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16 UNITED STATES DISTRICT COURT
 17 CENTRAL DISTRICT OF CALIFORNIA

18 FEDERAL TRADE COMMISSION,

Case No. **CV 13-8843 JFW(PLA)**

19 Plaintiff,

20 v.

21 CREAM GROUP, INC., also d/b/a
 22 Terra Nova, TNT, Inc., and CRM, Inc.,
 23 a California Corporation;

MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT OF
 PLAINTIFF'S *EX PARTE*
 APPLICATION FOR TEMPORARY
 RESTRAINING ORDER WITH
 ASSET FREEZE AND OTHER
 EQUITABLE RELIEF AND ORDER
 TO SHOW CAUSE

[FILED UNDER SEAL]

24 SAMI CHARCHIAN, also d/b/a Oro
 Marketing, Inc., Modo, Modo Industry,
 25 Oro Max, Casa de Oro, Casa de Moda,
 26 Oro Mundo, and Nation/Modo,
 27 individually and as an owner or director
 of Cream Group, Inc.;

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 CENTRAL DISTRICT OF CALIFORNIA
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28 Memo of Points & Authorities in Support of *Ex Parte* TRO

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1 JOHN CHARCHIAN, a/k/a Djahangir
 2 Charchian and Jahangir John
 3 Charchian, also d/b/a Oro Marketing,
 4 Inc., Modo, Modo Industry, Oro Max,
 5 Casa de Oro, Casa de Moda, Oro
 6 Mundo, and Nation/Modo, individually
 7 and as an owner or director of Cream
 8 Group, Inc.; and

9 NORMA RAE RAMOS, individually
 10 and as officer and director of Cream
 11 Group, Inc.,

12 Defendants.

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1 **I. INTRODUCTION**

2 The Federal Trade Commission asks this Court to bring an immediate halt
3 to a nationwide telemarketing scheme that has for the last several years targeted
4 mainly Spanish-speaking women with deceptive offers of low-priced, brand-name
5 merchandise that purportedly can be resold at a profit. Instead of the promised
6 goods, Defendants ship junk – cheap and unbranded or generic products – that
7 consumers would be lucky “to sell even at a garage sale.” When consumers
8 complain, Defendants frequently deceive them into paying for more shipments.
9 In these ways, Defendants have taken more than \$4 million from their consumer
10 victims since 2009.

11 Defendants operate their scheme from a boiler room in Van Nuys,
12 California, where they conduct unsolicited sales calls entirely in Spanish. In these
13 calls, Defendants describe their merchandise as “brand name,” “high quality,”
14 “top selling,” “first class” and “the same quality [as]... Macy’s” and tout well-
15 known, popular brands (*e.g.*, Armani, Guess, Gucci, Hollister, and Prada).
16 Defendants pitch the offer as a business opportunity, claiming that consumers can
17 make extra money by reselling the merchandise to their friends, family, and
18 members of their community. Based on these promises, consumers agree to pay
19 up to \$500 for Defendants’ merchandise, which Defendants then ship to
20 consumers “cash-on-delivery” (“COD”) so that consumers cannot inspect the
21 merchandise until after they have paid for it. When consumers open Defendants’
22 shipments, they discover poor-quality items, such as unbranded sweatpants and
23 old jeans, that they cannot resell for even close to what they paid.

24 When their customers then call to complain, Defendants rip off many of
25 them again. Saying that the initial shipment was sent by mistake and that the
26 correct merchandise will now be shipped with a refund check for the first
27 shipment, Defendants offer consumers only one option: to pay again for the
28

1 second delivery COD. Consumers who agree to this solution again receive the
2 same type of shoddy, unbranded merchandise, and no refund check. This cycle
3 continues until consumers refuse to pay for any more shipments.

4 Once consumers stop paying, Defendants threaten them with legal action,
5 even though consumers owe nothing to Defendants. In some instances,
6 Defendants go so far as to threaten consumers with arrest or to refer them to
7 immigration authorities. These brazen attempts to intimidate Spanish-speaking
8 consumers often result in consumers paying Defendants still more money for
9 shoddy goods.

10 Defendants' deceptive practices violate Section 5(a) of the Federal Trade
11 Commission Act, ("FTC Act"), 15 U.S.C. § 45(a), and several provisions of the
12 Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310. The FTC's evidence of
13 these law violations is overwhelming. The FTC has submitted, along with this
14 motion, declarations from 12 consumers victimized by Defendants' scheme; an
15 FTC investigator's summary of the hundreds of consumer complaints against
16 Defendants filed with the FTC and other law enforcement and consumer
17 protection authorities; a declaration from a Los Angeles Police Detective who has
18 received multiple complaints about Defendants from consumers and law
19 enforcement agencies around the country; corporate records reflecting the various
20 Defendants' roles in the scheme; and bank records showing how Defendants have
21 dissipated the scheme's proceeds.

22 Taken together, this evidence reveals an operation rife with fraud, leaving
23 no doubt that the FTC is likely to succeed in showing that Defendants are
24 violating the FTC Act and the TSR. As a result, the FTC asks that the Court issue
25 an *ex parte* TRO to stop the deceptive practices, which includes a freeze of
26 Defendants' assets and the appointment of a temporary receiver over the
27 corporate defendant. The requested relief is necessary to prevent ongoing injury
28

1 to consumers, the destruction of evidence, and the dissipation of assets, thereby
2 preserving the Court's ability to provide effective final relief to victims.

3 **II. DEFENDANTS' DECEPTIVE PRACTICES**

4 Defendants' bait-and-switch scheme deceives unsuspecting consumers into
5 paying high prices for shoddy merchandise, sometimes multiple times.

6 Defendants induce consumers to buy their merchandise by claiming they will
7 provide well-known, brand-name products at low or discount prices, but

8 Defendants send junk merchandise instead. Defendants then pretend that the
9 shipments were a mistake and promise what seems like a reasonable solution –

10 that they will send consumers the correct shipment and a refund if consumers pay
11 for another COD package. When consumers receive only more junk and finally

12 refuse to pay any more money, Defendants intimidate many of them into paying
13 more by threatening lawsuits and sometimes even arrest or referral to immigration

14 authorities.

15 **A. Defendants Promise, But Fail, to Provide Brand-Name 16 Merchandise to Consumers.**

17 Defendants' Spanish-speaking telemarketers typically first contact
18 consumers by cold calling their homes with offers to sell high-quality clothing,
19 handbags, purses, perfumes, and sometimes gold jewelry.¹ In their sales pitch,
20 Defendants' telemarketers specifically name well-known and popular brands,

21 ¹ TRO Exhibit ("Ex.") 1, p. 17 (Nancy Pintor Ayala ¶ 2) ("first-class and a good
22 brand"); Ex. 2, p. 22 (Teresa Camacho ¶ 3) ("gold"); Ex. 3, p. 33 (Mirna Garcia ¶
23 2) ("brand name products"); Ex. 4, p. 45 (Maricela D. Marciago ¶ 2) ("Victoria's
24 Secret merchandise"); Ex. 5, p. 56 (Silvia Mendez ¶ 2) ("top selling brand name
25 products"); Ex. 6, p. 71 (Karina Ortiz ¶ 2) ("name-brand clothing, perfume, and
26 purses"); Ex. 7, p. 85 (Rosa Ortiz ¶ 2) ("brand-name products"); Ex. 8, p. 135
27 (Patricia Pedraza ¶ 2) ("high-quality products"); Ex. 9, p. 153 (Olga Rivera ¶ 2)
28 ("the same quality [products] as the garments sold in Macy's stores"); Ex. 10, p.
165 (Esmerelda Rodriguez ¶ 2) ("high quality, brand-name clothes, perfumes, and
jewelry"); Ex. 11, p. 168 (Guadalupe Rodriguez ¶ 2) ("name brand clothing
products"); Ex. 12, p. 171 (Claudia Sepulveda ¶ 2) ("name brand products").

