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13
 14 UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF NEVADA
 15

16
 17 FEDERAL TRADE COMMISSION,
 Plaintiff,

18 v.

19 JEREMY JOHNSON, individually, as officer of
 Defendants I Works, Inc.; Cloud Nine, Inc.; CPA
 20 Upsell, Inc.; Elite Debit, Inc.; Internet Economy,
 Inc.; Market Funding Solutions, Inc.; and
 21 Success Marketing, Inc.; as a member of
 Defendant Network Agenda LLC; and as the *de*
 22 *facto* principal of numerous Defendant Shell
 Companies;

23 I WORKS, INC., a Utah Corporation, *et al.*
 24 Defendants.

CV 10-2203-RLH (GWF)

MEMORANDUM OF POINTS
 AND AUTHORITIES IN
 SUPPORT OF A
 PRELIMINARY INJUNCTION
 AND EXPEDITED HEARING
 THEREON

TABLE OF CONTENTS

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

I. SUMMARY AND OVERVIEW 1

II. DEFENDANTS’ BUSINESS PRACTICES 3

A. *Defendants Have Made Deceptive Claims Regarding Government Grants In Order to Obtain Consumers’ Billing Information* 5

1. Defendants Have Misrepresented That Government Grants Are Available For Individuals to Pay Personal Expenses 5

2. Defendants Have Misrepresented That Consumers Using Their Grant Program Are Likely to Find Government Grants to Pay Personal Expenses 9

3. Defendants Have Misrepresented That Consumers Are Likely to Obtain Grants Such as Those Obtained by Individuals in the Testimonials 11

B. *Defendants Have Made Deceptive Claims About Their Make-Money Products in Order to Obtain Consumers’ Billing Information* 13

C. *Defendants Have Tricked Consumers Into Providing Their Billing Information by Promising That Their Offers Are Free or Risk-Free* 15

D. *Defendants Have Failed to Disclose That Consumers Who Provide Their Billing Information Will Be Enrolled in High-Cost Negative Option Plans With Hefty Monthly Charges* 17

E. *Defendants Foist Their Programs on Unsuspecting Consumers* 20

F. *Defendants Evade Detection by Using Shell Companies, Threatening Consumers, and Flooding the Internet With Positive Reviews* 22

1. Defendants Use Subterfuge to Obtain New Merchant Accounts ... 23

a. *The VISA and MasterCard Chargeback Monitoring Programs.*23

b. *Defendants Enter the Monitoring Programs, Pay Fines, and Lose Merchant Accounts* 24

c. *Defendants Embark on a Scheme to Evade the VISA and MasterCard Monitoring Systems and Obtain New Merchant Accounts by Creating Shell Companies to Act as Fronts* 25

2. Defendants Created and Posted Phony Positive Reviews on the Internet 27

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. **Defendants Threaten Consumers Who Seek Chargebacks** 28

III. **JEREMY JOHNSON AND HIS NINE LIEUTENANTS HAVE OPERATED THE I WORKS ENTERPRISE THROUGH 61 CORPORATIONS** 29

A. *The I Works Enterprise Has Operated Through Ten Interrelated Defendant Companies* 29

- 1. **I Works, Inc.** 29
- 2. **Antho Holdings Corp.** 30
- 3. **Cloud Nine Marketing, Inc.** 31
- 4. **CPA Upsell, Inc.** 32
- 5. **Elite Debit, Inc.** 33
- 6. **Employee Plus, Inc** 33
- 7. **Internet Economy, Inc** 34
- 8. **Market Funding Solutions, Inc.** 35
- 9. **Network Agenda, LLC.** 35
- 10. **Success Marketing, Inc.** 37

B. *Since 2009, I Works Has Evaded Chargeback Monitoring Programs By Operating through 51 Defendant Shell Companies* 37

C. *The Corporate Defendants Have Functioned as a Common Enterprise* 38

D. *The Individual Defendants Run the I Works Enterprise* 40

- 1. **Jeremy Johnson** 40
- 2. **Duane Fielding.** 41
- 3. **Andy Johnson** 42
- 4. **Loyd Johnston** 43
- 5. **Scott Leavitt** 44
- 6. **Scott Muir** 45
- 7. **Bryce Payne** 46

1 8. **Kevin Pilon** 47

2 9. **Ryan Riddle** 48

3 10. **Terrason Spinks** 49

4 **IV. ARGUMENT: THE REQUESTED RELIEF IS WARRANTED** 49

5 **A. *The Court is Authorized to Grant the Requested Injunctive Relief*** 50

6 **B. *A Preliminary Injunction Against Defendants is Warranted.*** 51

7 **1. The FTC is Likely to Succeed in Showing that Defendants’ Deceptive**
8 **Misrepresentations and Omissions Violate Section 5(a) of the FTC**
9 **Act** 52

10 **a. *Defendants Have Made Deceptive Claims About Their Grant***
11 ***Products*** 53

12 **b. *Defendants Have Misrepresented That Consumers Are Likely to***
13 ***Earn Substantial Income by Using Defendants’ Make-Money***
14 ***Products*** 55

15 **c. *Defendants Have Misrepresented That Their Offers Are Free or***
16 ***Risk-Free*** 57

17 **d. *Defendants Have Failed to Disclose, or Disclose Adequately,***
18 ***the Material Terms of Their Offers.*** 57

19 **e. *Defendants Have Misrepresented That the Positive Reviews They***
20 ***Created and Posted on the Internet Reflect the Opinions of***
21 ***Unbiased Consumers and They Also Have Failed to Disclose***
22 ***That They Created and Posted the Reviews.***..... 60

23 **f. *Defendants Have Engaged in Unfair Billing Practices in***
24 ***Violation of Section 5(a) of the FTC Act*** 60

25 **g. *Defendants Have Violated EFTA and Regulation E*** 62

26 **2. The Equities Weigh Heavily in Favor of the Requested Injunctive**
27 **Relief** 63

28 **3. The Individual Defendants Are Personally Liable.** 65

29 **C. *An Asset Freeze as to the Corporate Defendants and Defendant Jeremy***
30 ***Johnson, Appointment of a Receiver, and Expedited Discovery Are Needed to***
31 ***Preserve Effective Final Relief*** 66

32 **1. A Freeze on the Assets of the Corporate Defendants and Jeremy**
33 **Johnson is Justified and Necessary** 67

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

2. **The Appointment of a Receiver is Necessary** 69

3. **Expedited Asset Discovery is Necessary and Appropriate** 69

V. **CONCLUSION** 70

TABLE OF AUTHORITIES

FEDERAL CASES

American Fin. Servs. v. FTC, 767 F.2d 957 (D.C. Cir. 1985) 61

American Home Prods. Corp. v. FTC, 695 F.2d 681 (3d Cir. 1982) 55

CFTC v. Hunt, 591 F.2d 1211 (7th Cir. 1979) 51

CFTC v. Wall Street Underground, Inc., 2003 U.S. Dist. LEXIS 15865 (D. Kan. 2003) 38

Delaware Watch Co. v. FTC, 332 F.2d 745 (2d Cir. 1964) 38

FTC v. Affordable Media, 179 F.3d 1228 (9th Cir. 1999) 52

FTC v. Amy Travel Serv., Inc., 875 F.2d 564 (7th Cir. 1989) 65

FTC v. Brown & Williamson Tobacco Corp., 778 F.2d 35 (D.C. Cir. 1985) 58

FTC v. Cyberspace.com, LLC, 453 F.3d 1196 (9th Cir. 2006) 53, 55, 58

FTC v. Direct Mktg. Concepts, Inc., 648 F. Supp. 2d 202 (D. Mass. 2009)
aff'd 624 F.3d 1 (1st Cir. 2010) 51, 58

FTC v. Febre, 1996 WL 396117 (N.D. Ill. 1996), *adopted by*, 1996-2 Trade Cases ¶ 71,580
(N.D. Ill. 1996), *aff'd*, 128 F.3d 530 (7th Cir. 1997) 56

FTC v. Figgie Int'l, 994 F.2d 595 (9th Cir. 1993) 53

FTC v. Five-Star Auto Club, Inc., 97 F. Supp. 2d 502 (S.D.N.Y. 2000) 51

FTC v. Gill, 265 F.3d 944 (9th Cir. 2001) 52

FTC v. Gill, 71 F. Supp. 2d 1030 (C.D. Cal. 1999) 58

FTC v. Global Mktg. Group, Inc., 594 F. Supp. 2d 1281 (M.D. Fla. 2008) 61

FTC v. H.N. Singer, Inc., 668 F.2d 1107 (9th Cir. 1982) 50, 51, 67

FTC v. Inc21, 688 F. Supp. 2d 927, 936 (C.D. Ca. 2010) 52

FTC v. J.K. Publications, Inc., 99 F. Supp. 2d 1176 (C.D. Cal. 2000) 38, 61

FTC v. Jordan Ashley, Inc., 1994 WL 200775 (S.D. Fla. 1994) 38, 39

FTC v. Kennedy, 574 F. Supp. 2d 714 (S.D. Tex. 2008) 61

FTC v. Jeremy Johnson, et al.
Memo in Support of Motion for Preliminary Injunction

1 *FTC v. Medicor, LLC*, 217 F. Supp. 2d 1048 (C.D. Cal. 2002) 56

2 *FTC v. Minuteman*, 53 F. Supp. 2d 248 (E.D.N.Y. 1998) 55

3 *FTC v. Neovi, Inc.*, 604 F.3d 1150 (9th Cir. 2010) 61

4 *FTC v. Network Services Depot, Inc.*, 617 F. 3d 1127 (9th Cir. 2010) 65, 66

5 *FTC v. Pantron I Corp.*, 33 F.3d 1088 (9th Cir. 1994) 52

6 *FTC v. Porter & Deitsch*, 605 F.2d 294 (7th Cir. 1979) 58

7 *FTC v. Publ’g Clearing House, Inc.*, 104 F.3d 1168 (9th Cir. 1997) 65, 66

8 *FTC v. Security Rare Coin & Bullion Corp.*, 1989 U.S. Dist. LEXIS 15958, 1989-2 Trade Cas.
 (CCH) P 68,807 (D. Minn.), *aff’d*, 931 F.2d 1312 (8th Cir. 1991) 55, 56

9 *FTC v. Sharp*, 782 F. Supp. 1445 (D. Nev. 1991) 66

10 *FTC v. Stefanchik*, 559 F.3d 924 (9th Cir. 2009) 52

11 *FTC v. Tashman*, 318 F.3d 1273 (11th Cir. 2003) 53, 56

12 *FTC v. Think Achievement*, 144 F. Supp. 2d 993 (N.D. Ind. 2000), *rev’d in part on*
 13 *other grounds*, 312 F.3d 259 (7th Cir. 2002) 38, 51

14 *FTC v. USA Beverages., Inc.*, 2005 WL 5654219 (S.D. Fla. 2005) 67, 69

15 *FTC v. U.S. Oil & Gas Corp.*, 748 F.2d 1431 (11th Cir. 1984) 50

16 *FTC v. Wolf*, 1996 WL 812940 (S.D.Fla. 1996) 38, 39

17 *FTC v. World Wide Factors, Ltd.*, 882 F.2d 344 (9th Cir. 1989) 52, 63

18 *Johnson v. Couturier*, 572 F.3d 1067 (9th Cir. 2009) 67

19 *Orkin Exterminating Co., Inc. v. FTC*, 849 F.2d 1354 (11th Cir. 1988) 61

20 *Removatron Intern. Corp. v. FTC*, 884 F.2d 1489 (1st Cir. 1989) 58

21 *SEC v. First Fin. Group of Tex.*, 645 F.2d 429 (5th Cir. 1981) 69

22 *SEC v. Keller Corp.*, 323 F.2d 397 (7th Cir. 1963) 69

23 *SEC v. Manor Nursing Ctrs., Inc.*, 458 F.2d 1082 (2d Cir. 1972) 67

24 *Simeon Mgmt. Corp. v. FTC*, 579 F.2d 1137 (9th Cir. 1978) 58

25 *Standard Educus, Inc. v. FTC*, 475 F.2d 401 (D.C. Cir.), *cert. denied*, 414 U.S. 828 (1973) 66

1 *Sunshine Art Studios v. FTC*, 481 F.2d 1171 (1st Cir. 1973) 38

2 *United States v. Diapulse Corp. of America*, 457 F.2d 25 (2d Cir. 1972) 63

3 *United States v. Laerdal Mfg.*, 73 F.3d 852 (9th Cir. 1995) 51

4 *United States v. W.T. Grant Co.*, 345 U.S. 629 (1953) 51

5 **FEDERAL STATUTES**

6 15 U.S.C. § 45(a) 3

7 15 U.S.C. § 45(n) 61

8 15 U.S.C. § 53(b) 50

9 15 U.S.C. § 1693e(a) 3, 62

10

11 **FEDERAL REGULATIONS**

12 12 C.F.R. § 205.10(b) 3, 62

13 **OTHER AUTHORITIES**

14 Fed. R. Civ. P. 1, 26(b)(2)(A), 30(a)(2), 33(a)(1) and 34(b)(2)(A) 50

15 Fed. R. Civ. P. 1, 26(d), 34(b) 70

16 *FTC Policy Statement on Deception*, 103 F.T.C. 174 (appended to *In re Cliffdale Associates, Inc.*,
103 F.T.C. 110 (1984)) 52, 56

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1 **I. SUMMARY AND OVERVIEW.**

2 Plaintiff, the Federal Trade Commission (“FTC”), moves this Court for a preliminary
 3 injunction to halt, as soon as this matter can be heard, a massive Internet-based scam that has
 4 caused consumers to lose more than \$275 million since its inception in 2006. The scam, operated
 5 by 10 individuals through 61 companies that comprise the I Works Enterprise (collectively the I
 6 Works Enterprise and 10 individual defendants are referred to as “Defendants”), has tricked
 7 consumers into providing their credit and debit card information and has repeatedly billed these
 8 consumers for Internet-based memberships they never agreed to join. At its height, the scheme
 9 was ensnaring 15,000 consumers per day. Defendant Jeremy Johnson, the mastermind behind the
 10 I Works Enterprise, received \$48 million from his well-oiled fraud machine.¹

11 Through their own Internet banner ads and spam email, as well as hyperlinks from their
 12 cadre of affiliate marketers, defendants lure consumers to their numerous websites. Whether
 13 hawking products that supposedly provide consumers with access to government grants to pay
 14 personal expenses or pitching supposedly lucrative money-making opportunities, defendants’
 15 *modus operandus* is the same. Defendants lie about the benefits of these products and then,
 16 stating that their products are “free” or “risk-free,” convince consumers to provide their credit and
 17 debit card numbers (“billing information”) to pay a nominal shipping and handling fee (usually
 18 \$1.99) to receive an allegedly free CD and access to an online membership site.

19
 20
 21 ¹ In support of its motion for a preliminary injunction, the FTC is submitting 18 volumes of exhibits.
 22 Included in the exhibits are declarations from: (1) VISA and MasterCard representatives; (2) several grant experts
 23 including defendants’ own grant consultant; (3) two key former employees of Defendants I Works, Inc. (hereinafter
 24 “I Works”) (Tracy Kramm and Devan Partridge); (4) postal inspectors and representatives from five Better Business
 25 Bureaus; (5) FTC personnel summarizing information from defendants’ business records and from banks the I
 26 Works Enterprise used; and (6) consumer victims. Also included in the exhibits are interrogatory responses by
 27 defendants I Works and its sole owner, defendant Jeremy Johnson [Exs. 3 - 15], spreadsheets and documents
 28 submitted as part of interrogatory responses [Ex. 16], documents submitted in response to document production
 requests [Ex. 17], and defendants’ emails [Ex. 18]. Exhibits that are declarations are cited as: [*name of declarant*],
 Ex. #. Other exhibits are cited with the exhibit number and, where marked, the applicable bates number. For
 example, Ex. 16, IW *** indicates that the I Works-produced document will be found in Exhibit 16 at p. ***.
 Citations to exhibits that are placed in the middle of paragraphs are placed in brackets.

1 Defendants, however, do much more with consumers' billing information. They have
2 used it to bilk more than \$275 million from consumers they enrolled in 10.7 million memberships
3 by charging unauthorized initial fees as high as \$189, and unauthorized recurring monthly
4 charges of \$59.95 or more, for the advertised government grant or money-making product (the
5 "core" product). But that is not all. They have also charged consumers for defendants' "Forced
6 Upsells," which are other products defendants bundle with their core product on their own sites,
7 as well as with core products advertised on the sites of their marketing partners.

8 At times, defendants' sites have included small print notices that consumers will be
9 enrolled in continuity programs with a negative option feature ("negative option plans") in which
10 the consumers' failure to cancel their "memberships" within a short period of time (sometimes as
11 few as three days) will result in high initial and monthly recurring fees. Even when such small
12 notices have appeared, they have failed to counter the large print claims regarding the "free" or
13 "risk-free" nature of defendants' offers, leaving consumers with the net impression that they are
14 entering into a limited, cost-free (or low cost), and risk-free transaction – not a transaction that
15 will result in hundreds of dollars in charges to their credit cards or debits to their bank accounts.

16 Eventually, some consumers realize that they are being charged for products and services
17 that they never knowingly agreed to receive. Some of these consumers obtain refunds directly
18 from defendants. Others seek chargebacks through their credit card companies. Defendants'
19 astronomical chargeback numbers (500,000 chargebacks according to defendants' own records)
20 landed defendants in VISA and MasterCard monitoring programs. These programs required the
21 defendants to pay millions of dollars in chargeback fines, and in some cases led banks to
22 terminate defendants' merchants accounts through which defendants processed the charges and
23 debits that caused the more than \$275 million in unreimbursed consumer injury and lined Jeremy
24 Johnson's pockets with \$48 million.

25 Rather than modify their business practices, however, defendants adopted strategies that
26 allowed their fraud machine to continue reaping millions of dollars from unsuspecting consumers.

1 They blanketed the Internet with positive articles and reviews to counter negative publicity
2 without disclosing that they were the source of the reviews. They threatened to place consumers
3 who sought chargebacks on an Internet blacklist defendants operate. They created no less than 51
4 shell companies, and used dummy sales sites that consumers never saw, to trick VISA,
5 MasterCard, and the banks into allowing them to obtain new merchant accounts.

6 Defendants' fraudulent business practices violate Section 5(a) of the Federal Trade
7 Commission Act ("FTC Act"), 15 U.S.C. § 45(a), which prohibits deceptive or unfair acts and
8 practices in or affecting commerce, and both Section 907(a) of the Electronic Fund Transfer Act
9 ("EFTA"), 15 U.S.C. § 1693e(a), and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b),
10 which together protect consumers from the very type of recurring bank debit so profitably
11 employed by defendants. To ensure that defendants cause no further harm during the pendency
12 of the litigation and that the \$275 million stolen from consumers is available to pay restitution at
13 the conclusion of the case, the FTC hereby moves for entry of a preliminary injunction that, *inter*
14 *alia*, prohibits defendants from engaging in unfair and deceptive practices, freezes the assets of
15 the 61 corporate defendants and defendant Jeremy Johnson, and places the tangled mass of
16 corporate defendants under the control of a receiver.

17 Section II of this Memorandum describes defendants' business practices. Section III
18 explains the roles played by the various corporate and individual defendants in the scheme.
19 Section IV sets forth the necessity for a preliminary injunction that, *inter alia*: (1) prevents
20 defendants from operating their scam during the pendency of the litigation; (2) freezes the assets
21 of the corporate defendants and Jeremy Johnson; and (3) places the corporate defendants under
22 the control of a receiver.

23 **II. DEFENDANTS' BUSINESS PRACTICES.**

24 Consumers' first exposure to defendants comes via an Internet advertisement, blog
25 posting, or spam email. In some instances, the advertisement or email comes directly from the
26 defendants. In other instances, consumers may respond to a banner ad or blog posting on an

1 independent website, operated by a third party known as an affiliate, that links to defendants'
2 landing and order pages hosted by a network affiliate broker ("affiliate broker").² Defendants
3 have contracted with at least three such affiliate brokers, each with hundreds of affiliates.
4 Defendants contractually maintained complete control over the content of their websites on the
5 brokers' servers and routinely reviewed and approved modifications to the content made by their
6 affiliate brokers.³

7 Whether lured by defendants' advertising or that of an affiliate, consumers landed at
8 defendants' own websites or those hosted by one of their three network affiliate brokers. Either
9 way, defendants presented consumers with lies about federal grants for paying personal expenses
10 or money-making opportunities that are available for "free" or at no risk, duped them into
11 providing their billing information, and then billed them for products consumers never knowingly
12 agreed to purchase, including defendants' Forced Upsells automatically bundled with defendants'
13 core grant and make-money products.

14 Section A describes defendants' false claims regarding the availability and likelihood of
15 receiving government grants for personal expenses. Section B sets forth defendants' false claims

16
17 ² As explained in greater detail *infra*, consumers initially arrive at one of defendants' landing pages that
18 includes false claims and no information about the negative option aspect of defendants' offer. Consumers complete
19 a form on the landing page and arrive at an order page, which repeats the false claims and includes a form where
20 consumers enter their billing information and hit a "Submit" button. By hitting the submit button, consumers are
21 agreeing to pay the nominal shipping fee and are unwittingly enrolled in defendants core product and in defendants
22 forced upsells.

23 Defendants sell to telemarketers and lead brokers information from consumers who enter their name and
24 other data but do not hit the Submit button. *I Works CID Response*, Ex. 7, pp. 13-19 (Interrogatory 46).

25 ³ See *infra* note 43. Defendants' employees routinely reviewed defendants' own websites, the sites hosted
26 by their network brokers, and those of their marketing partners. Defendants' employees noted on these "Website
27 Reviews" problems with the landing and order pages, such as false claims, unsubstantiated claims, bogus
28 testimonials, and missing or incomplete disclosures. [*Declaration of former employee Tracey Kramm*, Ex. 30 ¶¶ 45-
59]. An FTC Investigator has analyzed in detail defendants' Website Reviews. [*See generally Jacobson II*, Ex. 35].
Although these Website Reviews frequently identified deceptive claims, defendants failed to take measures to stop
the false claims or to provide restitution to consumers who purchased defendants' programs via such deceptive
websites. Indeed, the sham nature of their review of the sites is made clear by defendants' failure to maintain any
copies of the websites that were reviewed, which made it impossible for them to verify if corrective action had been
taken.

1 for their money-making offers. Section C explains why defendants' "Free" and "Risk-Free"
 2 claims are false. Section D shows how defendants hide the terms of their negative option
 3 programs. Section E addresses defendants' use of marketing partners to foist defendants' forced
 4 upsells on unsuspecting consumers who sign up for a marketing partner's core product. And,
 5 Section F explains the underhanded tactics defendants have used to perpetuate their scam: they
 6 lied to the banks in order to get new merchant accounts; they threatened to blacklist consumers
 7 who exercised their chargeback rights; and they posted positive reviews to drown out the chorus
 8 of complaints about their deceptive sales practices.

9 A. *Defendants Have Made Deceptive Claims Regarding Government Grants In*
 10 *Order to Obtain Consumers' Billing Information.*

11 Defendants' business records from their customer service database show that defendants
 12 enrolled more than 2.8 million consumers in grant memberships using the deceptive sales
 13 practices described herein.⁴ *Tyndall*, Ex. 37 ¶ 43(a).

