).

21 Defendants are “seller[s]” or “telemarketer[s]” engaged in “telemarketing” as
22 those terms are defined in the TSR, 16 C.F.R. § 310.2 (aa), (cc), and (dd).

24 Defendants are “sellers” or “telemarketers” of “debt relief services,” as defined by
25 the TSR, 16 C.F.R. § 310.2(aa), (cc), and (m). Defendants place outbound
26 telephone calls, as defined by 16 C.F.R. § 310.2(v), and receive inbound calls in
27
28

1 response to their advertisements for debt relief services. Since September 27, 2010,
2 inbound calls received in response to an advertisement related to debt relief services
3 are covered by the TSR. 16 C.F.R. § 310.6(b)(5).

4
5 **a. Defendants Have Made Material Misrepresentations**
6 **Regarding Their Debt Relief Services in Violation of**
7 **Section 5 of the FTC Act and the TSR**

8 As discussed above, the core message of Defendants' marketing campaign is
9 that they will settle consumers' debts for substantially less than they owe.

10 Defendants' websites and telemarketers repeatedly tout Defendants' ability to
11 reduce consumers' debts by 50- 89%, with no indications of any limitations. (PX15
12 Att. A at 320, 321, 330-31; PX17 Att. E at 435; PX08 at 153 ¶ 10; PX07 at 129 ¶

13 3.) Moreover, Defendants' marketing materials imply that most consumers will
14 benefit, again with no hint whatsoever that many or most consumers would not
15 benefit.

16 In reality, as described above, few if any consumers ever obtain the promised
17 debt relief. Many consumers report that after many months, or even a year or two
18 years, of enrollment, Defendants did not settle any of their debts. (PX11 at 223-24
19 ¶ 9-10; PX07 at 131 ¶ 10; PX04 at 93-94 ¶ 4-6; PX10 at 191 ¶ 12; PX05 at 98-99 ¶
20 16; PX14 at 316 ¶ 9; PX08 at 155 ¶ 15.) Many consumers report that Defendants
21 did not even contact their creditors. (PX09 at 160 ¶ 8; PX21 at 751 ¶ 31; PX20 at
22 675-76 ¶ 37, 41.) Moreover, the debt settlement examples on the Nelson Gamble
23
24
25
26
27
28

1 and Jackson Hunter websites are dated prior to the incorporation dates of the two
2 companies, making it implausible that the companies actually settled those debts.
3 Hence, Defendants generally do not settle consumers' debts for a reduction of 50-
4 89% of the debt amount.
5

6 A few consumers report that Defendants settled a small percentage of their
7 debt, presumably to lull them into remaining in the program. Even for these
8 consumers, however, Defendants left most of the debt unsettled, and hence did not
9 meet the representation that they would settle the consumers' debts for a substantial
10 reduction. It is possible that Defendants do settle all of the debt of some consumers,
11 but as the old saw goes, even a blind squirrel eventually stumbles upon a nut.
12

13 Defendants have represented essentially without qualification that they could help
14 most consumers, not just a small fraction of them. "The existence of some satisfied
15 customers does not constitute a defense under the FTC [Act]." *Amy Travel*, 875
16 F.2d at 572. Thus, Defendants have violated Section 5 of the FTC, as alleged in
17
18
19
20
21
22
23
24
25
26
27
28

1 Count I, and Sections 310.3(a)(2)(iii)⁸ and (x)⁹ of the TSR, as alleged in Counts
2 IV.A and V.A.

3
4 In addition, as discussed above, Defendants have also misrepresented that
5 they are a law firm or employ lawyers for the purpose of providing debt relief
6 services. As discussed, Defendants' websites contain many references to lawyers
7 providing the debt relief services. (PX15 Att. A at 321; PX17 Att. A at 351.) Also,
8 Defendants' telemarketers routinely inform consumers that Defendants are a law
9 firm or employ lawyers (PX08 at 153 ¶ 10; PX20 at 667 ¶ 14; PX01 at 1 ¶ 2, PX03
10 at 55 ¶ 2; PX21 at 751 ¶ 34.)

11
12 In fact, California bar records confirm that Jeremy Nelson is not a lawyer.
13
14 Corporate Defendants Nelson Gamble, Jackson Hunter, BlackRock, and Mekhia
15 Capital are not law firms and do not appear to have lawyers on staff. In addition,
16 none of the consumers with whom we spoke ever spoke with a lawyer or even were
17 told who the attorney representing them was. For example, one consumer asked
18
19
20

21
22 ⁸ Section 310.3(a)(2)(iii) of the TSR, 16 C.F.R. § 310.3(a)(2)(iii), prohibits sellers
23 and telemarketers from misrepresenting, directly or by implication, any material
24 aspect of the performance, efficacy, nature, or central characteristics of the good or
25 service.

26 ⁹ As amended, effective September 27, 2010, Section 310.3(a)(2)(x) of the TSR,
27 16 C.F.R. § 310.3(a)(2)(x), prohibits sellers and telemarketers from
28 misrepresenting, directly or by implication, any material aspect of any debt relief
service, including, but not limited to, the amount of money or the percentage of the
debt amount that a customer may save by using such service.

