

FILED RECEIVED
JUN 25 2009
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA
BY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

C09 5380 RJB

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

MCS PROGRAMS, LLC, a Washington Limited Liability Company, also doing business as Mutual Consolidated Savings; UNITED SAVINGS CENTER, INC., a Washington corporation, also doing business as Mutual Consolidated Savings; USC PROGRAMS, LLC, a Washington Limited Liability Company, also doing business as Mutual Consolidated Savings; PAUL MORRIS THOMPSON, individually and as an officer of MCS Programs, LLC, United Savings Center, Inc., and USC Programs, LLC; and MIRANDA CAVENDER, also known as Miranda Cavendar, individually and as a manager of MCS Programs, LLC, United Savings Center, Inc., and USC Programs, LLC,

Defendants.

Case No.

PLAINTIFF'S *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER, WITH ASSET FREEZE, APPOINTMENT OF A RECEIVER, ORDER GRANTING IMMEDIATE ACCESS, ORDER PERMITTING LIMITED EXPEDITED DISCOVERY, AND ORDER TO SHOW CAUSE WHY PRELIMINARY INJUNCTION SHOULD NOT ISSUE, AND SUPPORTING MEMORANDUM

Note on Motion Calendar: June 25, 2009

[FILED UNDER SEAL]

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

1 09-CV-05380-APPL

09-CV-05380-APPL

TABLE OF CONTENTS

1			
2			Page
3	I.	INTRODUCTION	1
4	II.	THE PARTIES	2
5	A.	Plaintiff Federal Trade Commission	2
6	B.	Defendants	2
7	1.	Corporate Defendants	2
8	2.	Individual Defendants	3
9	a.	Paul Morris Thompson	3
10	b.	Miranda Cavender	4
11	III.	DEFENDANTS' FRAUDULENT BUSINESS PRACTICES	4
12	IV.	ARGUMENT	12
13	A.	Jurisdiction and Venue	12
14	B.	Section 13(b) Of The FTC Act Authorizes the Requested Relief	12
15	C.	Likelihood of Success on the Merits and the Equities Weigh in Favor of a TRO	
16		13
17	1.	Evidence Shows a Substantial Likelihood of Ultimate Success on the Merits	
18		13
19	a.	Defendants' Violations of Section 5 of the FTC Act	15
20	i.	Misrepresentations Regarding Defendants' Service	15
21	ii.	Failure to Disclose Material Facts of Refund Policy	15
22	iii.	Failure to Disclose Material Facts Regarding Total Cost	16
23	b.	Defendants' Violations of the Telemarketing Sales Rule	16
24	i.	Misrepresentations and Failure to Disclose Material Facts	
25		16
26	ii.	Violations of the Do Not Call Provisions of the TSR	17
27	iii.	Violations of Other Disclosure Requirements of the TSR	18
28	c.	Individual Liability For Law Violations	18
	2.	The Balance Of The Equities Requires Preliminary Relief	20

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

- 3. A TRO Is Necessary To Halt Fraud and Prevent Serious Consumer Injury 21
 - a. A TRO Will Stop Ongoing Fraud 21
 - b. An Asset Freeze, a Temporary Receiver, and Limited Expedited Discovery are Necessary to Preserve the Possibility of Effective Final Relief for Consumers 21
 - i. An *Ex Parte* Asset Freeze is Necessary to Preserve the Possibility of Redress 21
 - ii. A Receiver Will Halt the Fraud and Consumer Injury and Locate and Preserve Business Assets and Records 23
 - iii. Immediate Access and Limited Expedited Discovery are Appropriate 23

- V. CONCLUSION 24

1 Plaintiff, the Federal Trade Commission (“FTC”), moves this Court for an *ex parte* Temporary
2 Restraining Order (“TRO”), including an order freezing assets, appointing a receiver, and permitting
3 limited expedited discovery, and an Order to Show Cause Why a Preliminary Injunction Should Not
4 Issue. The FTC brings this action under Sections 13(b) and 19 of the Federal Trade Commission Act
5 (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and Fed. R. Civ. P. 65(b), to halt Defendants’ deceptive
6 telemarketing of their “debt reduction” program. That telemarketing violates Section 5(a) of the FTC
7 Act, 15 U.S.C. § 45(a), and the FTC’s Telemarketing Sales Rule, 16 C.F.R. Part 310, which prohibits
8 deceptive and abusive telemarketing acts or practices. In support of its motion, the FTC submits this
9 Memorandum and accompanying exhibits.

10 **I. INTRODUCTION**

11 Defendants MCS Programs, LLC, United Savings Center, Inc., USC Programs, LLC, Paul
12 Morris Thompson, and Miranda Cavender (collectively, “Defendants”) telemarket what they call a
13 “rapid debt reduction” program. They claim their financial consultants, for a fee that has varied from
14 \$399 to \$899, will negotiate substantially reduced interest rates for consumers’ credit cards.
15 Defendants also claim their program will result in consumers paying their debts off three to five times
16 faster, without increasing their monthly payments. They promise consumers savings of thousands of
17 dollars, and they promise full refunds to consumers who do not save the promised amount.

18 These claims are false. Defendants’ financial consultants do not negotiate substantially lower
19 interest rates for consumers. The savings guaranteed to consumers will occur, if at all, not as the result
20 of significantly reduced interest rates, but instead, only if consumers follow a debt payment schedule
21 provided by Defendants that calls for higher monthly payments. That fact is not disclosed. Indeed,
22 Defendants often represent that higher monthly payments will not be required. Defendants also fail to
23 disclose various conditions that are later cited as reasons for denying the promised refund, and fail to
24 disclose a substantial fee that may be deducted from the refund.

25 Defendants also violate the Do Not Call provisions of the Telemarketing Sales Rule. They or
26 their telemarketers have called consumers who have asked not to be called, and have failed to transmit
27 caller ID for the telemarketer or seller. They or their telemarketers also fail to provide required
28 disclosures at the outset of telemarketing calls.

1 The FTC seeks an *ex parte* TRO, including an asset freeze to preserve for consumer redress
 2 funds obtained by fraud, and appointment of a receiver. Without this relief, Defendants are likely to
 3 secrete assets that should remain available for consumer redress, and to destroy or conceal evidence of
 4 their wrongdoing. That risk is apparent not only because individuals engaged in fraud are typically
 5 likely to conceal assets, but also because these defendants have credit card merchant accounts outside
 6 the United States, including in the Caribbean nation of Nevis and St. Kitts and in Israel, and claim to
 7 have an office in Nevis, making offshore transfers of money especially likely. Thus, absent an asset
 8 freeze and appointment of a temporary receiver, Defendants may be able to transfer funds to locations
 9 from which repatriation may be impossible. A receiver will ensure that consumer injury from
 10 Defendants' law violations ceases. A receiver will also locate and preserve business assets and records
 11 to obviate the threat of destruction, dissipation or secretion, to insure the effectiveness of final relief.

12 **II. THE PARTIES**

13 **A. Plaintiff Federal Trade Commission**

14 The FTC, an independent agency of the U.S. Government, enforces Section 5(a) of the FTC
 15 Act, 15 U.S.C. § 45(a), which prohibits deceptive acts or practices in or affecting commerce.
 16 15 U.S.C. §§ 41-58. The FTC also enforces the Telemarketing and Consumer Fraud and Abuse
 17 Prevention Act ("Telemarketing Act"), 15 U.S.C. §§ 6101-6108, and, pursuant to that Act, the
 18 Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310. The FTC is authorized to initiate federal
 19 district court proceedings to enjoin violations of the FTC Act and the TSR and to secure equitable
 20 relief, including restitution and disgorgement. 15 U.S.C. §§ 53(b), 57b, 6102(c), and 6105(b).

21 **B. Defendants**

22 **1. Corporate Defendants**

23 The three corporate Defendants, **MCS Programs, LLC, United Savings Center, Inc.,** and
 24 **USC Programs, LLC** (collectively, "MCS"), are a common enterprise, with offices at 1215 Earnest S.
 25 Brazill Street, Ste. 33, Tacoma, Washington. All are Washington corporations, United Savings Center,
 26 Inc. ("USC"), incorporated in June 1998, and the Limited Liability Companies in September 2008.¹

27
 28 ¹ TRO Exh. 1, ¶ 5, pp. 11-44.

1 USC admits that it does business as “Mutual Consolidated Savings”;² at times, the two names are used
2 interchangeably.³ USC owns the telephone numbers at the address the corporate Defendants share.⁴

3 **2. Individual Defendants**

4 **a. Paul Morris Thompson**

5 Paul Morris Thompson is Registered Agent for all three corporate Defendants. In March 1998,
6 he filed “Mutual Consolidated Savings” as a fictitious business name in Washington State.⁵ Three
7 months later, Thompson was an incorporator of USC, and he has signed official documents as its
8 President.⁶ He is also the only officer and only Member of the Board for both MCS Programs, LLC,
9 and USC Programs, LLC.⁷ “Mutual Consolidated Savings” correspondence with the Better Business
10 Bureau (“BBB”) identifies him as CEO.⁸ Thompson also registered domain names for eight websites,
11 from 2002 to 2008, marketing the MCS debt reduction program.⁹ He is the primary contact for USC
12 with its telephone carrier and is billed for call-forwarding service to MCS.¹⁰ He was also “Authorized
13 Representative” for “United Saving Center/Mutual Consolidated Savings” on a Do Not Call
14 organization registration in 2003.¹¹

15
16
17 ² TRO Exh. 1, ¶ 10, p. 122 (Complaint, ¶ 2, *North Carolina v. United Savings Center, Inc.* (Superior Court,
18 Wake County, NC, No. 07 CV 07753, filed May 15, 2007)); p. 178 (Answer, ¶ 2, Sept. 17, 2008). See TRO Exh. 1,
¶ 6, p. 43 (Washington Dept. of Licensing report).