14 1. Defendants Have Misrepresented That Government Grants Are Available
 15 For Individuals to Pay Personal Expenses.

16 Defendants have constantly changed the graphics and appearance of their grant-related
 17 websites, as well as the name of the grant product being marketed.⁵ Regardless of the website
 18 content or the product name, defendants' grant sites routinely have claimed that government
 19 grants are generally available for paying personal expenses. For example, the site touting *Grant*
 20 *Writer Pro* [Ex.121 A-D] proclaims in large print "The SECRET Behind Government Cash!" and
 21 announces that the "Government gives away BILLIONS each year!" The site features a

22 ⁴ In response to the FTC's CIDs [Exs. 1 & 2], I Works provided access to its live customer service
 23 database, from which FTC employees Reeve Tyndall and Samuel Jacobson created numerous reports that are
 24 exhibits or attachments to the declarations by Mr. Jacobson (Exs. 34 & 35) and Mr. Tyndall (Ex. 37). The customer
 25 service database records every sale transaction processed by I Works, and associated information such as the name
 of the core product and Upsell, number of recurring charges for the core products and Upsells, refunds, chargebacks,
 telephone complaints, and usage of the membership site.

26 ⁵ *Declaration of FTC Investigator Reeve Tyndall* ("Tyndall"), Ex. 37 ¶ 48(b) (grant product sold under
 more than 11 different names).

1 testimonial from a smiling woman who “replaced my kitchen and bathroom faucets, bought a new
2 vanity, fixed the pipes under my house, and paid my power bill.”

3 Likewise, a site pitching a program called *Grant Master* [Ex. 122] announces that “the
4 Government allocates Billions each year to be granted to American Citizens just like you!” and
5 lists “some of the Government Grants that have been funded” as “\$9,500 to pay medical bills,”
6 “\$5,000 to start [a] home business,” and “\$10,000 free healthcare.”⁶ A different version of the
7 *Grant Master* site includes a large banner with the text “The Amazing Lost Money Secrets of the
8 U.S. Government,” above which is a yellow sticky-note listing “\$2,877 to pay your medical
9 bills,” “\$2,000 / month to live on in order to get your own business off the ground,” “Up to 75%
10 of your rent paid by Uncle Sam if you qualify and know how to apply,” “\$4,000 cash to pay your
11 mortgage,” and “\$5,000 free money to fix up your home.” Ex. 125, p. 2.⁷

12 A website hawking *Grant Funding Solutions* features the two presidential candidates,
13 now President Obama and Senator McCain, and references “FREE Government Funding” that
14 “[y]ou can use . . . to: Start a Business, Get Your Education, Buy Equipment, Expand Your
15 Current Venture, Purchase Real Estate, and Much, Much MORE!” [*Grant Funding Solutions*,
16 Ex. 124, pp. 1-2].⁸ The offer for *Government Grant Solutions* [Ex. 127] depicts President Obama,
17 pitching a stimulus plan “for people in need of government aid and free federal money.”⁹

18
19 ⁶ The site for *Federal Grant Connection* references “some of the Government Grants that have been
20 funded,” as “\$9,500 to pay medical bills,” “\$5,000 to start a home-based business,” “\$50,000 for college,” and
21 “\$10,000 for free healthcare!” Ex. 119, pp. 3-4.

22 ⁷ The offer entitled *Government Funding Success* touts “FREE Government Funding” and includes as
23 examples of the “Billions of dollars . . . given away each year” the same sticky-note with the same grants for
24 personal needs as in *Grant Master*. Cf. *Government Funding Success*, Ex. 126, pp. 1-2 with *Grant Master*, Ex. 125,
25 p. 2.

26 ⁸ Other offers tell consumers they can use the “FREE Government Funding” to Start a Business, Expand
27 Your Current Venture, Purchase Real Estate, Buy Equipment, Pay Medical Bills, Start a Home Business, and For
28 Free Healthcare. *Grant Doctor*, Ex. 117, p. 5; *Grant Seeker Secrets*, Ex. 120, pp. 1-2.

⁹ Defendants also use streaming videos to hype their grant product “which reveals how to get available
(continued...) ”

1 Spam emails sent by defendants and/or their agents mirror these claims. An email with
 2 the subject “Pres Obama wants to give you Free Cash” refers to grants “for people who need
 3 assistance paying for bills, buying a home, starting their own business, going to school, or even
 4 helping raise their children.” [Ex. 140B].¹⁰ Ready-to-send emails that defendants provide to
 5 affiliates through the I Works Media Center tout the availability of government grants to pay
 6 personal expenses. For example, one email proclaims that “Every year, the Government gives
 7 away MILLIONS of dollars to people JUST LIKE YOU! Need FAST CASH to start a business,
 8 attend college, or pay off bills?”¹¹

9 Contrary to defendants’ representations on the grant-related sites and in emails, the claim
 10 that government grants are generally available to individuals to pay personal expenses is false as
 11 shown by declarations from: (1) Donna Davis, the Program Manager of the Catalog for Domestic
 12 Assistance (“CFDA”), which is a listing of all Federal Domestic Assistance Programs, including
 13 grants (“*Davis*” Ex. 54); (2) David Bauer, an expert in the field of resource development (*i.e.*,
 14 seeking and applying for grants) (“*Bauer*” Ex. 40); and (3) Dr. John Porter, defendants’ own grant
 15 consultant since 2006 (“*Porter*” Ex. 100).¹² These declarations show that government grants to
 16
 17

18 ⁹(...continued)

19 grants from the U.S. Government.” The video informs consumers they may qualify “for thousands of dollars to pay
 20 your mortgage. Or even find money to live on while you start a business. You can receive financial assistance for
 21 medical bills” *Grant Gold*, Ex. 123B, p. 4.

22 ¹⁰ Other emails make similar express claims. An email with the subject “FREE CASH to help you get
 23 started” mentions the “government could have a check to you in as little as two weeks” in order to “Stop
 24 Foreclosures,” “Get Your Degree,” “Cover Business Expenses,” and “Pay Down Debt.” Ex. 140A; *see also* Exs.
 25 140C-E.

26 ¹¹ Ex. 141A. Another email states that consumers can use “FREE MONEY dolled [*sic*] out by 1,400
 27 government agencies” to “buy a new home, car, pay for college, medical bills, groceries, bills, and more.” Ex.
 28 141B; *see also* Exs. 141C-E.

¹² Dr. Porter first met with defendants Ryan Riddle, Bryce Payne, and other I Works employees in May
 2006 at I Works’ headquarters in St. George, Utah. *Porter*, Ex. 100 ¶ 7.

FTC v. Jeremy Johnson, et al.

Memo in Support of Motion for Preliminary Injunction

1 individuals are almost non-existent.¹³ As set forth on the Grants.gov website, few government
 2 grants are available to individuals “**and none of them are available for personal assistance.**”
 3 [*Bauer*, Ex. 40 ¶ 29]. This is because all government grants are restricted to those applicants who
 4 will use the funds to provide support to accomplish a public purpose, as set forth in a federal
 5 statute.¹⁴ Additionally, few government grants are available for businesses, even small
 6 businesses, involved in profit-making projects. Instead, the bulk of government grants are
 7 awarded to colleges, universities, and other nonprofit organizations.¹⁵

8 Defendants knew that their representations about the availability of government grants
 9 are false because their own consultant repeatedly told them so. It was clear to Dr. Porter that
 10 I Works’s target audience was individuals, not businesses, and he told I Works “that virtually
 11 none of its customers would qualify for a government grant.” [*Porter*, Ex. 100 ¶ 16]. Dr. Porter
 12 also informed I Works that “telling individuals that there are grants to pay off their credit cards,
 13 mortgage and student loans, is very misleading because there are very limited and restrictive
 14 government grants for such purposes.”¹⁶ As Dr. Porter further states: “To the extent that I Works
 15 was making claims on their grant membership site about the availability of government grants for
 16 individuals to pay personal expenses, such as paying direct personal medical expenses, getting out
 17 of debt, and paying for direct personal emergency expenses, those claims are misleading.”

18 *Porter*, Ex. 100 ¶ 20.

20 ¹³ *Davis*, Ex. 54 ¶ 10 (“Only a very limited number of federal assistance programs offer grants directly to
 21 individuals”).

22 ¹⁴ *Davis*, Ex. 54 ¶ 11 (“All grants that are available through assistance programs are restricted to those
 23 applicants who will use the funds to provide support or stimulation to accomplish a public purpose, as set forth in a
 federal statute.”); *Bauer*, Ex. 40 ¶¶ 25-26.

24 ¹⁵ *Bauer*, Ex. 40 ¶ 29.

25 ¹⁶ *Porter*, Ex. 100 ¶ 16. Dr. Porter recommended that I Works clearly state on its grant membership site
 26 that grants for individuals are primarily for scholarships, fellowships, and research, and not to compensate for
 personal debt, but he never saw any of this language included on the membership site. *Porter*, Ex. 100 ¶ 20.

27 *FTC v. Jeremy Johnson, et al.*

1 Moreover, defendants' grant membership site shows that defendants knew that there are
 2 no government grants for personal needs. For instance, defendants' grant membership site states
 3 that "there are no federal grants that will buy your groceries or pay your mortgage." *Bauer*, Ex.
 4 40 ¶ 36. Defendants' program also states that "grants that are open to individuals do not include
 5 money for personal expenses such as bills" *Bauer*, Ex. 40 ¶ 46(c).

6 2. Defendants Have Misrepresented That Consumers Using Their Grant
 7 Program Are Likely to Find Government Grants to Pay Personal
 8 Expenses.

9 Defendants not only represent that government grants are available to pay personal
 10 expenses, they also represent that consumers who use their materials are *likely* to find such
 11 grants.¹⁷ For instance, the website marketing the *Grant Writer Pro* program invites consumers to
 12 "Locate & apply for cash using our FREE software! Finding Government grant money has never
 13 been easier or quicker!" and "Our FREE software reveals how you can get your share of Federal
 14 Money." According to this site "OVER HALF A MILLION MEMBERS HAVE FOUND
 15 GRANTS!" [Ex. 121A-D, p. 1]. The site also includes the testimonial from the smiling woman
 16 who replaced her kitchen and bathroom faucets, bought a new vanity, fixed some pipes, and paid
 17 her power bill. Another site featuring the two presidential candidates states in bold print: "Get
 18 our FREE Grant Funding Solutions kit. Find the Grant that's right for you. Receive your Grant
 19 Money!!!" [*Grant Funding Solutions*, Ex. 124, p. 1]. The same site claims that "our FREE
 20 SOFTWARE contains everything you need to know about how and where to access your grant
 21 money . . . you'll also have all the tools and resources you need to apply for this money with all
 22 the clutter cut out. . . . Learn step-by-step instructions for securing your first check." *Grant*
 23 *Funding Solutions*, Ex. 124, p. 3.¹⁸

24 ¹⁷ Defendants also make this claim via consumer testimonials. *See* Section II(A)(3), below.

25 ¹⁸ *Grant Funding Solutions* tells consumers they can use the government money to pay medical bills, start
 26 a home-based business, and get free healthcare. Other sites hawking defendants' grant product make the same
 (continued...)

1 Defendants' claim that consumers are *likely to* find and obtain government grants for
 2 personal needs using defendants' grant program is false. First, as explained above, there are few,
 3 if any, government grants to pay personal expenses. Therefore, if government grants to pay such
 4 expenses are not available, using defendants' grant program cannot make it likely that consumers
 5 will find and obtain such grants.¹⁹ Second, Mr. Bauer, using defendant's grant program, found no
 6 government grants to pay personal expenses listed on defendants' membership site. *Bauer*, Ex.
 7 40 ¶¶ 46, 51 (finding no government grants and only two private grants).

8 As noted in the previous Section, defendants knew that their grant program is of little or
 9 no use to a consumer looking for a *government* grant to pay personal expenses. Defendants' own
 10 grant consultant "repeatedly" told I Works that its grant program had inadequate information
 11 about government grants for individuals for personal expenses. Dr. Porter told I Works "that it
 12 would be difficult for consumers to use its CD and the associated website to find and obtain
 13 government grants for personal expenses." [*Porter*, Ex. 100 ¶ 19]. According to Dr. Porter,
 14 "[t]he grant membership site does not show consumers how to successfully apply for grants. It
 15
 16

17 ¹⁸(...continued)

18 claim. An offer for *Government Money Secrets* promises "Our Grant Program will show you the grants that are
 19 available and *HOW AND WHERE TO APPLY*." [Ex. 116, p. 1; *see also Fast Grants*, Ex. 118, p. 1]. A site touting
 20 *Federal Grant Connection* tells consumers to "Use this CD to Get *YOUR* Cash." [Ex. 119, p. 5]. The site for *Grant*
 21 *Toolbox* [Ex. 128, p. 1] boldly states "Our Free Grant Network software was created to help average people just like
 22 you tap into Uncle Sam's billions."

23 ¹⁹ Ms. Davis searched the CFDA, which is the federal government's comprehensive database for all
 24 domestic assistance programs, using search terms that allowed her to look for any assistance program offering grants
 25 for personal expenses, paying off debt, paying credit card or medical bills, paying mortgages, fixing up a car, or
 26 buying Christmas presents. Ms. Davis found virtually no government grants for the average consumer to use for
 27 personal expenses. [*Davis*, Ex. 54 ¶ 15]. And those that she found were extremely restricted in nature and clearly of
 28 no use to the average consumer seeking a government grant to pay for personal expenses. For instance, Ms. Davis
 found the Longshore and Harbor Workers' Compensation Program, which provides compensation for disability or
 death, but only longshore workers, harbor workers, and certain other employees engaged in maritime employment,
 are eligible. [*Davis*, Ex. 54 ¶ 15(e)(iii)]. She found one program to compensate employees involved in the testing or
 production of nuclear weapons and their survivors. [*Davis*, Ex. 54 ¶ 15(e)(iv)]. And she found one program that
 might provide financial assistance to repair a car, but only if the vehicle had been damaged by a Presidentially-
 declared disaster. *Davis*, Ex. 54 ¶ 15(f)(iii).

27 *FTC v. Jeremy Johnson, et al.*

28 Memo in Support of Motion for Preliminary Injunction

1 does not provide the tools or resources for an individual to be competitive and successful in the
2 grant application process.”²⁰

3 To the extent that I Works was purportedly providing information on *private* grants for
4 individuals to use for personal expenses, Dr. Porter repeatedly told I Works “that these were small
5 grants with restrictive criteria. Very few consumers would be able to qualify for the foundation
6 and private grants I Works was providing information on.” [*Porter*, Ex. 100 ¶ 19]. Indeed,
7 defendants themselves recognized this very fact; their own grant program states “[n]early all
8 private foundation funding is targeted to non-profit organizations” *Bauer*, Ex. 40 ¶ 47(c).

9 3. Defendants Have Misrepresented That Consumers Are Likely to Obtain
10 Grants Such as Those Obtained by Individuals in the Testimonials.

11 To entice consumers, defendants’ grant sites feature testimonials from happy consumers
12 describing how they used their money.²¹ Some sites refer exclusively to *government* grants. For
13 instance, the site touting the *Grant Writer Pro* program depicts a smiling woman who claims to
14 have used her grant to replace her kitchen and bathroom faucets and pay her power bill. [Ex. 121
15 A-D, p. 1]. Similarly, the site pitching the *Free Grant Toolbox* program represents that \$10
16 billion from the government’s “\$700 Billion Dollar Bailout” will go to “people just like you this
17 month” and includes two testimonials as “[p]roof our system works” -- Carol K states she
18 “received a check in [her] hand for \$100,000” in about two weeks, and Delray Stewart states she
19

20
21 ²⁰ *Porter*, Ex. 100 ¶ 18. In addition, Mr. Bauer also found that defendants’ grant program was of little use
22 in helping consumers locate, apply for, and obtain government grants to pay personal expenses. [*Bauer*, Ex. 40 ¶¶
23 36, 39, 42 - 45]. Defendants’ grant program includes a sample application for the Acme Youth Center, and a partial
24 grant application for a senior wellness center, neither of which is of any use to an individual seeking a government
or even a private grant to pay for personal expenses. [*Bauer*, Ex. 40 ¶¶ 43(d), 52]. Mr. Bauer found no sample
application for an individual to follow who is seeking a grant to pay personal expenses. Ex. 40 ¶ 43(a);
¶ 52(c).

25 ²¹ Defendants also include testimonials in their spam emails. For example, a spam email with the subject
26 line “Uncle Sam could give you up to \$25,000 open to see how” includes a testimonial from Silvia Henriquez who
was terrified because she could not pay her electric bill and put food on the table for her children. She applied for
funding and received \$500 a few weeks later. Ex. 140D, p. 2.

1 used funds “to get a reprieve from foreclosure on [her] home.” [Ex. 128, p. 1].²² Other sites
 2 include isolated references to private grants amidst the torrent of claims about the availability of
 3 government grants.²³

4 Defendants’ representation that the individuals in the testimonials received government
 5 grants and that therefore consumers who use defendants’ grant product are also likely to receive
 6 government grants is false. Not one single individual featured in the testimonials received a
 7 government grant. Further, none of the individuals received private grants -- except from one
 8 single source -- a nonprofit entity funded in whole or in part by defendants.²⁴

9 Moreover, defendants’ claim that the individuals in the testimonials received *private*
 10 grants and therefore consumers who use defendants’ grant product are likely to receive private
 11 grants is also false. The recipients of defendants’ so-called “grants” are so few and far between
 12 that the claim that consumers are likely to receive a grant from any private source rings hollow.
 13 The sole source from which the individuals in the testimonials received a grant came, not

14
 15 ²² The site *Government Grant Solutions* features President Obama and references the “[h]undreds of
 16 people everyday [who] are receiving thousands of dollars in Free Government Grant Money.” The site tells
 17 consumers “Don’t Take Our Word For It, Listen To What Others Are Saying,” and includes testimonials with
 18 headlines such as “Money For a Mom To Pay For Emergency Expenses,” “Money to Pay Your Business Expenses,”
 19 “Money To Pay Your Mortgage,” “Money to Buy Christmas Presents,” “Money to Pay Your Education Expenses,”
 20 “Money to Fix Up Your Car.” [Ex. 127, p. 1]. Similarly, the offer for *Grant Funding Solutions* includes an
 21 intermediary web page congratulating the consumer who could “be well on your way to receiving literally thousands
 22 of dollars in FREE unclaimed Government Grant Money by October 15, 2008.” The intermediary page features a
 23 testimonial from Jennifer Barsness who supposedly received government money to pay for overdue utility bills,
 24 groceries, and household supplies. Ex. 124, p. 11.

25 ²³ In some instances, the grant sites include in tiny print an oblique reference to private grants, but any
 26 such reference is overshadowed by the multiple references in a large and eye-catching font to government grant
 27 money for personal expenses. For instance, the landing page for the *Grant Master CD* offer includes eight
 28 references to government grants and money from Uncle Sam, some in large type, and only two references in tiny
 print to private grants. This emphasis on government money is followed by testimonials from consumers who used
 money to avoid foreclosure, work from home, help a struggling mother, and help with education expenses. *Grant
 Master CD*, Ex. 125, pp. 1-3. Because of the emphasis on government funds and the oblique reference to private
 grants, the net impression from these sites is that the consumers in the testimonials received government grants,
 which they used for various personal expenses.

²⁴ Between August 2007 and December 2008, I Works transferred \$521,015 to New Frontiers for Families
 [Ex. 32, *Crowley* ¶ 13], the non-profit organization that ran defendants’ Grant-A-Day Program, selected the winners,
 and sent the “award” check directly to that winner. *I Works CID Response*, Ex. 5, p. 3 (Interrogatory 15).

1 incidentally, from a nonprofit entity associated with defendants. Indeed, of the approximately 1.9
 2 million consumers defendants charged for their grant program during the time period when their
 3 nonprofit was extending “grants,” only 836 individuals received these “grants,” which amounts to
 4 approximately .04% of the consumers defendants enrolled in their grant program during this
 5 period.²⁵ Suffice it to say that consumers are not likely to receive grants, even if only from the
 6 defendants-funded source, if they have only a four one-hundredths of a percent chance of doing
 7 so.²⁶

8 Defendants enrolled more than 2.8 million consumers in memberships for the grant
 9 product by using deceptive sales practices. More than 2.2 million grant memberships were sold
 10 as a core product and almost 600,000 memberships were sold as a Forced Upsell. *Tyndall*, Ex. 37
 11 ¶ 43(a).

12 B. *Defendants Have Made Deceptive Claims About Their Make-Money Products in
 13 Order to Obtain Consumers’ Billing Information.*

14 In addition to luring consumers with false claims about government grants, defendants
 15 used a second ploy to gain the \$275 million they extracted from consumers – sites that touted
 16 lucrative make-money products. Defendants’ business records show they enrolled more than one
 17 million consumers in their make-money products by using deceptive sales practices including

18 ²⁵ *Tyndall*, Ex. 37 ¶¶ 39-41; *I Works CID Response*, Ex. 5, p. 3 (Interrogatory 15).

19 ²⁶ Making matters worse, some of defendants’ testimonials are entirely bogus. For instance, many of the
 20 defendants’ grant sites feature a testimonial from a “Na-Tasha,” who supposedly used defendants’ grant program to
 21 receive money, which she spent on items for her children. “Na-Tasha” never signed up for defendants’ grant
 22 program and never used the program. [*Declaration of Na-Tasha Bowman*, Ex. 101 ¶ 7]. Ms. Bowman received
 23 funds from a local church’s congregation and wrote a thank-you note to the church. Defendants appropriated the
 24 thank-you note and a photo of Ms. Bowman taken at a church function, and used them as a testimonial on their grant
 25 sites. Ms. Bowman never gave defendants permission to use the thank-you note or photo. [Ex. 101 ¶ 7]. In fact,
 26 because she had been placed in the Witness Protection Program to prevent her abusive husband from finding her and
 27 her children, Ms. Bowman repeatedly contacted defendants, begging them to remove the photo and the testimonial
 28 from their websites. [Ex. 101 ¶ 8]. When her husband showed up in town, Ms. Bowman and her children had to be
 relocated to a different part of Utah. [Ex. 101 ¶ 6].

Defendants themselves express their own concerns with bogus testimonials appearing on their sales sites.
 In their Website Reviews, defendants identified sales sites that repeatedly used bogus testimonials. *Jacobson II*, Ex.
 35 ¶¶ 108, 114, 116, 118.

FTC v. Jeremy Johnson, et al.

Memo in Support of Motion for Preliminary Injunction

1 extravagant earnings claims that were false and unsubstantiated. *Tyndall*, Ex. 37 ¶ 43 (e), (g), and
2 (h).

3 For instance, websites touting the *EasyGoogleProfit* program claim in large type “Now
4 ANYONE can learn how to earn \$200-\$943 per day or MORE on Google!” [Ex. 130, p. 1].
5 Similarly, the defendants’ *GoogleBizKit* site features a large headline that proclaims “You could
6 make \$199 or more on Google,” a quote adjacent to the logo for *USA Today* proclaiming “riches
7 range from a few hundred dollars a month to \$50,000 or more a year!” and a quote adjacent to the
8 Google logo stating “Google makes it possible to bring in money with little effort and major
9 return.” [Ex. 131]. According to the *GoogleBizKit* site, “[i]n just a few minutes per day, Google
10 Biz Kit will show you how you could earn \$199 per day working from home!” Ex. 131.

