

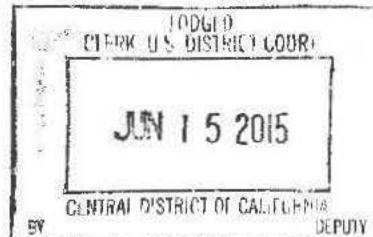
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14 **UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

15 **FEDERAL TRADE COMMISSION,**

16 Plaintiff,

17 v.

18 **BUNZAI MEDIA GROUP, INC.,
et al.,**

19 Defendants.
20

CV 15-04527 - GW (PLA*)

Case No. FILED UNDER SEAL

**PLAINTIFF FEDERAL TRADE
COMMISSION'S
MEMORANDUM IN SUPPORT
OF EX PARTE APPLICATION
FOR A TEMPORARY
RESTRAINING ORDER AND
OTHER EQUITABLE RELIEF
AND ORDER TO SHOW CAUSE
WHY A PRELIMINARY
INJUNCTION SHOULD NOT
ISSUE**

MEMORANDUM IN SUPPORT OF TRO APPLICATION

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8 *FTC v. Am. Nat’l Cellular, Inc.*,
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10 *FTC v. Arlington Press, Inc.*,
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12 *FTC v. BTV Indus.*,
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17 *FTC v. Elec. Processing Servs., Inc.*,
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3 **OTHER AUTHORITIES**

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1 **I. Introduction**

2 Defendants market skincare products over the Internet using deceptive
3 offers with hidden costs, negative option features, and return policies.
4 Specifically, Defendants falsely offer “risk free trials” or “gifts” of products to
5 consumers nationwide, using online banners, popup advertisements, and websites.
6 In truth, Defendants’ offers are designed to trick consumers into purchasing
7 Defendants’ product and enrolling in a continuity plan that charges consumers for
8 additional products each month.

9 Defendants require consumers who accept their “risk free trial” or “gift” to
10 provide credit or debit card billing information, purportedly to pay nominal
11 shipping and handling fees to receive the advertised products. However, 10 days
12 after receiving consumers’ billing information, Defendants charge consumers the
13 full costs of the products—imposing charges of up to \$97.88 onto consumers’
14 credit or debit cards. Defendants also enroll consumers into a negative option
15 continuity plan, in which Defendants ship additional products each month and
16 charge consumers’ credit or debit cards the full costs of the products, usually
17 \$97.88 per month. Finally, Defendants refuse to provide consumers with refunds
18 for product returns unless the products are returned unused and unopened within
19 30 days of the order’s placement. Defendants’ practices violate Section 5(a) of the
20 Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45(a), Section 4 of the

1 Restore Online Shoppers' Confidence Act ("ROSCA"), 15 U.S.C. § 8403, Section
2 907(a) of the Electronic Funds Transfer Act ("EFTA"), 15 U.S.C. § 1693e(a), and
3 Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b), and have caused
4 millions of dollars of consumer injury.

5 In similar cases, where a business is permeated by deception and causing
6 significant consumer injury, the FTC typically requests, and district courts have
7 regularly entered, *ex parte* temporary restraining orders enjoining the law
8 violations and freezing Defendants' assets.¹ There is strong precedent in Ninth
9 Circuit district courts for granting such *ex parte* relief in FTC cases.² This relief is

10 ¹ See, e.g., *FTC v. Grant Connect, LLC*, No. 09-01349 (D. Nev. July 28, 2009)
11 (Pro, J.) (granting *ex parte* TRO including asset freeze); *FTC v. Infusion Media,*
12 *Inc.*, No. 09-01112 (D. Nev. June 24, 2009) (Hunt, J.) (granting *ex parte* TRO
13 including asset freeze); *FTC v. ERG Ventures, LLC*, No. 06-00578 (D. Nev. Oct.
14 31, 2006) (McKibben, J.) (granting *ex parte* TRO including asset freeze); *FTC v.*
15 *3rd Union Card Servs., Inc.*, No. 04-00712 (D. Nev. May 25, 2004) (Jones, J.)
16 (granting *ex parte* TRO including asset freeze); *FTC v. BTV Indus.*, No. 02-00437
17 (D. Nev. Apr. 16, 2002) (Hicks, J.) (granting *ex parte* TRO including asset
18 freeze).

19 ² See, e.g., *FTC v. Health Formulas, LLC*, Case No. 2:14-cv-01649-RFB-GWF,
20 (D. Nev. Oct 9, 2014); *FTC v. Ivy Capital, Inc.*, No. 11-00283 (D. Nev. Feb. 22,
2011) (Mahan, J.) (granting *ex parte* TRO including asset freeze, immediate
access, and receiver); *FTC V. Nat'l Vending Consultants, Inc.*, No. 05-00160 (D.
Nev. Feb. 8, 2005) (Jones, J.) (granting *ex parte* TRO including asset freeze,
immediate access, and receiver); *FTC v. Global Net Solutions, Inc.*, No. 05-00002
(D. Nev. Jan. 3, 2005) (Pro, J.) (granting *ex parte* TRO including asset freeze and
immediate access); *FTC v. Tyme Lock 2000, Inc.*, No. 02-01078 (D. Nev. Aug. 19,
2002) (Mahan, J.) (granting *ex parte* TRO including asset freeze, receiver, and
immediate access); *FTC v. Elec. Processing Servs., Inc.*, No. 02-00500 (D. Nev.
Apr. 11, 2002) (Hicks, J.) (granting *ex parte* TRO including asset freeze and

1 essential to prevent further harm to consumers, to prohibit Defendants from
2 dissipating assets or destroying documents, and to preserve the Court’s ability to
3 award effective final relief for Defendants’ law violations.

4 **II. Defendants’ Business Practices are Permeated with Deception**³

5 Defendants have advertised, marketed, distributed, and sold skincare products
6 online from multiple Internet websites, including auraviefreetrial.com, and
7 mymiraclekit.com, and miraclefacekit.com, since at least 2010.⁴ Defendants
8 deceptively offer free trials of their products under a variety of brand names,
9 including “AuraVie,” “Dellure,” and “Miracle Face Kit” (collectively,
10 “AuraVie”).⁵ Defendants’ offers fail to disclose clearly and materially
11 misrepresent the terms of their offers.

12
13
14 immediate access); *FTC v. Nat’l Audit Defense Network, Inc.*, No. 02-00131 (D.
15 Nev. Feb. 1, 2002) (George, J.) (granting *ex parte* TRO including asset freeze,
immediate access, and receiver).

16 ³ The FTC’s evidence is collected into an Appendix of Evidence (“App.”) that, for
17 ease of citation and reference, is consecutively paginated. The appendix includes
18 declarations from federal trade investigators, deceived consumers, an investigator
with the Florida Attorney General, a United Postal Service Inspector, and the
Better Business Bureau.

19 ⁴ See App. 11-12; App. 173, 176, 179, 182.

20 ⁵ App. 11 ¶22; App. 783 ¶13.

1 **A. Defendants Deceptive “Risk Free Trial” Offers**

2 **1. Defendants’ Advertisements Contain Material**
3 **Misrepresentations**

4 Defendants contract with a network of third parties, known as “affiliate
5 marketers,” to direct consumers to Defendants’ websites.⁶ Affiliate marketers use
6 a variety of Internet advertising techniques, including banner and pop-up
7 advertisements, sponsored search terms, and special offers to drive consumer
8 traffic to Defendants’ websites.⁷ Defendants provide affiliate marketers with
9 advertisements describing their offers for the affiliate marketers to use.⁸ Some
10 affiliate marketers also create their own advertising.⁹

11 Defendants also purchase advertising space on third-party websites, such as
12 Amazon.com, Facebook.com, and HomeDepot.com, and offer consumers a “risk
13 free trial,” “trial order,” or “gift” of Defendants’ products.¹⁰ After consumers click
14 on these advertisements and are directed to Defendants’ websites, Defendants lure
15 consumers into providing their credit or debit card information by representing

16 _____
⁶ App. 13-14 ¶30.

17 ⁷ *Id.*

18 ⁸ *Id.*

19 ⁹ *Id.*

20 ¹⁰ See App. 650 ¶2; App. 741 ¶2; App. 754 ¶2.

1 that consumers need to pay only a nominal shipping and handling charge,
2 typically \$4.99 or less, to receive a “risk free trial,” “trial order,” or “gift.”¹¹

3 Defendants’ websites prominently claim that their offer is merely a “trial”:



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11 (screen capture from <http://auraviefreetrial.com>, last visited August 28, 2014)¹²

12 Additionally, many consumers also report receiving popup surveys that offer the
13 products as a “gift” or “giveaway” that is seemingly associated with the website
14
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19 ¹¹ See App. 27 ¶¶55, App. 31 ¶¶65; App. 650 ¶¶2; App. 675 ¶¶2; App. 741 ¶¶2; App.
20 760 ¶¶2.

¹² App. 27 ¶¶54-55; App. 465.

1 they have visited:



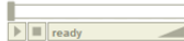
2 Visitor Survey:
3 **Amazon**

4 You've been selected to take part in an anonymous survey for visitors in the
5 **San Francisco, California** area. Tell us what you think of **Amazon** in this 30
6 second questionnaire, and to say "thank you", we'll offer you a few exclusive
7 giveaways. Available Today Only: **Thursday, May 28, 2015**

8 **Question 1 of 4: What is your Gender?**

- 9 Female
- 10 Male

11 Copyright 2011-2012 All rights reserved. We are not affiliated nor partnered, with Amazon. Amazon has not authored, participated
12 in, or in any way reviewed this advertisement or authorized it. The trial products offered on the last page pay this website for orders
13 placed. See important terms and conditions regarding this ad [here](#).