1 who the lawyers were, and was told by a representative that both Nelson and
2 Gamble were lawyers. (PX20 at 672 ¶ 27.) Many consumers spoke with, or
3 received correspondence from, Athena Marie Maldonado, who was supposedly the
4 “Vice President of Legal” and a “supervising paralegal.” (PX 12 Att. F at 290-92;
5 PX 09 Att. E at 182-87; PX 05 at 98 ¶ 13.) One consumer asked an attorney what
6 attorneys were working on her account, and the employee told her that the attorneys
7 were Nelson and Gamble. (PX20 at 671-72 ¶ 27.) Thus, Defendants kept up the
8 appearance of employing lawyers, but did not in fact have lawyers on staff to
9 provide the debt relief services. Accordingly, they have violated Section 5 of the
10 FTC Act as alleged in Count II and Sections 310.3(a)(2)(iii) and (x) of the TSR as
11 alleged in Counts IV.B and V.B

12
13
14
15
16 **b. Defendants Have Made Unauthorized Withdrawals**
17 **from Consumer Accounts in Violation of Section 5 of**
18 **the FTC Act, the TSR, the EFTA, and Regulation E**

19 As described above, Defendants bill consumers for debt relief services
20 without obtaining their express informed consent. In numerous instances
21 consumers decline to enroll in Defendants’ services but are subsequently enrolled
22 and billed despite their refusal. (PX16 at 335 ¶ 3-5; PX06 at 127 ¶ 2-3; PX08 at
23 154-55 ¶ 13-14). In numerous instances, consumers who agree to have their
24 accounts debited by GCS discover that Defendants subsequently debited their
25 accounts directly without authorization. (PX21 at 754 ¶ 42; PX12 at 257 ¶ 5.) In at
26
27
28

1 least one instance, a consumer observed multiple unauthorized charges to his
2 account. (PX16 at 335 ¶ 3-5.) Logically, consumers did not receive copies of their
3 authorizations because the consumers never provided such authorizations.
4

5 Defendants' practice causes substantial injury to consumers. Defendants
6 charge consumers for a program that they do not agree to order or make additional
7 charges that are not authorized by the consumers, consumers spend time and money
8 attempting to cancel their enrollment in the program, and many are unable to obtain
9 refunds. Second, consumers cannot reasonably avoid injury. Consumers provide
10 their bank account numbers, social security numbers, and security information
11 ostensibly for the purpose of allowing Defendants to pull their credit information
12 and use it to calculate how much money they can save, which is information
13 consumers need so that they can decide whether to retain Defendants' services.
14 Consumers who either do not expressly authorize use of their information to debit
15 their accounts or who expressly refuse to enroll in the services can not reasonably
16 foresee that Defendants will use the information to enroll and debit their accounts.
17 Finally, Defendants' practices do not benefit consumers or competition. Neither
18 consumers nor competition benefit when consumers are charged for debt relief
19 services they did not order or are charged additional unauthorized payments. Thus,
20 the practice is unfair and a violation of Section 5 of the FTC Act as alleged in Count
21
22
23
24
25
26
27
28

1 III. Defendants' practice of unauthorized withdrawals also violates Section
2 310.4(a)(7) of the TSR,¹⁰ as alleged in Count VI.
3

4 In addition, Defendants' practice violates the EFTA and its implementing
5 Regulation E. Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a), provides that a
6 "preauthorized electronic fund transfer from a consumer's account may be
7 authorized by the consumer only in writing, and a copy of such authorization shall
8 be provided to the consumer when made." Section 205.10(b) of the Federal
9 Reserve Board's Regulation E, 12 C.F.R. § 205.10(b), and Section 1005.10(b) of
10 the Bureau's Regulation E, 12 C.F.R. § 1005.10(b), provide that "[p]reauthorized
11 electronic fund transfers from a consumer's account may be authorized only by a
12 writing signed or similarly authenticated by the consumer. The person that obtains
13 the authorization shall provide a copy to the consumer." Comment 5 to Section
14 205.10(b) of the Federal Reserve Board's Official Staff Commentary to Regulation
15 E, 12 C.F.R. Part 205 Supp. I at ¶ 10(b), cmt. 5, and Comment 5 to Section
16 1005.10(b) of the Bureau's Official Interpretations of Regulation E, 12 C.F.R. Part
17 1005 Supp. I at ¶ 10(b), cmt. 5, provide that "[t]he authorization process should
18 evidence the consumer's identity and assent to the authorization." Thus,
19

20 Defendants' practice discussed above violates Section 907(a) of the EFTA, Section
21
22
23

24
25
26 ¹⁰ Section 310.4(a)(7) of the TSR, 16 C.F.R. § 310.4(a)(7), prohibits sellers and
27 telemarketers from causing billing information to be submitted for payment,
28 directly or indirectly, without the express informed consent of the customer.

1 205.10(b) of the Federal Reserve Board's Regulation E, and Section 1005.10(b) of
2 the Bureau's Regulation E, as alleged in Count XIV.

3
4 **c. Defendants' Telemarketing Activities Have Violated**
5 **Many Other Provisions of the TSR**

6 Defendants' practices of charging consumers advance fees, calling consumers
7 on the Do Not Call Registry, calling consumers who ask not to receive future calls,
8 delivering prerecorded messages without prior authorization, failing to make
9 required disclosures, calling consumers repeatedly, failing to disclose their identity
10 in sales calls, and blocking their identity from caller identification services have
11 violated many additional provisions of the TSR that prohibit abusive telemarketing
12 practices.
13
14

15 As described above, Defendants request or receive advance payment of fees
16 or consideration for debt relief services. Many consumers were told initially that
17 the program entailed an "initial fee" or "startup fee" of \$199 or more, and some
18 consumers were told that there would be no advance fees. Regardless of whether
19 consumers were told about them, the vast majority of consumers were in fact
20 charged fees of \$199 or more before any services were performed. (PX01 - 1-2,
21 PX03 - 55-56, PX07 at 130 ¶ 6; PX05 at 96 ¶ 5-7; PX18 at 659 ¶ 5.)
22
23
24

