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WILLARD K. TOM
General Counsel

DEANYA T. KUECKELHAN
Regional Director

JASON C. MOON, Tex. Bar No. 24001188
THOMAS B. CARTER, Tex. Bar No. 03932300
EMILY B. ROBINSON, Tex. Bar No. 24046737
Federal Trade Commission
1999 Bryan Street, Suite 2150
Dallas, Texas 75201
(214) 979-9378; jmoon@ftc.gov (Moon)
(214) 979-9372; tcarter@ftc.gov (Carter)
(214) 979-9386; erobinson@ftc.gov (Robinson)
(214) 953-3079 (Fax)

Attorneys for Plaintiff
FEDERAL TRADE COMMISSION

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

FEDERAL TRADE COMMISSION

Plaintiff

v.

**Ambrosia Web Design LLC, an Arizona
limited liability company, also d/b/a AWD;**

**Concord Financial Advisors LLC, an
Arizona limited liability company;**

**CAM Services Direct LLC, an Arizona
limited liability company;**

**AFB LLC, an Arizona limited liability
company;**

**Western GPS LLC, an Arizona limited
liability company;**

Case No. _____

**MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF PLAINTIFF'S *EX
PARTE* APPLICATION FOR
TEMPORARY RESTRAINING
ORDER WITH OTHER
EQUITABLE RELIEF, AND
ORDER TO SHOW CAUSE
WHY A PRELIMINARY
INJUNCTION SHOULD NOT
ISSUE, AND REQUEST TO
APPOINT RECEIVER**

1 **Chris Ambrosia, individually and as a**
2 **manager of Ambrosia Web Design LLC,**
3 **AFB LLC, and CAM Services Direct LLC;**

4 **and**

5 **LeRoy Castine, a/k/a Lee Castine,**
6 **individually and as a manager of Ambrosia**
7 **Web Design LLC, Concord Financial**
8 **Advisors LLC, AFB LLC, and Western**
9 **GPS LLC;**

10 **Defendants**

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1 **I. INTRODUCTION¹**

2 The Federal Trade Commission (FTC) brings this action under Sections 13 (b) and
3 19 of the Federal Trade Commission Act (FTC Act), 15 U.S.C. §§ 53(b) and 57b, and the
4 Telemarketing and Consumer Fraud and Abuse Prevention Act (Telemarketing Act), 15
5 U.S.C. §§ 6101-6108, to halt Defendants' unlawful telemarketing of credit card interest
6 rate reduction services. Defendants employ illegal prerecorded messages or "robocalls,"
7 violate the FTC's National Do Not Call Registry (DNC Registry), deceive consumers
8 about their services, charge illegal advance fees, bill some consumers without
9 authorization, refuse to honor refund promises, and commit multiple additional violations
10 of the FTC Act and the FTC's "Telemarketing Sales Rule" (TSR), 16 C.F.R. Part 310.
11 The FTC seeks temporary, preliminary, and permanent injunctive relief, rescission or
12 reformation of contracts, the refund of monies paid, disgorgement of ill-gotten gains, and
13 other equitable relief to halt Defendants' deceptive and abusive practices and to provide
14 restitution for Defendants' victims.

15
16 ¹ In support of this application, Plaintiff is concurrently filing a two-volume Appendix.
17 The Appendix includes consumer declarations, declarations from a Tempe, Arizona
18 police detective and two FTC investigators, and other declarations and exhibits. The
19 Appendix will be cited as "App. at 00000x." The citation will note source declarations
20 and attachments. The exhibits to the Declaration of FTC Investigator Brent McPeck
(App. at 000598-000601) are separately listed in the Appendix and will be cited by
Appendix number (App. at 000602-000915) for ease of reference.

21 The most compelling evidence in support of a temporary restraining order (TRO)
22 comes from consumers themselves. Ten consumers have provided declarations detailing
23 Defendants' deceptive, unfair, and abusive practices. *See* App. at 000264-285
(Declaration of Felisha Bradley, with Attachments A-D); 000286-325 (Declaration of
24 Lorene Carter, with Attachments A-E); 000326-353 (Declaration of Robert Clifton, with
25 Attachments A-D); 000354-358 (Declaration of Beulah Johnson, with Attachment A);
000359-371 (Declaration of Sharon McClellan, with Attachments A-D); 000372-389
(Declaration of Carolyn Paglia, with Attachment A); 000390-392 (Declaration of
26 Gregory Ramsey); 000393-418 (Declaration of Lydia Reagan, with Attachments A-C);
000419-435 (Declaration of Paul Smith, with Attachments A-D); 000436-478
27 (Declaration of Shirley Tester, with Attachments A-I).

1 Defendants Ambrosia Web Design, LLC (AWD), Concord Financial Advisors,
2 LLC (Concord), CAM Services Direct, LLC (CAM Services), and Western GPS LLC
3 (Western GPS), a group of closely affiliated companies, contact consumers directly or
4 through third-party telemarketing companies. These Defendants, or the telemarketing
5 companies they use, blast illegal robocalls to consumers on the DNC Registry. These
6 robocalls use names like "Card Member Services" or "Card Services" to disguise
7 Defendants' identities and mislead consumers into believing Defendants are connected
8 with credit card companies. The robocalls sometimes claim to be calling in connection
9 with a government program to reduce credit card interest rates. These "Card Member
10 Services" or "Card Services" calls are responsible for hundreds of thousands of Do Not
11 Call complaints to the FTC from beleaguered consumers.

12 Consumers who answer the phone are barraged with an aggressive, highly
13 deceptive sales pitch intended to convince them that Defendants can drastically lower
14 their credit card interest rates and save them thousands of dollars. Trusting consumers
15 give Defendants their credit card account information, often after being led to believe that
16 Defendants need the information to verify debts or perform services. Instead,
17 immediately after the call, Defendants charge consumers an illegal advance fee ranging
18 from \$595 to \$1995. Defendants then typically provide minimal or no service and fail to
19 achieve the promised results. In addition, Defendants routinely refuse to allow
20 consumers to cancel and fail to honor refund promises. Defendants' scam leaves
21 consumers who were already deeply in debt in grave financial condition. These practices
22 have generated hundreds of complaints against Defendants with the FTC, the Arizona
23 Attorney General, and the Better Business Bureau (BBB). Not including Do Not Call
24 complaints, consumers filed 68 FTC complaints against AWD, 26 FTC complaints
25 against Concord, 20 FTC complaints against CAM Services, 1 FTC complaint against
26
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28

1 AFB, and 24 FTC complaints against Western GPS.² The BBB rates both AWD and
2 Western GPS an “F.”³

3 Defendant AFB, LLC (AFB) supports the operations of the other Defendants.
4 Individual Defendants LeRoy Castine (Defendant Castine) and Chris Ambrosia
5 (Defendant Ambrosia) own and manage one or more of the corporate Defendants.
6 Together, all of the Defendants operate as a common enterprise.⁴

7 Plaintiff respectfully moves the Court to issue an *ex parte* temporary restraining
8 order against Defendants under Fed. R. Civ. Pro. 65(b). Defendants have a history of
9 deceiving consumers, the BBB, and law enforcement. Defendants also changed the
10 operation’s name to avert law enforcement attention and disassociate the operation from
11 negative national media coverage. If provided with advance notice of this action, there is
12 a serious risk that Defendants will destroy documents and dissipate or conceal assets,
13 which would severely undermine the Court’s ability to provide effective final relief to
14 injured consumers. Plaintiff further moves for an asset freeze to preserve assets for
15 consumer restitution, appointment of a temporary receiver, immediate access to
16 Defendants’ business premises, certain limited expedited discovery, and an order to show
17 cause why a preliminary injunction should not issue. The requested relief is necessary to
18

19 ² App. at 000600-601, ¶¶ 8-9 (McPeck). The FTC has also received 19,736 Do Not Call
20 complaints that cite telephone numbers linked to Defendants through consumer
21 complaints. See footnote 84 and accompanying text, *infra*.

22 ³ App. at 000004, ¶ 11; 000256-258 (Attachment D); 000259-261 (Attachment E)
23 (Declaration of Koriann M. Morales, Vice-President, BBB, with Attachments A-F, App.
24 at 000001-000263). The BBB previously rated Concord an “F,” but currently assigns
25 “No Rating” because it believes Concord may be out of business. *Id.* at 000004-5, ¶ 11,
000262-263 (Attachment F) (Morales). For a discussion of Concord’s status, see
discussion at Section II.B.2, *infra*.

26 ⁴ See Section III, *infra*. The common enterprise likely stopped using the name AWD,
27 Concord and CAM Services with consumers after February 2012 and is now calling
28 consumers as Western GPS. See footnotes 18-21 and accompanying text, *infra*.

1 bring an immediate halt to Defendants' egregious conduct and to protect any unlawfully
2 obtained assets pending a hearing on preliminary injunctive relief. This type of *ex parte*
3 relief has been granted in this Circuit, including this District, as well as in federal district
4 courts across the country in similar FTC cases.⁵

5 II. THE PARTIES

6 A. Plaintiff

7 The FTC is an independent agency of the United States Government created by
8 the FTC Act, 15 U.S.C. § 41 *et seq.* The FTC enforces Section 5(a) of the FTC Act, 15
9 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting
10 commerce. The FTC also enforces the Telemarketing Act, 15 U.S.C. §§ 6101-6108.
11 Pursuant to the Telemarketing Act, the FTC promulgated and enforces the TSR, 16
12 C.F.R. Part 310, which prohibits deceptive and abusive telemarketing acts or practices.
13 Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes the FTC, through its own
14 attorneys, to initiate federal district court proceedings to enjoin violations of the FTC Act

15 ⁵ For cases in this District, see *FTC v. North America Marketing and Associates, LLC*,
16 No. CV-12-914-PHX-DGC (D. Ariz. May 2, 2012); *FTC v. Premier Nationwide Corp.*,
17 No. CV-12-09-PHX-GMS (D. Ariz. Jan. 3, 2012); *FTC v. Government Careers, Inc.*, No.
18 CV-09-721-TUC-DCB (D. Ariz. Jan. 5, 2010); *FTC v. Freedom Foreclosure Prevention*
19 *Services, LLC*, No. CV-09-1167-PHX-FJM (D. Ariz. June 1, 2009); *FTC v. Helping*
20 *Hands of Hope, Inc.*, No. CV-08-0909-PHX-JAT (D. Ariz. May 13, 2008); *FTC v.*
21 *Handicapped & Disabled Workshops, Inc.*, No. CV-08-0908-PHX-DGC (D. Ariz. May
22 *13, 2008); FTC v. The Results Group, LLC*, No. CV-06-2843-PHX-JAT (D. Ariz.
23 *November 28, 2006). For additional cases in which ex parte preliminary relief has been*
24 *granted in this District, see Certification and Declaration of Plaintiff's Counsel Jason C.*
25 *Moon in Support of Plaintiff's: (A) Ex Parte Temporary Restraining Order Application;*
26 *and (B) Ex Parte Seal Order Application ("Moon Declaration") at ¶ 17, filed*
27 *concurrently. Other district courts in the Ninth Circuit have issued similar ex parte*
28 *TROs: FTC v. Moneymaker*, No. 2:11-CV-00461-RLH-RJJ (D. Nev. Mar. 29, 2011);
FTC v. U.S. Homeowners Relief, Inc., No. SACV-10-1452 JST (PJWx) (C.D. Cal. Sept.
28, 2010); *FTC v. Advanced Management Services NW LLC*, No. CV-10-148-LRS (E.D.
Wash. May 10, 2010); *FTC v. Your Magazine Provider, Inc.*, No. CV-08-64-M-DWM
(D. Mont. May 14, 2008); *FTC v. Merchant Processing, Inc.*, No. CV 07-0533-BR (D.
Ore. Apr. 11, 2007). For additional cases in which *ex parte* preliminary relief has been
granted by other district courts in the Ninth Circuit, see Moon Declaration at ¶ 17.

1 and the TSR and to secure appropriate equitable relief, including rescission or
2 reformation of contracts, restitution, the refund of monies paid, and the disgorgement of
3 ill-gotten gains. 15 U.S.C. §§ 53(b), 56(a)(2)(A)-(B), 57b, 6102(c) and 6105(b).

4 **B. Defendants**

5 The FTC sued seven Defendants - five corporate Defendants and two individual
6 Defendants. The corporate Defendants operate as a common enterprise. Individual
7 Defendants Ambrosia and Castine own or manage one or more of the corporate
8 Defendants.

9 1. **Ambrosia Web Design, LLC** is an Arizona company organized on March 30,
10 2011 by Defendant Ambrosia.⁶ Although Defendant Ambrosia listed a Mesa residential
11 address, 2906 South Revere Circle, on the formation documents,⁷ AWD uses two Tempe
12 addresses, 123 East Baseline Road, Suite D-208, and 209 East Baseline Road, Suite E-
13 201, in correspondence with consumers.⁸ While investigating a fraud complaint against
14 AWD in January 2012, Detective Christine Connors of the Tempe Police Department
15 went to the office buildings at 123 East Baseline Road and 209 East Baseline Road.⁹
16 She observed an AWD call center in Suite D-208 in the 123 East Baseline Road building
17 and an additional office in Suite E-201 in the 209 East Baseline Road building.¹⁰

18 ⁶ App. at 000602-603 (McPeek).

19 ⁷ Cf App. at 000618 (McPeek) with 000602 (McPeek).

20 ⁸ See, e.g., App. at 000270 (Attachment B) (Bradley); 000379 (Attachment A) (Paglia).

21 ⁹ App. at 000479-480, ¶ 2-5 (Declaration of Tempe Police Detective Christine Connors,
22 with Attachment A, App. at 000479-533).

23 ¹⁰ *Id.* at 480, ¶ 5 (Connors). The two buildings have separate street addresses, but are
24 physically connected by a hallway. *Id.* On later visits to the two office buildings,
25 Detective Connors observed that there were no internal walls between Suites D-208, D-
26 207, and D-206 in the 123 East Baseline Road building, and the office was actually
27 occupying all three suites. *Id.* at 000483, ¶ 16 (Connors). As of October 2012, AWD
28 was also using suite D-204. *Id.* at 000483-484, ¶ 17 (Connors).