14 (http://consumers-research.com/survey/TV.c1.php?t202id=
15 71048&t202kw=amazon; URL is no longer available, but an archive of the can be
16 seen at <https://archive.org/web>).¹³

17 After completing the survey, consumers are offered a selection of products they
18 can select as their "prize," including an AuraVie "risk FREE trial," which is
19 allegedly available for only the \$4.99 cost of shipping:
20

¹³ App. 30-31 ¶¶63-65.

1 We have the following special offers for your participation. You may
2 choose only (1) prize from the list below for participating in our survey!
3 Available today only: Thursday, May 28, 2015



3 Fujifilm- Camera
FINEPIX AX500
Regular Price \$129.98
Your price today: \$1
Quantity Left: (2)

Select Reward

Coupon "Amazon"
applied for reduced shipping price



5 iPod Shuffle-
Regular Price \$89.98
Your Price today: \$1
Quantity Left: (2)

Select Reward

Coupon "Amazon"
applied for reduced shipping price



6 Auravie © Anti-Aging System
Regular Price \$98.97
Yours: Risk FREE trial*
Pay Shipping Only: \$4.99
Quantity Left: (1)

Select Reward

7 Use Coupon "Amazon"
for reduced shipping price



8 Green Coffee Bean © Diet
Burn Fat Without Diet or Exercise!
Regular Price \$69.98
Yours: Risk FREE trial*
Pay Shipping Only: \$1.95
Quantity Left: (2)

Select Reward

9 Use Coupon "Amazon"
for reduced shipping price



10 Electronic Cigarettes Kit-
Tastes Like a Real Cigarette!
Regular Price \$98.97
Yours: Risk FREE trial*
Pay Shipping Only: \$4.95
Quantity Left: (1)

Select Reward

11 Use Coupon "Amazon"
for reduced shipping price

12 page 1 |

13 (<http://consumers-research.com/survey/TV.c1.php?t202id=71048&t202kw=amazon>; captured by <https://archive.org/web>).¹⁴

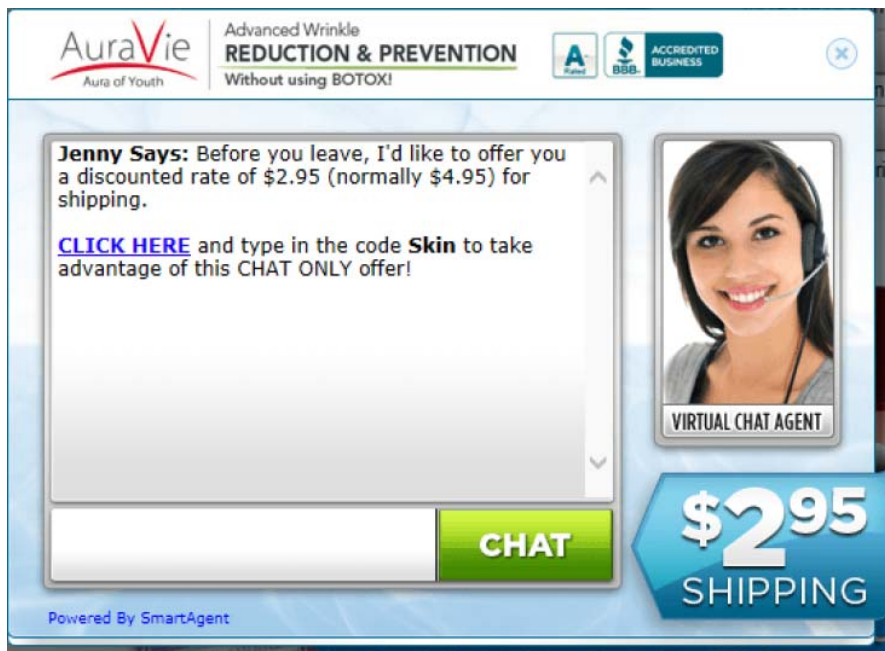
14 And although many consumers will incur charges for the trial offer, Defendants
15 promote it as a “risk free trial” and, on most sites, claim that customer satisfaction
16 is “100% guaranteed”:

17
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19
20 ¹⁴ App. 30-31 ¶¶63-65.



(screen capture from <http://mymiraclekit.com>, last visited April 13, 2015)¹⁵

Defendants also use deceptive pop-up advertisements that discourage consumers from leaving Defendants’ websites without accepting their offer. When consumers attempt to leave the websites, a text box appears that offers to ship the trial offer at an even lower shipping price.¹⁶ These pop-up advertisements contain false representations that AuraVie is accredited by the Better Business Bureau (“BBB”) with an “A-” rating:



¹⁵ App. 11 ¶25; App. 479.

¹⁶ App. 467.1.

1 (screen capture from <http://auraviefreetrial.com>, last visited April 13, 2015)¹⁷

2 In fact, AuraVie is not accredited by the BBB and has an F rating with the BBB.¹⁸

3 **2. Defendants' Offers Fail to Disclose Material Terms**

4 Defendants' marketing practices employ hidden costs, negative option
5 continuity plan features and, return policies, and are materially deceptive. In their
6 advertisements and sales offers, Defendants fail to disclose clearly that they will
7 charge consumers' credit or debit accounts for the trial product, typically as much
8 as \$97.88, after a 10-day period.¹⁹ Defendants also fail to disclose clearly that
9 consumers who accept the trial offer will be enrolled into a continuity program.
10 Under the continuity program, Defendants send consumers monthly shipments of
11 Defendants' skincare product and charge consumers' credit or debit cards the full
12 cost of each product shipped.²⁰

13 Consumers are typically unaware that they have been billed for
14 Defendants' products and enrolled in this continuity program until they discover
15

16 ¹⁷ App. 467.1; App. 11 ¶24.

17 ¹⁸ App. 789-90 ¶5.

18 ¹⁹ App. 651 ¶¶3, 5-6; App. 692-93 ¶¶3-5; App. 697 ¶5; App. 705-06 ¶¶2, 6; App.
19 714-15 ¶¶3-5; App. 727-28 ¶¶2-5; App. 735 ¶5; App. 742-43 ¶7; App. 755 ¶¶4-6.

20 ²⁰ App. 652 ¶6; App. 668-69 ¶¶8, 14; App. 693 ¶4; App. 706 ¶6; App. 742-43 ¶7;
See also App. 676 ¶6; App. 728 ¶5; App. 742-43 ¶7.

1 the charges—usually \$97.88—on their credit or debit card statements.²¹ Often, by
2 that time, Defendants contend that it is too late for consumers to return the
3 products and obtain a refund.²²

4 Finally, although they promote their offer as “risk free” with “100%
5 satisfaction guaranteed,” Defendants fail to disclose, or disclose clearly, material
6 terms of their return policy.²³ Defendants fail to disclose clearly that opened
7 product must be returned and received by Defendants within 10 days of placing
8 the order to avoid a \$97.88 fee.²⁴ Defendants also fail to disclose clearly that after
9 10 days, only unopened products may be returned for a refund—and that no
10 refunds will be provided for any product returned after 30 days.²⁵

12 ²¹ App. 675 ¶3; App. 692 ¶3; App. 697 ¶5; App. 705 ¶3; App. 728 ¶4; App. 731
13 ¶3; App. 734 ¶3; App. 738 ¶5; App. 742 ¶6; App. 755 ¶5; App. 761 ¶4; *See also*
App. 715 ¶4.

14 ²² App. 652 ¶6; App. 676 ¶6; App. 693 ¶4; App. 706 ¶6; App 735 ¶5.

15 ²³ App. 650-52 ¶¶2-6; App. 653 ¶10; App. 677 ¶8; App. 716 ¶8; App. 737 ¶2;
16 App. 744 ¶9; App. 756 ¶8; *See also* App. 669 ¶14; App. 675 ¶2; App. 692 ¶2;
App. 707 ¶7; App. 714 ¶3; App. 728 ¶7; App. 731 ¶2; App. 732 ¶7; App. 735 ¶7;
App. 739 ¶7; App. 760 ¶3; App. 762 ¶7.

17 ²⁴ App. 650-52 ¶¶2-6; App. 652-53 ¶¶7, 10; App. 693 ¶5; App. 715 ¶4; App. 728
18 ¶7; App. 737 ¶¶2-3; App. 744 ¶9; App. 755 ¶4, App. 756 ¶8; *See also* App. 675
¶2; App. 754 ¶3.

19 ²⁵ App. 652-53 ¶¶7-10; App. 693 ¶5; App. 728 ¶7; App. 744 ¶9; App. 754 ¶3;
20 App. 755 ¶4; App. 756 ¶8; App. 760 ¶3; *See also* App. 650-52 ¶¶2-6; App. 715
¶4; App. 737 ¶¶2-3; App. 762 ¶7.

1 Because consumers often do not receive their “risk free trial” or “gift” until
2 after 10 days have elapsed (or nearly elapsed), many consumers cannot return the
3 product in time to avoid the \$97.88 fee.²⁶ Defendants also fail to disclose clearly
4 to consumers that they often assess a “restocking” fee of up to \$15 for returning
5 products.²⁷ Accordingly, consumers who accept Defendants’ offers are likely to
6 incur unexpected charges.