1 including Abercrombie, Aeropostale, Dolce & Gabbana, and Victoria's Secret,
 2 among other brands.² Defendants' telemarketers claim that the company sells
 3 these items at "discount" or "wholesale" prices.³ Pitching the offer as a business
 4 opportunity, the telemarketers often claim that consumers will be able to resell the
 5 brand-name merchandise for a profit in their communities, or to their friends and
 6 family.⁴ Defendants typically offer packages for between \$400 to \$490, and
 7 consumers often select the specific brands, items, and sizes they want.⁵

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 10 ² Other brands that Defendants mention include American Eagle, Armani, Banana
 11 Republic, Bebe, Bulgari, Carolina Herrera, Chanel, Coach, Diesel, Eternity, GAP,
 12 Gucci, Guess, Hollister, Hugo Boss, Lacoste, Levi Strauss, Louis Vuitton,
 13 Obsession, Prada, Tommy Hilfiger, Ralph Lauren, and YSL. Ex. 1, pp. 17-18
 14 (Ayala ¶¶ 2, 4); Ex. 3, p. 33 (Garcia ¶ 3); Ex. 4, p. 45 (Marciago ¶ 2); Ex. 5, pp.
 15 56-57, 61-62 (Mendez ¶¶ 2, 5, Att. A); Ex. 6, p. 71 (K. Ortiz ¶ 2); Ex. 7, p. 85 (R.
 16 Ortiz, ¶ 2); Ex. 8, p. 135 (Pedraza ¶ 2); Ex. 9, p. 153 (Rivera ¶ 4); Ex. 10, p. 165
 17 (E. Rodriguez ¶ 2); Ex. 11, p. 168 (G. Rodriguez ¶¶ 2-3); Ex. 12, pp. 171-172
 18 (Sepulveda ¶¶ 2-3, 5).

19 ³ Ex. 1, p. 17 (Ayala ¶ 2) ("wholesale prices"); Ex. 3, p. 33 (Garcia ¶ 2) ("low
 20 prices"); Ex. 5, p. 56 (Mendez ¶ 2) ("wholesale prices with taxes prepaid"); Ex. 8,
 21 p. 135 (Pedraza ¶ 2) ("very low prices"); Ex. 6, p. 71 (K. Ortiz ¶ 2) ("discounted
 22 prices"); Ex. 7, p. 85 (R. Ortiz ¶ 2) (75% discount); Ex. 9, p. 153 (Rivera ¶ 2)
 23 ("very low prices"); Ex. 10, p. 165 (E. Rodriguez ¶ 2) (same); Ex. 11, p. 168 (G.
 24 Rodriguez ¶ 2) ("discounted"); Ex. 12, p. 171 (Sepulveda ¶ 2) ("wholesale
 25 prices").

26 ⁴ Ex. 3, p. 33 (Garcia ¶ 2); Ex. 4, p. 45 (Marciago ¶ 2); Ex. 5, p. 56 (Mendez ¶ 2);
 27 Ex. 6, p. 71 (K. Ortiz ¶ 2); Ex. 9, p. 153 (Rivera ¶ 2); Ex. 11, p. 168 (G.
 28 Rodriguez ¶ 2); Ex. 12, p. 171 (Sepulveda ¶ 2); *see also*, Ex. 2, p. 22 (Camacho
 ¶ 3).

⁵ Ex. 1, pp. 6, 17-18 (Ayala ¶ 4, Att. A); Ex. 3, p. 33 (Garcia ¶ 3); Ex. 5, pp. 56-
 57, 61 (Mendez ¶¶ 2-3, Att. A); Ex. 8, p. 135 (Pedraza ¶¶ 2-3); Ex. 6, p. 71 (K.
 Ortiz ¶ 3); Ex. 7, pp. 85, 90 (R. Ortiz ¶¶ 2-3, Att. A); Ex. 9, p. 153 (Rivera ¶ 4);
 Ex. 10, p. 165 (E. Rodriguez ¶ 2); Ex. 11, p. 168 (G. Rodriguez ¶ 3); Ex. 12, pp.
 171-172, 175 (Sepulveda ¶¶ 3, 5, Att. A). *See also*, Ex. 4, pp. 45-56 (Marciago ¶¶
 2-4); However, sometimes Defendants charge higher prices. For instance,
 Defendants charged consumer Teresa Camacho \$650 for a package that they
 claimed would include gold jewelry. Ex. 2, p. 22 (Camacho ¶ 3).

1 Defendants' telemarketers attempt to reassure skeptical consumers that the
 2 offer is legitimate by claiming that the company is reputable⁶ or licensed⁷ and that
 3 it is able to offer low prices on brand-name merchandise because it buys at high
 4 volume directly from the manufacturer⁸ or because it is making a limited offer to
 5 a select group of consumers.⁹ Defendants also represent that they do not require
 6 consumers to pay in advance¹⁰ and that they will provide refunds to any
 7 consumers who are not happy with their merchandise.¹¹ After taking consumers'
 8 orders for specific brand-name items,¹² Defendants' telemarketers instruct
 9 consumers to pay for the shipment with a money order upon delivery.¹³ To make
 10 sure that consumers do not inspect the contents of the package before paying,
 11 Defendants demand that their delivery agents collect consumers' money orders
 12 first.¹⁴ Defendants also attach prominent labels to their shipments that read:

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 16 ⁶ Ex. 1, p. 17 (Ayala ¶ 2); Ex. 5, pp. 56-57 (Mendez ¶ 3).

17 ⁷ Ex. 9, p. 153 (Rivera ¶ 3).

18 ⁸ Ex. 12, p. 171 (Sepulveda ¶ 3).

19 ⁹ Ex. 7, p. 85 (R. Ortiz ¶ 2).

20 ¹⁰ *E.g.*, Ex. 12, p. 172 (Sepulveda ¶ 4).

21 ¹¹ Ex. 8, p. 135 (Pedraza ¶ 2); Ex. 6, p. 71 (K. Ortiz ¶ 3).

22 ¹² *See* note 5, *supra*.

23 ¹³ Ex. 1, p. 18 (Ayala ¶ 5); Ex. 2, p. 22 (Camacho ¶ 4); Ex. 3, p. 33 (Garcia ¶ 3);
 24 Ex. 4, p. 45 (Marciago ¶ 3); Ex. 5, pp. 56-57 (Mendez ¶¶ 3, 5); Ex. 8, p. 135
 25 (Pedraza ¶ 3), Ex. 6, pp. 71-72 (K. Ortiz ¶ 4); Ex. 7, p. 86 (R. Ortiz ¶ 4); Ex. 9, p.
 153 (Rivera ¶ 4); Ex. 10, p. 165 (E. Rodriguez ¶ 3); Ex. 11, p. 169 (G. Rodriguez
 ¶ 4); Ex. 12, p. 172 (Sepulveda ¶ 4).