25 In addition to the initial fee of \$199, many consumers report that they were
26 charged additional fees before any debts were settled. Many consumers discovered
27 that Defendants withdrew most of the money in their GCS accounts, purportedly to
28

1 cover various fees. (PX01 at 2 ¶ 5; PX02 at 7 ¶ 16; PX05 at 98 ¶ 16; PX07 at 131 ¶
2 10; PX14 at 315 ¶ 7; PX21 at 750 ¶ 29; PX21 at 755-56 ¶ 46. *See also* PX21 at
3 780, PX20 at 720, PX20 at 728 (Consumer account activity statements showing
4 most of the money the consumer deposited was withdrawn as “customer fees”), and
5 PX20 at 670 ¶ 21 (Former employee observed a schedule of payments that showed
6 that every other consumer payment went directly to Nelson Gamble).) These fees
7 were administered before the services were fully performed, in contravention of the
8 TSR.

9
10
11
12 To the extent that Defendants have settled any consumer debts, they have
13 charged fees that are way out of proportion to the size of the debts and percentages
14 saved. (PX02 at 5-7 ¶ 11-16 (Consumer was charged approximately \$4,208;
15 Defendants eventually agreed to refund only \$1,675, explaining that the rest would
16 be kept as fees. Defendants may have assisted consumer in settling a debt of \$318
17 for \$160.19, out of \$9,521 in total debt.)) Thus, Defendants have violated Section
18 310.4(a)(5)(i)¹¹ of the TSR, as alleged in Count VII.

19
20
21
22 ¹¹ Section 310.4(a)(5)(i) of the TSR, 16 C.F.R. § 310.4(a)(5)(i), prohibits sellers
23 and telemarketers from requesting or receiving payment of any fees or
24 consideration for any debt relief service until and unless the seller or telemarketer
25 has renegotiated or settled at least one debt pursuant to a settlement agreement
26 between the customer and the creditor or debt collector, the customer has made at
27 least one payment pursuant to that agreement, and to the extent that debts enrolled
28 in the service are settled, the fee bears the same proportional relationship to the
total fee for settling the debt as the individual debt amount bears to the entire debt

(continued...)

1 Many consumers have received calls despite the fact that their telephone
2 numbers were in the Do Not Call Registry. (PX20 at 665 ¶ 6; 669 ¶ 19; PX08 at
3 152 ¶ 6; PX23 at 830 ¶ 7.) Defendants' telephone records confirm that Defendants
4 have called telephone numbers that are on the Registry. (PX17 at 347 ¶ 27.)
5 Indeed, Defendant Nelson bragged to a former employee that he instructed the
6 telemarketers to call consumers on the Registry because "no one else was calling
7 them." (PX08 at 152 ¶ 6.) Thus, Defendants have violated Section
8 310.4(b)(1)(iii)(B)¹² of the TSR, as alleged in Count VIII.
9
10
11

12 In addition, Defendants call consumers who have previously asked not to
13 receive calls. Many consumers request that Defendants do not call them again, yet
14 they repeatedly receive calls from Defendants. (PX20 at 669 ¶ 19; PX21 at 744 ¶ 4;
15 PX23 at 829 ¶ 4-5; PX21 at 745 ¶ 7-8.) Thus, Defendants have violated Section
16 310.4(b)(1)(iii)(A)¹³ of the TSR, as alleged in Count IX.
17
18
19
20

21 ¹¹ (...continued)

22 amount, or is a percentage of the amount saved as a result of the settlement.

23 ¹² Section 310.4(b)(1)(iii)(B) of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B), prohibits
24 sellers and telemarketers from initiating an outbound telephone call to numbers on
25 the Registry.

26 ¹³ Section 310.4(b)(1)(iii)(A) of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(A), prohibits
27 sellers from initiating an outbound telephone call to any person when that person
28 previously has stated that he or she does not wish to receive an outbound telephone
call made by or on behalf of the seller whose goods or services are being offered.

1 Defendants often block their phone number and/or name so that it does not
2 appear on consumers' caller identification services when they call. Consumers
3 report that their caller identification services displayed a phony name and/or
4 number when Defendants called them (PX21 at 744 ¶ 3; PX21 at 745 ¶ 7.) Thus,
5 Defendants have violated Section 310.4(a)(8)¹⁴ of the TSR, as alleged in Count X.
6

7
8 Consumers who receive calls from Defendants hear a prerecorded message
9 when they answer the phone. (PX08 at 152 ¶ 7; PX20 at 665 ¶ 6-7; PX21 at 745 ¶
10 7; PX23 at 830 ¶ 8; PX23 at 829 ¶ 4; PX21 at 744 ¶ 3.) Most consumers have not
11 heard of Defendants previously, let alone provided Defendants with written
12 permission to deliver a prerecorded message. Thus, Defendants have violated
13 Section 310.4(b)(1)(v)(A)¹⁵ of the TSR, as alleged in Count XI.
14

15
16 Defendants place calls that deliver prerecorded messages and often do not
17 disclose truthfully, promptly, and in a clear and conspicuous manner the identity of
18 the seller of the debt relief services, that the purpose of the call is to sell goods or
19

20
21 ¹⁴ Section 310.4(a)(8) of the TSR, 16 C.F.R. § 310.4(a)(8), requires sellers and
22 telemarketers to transmit or cause to be transmitted the telephone number, and,
23 when made available by the telemarketer's carrier, the name of the telemarketer, to
24 any caller identification service in use by a recipient of a telemarketing call

25 ¹⁵ Section 310.4(b)(1)(v)(A) of the TSR, 16 C.F.R. § 310.4(b)(1)(v)(A), prohibits
26 initiating a telephone call that delivers a prerecorded message to induce the
27 purchase of any good or service unless the seller has obtained from the recipient of
28 the call an express agreement, in writing, that evidences the willingness of the
recipient of the call to receive calls that deliver prerecorded messages by or on
behalf of a specific seller.