1 Defendant Ambrosia is the sole listed member of Ambrosia Web Design, which is
2 obviously named after him.¹¹ He handles charge-back requests against AWD¹² and
3 corresponds with law enforcement agencies¹³ and the BBB¹⁴ on behalf of AWD.
4 However, he shares ownership and management of AWD with Defendant Castine, who
5 met with Detective Connors in January 2012 and admitted that he was a partner in the
6 company with Defendant Ambrosia.¹⁵ Defendant Castine described AWD's operations
7 to Detective Connors in great detail,¹⁶ and it appeared to her that he was supervising
8 calling operations in one of the office suites.¹⁷

9 Defendant Castine told Detective Connors in January 2012 that AWD was no longer
10 operating under its own name, but was using the name "AFB LLC."¹⁸ Consumer
11 complaints against "Ambrosia Web Design" or "AWD" dropped significantly after
12 February 2012.¹⁹ However, in April 2012 consumers began filing similar complaints
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15

16 ¹¹ App. at 000603 (McPeek).
17

18 ¹² *See, e.g.*, App. at 000279-280 (Attachment C) (Bradley).

19 ¹³ App. at 000936 (Fisher complaint) (Declaration of Deborrah Miller, Arizona Attorney
20 General's Office, with Attachment A, App. at 000933-1044).

21 ¹⁴ App. at 000099 (Reagan complaint) (Morales).

22 ¹⁵ App. at 000480, ¶ 6 (Connors).

23 ¹⁶ *Id.* at 000480-481, ¶ 6-9 (Connors).

24 ¹⁷ *Id.* at 000480, ¶ 5 (Connors).

25 ¹⁸ *Id.* at 000481, ¶ 8 (Connors).

26 ¹⁹ App. at 000601, ¶ 9 (McPeek).
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1 against Western GPS,²⁰ which was formed by Defendant Castine in February 2012.²¹

2 The FTC has received only one complaint naming AFB.²²

3 When Detective Connors returned to the premises on October 9, 2012, she saw that
4 the names "AFB" and "AWD" still appeared on the suites at 123 East Baseline Road and
5 209 East Baseline Road, and that there were still employees working there.²³ She saw
6 that AWD and AFB continue to operate, but the name they now use with consumers is
7 Western GPS.²⁴

8 **2. Concord Financial Advisors LLC** is an Arizona company organized by
9 Defendant Castine on March 30, 2011.²⁵ He is the sole listed member.²⁶ He listed one of
10 AWD's Tempe addresses, 123 E. Baseline Road, Suite D-208, as the official address on
11 the formation documents.²⁷ The company markets the same credit card interest rate
12 reduction services as AWD.

13 Like AWD, Concord is no longer actively receiving complaints, which may
14 indicate that Defendants Ambrosia and Castine are no longer using the name in
15
16

17 ²⁰ *Id.* (McPeek).

18 ²¹ App. at 000606-607 (McPeek).

19 ²² App. at 000600, ¶ 8 (McPeek).

20 ²³ App. at 000483, ¶ 16 (Connors).

21 ²⁴ At the time Western GPS was formed in February 2012, AWD had received scrutiny
22 from the national news media. For a description of media coverage of AWD, see
23 footnotes 85-87 and accompanying text, *infra*.

24 ²⁵ App. at 000610-612 (McPeek).

25 ²⁶ App. at 000611 (McPeek).

26 ²⁷ App. at 000610 (McPeek).

1 communications with consumers. However, the company is still listed as active by the
2 State of Arizona.²⁸

3 **3. CAM Services Direct LLC** is an Arizona company organized by Defendant
4 Ambrosia on April 21, 2011.²⁹ The formation documents list 2906 South Revere Circle,
5 Mesa, Arizona as the address,³⁰ but the company uses both the 123 East Baseline Road
6 and 209 East Baseline Road addresses with consumers.³¹

7 Although Concord and CAM Services were separately incorporated by Castine
8 and Ambrosia, respectively, the two companies are essentially the same operation.
9 Consumers who speak with CAM Services representatives sometimes receive packets of
10 information from Concord,³² and vice versa.³³ Typically, CAM Services is the billing
11 name that appears on consumers' receipts and credit card statements, which indicates that
12 CAM Services holds a merchant account.³⁴ In at least one instance, CAM Services billed
13 a consumer who was initially called by Concord.³⁵ CAM Services handles credit card
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16 ²⁸ App. at 000612 (McPeek).
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18 ²⁹ App. at 000613 (McPeek).

19 ³⁰ *Id.* (McPeek).

20 ³¹ *See, e.g.*, App. at 000331, 333 (Attachment A) (Clifton).

21 ³² *Cf* App. at 000326, ¶ 3 (spoke with CAM Services) *with* 000331 (Attachment A) (first
22 page of packet received from Concord) (Clifton).

23 ³³ *Cf* App. at 000359, ¶ 4 (spoke with Concord) *with* 000367 (Attachment B) (first page
24 of packet received from CAM Services) (McClellan).

25 ³⁴ *See, e.g.*, App. at 000333 (Attachment A) (Clifton); 000446 (Attachment B) (Tester).

26 ³⁵ *Cf* App. at 000359, ¶ 4 (spoke with Concord) *with* 000369 (Attachment B) (billed by
27 CAM Services) (McClellan).
28

1 disputes against Concord.³⁶ Also, Defendant Castine told Detective Connors that AWD
2 uses the name CAM Services on its merchant account.³⁷

3 **4. Western GPS LLC** is an Arizona company organized by Defendant Castine on
4 February 8, 2012.³⁸ Defendant Castine listed 1935 E. Redmon, Tempe, Arizona, a
5 residential mailing address on the formation documents,³⁹ and the company uses this
6 address on correspondence.⁴⁰ However, two consumers who purchased Western GPS's
7 services obtained the 123 East Baseline Road address.⁴¹

8 As discussed below, Western GPS, the most recently formed company, appears to
9 be a reincarnation of AWD. It uses the same customer service telephone numbers and
10 even some of the same sales representatives as AWD.⁴²

11 **5. AFB LLC** was formed by Defendant Castine on January 28, 2010.⁴³ He is the
12 sole listed member.⁴⁴ He listed a residential address, 3021 S. Woodruff Circle, Mesa,
13 Arizona on the formation documents.⁴⁵ On October 9, 2012, its name appeared on the
14

15 ³⁶ Cf App. at 000359, ¶ 4 (“Concord”) with 000370 (Attachment C) (“CAM Services”) (McClellan). CAM Service’s response letter to Ms. McClellan’s dispute was from Chris
16 Ambrosia. *Id.* at App. 000370 (McClellan).

17 ³⁷ App. at 000480, ¶ 6 (Connors).

18 ³⁸ App. at 000606-607 (McPeek).

19 ³⁹ Cf App. at 000620 (McPeek) with App. at 000606 (McPeek).

20 ⁴⁰ See, e.g., App. at 000300 (Attachment C) (Carter).

21 ⁴¹ See App. at 000291, ¶ 26 (Carter); 000981 (Anderson complaint) (Miller) (given
22 address by representative Orlando Brown).

23 ⁴² See footnotes 59-62 and accompanying text, *infra*.

24 ⁴³ App. at 000609 (McPeek).

25 ⁴⁴ *Id.* (McPeek).

26 ⁴⁵ Cf App. at 000619 (McPeek) with App. at 000608 (McPeek).

1 door of Suite D-208 at 123 East Baseline Road.⁴⁶ Defendant Castine told Detective
2 Connors that AWD was operating under the name AFB.⁴⁷ AFB and Defendant Castine
3 registered the domain name for Concord's website, www.concordfinancialadvisors.net,⁴⁸
4 and a sample invoice included on Western GPS's website is marked at the top with an
5 AFB logo.⁴⁹ Defendants Ambrosia and Castine both listed an AFB email address,
6 office@afbllconline.com, in their contact information for a telephone account that
7 included telephone number 888-583-1956.⁵⁰ AWD provides this telephone number to
8 consumers.⁵¹

9 **6. Chris Ambrosia** lives at 2335 W. Nopal Avenue, Mesa, Arizona.⁵² He is an
10 owner and managing member of AWD and CAM Services, as discussed above.

11 **7. LeRoy Castine** lives at 8155 E. Obispo Avenue, Mesa, Arizona.⁵³ He is an
12 owner and manager of AWD, and an owner and managing member of Concord, AFB,
13 and Western GPS, as discussed above.

14
15 ⁴⁶ App. at 000483, ¶ 16 (Connors).

16 ⁴⁷ *Id.* at 000481, ¶ 8 (Connors).

17
18 ⁴⁸ App. at 000562 (Certification of Authenticity of Business Records by Keena R. Willis,
19 GoDaddy.com, App. at 000552-566).

20 ⁴⁹ App. at 000600, ¶ 7, 000643 (McPeck).

21 ⁵⁰ *Cf.* App. at 000918, ¶¶ 7-9 (Thacker) (Defendant Ambrosia listed
22 office@afbllconline.com on account) *with* 000918-919, ¶ 10 (Defendant Castine listed
23 same email address on same account); 000540-544 (Certification of Authenticity of
24 Business Records by Heather M. Blais, Freedom Voice Systems, Inc., App. at 000538-
25 550).

26 ⁵¹ *See, e.g.*, App. at 000400 (Attachment A) (Reagan).

27 ⁵² App. at 000615 (McPeck).

28 ⁵³ App. at 000616 (McPeck).

1 **III. COMMON ENTERPRISE**

2 Defendants AWD, Concord, CAM Services, and Western GPS operate as a
3 “common enterprise,” as defined by case law.⁵⁴ They conduct their business practices
4 through an interrelated network of companies that have common ownership, managers,
5 business functions, representatives, customer service telephone numbers, and office
6 locations, and they correspond with third parties on each other’s behalf. Defendants
7 Ambrosia and Castine formulate, direct, control, have authority to control, and participate
8 in the practices of the corporate Defendants.

9 **A. Common ownership and management**

10 As discussed in Section II, subsections 2, 4, and 5, *supra*, Defendant Castine is the
11 sole listed member on the formation documents of three of the five corporate Defendants,
12 Concord, AFB, and Western GPS. He also admitted he is an owner and manager of
13 AWD. His company Concord is essentially an alter-ego of CAM Services.⁵⁵ Defendant
14 Ambrosia is the sole listed member of AWD and CAM Services, and is connected with
15 Concord through CAM Services. Also, in at least one instance, Defendant Ambrosia sent
16 a letter to the BBB on behalf of Concord.⁵⁶

17 **B. Common Business Functions, Representatives, and Telephone Numbers**

18 AWD, Concord, CAM Services, and Western GPS offer very similar credit card
19 interest rate reduction services. The companies market their services in much the same
20 manner, including using robocalls and falsely claiming to be associated with the federal
21 government.⁵⁷ In fact, Western GPS uses some of the same sales representatives or
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23 _____
24 ⁵⁴ The law of common enterprise is discussed in Section VII.B.2, *infra*.

25 ⁵⁵ See footnotes 32-37 and accompanying text, *supra*.

26 ⁵⁶ App. at 000199 (McKenna complaint) (Morales).

27 ⁵⁷ See footnotes 72, 74, 89, 90 and accompanying text, *infra*.

1 “financial advisors” as AWD. Representative Brian Scoloff is named in complaints
2 against both AWD and Western GPS.⁵⁸ In November 2011, attorney Ashley Adams
3 responded to an inquiry by AWD’s payment processor and provided a batch of letters
4 signed by persons purporting to be AWD representatives, including Orlando Brown and
5 Larry Penman.⁵⁹ Lorene Carter, a Western GPS customer, dealt with Mr. Brown (she
6 wrote his name down as “Orlanzo”) and Mr. Penman.⁶⁰ AWD and Western GPS also
7 provide consumers with the same customer service telephone number, 800-273-3214.⁶¹
8 This evidence indicates that Western GPS is simply a continuation of AWD. Moreover,
9 Western GPS has adopted much of Concord’s business model; for example, the packets it
10 sends to consumers are almost identical to the packets sent to Concord customers.⁶²

11 Concord and CAM Services also share employees and telephone numbers with
12 AWD. Two of AWD employees, Norman Eckles and Michael Bogner,⁶³ are listed as
13

14
15 ⁵⁸ Cf App. at 000396-397, ¶ 14 (Reagan) (naming “Brian Scoloff” as AWD
16 representative) with App. at 000889 (Waddams complaint) (McPeek) (naming “Brian
17 Scolof” as Western GPS representative); see also App. at 000903 (Dickinson complaint)
18 (McPeek) (naming “Ryan Scoloff” as Western GPS representative).

19 ⁵⁹ App. at 000926, 931 (Attachment A) (Declaration of James Stavig, Fraud Risk
20 Manager, Citi Cards N.A., citing CITI-000001 through 12, App. at 000919-932). These
21 company policy acknowledgement letters, signed by AWD employees, were provided to
22 a Fraud Risk Manager for Citi Cards in response to concerns that Citi expressed about
23 AWD’s practices. *Id.* at 000919-920, ¶¶ 4,5 (Stavig).

24 ⁶⁰ App. at 000286- 287, 290, ¶¶ 5-6, 19 (Carter); see also App. at 000898 (Western GPS)
25 (Spears complaint) (McPeek) (naming “Orlando Brown”).

26 ⁶¹ Cf App. at 000781 (AWD) (Reagan complaint) (McPeek) with 000891, 892 (Western
27 GPS) (Gaven, Hedington complaints) (McPeek).

28 ⁶² Cf App. at 000331-349 (Attachment A) (Clifton) (Concord packet) with App. at
000300-322 (Attachment C) (Carter) (Western GPS packet).

⁶³ App. at 000925, 930 (Attachment A) (Stavig).

1 Concord “financial advisors” on Concord’s website.⁶⁴ Lee Miceli corresponds with the
2 BBB on behalf of both the Concord and AWD “billing departments.”⁶⁵ In addition,
3 CAM Services uses the same business telephone number as AWD, 888-583-1956.⁶⁶

4 **C. Common Office Locations**

5 As discussed in Section IIB, subsections 1-3 and 5, *supra*, AWD, Concord, CAM
6 Services, and AFB all operate out of the same addresses on East Baseline Road in
7 Tempe. Western GPS uses a different address in correspondence with consumers, but
8 two Western GPS consumers obtained the 123 E Baseline Road address from Western
9 GPS.⁶⁷

10 **D. Distinction between Companies Blurred in Correspondence**

11 Defendants do not preserve the distinction between companies in their
12 correspondence. Consumers who believe they are dealing with CAM Services sometimes
13 get correspondence from Concord, and vice versa.⁶⁸ In one instance, consumer Sharon
14 McClellan received a sales pitch from Concord and was billed by CAM Services.⁶⁹ Ms.
15 McClellan’s complaint to the BBB about CAM Services was responded to in a letter from
16 “AWD” in which the company referred to itself as “CAM Services,” thereby linking all
17

18 ⁶⁴ App. at 000622 (McPeek). On the website, Mr. Eckles’ first name is abbreviated to
19 “Norm” and his last name is spelled “Ekles,” and Mr. Bogner’s name is spelled
20 “Bougner.” *Id.*

21 ⁶⁵ *Cf* App. at 000060 (AWD) (Hanger complaint) (Morales) *with* 000187 (Concord)
22 (McCarter complaint) (Morales).