11 Defendants’ other make-money product sites are of a similar vein. The site for
12 defendants’ *Google Profit Software Kit* states in eye-catching yellow type “Easily make \$188-
13 \$923 a day from home, online,” and depicts the *Google Profit Software Kit* as a three-step
14 process: Step 1 - FAST; Step 2 - EASY; and Step 3 - CASH.²⁷ Furthermore, numerous websites
15 marketing defendants’ money-making products depict a laptop with hundred dollar bills literally
16 exploding out of the screen²⁸ or happy women fanning hundred dollar bills.²⁹

17 These earnings claims are flat-out false, unsubstantiated, and/or atypical. To support its
18 extravagant earnings claims, I Works only has emails from three individuals who bought the
19 make-money product, *Google Money Pro*, from Steven Holdaway, who subsequently licensed the

20
21 ²⁷ Ex. 132, *Google Profit Software Kit*. Other sites include similar earnings claims. A site for *Google Pay*
22 *Day* [Ex. 133] features the same “You can make \$199 or more a day on Google” headline as does the *GoogleBizKit*
23 [Ex. 131]. The *Google Home Income* site [Ex. 134] claims that consumers will “Learn to Earn up to \$209-\$909 a
24 day working from home on the Internet!” [Ex. 134, p. 1]. A different *Google Pay Day* site invites consumers to
“Learn how to make \$199 per day or more” and describes the process as FUN, EASY, and FAST. [Ex. 135, p. 1].
A variation of the *Google Pay Day* site asks “Would You Like to Make \$200 a Day from Home? With Google, you
could make it happen” and asserts that “In just a few minutes per day, Google Money Profits will show you how to
earn \$150, \$500—even \$1,000 per day or More!” Ex. 136, p. 1.

25 ²⁸ See Ex. 133, p. 1; Ex. 134, p. 1.

26 ²⁹ See Ex. 130; Ex. 133, p. 2; Ex. 134, p. 4.

1 product to I Works.³⁰ Not one of the three individuals bought the product from I Works.
 2 Moreover, not one of the emails substantiates defendants' earnings claims. One individual is a
 3 Senior Web Developer who used Holdaway's book to generate a \$37 sale using Google adwords.
 4 The second individual also read Holdaway's book and after five days was making a net profit of
 5 \$52 per day. The third individual made no mention of any amount he had earned or if he had
 6 even read Holdaway's book. [*I Works CID Response*, Ex. 17 at IW 029122-25]. Emails from
 7 three individuals, who made nowhere near the amounts listed on defendants' make-money sites
 8 and none of whom had used defendants' product, do not substantiate defendants' extravagant
 9 claims.

10 I Works employees who reviewed the make-money websites themselves found the
 11 earnings representations suspicious and unsubstantiated. In their Website Reviews,
 12 I Works employees have: (1) noted that earnings claims should be removed from the
 13 *GoogleBizKit* site [*Jacobson II*, Ex. 35 ¶141]; (2) asked "Where did the '199 or more a day' come
 14 from" regarding a make-money site identified as <https://yoursearchprofits.com/051609/>
 15 [*Jacobson II*, Ex. 35 ¶ 143]; and (3) questioned the accuracy of claims that consumers can "Easily
 16 make \$500 -\$5000 or more per day or more" with defendants' *Google Pay Day*. *Jacobson II*, Ex.
 17 35 ¶ 139.

18 C. *Defendants Have Tricked Consumers Into Providing Their Billing Information by*
Promising That Their Offers Are Free or Risk-Free.

19 Sites touting defendants' grant and money-making products repeatedly referred to the
 20 products as "free"³¹ or "risk-free."³² Defendants' claims that their programs are "free" or "risk-
 21

22 ³⁰ *I Works CID Response*, Ex. 10, p. 5 (Interrogatory 16).

23 ³¹ Defendants have expressly represented their offer is free. The *Grant Doctor* site tells consumers to
 24 "CLICK HERE to see if you qualify for one of our remaining FREE Grant Doctor CDs!" "Tell Us Where You'd
 25 Like Your Free Copy Of The Grant Doctor Program Rushed!" and "Our FREE SOFTWARE contains everything
 26 you need to know about how and where to access your free money . . ." [Ex. 117, pp. 1, 3-4, 6]. The offer for
 27 *Grant Writer Pro* promises consumers "Our FREE software reveals how you can get your share of Federal money"
 28 and emphasizes the no-cost nature of the offer with FREE in huge letters that dwarf all other print on the page. [Ex.
 (continued...)]

1 free” are false. The offers are not free because consumers who agree to provide their billing
 2 information to pay a small shipping fee are likely to incur significant additional charges. As
 3 described in Section D, below, defendants use this information to charge consumers’ credit and
 4 debit cards for large initial fees and recurring monthly charges for defendants’ core grant and
 5 make-money products. Further, as described in Section E, defendants use the same billing
 6 information to place additional charges and debits for the Forced Upsells they automatically
 7 bundle with the core products on their marketing partners’ sites. The high cost and riskiness of
 8 providing billing information to defendants is exacerbated by a cancellation period as short as
 9 three days.³³

10 Equally telling, defendants themselves recognize that their offer is not free. According to
 11 defendants’ own Website Reviews, “the statement that ‘information worth thousands of dollars is
 12 now yours for FREE’ is incorrect. It is not free.” *Jacobson II*, Ex. 35 ¶ 155.

14
 15 ³¹(...continued)

16 121 A-D, p. 1]. See also, *Government Money Secrets*, Ex. 116, p. 4; *Federal Grant Connection*, Ex. 119, p. 5; *Grant*
 17 *Funding Solutions*, Ex. 124, pp. 1, 3-4; *Grant Funding Toolbox*, Ex. 128, p. 1. On some grant and make-money
 18 sites, the order page includes a box that lists the price of the core product and the bonus products as \$0.0, with the
 shipping fees as the only cost. E.g., *Fast Grants*, Ex. 118, p. 5; *Google Profit Software Kit*, Ex. 132, p. 2; *Google*
Home Income, Ex. 134, p. 4.

19 The make-money sites invite consumers to “Get Your FREE CD!” with only a tiny reference to a shipping
 20 fee of \$1.95. [*Easy Google Profit*, Ex. 130, p. 1]. See also *Google Biz Kit*, Ex. 131, pp. 1-2 (“We have reserved a
 copy of our FREE SOFTWARE KIT for you, but you must act quickly” and “Your Cost = \$0.”); *Google Pay Day*,
 Ex. 133, p. 1; *Google Pay Day*, Ex. 135, p 1; *Google Pay Day*, Ex. 136, p. 2.

21 ³² “Get Our Risk-Free Grant Software Kit” and “Our Risk FREE SOFTWARE contains valuable
 22 information you need to know about how and where to access grant money that may be available.” [*Grant Seeker*
 23 *Secrets*, Ex. 120, p. 1, 3 & 5; *Grant Funding Success*, Ex. 12, pp. 1, 3]. The make-money sites also promise their
 offer is “risk-free.” The site for the *Google Profit Software Kit*, which includes a box showing the cost of the kit is
 24 \$0.00 and the “expedited electronic shipping” is only \$1.14, invites consumers to try the “YOUR RISK FREE
 TRIAL KIT.” [Ex. 132, pp. 1-2]. The *Google Home Income* site tells consumers to “Get Instant Access to Your
 Risk-Free Google Software. . . .” Ex. 134, p. 1.

25 ³³ *Kramm*, Ex. 30 ¶ 15(c). Consumers who were enrolled in trial memberships had three days to cancel
 26 before defendants imposed a one-time fee of \$129.95 and then monthly recurring charges. See *Federal Grant*
Connection, Ex. 119, p 7; *Grant Seeker Secrets*, Ex. 120, p. 7; *Google Pay Day*, Ex. 135, p. 2.

27 *FTC v. Jeremy Johnson., et al.*

28 Memo in Support of Motion for Preliminary Injunction

1 D. *Defendants Have Failed to Disclose That Consumers Who Provide Their Billing*
2 *Information Will Be Enrolled in High-Cost Negative Option Plans With Hefty*
3 *Monthly Charges.*

4 To bilk the more than \$275 million from consumers, and line Jeremy Johnson's pockets
5 with \$48 million, defendants have placed charges on consumers' credit cards and debited their
6 bank accounts for "memberships" that are either undisclosed or poorly disclosed on defendants'
7 own websites and on those hosted by the affiliate brokers. Consumers who thought they were
8 providing their billing information to pay a few dollars for shipping a free CD instead find that
9 defendants have enrolled them in a trial membership for the core grant or make-money product
10 that, if not cancelled within a trial period as short as three days, converts to a paying membership
11 with a one-time fee as high as \$189 and monthly recurring fees of as much as \$59.95. [*Tyndall*,
12 Ex. 37 ¶ 46(a)]. Moreover, consumers find that defendants have enrolled them in yet additional
13 "memberships," the Forced Upsells, that are also negative option plans with hefty monthly
14 charges as high as \$39.97. [*Tyndall*, Ex. 37 ¶ 46(b)(i)]. Defendants do not provide consumers
15 with any way to decline the Forced Upsells. *Kramm*, Ex. 30 ¶ 15 (d).

16 As noted in Section C, *supra*, defendants keep consumers in the dark about these high
17 fees by repeatedly referring to their products as "free" or "risk-free," and never mentioning on the
18 landing pages (the initial pages that consumers reach) the true cost of their grant and money-
19 making programs or the fact that consumers will be enrolled in costly memberships for the
20 defendants' core product as well as for defendants' Forced Upsells. Instead, defendants disclose
21 these key terms in tiny, hard-to-read print that appears, in almost all instances, only on the order
22 page.³⁴ As a result, consumers who thought they would be billed a nominal shipping and
23
24

25 ³⁴ *Partridge*, Ex. 31 ¶ 34. *E.g.*, *Government Money Secrets*, Ex. 116, p. 4; *Grant Doctor*, Ex. 117, p. 5;
26 *Fast Grants*, Ex. 118, p. 5; *Grant Seeker Secrets*, Ex. 120, p. 7; *Google Profit Software Kit*, Ex. 132, p. 3; *Google*
Home Income, Ex. 134, p. 4; and *Google Pay Day*, Ex. 135, p. 2.

27 *FTC v. Jeremy Johnson., et al.*

1 handling fee for a free product are surprised to find hefty credit card charges or debits to their
2 bank account for online memberships they never intended to order.³⁵

3 Looking at the websites themselves illustrates the paltry nature of the purported
4 disclosures, which are in cramped hard-to-read print overwhelmed by the bold and eye-catching
5 claims for the core products. *See, e.g., Government Money Secrets*, Ex. 116, p. 4; *Grant Doctor*,
6 Ex. 117, p. 5; *Fast Grants*, Ex. 118, p. 5; *Federal Grant Connection*, Ex. 119, p. 7; *Google Profit*
7 *Software Kit*, Ex. 132, p. 5; *Google Home Income*, E. 134, p. 4.

8 The actual description of the Forced Upsells, if it exists at all, is in a separate box. But
9 the description is cursory and simply lists the benefits of the Upsells,³⁶ referring to them as
10 “bonuses” - “2 FREE BONUS GIFTS” [*Grant Doctor*, Ex. 117, p. 6] or “incredible bonus gifts”
11 [*Fast Grants*, Ex. 118, p. 5].³⁷ Any brief description in the separate box is usually well below the
12 “Submit” button and usually contains no information about memberships, the cost, recurring
13 charges, the need to cancel to avoid the charges, and how to cancel.

14 Given the obscurity and placement of the tiny print notice about the core and Forced
15 Upsell trial memberships, when contrasted with the large and colorful print plastered all over the
16 sites advertising free government money or hundreds of dollars in extra income, consumers are
17 unlikely to review the offer details before signing up for what they are told is a free or risk-free
18 product.

19 Defendants’ own Website Reviews [*see Jacobson II*, Ex. 35 ¶ 155] and consumer
20 complaints demonstrate that defendants are fully aware that their sites gave consumers the

21
22 ³⁵ *Consumer Blohm*, Ex. 71 ¶¶ 8;9; *Consumer Hong*, Ex. 77 ¶ 5; *Consumer Huffman*, Ex. 78 ¶ 6; *Consumer Kizzie*, Ex. 79 ¶ 5; *Consumer Miller*, Ex. 82 ¶¶ 5-6; *Consumer Valenti*, Ex. 83 ¶¶ 5-6; *Consumer Waite*, Ex. 84 ¶ 8.

23 ³⁶ *See, e.g., Grant Doctor*, Ex. 117, p. 6 (“**1. Get 14 days of FREE access to the Search Market**
24 **Members Site!**. Open the door to even more funding in your future! **2. Get 21 days of FREE access to the**
25 **Network Agenda!** Organize all your contacts, emails and important dates in one location you can access from
anywhere, even by phone!” (*emphasis in original*)). *See also Grant Writer Pro*, Ex. 121 A-D, p. 2.

26 ³⁷ *See also Federal Grant Connection*, Ex. 119, p. 7, which refers to the Forced Upsells as a “Special
27 Bonus!”; *Grant Writer Pro*, Ex. 121 A-D, p. 2 (same).

28 *FTC v. Jeremy Johnson, et al.*

1 impression that defendants would provide information for free and at no risk, in exchange for a
2 small shipping and handling fee. Defendants knew that consumers did not understand that the
3 grant and money-making programs were negative option programs with high initial and recurring
4 monthly fees; they also knew that the existence of the Forced Upsells was not adequately
5 disclosed. *Partridge*, Ex. 31 ¶¶ 31-34.

6 Telephonic and written complaints, as well as other reports, notified defendants that the
7 sites selling their core grant and money-making products and their Forced Upsells did not
8 adequately disclose the terms of the offers.³⁸ Defendants' own customer service records indicate
9 that defendants knew that as many as **one million of the consumers** they had billed **were**
10 **unaware they had been enrolled** in monthly membership programs.³⁹ These same records also
11 show that defendants received **more than 500,000 chargebacks** on the sales of their core
12 products and Forced Upsells, another indication that consumers did not see and understand the
13 tiny print disclosures. *Tyndall*, Ex. 37 ¶ 37.

14 Finally, defendants' own membership usage data shows consumers were unaware that
15 they belonged to defendants' online membership sites. For example, less than 3% of the
16 consumers who were enrolled in the *Click Money* membership in 2009 ever logged in, and only
17 7% of those enrolled in *Fast Gov Grants* in 2009 accessed the site. [*Tyndall*, Ex. 37 ¶ 38(a) -
18 (b)]. It is likely that these 90% plus consumers never logged in because they saw the prominent
19 express claims regarding the free or risk-free nature of the programs and not the tiny disclosures
20 buried on the order pages. Thus, they never knew that defendants had enrolled them in expensive
21 membership programs.

22
23 ³⁸ *Kramm*, Ex. 30 ¶ 16 (“I found that many consumers were complaining because they were unaware that
24 I-Works had enrolled them in multiple trial memberships with monthly membership fees.”). *See also Jacobson I*,
Ex. 34 ¶¶ 65-66.

25 ³⁹ Of the approximately 3 million consumers who requested a cancellation or refund, defendants noted in
26 their records that more than one million were “not aware of the monthly charges.” *Tyndall*, Ex. 37 ¶ 36(a).

1 Moreover, correspondence from the defendants' payment processors alerted defendants
 2 that their disclosures were inadequate. In a September 2009 email to defendant Jeremy Johnson,
 3 CardFlex (one of defendants' payment processors) identified problems with one of I Works' grant
 4 sites, including that: (1) the \$39.95 monthly charge was "only disclosed in the fine print below
 5 the submit button," (2) the site did not reference anywhere "an on-going relationship," and (3) the
 6 \$39.95 on the receipt email was at the bottom of the page and not in bold ("If I weren't looking
 7 for it, I would have never known I was going to be billed."). *I Works CID Response*, Ex. 18, IW-
 8 P-007639-7641 at 7640.

9 By lying about their products and hiding important terms, defendants were able to place
 10 more than **4.6 million separate recurring charges** on consumers' credit or debit cards for their
 11 core products between January 2006 and October 31, 2010. During the same time period,
 12 defendants placed more than **11.6 million separate recurring charges** for their Upsells. *Tyndall*,
 13 Ex. 37 ¶ 46 (a) & (b); *Tyndall II*, Ex. 37A, ¶ 4.

14 E. *Defendants Foist Their Programs on Unsuspecting Consumers.*

15 Defendants reaped \$145 million by placing their negative option products as Forced
 16 Upsells on the sites of their own sites or other Internet marketers (defendants' "marketing
 17 partners").⁴⁰ In these arrangements, consumers who provided their billing information to one of
 18 defendants' marketing partners were automatically enrolled, without having any choice, in one or
 19 more of the defendants' Forced Upsells with significant monthly recurring charges.⁴¹ Defendants
 20
 21

22 ⁴⁰ *Tyndall*, Ex. 37 ¶ 44(b).

23 ⁴¹ *I Works CID Response*, Ex. 7, p. 10 (reference to Upsells appearing on websites of third-party
 24 advertisers). Examples of I Works's standard agreement whereby I Works' products are included as Forced Upsells
 25 on the websites of their marketing partners are: Ex. 17, IW 4113-21 at 4113 (Marketing Agreement with That's It
 26 Media, LLC that recites that I Works has developed, created, or has the right to market, and would like to include,
 Rebate Millionaire, Network Agenda, and Home Source Academy as "forced upsells with the Google Offers as
 found on That's It Websites . . ."); Ex. 17, IW 3867-74 at 3867; Ex. 17, IW 3925-33 at 3925; and Ex. 17, IW 8738-
 45 at 8738. *See also*, *Partridge*, Ex. 31 ¶ 14.

1 processed the charges or debits, and answered customer service phone calls, related to these
2 Forced Upsells.⁴²

3 Defendants have ultimate control over the content and location of information concerning
4 their Forced Upsells bundled on their marketing partners' core products. Defendants' contract
5 with one of its marketing partners, Karaktr Media, is typical. It provides:

6 Prior to Karaktr placing an Upsell Offer with the Bromalite Offer,
7 Karaktr shall obtain written approval from iworks for the
8 Bromalite Offer and Website, including but not limited to proper
9 disclosure for the Upsell Offer on the Bromalite Website.⁴³

10 In many instances, defendants knew from their Website Reviews that their Forced
11 Upsells appearing on their marketing partners' websites were not disclosed at all, or not
12 adequately disclosed.⁴⁴ In addition, defendants themselves handled customer service for their
13 Forced Upsells and, thus, responded to written and telephonic complaints from consumers who
14 had never knowingly agreed to enroll in the defendants' memberships when they agreed to buy
15 the marketing partner's core product.⁴⁵ Indeed, a former I Works employee who reviewed
16 websites repeatedly told I Works's managers that many of the sites did not disclose information
17 about the memberships and their costs and did not have functioning links to the Terms and
18

19 ⁴² Ex. 17 at IW 3867-68 Section One (a) & (c) (Agreement with marketing partner Karaktr Media, LLC,
20 which recites that each party shall be responsible for the customer service for its product and for processing its own
21 sales). *See also* Ex. 17 at IW 3925-26 Section One (a) & (c); Ex. 17 at IW 4113-14 Section One (a) and (c); Ex. 17
22 at IW 8738-39 Section One (a) and (c).

23 ⁴³ Ex. 17 at IW 3868 Section One (d). *See also* Ex. 17 at IW 3926 Section One (d); Ex. 17 at IW 4114
24 Section One (d); Ex. 17 at IW 8739 Section One (d).

25 ⁴⁴ *Jacobson II*, Ex. 35 ¶¶ 22, 24, 29, 30, 36, 38, 44, 46, 48, 50, 56, 58, 60, 65, 67, 79, 81, 83, 85, 87, 93,
26 101.

27 ⁴⁵ I Works employee Lara Clements responded to complaints from the Better Business Bureau. A typical
28 response is that "Customer states that she did not enroll in the Fit Factory membership. Ms. Ringo placed an order
online for a dietary supplement on 11/17/2008. Fit Factory was a companion program that accompanied that order."
Declaration from Better Business Bureau of Southern Nevada, Ex. 57 at LV-BBB-001075.

1 Conditions and Privacy pages. *Kramm*, Ex. 30 ¶¶ 52, 57, 59. Declarations from consumers
2 confirm that the Upsells were not adequately disclosed.⁴⁶

3 Even though defendants knew consumers did not understand they were being signed up
4 for defendants' Forced Upsells, defendants nonetheless charged consumers' credit cards or
5 debited their bank accounts for Forced Upsells that were not disclosed or were inadequately
6 disclosed. Defendants' records show their failure to provide adequate disclosure of the existence
7 of their Forced Upsells on their marketing partners' sites has resulted in more than \$145 million
8 in unreimbursed consumer injury. *Tyndall*, Ex. 37 ¶ 44(b).⁴⁷

9 F. *Defendants Evade Detection by Using Shell Companies, Threatening Consumers,
and Flooding the Internet With Positive Reviews.*

10 Rather than re-work their marketing practices to prevent ongoing deception, defendants
11 embarked on a three-fold strategy to perpetuate their scam.⁴⁸ First, they evaded VISA and
12 MasterCard monitoring programs by obtaining merchant accounts through shell companies that
13 appeared to be unrelated to I Works and Jeremy Johnson and by using dummy sales sites to
14 convince banks they had eliminated the claims that generated more than 500,000 chargebacks.⁴⁹
15 Second, they flooded the Internet with positive reviews to drown out the chorus of complaints
16 about their deceptive sales tactics. Third, they threatened to "blacklist" consumers who exercised
17 their chargeback rights.

18
19 ⁴⁶ *Consumer Britto*, Ex. 72 ¶ 16; *Consumer Cienfuegos*, Ex. 73 ¶ 14; *Consumer DeWitt*, Ex. 74 ¶ 6;
20 *Consumer Easterwood*, Ex. 75 ¶ 3; *Consumer Ellis*, Ex. 76 ¶ 2; *Consumer Melton*, Ex. 80 ¶ 20. *See also*, *Partridge*,
Ex. 31 ¶ 35.

21 ⁴⁷ Some consumers suffered additional injury in the form of overdraft fees and fees for exceeding their
22 credit card limits. Some consumers also had to close their bank accounts or cancel their credit cards to avoid
23 additional unauthorized charges. *Consumer Bachman*, Ex. 70 ¶ 6; *Consumer Blohm*, Ex. 71 ¶ 4; *Consumer Hong*,
Ex. 77 ¶ 5; *Consumer Merrell*, Ex. 81 ¶ 8; *Consumer Miller*, Ex. 82 ¶ 5; *Consumer Valenti*, Ex. 83 ¶ 7; *Consumer*
Waite, Ex. 84 ¶ 25.

24 ⁴⁸ *See, Elliott I*, Ex. 50 ¶¶ 23 - 30 for a description of the strategies that merchants use to evade the VISA
25 and MasterCard monitoring programs.

26 ⁴⁹ *Tyndall*, Ex. 37 ¶ 37 (532,356 chargebacks per the Dispositions Report generated from defendants'
business records).

27 *FTC v. Jeremy Johnson, et al.*

28 Memo in Support of Motion for Preliminary Injunction

1 1. Defendants Use Subterfuge to Obtain New Merchant Accounts.