1 services, and the nature of the goods or services. (PX20 at 667 ¶ 12; PX23 at 829 ¶
2 5; PX23 at 830 ¶ 8.). Thus, Defendants have violated Sections 310.4(b)(1)(v)(B)(ii)
3 and (d)¹⁶ of the TSR, as alleged in Count XII.
4

5 Finally, Defendants call many consumers repeatedly and engage in harassing
6 behavior. Consumers have received calls several times per day, continuing for days
7 or weeks, and some have encountered threats and profane language when they ask
8 Defendants' telemarketers to stop calling. (PX21 at 744 ¶ 4; PX23 at 830 ¶ 8-9;
9 PX23 at 829 ¶ 4.) For example, when Consumer Briscoe asked Nelson Gamble to
10 stop calling him, one telemarketer told him he would "f*cking sign [him] up for all
11 of their programs" and hung up the phone. (PX21 at 744 ¶ 4.) Indeed, a former
12 employee reported that when telemarketers receive calls from angry consumers,
13 they are supposed to give the consumer's phone number to Chantel Nelson,
14 Defendant Nelson's wife, who would "toy with them." (PX20 at 669 ¶ 19.) Thus,
15
16
17
18
19
20
21
22

23 ¹⁶ Section 310.4(b)(1)(v)(B)(ii) of the TSR, 16 C.F.R. § 310.4(b)(1)(v)(B)(ii),
24 requires that telemarketers initiating an outbound telephone call that delivers a
25 prerecorded message to induce the purchase of any good or service promptly
26 disclose the identity of the seller, that the purpose of the call is to sell goods or
27 services, and the nature of the goods or services. Section 310.4(d) of the TSR, 16
28 C.F.R. § 310.4(d), requires that telemarketers in outbound telephone calls make
these same disclosures "truthfully, promptly, and in a clear and conspicuous
manner."

1 Defendants have violated Section 310.4(b)(1)(i)¹⁷ of the TSR, as alleged in Count
2 XIII.

3
4 **d. Defendants Are a Common Enterprise and Jointly and Severally Liable for the Law Violations**
5

6 “When one or more corporate entities operate as a common enterprise, each
7 may be held liable for the deceptive acts and practices of the others.” *FTC v. Think*
8 *Achievement Corp.*, 144 F. Supp. 2d 993, 1011 (N.D. Ind. 2000), *aff’d* 312 F.3d 259
9 (7th Cir. 2002). Courts have found a common enterprise where companies share
10 common control, office space, employees, interrelated funds, and/or other factors.
11 *See, e.g., FTC v. J.K. Publ’ns, Inc.*, 99 F. Supp. 2d 1176, 1202 (C.D. Cal. 2000).
12 Where the same individuals transact business through a “maze of interrelated
13 companies,” the whole enterprise may be held liable as a joint enterprise. *See id.*
14 (quoting *Delaware Watch Co. v. FTC*, 332 F.2d 745, 746 (2d Cir. 1964)).
15
16

17
18 The corporate Defendants operate as a common enterprise to market and sell
19 debt relief services. The four companies share common ownership, management,
20 employees, and office locations, as well as commingle funds. Defendants operated
21 first under the name Nelson Gamble, then under the name Jackson Hunter, and most
22 recently under the name BlackRock. The corporate Defendants have all been
23
24

25
26 ¹⁷ Section 310.4(b)(1)(i) of the TSR, 16 C.F.R. § 310.4(b)(1)(i), prohibits sellers
27 and telemarketers from causing any telephone to ring, or engaging any person in
28 telephone conversation, repeatedly or continuously with intent to annoy, abuse, or
harass any person at the called number.

1 owned and managed by Defendant Nelson. (PX08 at 152 ¶ 4; PX17 Att. J at 463,
2 468, 473, 484, 487, Att O at 613, 626, Att. P at 635, Att. R at 657.) Defendants
3
4 have operated out of the same office location – previously 30221 Aventura, 2nd
5 Floor, Rancho Santa Margarita, California, PX08 at 151 ¶ 3, and more recently
6 8001 Irvine Center Drive, Irvine, California. (PX17 at 344 ¶ 16; PX20 at 681.)
7
8 Defendants have co-mingled funds by transferring large amounts of money between
9 accounts held by all four corporate Defendants and Defendant Nelson. (PX17 at
10 343-45 ¶ 14-19.)
11