23 ⁶⁶ *Cf* App. at 000270 (AWD) (Bradley Complaint) (Morales) *with* 000475 (Attachment
24 H) (Tester).

25 ⁶⁷ *See* footnote 41 and accompanying text, *supra*.

26 ⁶⁸ *See* footnotes 32, 33 and accompanying text, *supra*.

27 ⁶⁹ App. at 000359, 000362, ¶¶ 4, 13, (McClellan).

1 three companies together.⁷⁰ In another example, during the course of Detective Connors'
2 investigation of AWD, Defendant Castine provided her with a sample CAM Services
3 consumer file to illustrate the type of services AWD claimed to provide.⁷¹

4 **IV. JURISDICTION AND VENUE**

5 This Court has subject matter jurisdiction over the FTC's claims according to 28
6 U.S.C. §§ 1331, 1337(a), and 1345. Personal jurisdiction over Defendants exists under
7 the FTC Act's provision for nationwide service of process, 15 U.S.C. § 53(b). Venue is
8 proper in the District of Arizona. Under the FTC Act, an action may be brought where a
9 corporation or person "resides or transacts business." 15 U.S.C. § 53(b). As described
10 above, Defendants reside and do business in this district.

11 **V. DEFENDANTS' ILLEGAL PRACTICES**

12 **A. Robocalls**

13 With their first contact with consumers, Defendants violate the TSR. Defendants,
14 or telemarketers acting on their behalf, make nationwide robocalls to consumers who
15 have not consented in writing to receive robocalls from Defendants. The messages offer
16 to reduce consumers' credit card interest rates, and request that consumers press a
17 number if they are interested in the company's services.⁷² The robocalls sometimes state
18 that this is the consumers "last chance" or "last notice"⁷³ to reduce their rates, and

19 _____
20 ⁷⁰ App. at 000188, 000192 (McClellan complaint) (Morales).

21 ⁷¹ App. at 000480, 482, ¶¶ 6, 12 (Connors) (identifying Attachment A, subpart g as
22 "sample client documents sent by Ambrosia Web Design (24 pages)", 000509-533
(Attachment A, subpart g) (Connors).

23 ⁷² App. at 000286, 000287, ¶¶ 3, 6 (Carter) (Western GPS); 000326, ¶¶ 2-3 (Clifton)
24 (CAM Services); 000359, ¶¶ 2, 4 (McClellan) (Concord); 000372, ¶¶ 2-3 (Paglia)
25 (AWD); 000390-392, ¶¶ 3, 6, 7 (Ramsey) (Concord); 000436, 437 ¶¶ 3-4, 6 (Tester)
26 (CAM Services). The TSR prohibits sending prerecorded messages to consumers unless
27 consumers have previously given telemarketers written consent to receive the messages.
16 C.F.R. § 310.4(b)(1)(v).

28 ⁷³ App. at 000390, ¶ 3 (Ramsey); 000326, ¶ 2 (Clifton).

1 sometimes state that the services are being offered as part of a “stimulus package” or
2 government program.⁷⁴ Often consumers receive several of these calls before finally
3 pressing “1” to speak to a representative.⁷⁵

4 In a response letter to a consumer complaint filed against AWD with the Arizona
5 Attorney General, Defendant Ambrosia admitted that AWD used a third-party “automatic
6 dialer” to deliver prerecorded messages to consumers.⁷⁶ Defendant Castine admitted to
7 Detective Connors that AWD used a third-party telemarketer that used the name “Card
8 Member Services.”⁷⁷ Consumer Gregory Ramsey, who is on the DNC Registry, received
9 so many calls from a company calling itself “Card Services” that he started pressing “1”
10 to try to identify the calling company and stop the calls.⁷⁸ By pretending he was
11 interested in the caller’s services, Ramsey got a representative to admit he worked for
12 Concord, and the representative provided a telephone number.⁷⁹ Ramsey called the
13 telephone number and was connected with CAM Services.⁸⁰ Consumer Lydia Reagan
14

15 ⁷⁴ See, e.g., App. at 000390, ¶ 3 (Ramsey); 000436, ¶ 3 (Tester).

16 ⁷⁵ App. at 000390-391, ¶¶ 3, 6 (Ramsey); 000436, ¶¶ 3-4 (Tester).

17 ⁷⁶ App. at 000936 (Fisher complaint) (Miller).

18 ⁷⁷ App. at 000480, ¶ 7 (Connors). Defendant Castine claimed that AWD stopped using
19 the service in January 2012 because of complaints about abusive representatives, and
20 began to make calls directly from its Tempe, Arizona office. *Id.* at 000481, ¶ 8
21 (Connors). However, Western GPS, which was formed by Defendant Castine in
22 February 2012, continues to use prerecorded messages. App. at 000286, 287 ¶¶ 3-6
(Carter).

23 ⁷⁸ App. at 000390-391, ¶¶ 3-5 (Ramsey). In addition to the robocalls, Defendants make
24 live telephone calls to consumers on the DNC Registry. See, e.g., App. at 000419,
25 000422 ¶¶ 3, 20 (Smith).

26 ⁷⁹ App. at 000391-392, ¶ 7 (Ramsey).

27 ⁸⁰ *Id.* at 000392, ¶ 8 (Ramsey).

1 spoke with a representative who used the name "Card Member Services," but later turned
2 out to be calling on behalf of AWD.⁸¹

3 Defendants have likely committed thousands of violations of the DNC Registry.
4 Consumers have filed 522,408 Do Not Call complaints against companies using the
5 names "Card Member Services" and "Card Services."⁸² The FTC has received 310 Do
6 Not Call complaints specifically naming the corporate Defendants.⁸³ The FTC has
7 received 19,736 Do Not Call complaints that cite telephone numbers that are linked with
8 the corporate Defendants.⁸⁴ On November 29, 2011, Los Angeles Times reporter David
9 Lazarus published an article describing the nationwide impact of the "Card Member
10 Services" telemarketing scheme.⁸⁵ According to the article, consumers nationwide
11 receive robocalls from "Rachel" with "Card Member Services," offering credit card
12 interest rate reduction services.⁸⁶ The reporter called a telephone number obtained from
13 one of the robocalls and was connected with a representative who said she was
14 "Ambrosia Web Design" and "AWD CAM Services."⁸⁷

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17
18 ⁸¹ App. at 000393-395, ¶¶ 3, 8 (Reagan).

19 ⁸² App. at 000917, ¶ 6 (Thacker). Plaintiff does not contend that all "Card Member
20 Services" or "Card Services" calls can be attributed to the Corporate Defendants, because
21 there are several companies offering similar services that use similar telemarketing
22 tactics.

23 ⁸³ *Id.* at 000916-917, ¶ 4 (Thacker).

24 ⁸⁴ *Id.* at 000917, ¶ 5 (Thacker).

25 ⁸⁵ See App. at 000601, ¶ 10 (McPeck); 000534-535 (David Lazarus, *Hard to Stop*
26 *Telemarketing Calls from 'Rachel,'* Los Angeles Times, Nov. 29, 2011).

27 ⁸⁶ *Id.* at 000534 (L.A. Times Article).

28 ⁸⁷ *Id.* at 000535 (L.A. Times Article).

1 **B. Live Sales Presentations**

2 Once consumers press “1” or answer a live call from Defendants’ sales
3 representatives, Defendants launch into their aggressive, deceitful sales pitch. The sole
4 purpose of the pitch is to obtain consumers’ credit card account information, so
5 Defendants can immediately charge an exorbitant fee to consumers’ existing credit cards.

6 Defendants try to build trust with skeptical consumers. They often⁸⁸ claim that
7 they are calling on behalf of a U.S. government agency⁸⁹ or are offering services in
8 connection with a federal government program to reduce credit card interest rates.⁹⁰ As
9 noted above, Defendants also mislead consumers by using generic names that suggest
10 Defendants are affiliated with credit card companies, like “Card Member Services” or
11 “Card Services.” In one instance, AWD combined the two misrepresentations by telling
12 a consumer that it was “Account Services Quality Services” for Visa, and was calling on
13 behalf of the Federal Trade Commission.⁹¹ Western GPS representatives sometimes say
14 they are “Account Management Assistance.”⁹²

15 Defendants ask consumers for balances and interest rates on their credit cards.⁹³
16 In numerous instances, Defendants promise the company can save consumers a specific

17
18 _____
19 ⁸⁸ Defendants’ business practices are not uniform even for consumers supposedly dealing
20 with the same Defendants. Defendants’ representations to consumers vary, as do their
21 descriptions of the services they provide, and the actions they take on consumers’
22 accounts. *See generally* App. at 000264-478 (consumer declarations).

23 ⁸⁹ App. at 000264, ¶ 2 (Bradley); 000286, ¶ 3 (Carter).

24 ⁹⁰ *See* App. at 000393, ¶ 3 (Reagan); 000436, ¶¶ 3-4 (Tester).

25 ⁹¹ App. at 000264, ¶ 2 (Bradley).

26 ⁹² App. at 000883 (Lynch complaint) (McPeck).

27 ⁹³ App. at 000286, ¶ 4 (Carter); 000354, ¶ 3 (Johnson); 000359, ¶ 4 (McClellan); 000393-
28 394, ¶ 4 (Reagan).

1 amount between \$2500 to \$5000 through reduced interest rates.⁹⁴ In other instances,
2 Defendants promise a specific very low interest rate, such as zero percent.⁹⁵

3 These promises are wholly unsubstantiated. Often, the only credit-related
4 information Defendants obtain from consumers before Defendants make these promises
5 is the terms of existing credit cards.⁹⁶ According to Lisa Wilhelm, a consultant with
6 extensive experience and expertise in the field of credit card practices, actual credit card
7 issuers engage in a sophisticated analysis of a variety of factors related to a consumer's
8 payment history (including non-credit accounts), credit history, creditworthiness,
9 financial profile, and relationships with financial institutions.⁹⁷ Without an understanding
10 of these factors, it would be impossible for Defendants to predict whether a creditor
11 would lower interest rates or issue a new, low-rate credit card for an individual
12 consumer.⁹⁸ In Ms. Wilhelm's experience, Defendants' blanket promises to deliver a
13 specific interest rate reduction such as 0% to 7% or a minimum interest savings amount
14 such as \$2500 or more would be impossible to deliver without a case-by-case assessment
15 by the creditor.⁹⁹ Similarly, up-front promises to identify and offer low or 0% interest
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17

18 ⁹⁴ App. at 000264, ¶ 3 (Bradley) (\$2500); 000286, ¶ 5 (Carter) (\$5000); 000359-360, ¶ 4
19 (McClellan) (\$5000); 000372, ¶ 4 (Paglia) (\$2500); 000393-394, ¶¶ 3, 7 (Reagan)
20 (\$2500); 000419-420, ¶ 4 (Smith) (\$3000).

21 ⁹⁵ App. at 000326, ¶ 3 (Clifton) (0%); 000354, ¶ 4 (Johnson) (0%).

22 ⁹⁶ See App. at 000264, ¶ 3 (Bradley); 000326, ¶ 3 (Clifton); 000361, ¶ 8 (McClellan);
23 000419, ¶ 4 (Smith).

24 ⁹⁷ App. at 000580, ¶ 17 (Declaration of Lisa Wilhelm, with Attachment A, App. at
25 000570-597) (listing multiple factors considered by credit card issuers).

26 ⁹⁸ *Id.* at 000584-585, ¶ 22 (Wilhelm).

27 ⁹⁹ *Id.* (Wilhelm).

1 balance transfer cards would be impossible to obtain without the prior approval of the
2 creditor offering the card.¹⁰⁰

3 As discussed in more detail in Section V.F, *infra*, Defendants often guarantee that
4 they will provide a full or partial refund if they do not obtain the promised interest rate
5 reduction or interest savings. In other presentations, Defendants say nothing about a
6 refund or cancellation policy. Regardless of what the Defendants say about refunds,
7 Defendants often later take the position that they have a no-refund, no-cancellation
8 policy.

9 Defendants give consumers a variety of explanations about how they will obtain
10 lower interest rates. Sometimes they do not specify how they will lower interest rates.¹⁰¹
11 Other times they specifically promise a new reduced interest rate credit card.¹⁰² Still
12 other times they specifically promise to contact existing creditors and negotiate lower
13 interest rates.¹⁰³ Occasionally they say they will use a combination of these methods.¹⁰⁴

14 Defendants often claim to have special relationships with credit card companies
15 that allow them to obtain the lower rates.¹⁰⁵ It is highly unlikely that Defendants have
16

17 ¹⁰⁰ *Id.* at 585 (Wilhelm).

18 ¹⁰¹ App. at 000361, ¶ 9 (McClellan); 000436-437, ¶ 4 (Tester).

19 ¹⁰² App. at 000354, ¶ 4 (Johnson).

20 ¹⁰³ App. at 264, ¶¶ 2, 4 (Bradley). AWD did not explain in the sales presentation to
21 consumers Paglia and Reagan how it was going to obtain a lower interest rate for them,
22 but later sent them a Service Agreement in which it offered to negotiate with their
23 existing creditors. App. at 000372-373, ¶ 5, 000387 (Attachment A) (Paglia); 000394,
24 ¶ 6, 000411 (Attachment A) (Reagan).

25 ¹⁰⁴ App. at 000327, ¶ 5 (Clifton).

26 ¹⁰⁵ App. at 000419, ¶ 4 (Smith) (“excellent relations”); 000374, ¶ 10 (Paglia) (“inside
27 connections”); 000327, ¶ 5 (Clifton) (CAM Services had “companies all over the world
28 that could lend money”).

1 any such connections. In fact, most financial institutions view involvement by companies
2 like Defendants “in a negative light.”¹⁰⁶ In many cases, Defendants simply apply for new
3 credit cards with other companies on consumers’ behalf,¹⁰⁷ which is something
4 consumers can easily do themselves.¹⁰⁸

5 C. Unauthorized Billing and Advance Fees

6 During the sales presentation, Defendants ask consumers for detailed credit card
7 account information, including account numbers and expiration dates. Consumers often
8 do not understand that Defendants will use this information to charge a fee to consumers’
9 existing credit cards. Defendants tell consumers, or allow consumers to believe based on
10 the context of the request, that the information will be used to verify consumers’ debts or
11 financial information and for providing services.¹⁰⁹ Sometimes Defendants do not
12 disclose there will be an out-of-pocket fee.¹¹⁰ Other times they claim there will be no
13 out-of-pocket fee.¹¹¹ Even when a fee is disclosed, they sometimes create confusion
14 about how and when it will be paid, claiming the fee will be “absorbed” by later interest
15 savings.¹¹²

16 Consumers provide credit card account information, sometimes with great
17 reluctance, after being pressured by multiple representatives.¹¹³ Defendants then use it to

18 ¹⁰⁶ App. at 000591-592, ¶ 32 (Wilhelm).