26 ¹⁴ Ex. 14, pp. 327-328 (Laureen France ¶ 15, UPS Contact History).
 27
 28

1 “ATTENTION: UPS DRIVER...PLEASE DO NOT LET RECIPIENT OPEN
2 BOX WITHOUT GETTING MONEY ORDER FIRST.”¹⁵

3 When consumers open Defendants’ packages, they are surprised to find
4 cheap and inexpensive clothing, jewelry, and perfume, rather than the luxury
5 items they ordered.¹⁶ Not only is the merchandise in extremely poor condition, it
6 often does not even resemble what consumers actually ordered.¹⁷ For example,
7 consumer Mirna Garcia ordered 80 shirts from the brands Hollister, Aeropostale,
8 Abercrombie, and American Eagle, but she received 12 pairs of cheap, unbranded
9 sweatpants and sweatshirts instead.¹⁸ Consumer Patricia Pedraza ordered 50

10 _____
11 ¹⁵ Ex. 1, pp. 13, 18-19 (Ayala ¶ 7, Att. E); Ex. 7, pp. 86, 93 (R. Ortiz ¶ 5, Att. C);
12 Ex. 8, pp. 111-112, 135-136 (Pedraza ¶ 4, Att. B); Ex. 9, pp. 147, 154 (Rivera ¶ 6,
13 Att. B); Ex. 12, pp. 172, 178 (Sepulveda ¶ 6, Att.); *see also*, Ex. 5, pp. 57-58
14 (Mendez ¶ 7); Ex. 7, pp. 86, 93 (R. Ortiz ¶ 5, Att. C); Ex. 9, pp. 147, 154 (Rivera ¶
15 6, Att. B); Ex. 10, p. 165 (E. Rodriguez ¶ 4). With few exceptions, consumers are
16 not given the packages until after the drivers have received payment. *See* Ex. 1,
17 pp. 18-19 (Ayala ¶ 7); Ex. 2, p. 23 (Camacho ¶¶ 5-6); Ex. 3, p. 34 (Garcia ¶ 4);
18 Ex. 4, pp. 45-46 (Marciago ¶ 4); Ex. 5, pp. 56-57 (Mendez ¶ 7); Ex. 8, p. 136
19 (Pedraza ¶ 4); Ex. 6, p. 72 (K. Ortiz ¶ 6); Ex. 7, p. 86 (R. Ortiz ¶ 5); Ex. 9, p. 154
20 (Rivera ¶¶ 6-7); Ex. 10, p. 165 (E. Rodriguez ¶¶ 4-5); Ex. 11, p. 169 (G.
21 Rodriguez ¶ 5); Ex. 12, p. 172 (Sepulveda ¶ 6).

22 ¹⁶ Ex. 1, p. 9-11, 19 (Ayala ¶ 7, Att. C) (“[E]ight pairs of pants and six dresses, all
23 of poor quality...”); Ex. 2, pp. 23, 29 (Camacho ¶ 6, Att. C) (“[C]heap jewelry
24 items—the sort of thing you might get from a quarter machine.”); Ex. 4, pp. 45-
25 46, 51 (Marciago ¶ 4, Att. B) (“[T]en pairs of blue jeans and six dresses, none of
26 which were Victoria’s Secret brand items.”); Ex. 6, pp. 72-73 (K. Ortiz ¶¶ 6-7)
27 (“several pairs of cheap sweatpants and sweatshirts,” and “several pairs of poor
28 quality sweatpants, none of which had tags but all of which were one color”); Ex.
29 7, pp. 86, 95-99 (R. Ortiz ¶ 5, Att. E) (“20 bottles of cheap perfume . . . [t]he
30 smell was terrible.”); Ex. 9, pp. 148-149, 154 (Rivera ¶ 7, Atts. C and D)
31 (“[C]heap clothes that were...unknown imitations.”); Ex. 10, p. 165 (E.
32 Rodriguez ¶ 5) (“25 bottles of perfume that were not luxury brands, but cheap,
33 unknown imitation brands.”); Ex. 11, p. 169 (G. Rodriguez ¶ 5) (“23 pairs of low
34 quality, off-brand jeans.”); Ex. 12, pp. 172-173, 185 (Sepulveda ¶ 6, Att. G) (“24
35 bottles of off brand, cheap perfume with names like Mega Blue, Dolce Donna,
36 and Special Edition Fundamentals.”).

37 ¹⁷ *Id.*

38 ¹⁸ Ex. 3, pp. 34, 38-39 (Garcia ¶ 4, Atts. B and C).

1 designer handbags from Prada, Coach, Guess, and Gucci, but she too received 12
2 pairs of cheap, unbranded sweatpants and sweatshirts, and no handbags.¹⁹

3 Consumer Silvia Mendez received “old, worn jeans” with no labels instead of the
4 clothing and perfumes she ordered with labels from Chanel, Hugo Boss, and
5 Carolina Herrera, among others.²⁰ One consumer said that she would be unable to
6 resell the clothing Defendants shipped “even at a garage sale,”²¹ while another
7 consumer described the jewelry she received as “the sort of thing you might get
8 from a quarter machine.”²²

9 **B. Claiming That Their First Shipment was a Mistake, Defendants**
10 **Deceive Many Consumers into Paying for Additional Shipments.**

11 When dissatisfied consumers call Defendants to report that they did not
12 receive the brand-name merchandise they ordered, Defendants pretend that they
13 sent the wrong merchandise by mistake.²³ They offer to fix the problem by

14 ¹⁹ Ex. 8, pp. 129-133, 136 (Pedraza ¶ 4, Att. E) (“twelve pairs of low-quality
15 sweatshirts and sweat pants”).

16 ²⁰ Ex. 5, pp. 57-58, 64-65 (Mendez ¶¶ 5, 8, Att. C).

17 ²¹ Ex. 6, p. 75 (K. Ortiz ¶ 12).

18 ²² Ex. 2, p. 23 (Camacho ¶ 6). Although the packing slips and packaging Ms.
19 Camacho received were marked “14KGT,” Ex. 2, pp. 29, 31-32 (Camacho Atts. C
20 and D), an assay test of a similar jewelry sample sent by another consumer
confirmed that the products contain less than .1% gold. Ex. 14, p. 255 (France ¶
54).

21 ²³ Ex. 1, pp. 18-19 (Ayala ¶ 9), Ex. 2, p. 23 (Camacho ¶ 7); Ex. 3, p. 34 (Garcia ¶
22 5) (consumer told the delivered merchandise was intended for a charity); Ex. 4, p.
23 46 (Marciago ¶ 5) (consumer told the merchandise was meant for another
24 consumer with the same name who lived in the area); Ex. 5, pp. 58-59 (Mendez ¶
25 10); Ex. 6, pp. 72-73 (K. Ortiz ¶ 6) (consumer told the company mistakenly sent
26 “samples”); Ex. 8, p. 136 (Pedraza ¶ 4) (consumer told that employees in the
warehouse sent the wrong order); Ex. 9, pp. 154-155 (Rivera ¶ 8); Ex. 10, p. 166
(E. Rodriguez ¶ 6); Ex. 11, p. 169 (G. Rodriguez ¶ 5) (consumer told that the
27 person who took her order had made a mistake and was reprimanded); Ex. 12, p.
28 173 (Sepulveda ¶ 8) (consumer told employees in the warehouse sent the wrong
order).

1 sending the consumer another COD shipment that will purportedly contain the
 2 correct order and a check refunding the consumer's initial payment.²⁴ To further
 3 entice consumers to accept this proposal, Defendants sometimes promise to
 4 include complimentary gift cards or a store credit to compensate for the error.²⁵
 5 Many consumers believe Defendants' claims and agree to receive and pay for the
 6 "corrected" shipment.²⁶ Unfortunately, these claims, too, are false, and
 7 consumers subsequently receive and pay for another package of cheap, useless
 8 merchandise that does not include the promised refund check or gift.²⁷ The cycle
 9 continues until consumers realize they have been duped and refuse to pay for
 10 additional shipments.²⁸

11 _____
 12 ²⁴ *Id.*

13 ²⁵ *See, e.g.*, Ex. 3, pp. 34-35 (Garcia ¶¶ 5-6) (complimentary gifts of brand-name
 14 perfume and a Chase Bank gift card); Ex. 6, p. 73 (K. Ortiz ¶ 6) (\$50 JCPenney's
 15 gift card); Ex. 8, p. 136 (Pedraza ¶ 4) (\$100 gift card); Ex. 10, p. 166 (E.
 16 Rodriguez ¶ 8) (\$200 store credit).