2 a. *The VISA and MasterCard Chargeback Monitoring Programs.*

3 The Fair Credit Billing Act, 15 U.S.C. § 1666-1666a, gives consumers the right to
4 contest charges that appear on their credit card bills. When a consumer contests a charge by
5 contacting the issuer of the consumer's credit card or the consumer's bank, the credit card
6 company or bank conducts an investigation. If the charge is improper, the consumer's credit card
7 company or bank "charges back" the contested amount to the merchant. The amount of the
8 charge is debited from the merchant's account at the bank that provides the merchant with access
9 to the credit card system (the "acquiring bank" or "merchant bank") and credited back to the
10 consumer's account.⁵⁰ Notwithstanding the huge volume of credit and debit card charges,
11 chargebacks are extremely rare. High chargeback rates are therefore a harbinger that something
12 is wrong. For this reason, VISA starts monitoring merchants who have a chargeback rate in a
13 given month of 1% or greater and MasterCard's monitoring begins when a merchant has a
14 chargeback rate in excess of .5%.⁵¹ Chargeback rates of 1% and higher may be due to a
15 merchant's misrepresentations regarding an offer or a failure to disclose clearly and
16

17 ⁵⁰ *Elliott I*, Ex. 50 ¶ 13. The "acquiring bank" or "acquirer" is a financial institution that belongs to the
18 VISA system and that contracts with merchants who want to accept VISA cards to pay for sales the merchants
19 generate. The financial institutions that do so then "acquire" the sales transactions that their merchants generate.
20 [Ex. 50 ¶ 6]. In many cases, the acquirer contracts with independent agents called "independent sales organizations"
21 to sign up merchants who want to be able to accept VISA-branded cards for the sales the merchants make. Another
intermediary between the acquirer and the merchant is the "payment processor." Where a merchant uses a payment
processor, the merchant sends its sales transactions to the payment processor, who in turn forwards the transactions
through the VISA or MasterCard payment system. Ex. 50 ¶¶ 8-9.

22 ⁵¹ VISA places merchants with a chargeback rate of 1% or more for two consecutive months in its
23 monitoring program. The chargeback rate is calculated as a ratio. The numerator is the number of transactions that
24 are charged back to a merchant in a month. The denominator is the total number of transactions charged by that
merchant during the preceding month. [*Elliott I*, Ex. 50 ¶ 14]. MasterCard uses the same formula to calculate the
chargeback ratio. *Davidson*, Ex. 53 ¶¶ 5- 7.

25 VISA keeps track of chargebacks by the billing descriptor, which appears on the bank or credit card
26 statement next to a debit or a charge. [*Elliott I*, Ex. 50 ¶¶ 15-19]. VISA considers merchants who enter its
monitoring program to have an unacceptably high chargeback ratio. Ex. 50 ¶ 21.

1 conspicuously the terms and conditions of an offer.⁵² Merchants with chargebacks rates that
 2 exceed the chargeback threshold for several consecutive months must submit chargeback
 3 reductions plans to their acquiring bank and may have to pay progressively higher fines because
 4 of excessive chargebacks.⁵³ An acquiring bank may decide to terminate processing for a
 5 merchant with high chargeback rates, in which case the merchant may be placed on the
 6 Terminated Merchant File (“TMF,” also known as the MATCH list), a list of merchants and their
 7 principals who have had merchant accounts terminated.⁵⁴ Once on the MATCH list, it is difficult
 8 for a merchant to obtain a new merchant account in its own name.⁵⁵

9 b. *Defendants Enter the Monitoring Programs, Pays Fines, and
 10 Loses Merchant Accounts.*

11 I Works has repeatedly landed in the VISA and MasterCard monitoring programs due to
 12 the high chargeback rates associated with the defendants’ negative option schemes. I Works first
 13 appeared in VISA’s monitoring program in September 2006, using the name Grant Writer Pro.⁵⁶
 14 I Works first entered MasterCard’s program in November 2006, using the name of defendant
 15 Internet Economy.⁵⁷ Since 2008, defendants consistently have been in the VISA and MasterCard
 16 monitoring programs under scores of different product names and billing descriptors.⁵⁸

17
 18 ⁵² According to MasterCard “one of the reasons a merchant incurs excessive chargebacks is because of
 19 misrepresentations that the merchant makes during the sale process and/or because the merchant does not disclose
 20 important terms of the sale to consumers.” [*Davidson*, Ex. 53 ¶ 10]. VISA also finds that chargeback rates of 1% or
 21 higher can be due to “deceptive marketing practices, such as false statements regarding an offer or a failure to
 22 disclose clearly and conspicuously the terms and conditions of an offer.” *Elliott I*, Ex. 50 ¶¶ 16, 20.

23 ⁵³ *Elliott I*, Ex. 50 ¶ 18 (b-d); *Davidson*, Ex. 53 ¶ 8.

24 ⁵⁴ *Davidson*, Ex. 53 ¶ 9; *Elliott I*, Ex. 50 ¶ 22.

25 ⁵⁵ *Kramm*, Ex. 30 ¶ 19; *Partridge*, Ex. 31 ¶ 26.

26 ⁵⁶ *Elliott I*, Ex. 50 ¶ 35(b).

27 ⁵⁷ *Davidson*, Ex. 53 ¶ 13(a).

28 ⁵⁸ *Elliott I*, Ex. 50 ¶ 35; *Davidson*, Ex. 53 ¶¶ 13-21.

1 Members of the I Works Enterprise incurred chargeback rates (2.95%, 4.56%, 4.97%) far
 2 in excess of the .5% MasterCard threshold and the 1% VISA thresholds.⁵⁹ See n. 61 *infra*. These
 3 high chargeback rates landed I Works and Jeremy Johnson in hot water with VISA, MasterCard
 4 and the defendants' acquiring banks. Defendants paid millions in chargeback fines⁶⁰ because of
 5 these high chargeback rates to their acquiring banks and in September 2008, acquiring banks
 6 began terminating merchant accounts associated with Jeremy Johnson and I Works.⁶¹ Eventually,
 7 six different acquirers placed some members of the I Works Enterprise with Jeremy Johnson
 8 listed as the principal contact on the MATCH list.⁶²

9 c. *Defendants Embark on a Scheme to Evade the VISA and*
 10 *MasterCard Monitoring Systems and Obtain New Merchant*
 11 *Accounts by Creating Shell Companies to Act as Fronts.*

12 According to VISA, merchants have learned to evade the monitoring programs by
 13 artificially lowering their chargeback rates. For instance, sellers may: (a) offer a core product at

14
 15 ⁵⁹ Some accounts had even higher chargeback levels. For instance, an I Works account with Wells Fargo
 16 Bank had a chargeback rate of 26.17% in March 2009 and an I Works account with HSBC had a chargeback rate of
 30.66% in July 2009. *Elliott I*, Ex. 50 ¶¶ 54, 73(b). See also, *Davidson*, Ex. 53 ¶¶ 13(b) - 21(b).

17 ⁶⁰ Defendant Employee Plus paid \$167,593.06 between July and November 2007; I Works, Inc. paid
 18 \$1,606,619.02 between July 2008 and October 2009; Defendant Internet Economy paid \$1,000,788.70 between
 19 December 2007 and March 2009; Defendant Market Funding Solutions paid \$280,850 in August 2009; Defendant
 JRB Media paid \$6,227 in October, 2009; and Defendant Diamond J Media paid \$86,794 in October 2009. *I Works*
CID Responses, Ex. 4, p. 13, (Interrogatory 40, and associated spreadsheet IW-40-0001), and Ex. 8, p. 16.

20 ⁶¹ *Davidson*, Ex. 53 ¶¶ 14 -22. I Works using two different DBAs, had accounts with an overseas acquirer
 21 terminated in September 2008; the average chargeback ratio was as high as 2.95%. [Ex. 53 ¶¶ 17 - 18]. In February
 22 2009, Wells Fargo Bank terminated accounts I Works set up using different DBAs; the average chargeback rate was
 23 as high as 4.56% (Internet Economy d/b/a Fit Factory). [Ex. 53 ¶¶ 14-16]. In June 2009, Harris National
 Association terminated accounts I Works set up using different DBAs; the average chargeback ratio was as high as
 4.97%. [Ex. 53 ¶¶ 20-21]. See also, *Elliott I*, Ex. 50 ¶ 67 (email notifying VISA that Harris National Association
 had terminated its relationship with I Works and its 13 DBAs in May 2009).

24 ⁶² Israeli Credit Cards placed I Works d/b/a Business Funding Source on the MATCH list in October 2008;
 25 American Express placed defendant Market Funding Solutions on the list in April 2009; the HSBC Bank placed
 Marketing Funding Solutions on the list in April 2009; in May 2009, the Harris bank terminated, and placed on the
 MATCH list, 13 accounts associated with Jeremy Johnson; First Regional Bank placed an I Works account on the
 list in July 2009; and the National Bank of California placed Cloud Marketing on the list in October 2009.
 26 *Davidson*, Ex. 53 ¶ 22.

1 a higher price and two Upsells at lower prices;⁶³ (b) change billing descriptors; (c) change
 2 merchant names; (d) open a new merchant account with a different acquiring bank; or (e) process
 3 transactions at a bank outside of the United States.⁶⁴

4 In the past, I Works had used all of these strategies to fly under the radar of VISA and
 5 MasterCard. It deliberately decided to sell a core product and two Upsells to generate four sales
 6 transactions (the nominal shipping or processing fee, a higher charge for the primary product, and
 7 lower charges for the two Upsells).⁶⁵ It established merchant accounts at numerous acquirers⁶⁶
 8 using numerous DBAs⁶⁷ and billing descriptors.⁶⁸ It opened merchant accounts using at least 217
 9 different product names.⁶⁹

10 When banks began terminating I Works's merchant accounts and placing I Works and
 11 Jeremy Johnson on MasterCard's MATCH list, defendants found it difficult to obtain new
 12 merchant accounts in I Works's name or in the names of corporations associated with Johnson.
 13 *Kramm*, Ex. 30 ¶¶ 19, 69. To obtain new merchant accounts, defendants set up companies all over

15 ⁶³ When a consumer contests several unauthorized charges (the core product at a higher price and the two
 16 Upsells at much lower prices), the consumer's credit card company may chargeback only the higher-priced item and
 17 forgo seeking a chargeback for the smaller amounts because the operational cost of processing the chargeback for
 18 the lower amounts may exceed the transaction amount. And although the consumer's credit card company will issue
 19 a refund for all three contested charges, the merchant will have only one chargeback for the three sales. As VISA
 explains, ". . . by selling a primary product at a high price and one or more Upsells or a shipping fee at a much lower
 price, a merchant can greatly increase its total numbers of sales without increasing the number of chargebacks,
 thereby increasing the likelihood that it may be able to keep its chargeback rate below the 1% threshold." *Elliott I*,
 Ex. 50 ¶¶ 24-26.

20 ⁶⁴ *Elliott I*, Ex. 50 ¶¶ 27, 30.

21 ⁶⁵ Declarant Tracey Kramm confirms that I Works used this strategy to lower the chargeback rate. Ex. 30
 22 ¶¶ 17-18.

23 ⁶⁶ *Elliott I*, Ex. 50 ¶ 45-46 (five acquirers); *Davidson*, Ex. 53 ¶ 22 (six acquirers); *Jacobson I*, Ex. 34 ¶ 27.

24 ⁶⁷ See *Tyndall*, Ex. 37 ¶ 49.

25 ⁶⁸ *Elliott I*, Ex. 50 ¶ 42; *Jacobson I*, Ex. 34 ¶ 27.

26 ⁶⁹ *Tyndall*, Ex. 37 ¶ 49.

1 the country to act as fronts on account applications.⁷⁰ Defendants directed I Works employees to
 2 make up names for these companies and obtain maildrop addresses, telephone numbers, and bank
 3 accounts for each company.⁷¹ Defendants or their employees then listed I Works employees or
 4 Jeremy Johnson's business associates on the corporate paperwork as titular principals.⁷² The sole
 5 purpose of these defendants "shell companies," [see, *infra*, note 79] which have no employees
 6 and no offices, was to lend their names to obtain new merchant accounts so defendants' fraud
 7 machine could continue to bilk millions from unsuspecting consumers.⁷³ Defendants furthered
 8 the subterfuge by "rebranding" their two core products (the grant and money-making programs)
 9 and their primary Upsells with many different names to make it harder for the banks to connect
 10 the shell companies with I Works.⁷⁴ And, in a further effort to dupe the acquiring banks,
 11 defendants created dummy sales sites to show the acquiring banks. These dummy "underwriting"
 12 sites differed significantly from the sites that actually generated defendants' sales because they
 13 contained no misrepresentations and fully disclosed key terms and conditions.⁷⁵

14 2. Defendants Created and Posted Phony Positive Reviews on the Internet.

15 In an effort to drown out the chorus of consumer complaints about their grant and
 16 money-making programs, defendants flooded the Internet with positive reviews. To do so,

17
 18 ⁷⁰ *Kramm*, Ex. 30 ¶¶ 85-86. ("Basically, I understood that the companies used to obtain the new merchant
 accounts should not be traceable in any way to Jeremy Johnson.")

19 ⁷¹ *Kramm*, Ex. 30 ¶¶ 86, 90.

20 ⁷² *Kramm*, Ex. 30 ¶¶ 87 - 88; *Partridge*, Ex. 31 ¶ 26.

21 ⁷³ I Works acknowledges that the sole purpose of the defendant shell companies and many of the other
 22 corporate defendants was to provide processing for I Works' fraud machine. *I Works CID Response*, Ex. 3, response
 23 to Interrogatory 5 (q-s), (u-v), y, gg, hh, kk, ll, nn, oo, pp, qq, and rr.

24 ⁷⁴ *Kramm*, Ex. 30 ¶¶ 85, 93; *Partridge*, Ex. 31 ¶ 22.

25 ⁷⁵ For example, defendants' dummy sales sites usually had highly visible disclosures about the trial
 26 memberships and their monthly cost that were simple, clear, and in a large font; did not include Upsells; did not
 include earnings claims; and did not include trademarked terms such as Google or Ebay. *Kramm*, Ex. 30 ¶¶ 91, 94 -
 96; *Partridge*, Ex. 31 ¶ 57.

1 defendants hired third parties, including Reputation Hawk, to create and post positive articles and
2 other web pages “to correct the negative publicity on the internet.”⁷⁶ As explained by defendants
3 in Chargeback Reduction Plans, Reputation Hawk would be “posting hundreds of positive articles
4 . . . press releases and other pages” to offer “positive reflections on [our] reputation” and to
5 “replace negative postings by taking the top positions on the site on which they appear.” In
6 addition, Reputation Hawk would create “new, positive content on our site and on sites that we
7 control” and then optimize the content “so that it rises quickly to the top search engine
8 rankings.”⁷⁷

9 By creating and posting the positive articles and other web pages, defendants represented
10 that the articles were independent reviews reflecting the opinions of unbiased consumers who
11 successfully used defendants’ programs to find government grants or earn substantial income.
12 This representation was false. The positive reviews were created and posted by defendants and
13 their agents, a key fact that defendants failed to disclose. *Kramm*, Ex. 30 ¶ 26.

14 3. Defendants Threaten Consumers Who Seek Chargebacks.

15 Instead of reducing chargeback rates by modifying their websites to truthfully inform
16 consumers how their billing information would be used, defendants discouraged consumers from
17 exercising their chargeback rights. Defendants’ CDs or confirmation pages contained a notice
18 warning consumers that if they sought a chargeback, defendants would place those consumers on
19 an Internet blacklist they operated called BadCustomer.com. The notice informed consumers that
20
21

22 ⁷⁶ *Elliott I*, Ex. 50 at VISA 546 (letter from I Works and Google Money Profit); at VISA 558 (letter from
23 I Works and QuickGrantPro); at VISA 563 (letter from I Works and Web Save Club); *Leidental*, Ex. 52 at VISA
24 620 (letter from Jet Processing). *See also*, *Partridge*, Ex. 31 ¶ 25 and Attachments A & B.

25 ⁷⁷ *Elliott I*, Ex. 50 at VISA 547; at VISA 559; at VISA 564; *Leidental*, Ex. 52 at VISA 620-621. The
26 former I Works employee confirms that defendants and their agents created and posted on the Internet positive
27 reviews and articles in order to deflect negative publicity. *Kramm*, Ex. 30 ¶ 21. *See also* *Partridge*, Ex. 31 ¶ 25 and
28 Attachments A & B.

1 you “will be reported to the internet consumer blacklist . . . [which] will result in member
2 merchants blocking you from making purchases online!”⁷⁸

3 **III. JEREMY JOHNSON AND HIS NINE LIEUTENANTS HAVE OPERATED THE
4 I WORKS ENTERPRISE THROUGH 61 CORPORATE DEFENDANTS.**

5 The I Works Enterprise operates through ten interrelated corporations that function as
6 key components of the scheme, and through 51 shell companies that serve as vehicles to dupe
7 banks into providing access to the credit card payment system. Jeremy Johnson and nine
8 members of his inner circle control this Enterprise. Section A, below, describes the various roles
9 of the ten non-shell corporate defendants. Some corporate defendants play an active role in the
10 scheme, while others are straw entities used simply to process credit and debit card charges.
11 Section B identifies the corporate defendants that are shell companies. Section C shows how all
12 the corporate defendants comprise a common enterprise that is jointly liable for the scheme.
13 Finally, Section D details the leadership positions of Jeremy Johnson and the nine other
14 individual defendants.

15 A. *The I Works Enterprise Has Operated Through Ten Interrelated Corporate
16 Defendants.*

17 1. I Works, Inc.

18 Defendant **I Works, Inc.** (“I Works”) is a Utah company, incorporated in 2000, with a
19 principal place of business at 249 East Tabernacle, Suite 200, St. George, Utah 84770 (the “I
20 Works headquarters”) [*See* Ex. 175, p. 10; *I Works CID Response*, Ex. 4, p. 5 (Interrogatory 7)]
21 and a satellite office in Santa Monica, California (the “I Works Satellite Office”). [*Kramm*, Ex.
22 30 ¶ 38, explaining that most of I Works’s sales staff relocated to defendant CPA Upsell’s Santa
23 Monica office]. Defendant Jeremy Johnson is I Works’ sole owner, director, and officer. *I Works*
24 *CID Response*, Ex. 3, p. 8, (Interrogatory 4); Ex. 175, pp. 9-10.

25 ⁷⁸ *Jacobson I*, Ex. 34 ¶¶ 38(a), 45(a), 52(a). Until April 2009, defendants charged consumers \$99 to be
26 removed from their blacklist. *Jacobson I*, Ex. 34 ¶ 7.

1 I Works does business under numerous fictitious trade names and DBAs, including but
2 not limited to: Blue Sky Marketing, Grant Search, Fit Factory, Google, Grant Writer, Rebate
3 Millionaire, SBA, Websavers, Cost Smashers, 501c3, ClickNOffer, Acai and Living Lean.
4 *I Works CID Response*, Ex. 4, pp. 3-4 (Interrogatory 7).

5 The I Works Enterprise carries out a substantial portion of its scheme using the I Works,
6 Inc. corporate entity. I Works' role in the scheme has included: (1) operating websites that trick
7 consumers into providing their billing information [*Kramm*, Ex. 30, ¶¶15 a-g]; (2) providing
8 templates for websites hosted on its network affiliate brokers' websites [*PVI CID Response*, Ex.
9 157, pp. 10-11 (Interrogatory 11)]; (3) operating the scheme's "membership" websites [*See*
10 *Porter*, Ex. 100, ¶¶ 7-9]; (4) arranging for the I Works Enterprise's negative option programs to
11 be included as Forced Upsells on its marketing partners' websites [*I Works CID Response*, Ex. 8,
12 p. 10 (Interrogatory 22)]; (5) opening merchant accounts in its name [*I Works CID Response*, Ex.
13 8, p. 16 (Interrogatory 41) (I Works & various DBAs)]; (6) responding to consumer complaints
14 about defendants' core products and Upsells [*Declarations from Better Business Bureaus*, Exs. 55
15 - 58]; and (7) reviewing the defendants' own websites, those hosted by their affiliate brokers, and
16 those of their marketing partners. [*I Works CID Response*, Ex. 7, pp. 9-10 (Interrogatory 24)].
17 I Works, Inc. paid more than \$1.6 million in fines to its merchant banks between July 2008 and
18 October 2009 because of excessive chargebacks. *I Works CID Response*, Ex. 4, p. 13
19 (Interrogatory 40 and associated spreadsheet IW-40-0001).

20 2. Anthon Holdings Corp.

21 Defendant **Anthon Holdings Corp.** ("Anthon") is a Utah company that is located in the
22 same building as the I Works headquarters. [*I Works CID Response*, Ex. 4, p. 7 (Interrogatory 8);
23 Ex. 176, p. 13]. Defendant Duane Fielding is Anthon's sole owner and officer. [*I Works CID*
24 *Response*, Ex. 3, p. 11 (Interrogatory 4); Ex. 176, p. 13]. Anthon does, or has done, business
25 under various fictitious names, including Office Agenda, Network Agenda and PC Passport.

1 [I Works CID Response, Ex. 4, p. 4 (Interrogatory 7); Zions Bank CID Response, Ex. 156, ZIONS
2 6398-99, 6405]. Network Agenda is also the name of a product that I Works includes as a Forced
3 Upsell with the core products that I Works markets. Tyndall, Ex. 37 ¶ 43(b); I Works CID
4 Response, Ex. 3, p. 15 (Interrogatory 5 at (x)).

5 In 2008, Anthon entered into an agreement with the payment processor Litle & Co.
6 [Leidenthal, Ex. 52 at VISA 1680-1687]. Anthon obtained merchant accounts in the name of
7 various fictitious entities so that defendants could process the credit and debit card charges for
8 I Works's billing of core products and Upsells. [Leidenthal, Ex. 52 ¶¶ 50-64]. Anthon was in
9 VISA's Merchant Chargeback Monitoring Program because of high chargeback levels associated
10 with these accounts. Leidenthal, Ex. 52 ¶ 52.

11 At least one check was issued from one of Anthon's bank account to pay for Reputation
12 Hawk's services to I Works. Crowley, Ex. 32, ¶ 17.

13 3. Cloud Nine Marketing, Inc.

14 Defendant **Cloud Nine Marketing, Inc.** ("Cloud Nine") is a Nevada corporation with a
15 maildrop address of 2232 South Nellis Blvd., # 333, Las Vegas, NV 89104. [I Works CID
16 Response, Ex. 4, p. 5 (Interrogatory 8); Ex. 177]. Cloud Nine does, or has done, business under
17 various fictitious names, including Fit Factory and Acai. [I Works CID Response, Ex. 4, p. 4
18 (Interrogatory 7)]. Jeremy Johnson is the sole owner, officer, and director of Cloud Nine
19 Marketing. I Works CID Response, Ex. 3, p. 9 (Interrogatory 3); Ex. 177.

20 Jeremy Johnson created Cloud Nine in order to open merchant accounts for the credit
21 card and debit card billing of I Works's products and services. [I Works CID Response, Ex. 3, p.
22 15 (Interrogatory 5 at (q)); Kramm, Ex. 30 ¶ 72(a)]. Cloud Nine used various payment
23 processors, including Litle & Co. [I Works CID Response, Ex. 17 at IW 4069-79] and ECHO, to
24 obtain these merchant accounts. [Kramm, Ex. 30 ¶ 67; I Works CID Response, Ex. 17 at IW
25 20187]. In an email dated December 8, 2008, defendant Loyd Johnston informed defendants
26 Ryan Riddle and Bryce Payne that Cloud Nine was one of I Works's "new processing entities." [I

27 *FTC v. Jeremy Johnson., et al.*

28 Memo in Support of Motion for Preliminary Injunction

1 *Works CID Response*, Ex. 18 at IW-P-0008699]. MasterCard placed Cloud Nine in its
2 chargeback monitoring programs because of excessive chargebacks. *Davidson*, Ex. 53 ¶ 22(f).