19 ¹⁰⁷ See footnote 125 and accompanying text, *infra*.

20 ¹⁰⁸ *Id.* at 000592-593, ¶ 33.

21 ¹⁰⁹ App. at 000360-361, ¶ 7 (McClellan); 000394, ¶ 5 (Reagan); 000437-438, ¶ 8 (Tester).

22 ¹¹⁰ App. at 000355, ¶ 5 (Johnson).

23 ¹¹¹ App. at 000437, ¶ 7 (Tester).

24 ¹¹² App. at 360, ¶ 6 (McClellan).

25 ¹¹³ App. at 000265, ¶¶ 5, 6 (Bradley); 000359-360, ¶¶ 3, 5 (McClellan).

1 charge a fee ranging from \$595 to \$1995 to one of consumers' existing credit cards,
2 typically on the very same day.¹¹⁴ Defendants request, obtain, and use this payment
3 information in advance of providing any services.¹¹⁵

4 **D. Information Packets**

5 In the first few days after the sales presentations and after Defendants have
6 charged their fee to consumers' credit cards, Defendants often send packets of materials
7 to consumers. AWD often sends a Personal and Financial Profile asking for detailed
8 financial information (including consumers' Social Security numbers), a "Service
9 Agreement," and an invoice.¹¹⁶ Western GPS and Concord/CAM Services often send a
10 packet that includes a "Summary of Savings" and a "Debt Analysis Report."¹¹⁷ These
11 documents devote several pages to explaining how consumers can reduce their long-term
12 interest payments by making larger balance payments each month.¹¹⁸ Consumers do not
13
14
15

16 ¹¹⁴ App. at 000265, ¶ 6 (Bradley) (\$995, same day); 000288, ¶ 11 (Carter) (\$595, same
17 day); 000327, ¶ 5 (Clifton) (\$1995, same day); 000355, ¶¶ 7-8 (Johnson) (\$1995, within a
18 "couple of days"); 000362, ¶ 13 (McClellan) (\$1995, same day); 000395, 398 ¶¶ 9, 18
19 (Reagan) (\$695, same day); 000421, ¶ 13 (Smith) (\$1498, same day); 000438-439, ¶¶ 13,
20 18 (Tester) (\$1495, same day).

21 ¹¹⁵ See generally App. at 000264-478 (consumer declarations). Defendants sometimes
22 call consumers' credit card companies or other credit card companies on the same
23 telephone call, but not until after consumers have agreed to pay Defendants' fees. See,
24 e.g., App. at 000287, ¶¶ 6, 7 (Carter); 000327, ¶¶ 5, 6 (Clifton).

25 ¹¹⁶ See, e.g., App. at 000379-389 (Attachment A) (Paglia); 000400-416 (Attachment A),
26 (Reagan).

27 ¹¹⁷ App. at 000300-322 (Attachment C) (Carter); 000331-349 (Attachment A) (Clifton);
28 000447-462 (Attachment C) (Tester).

¹¹⁸ App. at 000306-320 (Attachment C) (Carter); 000337-349 (Attachment A) (Clifton);
000451-462 (Attachment C) (Tester).

1 find this information useful.¹¹⁹ After CAM Services promised to reduce consumer
2 Shirley Tester's credit card interest rates, charged her \$1495, and failed to negotiate
3 lower interest rates as it promised her, it resisted her charge-back request by claiming its
4 packet fulfilled the services it promised her.¹²⁰ Unfortunately, this misrepresentation by
5 CAM Services to Ms. Tester's credit card company caused the company to reinstate the
6 charge.¹²¹

7 **E. Lack of Results**

8 After promising consumers specific results and charging an advance fee,
9 Defendants sometimes simply do nothing and keep the money.¹²² When Defendants do

11 ¹¹⁹ App. at 000327-328, ¶ 7 (Clifton); 000289, ¶ 17 (Carter). The report Western GPS
12 sent to Ms. Carter also claimed that it had reduced her interest rate on one of her credit
13 cards when in fact it had not. App. at 000289, ¶ 16, 000321-322 (Attachment C) (Carter).

14 ¹²⁰ App. at 000436-438, 442, ¶¶ 4, 7, 13, 27, 000476 (Attachment H) (Tester). Also,
15 Defendants defend their charges by claiming that they provide financial advice rather
16 than the credit card interest rate reduction services that they sold. AWD falsely claimed
17 in a letter to the BBB that it provided Lydia Reagan advice on how to lower her credit
18 card interest rates. See App. at 000398, ¶ 21 (Reagan); 000103 (Reagan BBB complaint)
19 (Morales). Western GPS told the Florida Department of Agriculture and Consumer
20 Services that it is an "advisement company" that "educates our clients on ways they can
21 save money by paying less interest on their debt than they will otherwise pay." App. at
22 000325, (Attachment E) (Carter).

23 ¹²¹ App. at 000436, 000441, ¶¶ 2, 26 (Tester). CAM Services/Concord's conduct toward
24 Ms. Tester, a senior citizen living on Social Security income, was particularly egregious.
25 CAM Services told her it was working with the government, and that there would be no
26 out of pocket fee. *Id.* at 000436-437, ¶¶ 4, 6, 7 (Tester). Sears lowered her credit limit at
27 least in part because of too many credit inquiries; she believes this was a result of CAM
28 Services repeatedly trying to open a credit card for her, which it had not disclosed it
would do. *Id.* at 000442-443, ¶ 28 (Tester). As a result of her lowered credit limit and
the \$1495 fee by CAM Services, her balance exceeded her credit limit and her minimum
payments quadrupled; she is now facing severe financial hardship. See *Id.* at 000443, ¶ 29
(Tester).

¹²² App. at 000268, ¶ 15 (Bradley); 000397, ¶ 16 (Reagan); 000421-422, ¶¶ 16, 17
(Smith).

1 act on a customer's account, the actions are usually minimal. For example, on one
2 occasion, while still on the initial telephone call with the consumer, Concord initiated a
3 three-way call with the consumer's credit card company.¹²³ The Concord representative
4 asked for an interest rate reduction for the consumer, but the request was denied.¹²⁴

5 Most often, however, Defendants simply apply for new credit cards on consumers'
6 behalf.¹²⁵ These credit card applications frequently result in denials.¹²⁶ On some
7 occasions, Defendants obtain zero-interest, introductory rate cards for consumers.¹²⁷
8 Although these cards could theoretically provide consumers with some level of interest
9 savings, there often are problems. For example, the introductory rate cards may balloon
10 to extraordinarily high interest rates after the introductory period ends; consumers often
11 reject these introductory rate cards because they believe they cannot pay off the balance
12 during the introductory period.¹²⁸ Another problem is the low credit limit that sometimes
13 accompanies introductory rate cards. In one case, Defendants only obtained a new
14 introductory rate credit card with a \$3900 credit limit, but the consumer had

16 ¹²³ App. at 000327, ¶ 6 (Clifton).
17

18 ¹²⁴ *Id.* (Clifton).

19 ¹²⁵ App. at 000288, ¶ 12 (Carter); 000328, ¶ 8 (Clifton); 000356, ¶ 10 (Johnson); 000361,
20 ¶ 11 (McClellan); 000375, ¶ 13 (Paglia); 000440, ¶ 20 (Tester).

21 ¹²⁶ App. at 000361, ¶ 11 (McClellan); 000375, ¶ 13 (Paglia); 000440, ¶ 20 (Tester).

22 ¹²⁷ Western GPS, in particular, has sometimes been able to obtain introductory rate cards
23 for longer time periods and with higher credit limits.

24 ¹²⁸ *See, e.g.*, App. at 000288, ¶¶ 12, 13 (Carter) (rate jumped to 21.99%); 000356, ¶ 12
25 (Johnson) (rate jumped to 24.99%). Even if consumers were to keep and use the
26 introductory rate cards Defendants sometimes obtain, they would almost certainly not
27 achieve the interest savings Defendants typically promise. For a discussion of three
28 hypothetical scenarios demonstrating the problems with introductory rate cards, see App.
at 000588-590, ¶¶ 27-29 (Wilhelm).

1 approximately \$11,000 in credit card debt.¹²⁹ Another consumer received a new credit
2 card with a \$500 limit, but had \$7000 in credit card debt.¹³⁰

3 F. Refunds and Cancellation

4 Defendants make specific refund promises to some consumers during the sales
5 presentations.¹³¹ In some instances, Defendants make or affirm these refund promises in
6 subsequent documents sent to consumers.¹³² Defendants typically do not honor these
7 refund promises. When Defendants fail to obtain the promised results and consumers try
8 to get refunds, cancel participation, or reverse the credit cards charges, Defendants
9 typically refuse to give refunds and resist credit card charge-backs. For example, some
10 consumers are promised refunds that never come.¹³³ Other consumers are denied refunds
11 or charge-backs because they supposedly failed to comply with the company's refund or
12 cancellation policies, even though the company provided no services.¹³⁴

13
14 ¹²⁹ App. at 000286, 288, ¶¶ 4, 12 (Carter).

15 ¹³⁰ App. at 000328, ¶ 8 (Clifton).

16 ¹³¹ App. at 000326-327, ¶ 4 (Clifton); 000372, ¶ 4 (Paglia); 000419, ¶ 4 (Smith).

17 ¹³² App. at 000372, ¶ 4, 000387 (Attachment A) (Paglia); App. at 000394, ¶ 7 and 000411
18 (Attachment A) (Reagan).

19 ¹³³ App. at 000329, ¶¶ 11, 12 (Clifton); 000376-377, ¶¶ 18, 19 (Paglia); 000396, ¶ 13
20 (Reagan).

21 ¹³⁴ App. at 000421, ¶ 16 (Smith). AWD's treatment of consumer Paul Smith was
22 particularly brazen. AWD promised a partial refund to Mr. Smith if it did not achieve the
23 promised interest savings. *Id.* at 000419, 420, ¶¶ 4-5 (Smith). Mr. Smith decided to
24 purchase AWD's services and provided the AWD representative with his credit card
25 information. *Id.* (Smith). When Mr. Smith changed his mind and tried to cancel while
26 still on the original sales call, the AWD representative told him the company had a no-
27 cancellation policy. *Id.* at 000420, ¶¶ 7-9 (Smith). In the subsequent charge dispute,
28 AWD took the position that Mr. Smith had failed to comply with a 10-day cancellation
policy and was therefore not due a refund. *Id.* at 421, ¶ 16, 000430 (Attachment B).
(Smith).

1 In some instances, Defendants fail to disclose anything about a refund or
2 cancellation policy in the sales presentation, but when consumers later try to cancel or get
3 a refund or charge-back, Defendants deny the request and falsely claim that they
4 disclosed a no-cancellation or no-refund policy.¹³⁵ Defendants make these false claims
5 even when they previously sent consumers documents that state refund or cancellation
6 policies.¹³⁶

7 Defendants make other false and deceptive statements in response to credit card
8 charge disputes and BBB complaints, including: 1) that consumers verbally authorized
9 the charge when in fact they did not;¹³⁷ 2) that Defendants provide financial advice or
10 information, when that is not what Defendants promised consumers;¹³⁸ 4) that consumers
11 did not request a refund or cancellation, when in fact they did;¹³⁹ or 5) that Defendants

17 ¹³⁵ App. at 000363, ¶ 18, 000371 (Attachment D) (McClellan); 000398, ¶ 19 (Reagan);
18 000101 (Reagan BBB complaint) (Morales); 000442, ¶ 27, 000476 (Attachment H)
19 (Tester).

20 ¹³⁶ App. at 000398, ¶ 19, 000412 (Attachment A) (Reagan) (invoice stated 10-day refund
21 period); 000363, ¶ 18, 000368 (Attachment B) (McClellan) (invoice stated 10-day refund
22 request period).

23 ¹³⁷ App. at 000363, ¶ 17, 000371 (Attachment D) (McClellan); 000442, ¶ 27, 000476
24 (Attachment H) (Tester).

25 ¹³⁸ App. at 000291, ¶ 24, 000325 (Attachment E) (Carter); 000398, ¶ 21 (Reagan);
26 000101 (Reagan complaint) (Morales); 000442, ¶ 27, 000476 (Attachment H) (Tester).

27 ¹³⁹ App. at 000267, ¶ 11, 000282 (Attachment C) (Bradley); 000398, ¶ 20 (Reagan);
28 000101(Reagan BBB complaint) (Morales); 000420-422, ¶¶ 7-9, 17, 000430
(Attachment B) (Smith); 000442, ¶ 27, 000476 (Attachment H) (Tester).

1 provided services to the consumer, when in fact they did not.¹⁴⁰ Unfortunately, these bad-
2 faith rebuttals were sometimes successful.¹⁴¹

3 VI. DEFENDANTS HAVE VIOLATED THE FTC ACT AND TSR

4 A. Violations of Section 5 of the FTC Act

5 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or deceptive acts
6 or practices in or affecting commerce.” Misrepresentations or deceptive omissions of
7 material fact constitute deceptive acts or practices prohibited by Section 5. Acts or
8 practices are unfair under Section 5 if they cause substantial injury to consumers that
9 consumers cannot reasonably avoid themselves, and that injury is not outweighed by
10 countervailing benefits to consumers or competition. 15 U.S.C. § 45(n).

11 Count One - Misrepresenting Material Facts

12 Defendants make a number of false and unsubstantiated¹⁴² promises to consumers
13 to convince them to use Defendants’ purported credit card interest rate reduction services.

14
15 ¹⁴⁰ App. at 000267, ¶ 11, 000282 (Attachment C) (Bradley); 000398, ¶ 21 (Reagan);
16 000101 (Reagan BBB complaint) (Morales); 000421, ¶ 16, 000430 (Attachment B)
(Smith).

17 ¹⁴¹ App. at 000267-268, ¶¶ 12, 15 (Bradley); 000441, ¶ 26 (Tester).