17 ²⁶ Ex. 1, p. 19 (Ayala ¶ 9); Ex. 3, p. 34 (Garcia ¶ 5); Ex. 4, p. 46 (Marciago ¶ 6);
 18 Ex. 8, p. 136 (Pedraza ¶ 5); Ex. 6, p. 73 (K. Ortiz ¶ 7); Ex. 7, p. 86 (R. Ortiz ¶ 5);
 19 Ex. 9, p. 155 (Rivera ¶ 9); Ex. 11, p. 170 (G. Rodriguez ¶ 7).

20 ²⁷ Ex. 1, p. 20 (Ayala ¶ 10) ("perfume with no brand"); Ex. 3, pp. 34-35, 41
 21 (Garcia ¶¶ 6-7, Att. D) (second package contained "several pieces of fake gold
 22 jewelry" and third package contained "more cheap unbranded sweatpants."); Ex.
 23 4, pp. 46, 52 (Marciago ¶ 7, Att. C) ("20 bottles of off-brand perfume and five
 24 perfume samples."); Ex. 8, pp. 136-137 (Pedraza ¶ 6) ("11 ugly handbags with no
 25 luxury brands"); Ex. 6, p. 73 (K. Ortiz ¶ 7) ("poor quality sweatpants [with no]
 26 tags"); Ex. 9, p. 155 (Rivera ¶ 9) ("cheap black purses without zippers"); Ex. 11,
 27 p. 170 (G. Rodriguez ¶ 7) ("low quality, off brand pants"). Those consumers who
 28 call the company after paying for more shipments of cheap goods are once again
 told that the company made another mistake. Ex. 3, pp. 34-35 (Garcia ¶ 6); Ex. 4,
 p. 47 (Marciago ¶ 8); *see also* Ex. 9, p. 155 (Rivera ¶ 10).

²⁸ Those consumers who believe Defendants' promises receive more of the same
 poor-quality merchandise in the next package and no refund check. Ex. 3, p. 35
 (Garcia ¶ 7). ("[M]ore cheap unbranded sweatpants."); Ex. 4, pp. 47, 53
 (Marciago ¶ 9, Att. D) ("[T]en pairs of pants, eight dresses and three small empty
 white boxes...all off-brand."); Ex. 6, p. 74 (K. Ortiz ¶ 11) ("two boxes of fake
 gold jewelry" that the company claimed was "Italian gold").

1 **C. Defendants Do Not Provide Refunds and Threaten Consumers**
 2 **Who Refuse to Pay for More Shipments.**

3 When consumers finally have had enough and refuse to pay for any more
 4 shipments, Defendants do not refund their money but instead often harass them
 5 with repeated calls²⁹ and threats of legal action.³⁰ Defendants' representatives tell
 6 consumers that the only way to receive a refund is to pay between \$400 and \$490
 7 for a "corrected" shipment or for a shipment that will purportedly include return
 8 labels and paperwork that consumers will need to return the items previously sent
 9 in error.³¹ Those consumers who refuse to accept and pay for this additional
 10 shipment are harassed with threats of legal action. To make the threats seem
 11 more credible and intimidating to consumers, Defendants' representatives often
 12 give specific details about upcoming court proceedings. For example, a
 13 representative left a telephone message for consumer Patricia Pedraza about a
 14 court hearing in California, provided a bogus date and location, and claimed that

15 ²⁹ Ex. 1, p. 21 (Ayala ¶ 14); Ex. 2, p. 24 (Camacho ¶10); Ex. 5, p. 60 (Mendez ¶
 16 13); Ex. 10, p. 167 (E. Rodriguez ¶¶ 12-13); Ex. 11, p. 170 (G. Rodriguez ¶ 8).

17 ³⁰ Ex. 1, p. 21 (Ayala ¶ 13) ("Ms. Bonilla then threatened me saying that TNT
 18 would take me to court."); Ex. 3, p. 36 (Garcia ¶ 9) ("I have received telephone
 19 calls from Terra Nova representatives threatening to sue me in California if I did
 20 not continue to send them funds for another shipment."); Ex. 4, p. 48 (Marciago
 21 ¶ 11) ("[Rosana] said that if I wanted to prevent TNT from taking legal action
 22 against me, I needed to pay the company \$1,100."); Ex. 7, pp. 87-89 (R. Ortiz ¶¶
 23 8-11) (a company representative pretending to be an attorney told consumer that
 24 the "company would sue me... [and] that I would spend a lot of money traveling
 25 to appear in court."); Ex. 8, pp. 138-139, 118-119 (Pedraza ¶ 13, Att. D) ("The
 representative told me that the company was suing me in court because [I] had not
 returned the unwanted goods I had received, and that I had a court date soon.");
 Ex. 10, p. 167 (E. Rodriguez ¶ 12) ("The representative angrily told me in
 Spanish, 'Do you have a lawyer ready? Because we do.'"); *see also* Ex. 9, p. 154
 (Rivera ¶ 5) ("TNT called me and left a message on my answering machine
 saying: 'We will send you to court if you do not accept the delivery.'"); *see also*
 Ex. 14, pp. 690-707 (France ¶ 51).

26 ³¹ *See, e.g.*, Ex. 5, p. 59 (Mendez ¶¶ 11-12); Ex. 7, pp. 73-74 (K. Ortiz ¶ 8); Ex. 8,
 27 p. 138 (Pedraza ¶ 9). Customers do not receive these labels. *Id.*

1 Ms. Pedraza would need two government-issued IDs to enter the courthouse.³²

2 The representative told Ms. Pedraza that if she failed to appear for the hearing in
3 person, she could face thousands of dollars in fines and the garnishment of her
4 wages, bank accounts, and tax returns.³³ A company representative who claimed
5 she was from the “legal department” told consumer Rosa Ortiz that the company
6 had issued a warrant for her arrest and she had been ordered by a judge to appear
7 in court.³⁴ No consumer has reported that Defendants have ever actually sued or
8 reported consumers to a consumer reporting agency. Some consumers have also
9 complained that Defendants have threatened them with arrest³⁵ or with referral to
10 immigration authorities.³⁶

11 Consumers who have sought assistance in obtaining a refund from third
12 parties, such as a law enforcement agency, legal aid attorney, or the Better
13 Business Bureau, have been unsuccessful. Defendants respond to such
14 complaints by consistently blaming the consumer, claiming that it was “a

15 _____
16 ³² Ex. 8, pp. 138-139, 118-119 (Pedraza ¶ 13, Att. D).

17 ³³ *Id.* After Ms. Pedraza contacted a legal aid attorney, a Terra Nova
18 representative denied that she had been threatened with a lawsuit. *Id.* at pp. 138-
19 139 (Pedraza ¶¶ 12-16). Despite this, Ms. Pedraza subsequently received a
message on her answering machine stating that she had a court date at a
nonexistent address. *Id.*

20 ³⁴ Ex. 7, p. 89 (R. Ortiz ¶ 11).

21 ³⁵ For example, a company representative told one consumer that she would be
22 arrested, her husband fired from his job, and her services cut off if she did not pay
more money. Ex. 13, pp. 189-190, 220, 229 (Detective Richard Yep ¶ 7).
23 Another consumer was told that she would be facing a lawsuit and that her
government assistance would be discontinued. *Id.* Defendants’ representative
24 told consumer declarant Olga Rivera’s sister that they had a warrant for
Ms. Rivera’s arrest. Ex. 9, p. 156 (Rivera, ¶ 14). *See also*, Ex. 14, pp. 690, 694,
25 697-699, 702, 704, 706 (France ¶ 51) (summary of hundreds of consumer
complaints).

26 ³⁶ Ex. 14, pp. 694, 703 (France ¶ 51).
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1 misunderstanding” because the consumer had trouble understanding English.³⁷
2 Of course, this purported explanation ignores the fact that the sales calls are
3 conducted entirely in Spanish.