3 In September 2008, Cloud Nine set up a bank account at The Village Bank with funds
4 transferred from I Works, Inc. *Crowley*, Ex. 32, Att. C, p. 1.

5 4. CPA Upsell, Inc.

6 Defendant **CPA Upsell, Inc.** (“CPA Upsell”) is a California corporation located at the
7 I Works Satellite Office in Santa Monica. [*I Works CID Response*, Ex. 4, p. 5 (Interrogatory 8);
8 Ex. 178]. Jeremy Johnson is CPA Upsell’s sole owner, officer and director. [*I Works CID*
9 *Response*, Ex. 3, p. 9 (Interrogatory 4); Ex. 178].

10 In 2009, some or all of I Works’s in-house sales agents moved from the I Works
11 headquarters in St. George, Utah, to the offices of I Works and CPA Upsell in Santa Monica,
12 California. *Kramm*, Ex. 30 ¶ 38.

13 CPA Upsell markets numerous products to online sellers to place on their own websites
14 as Upsells. [*I Works CID Response*, Ex. 3, p. 15 (Interrogatory 5 at (r))]. I Works processes the
15 monthly charges or debits, and handles the customer service, for these Upsells, which are placed
16 on marketing partners’ websites. [*See e.g. Marketing Agreement with Adex Media, Inc.*, Ex. 17 at
17 IW 8738 - 8745]. These products include, but are not limited to, Calling Card Solutions, Credit
18 Repair Toolkit, Easy Google Profit, Express Business Funding, GetLoving.com, Grant Writer
19 Pro, Grant Master/Grant Search Assistant, Networkagenda, Rebate Millionaire, and Self Help
20 Works. *CPA Upsell Website*, Ex. 113, p. 2.

21 In 2009, I Works employees, using funds from I Works, Inc., opened one or more bank
22 accounts in the name of CPA Upsell, including an account at The Village Bank. [*Crowley*, Ex.
23 32, Att. C, p. 1; *I Works CID Response*, Ex. 16 at IW 57-00003; *Village Bank CID Response*,
24 Ex.155, VB 279-282 at 282]. CPA Upsell’s bank statements are sent to the I Works headquarters.
25 *See e.g. Crowley*, Ex. 32 ¶ Att. A, p. 1; *Village Bank CID Response*, Ex.155, VB 279-282 at VB
26 279.

27 *FTC v. Jeremy Johnson., et al.*

28 Memo in Support of Motion for Preliminary Injunction

1 As evidenced by a document titled “I Works’ Liability Risk Factors,” I Works considers
2 CPA Upsell one of its “[s]ister Companies (and affiliates)” *I Works CID Response*, Ex. 18 IW-P-
3 0008921-8924 at IW-P-8923.

4 5. Elite Debit, Inc.

5 Defendant **Elite Debit, Inc.** is a company incorporated in Utah in December 2009 and
6 located at the I Works headquarters. [*I Works CID Response*, Ex. 4, p. 5 (Interrogatory 8)].
7 Defendant Jeremy Johnson is Elite Debit’s sole owner and officer. *I Works CID Response*, Ex. 3,
8 p. 10 (Interrogatory 4 at (z)).

9 Elite Debit processes credit card charges and uses remotely-created payment orders to
10 charge or debit consumers’ accounts for I Works’s billing of core products and Upsells. *I Works*
11 *CID Responses*, Ex. 3, p. 16 (Interrogatory 5 at (y)); Ex. 18 at IW-P-66753-66755.

12 In December 2009, I Works opened a bank account in the name of defendant Elite Debit
13 at SunFirst Bank. [*I Works CID Response*, Ex. 16, IW-57-00001-00003 at IW-57-00003]. Elite
14 Debit’s bank statements are sent to the I Works Headquarters. *Crowley*, Ex. 32 Att. A, p. 1.

15 6. Employee Plus, Inc.

16 Defendant **Employee Plus, Inc.** (“Employee Plus”) is a Utah corporation located at the
17 I Works headquarters. [*I Works CID Response*, Ex. 17, IW 60-66 at 62]. Defendant Scott Leavitt
18 is the owner, officer, and director of Employee Plus. [Ex. 181; *I Works CID Response*, Ex. 3, p.
19 12 (Interrogatory 4 at (mm))].

20 Employee Plus obtained one or more merchant accounts in the name of various fictitious
21 entities, including Grant Search Assistant, so that defendants could process the credit and debit
22 card charges for I Works’s billing of core products and Upsells, many of which were Forced
23 Upsells bundled with core products sold by defendants’ marketing partners and clients. [*I Works*
24 *CID Response*, Ex. 8, p. 15 (Interrogatory 41)]. Employee Plus paid more than \$167,000 in fines
25 to its merchant banks in 2007 because of the high chargeback rates associated with these
26 accounts. *I Works CID Response*, Ex. 4, p. 13 (Interrogatory 40) and IW-40-00001.

1 Additionally, Employee Plus provides payroll services to I Works, Inc. and other
2 companies that are part of the I Works Enterprise. [*Kramm*, Ex. 30 ¶ 31]. Employee Plus has
3 also provided processing and loan services to I Works. *I Works CID Response*, Ex. 3, p. 17
4 (Interrogatory 5 at (II)(i)). Employee Plus d/b/a Grant Search Assistant opened a mailbox used by
5 I Works to register the domain iworkslive.com. *Tyndall*, Ex. 37 ¶¶ 10-11.

6 As evidenced by a document titled “I Works’ Liability Risk Factors,” I Works considers
7 Employee Plus one of its “[s]ister Companies (and affiliates).” *I Works CID Response*, Ex. 18,
8 IW-P-0008921-8924 at 8924.

9 7. Internet Economy, Inc.

10 Defendant **Internet Economy, Inc.** is a company incorporated in Nevada in 2002, which
11 uses a maildrop address at 2620 South Maryland Parkway, Box #859-A, Las Vegas, NV 89190.
12 [*I Works CID Response*, Ex. 4, p. 6 (Interrogatory 8); Ex. 182]. Jeremy Johnson is Internet
13 Economy’s sole owner, officer, and director. [*I Works CID Response*, Ex. 3, p. 10 (Interrogatory
14 4 at (t); Ex. 182)]. Internet Economy does business under various fictitious names including Grant
15 Search, Fit Factory, Network Agenda, Rebate Millionaire, Google Money Profit, Grant Writer
16 Pro, Funding Accelerator, Dentabright, Everyday Legal Forms, Living Lean, and Marqilife.
17 [*I Works CID Response*, Ex. 4, p. 4 (Interrogatory 7)]. Internet Economy obtained merchant
18 accounts in the name of Grant Search and Growing Rich with Google, both of which are I Works
19 products. *Leidenthal*, Ex. 52 at VISA 1615 and 1774.

20 Internet Economy paid more than \$1 million in fines to its merchant banks between
21 December 2007 and March 2009 because of the high chargeback rates associated with the billing
22 of I Works products. *I Works CID Response*, Ex. 16 at IW-40-00001.

23 All of Internet Economy’s finances are handled through one or more of I Works’s bank
24 accounts. *I Works CID Response*, Ex. 8, p. 14 (Interrogatory 38). Internet Economy does not
25 have its own bank account. [*Crowley*, Ex. 32 ¶ 6(f)].

8. Market Funding Solutions, Inc.

1 Defendant **Market Funding Solutions, Inc.** (“Market Funding”) is a Nevada corporation
2 that uses a maildrop located at 4790 Caughlin Pkway, # 735, Reno, Nevada. [*I Works CID*
3 *Response*, Ex. 4, p. 6 (Interrogatory 8); Ex. 183]. Defendant Jeremy Johnson is Market Funding’s
4 sole owner, officer, and director. *I Works CID Response*, Ex. 3, p. 10 (Interrogatory 4 at (v)); Ex.
5 183.
6

7 Market Funding obtained merchant accounts in the names of various fictitious entities,
8 including My Auction Tutor, Nature’s Best Acai, and Personal Wealth Academy, so that I Works
9 and other merchants could continue to bill consumers for core products and Upsells. [*Leidental*,
10 Ex. 52 at VISA 484; *I Works CID Response*, Ex. 4, p. 4 (Interrogatory 7)]. In an email dated
11 December 8, 2008, defendant Loyd Johnston informed defendants Ryan Riddle, Bryce Payne and
12 others that Market Funding was one of I Works’s “new processing entities.” *I Works CID*
13 *Response*, Ex. 18 at IW-P-0008699.

14 Market Funding paid \$280,850 in fines in August 2009 to its merchant banks because of
15 excessive chargebacks. *I Works CID Response*, Ex. 16 at IW-40-00001.

16 In September 2008, I Works opened a bank account for Market Funding at The Village
17 Bank. *I Works CID Response*, Ex. 16 at IW-57-00003.

9. Network Agenda, LLC.

18 Defendant **Network Agenda, LLC** (“Network Agenda”) is a Nevada limited liability
19 company with a maildrop address of 2780 S. Jones Blvd., Suite 3407, Las Vegas, NV 89146.
20 [*I Works CID Response*, Ex. 4, p. 7 (Interrogatory 8); Ex. 184]. Its office address is located in the
21 same building as I Works’s headquarters. [*I Works CID Response*, Ex. 3, p. 25 (Interrogatory 51
22 at (b))]. The sole members and managers of Network Agenda are defendants Duane Fielding and
23 Jeremy Johnson. *I Works CID Response*, Ex. 3, p. 10 (Interrogatory 4 at (y)).
24

25 Network Agenda has provided to I Works products to be placed as Upsells with I Works
26 core products. [*I Works CID Response*, Ex. 3, p. 15 (Interrogatory 5 at (x)); *I Works CID*

1 *Response*, Ex. 3, p. 25 (Interrogatory 51 at (b))). In a November 13, 2008 email from defendant
2 Ryan Riddle, I Works General Manager, to defendant Duane Fielding, Riddle writes that
3 “Network Agenda is on every sale we generate. . . .” [*I Works CID Response*, Ex. 18 at IW-P-
4 0012212]. On October 14, 2009, I Works employee Thane Belnap emailed CPA Upsell employee
5 David Moss, explaining that because “Network Agenda is tied to both Google and Grant, its
6 huge.” [*I Works CID Response*, Ex. 18 at IW-P-0011961]. In an April 23, 2008 email, defendant
7 Bryce Payne stated “Network Agenda - I know Jeremy gets good value out of this being pushed.”
8 *I Works CID Response*, Ex. 18 at IW-P-0016685.

9 Defendant Anthon Holdings obtained a merchant account using the name Network
10 Agenda so that defendants could continue to process charges for the I Works core products and
11 Upsells. [*Leidenthal*, Ex. 52, ¶¶ 45-48 and VISA 1647-49 & VISA 1703]. Visa placed Network
12 Agenda in chargeback monitoring program because of high chargeback levels associated with
13 these accounts. *Leidenthal*, Ex. 52, ¶¶ 51-52 and VISA 1647-49 and VISA 1703.

14 On January 7, 2010, Jeremy Johnson and Duane Fielding opened a business checking
15 account for Network Agenda at SunFirst Bank. [*See SunFirst Bank CID Return*, Ex.153, SunFirst
16 Bank 000073]. The mailing address for the account is the I Works headquarters. [*SunFirst Bank*
17 *CID Return*, Ex. 153, Sun First Bank 000073]. Network Agenda set up three bank accounts at
18 First Regional Bank and one bank account at SunFirst Bank. [*Crowley*, Ex. 32, Att. A, p. 1].
19 Monthly statements for all four bank Network Agenda accounts are sent to the I Works
20 headquarters. [*Crowley*, Ex. 32, Att. A, p. 1].

21 Checks were issued from Network Agenda’s bank accounts to pay for Reputation Hawk’s
22 services to I Works. *Crowley*, Ex. 32 ¶ 17.

23 As evidenced by a document titled “I Works’ Liability Risk Factors,” I Works considers
24 Network Agenda one of its “[s]ister Companies (and affiliates).” *I Works CID Response*, Ex. 18,
25 IW-P-0008921-8924 at 8924.

1 10. Success Marketing, Inc.

2 Defendant **Success Marketing, Inc.** (“Success Marketing), a company incorporated in
3 Utah in 2003, operates from the I Works Headquarters. [*I Works CID Response*, Ex. 4, p. 6
4 (Interrogatory 8); Ex. 186]. Defendant Jeremy Johnson is Success Marketing’s sole owner, officer
5 and director. *I Works CID Response*, Ex. 3, p. 10 (Interrogatory 4 at (w)).

6 Success Marketing has provided processing services for I Works. *I Works CID Response*,
7 Ex. 3, p. 15 (Interrogatory 5 at (v)).

8 Success Marketing’s bank statements were addressed to defendants Jeremy Johnson and
9 Scott Leavitt. *See e.g. I Works CID Response*, Ex. 17 at IW 15729.

10
11 B. *Since 2009, I Works Has Evaded Chargeback Monitoring Programs By Operating
12 through 51 Defendant Shell Companies.*

13 As explained in Section I-F-1(c), above, I Works’s and Jeremy Johnson’s disastrous
14 chargeback history had made it difficult, if not impossible, for I Works to obtain access to the
15 credit card billing system. Defendants therefore incorporated the 51 defendant shell companies
16 through which it applied for new merchant accounts. Each of the defendant shell companies had
17 one or more characteristics intended to disguise the shell’s relationship with I Works, including:
18 an owner in title only, usually an I Works employee or relative of an I Works employee, or one of
19 Johnson’s associates;⁷⁹ a maildrop address;⁸⁰ a rebranded I Works product;⁸¹ and/or a dummy
20 underwriting site. *Kramm*, Ex. 30, ¶¶ 72, 85, 87, 90, 91.

21 ⁷⁹ *See Jacobson I*, Ex. 34, ¶ 75.

22 ⁸⁰ *E.g.* GGL Rewards, Inc., Lifestyles for Fitness, Inc., Funding Success, Inc., Internet Fitness, Inc., Net
23 Discounts, Inc. and Fiscal Fidelity, Inc. [*Kramm*, Ex. 30 ¶ 90]. Premier Performance, Inc., eBusiness Success, Inc.,
24 Net Commerce, Inc., Pro Internet Services, Inc., Unlimited Processing Inc., Business First, Inc., eCom Success, Inc.,
TranFirst, Inc., Blue Streak Processing, Inc., and Tran Voyage, Inc. *Kramm*, Ex. 30 ¶¶ 100-101; *Jacobson I*, Ex. 34,
¶ 76a-vv.

25 ⁸¹ *E.g.* GGL Rewards, Inc., Lifestyles for Fitness, Inc., Funding Success, Inc., Internet Fitness, Inc.,
26 Business Loan Success, Inc. and Fiscal Fidelity, Inc. [*Kramm*, Ex. 30 ¶ 93]. *See Tyndall*, Ex. 37 ¶¶ 47-48 for a list
of all the names I Works has used for its core products and Upsells.

27 *FTC v. Jeremy Johnson., et al.*

28 Memo in Support of Motion for Preliminary Injunction

1 Although the defendant shell companies were designed to appear unrelated to I Works and
2 Jeremy Johnson, Jeremy Johnson was the *de facto* principal behind the shell companies. In a June
3 24, 2009 email discussing merchant accounts, Jeremy Johnson described the reasoning behind the
4 creation of the defendant shell companies as

5 I still want back up merchant accounts (even if we just use them a
6 tiny bit to keep them open) and I want many different corps so all
7 processing is broken out in many places and I want the ability to put
8 shit process in one of those corps not tied to us at all knowing full
9 well it will blow up in a few months. [*I Works CID Response*, Ex.
10 18 at IW-P-0026093].

11 In Jeremy Johnson's own words, the defendant shell companies were created to obtain merchant
12 accounts in order to continue processing charges, and were designed to be untraceable to himself
13 and I Works.

14 C. *The Corporate Defendants Have Functioned as a Common Enterprise.*

15 "Where one or more corporate entities operate in common enterprise, each may be held
16 liable for the deceptive acts and practices of the others." *FTC v. Think Achievement*, 144 F. Supp.
17 2d 993, 1011 (N.D. Ind. 2000), *rev'd in part on other grounds*, 312 F.3d 259 (7th Cir. 2002); *see*
18 *also, Delaware Watch Co. v. FTC*, 332 F.2d 745, 746-47 (2d Cir. 1964); and *CFTC v. Wall Street*
19 *Underground, Inc.*, 2003 U.S. Dist. LEXIS 15865, at *23 (D. Kan. July 18, 2003).

20 The corporate defendants have operated and functioned as a common enterprise under the
21 leadership of Jeremy Johnson and the other individual defendants. To determine the existence of a
22 common enterprise, courts look to factors such as whether the corporate participants have
23 conducted deceptive business practices through an interrelated network of companies that have
24 common control, ownership, officers, managers, business functions, office locations, and products.
25 *See e.g., Sunshine Art Studios v. FTC*, 481 F.2d 1171, 1173, 1175 (1st Cir. 1973); *Delaware Watch*
26 *Co.*, 332 F.2d at 746; *FTC v. Wolf*, 1996 WL 812940, at *7-8 (S.D. Fla. 1996); *FTC v. J.K.*
27 *Publications, Inc.*, 99 F. Supp. 2d 1176, 1201-02 (C.D. Cal. 2000); *FTC v. Jordan Ashley, Inc.*,

1 1994 WL 200775, at *1 (S.D. Fla. 1994). Courts assess whether there have been commingling of
2 corporate funds, failure to maintain separation of companies, unified advertising, and whether
3 there is evidence that reveals no real distinction existing between the corporate defendants. *FTC v.*
4 *Wolf*, 1996 WL 812940, at *7.

5 Here, the I Works Enterprise operates through a maze of interrelated companies with
6 common control, ownership, business functions, locations, and products. All of the 61 corporate
7 defendants are owned by Jeremy Johnson and/or one of his family members or associates.
8 [See *supra* at pp. 29-38 and note 79]. They are controlled by Johnson and the nine other
9 individual defendants. [See *supra* at pp. 29-39]. They engage in the same scheme. [See *supra* at
10 pp. 29-39. Of the ten non-shell corporate defendants, seven are either located at the I Works
11 headquarters or the I Works Satellite Office in Santa Monica, California. [See *supra* at pp. 29-37].
12 And, all 61 corporate defendants are involved in the billing of consumers for “memberships” in
13 negative option programs with recurring monthly charges. Indeed, I Works referred to a number
14 of the corporate defendants as its “sister companies” and “affiliates.” [I Works *CID Response*, Ex.
15 18 at IW-P-0008919-8924 at 8923]. See *FTC v. Wolf*, 1996 WL 812940, at *3 (S.D.Fla. 1996)
16 (finding a common enterprise where corporate defendants were referred to as “sister companies”
17 and “affiliates”).

18 There is no real distinction between I Works and the other 61 corporate defendants. There
19 have been numerous transfers of funds between and among the companies and commingling of
20 assets. [Crowley, Ex. 32 ¶ 11]. Jeremy Johnson and the other individual defendants have ignored
21 corporate formalities in setting up the shell companies, which are nothing more than fronts for
22 I Works. [See *supra* at pp. 37-39]. The only purpose of the shells was to get new merchant
23 accounts, in order to keep the Defendants’ Enterprise’s scam going. Kramm, Ex. 30 ¶ 72; I Works
24 *CID Response*, Ex. 18 at IW-P-0026093.

25 Because the corporate defendants operate as a common enterprise, they are all jointly
26 and severally liable for the violations alleged in the Complaint.

1 D. *The Individual Defendants Run the I Works Enterprise.*

2 While Jeremy Johnson has served as the ringleader of the I Works Enterprise, nine other
3 individuals who are or were I Works employees or business associates of Jeremy Johnson, have
4 played key roles in the scheme. As explained below, each of these individuals has had authority to
5 control the I Works Enterprise or participated directly in its unlawful acts or practices. And, each
6 has possessed actual knowledge of the misrepresentations, reckless indifference to the truth or
7 falsity of the misrepresentations, or an awareness of a high probability of fraud coupled with an
8 intentional avoidance of the truth.

9 1. Jeremy Johnson.

10 **Jeremy Johnson** is the head of the I Works Enterprise and has ultimate control over all
11 business operations. [*Kramm*, Ex. 30 ¶ 28]. He is the sole owner and officer of defendants
12 I Works, Inc., Cloud Nine, CPA Upsell, Elite Debit, Internet Economy, Market Funding, and
13 Success Marketing, and a member and manager of defendant Network Agenda. [*I Works CID*
14 *Response*, Ex. 3, pp. 8-10 (Interrogatory 4)]. Johnson is also the *de facto* principal behind the shell
15 companies that he established, using I Works employees and business associates, to act as fronts
16 for I Works. [*I Works CID Response*, Ex. 9, p. 8 (Interrogatory 11) (Jeremy Johnson requested that
17 various processing companies be created). *See supra* p. 38.

18 Johnson regularly exercises his control over the Enterprise and participates directly in the
19 illegal practices. He makes virtually all of the high-level, strategic decisions at I Works, including
20 those involving compliance and legal issues, business strategies and relationships, and I Works
21 products. [*I Works CID Response*, Ex. 9, p. 7 (Interrogatory 9)]. He hires and supervises the
22 managers working at his companies. [*Kramm*, Ex. 30 ¶ 28]. He has the authority to approve the
23 websites offering the products sold by I Works. [*Kramm*, Ex. 30 ¶ 28]. He signs legal documents
24 on behalf of I Works, including contracts with marketing partners, lease agreements and court
25 settlements. *See e.g.*, [*I Works CID Response*, Ex. 17 at IW 159 -173, IW 4080 - 4085 and IW
26 29161 - 29165].

27 *FTC v. Jeremy Johnson., et al.*

28 Memo in Support of Motion for Preliminary Injunction

1 Johnson has participated directly in meetings and telephone calls with payment
2 processors. [*I Works CID Response*, Ex. 10, p. 16 (Interrogatory 22)]. Johnson has participated in
3 calls and meetings with at least one credit card company about the I Works Enterprise's high
4 chargeback levels. [*I Works CID Response*, Ex. 10, pp. 7-8 (Interrogatory 42)]. And, Johnson
5 spearheaded the Enterprise's use of the shell companies to dupe acquiring banks into providing
6 access to the credit and debit card billing system. *I Works CID Responses*, Ex. 9, p. 8
7 (Interrogatory 11); Ex. 10, p. 21 (Interrogatory 35); Ex. 16 at IW 57.

8 Johnson has signatory authority over numerous accounts at financial institutions that have
9 received funds from I Works's billing of core products and Upsells. [*I Works CID Response*, Ex.
10 10, p. 18 (Interrogatory 31)]. And, since 2006 Johnson has personally received more than \$48
11 million in distributions and salary from the corporate defendants. *I Works CID Response*, Ex. 10,
12 p. 20-21 (Interrogatory 34).