19 ³ TRO Exh. 3, p. 35; TRO Exh. 20, p. 9 (invoices listing both names). All three corporate Defendants
20 describe the nature of their business in essentially the same terms. TRO Exh. 1, ¶ 5, pp. 32, 39, 44, 46, 65
(applications for initial annual report, MCS Programs, LLC, and USC Programs, LLC; websites for Mutual
21 Consolidated Savings/Mutual Consolidated Programs and for United Savings Center).

22 ⁴ TRO Exh. 1, ¶¶ 19, 21, p. 250.

23 ⁵ TRO Exh. 1, ¶ 6, p. 42.

24 ⁶ TRO Exh. 1, ¶ 5, pp. 17-24; ¶ 10, pp. 185-95.

25 ⁷ TRO Exh. 1, ¶ 5, pp. 13-16, 28-41.

26 ⁸ TRO Exh. 16, pp. 3-4, 7-8, 10.

27 ⁹ TRO Exh. 1, ¶¶ 7-8, pp. 44-120.

28 ¹⁰ TRO Exh. 1, ¶¶ 19, 21-22, pp. 250-54.

¹¹ TRO Exh. 1, ¶ 11, p. 197.

1 **b. Miranda Cavender**

2 Another document filed with the Washington Secretary of State names Miranda Cavender as
3 USC President.¹² The MCS correspondence identifying Thompson as CEO identifies her as “COO,”¹³
4 presumably meaning “Chief Operating Officer.” She is the subscriber to the call-forwarding service
5 that is billed to Thompson, including service for a number on mcsprograms.com.¹⁴ She is also
6 “Authorized Representative” for “Mutual Consolidated Savings” on a 2006 Do Not Call registration.¹⁵

7 **III. DEFENDANTS’ FRAUDULENT BUSINESS PRACTICES**

8 For several years, Defendants have marketed and sold a “rapid debt reduction” program under
9 the names “Mutual Consolidated Savings,” MCS, and other names. The program is marketed by
10 telephone and the Internet¹⁶ to customers in the U.S. and Canada.¹⁷ Defendants represent that
11 consumers who purchase the MCS program, typically for \$690-899,¹⁸ will reap substantially lower
12 credit card interest rates from MCS’s negotiations with their credit card companies, saving them
13 thousands of dollars in interest.

14 On the Internet, MCS has claimed: “WE SPECIALIZE IN LOWERING INTEREST RATES
15 ON YOUR CREDIT CARDS,” and that with MCS’s “expert negotiators,” consumers can “expect
16

17
18 ¹² TRO Exh. 1, ¶ 4, pp. 11-12.

19 ¹³ TRO Exh. 16, pp. 3-4, 7-8, 10.

20 ¹⁴ TRO Exh. 1, ¶¶ 7-8, 19, 22, pp. 48 (mcsprograms.com website listing 877-891-1348 as MCS phone),
21 252-54 (Panda Global CID response for service to 1215 Earnest S. Brazill St, including for 877-891-1348). Another
number for which Cavender is subscriber, 800-493-1304, is listed as the registrant’s phone for mcsprograms.com,
TRO Exh. 1, ¶ 8, pp. 97-98, and as the MCS phone number in credit card company records, TRO Exh. 17, p. 4.

22 ¹⁵ TRO Exh. 1, ¶ 11, p. 196. DHL account documents identify “Mandy Mgr” as MCS “decision-maker.”
23 TRO Exh. 1, ¶ 18, p. 198.

24 ¹⁶ TRO Exh. 1, ¶ 7, pp. 44-96 (various websites). Telemarketers sometimes refer consumers to an MCS
25 website for information, TRO Exh. 1, ¶¶ 26-30, p. 278; TRO Exh. 10, ¶ 2, p. 1, and a website is referenced on
26 materials MCS sends consumers, e.g., TRO Exh. 17, ¶ 8, p. 2.

27 ¹⁷ TRO Exh. 1, ¶¶ 19-20, pp. 200-49 (phone bills listing calls to Canada and U.S). The consumers whose
28 declarations are exhibits to this motion include 10 U.S. residents and 12 Canadian residents. TRO Exhs. 4-28.

¹⁸ Of 18 consumers whose declarations or complaints are attached and who report the amount charged in
U.S. dollars, 14 paid \$690-\$899: TRO Exh. 3, pp. 20-22; TRO Exh. 4, ¶¶ 2,6; TRO Exh. 7, ¶¶ 2, 6; TRO Exh. 11,
¶¶ 3, 6; TRO Exh. 12, ¶¶ 2-3; TRO Exh. 14, ¶¶ 2-3; TRO Exh. 15, ¶¶ 2,5; TRO Exh. 16, pp. 3, 13; TRO Exh. 20,
¶¶ 2, 4; TRO Exh. 22, ¶¶ 2, 5-6, 9; TRO Exh. 23, ¶¶ 2, 5; TRO Exh. 24, ¶ 2; TRO Exh. 25, ¶¶ 2-3.

1 anywhere from 3% to 12% lower interest rates on your cards.”¹⁹ While being recorded undercover by
 2 an FTC investigator, a telemarketer claimed MCS would negotiate a credit card interest rate 5 to 12%
 3 less than her current rate, saving her \$2,500 per year in interest.²⁰

4 Numerous consumers recount such claims by MCS telemarketers. A “robocall” – a
 5 prerecorded message delivered by automated phone call -- told one consumer to “press 1 if I wanted a
 6 lower interest rate on my credit cards.”²¹ Live telemarketers make the claims in more detail. Another
 7 consumer recounts that MCS said it would lower the interest rate on all of her credit cards, bank loans,
 8 and lines of credit by 3% to 12%. She also said MCS said it “would save me thousands of dollars in
 9 interest by negotiating a lower interest rate on my behalf with the credit card company.”²² Another
 10 consumer was told that the company “would lower the interest rates on all my credit cards to between
 11 2% and 6%, saving me at least \$2,500 per year in interest payments. . . . [M]y credit card payments
 12 would be so much lower, . . . that I would not even notice the \$500 fee.”²³ Many other consumers
 13 report claims that they would save \$2,000 to \$3,000 from reduced interest rates in one to two years.²⁴

14
 15
 16 ¹⁹ TRO Exh. 1, ¶ 9, pp. 118, 120 (March 2007 version of mcsprograms.com as archived).

17 ²⁰ TRO Exh. 1, ¶¶ 27-30, pp. 265-67. Another recording transcript reveals a “verifier” (who verifies the
 18 consumer’s authorization) claiming that an MCS economic advisor will “work with you and your credit card
 19 accounts to lower your interest rates” and that the MCS fee will “come out of your drop in interest” so that “[y]ou
 20 don’t even feel that fee.” The verifier indicated that the specific rate could not be specified “until *after* your
 economic advisor has completed that negotiation process with your lenders.” TRO Exh. 3, p. 23 (emphasis added).
 In another verification, the consumer was told, “Your interest rates will not be lowered *until* you return your debt
 profile form. TRO Exh. 1, p. 293 (emphasis added).

21 ²¹ TRO Exh. 22, ¶ 2. Similar robocalls are discussed in TRO Exh. 4, ¶ 2, and TRO Exh. 8, ¶¶ 3-4. *See*
 22 TRO Exh. 28, ¶ 3 (robocall “simply said the call was about my interest rate”). Interest rate reduction is also touted
 by the verifier just before the consumer’s final authorization (*see supra* note 20).

23 ²² *E.g.*, TRO Exh. 4, ¶ 3.

24 ²³ TRO Exh. 5, ¶¶ 3, 7.

25 ²⁴ TRO Exh. 5, ¶¶ 3, 6 (\$2,500 per year); TRO Exh. 7, ¶¶ 2; (“\$2,000 to \$2,500 within the next two
 26 years”); TRO Exh. 14, ¶ 2 (“\$3,000 in a year”); TRO Exh. 17, ¶ 3 (“at least \$2,500 in the first year”); TRO Exh. 25,
 27 ¶ 3 (\$2,500 to \$3,000 per year). Even when consumers do not recall such an explicit claim regarding how quickly
 the promised savings will be realized, they almost universally recall the MCS telemarketer’s claim that MCS will
 28 lower their credit card interest rates. TRO Exh. 6, ¶ 2; TRO Exh. 8, ¶¶ 3-4; TRO Exh. 10, ¶ 2; TRO Exh. 12, ¶ 2;
 TRO Exh. 13, ¶¶ 2-4; TRO Exh. 15, ¶¶ 2, 4; TRO Exh. 18, ¶¶ 3, 5; TRO Exh. 19, ¶ 2; TRO Exh. 20, ¶¶ 2-4; TRO
 Exh. 21, ¶¶ 2, 4; TRO Exh. 22, ¶¶ 2-5; TRO Exh. 23, ¶¶ 2-3; TRO Exh. 24, ¶ 2; TRO Exh. 26, ¶¶ 4-6. *See* TRO
 Exh. 1, ¶¶ 26-30, p. 265 (\$2,500 the first year).