18 ¹⁴² The Commission’s substantiation doctrine states that when an objective claim is
19 made, there is an implication that the speaker relies on a reasonable basis supporting the
20 claim. Failure to possess and rely upon a reasonable basis for an objective claim
21 constitutes an unfair and deceptive act or practice in violation of Section 5 of the FTC
22 Act. See 1984 Policy Statement Regarding Advertising Substantiation, appended to *In re*
23 *Thompson Medical Co.*, 1984 F.T.C. Lexis 6, *434 (1984), *aff’d*, 791 F.2d 189 (D.C. Cir.
24 1986), *cert. denied*, 479 U.S. 1086 (1987). In the instant case, Defendants frequently
25 make unsubstantiated claims that they can lower consumers’ credit card interest rates or
26 save consumers thousands of dollars, before Defendants know anything about the
27 consumers’ credit worthiness. See footnotes 96-100 and accompanying text, *supra*.
28 While some consumers may have high enough credit scores to qualify for a new credit
card with a low introductory rate or to receive a low promotional rate on balance transfers
to existing credit cards, Defendants often make their outlandish promises with little or no
information about the consumer. In any event, regardless of their creditworthiness,
consumers scammed by Defendants rarely, if ever, receive all that Defendants promise.

1 Defendants frequently claim that they can save consumers thousands of dollars, typically
2 anywhere from \$2500 to \$5000, by lowering their credit card interest rates. Defendants
3 also frequently claim that they can obtain a very low interest rate, such as zero percent,
4 for all, or substantially all, of the consumers' stated credit card debt.¹⁴³

5 Defendants rarely, if ever, make good on their promises. Often Defendants do
6 little or nothing on behalf of consumers. When Defendants fail to deliver the promised
7 results, these deeply indebted consumers are left far worse off than before. Even in
8 instances where Defendants render some service, they rarely, if ever, deliver all that they
9 promise consumers.¹⁴⁴

10 Defendants' false and unsubstantiated claims are deceptive. To prove deception,
11 the FTC must show "first, there is a representation, omission, or practice that, second, is
12 likely to mislead consumers acting reasonably under the circumstances, and third, the
13 representation, omission, or practice is material." *FTC v. Stefanchik*, 559 F.3d 924, 928
14 (9th Cir. 2009).

15 This three-prong test is easily met. First, Defendants make express representations
16 that they can substantially lower consumers' credit card interest rates and save them
17 thousands of dollars. Second, these representations are false and unsubstantiated and,
18 therefore, are likely to, and in fact did, mislead consumers. In addition, these
19 representations are believable because Defendants claim to be affiliated with the
20 government or to have relationships with the credit card companies. Consumers who
21 accept Defendants' offer, act reasonably under the circumstances because they are
22 promised they will save far more than Defendants' charge for the services or they will
23 receive a refund. Third, Defendants representations are material. Consumers simply
24

25 ¹⁴³ See footnotes 94-95 and accompanying text, *supra*.

26
27 ¹⁴⁴ See footnotes 120-130 and accompanying text, *supra*.

1 would not pay \$595 to \$1995 unless they believed Defendants' claims that the services
2 will save them substantially more than the cost of the services. Thus, Defendants' false
3 and unsubstantiated claims used to market and sell their so-called credit card interest rate
4 reduction services are misleading and constitute deceptive acts or practices in violation of
5 Section 5 of the FTC Act.¹⁴⁵

9
10 ¹⁴⁵ The FTC can prove its claims through a small number of injured consumers; the
11 FTC is not required to demonstrate that each individual consumer relied on Defendants'
12 representations or omissions. *FTC v. Figgie Int'l, Inc.*, 994 F.2d 595, 605-06 (9th Cir.
13 1993), *cert. denied*, 510 U.S. 1110 (1994); *FTC v. Int'l Diamond Corp.*, No. C-82-0878
14 WAI (JSB), 1983-2 Trade Cas. (CCH) P65,725, 1983 WL 1911, at *6-7 (N.D. Cal. Nov.
15 8, 1983). The court specifically stated that "[r]equiring proof of subjective reliance by
each individual consumer would thwart effective prosecutions of large consumer redress
actions and frustrate the statutory goals of [Section 13(b)]." *Figgie Int'l, Inc.*, 994 F.2d at
605 (*quoting* *FTC v. Kitco of Nev., Inc.*, 612 F. Supp. 1282, 1293-94 (D. Minn. 1985)).

16 From this small number of consumers, a court can infer a pattern or practice of
17 deceptive behavior. *FTC v. Sec. Rare Coin & Bullion Corp.*, 931 F.2d 1312, 1316 (8th
18 Cir. 1991); *FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 576 (7th Cir. 1989); *FTC v.*
19 *Kitco of Nev., Inc.*, 612 F. Supp. 1282, 1293-94 (D. Minn. 1985); *FTC v. Nat'l Bus.*
20 *Consultants*, 781 F. Supp. 1136, 1141-42 (E.D. La. 1991); *Int'l Diamond*, 1983 WL
21 1911, at *6-7. This pattern or practice of deceptive behavior can be proven by consumer
22 declarations and complaints, which are admissible under Rule 807. *See Figgie Int'l, Inc.*,
23 994 F.2d at 608-09 (affirming district court's ruling that consumer complaint letters are
24 admissible to prove the price paid by consumers and total injury). *See also FTC v.*
25 *Kuykendall*, 312 F.3d 1329, 1343 (10th Cir. 2002) (affirming district court's ruling that
26 consumer declarations and consumer complaints are admissible as evidence of the
27 appellants' violative behavior); *Amy Travel*, 875 F.2d at 576 (affirming district court's
28 ruling that sworn consumer declarations are admissible to show actual harm to consumers
had resulted from the defendants' activities); *Kitco*, 612 F. Supp. at 1294-95 (holding that
affidavits are admissible as proof of purchase, injury to consumers, and entitlement to
restitution); *FTC v. Cyberspace.com*, 2003-1 Trade Cas. (CCH) P73,960, No. C00-
1806L, 2002 U.S. Dist. LEXIS 25565, at *13 n.5 (W.D. Wash. July 10, 2002) (holding
that "[e]-mails and letters of complaint from recipients of the solicitations are admissible
both to show notice and to show the truth of the matters asserted . . .").

1 lies to bolster their creditability and to create a false sense of security for consumers who
2 are asked to reveal personal information like Social Security numbers, credit card
3 numbers, expiration dates, and security codes.

4 These actions constitute deception, because: 1) Defendants expressly claim to be
5 affiliated with the federal government; 2) these claims are likely to mislead consumers
6 acting reasonably under the circumstances, because there are government efforts to assist
7 consumers in the current recession; and 3) the claims are material to consumers, who are
8 more likely to believe Defendants' savings promises and to trust Defendants with
9 personal financial information. Thus, Defendants' claims of affiliation with the federal
10 government are false and misleading and constitute a deceptive act or practice in
11 violation of Section 5 of the FTC Act.

12 **Count Four - Unauthorized Billing**

13 During the course of the sales pitch, Defendants obtain consumers' account
14 numbers, expiration dates, and security codes for one or more of the consumers' credit
15 cards. In some instances, consumers are led to believe they are providing this
16 information merely to enable Defendants to verify the debts and negotiate lower interest
17 rates with their credit card companies, not to authorize payment to the Defendants. In
18 other instances, when Defendants collect this information, they specifically state that
19 there will be no out-of-pocket fee charged to the consumer.¹⁵⁰ See discussion at Section
20 V.C, *supra*. Nevertheless, Defendants routinely bill their entire fee to the consumers'
21 credit card accounts immediately after talking with consumers.

22 To prove this practice is unfair, the FTC must show: 1) Defendants' billing
23 practices cause, or are likely to cause, substantial injury to consumers; 2) the harm is not
24 outweighed by any countervailing benefits to consumers or competition; and 3) the harm
25

26
27 ¹⁵⁰ See footnotes 109-112 and accompanying text, *supra*.

1 is not reasonably avoidable by consumers. 15 U.S.C. § 45(n); *FTC v. Neovi*, 604 F.3d
2 1150, 1155 (9th Cir. 2010).

3 Each prong of the three-part test is met. First, Defendants injure consumers by
4 charging their credit cards without authorization. Moreover, Defendants \$595 to \$1995
5 fee is “substantial.” Second, the harm is not outweighed by any countervailing benefits,
6 because even when Defendants provide some service to consumers, the service rarely, if
7 ever, is worth more than the consumer is charged. *See FTC v. J.K. Publications, Inc.*, 99
8 F. Supp. 2d 1176, 1201 (C.D.Cal. 2000). Finally, consumers cannot reasonably avoid the
9 harm because Defendants place the charges on their credit cards without their knowledge
10 or consent. Courts have consistently held that unauthorized credit card billing satisfies
11 the three-part test, making it an unfair practice. *See FTC v. The Crescent Publ’g Group,*
12 *Inc.*, 129 F. Supp. 2d 311, 322 (S.D.N.Y. 2001); *J.K. Publications*, 99 F. Supp. 2d at
13 1201. Thus, Defendants’ unauthorized billing of consumers’ credit card accounts
14 constitutes an unfair act or practice in violation of Section 5 of the FTC Act.

15 **B. Violations of the Telemarketing Sales Rule**

16 Congress directed the FTC to prescribe rules prohibiting abusive and deceptive
17 telemarketing acts or practices under the Telemarketing Act, 15 U.S.C. §§ 6101-6108.
18 The FTC adopted the original TSR in 1995, extensively amended it in 2003, and
19 amended certain sections thereafter. 16 C.F.R. Part 310. Under the TSR,
20 “Telemarketing” means a plan, program, or campaign which is conducted to induce the
21 purchase of goods or services or a charitable contribution, by use of one or more
22 telephones and which involves more than one interstate telephone call. 16 C.F.R.
23 § 310.2(dd). “Seller” means any person who, in connection with a telemarketing
24 transaction, provides, offers to provide, or arranges for others to provide goods or
25 services to the customer in exchange for consideration. 16 C.F.R. § 310.2(aa).
26 “Telemarketer” means any person who, in connection with telemarketing, initiates or
27 receives telephone calls to or from a customer or donor. 16 C.F.R. § 310.2(cc).

1 “Outbound telephone call” means a telephone call initiated by a telemarketer to induce
2 the purchase of goods or services or to solicit a charitable contribution. 16 C.F.R.
3 § 310.2(v). Defendants, or others they employ, use outbound robocalls and live
4 telephone calls to consumers throughout the U.S. to induce the purchase of their interest
5 rate reduction services. Thus, Defendants are “sellers” or “telemarketers” engaged in
6 “telemarketing,” and have initiated, or caused telemarketers to initiate, “outbound
7 telephone calls” to consumers to induce the purchase of goods or services, as those terms
8 are defined in the TSR. Therefore, Defendants are covered by the requirements of the
9 TSR.

10 **Count Five - Misrepresenting Material Facts**

11 The TSR prohibits sellers and telemarketers from misrepresenting, directly or by
12 implication, in the sale of goods or services, any material aspect of the performance,
13 efficacy, nature, or central characteristics of the goods or services that are the subject of a
14 sales offer. 16 C.F.R. § 310.3(a)(2)(iii).

15 The same facts and arguments that support a finding that Defendants violated
16 Section 5 of the FTC Act, as alleged in Count One,¹⁵¹ also support a finding that
17 Defendants misrepresented material aspects of the performance, efficacy, nature, or
18 central characteristics of goods and services in violation of the TSR. 16 C.F.R. §
19 310.3(a)(2)(iii).

20 **Count Six - Misrepresenting Debt Relief**

21 The TSR, as amended, effective September 27, 2010, also *specifically* prohibits
22 sellers and telemarketers from misrepresenting, directly or by implication, in the sale of
23 goods or services, any material aspect of any debt relief service. 16 C.F.R.
24 § 310.3(a)(2)(x). The TSR defines a “debt relief service” as any service to “renegotiate,
25 settle, or in any way alter the terms of payment or other terms of the debt between a
26

27 ¹⁵¹ See discussion of Count One at Section VI.A, *supra*.

1 person and one or more unsecured creditors or debt collectors, including a reduction in
2 the balance, interest rate, or fees owed[.]” 16 C.F.R. § 310.2(m). Defendants are sellers
3 or telemarketers of debt relief services when they promise consumers they will negotiate
4 with consumers’ existing credit card companies to lower the interest rates those
5 companies charge.¹⁵² Defendants peddled these debt relief services after September 27,
6 2010.¹⁵³

7 In those instances where Defendants offer debt relief services, the same facts and
8 arguments that support a finding that Defendants violated Section 5 of the FTC Act, as
9 alleged in Count One¹⁵⁴ also support a finding that Defendants misrepresented, directly or
10 by implication, in the sale of goods or services, any material aspect of any debt relief
11 service in violation of the TSR. 16 C.F.R. §310.3(a)(2)(iii).

12 **Count Seven - Misrepresenting Refund Policy**

13 The TSR prohibits sellers and telemarketers from misrepresenting, directly or by
14 implication, in the sale of goods or services, any material aspect of the nature or terms of
15 the seller’s refund, cancellation, exchange, or repurchase policies. 16 C.F.R.
16 § 310.3(a)(2)(iv).

17 The same facts and arguments that support a finding that Defendants violated
18 Section 5 of the FTC Act as alleged in Count Two¹⁵⁵ also support a finding that
19 Defendants misrepresented, directly or by implication, that they will provide full or
20

21
22 ¹⁵² App. at 000264, ¶¶ 2, 4 (Bradley); 000327, ¶ 5 (Clifton); 000372-374, ¶¶ 5, 10,
23 000387 (Attachment A) (Paglia); 000411 (Attachment A) (Reagan).

24 ¹⁵³ See, e.g., App. at 000264, ¶ 2 (Bradley) (agreed to purchase on August 11, 2011);
25 000326, ¶ 2 (Clifton) (agreed to purchase on January 14, 2012).

26 ¹⁵⁴ See discussion of Count One at Section VI.A., *supra*.

27 ¹⁵⁵ See discussion of Count Two at Section VI.A., *supra*.

1 partial refunds if consumers do not achieve the guaranteed interest rate reductions or
2 interest savings in violation of the TSR. 16 C.F.R. §310.3(a)(2)(iv).

3 **Count Eight - Failing to Disclose No-Refund, No-Cancellation Policy**

4 The TSR prohibits sellers and telemarketers from failing to disclose, in a clear and
5 conspicuous manner, if the seller has a policy of not making refunds, cancellations,
6 exchanges, or repurchases, a statement informing the customer that this is the seller's
7 policy. 16 C.F.R. § 310.3(a)(1)(iii).

8 Defendants often claim to have a strict no-refund, no-cancellation policy when
9 they refuse refunds or resist charge-backs. However, Defendants rarely, if ever, disclose
10 this policy to consumers during Defendants' sales presentations. Consumers only learn
11 of the policy after they have agreed to purchase Defendants' services.¹⁵⁶ This failure to
12 disclose their no-refund, no-cancellation policy is a deceptive telemarketing act or
13 practice that violates the TSR. 16 C.F.R. § 310.3(a)(1)(iii).