13 Johnson received reports from the I Works call centers about consumer complaints. He
14 took part in communications with payment processors, VISA, MasterCard, and others about the
15 high level of chargebacks related to I Works's marketing of its core products and Upsells. *Kramm*,
16 Ex. 30 ¶ 28; *I Works CID Response*, Ex. 10, pp. 7-8 (Interrogatory 42); and p. 16 (Interrogatory
17 22).

18 2. Duane Fielding.

19 As a member and manager of defendant Network Agenda and the sole owner and officer
20 of defendant Anthon [*I Works CID Response*, Ex. 3, p. 11 (Interrogatory 4 (gg))], **Duane Fielding**
21 ("Fielding") had authority over key components of the I Works Enterprise. He also participated
22 directly in the Enterprise's illegal scheme.

23 In June 2008, Fielding arranged for the I Works Enterprise to obtain merchant accounts in
24 defendant Anthon's name through the payment processor Litle & Co. [*Leidental*, Ex. 52 at VISA
25 1698]. Fielding also arranged for I Works to procure merchant accounts in the names of products
26 such as Network Agenda and Office Assistant. [*Leidental*, Ex. 52 ¶¶ 50-63]. When these

1 accounts generated exorbitant chargeback rates, Fielding submitted Chargeback Reduction Plans
2 to payment processors on behalf of defendant Network Agenda. *Leidenthal*, Ex. 52 at VISA 1647-
3 1649.

4 Fielding has signatory authority over bank accounts titled in the name of defendants
5 Anthon and Network Agenda. *Zions Bank CID Response*, Ex. 156 Zions Bank 6899, 7481;
6 *Crowley*, Ex. 32 Att. B, p. 1.

7 Fielding received reports about consumer complaints, and communications from payment
8 processors about the high level of chargebacks related to I Works's marketing of its core products
9 and Upsells. [See e.g., *I Works CID Response*, Ex. 18 at IW-P-0012211; *Leidenthal*, Ex. 52 at
10 VISA 1647-1649]. Fielding participated in I Works meetings regarding Network Agenda and
11 other I Works products. See e.g. *I Works CID Response*, Ex. 18 at IW-P-0040056 and IW-P-
12 0040063.

13 On November 6, 2007, defendant Scott Leavitt emailed defendants Jeremy Johnson, Ryan
14 Riddle and Bryce Payne listing the week's income, expenses, and "Other Cash Flow." The "Other
15 Cash Flow" column has a payment of \$100,000 to Anthon Holdings with the description "[p]aid
16 back to Duane on Loan." *I Works CID Response*, Ex.18 at IW-P-0045820.

17 3. Andy Johnson.

18 **Andy Johnson** ("A. Johnson"), Jeremy Johnson's brother, had the authority to control
19 aspects of the Enterprise and participated directly in the I Works scheme. He is the manager of the
20 Research and Development department at I Works. [*I Works CID Responses*, Ex. 3, p. 19
21 (Interrogatory 9); Ex. 4, p. 16 (Interrogatory 10(e)]. As part of his official duties at I Works,
22 A. Johnson has created, or arranged for the creation of, and has managed several products,
23 including Rebate Millionaire and Cost Smashers, which I Works markets and sells directly and
24 through its marketing partners and clients. *I Works CID Response*, Ex. 11, p. 10 (Interrogatory
25 32). A. Johnson is the titular owner and officer of at least three defendant shell companies,
26

27 *FTC v. Jeremy Johnson., et al.*

28 Memo in Support of Motion for Preliminary Injunction

1 Funding Success, Hooper Processing, and Internet Fitness. *I Works CID Response*, Ex. 3, p. 11
2 (Interrogatory 4 (jj)).

3 A. Johnson has procured merchant accounts for the I Works Enterprise under the names of
4 several shell companies, including defendants Funding Success and xCel Processing, so that
5 defendants could continue to process the credit and debit card charges for I Works's billing of core
6 products and Upsells. *Leidenthal*, Ex. 52 at VISA 1691, 1737.

7 A. Johnson has signatory authority over bank accounts titled in the name of defendants
8 Funding Success and xCel Processing, as well as over bank accounts titled in the name of other
9 shell companies. *Town & Country Bank CID Response*, Ex. 154, pp. T&C 2d 487, 678.

10 As a manager at I Works, A. Johnson has been made well aware of the high number of
11 consumer complaints and chargebacks related to I Works's marketing of its core products and
12 Upsells. A. Johnson has received regular reports from payment processors listing the amount of
13 chargebacks for shell companies' accounts. [*See e.g. I Works CID Response*, Ex. 17 at IW 19762].
14 Additionally, A. Johnson has received consumer complaints from a Better Business Bureau about
15 at least one I Works offer. *See e.g., I Works CID Response*, Ex. 17 at IW 3317, 3330, 3375.

16 4. Loyd Johnston.

17 **Loyd Johnston** ("Johnston") is the manager of the Merchant Accounts Department at
18 I Works. [*I Works CID Response*, Ex. 3, p. 21 (Interrogatory 10)]. In that role, Johnston has
19 managed the relationships with the payment processors and banks that I Works has used to process
20 credit and debit card charges for I Works's billing of core products and Upsells. [*Kramm*, Ex. 30
21 ¶ 66-71]. Johnston has the authority to hire, and has hired, I Works employees. [*Kramm*, Ex. 30
22 ¶¶ 27, 32]. For instance, Johnston hired declarant Tracey Kramm. [*Kramm*, Ex. 30 ¶ 7].

23 Johnston also coordinated the establishment of the shell companies, which he knew were
24 being created solely for the purpose of opening new merchant accounts. [*Kramm*, Ex. 30 ¶ 72].
25 Johnston opened maildrops in various states for shell companies and directed employees in his

1 department to make the maildrops appear to be actual office locations rather than PO Boxes.
2 [*Kramm*, Ex. 30 ¶ 90]. Johnston is the titular owner and officer of at least 15 defendant shell
3 companies, including Blue Streak Processing, Business First, Cold Bay Media, Ebusiness Success,
4 Ecom Success, Money Harvest, Monroe Processing, Net Commerce, Premier Performance, Pro
5 Internet Services, Revive Marketing, Summit Processing, Tranfirst, Tran Voyage, and Unlimited
6 Processing. *I Works CID Response*, Ex. 3, p. 12 (Interrogatory 4); and p. 22 (Interrogatory 10).

7 On behalf of I Works, Johnston obtained one or more merchant accounts in the name of
8 numerous shell companies so that defendants could continue to process the credit and debit card
9 charges for I Works's billing of core products and Upsells. [*See e.g. Leidenthal*, Ex. 52 at VISA
10 1651].

11 Johnston has signatory authority over bank accounts titled in the name of various shell
12 companies. *I Works CID Response*, Ex. 16, IW-57-00001-3 at 00001.

13 As the head of the Merchant Accounts Department, Johnston was well aware of the
14 Enterprise's high chargeback rates and the mounting consumer complaints. Johnston regularly
15 attended meetings where chargeback levels were discussed. [*Kramm*, Ex. 30 ¶ 32]. Johnston
16 received communications from payment processors, VISA, MasterCard, and others about the high
17 level of chargebacks. [*I Works CID Responses*, Ex. 10, pp. 7-8 (Interrogatory 42); Ex. 17 at [IW
18 004943; *Kramm*, Ex. 30 ¶ 70]. Johnston submitted Chargeback Reduction Plans on behalf of one
19 or more corporate defendants, including the shell companies, to payment processors. *I Works CID*
20 *Response*, Ex. 17 at IW 29045-29046, 29051-29052.

21 5. Scott Leavitt.

22 **Scott Leavitt** ("Leavitt") is the Bookkeeping Manager for I Works. [*I Works CID*
23 *Response*, Ex. 3, p. 21 (Interrogatory 10); *Kramm* Ex. 30 ¶ 31]. In that role, Leavitt keeps the
24 financial books of the I Works Enterprise. He provides payroll and accounting services to I Works
25 through defendant Employee Plus, which Leavitt owns. *I Works CID Response*, Ex. 3, p. 20
26 (Interrogatory 9).

1 On behalf of I Works, Leavitt obtained one or more bank accounts in the name of
2 Employee Plus d/b/a Grant Search Assistant into which defendants deposited the proceeds from
3 I Works's sale of core products and Upsells. *Village Bank CID Response*, Ex. 155, VB 2d
4 000303-304; *First Regional Bank Response*, Ex. 152, Fst Reg Bnk 000247-248.

5 Leavitt has signatory authority over more than 90 bank accounts, maintained in the name
6 of 57 corporate defendants. *Crowley*, Ex. 32, ¶ 9b.

7 Leavitt has communicated with the payment processors and banks I Works used to bill
8 consumers for its core products and Upsells. [*Kramm*, Ex. 30 ¶ 31; *see also I Works CID*
9 *Response*, Ex. 17 at IW 004949 & 004958]. Leavitt has received reports from the I Works call
10 centers about consumer complaints, and communications from payment processors, VISA,
11 MasterCard, and others about the I Works Enterprise's high level of chargebacks. [*I Works CID*
12 *Response*, Ex. 17 at IW 004952 - 4953, IW 004960-4963 (showing problems with chargebacks);
13 *Kramm*, Ex. 30 ¶ 31. *See also I Works CID Response*, Ex. 17 at IW 004949 and 004958]. His
14 company, Employee Plus, paid fines to its processing banks because of high chargeback levels. [*I*
15 *Works CID Response*, Ex. 8, p. 15 (Interrogatory 41)]. As I Works's Bookkeeping Manager,
16 Leavitt was in a position to see the bank statements reflecting the thousands of chargebacks
17 associated with I Works's billing of core products and Upsells.

18 6. Scott Muir.

19 **Scott Muir** ("Muir"), Jeremy and Andy Johnson's uncle, is a former employee of
20 I Works and is currently employed by BadCustomer.com, an affiliate company of I Works.
21 [*Jeremy Johnson CID Response*, Ex. 4, p. 16 (Interrogatory 10)]. Muir is the titular owner and
22 officer of at least 12 defendant shell companies that I Works and Jeremy Johnson established to act
23 as fronts on applications to obtain new merchant accounts. These shell companies include Big
24 Bucks Pro, Blue Net Progress, Bolt Marketing, Business Loan Success, CS Processing, GGL
25 Rewards, Highlight Marketing, Mist Marketing, Net Discounts, Optimum Assistance, Razor

1 Processing, and Simcor Processing. *I Works CID Response*, Ex. 3, pp. 7, 13 (Interrogatories 3 &
2 4).

3 On behalf of I Works, Muir obtained merchant accounts in the name of one or more shell
4 companies so that defendants could continue to process the credit and debit card charges for
5 I Works's billing of core products and Upsells. *E.g.*, *Leidenthal*, Ex. 52 at VISA 1604.

6 Muir has signatory authority over at least 12 accounts at three different banks, all of which
7 are titled in the name of shell companies. *E.g.* *Sun First Bank CID Response*, Ex. 153, SunFirst
8 Bank 000132 (Bolt Marketing account); *Town & Country CID Response*, Ex. 154, T&C 2d
9 000539 (CS Processing account); *Crowley*, Ex. 32, Att. B, pp. 5-6.

10 As a former employee of I Works, and through his current work for BadCustomer.com,
11 Muir learned of the high level of chargebacks related to I Works's marketing of its core products
12 and Upsells.

13 7. Bryce Payne.

14 **Bryce Payne** ("Payne") is the current General Manager of I Works. [*I Works CID*
15 *Response*, Ex. 3, p. 20 (Interrogatory 9)]. Payne has authority to hire and fire persons who work
16 for I Works. [*Kramm*, Ex. 30 ¶¶ 27, 30]. Payne has signed contracts on behalf of I Works [*E.g.*
17 *I Works CID Response*, Ex. 17 at IW 00136-143 & 00151-158] and he has the authority to approve
18 all new I Works products and offers, as well as the websites offering the products I Works sells.
19 [*Kramm*, Ex. 30 ¶ 30; *I Works CID Response*, Ex. 8, p. 8 (Interrogatory 20)]. Payne is the titular
20 owner and officer of defendant JRB Media, one of the defendant shell companies. [*I Works CID*
21 *Response*, Ex.3, p.13 (Interrogatory 4)]. Payne has signatory authority over a bank account titled in
22 the name of JRB Media. *Village Bank CID Response*, Ex. 155, VB 001302 - 03; *Crowley*, Ex. 32
23 ¶ Att. B, p. 1.

24 On behalf of I Works, Payne obtained one or more merchants accounts in the name of
25 JRB Media so that defendants could continue to process the credit and debit card charges for I
26 Works's billing of core products and Upsells.. *Kramm*, Ex. 30 ¶ 72(c).

1 Payne spent much of his time overseeing the two I Works call centers where consumer
2 complaints were lodged, and he received email reports from the call centers discussing the high
3 level of chargebacks. *Kramm*, Ex. 30 ¶ 30.

4 8. Kevin Pilon.

5 **Kevin Pilon** (“Pilon”), a member of the Merchant Accounts Department, facilitates I
6 Works’s credit and debit card processing for the billing of the core products and Upsells. *Kramm*,
7 Ex. 30 ¶ 41.

8 Pilon is the titular owner and officer of at least 16 shell companies, including Bottom
9 Dollar, Bumble Marketing, Costnet Discounts, Cutting Edge Processing, Ebusiness First, Excess
10 Net Success, Fiscal Fidelity, Fitness Processing, GG Processing, Internet Business Source, Net
11 Business Success, Net Fit Trends, Power Processing, Rebate Deals, The Net Success, and xCel
12 Processing. [*I Works CID Responses*, Ex. 3, p. 7 (Interrogatory 3); Ex. 4, p. 13 (Interrogatory 34).
13 *See also I Works CID Response*, Ex. 16 at IW 34/39]. Pilon has signatory authority over bank
14 accounts titled in the name of numerous defendant shell companies. *See e.g. Zions Bank CID*
15 *Response*, Ex. 156, Zions Bank 6758, 6786; *Crowley*, Ex. 32, Att. B, pp. 2-3.

16 Pilon has opened 30 maildrops in nine states at which complaints about I Works’s
17 marketing of core products and Upsells are received, which are then forwarded to the I Works
18 headquarters. *Declarations of Postal Inspectors*, Ex. 60 ¶ 7; Ex. 62 ¶ 4; *Jacobson I*, Ex. 34
19 ¶ 13(c).

20 On behalf of I Works, Pilon has obtained bank accounts in the name of one or more shell
21 companies into which defendants deposited the proceeds from I Works’s sale of core products and
22 Upsells. *See e.g. Zions Bank Response*, Ex.156, Zions Bank 6758, 6786.

23 As a member of the Merchant Account Department, Pilon was well aware of the high
24 number of chargebacks. [*I Works CID Response*, Ex.18 at IW-P-0012395]. In fact, in September
25 2009, Pilon sent an email to Jeremy Johnson and other I Works managers with a suggestion about
26 how to reduce chargebacks. *I Works CID Response*, Ex. 18 at IW-P-0012395-12397.

9. Ryan Riddle.

Ryan Riddle (“Riddle”) was, until November 2009, the General Manager of I Works. [I Works CID Responses, Ex. 7, p. 11 (Interrogatory 25)]. As General Manager, Riddle exercised supervisory authority over I Works employees. [Kramm, Ex. 30 ¶¶ 27, 29]. Riddle hired and fired I Works employees. [Kramm, Ex. 30 ¶¶ 27, 29]. He supervised managers and sent directions to employees via email and otherwise. Kramm, Ex. 30 ¶ 29.

As General Manager, Riddle had the authority to approve websites offering the core products and Upsells sold by I Works. [Kramm, Ex. 30 ¶ 29]. And, he signed marketing and other contracts on behalf of I Works. See e.g. I Works CID Response, Ex.17 at IW 128-35 & 144-50.

Riddle is also the titular owner and officer of defendant Diamond J Media, one of the shell companies. [I Works CID Response, Ex. 3, p. 14 (Interrogatory 4)]. Riddle signed merchant account applications on behalf Diamond J Media’s various DBAs. [Leidenthal, Ex. 52 at VISA 469-470, 472-73]. Riddle has signatory authority over a bank account titled in the name of Diamond J Media. Village Bank CID Response, Ex. 155 at VB 001638 Crowley, Ex. 32, Att. B, p. 3.

Riddle has received numerous reports and emails about the I Works Enterprise’s high level of chargebacks. [Kramm, Ex. 30 ¶ 29]. Riddle was further made aware of I Works’s chargeback issue through his frequent communications with I Works’s merchant banks and payment processors. [I Works CID Responses, Ex. 10, pp. 7-8 (Interrogatory 42); Ex. 17 at IW 004930, 4932, 4934, 4936]. For example, in September 2008, Riddle received a letter from Litle & Co., one of defendants’ payment processors, stating that Visa was placing defendant Internet Economy in its chargeback monitoring program. [Leidenthal, Ex. 52 at VISA 1610-1612]. Riddle sent Progress Reports and Chargeback Reduction Plans on behalf of I Works to the banks and payment processors explaining the steps I Works was taking to decrease chargebacks. See e.g. Elliott I, Ex. 50 at VISA 544-547 & VISA 551-54.

1 In addition, Riddle knew of consumer complaints about I Works's products and responded
2 to the complaints that were sent to I Works by various state Attorneys General. *I Works CID*
3 *Response*, Ex. 17 at IW 880 & 3612.

4 10. Terrason Spinks.

5 **Terrason Spinks** ("Spinks") has or had an office at I Works Headquarters. [*Kramm*, Ex.
6 30 ¶ 68]. He is the titular owner and officer of defendant Jet Processing, a shell company that he
7 purchased from I Works and Jeremy Johnson in 2009 and he has since used to obtain merchant
8 accounts on behalf of I Works. [*Kramm*, Ex. 30 ¶ 68; *Leidenthal*, Ex. 52 at VISA 609-611;
9 *Partridge*, Ex. 31 ¶ 64]. He has also submitted a Chargeback Reduction Plan to a processing bank
10 on behalf of defendant Jet Processing. *Leidenthal*, Ex. 52 at VISA 618 - 621.

11 Spinks has signatory authority over at least six bank accounts in the name of Jet
12 Processing, one or more of which received funds from I Works directly and/or received funds from
13 I Works's billing of core products and Upsells. *See e.g. Village Bank CID Response*, Ex. 155,
14 VB2d 000577-578.

15 Spinks knew of the I Works Enterprise's high chargeback levels because he received
16 numerous I Works internal reports. [*Kramm*, Ex. 30 ¶ 68]. Spinks also regularly attended
17 meetings discussing the high chargeback levels on I Works merchant accounts. *Kramm*, Ex. 30
18 ¶ 74.

19 **IV. ARGUMENT: THE REQUESTED RELIEF IS WARRANTED.**

20 The FTC is asking the Court to issue a preliminary injunction that would prohibit
21 defendants from further injuring consumers during the pendency of the litigation, appoint a
22 receiver over the 61 corporate defendants, freeze the assets of the corporate defendants and Jeremy
23 Johnson, and provide for expedited discovery. Section A, below, sets forth the FTC's authority to
24 seek, and this Court's authority to grant, a preliminary injunction in this law enforcement action.
25 Section B describes the standard for issuance of a preliminary injunction in an enforcement action
26 brought by the government and demonstrates that the overwhelming evidence presented by the

1 FTC satisfies this standard. Finally, Section C explains why the requested ancillary relief - the
 2 appointment of a receiver, the freezing of assets, and expedited discovery - are necessary to protect
 3 consumers.

4 A. *The Court is Authorized to Grant the Requested Injunctive Relief.*

5 Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes the FTC to seek, and this
 6 Court to grant, permanent injunctive relief in “proper cases” and also to award “any ancillary relief
 7 necessary to accomplish complete justice.” *FTC v. H.N. Singer, Inc.*, 668 F.2d 1107, 1111-13 (9th
 8 Cir. 1982) (“*Singer*”).⁸² A routine fraud case such as this one, replete with misrepresentations of
 9 material facts in violation of Section 5(a) of the FTC Act, qualifies as a “proper case” under
 10 Section 13(b). *Id.*

11 The Court may exercise the full breadth of its equitable authority in a Section 13(b) action
 12 because Congress “did not limit that traditional equitable power” when it passed the FTC Act.
 13 *Singer*, 668 F.2d at 1113. Thus, under Section 13(b), the Court may order ancillary equitable
 14 remedies, such as rescission of contracts and restitution, as well as whatever additional preliminary
 15 relief is necessary to preserve the possibility of effective final relief. *Singer*, 668 F.2d. at 1113-14.
 16 Initial relief may include a preliminary injunction freezing assets, appointing a receiver, enjoining
 17 practices, and permitting expedited discovery. *See, e.g., Singer*, 668 F.2d. at 1113-14; *FTC v. U.S.*
 18 *Oil & Gas Corp.*, 748 F.2d 1431, 1432 (11th Cir. 1984). *See also* S. Rep. No. 103-130 (1993), *as*
 19 *reprinted in* 1994 U.S.C.C.A.N. 1790-91 (“Section 13 of the FTC Act authorizes the FTC to file
 20 suit to enjoin any violation of the FTC [Act]. The FTC can go into court ex parte to obtain an
 21 order freezing assets, and is also able to obtain consumer redress”). District courts are also
 22 authorized to fashion discovery in particular cases. Fed. R. Civ. P. 1, 26(b)(2)(A), 30(a)(2),
 23 33(a)(1), and 34(b)(2)(A). The exercise of this broad, equitable authority is particularly

24
 25 ⁸² Section 13(b) of the FTC Act authorizes the issuance of injunctive relief in two different situations.
 26 Because the FTC proceeds here under the second proviso of Section 13(b), the standard that is prescribed in the first
 27 proviso of the Section, which relates to the issuance of temporary relief in aid of administrative proceedings, does
 28 not apply. *Singer*, 668 F.2d at 1111.

27 *FTC v. Jeremy Johnson., et al.*

1 appropriate where, as here, the public interest is at stake. *Porter v. Warner Holding Co.*, 328 U.S.
2 395, 398 (1946); *United States v. Laerdal Mfg.*, 73 F.3d 852, 857 (9th Cir. 1995).