7 **3. Defendants’ Purported Disclosures are Inadequate**

8 Defendants’ websites do not contain a disclosure concerning the cost of the
9 product, continuity program, or return policies until the “final step” of
10 Defendants’ ordering page.²⁸ Many consumers report never seeing such a
11 disclosure, even when they looked for a disclosure.²⁹ As the screen capture below
12 illustrates, the disclosure is in significantly smaller print and is obscured by a
13
14
15
16

17 ²⁶ App. 755 ¶¶4,6; *See also* App. 731¶3.

18 ²⁷ App. 676-77 ¶7; *See also* App. 335 l. 8; App. 652 ¶6.

19 ²⁸ App. 341.

20 ²⁹ App. 677 ¶8; App. 714 ¶3.

1 variety of graphics and texts:

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Card:

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CVV: [What's This?](#)

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GET MY ORDER

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15 (screen capture from <http://auraviefreetrial.com>, last visited April 13, 2015; not to
16 scale)³⁰

17 In contrast, Defendants represent—in bold, red font at the top center of the page—
18 that their trial shipment costs “\$0.00.”

19 Even if the disclosure was prominently displayed, it fails to mention many

20 ³⁰ App. 11 ¶24; App. 476.

1 material terms and conditions of Defendants’ offer. Defendants’ disclosure states:

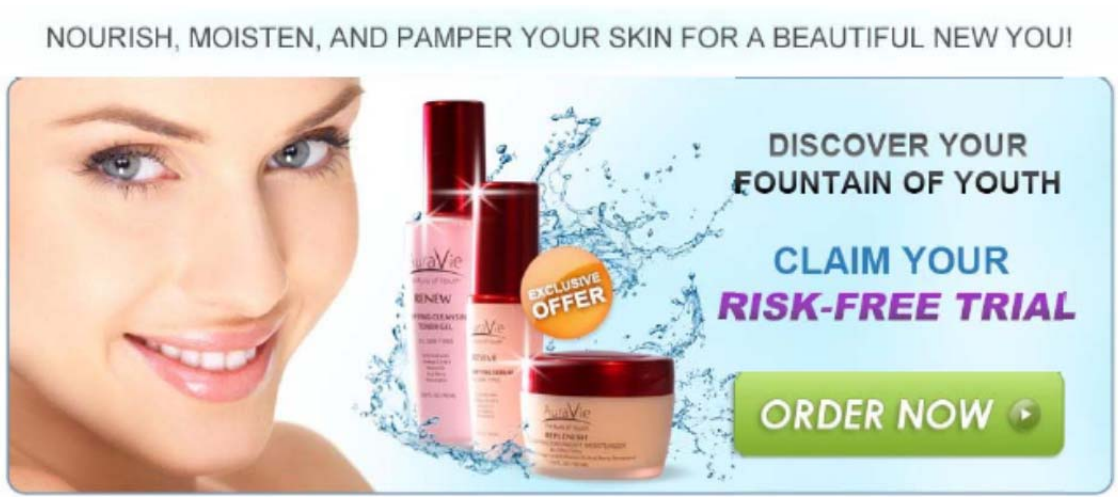
2 We take great pride in the quality of our products & are
3 confident that you will achieve phenomenal results. By
4 submitting your order, you agree to both the terms of
5 this offer (click link below) & to pay \$4.95 S&H for
6 your 10 day trial. If you find this product is not for you,
7 cancel within the 10 day trial period to avoid being
8 billed. After your 10 day trial expires, you will be billed
9 \$97.88 for your trial product & enrolled in our monthly
10 autoship program for the same discounted price. Cancel
11 anytime by calling 866.216.9336. Returned shipments
12 are at customer’s expense. This trial is limited to 1 offer
13 per household.³¹

8 Defendants’ disclosure paragraph fails to disclose: (a) that the 10-day trial period
9 begins on the day that the product is ordered; (b) that, to avoid charges, the
10 consumer must also return the product to Defendants before the end of the trial
11 period; (c) that to return a product, the consumer must first obtain a Return
12 Merchandise Authorization (“RMA”) code from Defendants; (d) that consumers
13 may not return the product for a refund after 10 days if it has been opened; (e) that
14 consumers may not return the product for a refund after 30 days, even if it has not
15 been opened; and (f) that a restocking fee, usually \$15, may be charged when a
16 product is returned.

17 Most of the material terms and conditions of Defendants’ offer are hidden
18 in a separate, multi-page terms and conditions webpage accessible only by
19

20 _____
³¹ App. 11 ¶24; App. 476.

1 hyperlink.³² On many of Defendants’ affiliate sites, this hyperlink can be found by
2 scrolling to the bottom of the website and clicking on a hyperlink labeled “T&C”:



3 [T&C](#) | [Privacy Policy](#) | [Contact Us](#)

4 © 2014 auraviefreetrial.com All Rights Reserved.

5 **The testimonials herein were provided by real people who were not paid by the advertiser and the images are of the
6 actual people.
7 *** The Free bonus gift valued at \$200.00 is free with this exclusive offer and the Processing fee of \$1.93 is included
8 in the Shipping and Handling charge for your trial order.

9 (screen capture from auravietrialkit.com, last visited April 13, 2015)³³

10
11
12 **4. Defendants’ Post-Sale Communications Do Not Disclose
13 Material Terms**

14
15 Defendants send consumers who accept their offer a confirmation email that
16 reinforces the false impression that consumers will receive a free shipment of

17
18 _____
19 ³² App. 11 ¶¶ 24-25; App. 12 ¶¶ 26-27; App. 467-71, 476; *See also* App. 479-85,
20 495-500, 514-18, 523.

³³ App. 467.

1 Defendants' skincare product.³⁴ Defendants' emails show no charges for the "risk
2 free trial" other than the nominal shipping and handling fees.³⁵

3 Defendants' emails do not disclose that consumers will be charged the full
4 cost of the product, usually \$97.88, after 10 days unless the consumer cancels the
5 order and returns the product during that time.³⁶ The emails do not disclose that
6 the consumer has been enrolled into a continuity program that will result in future
7 shipments of product and a monthly charge of \$97.88 on their credit or debit
8 cards.³⁷ Nor do these emails state when the charge will be imposed or how
9 consumers can avoid the charge.³⁸ Finally, the emails do not disclose that
10 unopened products may be returned for a refund only within 30 days of ordering.³⁹

11 **B. Defendants Do Not Honor their Cancellation and Refund Policies**

12

13

14 ³⁴ App. 715 ¶4; App. 718-19; App. 754-55 ¶3; App. 760 ¶3; App. 764; See also
15 App. 737 ¶2; App. 739 ¶7; App. 754 ¶3; App. 756 ¶8.

16 ³⁵ App. 715 ¶4; App. 718-19; App. 737 ¶2; App. 739 ¶7; App. 754 ¶3; App. 756
17 ¶8; App. 760 ¶3; App. 764.

18 ³⁶ *Id.*

19 ³⁷ *Id.*

20 ³⁸ *Id.*

³⁹ *Id.*

1 After consumers learn that Defendants have charged their accounts and signed
2 them up for a continuity plan, they often have significant difficulty receiving a
3 refund and cancelling the continuity plan. Many consumers have difficulty
4 contacting Defendants, despite calling Defendants' toll-free number repeatedly.⁴⁰
5 Even when consumers speak with one of Defendants' representatives and cancels
6 the continuity plan, consumers often receive further shipments and unauthorized
7 charges.⁴¹ Other consumers report receiving multiple charges from Defendants
8 without receiving products.⁴² As a result, consumers continue to incur unwanted
9 and unauthorized charges.

10 When consumers call Defendants to complain about unauthorized charges,
11 Defendants often tell consumers that, while the continuity plan will be cancelled,
12 their money will not be refunded.⁴³ In some instances, Defendants offer
13 consumers only a partial refund.⁴⁴ Other times, Defendants condition a partial
14

15 ⁴⁰ See App. 667 ¶5; App. 668 ¶9; App. 676 ¶¶4-6; App. 697 ¶6; App. 715 ¶5; App.
16 735 ¶5; App. 755 ¶5.

17 ⁴¹ App. 716 ¶6.

18 ⁴² App. 731-32 ¶¶3-4.

19 ⁴³ See App. 652 ¶6; App. 693 ¶4; App. 743 ¶7; *See also* App. 715 ¶5.

20 ⁴⁴ See App. 669 ¶13; App. 676-77 ¶7; App. 706 ¶6; App. 728 ¶5; App. 735 ¶5;
App. 755-56 ¶6; App. 761 ¶5.

1 refund upon the consumers' promise or signed statement that they will not
2 complain to any government authority or to the Better Business Bureau.⁴⁵

3 Further, Defendants often do not honor return policies, even when
4 consumers satisfy them. For example, Defendants often tell consumers that they
5 cannot obtain a refund on any product returned even when the product remains
6 unopened and the 30-day period has not yet elapsed, contrary to Defendants'
7 terms and conditions.⁴⁶ Some consumers report being refused a refund by
8 Defendants despite sending the product back within the permissible time period,
9 with Defendants' customer service representative stating they never received the
10 return shipment.⁴⁷ In other instances, consumers receive refunds from Defendants
11 only after they have complained to their credit card companies, state regulatory
12 authorities, or the Better Business Bureaus. Even in those instances, however,
13 Defendants have not always issued full refunds.⁴⁸

14 **C. Defendants Deceive their Payment Network and Threaten**
15 **Consumers who Seek Chargebacks**

16 _____
17 ⁴⁵ See App. 693 ¶4; App. 698 ¶8.

18 ⁴⁶ See App. 735 ¶5; App. 312 l. 19.