12 In addition, numerous consumers who purchased services from Defendant
13 Nelson Gamble originally found their accounts had been transferred to Defendant
14 Jackson Hunter. Consumers report that after orally agreeing to enroll in
15 Defendants’ services, they subsequently observed unauthorized debits by different
16 entities or from different accounts. (PX21 at 754 ¶ 42; PX19 at 662 ¶ 7 (Consumers
17 Boerjan and Hart authorized Nelson Gamble to debit their accounts, but
18 subsequently discovered that Jackson Hunter debited their accounts without
19 authorization).) Defendant Jackson Hunter also used the same marketing material
20 as Defendant Nelson Gamble with only the name replaced (compare PX13 Att. A at
21 296-303 to PX21 Att. A at 758-65); some of the same employees worked for both
22 Defendants Jackson Hunter and Nelson Gamble; and the websites of Defendants
23 Nelson Gamble, Jackson Hunter, and BlackRock share a substantial amount of the
24
25
26
27
28

1 same content. These details suggest that not only are Defendants a common
2 enterprise, but that each new corporate name they create is a sham, created only to
3 give the impression that the corporation is distinct from the name under which
4 Defendants previously operated.
5

6
7 **e. The Individual Defendant is Liable for Injunctive and**
8 **Monetary Relief**

9 In addition to the corporate Defendants, individual defendant Nelson is liable
10 for injunctive and monetary relief for law violations committed by the corporate
11 Defendants. To obtain an injunction against an individual, the FTC must show that
12 the individual either had the authority to control the unlawful activities or
13 participated directly in them. *See Affordable Media*, 179 F.3d at 1234; *FTC v. Gem*
14 *Merch. Corp.*, 87 F.3d 466, 470 (11th Cir. 1996); *Amy Travel*, 875 F.2d at 573-74.
15 In general, an individual's status as a corporate officer gives rise to a presumption
16 of liability to control a small, closely held corporation. *Standard Educators, Inc. v.*
17 *FTC*, 475 F.2d 401, 403 (D.C. Cir. 1973). More particularly, assuming the duties of
18 a corporate officer is probative of an individual's participation or authority. *Amy*
19 *Travel*, 875 F.2d at 573; *Five-Star Auto Club*, 97 F. Supp. 2d at 538.
20
21
22
23

24 An individual may be held liable for monetary redress for corporate practices
25 if the individual had, or should have had, knowledge or awareness of the corporate
26 defendants' misrepresentations. *Affordable Media*, 179 F.3d at 1231; *Gem Merch.*,
27 87 F.3d at 470; *Amy Travel*, 875 F.2d at 574. This knowledge element, however,
28

1 need not rise to the level of subjective intent to defraud consumers. *Affordable*
2 *Media*, 179 F.3d at 1234; *Amy Travel*, 875 F.2d 574. Instead, the FTC need only
3
4 demonstrate that the individual had actual knowledge or material
5 misrepresentations, reckless indifference to the truth or falsity of such
6
7 representations, or an awareness of a high probability of fraud coupled with the
8 intentional avoidance of the truth. *Affordable Media*, 179 F.2d at 1234; *Amy*
9 *Travel*, 875 F.2d at 574. Participation in corporate affairs is probative of
10
11 knowledge. *Affordable Media*, 179 F.3d at 1235; *Amy Travel*, 875 F.2d 564.

12 As discussed above, Defendant Nelson is the principal and sole officer of
13
14 three corporate Defendants and principal and president of the fourth corporate
15 Defendant. He has signatory authority over the corporate Defendants' bank
16
17 accounts, is the registrant and technical and administrative contact for many of
18
19 Defendants' websites, and is the subscriber for the telephone numbers used by
20
21 Nelson Gamble, Jackson Hunter, and BlackRock. He runs the business on a day-to-
22
23 day basis and even directly instructs employees to engage in the fraudulent behavior
24
25 described above. (PX08 at 152 ¶ 4, 6, 154 ¶ 12-13, 155-56 ¶ 16 (For example,
26
27 defendant Nelson docu-signed the contracts at the end of each day, enabling
28
29 Defendants to debit consumers' bank accounts. Defendant Nelson also bragged to
30
31 former employee Hocking that he directed employees to call consumers on the
32
33 National Do Not Call Registry because "no one else was calling them".) There can

1 be little doubt that Defendant Nelson had authority to control and direct knowledge
2 of Defendants' wrongful acts, and even participated directly in them. Accordingly,
3 he should be enjoined from violating the FTC Act, the TSR, the EFTA, and
4 Regulation E and held liable for consumer redress or other monetary relief in
5 connection with Defendants' activities. Thus preliminary relief is appropriate
6 against him.
7
8

9 2. **The Equities Weigh in Favor of Granting Injunctive Relief**

10 Once the FTC establishes the likelihood of its ultimate success on the merits,
11 preliminary injunctive relief is warranted if the Court, weighing the equities, finds
12 that relief is in the public interest. In balancing the equities between the parties, the
13 public equities must be given far greater weight. *Affordable Media*, 179 F.3d at
14 1236. Because Defendants "can have no vested interested in a business activity
15 found to be illegal," *United States v. Diapulse Corp. of Am.*, 457 F.2d 25, 29 (2d
16 Cir. 1972) (internal quotations and citations omitted), a balance of equities tips
17 decidedly toward granting the requested relief. *See also CFTC v. British American*
18 *Commodity Options Corp.*, 560 F.2d 135, 143 (2d Cir. 1977) (quoting *FTC v.*
19 *Thomsen-King & Co.*, 109 F.2d 516, 519 (7th Cir. 1940)) ("[a] court of equity is
20 under no duty 'to protect illegitimate profits or advance business which is
21 conducted illegally'").
22
23
24
25
26
27
28

1 The evidence demonstrates that the public equities – protection of consumers
2 from Defendants’ deceptive and unfair practices and violations of the TSR, the
3 EFTA, and Regulation E; effective enforcement of the law; and the preservation of
4 Defendants’ assets for consumer redress and disgorgement – weigh heavily in favor
5 of granting the requested injunctive relief. Granting such relief is also necessary
6 because Defendants’ conduct indicates that they will likely continue to deceive the
7 public. *Five-Star Auto Club*, 97 F. Supp. 2d at 536 (“[P]ast illegal conduct is highly
8 suggestive of the likelihood of future violations.”); *SEC v. R.J. Allen & Assoc., Inc.*,
9 386 F. Supp. 866, 877 (S.D. Fla. 1974) (past misconduct suggests likelihood of
10 future violations); *CFTC v. Hunt*, 591 F.2d 1211, 1220 (7th Cir. 1979).