1 Of course, one way to save money on interest is to reduce principal by making higher
 2 payments, but MCS assures consumers that higher payments will not be required to achieve the
 3 promised savings. On one of its websites, MCS “promise[s] to get all of our customers out of debt 3-
 4 10 faster [sic] without making any bigger payments than you already do right now.”²⁵ Telemarketers
 5 provide the same assurance. When an FTC undercover investigator asked the MCS telemarketer
 6 whether the MCS program would “change the minimum payment that I’d have to make,” the
 7 telemarketer answered, “No. All you do is continue to make your same monthly payments like you
 8 always have.”²⁶ Consumers also report being told that the MCS program would not increase the
 9 amount of the required monthly payment.²⁷ Some were told that it would reduce the monthly
 10 payment.²⁸ MCS telemarketers also assure consumers that higher payments will not be required by
 11 telling them that the MCS fee will hardly be noticed, if at all, because it will be “absorbed” or offset by
 12 immediate savings.²⁹ Defendants also claim that their program allows consumers to retire their debts
 13 several times faster than they could otherwise.³⁰ As MCS admitted to the BBB, it guarantees

14
 15
 16
 17
 18 ²⁵ TRO Exh. 1, ¶ 7, p. 84. Another site claims that the MCS program “takes the monthly payments that
 you are currently making, and optimizes your money using a ‘snowball’ effect.” *Id.*, ¶ 7, p. 46.

19 ²⁶ TRO Exh. 1, ¶¶ 26-30, p. 267. In another MCS recording, a verifier promised the consumer a refund if
 he failed to save \$3,000, without making “those large monthly payments.” TRO Exh. 1, ¶¶ 32-34, pp. 290-91.

20 ²⁷ TRO Exh. 11, ¶ 4 (MCS would save consumer approximately \$60,000 and help her pay off her bills in
 21 one-third the time or seven to ten years faster, “without changing the amount of my monthly payments”).

22 ²⁸ TRO Exh. 5, ¶ 3 (monthly payment would be so much lower she would not notice MCS fee); TRO
 Exh. 15, ¶ 2 (MCS would lower interest rate and monthly credit card payments); TRO Exh. 24, ¶ 2 (“MCS could
 23 lower the interest rates on my credit cards and reduce my monthly payments”). See TRO Exh. 11, ¶ 4 (MCS claimed
 it could help consumer after said she could not afford to keep making her monthly payments).

24 ²⁹ TRO Exh. 4, ¶ 6 (consumer would hardly notice fee; would recoup cost in 3 months); TRO Exh. 7, ¶ 4
 25 (would not notice \$699 fee because of savings on credit card payments); TRO Exh. 13, ¶ 5 (would not “see” \$399 fee
 26 because it would be “absorbed” by savings); TRO Exh. 22, ¶ 5 (would barely notice charge because of quick
 savings). The telemarketer recorded by the FTC investigator claimed that the \$699 fee is “completely absorbed” by
 savings over the next year. TRO Exh. 1, ¶¶ 26-30, pp. 267-68.

27 ³⁰ TRO Exh. 1, ¶¶ 32-34, p. 290 (out of debt 3 to 5 times faster); TRO Exh. 11, ¶ 4 (pay off bills in one-
 28 third the time); TRO Exh. 13, ¶ 4 (debt-free 3 to 5 times faster). MCS website claims are more extreme, TRO
 Exh. 1, ¶ 7, p. 46 (“eliminate your debt up to 10-20 times faster”); p. 84 (“all . . . customers out of debt 3-10 faster”).

1 consumers "savings and lower finance charges, along with becoming debt free 3 to 5 times faster."³¹

2 Defendants cement the "can't lose" proposition for consumers with their refund promise. As
3 recorded, an MCS telemarketer specifically promised that if the bank refused to lower her interest
4 rates, the MCS "fee gets processed back onto your card as if we were never there."³² Consumers
5 confirm that they were promised refunds if interest rates were not reduced,³³ and if a particular dollar
6 amount of savings, typically \$2,500 or more, was not achieved.³⁴ Defendants' web site reinforces the
7 refund guarantee, although it avoids details on how, or how soon, the savings will be achieved:

8 Make the choice to become debt free today, absolutely risk free, our refund policy is clear and
9 simple! If and only [if] we cannot save you money, we promise you'll receive a complete and
total refund!³⁵

10 When consumers wonder how MCS can reduce interest rates, MCS touts its purported
11 expertise in working with credit card companies.³⁶ In addition, MCS representatives create the
12 impression of affiliation with consumers' banks or credit card companies by reciting information about
13 consumer accounts, such as balance owing or even the account number.³⁷ Consumers tend to presume

14
15 ³¹ TRO Exh. 16, Exh. G, p. 13. A similar admission is in TRO Exh. 16, Exh. B, p. 5 (MCS guarantees to
16 get consumers "out of debt three to five times faster").

17 ³² TRO Exh. 1, ¶¶ 26-30, pp. 270-71, 278-79.

18 ³³ TRO Exh. 20, ¶ 2 (refund if MCS unable to lower consumer's interest rates and save \$4,000). See TRO
19 Exh. 13, ¶ 4 (interest rate reduction guaranteed within 30 days).

20 ³⁴ E.g., TRO Exh. 17, ¶¶ 3, 5 (would save \$2,500 the first year; refund if \$2,500 savings not achieved);
21 TRO Exh. 23, ¶ 3 (guaranteed refund if savings not more than \$4,000); TRO Exh. 24, ¶ 2 (100% refund if MCS
22 could not save her \$1,400); TRO Exh. 25, ¶ 3 (refund if didn't save \$2,500 to \$3,000 from lower interest rates in the
first year). Other guarantees are recounted in TRO Exh. 5, ¶ 3; TRO Exh. 7, ¶ 2; TRO Exh. 12, ¶ 7; TRO Exh. 14,
¶ 2; TRO Exh. 22, ¶ 5. After MCS charges consumers, it sends them a written guarantee of a refund "if MCS cannot
meet the minimum savings guarantee," which has varied from \$2,500 to \$4,000. TRO Exh. 15, pp. 7-8; TRO
Exh. 22, p. 4; TRO Exh. 20, ¶ 2, pp. 12 and 15.

23 ³⁵ TRO Exh. 1, ¶ 7, p. 46.

24 ³⁶ TRO Exh. 12, ¶ 3 (consumer assured MCS could lower interest rates because "'we work with these
25 companies'"); TRO Exh. 20, ¶¶ 3-4 (MCS' "experienced negotiators . . . are always able to secure lower interest
rates"); TRO Exh. 1, ¶ 9, p. 120 (MCS' "expert negotiators" can obtain lower interest rates for consumers).

26 ³⁷ TRO Exh. 1, ¶¶ 32-34, pp. 289-90 (MCS had consumer's current balance); TRO Exh. 5, ¶ 5; TRO
27 Exh. 22, ¶ 3. However telemarketers obtain the credit card numbers, they apparently use them to obtain account
28 information. Telephone records reveal multiple rapid-fire calls from the same telemarketer's number to a card-
issuing bank's line for providing balance information to consumers - calls that would require possession of credit
card numbers in order to obtain information. A bank official verified that the calling number belonged to MCS or
one of its telemarketers by calling the number. TRO Exh. 9, ¶¶ 2-4, 6.

1 the information came from, and that MCS is affiliated with, their credit card companies.³⁸ In fact, one
 2 telemarketer indicated to a Canadian bank investigator that MCS is a bank³⁹ – an impression
 3 encouraged by its use of names such as “Mutual Consolidated Savings.”

4 MCS representations of savings from reduced interest rates are false. MCS does not negotiate
 5 substantially lower credit card interest rates for consumers, nor does it produce the claimed savings, or
 6 enable consumers to pay off their debts more quickly.

7 Some consumers learn they have been duped when their credit card companies or banks tell
 8 them they simply will not negotiate, or even discuss, interest rates with a third party.⁴⁰ Others get the
 9 bad news when the credit card companies tell MCS “no” with the consumer on the line,⁴¹ or when they
 10 receive month after month of credit card statements with rates unchanged.⁴² At least one MCS
 11 “advisor” admitted to a consumer that MCS has no program for reducing interest rates.⁴³

12 When aggrieved consumers demand a refund, MCS denies it ever promised one if interest rates
 13 were not lowered.⁴⁴ And it claims that it fulfilled its savings guarantee – but in a way previously
 14

15
 16 ³⁸ Consumers are often misled as to a relationship between MCS and the bank. TRO Exh. 15, ¶¶ 3-4
 17 (information displayed by MCS representatives convinced consumer MCS was affiliated with his credit card
 18 company); TRO Exh. 20, ¶ 4 (telemarketer said “MCS has special relationships with credit card companies”); TRO
 19 Exh. 22, ¶ 3 (telemarketer had credit card numbers and balances owed; consumer concluded MCS must be a bank or
 20 credit card company). One telemarketer claimed MCS handled the printing and mailing of consumers’ credit card
 21 statements. TRO Exh. 5, ¶¶ 2, 4-5, 7. See TRO Exh. 26, ¶¶ 5-6 (telemarketers “tried to give me the impression that
 22 they worked with my credit card company, and told me they were licensed with banks to lower my interest rates”).
 23 See TRO Exh. 18, ¶ 4 (MCS telemarketer had consumer’s checking account number without her providing it).

24 ³⁹ TRO Exh. 9, ¶ 6.

25 ⁴⁰ As a credit card company representative told MCS while the consumer was listening, ““You should
 26 know that we can’t do that.” TRO Exh. 24, ¶ 4. See TRO Exh. 14, ¶ 5 (bank representative said only the bank or
 27 credit card company could lower credit card interest rate); TRO Exh. 17, ¶ 6 (bank employee said MCS had charged
 28 consumer for a service it could not provide); TRO Exh. 20, ¶ 5 (two credit card companies told consumer they do
 not negotiate for lower rates and would not lower her interest rate in any circumstance).

⁴¹ TRO Exh. 5, ¶¶ 3, 5-12; TRO Exh. 11, ¶¶ 8-9; TRO Exh. 12, ¶¶ 2-7; TRO TRO Exh. 24, ¶¶ 2, 4-5; TRO
 Exh. 25, ¶¶ 2-4, 11-15. In correspondence with the BBB regarding a consumer complaint, MCS has acknowledged
 that “no rate reductions were possible” for that consumer. TRO Exh. 16, p. 17.