19 ⁴⁷ See App. 706 ¶6; See also App. 743 ¶7.

20 ⁴⁸ App. 669 ¶¶12-13; App. 678 ¶11; App. 694 ¶8; App. 707-8 ¶9, App. 713; App.
745 ¶11; App. 752-53; App. 758-59.

1 In numerous instances, Defendants submit inaccurate or false information to
2 financial institutions and otherwise obstruct consumers' efforts to seek
3 chargebacks or refunds for unauthorized credit card charges.⁴⁹

4 Merchants that accept credit card payments contract with financial
5 institutions called "acquiring banks" and use the services of payment processing
6 companies. Acquiring banks have various rules that a merchant must follow to
7 qualify for and retain access to a merchant account. Acquiring banks want to
8 avoid losses associated with consumer reversals of credit card transactions
9 (termed "chargebacks").⁵⁰ Therefore, acquiring banks often require that merchants
10 clearly and prominently disclose to consumers the terms and conditions of a sale
11 before the consumer authorizes payment. Acquiring banks may suspend or
12 terminate merchant accounts that have a high rate of chargebacks.

13 Many of Defendants' charges for their trial offer and continuity program
14 result in chargeback requests by consumers.⁵¹ In an effort to maintain access to
15 credit card processing, Defendants have established as many as two dozen
16 merchant accounts, held by shell corporations, that use a variety of billing

17
18 ⁴⁹ See App. 783-84 ¶¶15-16.

19 ⁵⁰ See App. 279.

20 ⁵¹ See App. 27 ¶53; See also App. 783-84 ¶¶15-16, 18.

1 descriptors.⁵² Many of these shell companies use the same payment processing
2 companies and acquiring banks.⁵³

3 To prevent consumers from receiving chargebacks for unauthorized
4 charges, Defendants submit falsified documents to oppose consumers' chargeback
5 requests.⁵⁴ These falsified documents are altered or doctored to make it appear that
6 Defendants' websites require consumers to click a box on the ordering screen
7 indicating they have read and agreed to the terms and conditions of their offer to
8 complete a purchase⁵⁵ and show a disclosure that is larger and more prominent
9 than appears on their actual websites.⁵⁶ Defendants also attempt to discourage
10 chargebacks by threatening, in their terms and conditions, to refer consumers who
11 request chargebacks to authorities for potential criminal prosecution:

12 CHARGEBACKS AND REVERSALS. We handle all
13 chargebacks and reversals as potential cases of fraudulent use
14 of our product offer and/or theft of product. In cases where we
15 have provided a product and we have verified that a client has
16 received a product and/or refused or returned product(s),
whether or not they have used the product in any way, possible
actions taken by the company may include filing a complaint
with the Internet Crimes Bureau and/or local authorities, or

17 ⁵² See App. 784 ¶¶17-18; App. 786-88.

18 ⁵³ See App. 786-88.

19 ⁵⁴ See App. 783-84 ¶¶15-16.

20 ⁵⁵ See App. 783-84 ¶¶15-16.

⁵⁶ See App. 266, App. 470, App. 498, App. 517, App. 775.

1 reporting the incident to the appropriate authorities in your
2 state to investigate theft of product and possible mail fraud
3 which is a Federal Crime. All cases of chargeback requests
4 will be vigorously fought by the Company. BE AWARE that if
5 you choose to claim your online transaction was fraudulent
6 that all activity and IP address information is captured. This
7 digital proof of whom and where the order was placed will be
8 submitted to the proper authorities. This information may be
9 used in a civil and criminal case against a customer if there is
10 fraudulent use or theft of product(s).⁵⁷

6 **III. The Defendants**

7 **A. Corporate Defendants**

8 **1. BunZai Media Group, Inc. (“BunZai”)**

9
10 BunZai Media Group, Inc. (“BunZai”), also doing business as AuraVie,
11 Miracle FaceKit, and Attitude Skincare, was a California corporation incorporated
12 in January 2010 with its principal place of business at 7900 Gloria Avenue, Van
13 Nuys, California 91406 (“the Van Nuys Office”).⁵⁸ BunZai, along with Defendant
14 Pinnacle Logistics, Inc., is at the center of Defendants’ scam. The company
15 marketed skincare products using a variety of names through the shell
16 corporations.⁵⁹ BunZai formally dissolved in June 2013.⁶⁰ BunZai was owned by

17 _____
⁵⁷ See App. 266, App. 470, App. 498, App. 517, App. 775.

18 ⁵⁸ See App. 158.

19 ⁵⁹ App. 780 ¶5.

20 ⁶⁰ App. 558.

1 Defendants Alon Nottea, Igor Latsanovski, and Khristopher Bond.⁶¹ Defendant
2 Motti Nottea was a Chief Executive Officer (“CEO”).⁶²

3 **2. Pinnacle Logistics, Inc. (“Pinnacle”)**

4 Pinnacle Logistics, Inc. (“Pinnacle”), another California corporation, was
5 incorporated in June 2012⁶³ and took over BunZai’s marketing and sale of the
6 various skincare products in 2013.⁶⁴ Pinnacle’s principle place of business was at
7 the same location as BunZai, at the Van Nuys Office.⁶⁵ However, it recently
8 moved to 6914 Canby, Ste. 107, Reseda, California 91335 (“the Reseda
9 Office”).⁶⁶ With the formation of Pinnacle, virtually nothing changed in BunZai’s
10 operation except for its name.⁶⁷ The principals are the same (save one,
11 Khristopher Bond, who left the enterprise),⁶⁸ and the location, employees, sales
12

13 ⁶¹ App. 158.

14 ⁶² App. 254, App. 258.

15 ⁶³ App. 3 ¶7; App. 559.

16 ⁶⁴ App. 69; App. 779-80 ¶4.

17 ⁶⁵ App. 779 ¶2.

18 ⁶⁶ App. 33 ¶70; App. 149.

19 ⁶⁷ App. 779-80 ¶4.

20 ⁶⁸ App. 42.

1 tactics, and product remain unchanged.⁶⁹ Defendants Alon Nottea, Doron Nottea,
2 and Oz Mizrahi own or operate Pinnacle.⁷⁰

3 **3. Media Urge, Inc.**

4 Media Urge, Inc., was a California corporation with its principal place of
5 business at the same office campus as the Reseda Office.⁷¹ The corporation was
6 formed in September 2012 and formally dissolved in July 2014.⁷² This company
7 secured third-party advertising, tracked sales, and designed marketing materials.⁷³
8 Media Urge, Inc., and Pinnacle are owned by the same parent company,
9 Defendant CalEnergy, Inc.⁷⁴ While Pinnacle took over BunZai's product
10 fulfilment, Media Urge appears to have taken over its affiliate marketing and
11 advertising work.⁷⁵

14 ⁶⁹ App. 779-80 ¶4.

15 ⁷⁰ App. 3 ¶7; App. 560; App. 779-80 ¶4.

16 ⁷¹ App. 55.

17 ⁷² App. 8 ¶16; App. 596, 599.

18 ⁷³ App. 55, 60-61.

19 ⁷⁴ App. 809.

20 ⁷⁵ App. 61, App. 63, App. 69.

1 **4. CalEnergy, Inc.**

2 CalEnergy, Inc., a California corporation established in September 2009,⁷⁶
3 has held itself out as the parent company of Pinnacle and Media Urge, Inc.⁷⁷ The
4 CEO and registered agent for CalEnergy, Inc., is Defendant Igor Latsanovski,⁷⁸ an
5 owner of BunZai⁷⁹ and the CEO of Defendant Zen Mobile Media, Inc.⁸⁰ Igor
6 Latsanovski has also held himself out to be the founder, president, and
7 multinational manager of the company.⁸¹

8 **5. Adageo, LLC**

9 Adageo, LLC, a California limited liability corporation incorporated in
10 September 2012,⁸² is a consulting company Alon Nottea is an owner.⁸³ Its
11 registered address is 16161 Ventura Boulevard, #378, Encino, California 91436.⁸⁴

12 ⁷⁶ App. 603.

13 ⁷⁷ App. 809.

14 ⁷⁸ App. 8-9 ¶19; App. 604.

15 ⁷⁹ App. 158.

16 ⁸⁰ App. 26 ¶52; App. 275; App. 786-88.

17 ⁸¹ App. 617.

18 ⁸² App. 8; App. 600.

19 ⁸³ App. 60.

20 ⁸⁴ App. 8 ¶ 17; App. 601.

1 Oz Mizrahi and Media Urge, Inc., hired Adageo, LLC, to consult Media Urge
2 regarding affiliate marketing.⁸⁵

3 **6. SBM Management, Inc.**

4 SBM Management, Inc., was a California corporation was a California
5 corporation with its principal place of business at 655 North Central Avenue,
6 Suite 1700, Glendale, California 91203. A corporate credit card registered to SBM
7 Management, Inc., was used to pay for numerous AuraVie “risk free trial”
8 websites,⁸⁶ and the an SBM Management, Inc., email address was listed as the
9 point of contact.⁸⁷

10 **7. The Shell Corporations**

11 Defendants use numerous shell corporations to further their scheme. These
12 shell corporations include: Agoa Holdings, Inc.; Zen Mobile Media, Inc.;
13 SafeHaven Ventures, Inc.; Heritage Alliance Group, Inc.; AMD Financial
14 Network, Inc.; Kai Media, Inc.; and Insight Media, Inc. (“shell corporations”).⁸⁸
15 All of the shell corporations are California corporations. And although the shell
16 corporations have various mailing addresses, they are in fact all operated from the

17 ⁸⁵ App. 61, 63.