4 **D. Consumer Injury**

5 From July 2009 through January 2013, the period during which the FTC
6 has obtained limited financial records, Defendants’ deceptive business practices
7 resulted in consumer losses totaling more than \$4 million.³⁸ Those losses are
8 ongoing.

9 **III. DEFENDANTS**

10 The parties responsible for these deceptive practices are Defendant Cream
11 Group, Inc. (“Cream Group”), and the three individuals who control this entity,
12 Sami Charchian, John Charchian, and Norma Ramos. Prior to the formation of
13 Cream Group, the Charchians operated the scheme in their individual capacities
14 using a series of business names, including Oro Marketing, Inc.,³⁹ Modo, Modo
15 Industry, Oro Max, Casa de Oro, Casa de Moda, Oro Mundo, and Nation/Modo
16 (collectively, “Oro Marketing”).⁴⁰

17 Cream Group is a California corporation formed on September 30, 2011.⁴¹
18 Its registered business address and location is 14037 Vanowen Street, Van Nuys,
19 California, the location of the boiler room where Defendants make their

20
21 ³⁷ Ex. 3, p. 35 (Garcia ¶ 8).

22 ³⁸ Ex. 14, p. 251 (France ¶ 47).

23 ³⁹ Incorporation papers were filed for Oro Marketing, Inc., on July 30, 2009, but
24 the company’s corporate status was cancelled in August 2009. *Id.* at pp. 231,
260-263 (France ¶ 4).

25 ⁴⁰ *Id.* at pp. 233-234 (France ¶¶ 12, 23b-c, 25, 26.b, 51).

26 ⁴¹ *Id.* at pp. 230-231 (France ¶ 3.a-b).
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1 telemarketing calls.⁴² The company does business under various names, including
2 Terra Nova, TNT, Inc., and CRM, Inc.⁴³ Cream Group has established bank
3 accounts into which consumer payments are deposited and from which it then
4 makes large distributions to Individual Defendants Sami and John Charchian.

5 Individual Defendant Sami Charchian owns, directs, or otherwise controls
6 Cream Group. He is the primary signatory on the Cream Group bank accounts
7 where consumers' payments are deposited, and he has authorized most of the
8 subsequent withdrawals and payments from these accounts.⁴⁴ He also has paid
9 for various personal and non-business expenses with Cream Group funds.⁴⁵ In
10 addition to controlling the scheme's bank accounts, Sami Charchian also has
11 provided the scheme with telephone and shipping services through a related
12 company, Nation Optical, that John Charchian incorporated and Sami Charchian
13 controls. The telephone account Defendants use to call consumers was
14 established in the name of Nation Optical.⁴⁶ UPS account records similarly show

15 ⁴² *Id.*; see also Ex. 13, p. 190 (Yep ¶ 8).

16 ⁴³ *Id.* at pp. 247, 250, 646-651, 690-670 (France ¶¶ 37.a, 44, 51); see also, Ex. 1,
17 p. 17 (Ayala ¶ 2); Ex. 2, p. 22 (Camacho ¶ 3); Ex. 3, p. 33 (Garcia ¶ 2); Ex. 4, p.
18 45 (Marciago ¶ 2); Ex. 5, p. 56 (Mendez ¶ 2); Ex. 8, p. 135 (Pedraza ¶ 2); Ex. 6,
19 p. 71 (K. Ortiz ¶ 2); Ex. 7, p. 85 (R. Ortiz ¶ 2); Ex. 9, p. 153 (Rivera ¶ 2); Ex. 10,
20 p. 165 (E. Rodriguez ¶ 2); Ex. 11, p. 168 (G. Rodriguez ¶ 2); Ex. 12, p. 171
(Sepulveda ¶ 2).

21 ⁴⁴ Ex. 14, pp. 246-251, 555-580, 594-630, 633-645, 652-664 (France ¶¶ 35.b, 36,
22 38-39, 46.b, 43.c, 45).

23 ⁴⁵ *Id.* at pp. 247, 594-630 (France ¶¶ 38-39). For example, since 2011, Sami
24 Charchian has written checks for \$3,400 each month from Cream Group accounts
25 for what appear to be rent or mortgage payments. *Id.* at pp. 247, 594-595. He has
26 also written checks totaling \$25,000 to a diamond jewelry retailer in Los Angeles
27 and used more than \$17,000 of consumers' funds to make automobile payments.
28 *Id.* at p. 247, 596-597.

⁴⁶ John Charchian is listed as "incorporator" for Nation Optical in its Articles of
Incorporation. Ex. 14, pp. 231, 264-266 (France ¶ 5). The company's corporate
status was suspended on February 1, 2012. *Id.*

1 that Defendants ship packages to their victims using an account in the name of
2 “Modo,” an entity for which Sami Charchian serves as “president.”⁴⁷

3 Individual Defendant John Charchian (aka Djahangir and Jahangir
4 Charchian)⁴⁸ owns, directs, or otherwise controls Cream Group with Sami
5 Charchian. John Charchian has signed several checks drawn on Cream Group
6 accounts and also has received substantial sums from those accounts.⁴⁹ He is
7 listed as the “primary authority/authorized signee” on the Nation Optical
8 telephone account that Cream Group uses to call consumers.⁵⁰ In addition, John
9 Charchian is one of the owners of the Van Nuys property where Defendants’
10 boiler room has been located since 2009.⁵¹ He has been observed on the business
11 premises during normal business hours, and has identified himself as the owner of
12 the property and manager at the location.⁵²

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15 ⁴⁷ *Id.* at pp. 234, 323-326 (France ¶ 14).

16 ⁴⁸ *Id.* at pp. 231, 267 (France ¶ 61).

17 ⁴⁹ *Id.* at pp. 248-251 (France ¶¶ 38.b, 39, 45-46). Sami Charchian wrote checks
18 made payable to John Charchian totaling \$74,000 from Cream Group’s JPMorgan
19 Chase Bank account. *Id.* at p. 248 (France ¶ 39.c). Sami Charchian wrote another
20 \$130,000 in checks to “Charchian” from Cream Group’s JPMorgan Chase
21 account, several of which were deposited into John Charchian’s personal account.
Id. at p. 249 (France ¶ 39.d). Sami Charchian wrote \$82,000 in checks on a U.S.
Bank Cream Group, Inc., account to “Charchian.” *Id.* at p. 251 (France ¶ 46.c).

22 ⁵⁰ *Id.* at pp. 232, 268-270 (France ¶ 8.b).

23 ⁵¹ *Id.* at p. 728.

24 ⁵² On September 26, 2013, Detective Richard Yep from the Los Angeles Police
25 Department visited Defendants’ business premises in Van Nuys. Ex. 13, pp. 190-
26 191 (Yep, ¶ 8). He observed a boiler room containing approximately 10-12
27 desks, and saw women who appeared to be wearing telephone headsets seated at
28 these desks. *Id.* John Charchian identified himself as the owner of the property
and the manager of the location. *Id.*

1 During the time that Sami and John Charchian operated the telemarketing
 2 scheme as Oro Marketing, Sami Charchian was a signatory on Oro Marketing
 3 bank accounts into which consumer funds were deposited, and he authorized
 4 significant fund transfers from these accounts to himself.⁵³ John Charchian also
 5 regularly signed checks from Oro Marketing accounts to pay the company's
 6 employees and various other business expenses,⁵⁴ and he received significant
 7 sums from these accounts.⁵⁵ During this time, Sami Charchian used his company,
 8 Nation Optical, to set up the FedEx shipping accounts used in the telemarketing
 9 scheme⁵⁶ and registered websites containing the names, or variations of names, of
 10 several d/b/as, including modoindustries.com and orosam.com.⁵⁷ The Charchians

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 13
 14 ⁵³ Ex. 14, pp. 239-243, 394-395, 389-399, 401, 409, 416, 426, 429, 442, 464-499,
 15 505-509 (France ¶¶ 22.d, 22.g, 24, 27.c, 27.g). For example, from August 2009
 16 through September 2011, Sami Charchian signed checks made payable to himself
 17 from Oro Marketing accounts totaling approximately \$255,000. *Id.* at p. 243
 18 (France ¶ 27.c). He also used Oro Marketing accounts to pay charges on an
 19 American Express account that appear unrelated to the business, as well as to pay
 20 other significant personal expenses, including what appears to be mortgage or
 21 rental payments and a car loan. *Id.* at pp. 240-241, 464-499 (France ¶ 24).