⁴² TRO Exh. 11, ¶¶ 15, 16, 18; TRO Exh. 13, ¶¶ 7, 12.

⁴³ TRO Exh. 25, ¶¶ 13-14.

⁴⁴ *E.g.*, TRO Exh. 16, ¶ 2G, p. 13 (“We did not guarantee her a refund if her rates were not lowered.”);
 TRO Exh. 25, ¶ 14 (MCS advisor “claimed that MCS does not even offer a [sic] interest rate reduction program”).

1 unheard of by the consumers. After charging consumers \$690 or more, MCS sends them documents
 2 that promise – not to save them money by reducing interest rates -- but to “show” customers how to
 3 save at least \$2,500 “over the course of paying off your current recorded debt,”⁴⁵ or “throughout the
 4 duration of their loans.”⁴⁶ In these materials, “Rapid Debt Reduction” is simply a “payment
 5 scheduling program” under which, if the consumer makes higher monthly payments according to the
 6 schedule, he or she “will achieve the level of savings calculated by this program.”⁴⁷ For example,
 7 MCS “showed” an Ohio customer that by increasing her monthly total of payments from \$303 to
 8 \$1,004, she could save \$25,688 in finance costs. Unfortunately, she was unable to afford her monthly
 9 payments, even at the lower level, and she had told the MCS telemarketer that.⁴⁸ MCS claims that by
 10 providing consumers with a “plan for moving forward,”⁴⁹ it saves consumers thousands - even millions
 11 - of dollars, but these are potential, not actual, savings.⁵⁰ MCS refuses to refund because, “Our product
 12 package’s service contract is considered fully fulfilled . . . when the customer . . . has been provided
 13 proof of the ability of our product package to meet or exceed the savings guarantee.”⁵¹

14
 15 ⁴⁵ TRO Exh. 17, ¶ 8, p. 6; TRO Exh. 20, ¶ 7, p. 12.

16 ⁴⁶ TRO Exh. 11, ¶ 10, p. 16; TRO Exh. 13, ¶ 6, p. 27; TRO Exh. 15, ¶ 7, pp. 7-8.

17 ⁴⁷ TRO Exh. 17, ¶ 8, p. 6; TRO Exh. 20, ¶ 7, p. 12. Almost identical language appears in TRO Exh. 11,
 18 ¶ 10, p. 16; TRO Exh. 15, ¶ 7, pp. 7-8; TRO Exh. 16, ¶ 3, p. 18. When consumers seek refunds, MCS insists that
 19 this “Rapid Debt Reduction” plan is the “primary purpose of our program.” TRO Exh. 16, pp. 3, 10 (quoting MCS
 20 correspondence with BBB).

21 ⁴⁸ TRO Exh. 11, ¶¶ 4, 10, p. 22 (amount paid per month derived by dividing total of payments by number
 22 of months). Similarly, the Rapid Debt Reduction program MCS provided to a Massachusetts customer called for her
 23 total monthly payments to increase from \$191 to \$928. TRO Exh. 13, ¶¶ 6, 9-10, p. 18.

24 ⁴⁹ TRO Exh. 16, ¶ 2, pp. 3, 10.

25 ⁵⁰ When MCS responded to one consumer who claimed he was promised an interest rate reduction and a
 26 refund if MCS was unable to save him \$2,500, MCS did not dispute that such representations were made, admitted
 27 that “no rate reductions were possible,” but refused a refund because “as a result of implementation of our Rapid
 28 Debt Reduction Program, total savings amounted to \$3,395,527.59.” TRO Exh. 16, ¶ 3, p. 17. In another instance,
 MCS acknowledged that the consumer’s bank would not reduce her interest rates, but claimed that if she
 “consistently followed our Rapid Debt Reduction Program she would . . . save over 83,223.09” over 8.75 years, and
 that MCS had fulfilled its guarantees. TRO Exh. 16, ¶ 2, p. 13

⁵¹ TRO Exh. 3, p. 15. MCS also denies refunds to consumers even when the “plan” provided is simply oral
 advice. TRO Exh. 12, ¶¶ 2, 4-7, 13 (no refund after failing to reduce consumer’s interest rates and guaranteeing a
 refund if she didn’t save; MCS representative suggested she increase her monthly payments to pay off her bills
 faster); TRO Exh. 24, ¶¶ 4-5 (refund denied after MCS financial advisor admits “we can’t help you” with interest

(continued...)

1 Of course, conditioning savings on higher monthly payments contradicts the pre-sale
 2 promises.⁵² As one consumer explained to an MCS representative, "I signed up for the MCS program
 3 to have the interest rates on all my credit cards reduced to between 3% and 4%," not to have MCS give
 4 her advice on how to pay her bills. "Why," she asked the MCS employee, "would I pay you to tell me
 5 how to pay my bills?"⁵³ In any event, many of these financially distressed consumers simply cannot
 6 make higher payments (financial distress often being the reason they agreed to the transaction),⁵⁴ and
 7 therefore cannot "save" by following the MCS advice.

8 MCS gives various other excuses for refusing refunds, withholding the refund on the ground
 9 that the consumer has not waited long enough to claim it,⁵⁵ or on the ground that the consumer has
 10 waited too long.⁵⁶ In some instances, MCS simply fails to address the consumer's refund request.⁵⁷
 11

12 _____
 13 ⁵¹(...continued)

14 rate reduction, and offers to explain how to save money by paying balances off faster with higher payments); TRO
 15 Exh. 25, ¶¶ 2, 12-19 (consumer who was promised interest rate reduction to 3-4% later told that she could pay off
 16 debt faster by making higher payments, and that refund was not possible; no refund until after BBB complaint).

17 ⁵² See *supra* notes 25-28 and accompanying text.

18 ⁵³ TRO Exh. 25, ¶ 13. Another MCS employee claiming that MCS had no obligation to lower interest rates
 19 told a consumer she needed to read through an MCS booklet and follow through with the program on her own. The
 20 consumer replied, "that I had not paid \$500 to receive a booklet on how to lower my interest rates, and that I wanted
 21 MCS to lower my interest rates . . . as had been promised." TRO Exh. 5, ¶ 7. Similarly, a consumer was upset when
 22 her MCS advisor offered to explain how to save money by making higher payments because she "already knew that
 23 higher minimum payments would do that, and that wasn't what I'd . . . paid over \$700 for," TRO Exh. 24, ¶ 5.

24 ⁵⁴ TRO Exh. 4., ¶ 3 (MCS program attractive to consumer who was "strained financially" because she was
 25 on maternity leave and receiving "very little income"); TRO Exh. 7, ¶¶ 4, 15 (consumer not making enough to cover
 26 expenses relied on MCS promise to lower interest rates by half); TRO Exh. 11, ¶ 4 (consumer told telemarketer she
 27 "could not afford to keep making my monthly payments"); TRO Exh. 12, ¶ 6 ("did not have the money to pay larger
 28 monthly payments"); TRO Exh. 15, ¶ 2 ("was having difficulty making the monthly payments on my credit card").

⁵⁵ TRO Exh. 12, ¶ 7 (MCS denied full refund on grounds that consumer had not given MCS sufficient time
 to make the service work).

⁵⁶ TRO Exh. 7, ¶ 14 (despite MCS failure to reduce interest rates by half as promised, refund refused
 because it had been more than six months since purchase); TRO Exh. 3, pp. 28-31 (refund refused three months after
 purchase on grounds that consumer waited too long to call; partial refund after Washington AG contacted MCS).

⁵⁷ TRO Exh. 11, ¶¶ 16-17; TRO Exh. 13, ¶¶ 12-13. Although Defendants promise a full refund if the
 promised savings do not occur, TRO Exh. 1, ¶ 7, p. 46 (promising "complete and total refund"), TRO Exh. 1,
 ¶¶ 26-30, pp. 270-71, 278-79 (promising fee to be charged back "as if we were never there"), when they pay refunds,
 Defendants sometimes deduct a 12.5% fee. TRO Exh. 3, pp. 30-31; TRO Exh. 20, ¶¶ 10-12, 22. The fee is not
 disclosed until after consumers are charged, in documents mailed to consumers. *E.g.*, TRO Exh. 20, ¶¶ 6, 7, 11,
 pp. 12, 15; TRO Exh. 12., ¶ 9; TRO Exh. 22, ¶¶ 3, 10, p. 4.

1 Defendants engage in other deceptive and abusive telemarketing. For example, they do not
 2 disclose to Canadian consumers that the quoted price is in U.S. dollars and that the amount charged to
 3 their Canadian credit cards may be higher.⁵⁸ Because of the exchange rate, the price has been as much
 4 \$300 higher in Canadian dollars.⁵⁹ Consumers may be shocked when they realize they have been
 5 charged much more than the amount they authorized. This can be a tip-off that MCS is a fraud.⁶⁰

6 Defendants and their telemarketers also defy the TSR by failing to disclose promptly, clearly,
 7 and conspicuously the identity of the seller and that the purpose of the call is to sell goods or services.
 8 Defendants also deliver prerecorded messages via automated calls (“robocalls”) without providing
 9 required disclosures and a compliant opt-out mechanism.⁶¹

10 MCS telephone bills show that it violates the TSR’s “Do Not Call” (“DNC”) provisions by
 11 calling numbers that consumers have placed on the Do Not Call Registry.⁶² In fact, MCS admitted in
 12 the fall of 2007 that an MCS telemarketer had called consumers on a list that had not been “scrubbed”
 13 to remove numbers on the Registry.⁶³ MCS or its telemarketers also call consumers who have asked
 14
 15
 16
 17

18 ⁵⁸ TRO Exh. 4, ¶¶ 6, 9; TRO Exh. 15, ¶ 6; TRO Exh. 17, ¶¶ 5-6; TRO Exh. 20, ¶¶ 2, 4, 6, and 10; TRO
 19 Exh. 22, ¶¶ 6, 9, p. 5; TRO Exh. 23, ¶ 5, p. 4.