14 **Count Nine - Misrepresenting Affiliation with a Government Entity**

15 The TSR prohibits sellers and telemarketers from misrepresenting, directly or by
16 implication, in the sale of goods or services, a seller's or telemarketer's affiliation with,
17 or endorsement or sponsorship by, any person or government entity. 16 C.F.R.
18 § 310.3(a)(2)(vii).

19 The same facts and arguments that support a finding that Defendants violated
20 Section 5 of the FTC Act as alleged in Count Three¹⁵⁷ also support a finding that
21 Defendants misrepresented, directly or by implication, that they are carrying out a
22 government program or are otherwise affiliated with the U.S. government in violation of
23 the TSR. 16 C.F.R. § 310.3(a)(2)(vii).

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26 ¹⁵⁶ See discussion at footnotes 135 and accompanying text, *supra*.

27 ¹⁵⁷ See discussion of Count Three at Section VI.A., *supra*.

1 **Count Ten - Charging or Receiving a Fee in Advance of Obtaining a**
2 **New, Lower Interest Credit Card**

3 The TSR prohibits sellers and telemarketers from requesting or receiving payment
4 of any fee or consideration in advance of obtaining a loan or other extension of credit
5 when the seller or telemarketer has guaranteed or represented a high likelihood of success
6 in obtaining or arranging a loan or other extension of credit for a person. 16 C.F.R.
7 § 310.4(a)(4).

8 Defendants routinely promise that they can lower consumers' interest rates to very
9 low rates on all, or substantially all, of their stated credit card debt, or save consumers
10 thousands of dollars in interest payments as a result of lowered interest rates.¹⁵⁸ In some
11 instances, Defendants guarantee results; in others, Defendants' promises are implicit
12 representations that their methods are likely to succeed. Defendants sometimes tell
13 consumers specifically that they will accomplish this by arranging a new credit card at a
14 lower interest rate. More often Defendants are vague about how they will obtain the rate
15 reductions. Regardless of what Defendants say they will do, often, the only service they
16 provide is applying for new credit cards on consumers' behalf.¹⁵⁹ See discussion at
17 Section V.E, *supra*. In those instances in which Defendants promise to arrange or
18 attempt to arrange a new credit card, Defendants are offering to obtain a loan or other
19 extension of credit.

20 Under these circumstances, the TSR prohibits Defendants from even requesting a
21 fee before the loan or extension of credit is obtained. Defendants routinely request and
22 receive payment information from consumers during the initial telephone call, and bill
23 the consumers' credit cards the same day. Some consumers are charged and never
24 receive extensions of credit.¹⁶⁰ Other consumers receive a new credit card, but it is issued

25 ¹⁵⁸ See footnotes 93-95 and accompanying text, *supra*.

26 ¹⁵⁹ See footnote 125 and accompanying text, *supra*.

27 ¹⁶⁰ See footnote 126 and accompanying text, *supra*.

1 after Defendants charge their fee.¹⁶¹ Thus, Defendants request and receive payment of a
2 fee in advance of obtaining or arranging an extension of credit in violation of the TSR.
3 16 C.F.R. § 310.4(a)(4).

4 **Count Eleven - Charging or Receiving a Fee In Advance of Providing Debt**
5 **Relief Services**

6 The TSR, as amended, effective October 27, 2010, prohibits sellers and
7 telemarketers from requesting or receiving payment of any fee or consideration for any
8 debt relief service unless and until:

- 9 a. the seller or telemarketer has renegotiated, settled, reduced, or otherwise
10 altered the terms of at least one debt pursuant to a settlement agreement,
11 debt management plan, or other such valid contractual agreement executed
12 by the customer; and
13 b. the consumer has made at least one payment pursuant to that settlement
14 agreement, debt management plan, or other valid contractual agreement
15 between the customer and the creditor or debt collector. 16 C.F.R.
16 § 310.4(a)(5)(i).

17 In some instances, since October 27, 2010, Defendants specifically promised
18 consumers that they would negotiate with consumers' existing credit card companies to
19 lower their interest rate. This meets the definition of a "debt relief service."¹⁶² Under the
20 TSR, a company offering debt relief services cannot request or receive payment of any
21 fee until a valid modification agreement has been executed by the consumer and the
22 consumer has made at least one payment under the plan. Defendants routinely request
23 payment information and bill consumers' credit cards the same day consumers agree to
24 employ Defendants. In every instance, this is before the consumer has made at least one

25 ¹⁶¹ Cf App. at 000288, ¶¶ 11-12 (Carter) (charged \$595 fee on April 5, 2012) with
26 000295-297 (Attachment B) (new Citi Card issued on April 7, 2012) (Carter).

27 ¹⁶² See discussion of Count Six at Section VI.B., *supra*.

1 payment under a modification agreement obtained by Defendants.¹⁶³ See discussion at
2 Section V.C., *supra*. Thus, Defendants request and receive payment of a fee for debt
3 relief services before these prerequisites are met in violation of the TSR. 16 C.F.R.
4 § 310.4(a)(5).

5 **Count Twelve - Unauthorized Billing**

6 The TSR prohibits telemarketers and sellers from causing billing information to be
7 submitted for payment, directly or indirectly, without the express informed consent of the
8 consumer. 16 C.F.R. § 310.4(a)(7).

9 The same facts and arguments that support a finding that Defendants violated
10 Section 5 of the FTC Act as alleged in Count Four¹⁶⁴ also support a finding that
11 Defendants have caused billing information to be submitted for payment without the
12 express informed consent of the consumer in violation of the TSR. 16 C.F.R. §
13 310.4(a)(7).

14 **Count Thirteen - Violating the National Registry**

15 The TSR, as amended in 2003, established the DNC Registry, maintained by the
16 FTC, of consumers who do not wish to receive certain types of telemarketing calls. The
17 TSR prohibits sellers and telemarketers from initiating, or causing others to initiate, an
18 outbound telephone call to a person's telephone number that is on the DNC Registry,
19 unless the Defendants have obtained an express agreement, in writing, that clearly
20 evidences that person's authorization that calls made by or on behalf of Defendants may
21 be placed to that person; or have an established business relationship with that person. 16
22 C.F.R. § 310.4(b)(1)(iii)(B).

23
24 ¹⁶³ None of the consumers who were offered debt relief services obtained modification
25 agreements. See generally App. at 000264-265 (Bradley Declaration); 000326-353
26 (Clifton Declaration); 000372-389 (Paglia Declaration); 000393-418 (Reagan
Declaration).

27 ¹⁶⁴ See discussion of Count Four at Section VI.A.
28

1 After 2003, Defendants directly, or through the use of third-party telemarketing
2 companies, have made unsolicited telemarketing calls to consumers throughout the U.S.
3 to sell their purported credit card interest rate reduction services. These calls are often
4 placed to telephone numbers on the DNC Registry. Moreover, Defendants have not
5 obtained express written agreements that evidence authorization for these calls to be
6 placed, nor do Defendants have established business relationships with the persons
7 called.¹⁶⁵ Thus, Defendants have engaged, or caused a telemarketer to engage, in
8 initiating an outbound telephone call to a person's telephone number on the DNC
9 Registry in violation of the TSR. 16 C.F.R. § 310.4(b)(1)(iii)(B).

10 **Count Fourteen - Initiating Unlawful Prerecorded Messages On or After**
11 **September 1, 2009**

12 The TSR, as amended, effective September 1, 2009, prohibits initiating, or causing
13 others to initiate, a telephone call that delivers a prerecorded message to induce the
14 purchase of any good or service unless the seller has obtained from the recipient of the
15 call an express agreement, in writing, that evidences the willingness of the recipient of
16 the call to receive calls that deliver prerecorded messages by or on behalf of a specific
17 seller. The express agreement must include the recipient's telephone number and
18 signature, must be obtained after a clear and conspicuous disclosure that the purpose of
19 the agreement is to authorize the seller to place prerecorded calls to the person, and must
20 be obtained without requiring, directly or indirectly, that the agreement be executed as a
21 condition of purchasing any good or service. 16 C.F.R. § 310.4(b)(1)(v)(A).

22 After September 1, 2009, Defendants directly, or through the use of third-party
23 telemarketing companies, have blasted unwanted and repetitive robocalls to consumers
24 across the U.S. to sell their purported credit card interest rate reduction services.
25 Consumers harassed by these calls have not given Defendants their express written

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27 ¹⁶⁵ See, e.g., App. at 000291-292, ¶ 27 (Carter); 000359, 364 ¶¶ 2, 20 (McClellan);
28 000372, 377, ¶¶ 2, 23 (Paglia).

1 consent evidencing their willingness to receive robocalls.¹⁶⁶ Thus, Defendants have
2 made, or caused others to make, outbound telephone calls that deliver prerecorded
3 messages to induce the purchase of goods or services in violation of the TSR. 16 C.F.R.
4 § 310.4(b)(1)(v).

5 VII. LEGAL ANALYSIS

6 The FTC respectfully requests that the Court stop Defendants' ongoing deceptive
7 marketing of purported credit card interest rate reduction services and Defendants'
8 violations of the FTC Act and multiple provisions of the TSR, by issuing a TRO
9 enjoining future misrepresentations; prohibiting the unlawful acts and practices;
10 appointing a temporary receiver; preserving assets and documents; requiring a prompt
11 reporting of customers and status; requiring an accounting of Defendants' finances and
12 scope of their operations; and ordering Defendants to show cause why a preliminary
13 injunction should not be entered. The requested relief, which the Court is authorized to
14 grant under Section 13(b) of the FTC Act, is warranted. The FTC is likely to succeed on
15 the merits. Irreparable injury is likely to occur if Defendants' misrepresentations and
16 their unlawful acts and practices are not enjoined and assets and documents are not
17 preserved.

18 A. The Court is Authorized to Grant the Requested Relief

19 Section 13(b) of the FTC Act authorizes the FTC to seek, and the Court to issue,
20 temporary, preliminary, and permanent injunctions. The second proviso of Section 13(b)
21 of the FTC Act, 15 U.S.C. § 53(b), states that "in proper cases the Commission may seek,
22 and, after proper proof, the court may issue, a permanent injunction" against violations of
23 "any provision of law enforced by the Federal Trade Commission." 15 U.S.C. § 53(b).¹⁶⁷

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25 ¹⁶⁶ See previous footnote.

26 ¹⁶⁷ See also *FTC v. Gem Merch. Corp.*, 87 F.3d 466, 468 (11th Cir. 1996) ("Section 13(b)
27 of the Federal Trade Commission Act authorizes the FTC to seek, and the district courts
28 to grant, preliminary and permanent injunctions against practices that violate any of the
laws enforced by the Commission."). The FTC is not proceeding under the first proviso

1 The Ninth Circuit has recognized that any case alleging violations of a law enforced by
2 the FTC constitutes a proper case for which injunctive relief may be sought. *FTC v.*
3 *Evans Prod. Co.*, 775 F.2d 1084, 1086-87 (9th Cir. 1985); *FTC v. H.N. Singer, Inc.*, 668
4 F.2d 1107, 1110-13 (9th Cir. 1982). Moreover, Section 13(b) preserves the Court's
5 inherent authority not only to order permanent relief, restitution, or disgorgement of ill-
6 gotten gains, but also to grant ancillary and preliminary equitable relief, including
7 temporary orders imposing asset freezes and issuing other relief. *FTC v. Pantron I Corp.*,
8 33 F.3d 1088, 1102 (9th Cir. 1994); *H.N. Singer, Inc.*, 668 F.2d at 1113-14 (finding that
9 the district court is authorized to order an asset freeze in a case brought under 13(b)).¹⁶⁸

10 Here, where the public interest is at stake, exercise of the court's broad equitable
11 authority is particularly appropriate. *United States v. Laerdal Mfg. Corp.*, 73 F.3d 852,
12 857 (9th Cir. 1995); *FTC v. World Wide Factors, Ltd.*, 882 F.2d 344, 346-47 (9th Cir.
13 1989). The Ninth Circuit has held that a Court may exercise the full breadth of its
14 equitable authority in a Section 13(b) action because Congress "did not limit that
15 traditional equitable power" when enacting the FTC Act. *H.N. Singer, Inc.*, 668 F.2d at
16 1113. Thus, the Court has latitude to issue the full range of equitable relief, including a
17 TRO to freeze assets, enjoin deceptive practices, and allow expedited discovery. *See,*
18 *e.g., id.* at 1113-14; *see also U.S. Oil & Gas Corp.*, 748 F.2d at 1432; *FTC v. Gill*, 183 F.
19 Supp. 2d 1171, 1176-77 (C.D. Cal. 2001); *see also* S. Rep. No. 103-130, 15-16, 1993 WL
20 322671, at **13 (Aug. 24, 1993) ("Section 13 of the FTC Act authorizes the FTC to file
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22 of 13(b), which allows the Court to issue temporary relief in aid of an administrative
23 action brought by the FTC. Therefore, the procedural and notice requirements of the first
24 proviso do not apply to this case. *FTC v. H.N. Singer, Inc.*, 668 F.2d 1107, 1111 (9th Cir.
1982); *FTC v. U.S. Oil & Gas Corp.*, 748 F.2d 1431, 1434 (11th Cir. 1984).

25 ¹⁶⁸ *See also Gem Merch. Corp.*, 87 F.3d at 469-70 (district court may award consumer
26 restitution under 13(b)); *Sec. Rare Coin & Bullion Corp.*, 931 F.2d at 1314-15 (8th Cir.
27 1991) (upholding the district court's rescission remedy); *FTC v. Southwest Sunsites, Inc.*,
28 665 F.2d 711, 718 (5th Cir. 1982) (court authorized to "exercise the full range of
equitable remedies traditionally available to it" in Section 13(b) actions).

1 suit to enjoin any violation of the FTC [Act]. The FTC can go into court *ex parte* to
2 obtain an order freezing assets . . .”). Finally, district courts are authorized to depart from
3 normal discovery procedures and to fashion discovery by court order to meet needs in
4 particular cases. Fed. R. Civ. P. 1, 26(b)(2), 30(a), 34(b).