22 ⁵⁴ *Id.* at pp. 240, 243, 541-545 (France ¶¶ 24.a, 27.c, 27.d, 27.h, 32.c).

23 ⁵⁵ *Id.* at pp. 239-240, 243, 245 (France ¶¶ 22.e, 24.a, 24.b, 27.d, 27.e, 27.h, 32.b).
 24 From August 2009 to June 2011, John Charchian received checks totaling
 25 \$29,000 from an Oro Marketing, Inc., at Bank of America. *Id.* p. 245 (France ¶
 26 32.b). He received approximately \$10,000 from Oro Marketing's Citibank
 27 account, and another \$14,000 in checks made payable to "Charchian" were
 28 endorsed by him or deposited into his personal account at JP Morgan Chase. *Id.*
 pp. 243, 245 (France ¶¶ 27.d, 32.b note 9).

⁵⁶ *Id.* at p. 233 (France ¶ 10). Defendants Sami and John Charchian used FedEx
 for COD shipments from 2009 through early 2010, when they switched to UPS.
Id. at p. 232-233 (France ¶¶ 9, 13).

⁵⁷ *Id.* at pp. 237-238, 386-390 (France ¶¶ 18-19). These websites are no longer
 active. *Id.* at p. 238 (France ¶ 19).

1 operated the business from the same Van Nuys location from which they
2 currently run Cream Group.⁵⁸

3 According to incorporation documents filed with the California Secretary
4 of State, Individual Defendant Norma Rae Ramos is Cream Group's president,
5 chief executive officer, secretary, chief financial officer, director, and registered
6 agent for service.⁵⁹ She is also an authorized signatory on Cream Group bank
7 accounts where consumers' funds have been deposited and is listed as Cream
8 Group's president on the company's Employment Development Department
9 application.⁶⁰

10 IV. ARGUMENT

11 Defendants' telemarketing scheme violates Section 5 of the FTC Act and
12 various provisions of the TSR. The FTC seeks the entry of a TRO to bring a halt
13 to the ongoing deceptive scheme, to prevent the dissipation of assets and the
14 destruction of evidence, and to preserve the Court's ability to provide effective,
15 final relief to consumer victims.

16 A. Section 13(b) of the FTC Act Authorizes the Requested Relief.

17 The Court may grant temporary, preliminary, and permanent relief under
18 Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and Fed. R. Civ. P. 65(b).
19 Section 13(b) of the FTC Act authorizes a district court to grant permanent
20 injunctions to enjoin violations of the FTC Act in "proper cases."⁶¹ Proper cases

21 ⁵⁸ See *id.* at pp. 231, 233-234 (France ¶¶ 4, 11, 12).

22 ⁵⁹ *Id.* at pp. 230-231, 246, 249, 257-259, 555-558, 633-637 (France ¶¶ 3, 35.b-c,
23 42.b-c).

24 ⁶⁰ *Id.* at pp. 249, 636 (France ¶ 42).

25 ⁶¹ As in *FTC v. H.N. Singer, Inc.*, 668 F.2d 1107, 1110 (9th Cir. 1982), a case
26 may be brought under the second proviso of § 13(b), and need not be conditioned
27 on the first proviso requirement that the FTC bring an administrative proceeding.
28 See *FTC v. U.S. Oil & Gas Corp.*, 748 F.2d 1431, 1434 (11th Cir. 1984)

1 for which injunctive relief may be sought include those alleging that a person is
 2 violating or about to violate a provision of law enforced by the FTC.⁶² In Section
 3 13(b) actions, the district court may exercise the full breadth of its equitable
 4 authority by imposing additional relief, such as consumer restitution, if necessary,
 5 to accomplish complete justice.⁶³ Incident to its authority to issue permanent
 6 injunctive relief, this Court has inherent equitable power to grant all preliminary
 7 relief necessary for ultimate relief.⁶⁴

8 **B. This Case Meets the Applicable Standard for Injunctive Relief.**

9 To grant temporary injunctive relief in an FTC Act case, the district court
 10 must (1) determine the likelihood that the Commission ultimately will succeed on
 11 the merits, and (2) balance the equities.⁶⁵ In statutory enforcement actions where
 12 the government has established a likelihood of success on the merits, irreparable
 13 injury is presumed because the passage of the statute indicates that violations will
 14 harm the public.⁶⁶ Thus, the FTC need not prove irreparable harm.⁶⁷ The FTC
 15 meets the required standard in the present case.

16
 17 (“Congress did not limit the court’s powers under the final proviso of 13(b)”).

18 ⁶² *FTC v. Evans Prod. Co.*, 775 F.2d 1084, 1086-87 (9th Cir. 1985); *Singer*, 668
 19 F.2d at 1113.

20 ⁶³ *FTC v. World Wide Factors, Ltd.*, 882 F.2d 344, 346-47 (9th Cir. 1989)
 21 (affirming the district court’s power to freeze assets and appoint a receiver);
 22 *Singer*, 668 F.2d at 1113 (preliminary injunction with asset freeze affirmed).

23 ⁶⁴ *FTC v. Stefanchik*, 559 F.2d 924, 931 (9th Cir. 2009) (“The district court has
 24 broad authority under the FTC Act ‘to grant any ancillary relief necessary to
 25 accomplish complete justice’”), quoting *FTC v. Pantron I Corp.*, 33 F.3d 1088,
 26 1102 (9th Cir. 1994).

27 ⁶⁵ *FTC v. Affordable Media, LLC*, 179 F.3d 1228, 1233 (9th Cir. 1999); *World*
 28 *Wide Factors*, 882 F.2d 344 at 346.

⁶⁶ *U.S. v. Nutri-cology, Inc.*, 982 F.2d 394, 398 (9th Cir. 1992).

⁶⁷ *Affordable Media*, 179 F.3d at 1233; *FTC v. Warner Commc’ns, Inc.*, 742 F.2d

1 **1. The FTC is Likely to Succeed on the Merits.**

2 The FTC’s evidence establishes a substantial likelihood of success in
3 proving that Defendants have violated Section 5(a) of the FTC Act and various
4 provisions of the TSR.

5 **a. Defendants’ False Promises of Brand-Name
6 Merchandise and Refunds Violate Section 5(a) of the
7 FTC Act.**

8 Defendants’ misrepresentations that they offer brand-name merchandise at
9 low prices and that they will provide refunds to consumers are deceptive acts or
10 practices under Section 5(a) of the FTC Act, 15 U.S.C. § 45(a). A deceptive act
11 or practice involves a material misrepresentation or omission that is likely to
12 mislead consumers acting reasonably under the circumstances.⁶⁸ Courts consider
13 the overall net impression created by the acts or practices when evaluating their
14 deceptiveness.⁶⁹

15 A representation is likely to mislead consumers if it is false.⁷⁰ A
16 misleading representation “is material if it ‘involves information that is important
17 to consumers and, hence, likely to affect their choice of, or conduct regarding, a
18 product.’”⁷¹ Express claims are presumed to be material, so consumers are not

19 1156, 1159 (9th Cir. 1984); *U.S. v. Odessa Union Warehouse Co-op*, 833 F.2d
20 172, 175 (9th Cir. 1987) (agency enforcing statute authorizing injunction “not
21 required to show irreparable injury”). Although the FTC is not required to prove
22 irreparable injury, there is sufficient evidence that consumers will suffer
23 irreparable injury, such as ongoing injury and dissipated assets, to satisfy this
24 prong.