20 ⁵⁹ TRO Exh. 17, ¶¶ 5-6 (attempt to charge \$917.18 CDN vs. \$600 representation). *See also* TRO Exh. 20,
 21 ¶¶ 2, 4, 6, 10 (\$1,164.61 CDN charge vs. \$895 authorized); TRO Exh. 22, ¶¶ 5-6, 9 (\$823 CDN charge vs. \$690
 22 representation); TRO Exh. 23, ¶¶ 3, 5 (\$978.47 CDN charge vs. \$895 representation).

23 ⁶⁰ *E.g.*, TRO Exh. 22, ¶ 6 (consumer who was told charge would be \$690 “shocked” by \$823 charge).

24 ⁶¹ Failure to make prompt, required disclosures in live calls: TRO Exh. 4, ¶¶ 2-3, 5-6; TRO Exh. 5, ¶¶ 2,
 25 7; TRO Exh. 15, ¶ 5; TRO Exh. 22, ¶¶ 3-5; TRO Exh. 25, ¶¶ 2-3; TRO Exh. 26, ¶ 5. Failure to make prompt,
 26 required disclosures in robocalls, TRO Exh. 8, ¶ 3; TRO Exh. 26, ¶ 4; TRO Exh. 28, ¶ 3; and failure to disclose and
 27 provide an automated mechanism for asserting a request not to be called: TRO Exh. 8, ¶ 3; TRO Exh. 28, ¶ 4.

28 ⁶² TRO Exh. 1, ¶¶ 19-20, pp. 200-49 (telephone bills listing calls); TRO Exh. 2, ¶¶ 2-14, pp. 68-72, 74, 76,
 78 (sample of four MCS phone bills showing 294 calls to numbers that were on DNC Registry more than 30 days
 before call). In addition, individual consumers have complained that they were called while their numbers were on
 the Registry and they had no business relationship with MCS. TRO Exh. 8, ¶¶ 2-5, 7-8, p. 3; TRO Exh. 16, p. 12;
 TRO Exh. 26, ¶¶ 2-3, 6-7, p. 3; TRO Exh. 28, ¶¶ 2-5, p. 3. The presence of their numbers on the Registry for more
 than 30 days before these calls has been confirmed. TRO Exh. 2, ¶ 15, pp. 80-82.

⁶³ TRO Exh. 16, p. 12.

1 not to be called by them.⁶⁴ MCS also violates DNC by failing to transmit, or to cause telemarketers to
2 transmit, either the telemarketer's or seller's telephone number to caller ID services.⁶⁵

3 **IV. ARGUMENT**

4 **A. Jurisdiction and Venue**

5 Subject matter jurisdiction is proper pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and
6 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), and 6105(b). Venue is proper under 28 U.S.C. § 1391(b) and
7 (c), and 15 U.S.C. §§ 53(b). Foreign commerce involving "material conduct occurring within the
8 United States" is within the FTC's enforcement authority. FTC Act, § 5(a)(4)(A)(ii), 15 U.S.C.
9 § 45(a)(4)(A)(ii).⁶⁶ The Defendants reside, or have transacted business, in this District.

10 **B. Section 13(b) Of The FTC Act Authorizes the Requested Relief**

11 Plaintiff seeks a permanent injunction and equitable relief to redress the consumer injury
12 caused, and likely to continue to be caused, by Defendants' deceptive and illegal practices. To prevent
13 Defendants from committing further violations pending resolution of this action and to prevent further
14 serious harm to consumers, Plaintiff also seeks an *ex parte* TRO, including an order to freeze
15 Defendants' assets and appoint a receiver, and an order to Defendants to show cause why a
16 Preliminary Injunction should not issue.

17 This Court has authority to grant such preliminary and permanent relief pursuant to Section
18 13(b) of the FTC Act, 15 U.S.C. § 53(b), 28 U.S.C. § 1651(a), and Fed. R. Civ. P. 65(b). Section 13(b)
19 of the FTC Act specifically authorizes a district court to grant permanent injunctions to enjoin
20 violations of the FTC Act in "proper cases,"⁶⁷ which includes any matter involving a violation of a law

21 _____
22 ⁶⁴ TRO Exh. 8, ¶¶ 3-6; TRO Exh. 16, pp. 7, 9; TRO Exh. 26, ¶¶ 4-6; TRO Exh. 28, ¶ 4.

23 ⁶⁵ TRO Exh. 1, ¶¶ 19, 23, p. 255 (phone numbers reported in complaints against MCS not used to make
24 phone calls but are supplied for transmission to caller ID); TRO Exh. 26, ¶¶ 2-3, p. 3, and TRO Exh. 2, ¶ 16 (number
on consumer's caller ID has a prefix of "000" and does not ring or go through to a person or message).

25 ⁶⁶ MCS telemarketing, service, and mailings to customers are all provided from within the U.S. Also, by
26 statute, restitution is available "to domestic or foreign victims." FTC Act, § 5(a)(4)(B), 15 U.S.C. § 45(a)(4)(B).

27 ⁶⁷ The FTC proceeds here, as in *FTC v. H.N. Singer*, 668 F.2d 1107 (9th Cir. 1982), under the second
28 proviso of Section 13(b). Cases brought under this proviso are not subject to the conditions set forth in the first
proviso of Section 13(b) for the issuance of preliminary injunction in aid of administrative proceedings. *Singer*, 668
F.2d at 1111 (routine fraud case may be brought under second proviso, without being conditioned on first proviso)

(continued...)

1 the FTC enforces.⁶⁸ In actions under Section 13(b), the district court may exercise the full breadth of
 2 its equitable authority, imposing additional relief such as consumer restitution if necessary to
 3 accomplish complete justice.⁶⁹ Incident to its authority to issue permanent injunctive relief, this Court
 4 has the inherent equitable power to grant all preliminary relief necessary to effectuate ultimate relief.⁷⁰

5 **C. Likelihood of Success on the Merits and the Equities Weigh in Favor of a TRO**

6 To obtain a TRO and preliminary relief, the FTC must show likelihood of success on the merits
 7 and equities weighing in favor of granting the relief.⁷¹ Harm to the public is not only evident in this
 8 case, but is presumed when a statute is violated.⁷² Because irreparable injury is presumed, in statutory
 9 enforcement cases a federal agency need only demonstrate “some chance of probable success on the
 10 merits,”⁷³ and public equities receive greater weight than private equities.⁷⁴

11 **1. Evidence Shows a Substantial Likelihood of Ultimate Success on the Merits**

12 Based on evidence presented with this motion, there is a substantial likelihood that the FTC
 13 will ultimately succeed in proving Defendants have violated Section 5 of the FTC Act and the TSR,
 14 and that redress to injured consumers is necessary.

15 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or deceptive acts or practices
 16 in or affecting commerce.” An act or practice is “deceptive” within the meaning of Section 5 if a

17 _____
 18 (...continued)
 19 requirement that the FTC institute an administrative proceeding); *FTC v. U.S. Oil & Gas Corp.*, 748 F.2d 1431, 1434
 (11th Cir. 1984) (“Congress did not limit the court’s powers under the [second and] final proviso of Section 13(b)”).

20 ⁶⁸ *FTC v. Evans Products Co.*, 775 F.2d 1084, 1086-87 (9th Cir. 1985); *Singer*, 668 F.2d at 1113; *FTC v.*
 21 *Pacific Medical Clinics Management, Inc.*, 1992-1 Trade Cas. (CCH) ¶ 69,777 at 67,587 (S.D. Cal. 1992).

22 ⁶⁹ *FTC v. World Wide Factors, Ltd.*, 882 F.2d 344, 346-47 (9th Cir. 1989) (affirming district court’s power
 to freeze assets and appoint a receiver); *Singer*, 668 F.2d at 1113 (preliminary injunction with asset freeze affirmed).

23 ⁷⁰ *FTC v. Pantron I Corp.*, 33 F.3d 1088, 1102 (9th Cir. 1994); *FTC v. Amy Travel Service, Inc.*, 875 F.2d
 24 564, 572 (7th Cir. 1989); *Singer*, 668 F.2d at 1113.

25 ⁷¹ *World Wide Factors*, 882 F.2d at 346.

26 ⁷² *Id.* See also *United States v. Odessa Union Warehouse Co-op*, 833 F.2d 172, 175 (9th Cir. 1987) (where
 injunction is authorized by statute, enforcing agency need not show irreparable injury).

27 ⁷³ *Odessa Union*, 833 F.2d at 176.

28 ⁷⁴ *FTC v. Affordable Media, LLC*, 179 F.3d 1228, 1236 (9th Cir. 1999) (quoting *World Wide Factors*, 882
 F.2d at 347).