11
12
13
14
15 By contrast, the private equities in this case are not compelling. Compliance
16 with the law is hardly an unreasonable burden. *See World Wide Factors*, 882 F.2d
17 at 347 (“there is no oppressive hardship to defendants in requiring them to comply
18 with the FTC Act, refrain from fraudulent representation or preserve their assets
19 from dissipation or concealment”). Because the injunction will preclude only
20 harmful, illegal behavior, the public equities supporting the proposed injunctive
21 relief outweigh any burden imposed by such relief on Defendants. *See, e.g., Nat’l*
22 *Soc’y of Prof. Eng’rs. v. United States*, 435 U.S. 679, 697 (1978).
23
24
25
26
27
28

1 **IV. THE SCOPE OF THE PROPOSED *EX PARTE* TRO IS**
2 **APPROPRIATE IN LIGHT OF DEFENDANTS' CONDUCT**

3 As the evidence has forcefully shown, the FTC will ultimately succeed in
4 proving that Defendants are engaging in deceptive and unfair practices in violation
5 of the FTC Act, the TSR, the EFTA, and Regulation E, and that the balance of
6 equities strongly favors the public. Preliminary injunctive relief is thus justified.
7

8 **A. Conduct Relief**
9

10 To prevent ongoing consumer injury, the proposed temporary restraining
11 order prohibits Defendants from making future misrepresentations concerning the
12 provision of debt relief services. The order also prohibits Defendants from
13 engaging in any conduct that violates the FTC Act, the TSR, the EFTA, or
14 Regulation E, including but not limited to: billing consumers without their
15 authorization; charging advance fees; calling consumers on the National Do Not
16 Call Registry; calling consumers who previously stated that they did not wish to
17 receive such calls; failing to transmit their telephone numbers and names to caller
18 identification services; placing outbound calls that deliver prerecorded messages to
19 induce the purchase of goods or services without first obtaining consumers' express
20 written agreement; placing outbound calls, including calls that deliver prerecorded
21 messages, that fail to disclose truthfully, promptly, and in a clear and conspicuous
22 manner the identity of the seller, that the purpose of the call is to sell goods or
23 services, and the nature of the goods or services; and causing a telephone to ring, or
24
25
26
27
28

1 engaging a person in telephone conversation, repeatedly or continuously with intent
2 to annoy, abuse, or harass any person at the called number.
3

4 As discussed above, this Court has broad equitable authority under Section
5 13(b) of the FTC Act to grant ancillary relief necessary to accomplish complete
6 justice. *Amy Travel*, 875 F.2d at 571-72; *Singer*, 668 F.2d at 1113; *Five-Star Auto*
7 *Club*, 97 F. Supp. 2d at 532-39. These requested prohibitions do no more than
8 order that Defendants comply with the FTC Act, the TSR, the EFTA, and
9 Regulation E.
10
11

12 **B. Temporary Disabling of Websites**

13 An order provision temporarily disabling Defendants' websites and
14 suspending their domain name registrations is necessary to prevent further
15 consumer injury. As discussed above, Defendants operate several active Internet
16 websites containing deceptive representations. Suspending their domain name
17 registrations will ensure that Defendants cannot evade compliance with any
18 preliminary relief entered by this Court pending final determination of this matter.
19
20
21

22 This Court has the authority to direct third parties to effectuate the purpose
23 of the TRO. *Cf. Deckert v. Independence Shares Corp.*, 311 U.S. 282, 290 (1940)
24 (holding that courts have authority to direct third parties to preserve assets); *United*
25 *States v. First Nat'l City Bank*, 379 U.S. 378, 385 (1965); *Reebok Int'l, Ltd. v.*
26 *McLaughlin*, 49 F.3d 1387, 1391 (9th Cir. 1995); *Waffenschmidt v. Mackay*, 763
27
28

1 F.2d 711, 714 (5th Cir. 1985). Other courts have granted similar relief against other
2 defendants who have utilized Internet websites to promote fraud.¹⁸
3

4 **C. An Asset Preservation Order Is Necessary to Preserve the**
5 **Possibility of Final Effective Relief**

6 As part of the permanent relief in this case, the FTC seeks monetary redress
7 for consumers harmed by Defendants' unlawful practices. To preserve the
8 availability of funds for injured consumers, the FTC requests that the Court issue an
9 order requiring the preservation of assets and evidence. Such an order is well
10 within the Court's authority, *Singer* 668 F.2d at 1113, and is similar to the equitable
11 relief granted in prior FTC cases in this District and the Ninth Circuit. *See* note 4
12 *supra*. An asset freeze is appropriate once the Court determines that the FTC is
13 likely to prevail on the merits and restitution would be an appropriate final remedy.
14 *World Travel*, 861 F.2d at 1031.
15
16