25 ⁶⁸ *Stefanchik*, 559 F.3d at 928; *FTC v. Cyberspace.com, LLC*, 453 F.3d 1196,
26 1199 (9th Cir. 2006); *FTC v. Gill*, 265 F.3d 944, 950 (9th Cir. 2001).

27 ⁶⁹ *Stefanchik*, 559 F.3d at 928; *Cyberspace.com*, 453 F.3d at 1200 (solicitation
28 may be likely to mislead by virtue of its net impression).

⁷⁰ See *Pantron*, 33 F.3d at 1096 n.22.

⁷¹ *Cyberspace.com*, 453 F.3d at 1201 (quoting *In re Cliffdale Assoc., Inc.*, 103

1 required to question their veracity in order for their actions to be deemed
2 reasonable.⁷²

3 Hundreds of consumers from all over the country have reported that
4 Defendants' telemarketers consistently offer to sell them popular, brand-name
5 merchandise at discount or wholesale prices.⁷³ What consumers receive instead is
6 poor-quality, unbranded merchandise that does not remotely resemble what
7 consumers ordered. When consumers contact Defendants to complain,
8 Defendants promise to provide a refund for the previous shipment if consumers
9 agree to pay for and receive an additional COD shipment purportedly containing
10 the correct merchandise.⁷⁴ Despite these promises, Defendants never send the
11 ordered brand-name merchandise or refunds to consumers.⁷⁵ Because
12 Defendants' express representations are false, they are likely to and do mislead
13 consumers acting reasonably under the circumstances.⁷⁶ The claims also are
14 material because they are express and because they deceive consumers into
15 paying money for goods they would not otherwise have ordered.⁷⁷ Thus,
16 Defendants' false and misleading representations violate Section 5(a) of the FTC
17 Act.

18
19
20 F.T.C. 110, 165 (1984)).

21 ⁷² *Pantron*, 33 F.3d at 1095-96.

22 ⁷³ See notes 1-3 and accompanying text, *supra*.

23 ⁷⁴ See notes 23-24 and accompanying text, *supra*.

24 ⁷⁵ See note 27 and accompanying text, *supra*.

25 ⁷⁶ See *Pantron*, 33 F.3d at 1096 n.22.

26 ⁷⁷ *Id.* at 1095-96.
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1 **b. Defendants' Misrepresentations Violate the TSR.**

2 Defendants' conduct also violates multiple provisions of the TSR. As
 3 "sellers" and/or "telemarketers" engaged in "telemarketing,"⁷⁸ the TSR prohibits
 4 Defendants from: (1) misrepresenting a material aspect of the performance,
 5 efficacy, nature, or central characteristics of goods they sell; (2) using false or
 6 misleading statements to induce consumers to pay for goods; (3) misrepresenting
 7 a material aspect of the nature or terms of the seller's refund or cancellation
 8 policies; (4) failing to truthfully and clearly disclose that the seller has a policy of
 9 not making refunds or cancellations before a customer consents to pay for goods
 10 or services offered; and (5) using threats or intimidation.⁷⁹

11 Defendants induce consumers to pay for their merchandise by
 12 misrepresenting a material aspect of their goods—namely, by purporting in their
 13 sales calls to sell brand-name merchandise at low or discount prices. In these
 14 calls, Defendants also fail to disclose that the company does not offer refunds.
 15 Defendants follow these calls with false promises to refund consumers' money
 16 upon payment for additional shipments. And last, Defendants attempt to
 17 intimidate consumers who finally refuse to pay more money with threats of legal
 18 and other actions. These acts and practices are deceptive or abusive telemarketing
 19 acts or practices that violate the TSR.

20 _____
 21 ⁷⁸ TSR, 16 C.F.R. § 310.2(v)(aa) ("Seller means any person who, in connection
 22 with a telemarketing transaction, provides, offers to provide, or arranges for
 23 others to provide goods or services to the customer in exchange for
 24 consideration."); (cc) ("Telemarketer means any person who, in connection with
 25 telemarketing, initiates or receives telephone calls to or from a customer or
 donor."); and (dd) ("Telemarketing means a plan, program, or campaign which is
 conducted to induce the purchase of goods or services or a charitable contribution,
 by use of one or more telephones and which involves more than one interstate
 telephone call.")

26 ⁷⁹ TSR, 16 C.F.R. §§ 310.3(a)(2)(iii), 310.3(a)(2)(iv), 310.3(a)(4), 310.3(a)(1)(iii),
 27 and 310.4(a)(1).
 28

1 **2. The Equities Tip Decidedly in the Commission’s Favor.**

2 The public equities in this case warrant preliminary and ancillary injunctive
3 relief.⁸⁰ In weighing the equities, the Ninth Circuit has held that the public
4 interest should receive far greater weight than private interests.⁸¹

5 In the present case, the equities tip decidedly in favor of the public interest
6 in issuing a temporary restraining order. The public interest in ending this
7 deceptive scheme is compelling, as the public has a strong interest in halting
8 Defendants’ ongoing law violations and in preserving the assets necessary to
9 provide effective final relief to victims. Defendants, by contrast, have no
10 legitimate interest in continuing to deceive consumers and violate federal law.⁸²
11 Further, compliance with the law is not an unreasonable burden.⁸³

12 **C. Individual Defendants are Liable for Cream Group’s Practices.**

13 The FTC is likely to succeed in demonstrating that Individual Defendants
14 are liable for the practices of Cream Group. An individual may be subject to
15 injunctive relief for a corporation’s violations of the FTC Act if the Court finds
16 that he or she either participated directly in the acts or practices or had authority
17 to control them.⁸⁴ Authority to control includes “active involvement in business
18 affairs and the making of corporate policy, including assuming the duties of a

19 _____
20 ⁸⁰ *FTC v. World Travel Vacation Brokers Inc.*, 861 F.2d 1020, 1029 (7th Cir. 1988).

21 ⁸¹ *Id.* at 1028-29.

22 ⁸² *FTC v. Sabal*, 32 F.Supp.2d 1004, 1009 (N.D. Ill. 1998) (*citing World Wide*
23 *Factors*, 882 F.2d at 347).

24 ⁸³ *World Wide Factors*, 882 F.2d at 347 (affirming the district court’s finding that
25 there is no oppressive hardship to defendants in requiring them to comply with the
26 FTC Act, refrain from fraudulent representation or preserve their assets from
27 dissipation or concealment”).

28 ⁸⁴ *FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 573 (7th Cir. 1989).

1 corporate officer.”⁸⁵ The FTC must show that defendants “had knowledge or
2 awareness” of misrepresentations made.⁸⁶ An individual’s “degree of
3 participation in business affairs is probative of knowledge.”⁸⁷ An individual is
4 liable for restitution based on corporate misconduct if he or she had actual
5 knowledge of material misrepresentations, was recklessly indifferent to the falsity
6 of the misrepresentations, or was aware of a high probability of fraud and
7 intentionally avoided the truth.⁸⁸ The FTC does not need to prove subjective
8 intent to defraud.⁸⁹

9 Under this test, Individual Defendants Sami Charchian, John Charchian,
10 and Norma Ramos are liable for Cream Group’s deceptive practices.⁹⁰ The
11 Charchians actively control and manage Cream Group’s operations and sales
12 practices and have full knowledge of the company’s deceptive conduct.⁹¹ They
13 have been at the helm of the company since its inception, with Sami Charchian
14 primarily managing the money and arranging for telephone and delivery services
15 that are essential to the scheme, and John Charchian providing and managing the
16 business location from which the scheme operates, authorizing key payments
17 from corporate accounts, and facilitating the use of the telephone account to

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19 ⁸⁵ *Id.*

20 ⁸⁶ *Id.* at 574.