3 Injunctive relief is appropriate even if a defendant has ceased its illegal activities if there
4 is “cognizable danger of recurrent violation.” *United States v. W.T. Grant Co.*, 345 U.S. 629, 633
5 (1953). The commission of past illegal conduct is “highly suggestive of the likelihood of future
6 violations.” *CFTC v. Hunt*, 591 F.2d 1211, 1220 (7th Cir. 1979). *See also FTC v. Direct Mktg.*
7 *Concepts, Inc.*, 648 F. Supp. 2d 202, 212 (D. Mass. 2009) *aff’d* 624 F.3d 1 (1st Cir. October 21,
8 2010); *FTC v. Think Achievement Corp.*, 144 F. Supp. 2d 1013, 1017 (N.D. Ind. 2000); *FTC v.*
9 *Five-Star Auto Club, Inc.*, 97 F. Supp. 2d 502, 536 (S.D.N.Y. 2000).⁸³

10 B. *A Preliminary Injunction Against Defendants is Warranted.*

11 A plaintiff in a lawsuit between two private parties may obtain a preliminary injunction if
12 it demonstrates that: (1) the plaintiff is likely to succeed on the merits; (2) the plaintiff is likely to
13 suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in
14 plaintiff’s favor; and (4) an injunction is in the public interest. *Winter v. Natural Res. Def.*
15 *Council, Inc.*, 129 S. Ct. 365, 374 (2008) (“*Winter*”). In a statutory enforcement action, however,
16 the government need not show irreparable injury. If the government shows a likelihood of success

17
18 ⁸³ Here, defendants are skilled in online marketing and, even if they have halted some portions of their
19 scam, they could easily resume any of their unlawful activities. More importantly, it appears that defendants are still
20 in business and continue to violate the law and profit from prior violations, creating a real danger of additional harm
21 to the public absent the entry of a preliminary injunction. First, defendants continue to charge consumers for a
22 Forced Upsell called “Wellness Hub,” (a Fit Factory rebrand) bundled with a marketing partner’s core product and
23 sold on the website Gotbody.com. [*Tyndall*, Ex. 37 ¶ 64]. Between April 1 and November 30, 2010, defendants
24 billed 9,753 consumers \$770,618, according to defendants’ records. [*Tyndall*, Ex. 37 ¶ 50(a)(i)]. I Works continues
25 to enroll consumers in its Fit Factory Upsell. Between December 20 and 26th, I Works enrolled 74 new consumers
26 in the Fit Factory Upsell and billed existing consumers \$41,590. [*Tyndall*, Ex. 37 ¶ 64]. Second, defendants’
27 websites are still active. [*Tyndall*, Ex. 37 ¶ 59]. Third, defendants have continued to establish shell companies even
28 after learning in early 2010 of the FTC’s investigation. Defendants set up a company by the name of BioFactor with
one of their customer service representative as the titular officer. Defendants then obtained at least one merchant
account in the name of BioFactor using the name of the customer service representative. [*Tyndall*, Ex. 37 ¶ 55].
Fourth, after receiving a letter from the FTC admonishing them not to make any asset transfers out of the ordinary
course of business [Ex. 102], I Works and Jeremy Johnson sold their “portfolio” - their right to consumers’ monthly
recurring payments - to a company by the name of Cerberus Management, LLC. [Ex. 103]. This sale enabled
defendants to state that they no longer are receiving the proceeds of fraud. Yet, through this sale, defendants
obtained the present value of the future recurring payments.

1 on the merits, irreparable injury is presumed. *United States v. Odessa Union Warehouse Co-op*,
 2 833 F.2d 172, 175-76 (9th Cir. 1987); *FTC v. World Wide Factors, Ltd.*, 882 F.2d 344, 347 (9th
 3 Cir. 1989) (Unlike private litigants, the FTC need not prove irreparable injury, which is
 4 presumed).⁸⁴ Thus, the FTC need only show (1) a likelihood of success on the merits, and (2) the
 5 balance of equities tips in its favor. *FTC v. Affordable Media*, 179 F.3d 1228, 1233 (9th Cir. 1999)
 6 (“*Affordable Media*”). In weighing the public and private equities, the public interest should
 7 receive greater weight. *Winter*, 129 S. Ct. at 376-77; *Affordable Media*, 179 F.3d at 1236. As
 8 explained in detail below, the FTC is likely to succeed in showing defendants’ multiple law
 9 violations. Moreover, the balance of the equities tips decidedly in favor of protecting the public
 10 from further harm and preserving assets for eventual consumer redress.⁸⁵

11 1. The FTC is Likely to Succeed in Showing that Defendants’ Deceptive
 12 Misrepresentations and Omissions Violate Section 5(a) of the FTC Act.

13 A violation of Section 5(a) of the FTC Act prohibiting “unfair or deceptive acts or
 14 practices” is properly found upon a showing that there is a representation, omission, or practice
 15 that is likely to mislead consumers acting reasonably under the circumstances, and the
 16 representation, omission, or practice is material. *FTC v. Stefanich*, 559 F.3d 924, 928 (9th Cir.
 17 2009); *FTC v. Gill*, 265 F.3d 944, 950 (9th Cir. 2001). A representation is likely to mislead
 18 consumers if it is false. *FTC v. Pantron I Corp.*, 33 F.3d 1088, 1096 & note 22 (9th Cir. 1994)
 19 (“*Pantron*”). A representation that lacks a reasonable basis is also considered false. *FTC Policy*
 20 *Statement on Deception*, 103 F.T.C. 174, 175 n.5 (appended to *In re Cliffdale Associates, Inc.*, 103

21 ⁸⁴ In *FTC v. Inc21*, 688 F. Supp. 2d 927, 936 (C.D. Ca. 2010), the court held that “[c]ongress determined
 22 that the traditional standard was *not* ‘appropriate for the implementation of a Federal statute by an independent
 23 regulatory agency where the standards of the public interest measure the propriety and the need for injunctive relief.’
 24 [citation omitted]. In this light, the recent Supreme Court holding in *Winter v. Natural Resources Defense Council*,
 129 S. Ct. 365 (2008), which clarified the test for applying the “traditional” equity standard for issuing an injunction,
 does *not* affect the analysis under Section 13(b) of the FTC Act.”

25 ⁸⁵ Requiring defendants to comply with the FTC Act, to refrain from fraudulent representations, or to
 26 preserve their assets from dissipation or concealment, is not an oppressive hardship. *FTC v. World Wide Factors*,
Ltd., 882 F.2d at 347; *FTC v. City West Advantage, Inc.*, 2008 WL 2844696 (D. Nev. 2008) (no hardship in
 requiring defendants to merely follow the law – to refrain from making misrepresentations to consumers).

27 *FTC v. Jeremy Johnson, et al.*

1 F.T.C. 110 (1984)). *See also*, *FTC v. Tashman*, 318 F.3d 1273, 1277 (11th Cir. 2003); *FTC v. US*
 2 *Sales Corp.*, 785 F. Supp. 737, 748 (N.D. Ill. 1992)(“Apart from challenging the truthfulness of an
 3 advertiser’s representations, the FTC may challenge the representation as unsubstantiated if the
 4 advertiser lacked a reasonable basis for its claims.”). A representation, omission or practice is
 5 material if it “involves information that is important to consumers and, hence, likely to affect their
 6 choice of, or conduct regarding a product.” *FTC v. Cyberspace.com, LLC*, 453 F.3d 1196, 1201
 7 (9th Cir. 2006) (“*Cyberspace*”) (quoting *Cliffdale Assocs.*, 103 F.T.C. at 165). A
 8 misrepresentation may be express or implied. *FTC v. Figgie Int’l*, 994 F.2d 595, 604 (9th Cir.
 9 1993). Express product claims are presumed to be material. *FTC v. Pantron*, 33 F.3d at 1095-96.
 10 Small print disclaimers, even if truthful, are inadequate to inform consumers of material
 11 information. *Cyberspace*, 453 F.3d at 1200. Here, the record shows that defendants have
 12 marketed their grant and make-money products using numerous deceptive representations and
 13 omissions.

14 a. *Defendants Have Made Deceptive Claims About Their Grant*
 15 *Products.*

16 Counts I and II of the Complaint allege that defendants have violated Section 5(a) of the
 17 FTC Act by representing that government grants are generally available to individuals to pay
 18 personal expenses (Count I) and that consumers using defendants’ grant product are likely to find
 19 and obtain government grants for personal expenses (Count II). These representations are false.

20 As discussed in Section II(A), *supra*, defendants lather their sites with representations that
 21 government grants are generally available to individuals for personal needs⁸⁶ and that consumers
 22 are likely to find and obtain government grants to pay personal expenses by using defendants’
 23 grant product.⁸⁷ Yet, the declarations from the manager of the Catalogue for Domestic Assistance
 24 (*Donna Davis*), an expert in locating and obtaining grants retained by the FTC (*Mr. Bauer*), and

25 ⁸⁶ *See supra* pp. 5-9.

26 ⁸⁷ *See supra* pp. 9-11.

1 defendants' own grant consultant (*Dr. Porter*) show that government grants are almost never
2 available to individuals for payment of their personal expenses.⁸⁸ The evidence further shows that
3 defendants themselves knew that their claim that government grants are available for individuals
4 to pay personal expenses is false.⁸⁹ Because government grants are not available to pay personal
5 expenses, defendants' grant program is not going to make it any more likely that consumers will
6 find and obtain such grants. Moreover, the searches performed by Mr. Bauer using defendants'
7 grant program confirm that consumers using the grant product are not likely to find government
8 grants to pay personal expenses.⁹⁰

9 Count VI of the Complaint alleges that defendants have violated Section 5(a) of the FTC
10 Act by representing that consumers who enroll in the grant program can generally expect to find
11 and receive grants for personal expenses such as those obtained by the individuals whose
12 testimonials appear on defendants' sites. The testimonials purport to be from happy consumers
13 who used the money they received for emergency expenses, to pay a mortgage, buy Christmas
14 presents and groceries, and pay utility bills.⁹¹ The testimonials, in the context of the repeated and
15 specific references to government grants, convey the net impression that the individuals providing
16 the testimonials received government grants for the listed personal expenses and therefore users of
17 defendants' grant program are also likely to receive government grants for personal expenses.⁹²
18 Not one of the consumers in the testimonials, however, received a government grant for personal
19
20

21 ⁸⁸ See *supra* pp. 7-9, 10-11.

22 ⁸⁹ See *supra* pp. 8-9, 10-11.

23 ⁹⁰ See *supra* p. 10.

24 ⁹¹ See *supra* pp. 11-12.

25 ⁹² *Cyberspace*, 453 F.3d at 1200 citing *American Home Prods. Corp. v. FTC*, 695 F.2d 681, 687 (3d Cir.
26 1982) (“[T]he tendency of the advertising to deceive must be judged by viewing it as a whole’ The impression
created by the advertising, not its literal truth or falsity, is the desideratum.”).

27 *FTC v. Jeremy Johnson, et al.*

28 Memo in Support of Motion for Preliminary Injunction

1 needs. None of them even received a private grant for personal needs, other than a payment from
2 a nonprofit organization funded in whole or in part by defendants.⁹³

3 Consumers are unlikely to receive even defendants' "grants." Defendants' own records
4 show that a minuscule .04% of consumers enrolled in defendants' grant membership program ever
5 received a payment. [*Tyndall*, Ex. 37 ¶¶ 39-41]. Consumers viewing the testimonials in the
6 context of the grant sites are likely to believe that they have a far greater chance of receiving
7 grants for personal expenses, similar to those received by the individuals in the testimonials, than
8 four one hundredths of one percent.

9 The three grant-related misrepresentations alleged in Counts I, II, and VI of the Complaint
10 are material. They relate directly to the reason consumers would use defendants' grant product --
11 to find and obtain a grant for personal expenses -- and hence are likely to affect a consumer's
12 purchasing decision. *Cyberspace*, 453 F.3d at 1201.

13 b. *Defendants Have Misrepresented That Consumers Are Likely to*
14 *Earn Substantial Income by Using Defendants' Make-Money*
Products.

15 Count III of the Complaint alleges that defendants have violated Section 5(a) of the FTC
16 Act by representing that consumers are likely to earn substantial amounts of money by using
17 defendants' make-money products. The FTC is likely to succeed in showing that this
18 representation is deceptive because there is no evidence to support this claim.⁹⁴

19 The case law is clear that misrepresentations regarding the profit potential of a business
20 opportunity are important to consumers, and therefore are material misrepresentations in violation
21 of Section 5. *See FTC v. Minuteman*, 53 F. Supp. 2d 248, 258 (E.D.N.Y. 1998).
22 ("misrepresentations -- which tend to bear directly on the economic viability of the transaction
23 under consideration -- are both likely to deceive and material") (citing *FTC v. Security Rare Coin*

24
25 ⁹³ *See supra* note 24 and accompanying text.

26 ⁹⁴ *See supra* pp. 13-15.

1 & Bullion Corp., 1989 U.S. Dist. LEXIS 15958, 1989-2 Trade Cas. (CCH) P 68,807 at 62,219 (D.
2 Minn.), *aff'd*, 931 F.2d 1312 (8th Cir. 1991); *FTC v. Kitco of Nevada, Inc.*, 612 F. Supp. 1282,
3 1292 (D. Minn. 1985). Courts have held that even when earnings claims are made in a manner
4 containing a range of earnings or with an “up to” caveat, consumers can reasonably interpret
5 representations regarding earnings as typical or average earnings for that program. *See FTC v.*
6 *Medicor, LLC*, 217 F. Supp. 2d 1048, 1053-54 (C.D. Cal. 2002) (earnings claims modified by
7 “results may vary” would still be deceptive); *FTC v. Febre*, 1996 WL 396117 at *8 (N.D. Ill., July
8 3, 1996), *adopted by*, 1996-2 Trade Cases ¶ 71,580 (N.D. Ill., Sept. 27, 1996), *aff'd*, 128 F.3d 530
9 (7th Cir. 1997) (“while it might not be reasonable to believe that everyone who participates in the
10 program would earn the stated amount, it can be presumed that a consumer would reasonably
11 believe that the statements of earnings potential represent typical or average earnings.”)

12 Moreover, advertising that lacks a reasonable basis is also deceptive. *FTC Policy*
13 *Statement on Deception*, 103 F.T.C. 174, 175 n.5 (appended to *In re Cliffdale Associates, Inc.*, 103
14 F.T.C. 110 (1984)). *See also, FTC v. Tashman*, 318 F.3d 1273, 1277 (11th Cir. 2003) (finding that
15 extravagant earnings claims for which defendant had no basis or substantiation were deceptive and
16 violated Section 5 of the FTC Act).

17 As delineated in Section II(B), *supra*, defendants’ money-making websites are replete
18 with false earnings claims ranging from \$199 to thousands of dollars a day.⁹⁵ Defendants rely on
19 emails from three individuals to support their claims, but not one of the three individuals used
20 defendants’ product. Rather, they read a book whose author licensed his product to defendants and
21 there is no indication that the make-money product defendants’ offered have any relationship to
22 the book. Not one of the individuals achieved even the minimum amount defendants use on their
23 make-money sites. Moreover, defendants themselves often question the accuracy of even the most

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26 ⁹⁵ *See supra* pp. 14-15.

1 modest of the product’s earnings claims.⁹⁶ Through this evidence, the FTC has demonstrated a
2 likelihood of success on the merits of Count III of the Complaint.

3 c. *Defendants Have Misrepresented That Their Offers Are Free or*
4 *Risk-Free.*

5 Count IV of the Complaint alleges that defendants have violated Section 5(a) of the FTC
6 Act by expressly representing that their grant and make-money offers are free or risk-free. As
7 shown in Section II(C), defendants’ offers are neither free (because consumers who agree to pay
8 the small fee are likely to incur significant additional charges through one-time fees and monthly
9 recurring charges for the core products and Upsells) nor risk-free (because consumers are likely to
10 incur these significant charges unless they cancel the “free” offers during a short time period, often
11 as short as three days).⁹⁷ Defendants themselves admit that their offers are not free.⁹⁸ Defendants’
12 misrepresentations about the free or risk-free nature of their memberships are presumed to be
13 material because they are express claims. Moreover, these misrepresentations were likely to result
14 in consumers providing their billing information, which is what causes consumers to incur the
15 unexpected financial injury.

16 d. *Defendants Have Failed to Disclose, or Disclose Adequately, the*
17 *Material Terms of Their Offers.*

18 Count V of the Complaint alleges that defendants have violated Section 5(a) of the FTC
19 Act by failing to disclose, or disclose adequately, that consumers who pay a few dollars as a small
20 shipping or processing fee for a supposedly free or risk-free product will be enrolled in negative
21 option plans with hefty one-time and recurring charges for the advertised core product as well for
22 other unrelated continuity programs, the Forced Upsells, that also carry high recurring charges.
23

24 ⁹⁶ See *supra* p. 15.

25 ⁹⁷ See *supra* note 33 and accompanying text.

26 ⁹⁸ See *supra* p. 16.

1 The failure to disclose material information causes an advertisement to be deceptive.
2 *Simeon Mgmt. Corp. v. FTC*, 579 F.2d 1137, 1146 (9th Cir. 1978). Moreover, courts have held in
3 various contexts that an inconspicuous disclosure does not remedy the deceptiveness of a material
4 omission. *Cyberspace.com*, 2002 U.S. Dist. LEXIS 25565, * 8-9 (W.D. Wash. July 10, 2002)
5 (fine print disclosures inadequate to escape liability), *aff'd* 453 F.3d 1196, 1200 (9th Cir. 2006)
6 (reviewing cases where deception found because fine print disclosures inadequate to qualify claim
7 or disclose material information); *FTC v. Direct Marketing Concepts, Inc.*, 624 F.3d 1, 12 (1st Cir.
8 2010) (“[d]isclaimers or qualifications in any particular ad are not adequate to avoid liability
9 unless they are sufficiently prominent and unambiguous to change the apparent meaning of the
10 claims and leave an accurate impression” citing *Removatron Intern. Corp. v. FTC*, 884 F.2d 1489,
11 1497 (1st Cir. 1989)); *FTC v. Brown & Williamson Tobacco Corp.*, 778 F.2d 35, 43 (D.C. Cir.
12 1985) (advertisement’s description of cigarette tar content deceptive despite fine print disclosure at
13 the bottom of the ad); *FTC v. Porter & Deitsch*, 605 F.2d 294, 301 (7th Cir. 1979) (upholding FTC
14 finding that disclosures “buried in small print” were inadequate to qualify weight loss claims in
15 advertising); *FTC v. Gill*, 71 F. Supp. 2d 1030, 1044 (C.D. Cal. 1999) (disclaimers in contract for
16 credit repair services insufficient to counteract advertising claims about the service).

17 Defendants have made material misrepresentations to consumers in violation of Section
18 5(a) by failing to adequately disclose: (1) that there is a trial period for defendants’ products and
19 services; (2) that defendants enroll consumers who do not cancel during this trial period in
20 multiple online memberships for multiple products and services; and (3) that these memberships
21 impose a one-time charge as high as \$189 and then recurring charges as high as \$59.95.
22 Defendants’ websites themselves show that the defendants do not provide adequate notice of the
23 nature and terms of the offer; the disclosures are in tiny densely-packed print that is overwhelmed
24 by the promises that the offers are free or risk-free.⁹⁹ As outlined in Section II-D above,

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26 ⁹⁹ *See supra* p. 18.

1 consumers who initially provide their contact information on a landing page of one of the sites
2 advertising defendants' grant or money-making offers receive little to no information on that page
3 regarding any fees, costs, or terms and conditions other than an inconspicuous link to the
4 defendants' separate Terms and Condition and Privacy pages.¹⁰⁰ Defendants later state on the
5 order page that consumers will pay only a nominal shipping fee. Many consumers do not see the
6 fine print disclosures regarding any additional terms and costs and, misled by defendants'
7 deception, decide to pay the small fee. Instead of a minimal fee, however, defendants assault
8 consumers with a one-time fee of as much as \$189 and then recurring monthly charges for the core
9 grant or money-making product as well as for the Forced Upsells.¹⁰¹

10 Defendants' Website Reviews, correspondence with the payment processors, the large
11 percentage of consumers who never logged into defendants' membership sites, the half-million
12 chargebacks, and the declarations from defendants' former employees show that defendants knew
13 that the terms associated with their grant and money-making opportunities, and their Forced
14 Upsells, were not adequately disclosed.¹⁰² Moreover, defendants' own records show that more
15 than a million consumers who called to cancel or get a refund stated that they were unaware of the
16 monthly charges.¹⁰³ Finally, multiple consumer declarations show that defendants consistently
17 have failed to adequately disclose the material terms associated with what consumers believe is a
18 simple \$.99 to \$2.99 purchase.¹⁰⁴

21 ¹⁰⁰ See *supra* p. 17.

22 ¹⁰¹ See *supra* p. 17.

23 ¹⁰² See *supra* pp. 19-20.

24 ¹⁰³ Ex. 37, *Tyndall* ¶ 36(a).

25 ¹⁰⁴ *Consumer Bachman*, Ex. 70 ¶ 2; *Consumer Blohm* Ex. 71 ¶ 4; *Consumer Hong* Ex. 77 ¶ 2; *Consumer*
26 *Huffman*, Ex. 78 ¶ 3; *Consumer Kizzie*, Ex. 79 ¶ 2; *Consumer Miller*, Ex. 82 ¶ 2; *Consumer Valenti*, Ex. 83 ¶ 2;
Consumer Waite, Ex. 84 ¶ 3.

27 *FTC v. Jeremy Johnson., et al.*

1 Defendants' failure to adequately disclose the material terms of their grant and make-
2 money offers, in light of their express representation that the product is free or at most less than
3 \$3, is a deceptive practice in violation of Section 5(a) of the FTC Act. In fact, it is likely that
4 many consumers would not have agreed to pay the small fee had they been aware of the onerous
5 and expensive terms and conditions that would result from the submission of their billing
6 information to pay what they were told was only a small fee.¹⁰⁵

7 e. *Defendants Have Misrepresented That the Positive Reviews They*
8 *Created and Posted on the Internet Reflect the Opinions of*
9 *Unbiased Consumers and They Also Have Failed to Disclose That*
10 *They Created and Posted the Reviews.*

11 Counts VII and VIII of the Complaint address defendants' tactics to counter negative
12 publicity and keep the scam going. As set forth in Section II(F)(2), defendants hired third parties
13 to counter the negative publicity generated by their deceptive billing of their core products and
14 Upsells.¹⁰⁶ Defendants and their agents, including defendants' affiliate brokers, created and posted
15 on the Internet hundreds of positive articles and other web pages regarding defendants' reputation
16 and products. In doing so, defendants falsely represented that the positive articles were
17 independent reviews created and posted by unbiased consumers who had successfully used
18 defendants' products and services. Moreover, defendants failed to disclose the material
19 information that they and their agents had created and posted the positive information.

20 f. *Defendants Have Engaged in Unfair Billing Practices in Violation*
21 *of Section 5(a) of the FTC Act.*

22 Count IX of the Complaint alleges that defendants committed an unfair practice when they
23 billed consumers' accounts for the Forced Upsells that consumers never knowingly authorized
24 (because the Upsells were inadequately disclosed or not disclosed at all). As discussed in Section

25 ¹⁰⁵ *Consumer Bachman*, Ex. 70 ¶ 6; *Consumer Blohm*, Ex. 71 ¶ 20; *Consumer Huffman*, Ex. 78 ¶ 10;
26 *Consumer Kizzie*, Ex. 79 ¶ 10; *Consumer Miller*, Ex. 82 ¶ 8; *Consumer Valenti*, Ex. 83 ¶ 20; *Consumer Waite*, Ex.
27 84 ¶ 26.

28 ¹⁰⁶ *See supra* p. 28.

1 II(E), *supra*, defendants routinely charged consumers' credit cards or debited their bank accounts
2 for Forced Upsells without consumers' informed consent because consumers were not adequately
3 informed of the terms and conditions of defendants' offers. Defendants have unlawfully charged
4 millions of consumers in this manner, causing more than \$145 million in unreimbursed consumer
5 injury. [*Tyndall*, Ex. 37 ¶ 44(b)].