1 representation, omission, or practice is likely to mislead consumers acting reasonably under the
 2 circumstances and that representation, omission, or practice is material to the consumer's payment
 3 decision.⁷⁵ A misleading impression "is material if it 'involves information that is important to
 4 consumers and, hence, likely to affect their choice of, or conduct regarding, a product.'"⁷⁶ A finding of
 5 deception normally justifies an inference of materiality.⁷⁷ Express claims are presumed material, so
 6 consumers are not required to question their veracity in order to be deemed reasonable.⁷⁸ Implied
 7 claims are also presumed material if there is evidence that the seller intended to make the claim⁷⁹ or if
 8 the claims go to the heart of the solicitation or the characteristics of the product or service offered.⁸⁰

9 A claim is deemed made if consumers, acting reasonably under the circumstances, would
 10 interpret the statements to contain that message.⁸¹ A solicitation capable of being interpreted in a
 11 misleading way is construed against the maker of the solicitation.⁸² In determining what messages
 12 may reasonably be ascribed to a statement or set of statements, the Court is to consider the overall, net
 13 impression.⁸³ In appropriate circumstances, a presumption can be made that consumers are likely to
 14

15
 16 ⁷⁵ *FTC v. Stefanchik*, 559 F.3d 924, 928 (9th Cir. 2009); *FTC v. Cyberspace.com, LLC*, 453 F.3d 1196,
 1199-1200 (9th Cir. 2006); *FTC v. Gill*, 265 F.3d 944, 950 (9th Cir. 2001).

17 ⁷⁶ *Cyberspace.com*, 453 F.3d at 1201 (quoting *Cliffdale Associates, Inc.*, 103 F.T.C. 110, 165 (1984)).

18 ⁷⁷ *FTC v. Colgate-Palmolive*, 380 U.S. 374, 391-92 (1965); *American Home Products Corp. v. FTC*, 695
 19 F.2d 681, 688 n.11 (3rd Cir. 1982); *Simeon Management Corp. v. FTC*, 579 F.2d 1137, 1146 (9th Cir. 1978).

20 ⁷⁸ *Pantron*, 33 F.3d at 1095-96, 1096 n. 21 (if challenged claims are express, a court need not decide
 whether they are so far-fetched that reasonable consumers would not believe them).

21 ⁷⁹ The presumption of materiality for intentional implied claims has been accepted by circuit courts. *See*,
 22 *e.g.*, *Novartis Corp. v. FTC*, 223 F.3d 783, 786-87 (D.C. Cir. 2000); and *Kraft, Inc. v. FTC*, 970 F.2d 311, 322 (7th
 Cir. 1992).

23 ⁸⁰ *Southwest Sunsites, Inc.*, 105 F.T.C. 7, 149 (1985), *aff'd*, 785 F.2d 1431 (9th Cir. 1986). *See FTC v.*
 24 *Figgie Int'l, Inc.*, 994 F.2d 595, 604 (9th Cir. 1993) (no loophole for implied deceptive claims).

25 ⁸¹ *Kraft, Inc.*, 114 F.T.C. 40, 120 (1991).

26 ⁸² *Simeon Management Corp. v. FTC*, 579 F.2d at 1146 (quoting *Resort Car Rental Systems, Inc. v. FTC*,
 518 F.2d 962, 964 (9th Cir. 1975)).

27 ⁸³ *Stefanchik*, 559 F.3d at 928; *Cyberspace.com*, 453 F.3d at 1200 (holding that solicitation may be likely
 28 to mislead by virtue of the net impression it creates even if it contains truthful disclosures). To judge the tendency of
 advertising to deceive, it must be viewed as a whole, without emphasizing isolated words or phrases apart from their
 context. *Removatron International Corp. v. FTC*, 884 F.2d 1489, 1496 (1st Cir. 1989).

1 reach false beliefs about a product or service because of an omission.⁸⁴ The failure to disclose material
 2 information may cause a solicitation to be deceptive in violation of Section 5 of the FTC Act, “even if
 3 it does not state false facts.”⁸⁵ A solicitation is misleading “if it fails to disclose facts necessary to
 4 dissipate false assumptions likely to arise in light of the representations actually made.”⁸⁶

5 **a. Defendants’ Violations of Section 5 of the FTC Act**

6 **i. Misrepresentations Regarding Defendants’ Service**

7 Defendants make numerous false claims, expressly misrepresenting that consumers will:
 8 (1) have their credit card and loan interest rates reduced substantially, (2) save thousands of dollars in
 9 a short time, and (3) pay off their debt three to five times faster, without increasing their monthly
 10 payments, as a result of reduced interest rates on their credit cards.⁸⁷ As discussed above, express
 11 misrepresentations are presumed material. These claims are obviously actually material. Therefore,
 12 Defendants’ false and misleading representations violate Section 5 of the FTC Act.

13 **ii. Failure to Disclose Material Facts of Refund Policy**

14 Defendants deceive consumers about the nature of their refund policy. First, they do not
 15 disclose that MCS will purport to provide the guaranteed savings by recommending that the consumer
 16 make higher monthly payments.⁸⁸ MCS denies refunds on the basis that if the consumer makes the
 17 recommended higher monthly payments over the life of the debt, he or she can theoretically achieve
 18 the promised interest savings.⁸⁹ Before payment, however, MCS not only fails to disclose that higher
 19 payments may be required, it claims monthly payments will remain the same or even go down.⁹⁰

21
 22 ⁸⁴ *Kraft*, 114 F.T.C. at 133 n. 21.

23 ⁸⁵ *Sterling Drug, Inc. v. FTC*, 741 F.2d 1146, 1154 (9th Cir. 1984); *Simeon Management Corp.*, 579 F.2d at
 24 1145.

25 ⁸⁶ *FTC v. Simeon Management Corp.*, 532 F.2d 708, 716 (9th Cir. 1976).

26 ⁸⁷ See *supra* notes 19-31 and 40-43 and accompanying text.

27 ⁸⁸ See *supra* notes 45-53 and accompanying text.

28 ⁸⁹ See *supra* notes 44-51 and accompanying text.

⁹⁰ See *supra* notes 25-29 and accompanying text.

1 Consumers do not intend to pay \$700 just to be advised to make higher payments.⁹¹ Many cannot do
2 so anyway.⁹²

3 MCS also imposes other undisclosed material conditions on the payment of refunds. It denies
4 refunds because they are requested too soon, or because they are not requested soon enough.⁹³ Clearly,
5 conditions that affect whether the consumer can exercise the promised right to a refund are material.⁹⁴
6 Defendants' failure to disclose these material facts violates Section 5 of the FTC Act.

7 **iii. Failure to Disclose Material Facts Regarding Total Cost**

8 When MCS telemarketers quote the price of the MCS program to consumers, the amount stated
9 is in U.S. dollars, even when the consumer is in Canada. In many instances, the telemarketers do not
10 disclose to Canadian consumers that the price quoted is in U.S. dollars, even when the exchange rate
11 creates a significant discrepancy between U.S. and Canadian dollars.⁹⁵ Of course, price is material.⁹⁶
12 Thus, failure to disclose to Canadians that the price is quoted is in U.S. dollars and that the price in
13 Canadian dollars is substantially higher is a deceptive practice and violates Section 5 of the FTC Act.

14 **b. Defendants' Violations of the Telemarketing Sales Rule**

15 **i. Misrepresentations and Failure to Disclose Material Facts**

16 Because Defendants make, or cause telemarketers to make, unsolicited calls to consumers to
17 induce them to purchase their program, they are "sellers" or "telemarketers" engaged in
18 "telemarketing" for purposes of the TSR, 16 C.F.R. § 310.2(z), (bb), and (cc). The TSR prohibits
19 telemarketers from misrepresenting, directly or by implication, any material aspect of the performance,
20 efficacy, nature, or central characteristics of the goods or services offered for sale. 16 C.F.R.

21
22
23 ⁹¹ See *supra* note 53 and accompanying text.

24 ⁹² See *supra* note 54.

25 ⁹³ See *supra* notes 55-56.

26 ⁹⁴ Defendants' imposition of a fee of 12.5%, as stated in the undisclosed "Terms and Conditions," also
renders the promise of a "full refund" false or misleading. See *supra* note 57 and accompanying text.

27 ⁹⁵ See *supra* note 58 and accompanying text.

28 ⁹⁶ See *supra* notes 59-60 and accompanying text.

1 § 310.3(a)(2)(iii). Therefore, Defendants' misrepresentations of the purported benefits of their debt
2 reduction program violate Section 310.3(a)(2)(iii) of the TSR.

3 The TSR further prohibits omissions of fact that cause deception. If the seller or telemarketer
4 makes a representation about a refund policy, the seller or telemarketer must disclose truthfully, and in
5 a clear and conspicuous manner, all material terms and conditions of the policy before a customer pays
6 for goods and services offered. 16 C.F.R. § 310.3(a)(1)(iii).⁹⁷ Defendants' guarantee of a full refund if
7 consumers do not save a particular amount, often represented as \$2,500, violates the TSR because, as
8 discussed above, Defendants fail to disclose that MCS will purport to satisfy the guaranteed savings
9 simply by recommending that the consumer make higher monthly payments.⁹⁸ They also fail to
10 disclose other conditions used to deny refunds.⁹⁹

11 The TSR also requires sellers and telemarketers to disclose, in a clear and conspicuous manner,
12 before a customer pays for goods or services, the "total costs to purchase, receive, or use, and the
13 quantity of, any goods or services that are the subject of the sales offer." 16 C.F.R. § 310.3(a)(1)(i).
14 Defendants violate this provision because they or their telemarketers quote prices to Canadian
15 consumers in U.S. dollars, not Canadian dollars, and fail to disclose that they are doing so.¹⁰⁰

16 **ii. Violations of the Do Not Call Provisions of the TSR**

17 Since October 17, 2003, sellers and telemarketers under the TSR generally have been
18 prohibited from calling telephone numbers on the National Do Not Call Registry ("Registry").
19 16 C.F.R. §§ 310.4(b)(1)(iii)(B). The TSR also prohibits sellers and telemarketers from calling
20 persons who have previously stated that they do not wish to receive calls from or on behalf of the
21 seller whose goods or services are being offered. 16 C.F.R. §§ 310.4(b)(1)(iii)(A). Consumer
22
23
24

25 ⁹⁷ Under the TSR, the customer has paid when he or she divulges credit card information to a telemarketer
or seller or when a seller or telemarketer requests such information. 68 Fed. Reg. 4580, 4599 (2003).