17
18 "A party seeking an asset freeze must show a likelihood of dissipation of the
19 claimed assets, or other inability to recover monetary damages, if relief is not
20 granted." *Johnson v. Couturier*, 572 F.3d 1067, 1085 (9th Cir. 2009). In *Johnson*,
21 the Ninth Circuit upheld an asset freeze because plaintiffs had established they were
22
23

24
25 ¹⁸ *See, e.g., FTC v. Mountain View Systems, Ltd., et al.*, Case No. 1:03-cv-0021-
26 RMC (D.D.C. Jan. 9, 2003); *FTC v. Stuffingforcash.com Corp.*, Case No. 1:02-cv-
27 05022-CRN (N.D. Ill. July 16, 2002); *FTC v. TLD Network Ltd.*, Case No. 1:02-
28 cv-01475-JFH (N.D. Ill. Feb. 28, 2002); *FTC v. 1268957 Ontario Inc.*, Case No.
1:01-cv-00423-JEC (N.D. Ga. Feb. 13, 2001); *FTC v. Pereira*, Case No. 1:99-cv-
01367-AVB (E.D. Va. Sep. 14, 1999).

1 “likely to succeed in proving that [Defendant] impermissibly awarded himself tens
2 of millions of dollars.” *Id.* at 1085. Courts have also concluded that an asset freeze
3 is justified where a Defendant’s business is permeated with fraud. *See, e.g., SEC v.*
4 *Manor Nursing Ctrs., Inc.*, 458 F.2d 1082, 1106 (2nd Cir. 1972); *R.J. Allen &*
5 *Assoc.*, 386 F.Supp. at 881.

6
7
8 Further, the Court can order Defendants’ assets to be frozen whether the
9 assets are inside or outside the United States.¹⁹ *First Nat’l City Bank*, 379 U.S. at
10 384 (“Once personal jurisdiction of a party is obtained, the District Court has
11 authority to order it to ‘freeze’ property under its control, whether the property be
12 within or without the United States”). In addition to freezing company assets,
13 courts have frozen individual defendants’ assets where the individual defendants
14 controlled the deceptive activity and had actual or constructive knowledge of the
15 deceptive nature of the practices in which they were engaged. *Amy Travel*, 875
16 F.2d at 574.

17
18
19
20 A freeze of the Defendants’ assets is appropriate here to preserve the status
21 quo, ensure that funds do not disappear during the course of this action, and
22

23
24
25 ¹⁹ The TRO also includes a provision that restrains Defendants from taking any
26 action that may result in the encumbrance or dissipation of foreign assets,
27 including taking any action that would invoke a duress clause. This provision is
28 important since Defendants may have created offshore asset protection trusts that
could frustrate the Court’s ability to provide consumer redress. *See Affordable*
Media, 179 F.3d at 1239-44.

1 preserve Defendants' assets for consumer redress and disgorgement. Here, the
2 consumer injury arising from Defendants' practices is substantial. The corporate
3 Defendants have taken in over \$4 million in revenue in a little more than 2 years.
4 (PX17 at 343 ¶ 13.) Defendants have diverted at least \$530,000 of corporate assets
5 to the individual Defendant, Jeremy Nelson. A temporary asset freeze is required to
6 preserve the Court's ability to order redress or disgorgement of profits.
7

8
9 Without an asset freeze, the dissipation and misuse of assets is likely.
10
11 Defendants who have engaged in fraudulent or other serious law violations are
12 likely to waste assets prior to resolution of the action. *See Manor Nursing Ctrs.*,
13 458 F.2d at 1106. As set forth in the Certification and Declaration of Plaintiff's
14 Counsel Gregory A. Ashe in Support of Plaintiff's *Ex Parte* Application for
15 Temporary Restraining Order with Asset Freeze and Other Equitable Relief, in the
16 FTC's experience, defendants in other cases engaging in similarly serious unlawful
17 practices have secreted assets and destroyed documents upon learning of an
18 impending law enforcement action. As discussed above, the evidence here
19 demonstrates that Defendants' enterprise is permeated by deception and
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000

1 operation by changing their trade name and address²⁰ and hiding their actual address
2 from consumers. Defendants have continued their unlawful practices even though
3 one state attorney general lawsuit, multiple private lawsuits, and many complaints
4 from consumers through their state attorneys general have alerted them to the
5 problems with their conduct. Therefore, an asset freeze is required to preserve the
6 funds derived from Defendants' unlawful activities so that the Court can order that
7 those funds be used to pay redress to the consumers injured by them.

11 **D. Preservation of Records**

12 In addition, the proposed order contains a provision directing Defendants to
13 preserve records, including electronic records, and evidence. It is appropriate to
14 enjoin Defendants charged with deception from destroying evidence and doing so
15 would place no significant burden on them. *See SEC v. Unifund SAL*, 910 F.2d
16 1028, 1040 n.11 (2d Cir. 1990) (characterizing such orders as "innocuous").

19 **E. Expedited Discovery**

20 The FTC seeks leave of Court for limited discovery to locate and identify
21 documents and assets. District courts are authorized to depart from normal
22 discovery procedures and fashion discovery to meet discovery needs in particular

25 ²⁰ Defendants' most recent change in trade name and address, in which they appear
26 to be operating under the name BlackRock instead of Jackson Hunter and to have
27 moved their operations from 30221 Aventura, 2nd Floor, Rancho Santa Margarita,
28 California to 8001 Irvine Center Drive, Irvine, California, appears to have followed
on the heels of a lawsuit by the Ohio Attorney General's office.