18 ⁸⁶ App. 34 ¶¶73-76.

19 ⁸⁷ App. 229.

20 ⁸⁸ App. 782 ¶10; App. 786-88.

1 same location by employees of BunZai and Pinnacle.⁸⁹ Each shell corporation is
2 associated with at least one merchant account that the Individual Defendants use
3 to process payments for AuraVie and related products.⁹⁰ By processing payments
4 through a variety of accounts and a variety of names, the Individual Defendants
5 attempt to disguise their chargeback rates from the credit card network.⁹¹

6 **B. Individual Defendants**

7 Each of the Individual Defendants own, operate, or manage one or more of
8 the Corporate Defendants, and each shares in the profits from the enterprise's
9 illegal operation. Further, each of the Individual Defendants: (1) participated
10 directly in the wrongful acts or had authority to control them; and (2) had some
11 knowledge, either actual or constructive, of the wrongful acts.

12 **1. Alon Nottea**

13 Alon Nottea, along with Defendants Igor Latsanovski and Khristopher
14 Bond, was an owner of BunZai.⁹² He was a principal or manager of Pinnacle⁹³ and
15

16 ⁸⁹ App. 780 ¶5.

17 ⁹⁰ App. 784 ¶17; App. 786-88.

18 ⁹¹ App. 784-85 ¶¶ 18-19.

19 ⁹² App. 158.

20 ⁹³ App. 780 ¶6.

1 also worked as a consultant for Media Urge,⁹⁴ assisting them in taking over some
2 of BunZai's business. Alon is listed as mailing and billing contact for the
3 enterprise's websites,⁹⁵ and a business credit card in his name was used to pay for
4 many of the websites.⁹⁶ Alon Nottea was at one time listed as the billing and
5 shipping contact for many of the enterprise's websites.⁹⁷ Alon Nottea was
6 described by a former employee as the head of the common enterprise,⁹⁸ and he
7 was integrally involved in the day-to-day operations of the scam.⁹⁹ Because he
8 oversaw operations in both the chargeback and customer-service departments at
9 BunZai and Pinnacle,¹⁰⁰ he had actual knowledge that consumers were being
10 injured by unauthorized charges to their credit and debit card accounts.

14 ⁹⁴ App. 60.

15 ⁹⁵ App. 223, 225-26, 228.

16 ⁹⁶ App. 217-18, 220-21, 223, 225-26, 228.

17 ⁹⁷ App. 217-228.

18 ⁹⁸ App. 780 ¶6; App. 781 ¶9.

19 ⁹⁹ App. 780-81 ¶¶6-7, 9; App. 783 ¶15; App. 784-85 ¶18.

20 ¹⁰⁰ App. 780 ¶6.

1 **2. Motti Nottea**

2 Motti Nottea, Alon’s father, held himself out as a CEO of BunZai.¹⁰¹ He
3 also is or was the CEO or owner of DSA Holdings, Inc.,¹⁰² one of the shell
4 corporations used to process payments for Defendants’ continuity plans.¹⁰³ His
5 position as CEO of BunZai and DSA Holdings, Inc., demonstrates an ability to
6 control the companies. His management of at least one of the enterprises’
7 merchant account suggests that he had actual knowledge of the unauthorized
8 charges at issue.

9 **3. Doron Nottea**

10 Doron Nottea, Alon’s brother, was a manager at BunZai and Pinnacle.¹⁰⁴ He
11 handled Pinnacle and the shell companies’ finances.¹⁰⁵ His position as manager
12 and role in handling the Corporate Defendants’ finances evinces his knowledge of
13 the deceptiveness of the enterprise and of the resulting consumer injury.
14

15
16

¹⁰¹ App. 254, 258, 260, 274.

17 ¹⁰² App. 787.

18 ¹⁰³ App. 785 ¶19.

19 ¹⁰⁴ App. 781 ¶9.

20 ¹⁰⁵ App. 782 ¶10.

4. Igor Latsanovski

Igor Latsanovski was an owner of BunZai¹⁰⁶ and Zen Mobile Media, Inc.,¹⁰⁷ as well as a president,¹⁰⁸ multinational manager,¹⁰⁹ and the registered agent for CalEnergy, Inc.¹¹⁰ His name is also listed on the Zen Mobile Media, Inc., merchant account,¹¹¹ suggesting knowledge of the company's business practices and high chargeback requests. As an owner, Latsanovski had authority to control his companies' practices. His participation in obtaining merchant accounts for the enterprise shows that he was aware of the unauthorized billing scheme or, alternatively, was recklessly indifferent to the illegal business practices.

5. Oz Mizrahi

Oz Mizrahi is the CEO and owner of Pinnacle¹¹² and was one of the "heads" of the company.¹¹³ He actively participated in Defendants' illegal scheme.

¹⁰⁶ App. 158-59; App. 781 ¶8.

¹⁰⁷ App. 786-88.

¹⁰⁸ App. 617.

¹⁰⁹ App. 617.

¹¹⁰ App. 8-9 ¶18, App. 604-605.

¹¹¹ App. 5 ¶11; App. 26 ¶52.

¹¹² App. 560.

1 In addition to managing the business itself,¹¹⁴ he registered a post office box in the
2 name of Pinnacle and AuraVie in which he held himself out as “administrator” of
3 Pinnacle.¹¹⁵ His position as an owner of two of the companies demonstrates an
4 ability to control the companies’ business practices, including the practices giving
5 rise to the complaint.

6 **6. Roi Reuveni**

7 Roi Reuveni, a cousin of the Nottea brothers, Alon and Doron, and was a
8 manager of the customer service and chargebacks departments at BunZai and
9 Pinnacle.¹¹⁶ As manager of the chargebacks department, he drafted the deceptive
10 template used to respond to financial institutions with false information when
11 consumers requested chargebacks.¹¹⁷ He is also the CEO or owner of Agoa
12 Holdings, Inc., one of the shell corporations used to process payments for
13 Defendants’ continuity plans.¹¹⁸ Reuveni’s knowledge of the deceptiveness of the
14

15 ¹¹³ App. 780 ¶4.

16 ¹¹⁴ See App. 780 ¶4.

17 ¹¹⁵ App. 553.

18 ¹¹⁶ App. 781 ¶9.

19 ¹¹⁷ App. 781 ¶9.

20 ¹¹⁸ App. 786-87.

1 enterprise can be inferred from his positions as manager and CEO of companies in
2 the enterprise and role in supervising the customer service and chargeback
3 departments.

4 **7. Khristopher Bond, also known as Raymond Ibbot**

5 Khristopher Bond, also known as Raymond Ibbot, was an owner of BunZai
6 along with Igor Latsanovski and Alon Nottea.¹¹⁹ A former employee stated that
7 Bond trained him as an AuraVie customer service representative and prepared him
8 to respond to customer complaints.¹²⁰ He eventually left the common enterprise,
9 leading to the dissolution of BunZai.¹²¹ His position as manager and role in
10 supervising the customer service department shows his participation in and actual
11 knowledge of the deceptive enterprise.

12 **IV. Legal Argument**

13 To put an immediate stop to Defendants' ongoing deceptive practices and to
14 preserve the possibility of effective final relief, the FTC requests the issuance of
15 an *ex parte* TRO with provisions for asset and document preservation, the
16 appointment of a receiver, immediate access to Defendants' business premises and
17

18 ¹¹⁹ See App. 158-59; see also App. 780-81 ¶7.

19 ¹²⁰ App. 782 ¶11.

20 ¹²¹ App. 52.

1 records, and an order to show cause why a preliminary injunction should not
2 issue. As shown below, the Court possesses authority to enter the relief sought, the
3 evidence demonstrates that the FTC is likely to succeed on the merits, and the
4 equities weigh in favor of the requested relief.

5 **A. The Court Possesses Authority to Grant the Requested Relief.**

6 Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), gives the FTC authority to
7 seek, and the district court authority to grant, both a permanent injunction against
8 violations of any provisions of law enforced by the FTC and “any ancillary relief
9 necessary to accomplish complete justice.”¹²² This ancillary relief can include,
10 among other remedies, an *ex parte* temporary restraining order, a preliminary
11 injunction, an asset freeze, and the appointment of a receiver.¹²³ On numerous
12 occasions, courts of this district have acted under the authority of Section 13(b) to
13 grant preliminary relief similar to that sought here.¹²⁴

14
15 ¹²² *FTC v. H. N. Singer, Inc.*, 668 F.2d 1107, 1111–13 (9th Cir. 1982).

16 ¹²³ *E.g.*, *FTC v. Affordable Media, LLC*, 179 F.3d 1228, 1232 & n.2 (9th Cir.
17 1999) (*ex parte* TRO and preliminary injunction including asset freeze); *FTC v.*
18 *Am. Nat’l Cellular, Inc.*, 810 F.2d 1511, 1512 (9th Cir. 1987) (TRO and
preliminary injunction including asset freeze and appointment of a receiver).