5 **B. The FTC Has Met the Standard for Issuance of a TRO**

6 To determine whether to grant a temporary or preliminary injunction in a case
7 under Section 13(b) of the FTC Act, the Court must consider the Plaintiff’s likelihood of
8 success on the merits and weigh the equities. *World Wide Factors*, 882 F.2d at 346-347;
9 *see also FTC v. Arlington Press, Inc.*, No. 98CV9260, 1999 WL 33562452, at *8 (C.D.
10 Cal. Jan. 18, 1999); *FTC v. Sage Seminars, Inc.*, No. 95-2854, 1995 WL 798938, at *2
11 (N.D. Cal. Nov. 2, 1995). Irreparable injury is presumed in statutory enforcement
12 actions. *World Wide Factors*, 882 F.2d at 347; *United States v. Odessa Union*
13 *Warehouse Co-Op*, 833 F.2d 172, 175 (9th Cir. 1987) (“No specific or immediate
14 showing of the precise way in which violation of the law will result in public harm is
15 required[.]”). The district court need only find “some chance of probable success on the
16 merits” to grant an injunction. *World Wide Factors*, 882 F.2d at 347 (citing *Odessa*, 833
17 F.2d at 176). In balancing the equities, the public interest should receive greater weight,
18 particularly where, as here, the evidence demonstrates that Defendants are engaged in
19 deceptive and abusive practices. *World Wide Factors*, 882 F.2d at 347. A TRO should
20 issue in this case because the FTC has demonstrated that it is likely to prevail in proving
21 that Defendants are violating the FTC Act and the TSR, and will continue to do so absent
22 court intervention, and because the public interest favors entry of the requested Order.

23 **1. The FTC Is Likely to Succeed on the Merits**

24 The FTC is likely to succeed on the merits of this case. Based on the acts and
25 practices described in Section V, *supra*, discussed in detail in Section VI, *supra*, and
26 evidenced by the cited and attached exhibits to this memorandum, Defendants commit
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1 multiple violations of the FTC Act and the TSR. Therefore, the FTC is likely to prevail
2 on each of the fourteen counts alleged in the Complaint.

3 **2. Defendants Are Subject To Joint and Several Liability**

4 Corporate defendants may be held jointly and severally liable if they operate as a
5 common enterprise. *FTC v. J.K. Publ'ns, Inc.*, 99 F. Supp. 2d at 1202.¹⁶⁹ “[I]n situations
6 where corporations are so entwined that a judgment absolving one of them of liability
7 would provide the other defendants with a ‘clear mechanism for avoiding the terms of the
8 order,’ courts have been willing to find the existence of a common enterprise.” *FTC v.*
9 *Nat’l Urological Group, Inc.*, 645 F. Supp. 2d 1167, 1182 (N.D. Ga. 2008) (citing
10 *Delaware Watch Co., Inc.*, 332 F.2d at 746-746), *aff’d* 356 Fed. Appx. 358 2009 WL
11 4810345 (11th Cir.), *reh’g and reh’g en banc denied*, 401 Fed. Appx. 522, 2010 WL
12 2787701 (11th Cir), *cert. denied*, 131 S. Ct. 505 (2010) (quotation omitted). “When
13 corporations act as a common enterprise, each may be held liable for the deceptive acts
14 and practices of the other.” *Id.*

15 “[E]ntities constitute a common enterprise when they exhibit either vertical or
16 horizontal commonality--qualities that may be demonstrated by a showing of strongly
17 interdependent economic interests or the pooling of assets and revenues.” *FTC v.*
18 *Network Servs. Depot, Inc.*, 617 F.3d 1127, 1142-43 (9th Cir. 2010). To determine
19 whether a common enterprise exists, the court considers factors such as:

20 common control; the sharing of office space and officers; whether business
21 is transacted through a maze of interrelated companies; the commingling of
22 corporate funds and failure to maintain separation of companies; unified
23 advertising; and evidence that reveals that no real distinction exists between
the corporate defendants.

24 ¹⁶⁹ See *Sunshine Art Studios, Inc. v. FTC*, 481 F.2d 1171, 1175 (1st Cir. 1973); *FTC v.*
25 *Kennedy*, 574 F. Supp. 2d 714, 722 (S.D. Tex. 2008); *FTC v. SkyBiz.com, Inc.*, No. 01-
26 CV-396-K(E), 2001 WL 1673649, at *5-6 (N.D. Okla. Aug. 2, 2001); *FTC v. Think*
27 *Achievement Corp.*, 144 F. Supp. 2d 993, 1011 (N.D. Ind. 2000); see also *FTC v. Para-*
28 *Link Int’l, Inc.*, No. 8:00-CV-2114-T-17E, 2000 WL 33988084, at *2-4 (M.D. Fla. Nov.
21, 2000) (holding multiple corporate entities liable as participants in a common
enterprise).

1 *Nat'l Urological Group, Inc.*, 645 F. Supp. 2d at 1182; *see also Delaware Watch Co.,*
2 *Inc.*, 332 F.2d at 746 (finding common enterprise where “the same individuals were
3 transacting an integrated business through a maze of interrelated companies”). The court
4 evaluates “the pattern and frame-work of the whole enterprise.” *Nat'l Urological Group,*
5 *Inc.*, 645 F. Supp. 2d at 1182 (quotation omitted). No one factor is dispositive, and all
6 factors need not be present to justify a finding of common enterprise. *Kennedy*, 574 F.
7 Supp. 2d at 722 (“It is not necessary that the FTC prove any particular number of entity
8 connections and any specific connection.”)

9 For example, the Ninth Circuit found a common enterprise existed where
10 companies were commonly owned; pooled resources, staff, and funds; and participated to
11 some extent in a common venture to sell the same products. *Network Servs. Depot, Inc.*,
12 617 F.3d at 1143. Because the defendants participated in and benefitted from a “shared
13 business scheme,” the “common revenue generated in the course of that scheme was the
14 proper subject of the court’s equitable powers under the FTC Act.” *Id.*

15 As discussed in Section III, *supra*, the corporate Defendants operate as a common
16 enterprise. They are an interrelated network of companies that share common owners
17 and managers; offer the same services, including in some instances the same consumer
18 materials; use common sales representatives and customer service telephone numbers;
19 occupy the same office locations; and fail to maintain separation between companies by
20 corresponding on each other’s behalf. Finally, the common enterprise is used to
21 perpetuate a deceit, and unjust loss or injury would result from treating the Defendants
22 separately because all companies are involved actively in the deception.

23 **3. Individual Defendants Are Liable for Acts of Common Enterprise**

24 Individuals can be held liable for corporate violations of Section 5 of the FTC Act.
25 *FTC v. Cyberspace.com LLC*, 453 F.3d 1196, 1202 (9th Cir. 2006); *FTC v. Am. Standard*
26 *Credit Sys., Inc.*, 874 F. Supp. 1080, 1089-90 (C.D. Cal. 1994). Individual liability for
27 injunctive relief is appropriate where the individual defendant directly participated in or
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1 had the authority to control corporate deceptive acts and practices. *Am. Standard*, 874 F.
2 Supp. at 1089. Authority to control can arise from active involvement in business affairs
3 and the making of corporate policy, including assuming the duties of a corporate officer.
4 *Amy Travel Serv., Inc.*, 875 F.2d at 573; *see also Am. Standard*, 874 F. Supp. at 1089.
5 This is especially true when the corporate defendants are closely held corporations.
6 *Think Achievement*, 144 F. Supp. 2d at 1011. Individual defendants are further subject to
7 monetary liability if they had knowledge of the practices at issue. *Id.*¹⁷⁰ “The degree of
8 participation in business is probative of knowledge.” *FTC v. Transnet Wireless Corp.*,
9 506 F. Supp. 2d 1247, 1270 (S.D. Fla. 2007); *Amy Travel*, 875 F.2d at 574 (citing *Int’l*
10 *Diamond Corp.*, 1983-2 Trade Cas. (CCH) at 69,707-8). The individual defendants’
11 awareness of a high volume of consumer complaints further demonstrates knowledge of
12 deceptive practices. *Amy Travel*, 875 F.2d at 574-75.

13 Here, each individual Defendant is liable for both injunctive and monetary relief.
14 Defendant Ambrosia is the sole listed member of CAM Services and AWD (which is
15 named after him) and an owner of AWD according to Castine.¹⁷¹ He is the primary
16 contact person on the telephone account that includes 888-583-1956, a business number
17 for AWD.¹⁷² He paid for registration of ambrosiawebdesign.net, AWD’s defunct
18 website.¹⁷³ He corresponds on behalf of AWD and CAM Services/Concord regarding

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20 ¹⁷⁰ However, an individual need not have had subjective intent to deceive or actual
21 knowledge of the deception; reckless indifference to the truth or falsity of a
22 misrepresentation or an awareness of a high probability of fraud coupled with intentional
23 avoidance of the truth will suffice. *Amy Travel Serv., Inc.*, 875 F.2d at 573-74; *Think*
24 *Achievement Corp.*, 144 F. Supp. 2d at 1011; *Cyberspace.com LLC*, 453 F.3d at 1202;
25 *Am. Standard Credit Systems, Inc.*, 874 F. Supp. at 1089; *J.K. Publ’ns, Inc.*, 99 F. Supp.
26 2d at 1204.

27 ¹⁷¹ *See* discussion at Section II.B.1. and II.B.3., *supra*.

28 ¹⁷² App. at 000540 (Blais); *see also* footnote 50-51 and accompanying text, *supra*.

¹⁷³ App. at 000555-556 (Willis).

1 complaints and chargebacks,¹⁷⁴ and the letters that go out under his name claim detailed
2 familiarity with the companies' business practices.¹⁷⁵ The evidence shows he is well
3 aware of the business practices of AWD, CAM Services, Concord, and AFB, and of the
4 complaints against these companies.

5 Defendant Castine is the sole listed member of corporate Defendants Concord,
6 AFB, and Western GPS, and an admitted owner of AWD.¹⁷⁶ In his statements to
7 Detective Connors, he displayed a detailed familiarity with AWD's operations, including
8 use of a third-party telemarketer, a large volume of complaints about the telemarketer's
9 representatives, the details of the sales presentations and the fees charged, the fact that
10 AWD used "CAM Services" as a merchant account, and specific details about some
11 consumers' files.¹⁷⁷ Defendant Castine paid for a telephone account that included 800-
12 530-1093, a business number used by Western GPS.¹⁷⁸ He also paid for registration of
13 concordfinancialadvisors.net.¹⁷⁹

14 "A heavy burden of exculpation rests on the chief executive and primary
15 shareholder of a closely held corporation whose stock-in-trade is overreaching and

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17 ¹⁷⁴ For examples of Defendant Ambrosia's correspondence on behalf of AWD, see
18 footnotes 12-14 and accompanying text, *supra*. For correspondence on behalf of CAM
19 Services/Concord, see footnote 36, *supra*.

20 ¹⁷⁵ See, e.g., App. at 000936 (AWD) (Fisher complaint) (Miller) (Ambrosia letter
21 describing AWD's telemarketing methods); 000099 (AWD) (Reagan complaint)
(Morales) (Ambrosia letter describing Reagan billing transaction); 000370 (Attachment
C) (McClellan) (CAM Services) (Ambrosia letter describing McClellan billing
transaction).

22 ¹⁷⁶ See discussion at Section II.B., subsections 1, 2, 4, and 5, *supra*.

23 ¹⁷⁷ App. at 000480-481, ¶¶ 6-9 (Connors).

24
25 ¹⁷⁸ Cf. App. at 000918-918.1, ¶¶ 7, 8, 11 (Thacker) and App. at 000545-547 (Blais)
26 (Defendant Castine paid for a telephone number) *with* App. at 000287, ¶ 9 (Carter)
(telephone number used by Western GPS).

27 ¹⁷⁹ App. at 000562-563 (Willis).

1 deception.” *Standard Educators, Inc. v. FTC*, 475 F.2d 401, 403 (D.C. Cir. 1973) *cert.*
2 *denied*, 414 U.S. 828 (1973). The evidence shows that both Defendant Castine and
3 Defendant Ambrosia each participate in and exercise control over these single-member
4 limited liability companies. Therefore, this Court should hold both individual Defendants
5 liable for monetary and injunctive relief.

6 **4. The Balance of Equities Favors Issuance of an Injunction**

7 The public interest in halting Defendants’ violations of Section 5 of the FTC Act
8 and the TSR, and in preserving assets for a meaningful monetary remedy, far outweighs
9 any interest Defendants may have in continuing to deceptively market their services,
10 engage in unfair practices, and engaging in telemarketing practices prohibited by the
11 TSR. In balancing the hardships between the public and private interest, “public equities
12 must receive far greater weight.” *FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d
13 1020, 1030, 1031 (7th Cir. 1988); *see also FTC v. Affordable Media, LLC*, 179 F.3d
14 1228, 1236 (9th Cir. 1999) (“Obviously, the public interest in preserving the illicit
15 proceeds . . . for restitution to the victims is great.”). Here, the balance tips strongly in
16 favor of issuance of the requested TRO. Defendants’ ongoing law violations, hardly
17 isolated in nature, strongly suggest they will persist in scamming consumers absent the
18 requested injunctive relief. In contrast, “[t]here is no oppressive hardship to defendants
19 in requiring them to comply with the FTC Act, refrain from fraudulent representation or
20 preserve their assets from dissipation or concealment.” *World Wide Factors*, 882 F.2d at
21 347. Thus, the Court has no obligation to protect ill-gotten gains or illegal business
22 interests. *CFTC v. British Am. Commodity Options Corp.*, 560 F.2d 135, 143 (2d Cir.
23 1977); *United States v. Diapulse Corp. of America*, 457 F.2d 25, 29 (2d Cir. 1972). The
24 public interest strongly favors entry of the requested TRO.

25 **5. Injunctive Relief Is Appropriate**

26 To prevent ongoing consumer injury, the proposed TRO prohibits Defendants
27 from making material misrepresentations in connection with marketing credit card
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1 interest rate reduction services, billing consumers without having previously obtained
2 their express informed consent, and violating any provision of the TSR, including the
3 specific violations alleged in the Complaint. The proposed TRO also prohibits
4 Defendants from releasing customer information. As discussed above, this Court has
5 broad equitable authority under Section 13(b) to grant ancillary relief necessary to
6 accomplish complete justice. *Amy Travel*, 875 F.2d at 571-72; *H.N. Singer, Inc.*, 668
7 F.2d at 1113; *FTC v. Five-Star Auto Club, Inc.*, 97 F. Supp. 2d 502, 533 (S.D.N.Y. 2000).
8 These prohibitions are necessary to prevent ongoing consumer injury.