26 ⁹⁸ See *supra* notes 32-35, 45-53 and accompanying text.

27 ⁹⁹ See *supra* notes ?-56 and accompanying text.

28 ¹⁰⁰ See notes 58-59 and accompanying text.

1 declarants and the Do Not Call complaint database indicate that Defendants have violated these
2 provisions numerous times.¹⁰¹

3 Sellers and telemarketers are also prohibited from failing to transmit either the caller's or the
4 seller's telephone number (and name, where available) to caller ID services. 16 C.F.R. § 310.4(a)(7).
5 Apparently, MCS or its telemarketers are transmitting numbers to caller ID that are neither the
6 telemarketer's nor the seller's.¹⁰²

7 **iii. Violations of Other Disclosure Requirements of the TSR**

8 The TSR also requires certain disclosures at the beginning of the call. It requires telemarketers
9 to promptly disclose, in a clear and conspicuous manner, the identity of the seller, that the purpose of
10 the call is to sell goods or services, and the nature of the goods or services. 16 C.F.R. § 310.4(d).
11 Consumers attest that MCS telemarketers have violated this provision, failing to promptly identify the
12 seller and/or failing to promptly disclose that the purpose of the call is to sell goods or services.¹⁰³

13 Since December 1, 2008, the TSR has also prohibited telemarketers from using prerecorded
14 messages, and has prohibited sellers from causing telemarketers to do so, unless the prerecorded
15 message promptly discloses the same information (seller's identity, purpose of call, and nature of
16 goods or services sold), and unless it provides an automated mechanism for asserting a "do not call"
17 request as to the seller. 16 C.F.R. § 310.4(b)(1)(v)(B)(ii). Consumers attest that MCS and its
18 telemarketers do not comply.¹⁰⁴

19 **c. Individual Liability For Law Violations**

20 The FTC is also likely to succeed in demonstrating that Defendants Paul Morris Thompson and
21 Miranda Cavender are individually liable for the deceptive and abusive practices of the common
22 corporate enterprise, and for restitution to injured consumers. An individual may be subject to
23
24

25 ¹⁰¹ See *supra* notes 62-64 and accompanying text.

26 ¹⁰² See *supra* note 65.

27 ¹⁰³ See *supra* note 61 (citing "live call" evidence).

28 ¹⁰⁴ See *supra* note 61 (citing "robocall" evidence).

1 injunctive relief for the corporate Defendants' violations of the FTC Act if he or she either
2 (a) participated in the challenged conduct, or (b) had authority to control it.¹⁰⁵

3 Individual defendants may also be held liable for restitution based on corporate misconduct
4 under Sections 5 and 13(b) of the FTC Act if they had actual knowledge of material
5 misrepresentations, were recklessly indifferent to the falsity of the misrepresentations, or were aware
6 of a high probability of fraud and intentionally avoided the truth.¹⁰⁶ The extent of a person's
7 involvement in a fraudulent scheme can establish knowledge for purposes of restitution.¹⁰⁷

8 As discussed above, the corporate Defendants have engaged in systematic misrepresentations
9 that were reasonably relied upon by consumers and caused consumer injury. As corporate officers,
10 Defendants Thompson and Cavender are in a position to exercise control over the corporate
11 Defendants. Their knowledge is established by evidence of their involvement in the fraudulent
12 activities of MCS. Defendant Thompson's role is especially clear because he apparently took the
13 leading role in creating the corporate Defendants and owns the "Mutual Consolidated Savings" name.
14 Both have responsibility for obtaining the telephone service used for fraudulent telemarketing. In
15 addition, Defendant Thompson has created websites on which false claims are made. Defendant
16 Cavender been responsible for shipping materials to consumers, materials that are at odds with the
17 claims of MCS telemarketers.¹⁰⁸

18 Because they are present at the site of telemarketing, both individual Defendants are likely to
19 know what telemarketers say to consumers.¹⁰⁹ In light of their authority, if they do not know, it is
20 likely the result of intentional avoidance. As to knowledge, the authority of Defendants Thompson
21 and Cavender over MCS employees who purportedly provide service to consumers should also
22

23 ¹⁰⁵ *Cyberspace.com*, 453 F.3d at 1202 (9th Cir. 2006); *Affordable Media*, 179 F.3d at 1234; *FTC v.*
Publishing Clearing House, 104 F.3d 1168, 1171 (9th Cir. 1997).

24 ¹⁰⁶ *Cyberspace.com*, 453 F.3d at 1202; *Affordable Media*, 179 F.3d at 1234; *Publishing Clearing House*,
25 104 F.3d at 1171.

26 ¹⁰⁷ *Affordable Media*, 179 F.3d at 1234 (individual's degree of participation in corporation's business affairs
is probative of knowledge); *Publishing Clearing House*, 104 F.3d at 1171.

27 ¹⁰⁸ See *supra* notes 5-15 and accompanying text.

28 ¹⁰⁹ TRO Exh. 1, ¶¶ 4-5, pp. 24, 26-27, 32-33, 39-40 (addresses of corporations and individual Defendants).

1 provide knowledge that the service is not as represented, unless, again, they deliberately avoid
 2 knowing. Defendants Thompson and Cavender are copied on MCS responses to consumer complaints,
 3 also providing knowledge of the conflict between telemarketers' representations and the truth.¹¹⁰

4 **2. The Balance Of The Equities Requires Preliminary Relief**

5 As discussed above, preliminary relief is appropriate if the FTC is likely to succeed on the
 6 merits and the Court finds that the equities weigh in favor of granting the relief sought. In weighing
 7 the equities, the Ninth Circuit has held that the public interest should receive greater weight than the
 8 private interests.¹¹¹ The public interest requires that Defendants be prohibited from making false or
 9 deceptive statements in their business operations. Otherwise, Defendants would be free to continue to
 10 perpetrate their fraud on members of the public and cause substantial consumer injury. As discussed
 11 above, Defendants' conduct evidences a pattern of law violations central to the success of their
 12 business. Given the pervasive nature of the fraudulent activity, there is a strong likelihood that, absent
 13 injunctive relief, future law violations will occur,¹¹² injuring consumers who are particularly vulnerable
 14 with bogus charges of \$690-899.¹¹³

15 The private equities in this case are simply not compelling. The conduct prohibitions contained
 16 in the proposed TRO would work no hardship on Defendants as they have no right to engage in
 17 practices that violate federal laws.¹¹⁴ A "court of equity is under no duty to 'protect illegitimate profits
 18
 19
 20
 21

22 ¹¹⁰ TRO Exh. 16, ¶ 2, pp. 3-4, 7-8, 10.

23 ¹¹¹ *Affordable Media*, 179 F.3d at 1236; *FTC v. Warner Communications, Inc.*, 742 F.2d 1156, 1165
 24 (9th Cir. 1984).

25 ¹¹² "A large-scale systematic scheme tainted by fraudulent and deceptive practices" gives rise to the
 26 "reasonable expectation of continued violations." *FTC v. Southwest Sunsites*, 665 F.2d 711, 723 (5th Cir. 1982).

27 ¹¹³ See *supra* notes 18 and 54.

28 ¹¹⁴ See *World Wide Factors*, 882 F.2d at 347 (upholding district court finding that "there is no oppressive
 hardship to defendants in requiring them to comply with the FTC Act, refrain from fraudulent representation, or
 preserve their assets from dissipation or concealment").

1 or advance business which is conducted [illegally].”¹¹⁵ Moreover, the public interest in preserving the
2 illicit proceeds of this scheme for restitution to victims is great.¹¹⁶

3 **3. A TRO Is Necessary To Halt Fraud and Prevent Serious Consumer Injury**

4 **a. A TRO Will Stop Ongoing Fraud**

5 The compelling evidence of deception in this case justifies the burden that a TRO would
6 impose on Defendants. Absent a TRO, Defendants will continue their fraudulent practices to extract
7 money from consumers who can ill-afford to lose it. Moreover, the TRO is subject to prompt
8 reconsideration and modification if warranted, thereby minimizing the potential harm to Defendants.

9 **b. An Asset Freeze, a Temporary Receiver, and Limited Expedited**
10 **Discovery are Necessary to Preserve the Possibility of Effective Final**
11 **Relief for Consumers**

12 **i. An Ex Parte Asset Freeze is Necessary to Preserve the**
13 **Possibility of Redress**

14 Plaintiff seeks *ex parte* entry of an order freezing the assets of all Defendants. The permanent
15 remedy sought by the FTC includes seeks restitution for the many consumers Defendants have
16 defrauded. To ensure the possibility of restitution by preventing the concealment or dissipation of
17 assets pending final disposition of this matter, a freeze of Defendants’ assets is necessary.

18 In this Circuit, the standard for granting an asset freeze to a federal agency is whether it has
19 shown likelihood of success on the merits and a mere *possibility* of dissipation of assets.¹¹⁷ Where, as
20 here, fraud permeates the Defendants’ operations, the Court may conclude there is a likelihood that the
21 Defendants will attempt to dissipate or conceal their assets during the pendency of the action and may
22 grant an asset freeze.¹¹⁸ Defendants who knowingly bilk consumers cannot be trusted to preserve
23 assets for possible disgorgement or restitution pending the outcome of litigation.

24 ¹¹⁵ *CFTC v. British American Commodity Options Corp.*, 560 F.2d 135, 143 (2d Cir. 1977) (quoting *FTC v.*
Thomsen-King & Co., 109 F.2d 516, 519 (7th Cir. 1940)).