19 ¹²⁴ *FTC v. Am. Mortg. Consulting Grp.*, No. SACV12-01561 DOC (JPRx), 2012
20 WL 4718927 (C.D. Cal. Oct. 1, 2012); *FTC v. Consumer Advocates Grp. Experts,*
LLC, No. CV12-04736 DDP (CWx), 2012 WL 2061702 (C.D. Cal. June 7, 2012);
FTC v. National Foreclosure Relief, Inc., No. SACV09-117-DOC(MLGx), 2009
WL 650401 (C.D. Cal. Mar. 6, 2009); *FTC v. Myricks*, No. CV05-7013 CAS

1 In determining whether to grant preliminary relief under Section 13(b), a
2 court must consider two factors: (1) the FTC’s likelihood of ultimate success and
3 (2) whether the public equities outweigh any private equities.¹²⁵ “District courts
4 apply a more lenient standard to the FTC when it is seeking an injunction than
5 they do to private litigants.”¹²⁶ Unlike private litigants, the FTC does not need to
6 prove irreparable injury,¹²⁷ which is presumed in a statutory enforcement action.¹²⁸
7 Because irreparable injury is presumed, the burden of establishing success on the
8 merits is decreased, and a court ““need only to find some chance of probable
9 success on the merits”” in order to award preliminary relief.¹²⁹ In addition, when

11 FMOX, 2005 WL 3670908 (C.D. Cal. Sept. 27, 2005); *FTC v. Arlington Press,*
12 *Inc.*, No. CV-98-9260-MMM(CWX), 1999 WL 33574020 (C.D. Cal. Jan. 11,
1999);

13 ¹²⁵ *FTC v. Warner Commc’ns, Inc.*, 742 F.2d 1156, (9th Cir. 1984) (citing *FTC v.*
14 *Simeon Mgmt. Corp.*, 532 F.2d 708, 713-714 (9th Cir. 1976).

15 ¹²⁶ *FTC v. Health Formulas, LLC*, Case No. 2:14-cv-01649-RFB-GWF, 2015 WL
16 2130504, at *5 (D. Nev. May 6, 2015) (citing *FTC v. Affordable Media*, 179 F.3d
17 1228, 1233 (9th Cir. 1999)).

18 ¹²⁷ *Warner Commc’ns*, 742 F.2d at 1159.

19 ¹²⁸ *FTC v. World Wide Factors, Ltd.*, 882 F.2d 344, 347 (9th Cir. 1989); *see also*
20 *See United States v. Odessa Union Warehouse Co-op*, 833 F.2d 172, 176 (9th Cir.
1987).

¹²⁹ *Id.* (quoting *United States v. Odessa Union Warehouse Co-op*, 833 F.2d 172,
176 (9th Cir. 1987)).

1 weighing the equities, the public interest receives greater weight than private
2 interests.¹³⁰

3 **B. The FTC is Likely to Succeed on the Merits**

4 The evidence in the record amply demonstrates that the FTC is likely to
5 succeed on the merits of its claims that Defendants have violated Section 5(a) of
6 the FTC Act, 15 U.S.C. § 45(a), Section 4 of ROSCA, 15 U.S.C. § 8403, Section
7 907(a) of EFTA, 15 U.S.C. § 1693e(a), and Section 205.10(b) of Regulation E, 12
8 C.F.R. § 205.10(b). Further, the record illustrates that the equities weigh heavily
9 in favor of the requested relief.

10 **1. Defendants are Violating Section 5 of the FTC Act**

11 Section 5(a) of the FTC Act empowers the FTC to prevent “deceptive acts
12 or practices in or affecting commerce.”¹³¹ An act or practice is deceptive if “first,
13 there is a representation, omission, or practice that, second, is likely to mislead
14 consumers acting reasonably under the circumstances, and third, the
15 representation, omission, or practice is material.”¹³² A misrepresentation may be
16

17 ¹³⁰ *Id.* (citing *Warner Comm’cns*, 742 F.2d at 1165).

18 ¹³¹ 15 U.S.C. § 45(a) (2006).

19 ¹³² *FTC v. Gill*, 265 F.3d 944, 950 (9th Cir. 2001); *FTC v. Pantron I Corp.*,
20 33 F.3d 1088, 1095 (9th Cir. 1994) (quoting and adopting the standard set forth in
In re Cliffdale Assocs., 103 F.T.C. 110, 164–65 (1984)). Under Section 5, the FTC
is not required to prove that a defendant intended to deceive consumers, nor is a

1 either express or implied.¹³³ A representation, omission, or practice is material if it
2 “involves information that is important to consumers and, hence, likely to affect
3 their choice of, or conduct regarding, a product.”¹³⁴

4 An act or practice is unfair, and also violates Section 5(a) of the FTC Act, if
5 it causes, or is likely to cause, substantial injury to consumers that is not
6 reasonably avoidable and is not outweighed by countervailing benefits to
7 consumers or competition.

8 Here, Defendants engage in deceptive and unfair practices in violation of
9 Sections 5(a) by: (i) failing to disclose clearly material terms of their offer; (ii)
10 making false “risk free trial” claims; (iii) making false representations regarding
11

12 defendant’s good faith a defense to liability. *FTC v. World Travel Vacation*
13 *Brokers, Inc.*, 861 F.2d 1020, 1029 (7th Cir. 1988); *FTC v. NCH, Inc.*, 1995-2
14 Trade Cas. (CCH) ¶71,114, at 75,346 (D. Nev. 1995) (O’Connor, J.); *FTC v.*
Pioneer Enters., Inc., 1992-2 Trade Cas. (CCH) ¶70,043, at 69,156 (D. Nev.
1992) (George, C.J.).

15 ¹³³ *FTC v. Figgie Int’l, Inc.*, 994 F.2d 595, 604 (9th Cir. 1993) (“[N]othing in
16 statute or case law . . . protects from liability those who merely imply their
deceptive claims . . .”).

17 ¹³⁴ *FTC v. Cyberspace.com LLC*, 453 F.3d 1196, 1201 (9th Cir. 2006) (quoting
18 *Cliffdale Assocs.*, 103 F.T.C. at 165). The FTC need not prove actual reliance by
19 each individual consumer. *Figgie Int’l*, 994 F.2d at 605. Requiring such proof
20 would defeat the intent of the FTC Act and would frustrate prosecutions of large
consumer redress actions. *Id.* Instead, a presumption of actual reliance arises once
the FTC has proved that the defendant made material misrepresentations, that they
were widely disseminated, and that consumers purchased the defendant’s product.
Id. at 605–06.

1 their Better Business Bureau rating and accreditation status; and (iv) unfairly
2 charging consumers without authorization.

3 **i. Defendants Fail to Disclose Clearly the Material**
4 **Terms of Their Offer and Falsely Represent that their**
5 **Trial Offer is “Risk Free”**

6 As alleged in Counts I and II of the Complaint, Defendants use trickery to
7 obtain consumers’ credit card information. The Defendants represent that the
8 products they sell are available on a “risk free” basis—consumers need only pay
9 shipping—but Defendants then bury material, contradictory terms concerning
10 their offer. In particular, the Defendants fail to disclose clearly that their “risk
11 free” trial offer of product converts into a \$97.88 charge after just 10 days.
12 Further, Defendants fail to disclose when the trial begins and ends; that consumers
13 are automatically enrolled into a negative option continuity plan with monthly
14 charges; or how consumers can cancel their membership in this program.

15 An advertisement that fails to disclose material information is deceptive.¹³⁵
16 Importantly, numerous courts have held that an inconspicuous disclosure does not
17 remedy the deceptiveness of a material omission.¹³⁶

18 ¹³⁵ *Simeon Mgmt. Corp. v. FTC*, 579 F.2d 1137, 1146 (9th Cir. 1978).

19 ¹³⁶ *FTC v. Cyberspace.com LLC*, No. C00-1806L, 2002 U.S. Dist. LEXIS 25564,
20 *8-9 (W.D. Wash. July 10, 2002) (holding that a fine print disclosure was
inadequate to escape liability), *aff’d* 453 F.3d 1196, 1200 (9th Cir. 2006)
(collection case where deception was found because fine print disclosures were
inadequate); *FTC v. Direct Marketing Concepts, Inc.*, 624 F.3d 1, 12 (1st Cir.

1 **ii. Defendants Falsely Represent that their Business is**
2 **Accredited by the Better Business Bureau with an “A-**
3 **” Rating**

4 Count III addresses Defendants’ practice of falsely representing
5 accreditation by the Better Business Bureau (“BBB”) with an “A-” rating.¹³⁷
6 These representations are false.¹³⁸ AuraVie had its accreditation revoked over a
7 year ago and has an “F” rating with the BBB.¹³⁹ Express product claims are
8 presumed to be material,¹⁴⁰ and reliance upon such claims is presumptively
9 reasonable.¹⁴¹ Accordingly, Defendants representations about their company’s

10 2010) (“[d]isclaimers or qualifications in any particular ad are not adequate to
11 avoid liability unless they are sufficiently prominent and unambiguous to change
12 the apparent meaning of the claims and leave an accurate impression”) (*quoting*
13 *Removatron Intern. Corp. v. FTC*, 884 F.2d 1489, 1497 (1st Cir. 1989)); *FTC v.*
14 *Brown & Williamson Tobacco Corp.*, 778 F.2d 35, 43 (D.C. Cir. 1985) (holding
15 that an advertisement’s description of cigarette tar content was deceptive despite a
16 fine print disclosure at the bottom of the ad); *FTC v. Porter & Deitsch*, 605 F.2d
17 294, 301 (7th Cir. 1979) (upholding FTC and finding that disclosures “buried in
18 small print” were inadequate to qualify weight loss claims in advertising); *FTC v.*
19 *Gill*, 71 F. Supp. 2d 1030, 1044 (C.D. Cal. 1999) (disclaimers made in contract for
20 credit repair services were insufficient to counteract advertising claims about the
service).

16 ¹³⁷ App. 467.1.

17 ¹³⁸ App. 789-90 ¶5.