1 cases. Federal Rules of Civil Procedure 26(d), 33(a), and 34(b) authorize the Court
2 to alter the standard provisions, including applicable time frames, that govern
3 depositions and production of documents. This type of discovery order reflects the
4 Court's broad and flexible authority in equity to grant preliminary emergency relief
5 in cases involving the public interest. *See Warner Holding*, 328 U.S. at 398; *FSLIC*
6 *v. Dixon*, 835 F.2d 554, 562 (5th Cir. 1987); *Federal Express Corp. v. Federal*
7 *Expresso, Inc.*, 1997 U.S. Dist. LEXIS 19144, at * 6 (N.D.N.Y. Nov. 24, 1997)
8 (early discovery "will be appropriate in some cases, such as those involving
9 requests for a preliminary injunction") (quoting commentary to Fed. R. Civ. P.
10 26(d)); *Benham Jewelry Corp. v. Aron Basha Corp.*, 1997 U.S. Dist. LEXIS 15957,
11 at *58 (S.D.N.Y. July 18, 1997) (courts have broad powers to grant expedited
12 discovery).

13
14
15
16
17
18 **F. The Temporary Restraining Order Should Be Issued *Ex Parte* To**
19 **Preserve The Court's Ability To Fashion Meaningful Relief And**
20 **To Prevent Irreparable Injury To Victims Of Defendants'**
21 **Deceptive Business Activities**

22 The substantial risk of asset dissipation and document destruction in this
23 case, coupled with Defendants' ongoing and deliberate statutory violations, justifies
24 *ex parte* relief without notice. Federal Rule of Civil Procedure 65(b) permits this
25 Court to enter *ex parte* orders upon a clear showing that "immediate and irreparable
26 injury, loss, or damage will result" if notice is given. *Ex parte* orders are proper in
27 cases where "notice to the defendant would render fruitless the further prosecution
28

1 of the action.” *Am. Can Co. v. Mansukhani*, 742 F.2d 314, 322 (7th Cir. 1984); *see*
2 also *Granny Goose Foods, Inc. v. Bhd. of Teamsters*, 415 U.S. 423, 439 (1974); *In*
3 *re Vuitton et Fils, S.A.*, 606 F.2d 1, 4-5 (2d Cir. 1979). The court noted in *Cenergy*
4 *Corp. v. Bryson Oil & Gas P.L.C.*, 657 F. Supp. 867, 870 (D. Nev. 1987), given the
5 pervasive fraud in the case, “it [is] proper to enter the TRO without notice, for
6 giving notice itself may defeat the very purpose for the TRO.” Mindful of this
7 problem, courts have regularly granted the FTC’s request for *ex parte* temporary
8 restraining orders in Section 13(b) cases.²¹

12 As discussed above, Defendants’ business operations are permeated by, and
13 reliant upon, unlawful practices. The FTC’s past experiences have shown that, upon
14 discovery of impending legal action, defendants engaged in fraudulent schemes
15 withdrew funds from bank accounts and destroyed records. (Declaration of
16 Counsel.) Defendant Nelson’s conduct – including withdrawing large sums from
17 the corporate Defendants’ coffers and bragging to a former employee that he has
18 money hidden in so many accounts that the government would never find it, *see*
19 PX08 at 156 ¶ 16 – and the nature of Defendants’ scheme that is so permeated by

24 ²¹ See *supra* note 5 and the cases cited therein. Indeed, Congress has looked
25 favorably on the availability of *ex parte* relief under the FTC Act: “Section 13 of
26 the FTC Act authorizes the FTC to file suit to enjoin any violation of the FTC
27 [Act]. The FTC can go into court *ex parte* to obtain an order freezing assets, and
28 is also able to obtain consumer redress.” S. Rep. No. 130, 103rd Cong., 2d Sess.
15-16, *reprinted in* 1994 U.S. Code Cong. & Admin. News 1776, 1790-91.

1 fraud creates a strong likelihood that Defendants would conceal or dissipate assets
2 absent *ex parte* relief. (PX08 at 154-57 ¶ 12-20.) Thus, this case fits squarely into
3
4 the narrow category of situations where *ex parte* relief is appropriate to make
5 possible full and effective final relief, and it is in the interest of justice to waive the
6
7 notice requirement of Local Rule 7-19.2.
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **V. CONCLUSION**

2 For all of the above reasons, the FTC respectfully requests that this Court
3
4 issue the attached proposed TRO with asset freeze, expedited discovery, and other
5 equitable relief, and require Defendants to show cause why a preliminary injunction
6 should not issue.
7

8 Dated: September 10, 2012

Respectfully submitted,

9
10 WILLARD K. TOM
General Counsel

11
12
13 _____
14 GREGORY A. ASHE
15 LISA A. ROTHFARB
16 JASON M. ADLER
17 Federal Trade Commission
18 600 Pennsylvania Ave., N.W.
19 Washington, D.C. 20580
20 Telephone: 202-326-3719 (Ashe)
21 Telephone: 202-326-2602 (Rothfarb)
22 Telephone: 202-326-3231 (Adler)
23 Facsimile: 202-326-3768
24 Email: gashe@ftc.gov, lrothfarb@ftc.gov,
25 jadler@ftc.gov

26 RAYMOND E. MCKOWN
27 (CA Bar No. 150975)
28 Federal Trade Commission
10877 Wilshire Blvd, Suite 700
Los Angeles, CA 90024
Telephone: 310-824-4325
Facsimile: 310-824-4380
Email: rmckown@ftc.gov

Attorneys for Plaintiff