25 ¹¹⁶ See *Affordable Media*, 179 F.3d at 1236.

26 ¹¹⁷ *FSLIC v. Sahni*, 868 F.2d 1096, 1097 (9th Cir. 1989) (district court erred in requiring showing that
27 dissipation was likely; requiring such a showing places an unnecessarily heavy burden on the agency).

28 ¹¹⁸ See, e.g., *SEC v. Manor Nursing Ctrs., Inc.*, 458 F.2d 1082, 1106 (2d Cir. 1972); *SEC v. R.J. Allen &*
Assocs., Inc., 386 F.Supp. 866, 881 (S.D. Fla. 1974).

1 A TRO may be granted without notice if notice will result in irreparable injury and if the
 2 applicant certifies to the court in writing the reasons why notice should not be given.¹¹⁹ Defendants
 3 have every incentive to evade service, secrete recoverable assets, and destroy inculpatory documents.
 4 If they were to learn of this action before their assets are frozen and records secured, it would
 5 irreparably harm Plaintiff's ability to secure effective final relief for injured purchasers.¹²⁰

6 Defendants have offshore accounts with merchant banks in Israel and in the Carribean nation of
 7 Nevis and St. Kitts.¹²¹ There may also be other offshore accounts. Defendants advertise an
 8 "International Office" in the United Kingdom, and an "Overseas Corporate Office" in Nevis.¹²² With
 9 these accounts and contacts, with notice Defendants may secrete assets and financial documents
 10 beyond the Court's reach. Repatriation from overseas accounts may be difficult or impossible to
 11 accomplish. Therefore, without the *ex parte* temporary and preliminary injunctive relief requested,
 12 any ultimate resolution in favor of Plaintiff may be irreparably incomplete. Courts in this district and
 13 elsewhere repeatedly have granted *ex parte* TROs with asset freezes to the FTC in similar
 14 circumstances.¹²³

15 The asset freeze should include the assets of the individual Defendants, as they have no right to
 16 dissipate or conceal funds that later may be determined to have been wrongfully gained. If frozen, at
 17

18 ¹¹⁹ Fed. R. Civ. P. 65(b); *see also In the Matter of Vuitton et Fils S.A.*, 606 F.2d 1, 3-4 (2d Cir. 1979)
 19 (discussion of when an *ex parte* order should enter).

20 ¹²⁰ *See Cenergy Corp. v. Bryson Oil & Gas P.L.C.*, 657 F. Supp. 867, 870 (D. Nev. 1987) ("it appears
 21 proper to enter the TRO without notice, for giving notice itself may defeat the very purpose for the TRO").

22 ¹²¹ TRO Exh. 1, ¶ 24, pp. 258-59.

23 ¹²² TRO Exh. 1, ¶ 7, pp. 53-56 (two UK addresses and Nevis address on website); TRO Exh. 13, pp. 6,
 24 15-16 (example of UK telephone number on materials sent to consumers).

25 ¹²³ *E.g., Affordable Media*, 179 F.3d at 1232 (describing district court issuance of *ex parte* TRO with asset
 26 freeze and repatriation); *U.S. Oil & Gas Corp.*, 748 F.2d at 1434; *Singer*, 668 F.2d at 1113. *Ex parte* TROs with
 27 asset freezes were entered in these Ninth Circuit cases: *FTC v. 3rd Union Card Services Inc.*, CV-S-04-0712 (D.
 28 Nev. May 25, 2004); *FTC v. Vector Direct*, CV-04-0095 (D. Ariz. Jan. 21, 2003); *FTC v. Corporate Marketing Svcs.*,
 CV02-1256 (D. Ariz. July 8, 2002); *FTC v. Electronic Medical Billing, Inc.*, SACV02-368 (C.D. Cal. April 2002);
FTC v. Bargains & Deals Magazine LLC, C01-1610P (W.D. Wash. Oct.11, 2001); *FTC v. Canada Prepaid Legal*
Services, Inc., CV00-2080 (D. Wash. Dec. 11, 2000); *FTC v. YP.Net, Inc.*, CV00-1210 (D. Ariz. June 26, 2000);
FTC v. Martinez, Civ. No. 00-12701 (C.D. Cal. 2000); *FTC v. Productive Mktg.*, Civ. No. 00-06502 (C.D. Cal.
 2000); *FTC v. J.K. Publications*, Civ. No. 99-00044 (C.D. Cal. 1999); *FTC v. Gary Walton*, CIV98-0018 (D. Ariz.
 Jan. 8, 1998); *FTC v. Jewelway Int'l, Inc.*, CV-97-383 (D. Ariz. June 24, 1997); *FTC v. Fortuna Alliance LLC*,
 C96-799M (W.D. Wash. May 24, 1996); *FTC v. Vendall Marketing*, Civ. No. 94-6011-HO (D.Or. 1994).

1 least temporarily, those assets may be located and inventoried. Freezing individual assets is warranted
2 if the individual Defendants control corporate Defendants that perpetrated the fraudulent scheme.¹²⁴

3 ii. **A Receiver Will Halt the Fraud and Consumer Injury and**
4 **Locate and Preserve Business Assets and Records**

5 The FTC seeks appointment of a temporary receiver to take control of the corporate
6 Defendants. Because pervasive fraud is at the heart of Defendants' business, a receiver is needed to
7 stop the fraud and prevent destruction of documents and concealment of assets during the pendency of
8 this proceeding, thus helping to insure the effectiveness of final relief.¹²⁵ This Court has the inherent
9 power to appoint a receiver as an incident to its statutory authority to issue a permanent injunction
10 under Section 13(b) of the FTC Act.¹²⁶ District Courts in this Circuit have appointed receivers in
11 connection with *ex parte* TROs on the basis of fraudulent activities similar to those found here.¹²⁷

12 The receiver will locate and preserve business assets and records to obviate the threat of
13 destruction, dissipation or secretion. The receiver may also investigate and determine the extent of
14 Defendants' fraud, and identify injured consumers. To avoid additional consumer injury, the receiver
15 will ensure that adequate notice of this proceeding is given to employees, agents, clients, and others
16 who participated in Defendants' scheme.

17 iii. **Immediate Access and Limited Expedited Discovery are**
18 **Appropriate**

19 The proposed TRO directs the receiver to provide both Plaintiff and Defendants with
20 reasonable access to Defendants' premises,¹²⁸ and provides Plaintiff with immediate access to locate
21

22
23 ¹²⁴ *FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1031 (7th Cir. 1988).

24 ¹²⁵ See *SEC v. Keller Corp.*, 323 F.2d 397, 403 (7th Cir. 1963) ("hardly conceivable" that lower court
25 would permit those enjoined from fraudulent misconduct to continue in control of the corporate defendant's affairs).

26 ¹²⁶ *FTC v. U.S. Oil & Gas*, 748 F.2d 1431, 1432 (11th Cir. 1984).

27 ¹²⁷ Receivers were appointed in the *ex parte* TROs obtained by the FTC in the following cases fully cited
28 *supra* note 123: *Corporate Marketing Svcs*; *Electronic Medical Billing*; *Canada Prepaid Legal Services*; *YP.Net*;
Productive Mktg.; *J.K. Publications*; *Fortuna Alliance*, and *Vendall Marketing*.

¹²⁸ Both the FTC and Defendants may need access to prepare for a preliminary injunction hearing.

1 assets wrongfully obtained from defrauded consumers, consistent with relief regularly granted to the
2 plaintiff in similar cases where receivers are appointed.¹²⁹

3 Plaintiff also seeks limited expedited discovery to locate quickly and efficiently assets
4 Defendants have wrongfully taken from consumers, identify possible additional defendants, locate
5 documents pertaining to Defendants' business, and locate Defendants, should they attempt to evade
6 service. Specifically, Plaintiff seeks permission to conduct depositions upon forty-eight hours' notice,
7 and to issue requests (or subpoenas) for production of documents on five days' notice. In appropriate
8 circumstances, district courts are authorized to depart from normal discovery procedures.¹³⁰ Expedited
9 discovery is particularly appropriate as preliminary relief in a case involving the public interest.¹³¹

10 Plaintiff also asks that the Court require Defendants to produce financial records and
11 information on short notice, and require financial institutions and other third parties served with the
12 TRO to disclose whether they are holding any of Defendants' assets. These measures will protect the
13 effectiveness of the Court's asset freeze and temporary receivership.

14 **V. CONCLUSION**

15 Plaintiff urges this Court to issue the proposed *ex parte* TRO, including an order freezing
16 Defendants' assets, appointing a temporary receiver, permitting limited expedited discovery, and
17 directing Defendants to show cause why a preliminary injunction should not issue. Justice requires
18 that Defendants cease fraudulent sales of their "debt reduction" program, which serves only to sink
19 already struggling consumers even further into debt, and that assets be preserved for restitution.

20 Dated: June 25, 2009

21 Respectfully Submitted,

22 DAVID C. SHONKA
Acting General Counsel
23 CHARLES A. HARWOOD
Regional Director
24

Maxine R. Stansell
25 MAXINE R. STANSELL WSBA # 9418
26 ELEANOR DURHAM Member MD Bar
27 Attorneys for Plaintiff
28 Federal Trade Commission

25 ¹²⁹ See *supra* notes 123, 127.

26 ¹³⁰ See Fed. R. Civ. P. 26(d), 30(a)(2), 33(a), and 34(b) (authorizing courts to alter standard provisions,
27 including applicable time frames governing depositions, interrogatories, and production of documents).

28 ¹³¹ See *Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946) (if public interest is involved, court's
equitable powers are broader and more flexible than if only private controversy is at stake).