18 ¹³⁹ App. 789-90 ¶5.

19 ¹⁴⁰ *FTC v. Pantron I Corp.*, 33 F.3d 1088, 1095-96 (9th Cir. 1994).

20 ¹⁴¹ *FTC v. Five-Star Auto Club, Inc.*, 97 F. Supp. 2d 502, 528 (S.D.N.Y. 2000).

1 BBB rating and accreditation status are materially deceptive in violation of
2 Section 5 of the FTC.

3 **iii. Defendants Unfairly Charge Consumers without**
4 **Authorization**

5 As alleged in Count IV, Defendants routinely charge consumers' credit or
6 debit cards without consumers' express informed consent. Such conduct is
7 consistently held to be unfair under the FTC Act.¹⁴²

8 **2. Defendants are Violating the Restore Shoppers Online**
9 **Confidence Act**

10 Section 4 of ROSCA, 15 U.S.C. § 8403, generally prohibits charging
11 consumers for goods or services sold on the Internet through a negative option
12 feature, unless the seller clearly and conspicuously discloses all material terms of
13 the transaction before obtaining the consumer's billing information, obtains the
14 consumer's express informed consent before making the charge, and provides a
15 simple mechanism to stop recurring charges.¹⁴³ Defendants' continuity plans are a
16
17

18 ¹⁴² See, e.g., *FTC v. J.K. Publ'ns, Inc.*, 99 F. Supp. 2d 1176, 1201 (C.D. Cal.
19 2000); *FTC v. Global Mktg. Grp., Inc.*, 594 F. Supp. 2d 1281, 1288-89 (M.D. Fla.
20 2008).

¹⁴³ See 15 U.S.C. § 8403 (2006).

1 negative option feature, as defined by the TSR.¹⁴⁴ Under Section 5 of ROSCA, 15
2 U.S.C. § 8404, a violation of ROSCA is a violation of a rule promulgated under
3 Section 18 of the FTC Act, 15 U.S.C. § 57a.

4 As described in Count V of the Complaint, Defendants violate ROSCA in
5 three ways. First, Defendants fail to disclose clearly, if at all, material terms of
6 their continuity plan. Second, Defendants routinely charge consumers for
7 continuity plans without obtaining their express informed consent. Third,
8 Defendants fail to provide a simple mechanism for cancelling the continuity plan.

9 **3. Defendants are Violating the Electronic Fund Transfer 10 Act and Regulation E**

11 The Electronic Fund Transfer Act and its implementing Regulation E
12 regulate the circumstances under which a merchant may make regularly recurring
13 debits from a consumer's bank account. EFTA and Regulation E require that,
14 before a merchant can make such recurring debits, it must obtain a written

15 ¹⁴⁴ It is unlawful “for any person to charge or attempt to charge any consumer for
16 any goods or services sold in a transaction effected on the Internet through a
17 negative option feature (as defined in the Federal Trade Commission’s
18 Telemarketing Sales Rule in part 310 of title 16, Code of Federal Regulations)”
19 without clearly and conspicuously disclosing material terms, obtaining a
20 consumer’s informed consent, and providing a simple mechanism to stop
recurring charges. 15 U.S.C. § 8403 (2006). The TSR defines a negative option
feature as “an offer or agreement to sell or provide any goods or services, a
provision under which the consumer's silence or failure to take an affirmative
action to reject goods or services or to cancel the agreement is interpreted by the
seller as acceptance of the offer.” 16 C.F.R. § 310.2(u) (2006).

1 authorization signed or similarly authenticated by the consumer.¹⁴⁵ For an
2 authorization to be valid, the terms of the preauthorized transfer must be “clear
3 and readily understandable” and the authorization “should evidence the
4 consumer’s identity and assent to the authorization.”¹⁴⁶ Moreover, a copy of the
5 authorization must be provided to the consumer.¹⁴⁷ These protections ensure that
6 consumers’ consent to recurring debits will be knowing and informed. A
7 consumer’s rights under EFTA cannot be waived.¹⁴⁸

8 Defendants’ business practices fail to comply with EFTA for several
9 reasons. First, Defendants’ terms and conditions regarding recurring monthly fees
10 are not clear and readily understandable. In fact, this information is concealed in
11 documents available only by hyperlink or in hard-to-read disclosures. Further,
12 Defendants’ websites are covered with claims that their offer is “risk free” and
13 other directly contradictory statements.

14 Second, Defendants’ websites or terms and conditions pages cannot serve
15 as the consumer’s “copy” of the authorization, as required by 15 U.S.C. §

16 ¹⁴⁵ 15 U.S.C. § 1693e(a) (2006); 12 C.F.R. § 205.10(b) (2006).

17 ¹⁴⁶ Federal Reserve Board’s Official Staff Commentary to Regulation E, 12 C.F.R.
18 Part 205, Supp I, ¶ 10(b), comments (5) & (6).

19 ¹⁴⁷ 15 U.S.C. § 1693e(a); 12 C.F.R. § 205.10(b).

20 ¹⁴⁸ 15 U.S.C. § 1693l (2006).

1 1693e(a), because it is not signed or similarly authenticated by the consumer and
2 does not evidence the consumer's identity and assent to additional transfers. In
3 short, consumers who purchased Defendants' products using their debit cards
4 were not authorizing recurring debits from their bank accounts and never received
5 a copy of any purported authorization for such debits. In light of this evidence, the
6 Commission has clearly demonstrated a likelihood of success on Count VI of the
7 Complaint.

8 **C. Balancing of the Equities Serves the Public Interest**

9 The FTC has demonstrated a likelihood of success on the merits of every
10 count contained in the Complaint, and injunctive relief is further warranted
11 because the public equities outweigh the private equities. The public equities are
12 served by enjoining deceptive or unfair acts or practices that violate the law,
13 maintaining status quo over assets and business documents relating to
14 Defendants' law violations until a fair and impartial hearing may be held, and
15 preserving the Court's ability to award full and effective final relief at trial or
16 other disposition of this matter.¹⁴⁹

17 Defendants have operated their deceptive scheme since at least 2010, and
18 have received millions of dollars in ill-gotten gains from hundreds of
19

20 ¹⁴⁹ See *World Wide Factors*, 882 F.2d at 347.

1 consumers.¹⁵⁰ Consumers nationwide lost money as a result of Defendants’
2 misrepresentations.¹⁵¹ Despite receiving numerous complaints from the BBB, state
3 attorneys general, and consumers themselves, Defendants continue to promote
4 their program, products, and services in the same deceptive manner.

5 Absent injunctive relief, there is a strong likelihood that future violations
6 will occur. Here, the public’s interest in immediately halting this unlawful scheme
7 and preventing the victimization of additional consumers far outweighs any
8 limited interest Defendants may have in continuing to operate their businesses.¹⁵²

9 **D. Defendants are Each Liable for the Law Violations**

10 **1. The Corporate Defendants Operate as a Common
11 Enterprise**

12 Defendants run their scam through a tangled web of companies that operate
13 as a common enterprise. Participants in a common enterprise are held jointly and
14

15 ¹⁵⁰ App. 2 ¶6, 27 ¶53.

16 ¹⁵¹ See App. 791-806; App. 650 ¶1; App. 666 ¶1; App. 675 ¶1; App. 692 ¶1; App.
17 696 ¶1; App. 705 ¶1; App. 714 ¶1; App. 731 ¶1; App. 734 ¶1; App. 737 ¶1; App.
18 741 ¶1; App. 754 ¶1; App. 760 ¶1.

19 ¹⁵² See *World Wide Factors*, 882 F.2d at 347 (affirming the district court’s finding
20 that “there is no oppressive hardship to defendants in requiring them to comply
with the FTC Act, refrain from fraudulent representation or preserve their assets
from dissipation or concealment”).

1 severally liable for the law violations.¹⁵³ To determine the existence of a common
2 enterprise, a court may consider a variety of factors including: common control;
3 the sharing of office space and officers; whether business is transacted through a
4 maze of interrelated companies; the commingling of corporate funds and failure to
5 maintain separation of companies; unified advertising; pooled resources and staff;
6 and evidence which reveals that no real distinction existed between the Corporate
7 Defendants¹⁵⁴ It has been held by the Ninth Circuit that “entities constitute a
8 common enterprise when they exhibit either vertical or horizontal commonality –
9 qualities that may be demonstrated by a showing of strongly interdependent
10 economic interests or the pooling of assets and revenues.”¹⁵⁵

11 The Corporate Defendants have operated as a common enterprise under the
12 leadership of Alon Nottea and the other Individual Defendants.¹⁵⁶ All 14
13 Corporate Defendants are owned and operated by Alon Nottea or one of his

15 ¹⁵³ *FTC v. J.K. Publ’ns, Inc.*, 99 F. Supp. 2d 1176, 1202 (C.D. Cal. 2000); *FTC v.*
16 *Wolf*, 1997-1 Trade Cas. (CCH) ¶ 71,713, at 79,080 (S.D. Fla. 1997);

17 ¹⁵⁴ *FTC v. J.K. Publ’ns, Inc.*, 99 F. Supp. 2d 1176, 1202 (C.D. Cal. 2000); *FTC v.*
18 *Wolf*, 1997-1 Trade Cas. (CCH) ¶ 71,713, at 79,080 (S.D. Fla. 1997).

19 ¹⁵⁵ *FTC v. Network Servs. Depot, Inc.*, 617 F.3d 1127, 1143 (9th Cir. 2010)

20 ¹⁵⁶ See App. 2-10 (explaining connections between the 14 Corporate Defendants);
App. 779 ¶¶4, 6.