9 **6. An Asset Freeze and Evidence Preservation Order Is Necessary**

10 In addition to injunctive relief, the FTC will seek a final order with monetary
11 restitution. To preserve the availability of funds to redress consumers' injury, to
12 determine the scope of the harm, and to preserve evidence, the FTC requests that the
13 Court issue an asset freeze and evidence preservation order. Such an order is well within
14 the Court's authority.¹⁸⁰ Moreover, courts have imposed asset freezes and evidence
15 preservation orders on the basis of the mere possibility of dissipation.¹⁸¹

16 Here, Defendants are likely to conceal or dissipate assets and conceal or destroy
17 documents, as demonstrated by the steps that they take to conceal their true identities and
18 disguise the true nature of their operations. From their first contact with consumers,

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20 ¹⁸⁰ See *CFTC v. Am. Metals Exch. Corp.*, 991 F.2d 71, 79 (3d Cir. 1993); *World Travel*
21 *Vacation Brokers, Inc.*, 861 F.2d at 1031-1032 (affirming asset freeze obtained by FTC);
22 *H.N. Singer, Inc.*, 668 F.2d at 1113 (same); *In re Nat'l Credit Mgmt. Group, L.L.C.*, 21 F.
23 Supp. 2d 424, 462 (D. N.J. 1998) (“[A] freeze of the assets of all Defendants is
appropriate to preserve those assets for possible restitution awards.”); *Gem Merch. Corp.*,
87 F.3d at 469.

24 ¹⁸¹ See, e.g., *Fed. Sav. & Loan Ins. Corp. v. Sahni*, 868 F.2d 1096, 1097 (9th Cir. 1989)
25 (holding that when a government agency is the movant, the possibility of a dissipation of
26 assets is sufficient to justify a freeze). But see *Johnson v. Couturier*, 572 F.3d 1067,
27 1085 (9th Cir. 2009) (“A party seeking an asset freeze must show a likelihood of
28 dissipation of the claimed assets, or other inability to recover monetary damages, if relief
is not granted.”)

1 Defendants make efforts to disguise who they are. As discussed previously, they use
2 robocalls that do not disclose Defendants' true identities, and use generic, deceptive
3 names like "Card Member Services." Sometimes Defendants resist disclosing their real
4 names even when speaking with consumers personally.¹⁸²

5 Defendants often mischaracterize their services for billing purposes, presumably to
6 mislead their merchant account providers and consumers' credit card companies as to the
7 true nature of their services. One consumer was told by her bank that AWD had
8 characterized the \$795 fee as being for computer equipment.¹⁸³ Another consumer was
9 billed for "website design."¹⁸⁴ As discussed above, Defendants often make a variety of
10 false statements to the BBB and payment processors to avoid refunds or chargebacks.¹⁸⁵

11 Defendants changed the name of their operation in approximately February 2012
12 to disassociate themselves from negative publicity and avert the attention of law
13 enforcement. Defendant Castine told Detective Connors in January 2012 that AWD was
14 now operating as AFB. However, a month later he formed Western GPS, and resumed
15 business under that name, using some of the same representatives, customer service
16 telephone numbers, and consumer materials.¹⁸⁶ From the anonymous robocalls, to the
17 false billing descriptions, to the multifarious company names, to the efforts to mislead
18 law enforcement, the BBB, and payment processors, Defendants' common enterprise is
19 built on deceit and relies on deceit to continue. The Court cannot rely on Defendants to

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21 ¹⁸² See, e.g., App. at 000391, ¶ 5 (Ramsey); 000394-395, ¶ 8 (Reagan).

22 ¹⁸³ See, e.g., App. at 000377, ¶ 21 (Paglia).

23 ¹⁸⁴ App. at 000266, ¶ 8, 000270.1 (Attachment B) (Bradley). AWD's response letter for
24 the charge-back dispute referred to it as a "Referral Program." *Id.* at 000282 (Attachment
25 C) (Bradley).

26 ¹⁸⁵ See footnotes 135, 137-140 and accompanying text, *supra*.

27 ¹⁸⁶ See footnotes 18-21, 58-62 and accompanying text, *supra*.

1 preserve assets and evidence absent an order. The requested relief is similar to that
2 ordered in recent FTC cases in the District of Arizona.¹⁸⁷

3 An asset freeze is appropriate where, as here, the magnitude of the financial injury
4 is large, and there is a possibility of dissipation. *See, e.g., FTC v. USA Bevs., Inc.*, No.
5 05-61682-CIV-LENARD/KLEIN, 2005 U.S. Dist. LEXIS 39075 at *24-25 (S.D. Fla.
6 Dec. 5, 2005) (considerable motivation to hide assets because of potential size of
7 monetary remedy.) Defendants' potential liability possibly already exceeds the funds that
8 are available for restitution, and therefore any new business expenditures would
9 jeopardize the possibility of effective relief. When a district court determines that the
10 FTC is likely to prevail in a final determination on the merits, it has "a duty to ensure that
11 . . . assets . . . [are] available to make restitution to the injured customers." *World Travel*
12 *Vacation Brokers*, 861 F.2d at 1031. To help ensure the availability of assets, preserve
13 the status quo, and guard against the dissipation and diversion of assets, the Court may
14 issue an order freezing Defendants' assets.

15 Further, the Court can order Defendants' assets to be frozen whether the assets are
16 located inside or outside the U.S. *United States v. First Nat'l City Bank*, 379 U.S. 378,
17 384 (1965) ("Once personal jurisdiction of a party is obtained, the District Court has
18 authority to order it to 'freeze' property under its control, whether the property be within
19 or without the United States."). Courts have frozen company assets and individual
20 defendants' assets where the individual defendants controlled the deceptive activity and
21 had actual or constructive knowledge of the deceptive nature of the practices in which
22
23

24 ¹⁸⁷ *See, e.g., FTC v. North America Marketing and Associates, LLC*, No. CV-12-914-
25 PHX-DGC (D. Ariz. May 2, 2012); *FTC v. Premier Nationwide Corp.*, No. CV-12-09-
26 PHX-GMS (D. Ariz. Jan. 4, 2012) (granted TRO with asset freeze); *FTC v. Government*
27 *Careers, Inc.*, No. CV-09-721-TUC-DCB (D. Ariz. Jan. 5, 2010) (granted TRO with
28 asset freeze); *FTC v. Helping Hands of Hope, Inc.*, No. CV-08-0909-PHX-JAT (D. Ariz.
May 13, 2008) (granted TRO with asset freeze); *FTC v. The Results Group, LLC*, No.
CV-06-02843-PHX-JAT (D. Ariz. Nov. 28, 2006) (granted TRO with asset freeze).

1 they were engaged. *Amy Travel*, 875 F.2d at 574-76; *Nat'l Credit Mgmt.*, 21 F. Supp. 2d
2 at 462.

3 In addition to a provision directing Defendants not to dissipate or conceal assets,
4 the FTC seeks a provision in the TRO directing banks and other financial institutions to
5 freeze Defendants' assets in their custody or control. This Court has the authority to
6 direct its order to such third parties to freeze assets that are easily dissipated and may be
7 difficult or impossible to trace.¹⁸⁸

8 Finally, the FTC seeks an immediate accounting of Defendants' assets, and seeks
9 an order requiring that Defendants complete and return to the FTC financial statements
10 on the forms attached to the proposed TRO. Requiring accounting and financial
11 statements, combined with an asset freeze, will increase the likelihood of preserving
12 existing assets pending final determination of this matter.¹⁸⁹

13 Here, Defendants' ongoing deception demonstrates their willingness to engage in
14 wrongdoing. The possibility of a large monetary judgment provides Defendants with
15 ample incentive to conceal or dissipate otherwise recoverable assets. Without an
16 immediate freeze of the recoverable assets of Defendants, it is unlikely that funds will
17 remain to satisfy any final order granting restitution to deceived consumers or disgorging
18 Defendants' ill-gotten gains.

19 C. A Temporary Receiver Should Be Appointed

20 Appointment of a temporary receiver over the affairs of the corporate Defendants
21 is necessary to preserve evidence for trial and assets for effective final relief in this case,
22 and to evaluate the true nature of the Defendants' common enterprise.

24 ¹⁸⁸ See *First Nat'l City Bank*, 379 U.S. at 385; *Reebok Int'l, Ltd. v. McLaughlin*, 49 F.3d
25 1387, 1391-92 (9th Cir. 1995); *Waffenschmidt v. Mackay*, 763 F.2d 711, 714 (5th Cir.
26 1985).

27 ¹⁸⁹ See, e.g., *SEC v. Parkersburg Wireless Ltd. Liability Co.*, 156 F.R.D. 529, 532 n.3
28 (D.D.C. 1994); *SEC v. Bankers Alliance Corp.*, 881 F. Supp. 673, 676-77 (D.D.C. 1995).

1 Federal district courts have the inherent power to appoint a temporary receiver
2 incident to their statutory authority to issue a permanent injunction under Section
3 13(b).¹⁹⁰ A court's exercise of its equity jurisdiction to appoint a receiver is necessary in
4 instances in which a corporate defendant, via its management, has defrauded the
5 public.¹⁹¹ A receiver is also appropriate where the business may continue to operate in an
6 unlawful manner without a receiver's oversight.¹⁹² The appointment of a receiver in this
7 case is appropriate under both standards.

8 Defendants have persisted in their unlawful business practices, while changing the
9 names under which they do business. The risk that Defendants' common enterprise will
10 continue to operate unlawfully is extremely high. It is inconceivable that they can be
11 relied upon to immediately develop a legal business model. The individual Defendants
12 who have overseen the creation and operation of the common enterprise's unlawful
13 program cannot be left in control of the corporate Defendants pending resolution of this
14 case. Otherwise, the entire nature of the dispute, discovery, and the ultimate proof of the
15 case will likely be hampered by the alteration or destruction of corporate records. A
16 neutral Court-appointed temporary receiver should be entrusted to take over the
17 operations of the corporate Defendants. A temporary receiver will assist in the
18 preservation of evidence and marshaling of assets. By timely reporting the status of the
19 Defendants' operations, the receiver can assess the nature of the Defendants' business
20 and, if instructed, wind-down its unlawful operations.

21
22
23 ¹⁹⁰ See *U.S. Oil & Gas Corp.*, 748 F.2d at 1432-34 (all the inherent equitable powers of
24 the District Court are available in an action filed pursuant to the final proviso in FTC Act
25 13(b)); see also *SEC v. Manor Nursing Ctrs., Inc.*, 458 F.2d 1082, 1105 (2d Cir. 1972).

26 ¹⁹¹ See, e.g., *World Wide Factors, Ltd.*, 882 F.2d at 348; *FTC v. Am. Nat'l Cellular, Inc.*,
27 810 F.2d 1511, 1512-14 (9th Cir. 1987).

28 ¹⁹² See *SEC v. Keller Corp.*, 323 F.2d 397, 403 (7th Cir. 1963).

1 receiver reasonable access to Defendants' premises. This District has previously granted
2 immediate access in *ex parte* TROs requested by the FTC.¹⁹⁴

3 **F. Limited Expedited Discovery Is Necessary**

4 The Court should grant the FTC's request for limited discovery to locate and
5 identify consumers, documents, and assets. The Court's ability to award meaningful final
6 relief in this action would be irreparably injured if Defendants conceal either their assets
7 or records. District courts are authorized to depart from normal discovery procedures and
8 fashion discovery to meet discovery needs in particular cases. Fed. R. Civ. P. 26(d),
9 33(a), 34(b) (authorizing alteration of standard discovery provisions, including applicable
10 time frames governing depositions and production of documents). Such a departure is
11 justified in light of the Court's broad and flexible authority in equity to grant preliminary
12 emergency relief in cases involving the public interest.¹⁹⁵

13 In this case, limited discovery is crucial. First, it will aid in locating and securing
14 assets for final relief and ensuring compliance with any asset freeze the FTC requests that
15 the Court order. Second, limited discovery into Defendants' business practices will shed
16 light on the scope of consumer injury. It also will help to determine the existence and
17 location of documents needed to determine the nature and extent of consumer injury.
18 Further, the FTC's request will not unduly burden Defendants as the requested
19 information should be available readily in a computerized, business-records format

21 ¹⁹⁴ See, e.g., *FTC v. North America Marketing and Associates, LLC*, No. CV-12-914-
22 PHX-DGC (D. Ariz. May 2, 2012); *FTC v. Government Careers, Inc.*, No. CV-09-721-
23 TUC-DCB (D. Ariz. Jan. 5, 2010); *FTC v. Helping Hands of Hope, Inc.*, No. CV-08-
24 0909-PHX-JAT (D. Ariz. May 13, 2008); *FTC v. Handicapped & Disabled Workshops,*
25 *Inc.*, No. CV-08-0908-PHX-DGC (D. Ariz. May 13, 2008); *FTC v. The Results Group,*
LLC, No. CV-06-02843-PHX-JAT (D. Ariz. Nov. 28, 2006).

26 ¹⁹⁵ See, e.g., *Gill*, 183 F. Supp. 2d at 1176-77 (granted expedited discovery); *FTC v.*
27 *Productive Mktg., Inc.*, 136 F. Supp. 2d 1096, 1100 (C.D. Cal. 2001) (same). See also
28 *Fed. Sav. & Loan Ins. Corp. v. Dixon*, 835 F.2d 554, 557, 562 (5th Cir. 1987).

1 because it is the information needed daily by Defendants in the course of their
2 telemarketing program.¹⁹⁶

3 **VIII. CONCLUSION**

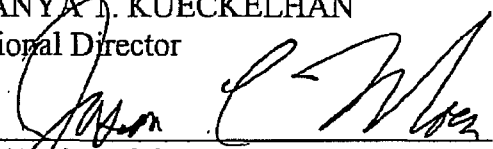
4 For the reasons delineated above, the FTC respectfully requests that
5 the Court enter the proposed Order Granting Application for Temporary Restraining
6 Order and Order to Show Cause, filed concurrently with this Memorandum, to halt
7 Defendants' ongoing violations of the FTC Act and the TSR, and to protect the Court's
8 ability to issue effective, final relief in this matter as it may deem appropriate.

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10 Dated: 10/22/2012

Respectfully submitted,

11
12 WILLARD K. TOM
General Counsel

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14 DEANYA T. KUECKELHAN
Regional Director

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16 
17 JASON C. MOON, Tex. Bar No.24001188
18 THOMAS B. CARTER, Tex. Bar No.03932300
19 EMILY B. ROBINSON, Tex. Bar
20 No.24046737
21 Federal Trade Commission
22 1999 Bryan Street, Suite 2150
23 Dallas, Texas 75201
24 (214) 979-9378; jmoon@ftc.gov (Moon)
(214) 979-9372; tcarter@ftc.gov (Carter)
(214) 979-9386; erobinson@ftc.gov (Robinson)
(214) 953-3079 (Fax)

Attorneys for Plaintiff

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26 ¹⁹⁶ This type of information is commonly kept on proprietary, client-contact software,
27 which is often not readable in its native format without the underlying software. As a
28 result, an order to provide information in written format, rather than produce the
computer records themselves, will facilitate the design of appropriate preliminary
injunctive relief by the Court.