6 Under Section 5(n) of the FTC Act, an act or practice is unfair if it causes or is likely to
7 cause substantial injury to consumers that is not reasonably avoidable by consumers and is not
8 outweighed by countervailing benefits to consumers or to competition. *See* 15 U.S.C. § 45(n);
9 *FTC v. Neovi, Inc.*, 604 F.3d 1150, 1155 (9th Cir. 2010) ("*Neovi*"); *Orkin Exterminating Co., Inc.*
10 *v. FTC*, 849 F.2d 1354, 1363-66 (11th Cir. 1988). Charging consumers' credit and debit cards
11 without consumers' knowing authorization is an "unfair" practices that violates Section 5(a) of the
12 FTC Act. *See, e.g., FTC v. Global Mktg. Group, Inc.*, 594 F. Supp. 2d 1281, 1288-89 (M.D. Fla.
13 2008); *FTC v. J.K. Publications*, 99 F. Supp. 2d 1176, 1201 (C.D. Cal. 2000). *See also FTC v.*
14 *Kennedy*, 574 F. Supp. 2d 714 (S.D. Tex. 2008) (unauthorized charges placed on telephone bills
15 for product with a negative option feature held unfair).

16 The injury resulting from unauthorized billing is substantial because consumers suffer
17 ongoing and significant monetary harm. *Neovi*, 604 F.3d at 1157 (an act or practice can cause
18 "substantial injury" by doing a "small harm to a large number of people, or if it raises a significant
19 risk of concrete harm," *quoting American Fin. Servs. v. FTC*, 767 F.2d 957, 972-75 (D.C. Cir.
20 1985)). As noted above, defendants have regularly billed and debited the accounts of unsuspecting
21 consumers for a one-time fee as high as \$189 and recurring charges as high as \$59.95, thereby
22 inflicting significant economic harm on each consumer.

23 Moreover, this consumer injury is not reasonably avoidable. "In determining whether
24 consumers' injuries were reasonably avoidable, courts look to whether the consumers had a free
25 and informed choice." *Neovi*, 604 F.3d at 1158; *see also J.K. Publications*, 99 F. Supp. 2d at 1201.
26 Consumers could not avoid the charges or debits because they were wholly unaware of the Forced

27 *FTC v. Jeremy Johnson., et al.*

28 Memo in Support of Motion for Preliminary Injunction

1 Upsells into which they were automatically enrolled when they signed up for a core product
2 offered by defendants or by one of their marketing partners. Hence, many consumers were forced
3 to pay for a product they never requested and never knew they ordered.

4 Finally, defendants' unauthorized billing practice – simple theft – has no countervailing
5 benefit to consumers or to competition. Any monetary benefit to defendants of being able to
6 surreptitiously charge unsuspecting consumers for poorly disclosed or undisclosed Forced Upsells
7 is far outweighed by financial injury to defendants' victims, many of whom suffer additional
8 monetary injury on top of the losses from the initial one-time fee and the recurring charges,
9 including insufficient funds penalties due to unanticipated debits. There is no benefit to the
10 competitive marketplace in allowing a seller to impose unauthorized charges and debits to
11 consumers' accounts.

12 g. *Defendants Have Violated EFTA and Regulation E.*

13 Count X of the Complaint alleges that defendants have violated the Electronic Fund
14 Transfer Act (“EFTA”) and its implementing Regulation E, which regulate the circumstances
15 under which a merchant may make regularly recurring debits from a consumer's bank account.
16 EFTA and Regulation E require merchants to obtain a written authorization signed or similarly
17 authenticated by the consumer before making recurring debits. 15 U.S.C. § 1693e(a); 12 C.F.R.
18 § 205.10(b). In order for a preauthorization to be valid, the terms of the preauthorized transfer
19 must be “clear and readily understandable,” and the authorization “should evidence the
20 consumer's identity and assent to the authorization.” Federal Reserve Board's Official Staff
21 Commentary to Regulation E, 12 C.F.R. Part 205, Supp I, ¶ 10(b), comments (5)&(6). Moreover,
22 a copy of the authorization must be provided to the consumer. 15 U.S.C. § 1693e(a); 12 C.F.R. §
23 205.10(b). These protections ensure that consumers' consent to recurring debits will be knowing
24 and informed.

25 Many consumers were completely unaware that defendants would deduct recurring
26 monthly fees from their bank accounts. Defendants' attempt to lock consumers into this

1 arrangement with tiny disclosures, a checkbox regarding the terms and conditions, and a “Submit”
2 button, is insufficient to meet EFTA’s requirements. First, because defendants’ sites are covered
3 with express claims of “free,” “risk-free,” and other such statements that directly contradict the
4 negative option billing terms, the terms and conditions are not clear and readily understandable.
5 Instead, as evidenced by multiple declarations, consumers state that they had no idea defendants
6 would charge them more than a small one-time shipping and handling fee.¹⁰⁷ Second, neither the
7 terms and conditions page, nor the website itself, can serve as the consumer’s “copy” of the
8 authorization because it is not signed or similarly authenticated by the consumer and does not
9 evidence the consumer’s identity and assent to additional transfers. Based on this evidence,
10 defendants clearly do not meet the requirements of EFTA and have violated EFTA and
11 Regulation E.

12 2. The Equities Weigh Heavily in Favor of the Requested Injunctive Relief.

13 Not only has the FTC demonstrated a likelihood of success on the merits for each count of
14 its Complaint, but the balance of the equities tip decidedly in favor of the public interest. When
15 balancing public and private interests, the greater weight should be given to the public interest.
16 *Winter*, 129 S. Ct. at 376-77; *FTC v. World Wide Factors*, 882 F.2d at 347. Furthermore,
17 defendants “can have no vested interest in a business activity found to be illegal.” *United States v.*
18 *Diapulse Corp. of America*, 457 F.2d 25, 29 (2d Cir. 1972). The FTC’s interest in protecting
19 consumers from harm, enforcing the law, and preserving defendants’ assets for eventual consumer
20 redress greatly outweighs any private interests.

21 Defendants have clearly operated their deceptive scheme to the detriment of the public by
22 swindling consumers out of more than \$275 million since 2006. Consumers taken in by
23 defendants’ misrepresentations have lost money to defendants directly, and some incurred further
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26 ¹⁰⁷ *Consumer Bachman*, Ex. 70 ¶ 6; *Consumer Hong*, Ex. 77 ¶ 5; *Consumer Miller*, Ex. 82 ¶ 5; *Consumer*
Waite, Ex. 84 ¶ 25.

27 *FTC v. Jeremy Johnson., et al.*

28 Memo in Support of Motion for Preliminary Injunction

1 loss through bank overdraft fees.¹⁰⁸ Consumers have also lost time spent trying to disentangle
 2 themselves from the web of memberships in which defendants have ensnared them.¹⁰⁹ Some of
 3 these consumers went so far as to cancel their debit or credit cards out of fear of further charges
 4 from defendants.¹¹⁰ Defendants were aware, as evidenced by their own Website Reviews and
 5 through the telephone and written complaints they received, that their marketing claims and
 6 inconspicuous disclosures misled consumers. However, defendants continued to promote their
 7 products and services in the same deceptive manner, even going so far as to: (1) constantly
 8 change the name of their product or service to seduce unsuspecting new consumers with the same
 9 deceitful representations,¹¹¹ and (2) create shell companies seemingly unrelated to Jeremy Johnson
 10 and I Works in order to dupe banks into opening new merchant accounts.¹¹² As the evidence
 11 indicates, the public interest in protecting consumers from defendants' illegal practices far
 12 outweighs defendants' private interests.

13 Moreover, defendants' victims are still being charged for the memberships.¹¹³
 14 Defendants' websites are still active.¹¹⁴ Defendants continue to follow their pattern of setting up
 15 shell companies to obtain merchant accounts, the most recent of which is one for a company by the
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17 ¹⁰⁸ *Consumer Bachman* Ex. 70 ¶ 6; *Consumer Blohm*, Ex. 71 ¶ 4; *Consumer Hong* Ex. 77 ¶ 5; *Consumer*
 18 *Miller*, Ex. 82 ¶ 5; *Consumer Waite*, Ex. 84 ¶ 25.

19 ¹⁰⁹ *Consumer Bachman*, Ex. 70 ¶ 8; *Consumer Blohm*, Ex. 71 ¶ 14; *Consumer Britto*, Ex. 72 ¶ 18;
 20 *Consumer DeWitt*, Ex. 74 ¶ 23; *Consumer Easterwood*, Ex. 75 ¶ 8; *Consumer Hong*, Ex. 77 ¶ 10; *Consumer*
 21 *Huffman*, Ex. 78 ¶ 10; *Consumer Kizzie*, Ex. 79 ¶ 10; *Consumer Merrell*, Ex. 81 ¶ 10; *Consumer Miller*, Ex. 82 ¶ 7;
 22 *Consumer Valenti*, Ex. 83 ¶ 12; *Consumer Waite*, Ex. 84 ¶ 25.

23 ¹¹⁰ *Consumer Merrell*, Ex. 81 ¶ 8; *Consumer Valenti*, Ex. 83 ¶ 7.

24 ¹¹¹ *Tyndall*, Ex. 34 ¶¶ 47-49; *Kramm*, Ex. 30 ¶ 93.

25 ¹¹² *See supra* Section III(B).

26 ¹¹³ *Tyndall*, Ex. 37 ¶ 64. Between April 1 and November 30, 2010, defendants billed 9,753 consumers
 27 \$770,618, according to defendants' records. Ex. 37 ¶ 50(a). Between December 20 and 26, defendants enrolled 74
 28 new consumers in their Fit Factory product and billed existing consumers \$41,590. *Tyndall*, Ex. 37 ¶ 64.

¹¹⁴ *Tyndall*, Ex. 37 ¶ 59.

1 name of Bio-Factors.¹¹⁵

2 And, more significantly, after defendants became aware of the FTC's investigation, the
3 FTC sent I Works and Jeremy Johnson's counsel a letter apprising them that the FTC may be
4 seeking an order requiring them to pay restitution to defrauded consumers and urging to refrain
5 from making any financial transfers. [Ex. 102]. Despite this admonition, defendants sold their
6 portfolio of receivables that consisted of consumers' monthly billing in July 2010, and those
7 consumers are being billed. [Ex. 103]. Finally, Jeremy Johnson has recently embarked on a new
8 venture, iSaversNetwork, of which he is a co-founder. *Tyndall*, Ex. 37 ¶¶ 56-58.

9 3. The Individual Defendants Are Personally Liable.

10 In order to obtain injunctive relief against individuals for injury to consumers resulting
11 from a company's violation of Section 5(a), the FTC must establish that the individuals
12 participated directly in the acts or practices or had the authority to control the company involved in
13 the unlawful practices. *FTC v. Publ'g Clearing House, Inc.*, 104 F.3d 1168, 1170 (9th Cir. 1997);
14 *FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 573 (7th Cir. 1989).¹¹⁶ To find an individual liable
15 for monetary relief, the FTC must also show that an individual had knowledge of the acts or
16 practices. *FTC v. Network Services Depot, Inc.*, 617 F. 3d 1127, 1138 (9th Cir. 2010) (quoting
17 from *FTC v. Publ'g Clearing House*, 104 F. 3d at 1170); *FTC v. Amy Travel*, 875 F.2d at 574.
18 Direct participation or authority to control is evidenced by "active involvement in business affairs
19 and the making of corporate policy, including assuming the duties of a corporate officer." *FTC v.*
20 *Amy Travel*, 875 F.2d.at 573. The knowledge requirement may be satisfied by showing actual
21 knowledge of the misrepresentations, reckless indifference to the truth or falsity of the
22 misrepresentations, or an awareness of a high probability of fraud coupled with an intentional

23 _____
24 ¹¹⁵ *Tyndall*, Ex. 37 ¶ 55.

25 ¹¹⁶ An individual's status as a corporate officer gives rise to a presumption of control of a small, closely-
26 held corporation. "A heavy burden of exculpation rests on the chief executive and primary shareholder of a closely-
held corporation whose stock-in-trade is overreaching and deception." *Standard Educus, Inc. v. FTC*, 475 F.2d 401,
403 (D.C. Cir.), *cert. denied*, 414 U.S. 828 (1973).

27 *FTC v. Jeremy Johnson., et al.*

1 avoidance of the truth. *FTC v. Network Services Depot, Inc.*, 617 F. 3d at 1138-39; *FTC v. Publ’g*
2 *Clearing House*, 104 F.3d at 1171; *Amy Travel*, 875 F.2d at 574. The degree of participation in
3 business affairs is probative of knowledge. *Id.*; *FTC v. Sharp*, 782 F. Supp. 1445, 1450 (D. Nev.
4 1991). In order to establish individual liability, the FTC need not show that the individual
5 intended to defraud consumers. *FTC v. Network Services Depot*, 617 F.3d at 1139; *FTC v. Publ’g*
6 *Clearing House*, 104 F.3d at 1171.

7 The individual defendants in this case had authority to control the companies within the
8 I Works Enterprise. Each individual defendant is an owner or officer of one or more of the
9 corporate defendants or shell companies. [*See supra* pp. 41-50]. An individual’s status as a
10 corporate officer in a small closely-held corporation gives rise to a presumption of authority to
11 control the corporation. [*See supra* note 116]. Each individual defendant has signatory authority
12 over at least one bank account belonging to a corporation within the I Works Enterprise. [*See*
13 *supra* pp. 41-50]. Furthermore, all of the individual defendants directly participated in deceptive
14 acts by obtaining one or more merchant accounts so that I Works could continue processing
15 charges for I Works products and Forced Upsells. *See supra* pp. 41-50.

16 All of the individual defendants had knowledge of I Works’s deceptive acts and practices,
17 or intentionally avoided the truth. As stated above, each of them was the owner or officer of a
18 company within the I Works Enterprise and obtained merchant accounts to keep the deceptive
19 practices going. By virtue of their positions in the Enterprise and actions in obtaining merchant
20 accounts, each defendant had knowledge of the deceptive scheme or at the very least intentionally
21 avoided the truth. [*See supra* pp. 41-50]. Therefore, the FTC is likely to succeed in establishing
22 the individual defendants’ liability for both permanent injunctive and monetary relief.

23 C. *An Asset Freeze as to the Corporate Defendants and Defendant Jeremy Johnson,*
24 *Appointment of a Receiver, and Expedited Discovery Are Needed to Preserve*
Effective Final Relief.

25 In addition to requesting the issuance of a preliminary injunction that bars the defendants
26 from violating the law during the pendency of this litigation, the FTC requests that the Court
27 freeze the assets of the 61 corporate defendants and Jeremy Johnson, appoint a receiver over the
28

1 corporate defendants, and authorize expedited discovery so that the FTC and the receiver may
2 quickly locate assets.

3 1. A Freeze on the Assets of the Corporate Defendants and Jeremy Johnson is
4 Justified and Necessary.

5 A freeze of the assets of the 61 corporate defendants and of Jeremy Johnson, the
6 mastermind behind the fraud, is appropriate here to ensure that funds do not disappear during the
7 course of this action. An asset freeze should be imposed where the movant has shown that there
8 exists a likelihood of success on the merits and that there is “a likelihood of dissipation of the
9 claimed assets, or other inability to recover monetary damages, if relief is not granted.” *Johnson v.*
10 *Couturier*, 572 F.3d 1067, 1085 (9th Cir. 2009). Where defendants have engaged in fraud, a court
11 may conclude there is a likelihood that assets will be dissipated. *SEC v. Manor Nursing Ctrs.,*
12 *Inc.*, 458 F.2d 1082, 1106 (2d Cir. 1972). Further, an asset freeze is appropriate where the FTC’s
13 objective is “to obtain restitution of monies fraudulently obtained.” *Singer*, 668 F.2d at 1113.
14 The magnitude of a defendant’s ultimate liability also warrants entry of an asset freeze. *FTC v.*
15 *USA Beverages., Inc.*, 2005 WL 5654219, at *9 (S.D. Fla. Dec. 5, 2005) (asset freeze is
16 appropriate where scope of monetary liability for defendants’ unlawful conduct is enormous and
17 provides considerable motivation for defendants to place their assets beyond the Court’s reach).

18 Here, the corporate defendants face an enormous monetary liability of more than \$275
19 million, which in itself warrants an asset freeze. In addition, the corporate defendants have taken
20 elaborate steps to trick financial institutions, making an asset freeze even more imperative. They
21 have: (1) created no fewer than 51 shell companies to conceal their true identity from acquiring
22 banks after banks had terminated defendants’ merchant accounts for high chargebacks;¹¹⁷ and (2)
23 created dummy underwriting sites to show the banks, thereby hiding from the banks the actual
24 deceptive sales sites consumers saw.¹¹⁸ These factors are sufficient to demonstrate at least “a
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26 ¹¹⁷ See *supra* Section III(B). See also *Kramm*, Ex. 30 ¶¶ 85-93.

27 ¹¹⁸ See *Partridge*, Ex. 31 ¶ 57; *Kramm*, Ex. 30 ¶¶ 102-103. See also, *supra* pp. 27, 38.

1 likelihood” that the 61 corporate defendants would dissipate assets without the entry of an asset
2 freeze.

3 Moreover, the record is replete with evidence showing that, in the absence of an asset
4 freeze, defendant Jeremy Johnson is likely to dissipate assets. As noted above, when Jeremy
5 Johnson and I Works were placed on the terminated merchant list by several different banks [*see*
6 *supra* notes 61-62 and accompanying text], instead of making changes to his marketing materials,
7 Johnson ordered the creation of numerous companies to obtain new merchant accounts from banks
8 by means of subterfuge.¹¹⁹ In fact, Jeremy Johnson exhorts his lieutenants that he wants the
9 “ability to put shit processing in one of those corps not tied to us at all knowing full well it will
10 blow up in a few months”¹²⁰ – meaning that sales likely to produce excessive chargebacks are to be
11 processed through one of the shell companies not linked to I Works or Johnson. Additionally,
12 Jeremy Johnson controls companies in the Philippines and Belize,¹²¹ and Johnson himself has
13 stated that the reason for the Belize company is to protect his assets.¹²² Furthermore, Johnson
14 enjoys a lavish lifestyle, complete with helicopters, houseboats, and millions of dollars in real
15 estate holdings and other investments.¹²³ Facing a sizeable judgment, Johnson is likely to dissipate
16 and hide assets. Indeed, since Johnson has discovered the existence of the FTC’s investigation, he
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18

19 ¹¹⁹ *See I Works CID Response*, Ex. 18 at IW-P-0007865 - 7870.

20 ¹²⁰ *See I Works CID Response*, Ex. 18, IW-P-0026093. *See also supra* pp. 38-39.

21 ¹²¹ *See* email dated March 24, 2008 from Jeremy Johnson that “Raven Media is our subsidiary in the
22 Philippines. All offers are run under the Raven Media name” [*I Works CID Response*, Ex. 18 at IW-P-
23 0038375]. *See also* email dated April 7, 2009, from defendant Bryce Payne stating that “Jeremy wants to change the
24 name of JRS Media to ‘Pera Marketing’” [Ex. 18 at IW-P 9813]. JRS Media is an I Works company located in the
25 Philippines. [*Jacobson I*, Ex. 34 ¶ 70]. *See also Deposition Testimony of Kyle Kimoto*, Ex. 26 pp. 18-19 (in
discussing Jeremy Johnson, Kimoto testifies that “I just know that he has a lot of businesses” in both Belize and the
Philippines and in “locations throughout the Utah area.” Kimoto learned about Johnson’s businesses in Belize and
the Philippines from Johnson. *Partridge*, Ex. 31 ¶ 23; *Jacobson I*, Ex. 34 ¶¶ 68-72.

26 ¹²² *See Deposition Testimony of Kyle Kimoto*, Ex. 26 pp. 44-45 (in discussing Jeremy Johnson, Kimoto
27 testifies that Johnson told him that “asset protection of corporate entities . . . is better” in Belize).

28 ¹²³ *Tyndall*, Ex. 37 ¶ 62.

1 has siphoned more than \$2 million from the corporate defendants to pay his personal income tax
2 liabilities for past years.¹²⁴

3 2. The Appointment of a Receiver is Necessary.

4 The appointment of a receiver for the corporate defendants is also critical. In cases in
5 which a corporate defendant, through its management, has defrauded members of the public, “it is
6 likely that in the absence of the appointment of a receiver to maintain the status quo, the corporate
7 assets will be subject to diversion and waste” to the detriment of the fraud’s victims. *SEC v. First*
8 *Fin. Group*, 645 F.2d 429, 438 (5th Cir. 1981); *SEC v. Keller Corp.*, 323 F.2d 397, 403 (7th Cir.
9 1963) (“[I]t is hardly conceivable that the trial court should have permitted those who were
10 enjoined from fraudulent misconduct to continue in control of [the corporate defendant’s] affairs
11 for the benefit of those shown to have been defrauded.”).

12 Appointment of a receiver is particularly appropriate here because defendants’ Enterprise
13 is permeated with fraud. [*FTC v. USA Beverages, Inc.*, 2005 WL 5654219 at * 8 (S.D. Fla. Dec.
14 6, 2005) (equity receiver appropriate where entire business model is permeated with fraud)]. A
15 receiver can monitor the use of defendants’ assets, marshal and preserve records, identify assets,
16 determine the size and extent of the fraud, and identify additional consumers who were injured.
17 Moreover, defendants have constructed a complicated fraud machine comprised of a tangled web
18 of interrelated companies that only a receiver will be able to unwind.

19 The FTC recommends that the Court appoint **Robb Evans** as receiver for the corporate
20 defendants. Mr. Evans’ qualifications are set forth in the Commission’s Recommendation for
21 Receiver, filed simultaneously with the Commission’s Motion for a Preliminary Injunction With
22 Other Equitable Relief.

23 3. Expedited Asset Discovery is Necessary and Appropriate.

24 In order to fully unravel the layers of corporations and individuals involved in this matter,
25 and to locate assets wrongfully obtained from defrauded consumers, the FTC respectfully requests
26 that this Court permit expedited discovery and order financial reporting by defendants.

27
28 ¹²⁴ See *Crowley*, Ex. 32 ¶ 17.

1 District courts are authorized to depart from normal discovery procedures and fashion
2 discovery by order to meet discovery needs in particular cases. Fed. R. Civ. P. 1, 26(d), 34(b).
3 Moreover, the prompt and full disclosure of the scope and financial status of defendants' business
4 operations is necessary to ensure that the Court is fully advised regarding: (1) the full range and
5 extent of defendants' law violations; (2) the identities of injured consumers; (3) the total amount of
6 consumer injury; and (4) the nature, extent and location of defendants' assets. For these reasons,
7 the proposed Order requires that defendants produce certain financial records and information on
8 short notice, and requires financial institutions served with the order to disclose whether they are
9 holding any of defendants' assets. The proposed Order also includes a provision ordering the
10 repatriation of foreign assets and requiring the corporate defendants and Jeremy Johnson to sign a
11 form authorizing financial institutions outside the United States to provide the FTC and the
12 receiver access to account records and assets.

13 This requested relief is necessary to identify and preserve assets defendants wrongfully
14 obtained from consumers. Any hardship on defendants caused by the relief sought is greatly
15 outweighed by the public's interest in preserving evidence and assets obtained through defendants'
16 unlawful practices.

1 **V. CONCLUSION.**

2 Defendants have caused and are likely to continue to cause substantial injury to consumers
3 as a result of their violations of the FTC Act and the EFTA. The FTC therefore asks that the Court
4 issue the requested injunctive relief to prevent ongoing harm and to help ensure the possibility of
5 effective final relief, including monetary restitution.

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8 Respectfully submitted,

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16 DATE: January 12, 2011
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CERTIFICATE SERVICE

I hereby certify that on January 12, 2011 I served via electronic email and via overnight delivery service the foregoing document on the counsel listed below:

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