1 family members or associates and all participate in the scam of luring consumers
2 to provide billing information with false offers of “risk free trials.”¹⁵⁷

3 As detailed above, many of the Corporate Defendants have no business
4 premises, employees, or business function except to process charges for
5 Defendants’ “risk free trial.”¹⁵⁸ Many, if not all, of the Corporate Defendants
6 operated out of a single address.¹⁵⁹ Several other factors show the intertwined
7 nature of these companies: BunZai and Pinnacle share phone numbers, mailing
8 addresses, and dozens of employees.¹⁶⁰ Further, the finances for almost all of the
9 corporate Defendants are derived from the sale of the same products. The finances
10 of these Corporate Defendants are handled by the same managers and
11 employees.¹⁶¹ Because the Corporate Defendants operate as a common enterprise,
12 they are all jointly and severally liable for the violations alleged in the Complaint.

13
14 _____
¹⁵⁷ App. 2-10; App. 782 ¶10.

15
16 ¹⁵⁸ App. 780, ¶5; *Cf. J.K. Publications, Inc.*, 99 F. Supp. 2d at 1202 (finding a
17 common enterprise where “the corporate defendants utilized at least five different
merchant accounts and four fictitious business names to process over \$40 million
in credit and debit card transactions”).

18 ¹⁵⁹ App. 779-80 ¶4 App. 782 ¶10.

19 ¹⁶⁰ App. 2-3; App. 782 ¶10.

20 ¹⁶¹ App. 782 ¶10.

1 **2. The Individuals are Liable for Injunctive and Monetary**
2 **Relief**

3 To obtain injunctive and monetary relief against individuals for injury to
4 consumers resulting from a company’s conduct, the FTC must establish that the
5 individuals both: (1) participated directly in the unlawful acts or practices or had
6 authority to control them; and (2) had some knowledge of these acts or
7 practices.¹⁶² Authority to control the company can be demonstrated by “active
8 involvement in business affairs and the making of corporate policy, including
9 assuming the duties of a corporate officer.”¹⁶³ The FTC may satisfy the knowledge
10 requirement by showing either actual knowledge of the misrepresentations,
11 reckless indifference to the truth or falsity of the misrepresentations, or an
12 awareness of a high probability of fraud coupled with an intentional avoidance of
13 the truth.¹⁶⁴ The degree of participation in business affairs is probative of
14 knowledge.¹⁶⁵ To establish individual liability, the FTC need not show that the
15 individual intended to defraud consumers.¹⁶⁶

16 ¹⁶² *FTC v. Publ’g Clearing House, Inc.*, 104 F.3d 1168, 1170–71 (9th Cir. 1997);
17 *FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 573 (7th Cir. 1989).

18 ¹⁶³ *Amy Travel*, 875 F.2d at 573.

19 ¹⁶⁴ *Publ’g Clearing House*, 104 F.3d at 1171; *Amy Travel*, 875 F.2d at 574.

20 ¹⁶⁵ *Publ’g Clearing House*, 104 F.3d at 1170; *FTC v. Sharp*, 782 F. Supp. 1445,
1450 (D. Nev. 1991) (Pro, J.).

¹⁶⁶ *Publ’g Clearing House*, 104 F.3d at 1171.

1 **E. An *Ex Parte* TRO with Asset Freeze and Receiver is Essential to**
2 **Prevent Further Harm to Consumers, Prohibit Defendants from**
3 **Dissipating Assets or Destroying Documents, and to Preserve the**
4 **Court’s Ability to Award Effective Final Relief**

5 As part of the permanent relief in this case, the FTC seeks restitution for the
6 consumer victims of AuraVie. To preserve this possibility, the FTC seeks a TRO
7 with an immediate freeze of Defendants’ assets, the appointment of a temporary
8 receiver, access to Defendants’ business premises and records, and expedited
9 discovery. Absent such relief, there is a substantial risk that Defendants will
10 continue to operate their deceptive scheme, dissipate their ill-gotten assets, and
11 destroy documents to preclude satisfaction of any final order requiring monetary
12 relief.

13 Such actions by Defendants are a common occurrence in FTC cases.
14 Defendants involved in similar scams have secreted assets, destroyed documents,
15 and otherwise stymied courts’ abilities to provide relief to consumers after
16 learning of a federal action. The Certification and Declaration of Plaintiff’s
17 Counsel Reid Tepfer in Support of Plaintiff’s: (A) *Ex Parte* Motion for Temporary
18 Restraining Order; (B) *Ex Parte* Seal Order Application; and (C) *Ex Parte*
19 Application for Waiver of Notice Requirement, filed contemporaneously with this
20 motion, details the FTC’s experience in many of these cases.

 Further, the facts here show Defendants are particularly likely to attempt to
thwart potential victim relief. Defendants have made substantial efforts to conceal

1 their identities and locations and operate their scam using countless fictitious
2 business names and billing descriptors that do not reflect the real name of the
3 company. They have numerous drop box locations, business addresses, and
4 telephone numbers. Such a deceptive scheme demonstrates such an indifference to
5 the law that both the individuals and the corporations may reasonably be expected
6 to frustrate the FTC's law enforcement efforts by destroying evidence and
7 concealing or dissipating assets. Defendants' business practices amount to trickery
8 and deceit: Defendants trick consumers into providing billing information, bilk
9 them of sometimes hundreds of dollars each, and then submit false or forged
10 documents to financial institutions to prevent refunds. They have continued these
11 practices unabated by hundreds of consumer chargeback transactions and
12 complaints.

13 Notably, a former employee informed the FTC that Defendants have
14 planned and attempted in the past to hide assets in other companies or countries.¹⁶⁷
15 These measures were taken to hide assets from the government to avoid taxes.¹⁶⁸
16 Defendants may also have been avoiding possible government enforcement
17 actions. Accordingly, Defendants will likely move money out of the FTC's reach
18 quickly if given the opportunity.

19 ¹⁶⁷ See App. 13 ¶29; See *FTC v. Williams*, No. C11-828 MJP (W.D. Wash. 2011).

20 ¹⁶⁸ App. 13 ¶29.

1 irreparable harm. It is therefore appropriate, in light of the facts above, for this
2 Court to grant the requested relief *ex parte*.¹⁷¹

3 **2. An Asset Freeze is Critical to Preserve Effective** 4 **Consumer Relief**

5 Defendants have generated millions in income from their deceptive
6 activities at the expense of consumers. Without a freeze of Defendants' assets,
7 these funds will likely disappear during the course of this action. An asset freeze
8 should be imposed where there exists a likelihood of success on the merits and
9 there is a likelihood of dissipation of assets in the absence of an injunction.¹⁷²

10 Defendants who engage in deceit may be considered likely to waste assets
11 prior to resolution of the action.¹⁷³ And as discussed extensively above,
12 Defendants have taken steps and made attempts to secrete assets before, possibly
13 in anticipation of law-enforcement actions, and will likely attempt to frustrate
14 restitution if given the opportunity.

15 **3. A Receiver is Appropriate in this Case**

17 ¹⁷¹ See *AT&T Broadband v. Tech Comm'n., Inc.*, 381 F.3d 1309, 1319 (11th Cir.
18 2004) (holding that *ex parte* relief is appropriate where either the defendant or
19 persons involved in similar activities have concealed evidence or disregarded
20 court orders in the past).

¹⁷² *Johnson v. Couturier*, 572 F.3d 1067, 1085 n.11 (9th Cir. 2009).

¹⁷³ *SEC v. Manor Nursing Ctrs., Inc.*, 458 F.2d 1082, 1106 (2d Cir. 1972).

1 It is also necessary to appoint a receiver for the Corporate Defendants. In
2 cases in which a corporate defendant, through its management, has defrauded
3 members of the public, “it is likely that in the absence of the appointment of a
4 receiver to maintain the status quo, the corporate assets will be subject to
5 diversion and waste” to the detriment of the victims.¹⁷⁴ A receiver can monitor the
6 use of Defendants’ assets, marshal and preserve records, identify assets, determine
7 the size and extent of the fraud, and identify additional consumers who were
8 injured. As the facts above demonstrate, diversion and waste of funds is likely
9 without the benefit of a receiver.

10 **4. Expedited Discovery and Immediate Access to**
11 **Defendants’ Business Premises are Essential**

12 To locate assets wrongfully obtained from defrauded consumers, the FTC
13 respectfully requests that this court permit expedited discovery, including
14 immediate access to Defendants’ business premises and records, and order
15 financial reporting by Defendants.

16 District courts are authorized to depart from normal discovery procedures
17 and fashion discovery by order to meet discovery needs in particular cases.¹⁷⁵
18 Moreover, the prompt and full disclosure of the scope and financial status of

19 _____
20 ¹⁷⁴ *SEC v. First Fin. Group*, 645 F.2d 429, 438 (5th Cir. 1981).

¹⁷⁵ FED. R. CIV. P. 1, 26(d), 34(b).

1 Defendants' business operations is necessary to locate and preserve the
2 Defendants' assets and business records. For these reasons, the proposed Order
3 requires that Defendants produce certain financial records and information on
4 short notice, and requires financial institutions served with the order to disclose
5 whether they are holding any of Defendants' assets.

6 **V. Conclusion**

7 The FTC respectfully requests that the court grant its motion for an *ex parte*
8 TRO with an asset freeze, appointment of a temporary receiver, and other
9 equitable relief.

10 Respectfully submitted,

11
12 Dated: 6/15/15

/s/ Reid Tepfer

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