21 ⁸⁷ *Affordable Media*, 179 F.3d at 1234-35.

22 ⁸⁸ *FTC v. Network Servs. Depot, Inc.*, 617 F.3d 1127, 1138-39 (9th Cir. 2010).

23 ⁸⁹ *Affordable Media*, 179 F.3d at 1234-35.

24 ⁹⁰ Sami and John Charchian are also individually liable for the deceptive conduct
25 that pre-dates Cream Group’s formation, which they conducted directly through a
series of d/b/as.

26 ⁹¹ See notes 44-58 and accompanying text, *supra*.

1 contact consumers.⁹² As the sole officer of Cream Group and a signatory to its
2 bank accounts, Defendant Norma Ramos also has the requisite authority to
3 control the corporation's acts or practices sufficient for injunctive relief.⁹³ As
4 Cream Group's sole officer, she is at least recklessly indifferent to whether the
5 representations made by the corporation's telemarketers are true, or is aware of a
6 high probability that the company is engaged in fraud and intentionally avoids the
7 truth.⁹⁴

8 **D. An Asset Freeze Is Necessary to Preserve Funds for Consumer**
9 **Restitution.**

10 To ensure the preservation of funds for consumer restitution, the FTC seeks
11 an order freezing the assets of Cream Group, Sami Charchian, and John
12 Charchian.⁹⁵ This Court has the authority under Section 13(b) to grant ancillary
13 relief, which includes the power to issue an order freezing assets in the course of
14 pending legal action.⁹⁶ An asset freeze is appropriate once the Court determines
15 that the FTC is likely to prevail on the merits and restitution would be an
16 appropriate final remedy.⁹⁷ The freeze should extend not only to the Corporate

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18 ⁹² *Id.*

19 ⁹³ *FTC v. Publ'g Clearing House, Inc.*, 104 F.3d 1168, 1170 (9th Cir. 1996)
20 (holding that a defendant with authority to sign documents on behalf of a
corporation had requisite control over the corporation).

21 ⁹⁴ *See, e.g., Affordable Media*, 179 F.3d at 1234.

22 ⁹⁵ The FTC is not seeking an asset freeze over Defendant Norma Ramos' personal
23 assets at this time because it does not have evidence that she shared in the
24 scheme's profits. However, as Cream Group, Inc.'s sole officer and director, the
proposed TRO would prohibit her from taking any action to dissipate the
Corporate Defendant's assets.

25 ⁹⁶ *U.S. Oil & Gas Corp.*, 748 F.2d at 1434.

26 ⁹⁷ *Id.*

1 Defendant, but also to Individual Defendants who own or control that entity.⁹⁸ “A
2 party seeking an asset freeze must show a likelihood of dissipation of the claimed
3 assets, or other inability to recover monetary damages, if relief is not granted.”⁹⁹
4 An asset freeze is justified if a defendant’s business is permeated with fraud.¹⁰⁰
5 As the Ninth Circuit has observed in upholding an asset freeze, an individual who
6 has “impermissibly awarded himself” funds that are not rightfully his “is
7 presumably more than capable of placing assets in his personal possession beyond
8 the reach of a judgment.”¹⁰¹

9 Here, an asset freeze is necessary to preserve assets for restitution to
10 victims. Sami and John Charchian have on numerous occasions signed for the
11 transfer of significant sums from the Corporate Defendant’s accounts for their
12 personal and non-business expenses, including the dissipation of at least \$1.6
13 million in assets since 2009.¹⁰² Absent a court order, they are likely to continue to
14 dissipate corporate funds in this way. Given the wholly fraudulent nature of their
15 scheme, moreover, it also is likely that Defendants would attempt to move
16 corporate and individual assets beyond the Commission’s reach, *e.g.* – by moving
17 them offshore – once they are notified of the Commission’s case.

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22 ⁹⁸ *World Travel*, 861 F.2d at 1031.

23 ⁹⁹ *Johnson v. Couturier*, 572 F.3d 1067, 1085 (9th Cir. 2009).

24 ¹⁰⁰ *See, e.g., SEC v. Manor Nursing Ctrs., Inc.*, 458 F.2d 1082, 1106 (2nd Cir.
1972); *SEC v. R.J. Allen & Assoc., Inc.*, 386 F.Supp. 866, 881 (S.D. Fla. 1974).

25 ¹⁰¹ *Johnson*, 572 F.3d at 1085.

26 ¹⁰² Ex. 14, pp. 243, 245-246, 248-249, 251 (France ¶¶ 27, 33, 39, 47)

E. The Temporary Restraining Order with Asset Freeze Should Be Issued *Ex Parte*.

The proposed should be issued *ex parte*. Rule 65(b) of the Federal Rules of Civil Procedure empowers the Court to grant a temporary restraining order without notice (1) if the facts of the complaint clearly show immediate or irreparable injury, and (2) the applicant provides reasons and support for the request. *Ex parte* TROs are granted in such cases to serve the “underlying purpose of preserving the status quo and preventing irreparable harm just so long as is necessary to hold a hearing, and no longer.”¹⁰³ A request for *ex parte* relief can be justified, for example, by showing a likelihood that Defendants will dissipate assets or destroy evidence in the absence of such relief.¹⁰⁴

The factual basis for requesting *ex parte* relief is set forth in the Declaration of Counsel Pursuant to Rule 65(b), filed concurrently with this Application for TRO. The FTC’s experience shows that defendants like these who are engaged in wholly fraudulent schemes will routinely withdraw funds from bank accounts and move or shred documents upon learning of impending legal action. District courts therefore have regularly granted the FTC *ex parte* relief in similar cases, where dissipation of assets and the destruction of evidence would likely result.¹⁰⁵

Defendants’ conduct here supports the issuance of a temporary restraining order *ex parte*. Defendants engage in business practices that clearly violate both the FTC Act and the TSR. They have frequently changed company names and

¹⁰³ *Reno Air Racing Ass’n, Inc. v. McCord*, 452 F.3d 1126, 1131 (9th Cir. 2006) (quoting *Granny Goose Foods, Inc. v. Teamsters*, 415 U.S. 423, 438-39, 94 S. Ct. 1113, 1124, 39 L. Ed. 2d 435, 439 (1974).

¹⁰⁴ *See Affordable Media*, 179 F.3d at 1236-37.

¹⁰⁵ *See* Rule 65 Declaration of Counsel Pursuant to Rule 56(b) and cases cited therein.

1 business accounts to evade detection by law enforcement, and they have failed to
2 resolve consumer complaints or to modify their business practices to conform
3 with the law. This conduct gives rise to a high probability that if notified of legal
4 action, Defendants will destroy evidence and dissipate assets, thus making it more
5 difficult for the FTC to recover restitution for victims. Issuing the TRO *ex parte*
6 is indispensable to preserving the status quo and securing full and effective relief
7 pending a hearing on the preliminary injunction.

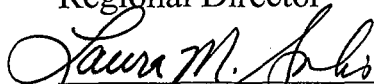
8 **V. CONCLUSION**

9 For the foregoing reasons, the FTC respectfully moves the Court to issue
10 the proposed *ex parte* TRO to ensure a halt to Defendants' deceptive conduct and
11 to protect the public from further harm. Defendants have engaged in and are
12 likely again to engage in acts or practices that violate Section 5(a) of the FTC Act,
13 15 U.S.C. § 45(a) and various provisions of the TSR. Without the requested relief
14 pending final disposition of this case, Defendants will continue to defraud
15 consumers through their deceptive business practices.

16 Respectfully Submitted,

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