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8 **UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF WASHINGTON**

10 FEDERAL TRADE COMMISSION,

11 Plaintiff,

12 v.

13 ADVANCED MANAGEMENT  
14 SERVICES NW LLC, also d.b.a. AMS  
Financial, Rapid Reduction Systems, and  
15 Client Services Group, a Washington  
limited liability company;

16 PDM INTERNATIONAL, INC., also d.b.a.  
17 Priority Direct Marketing International,  
Inc., a Delaware corporation;

18 RAPID REDUCTION SYSTEM'S, LLC, a  
19 Delaware limited liability company;

20 Ryan David Bishop;

21 Michael L. Rohlf; and

22 William D. Fithian,

23 Defendants.  
24  
25  
26  
27  
28

Civil No.

MEMORANDUM OF  
POINTS AND  
AUTHORITIES IN  
SUPPORT OF *EX PARTE*  
MOTION FOR  
TEMPORARY  
RESTRAINING ORDER  
WITH ASSET FREEZE,  
APPOINTMENT OF  
TEMPORARY RECEIVERS,  
AND OTHER EQUITABLE  
RELIEF

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1 **I. INTRODUCTION**

2 The Federal Trade Commission (“FTC”) asks this Court to stop a massive  
 3 enterprise that telemarkets debt reduction services to consumers nationwide. Since  
 4 2008, Defendants have charged from \$499 to \$1590 for their promise to dramatically  
 5 reduce consumers’ credit card interest rates and save them thousands of dollars in a  
 6 short time. Law enforcement agencies and the Better Business Bureau have received  
 7 hundreds of complaints about Defendants’ fraudulent practices. Defendants’  
 8 misrepresentations, material omissions, and calling practices violate Section 5(a) of the  
 9 Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45(a), and the Do Not Call  
 10 and other provisions of the Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310.

11 To halt Defendants’ violations and preserve assets for eventual victim  
 12 restitution, the FTC asks the Court to enter an *ex parte* temporary restraining order  
 13 (“TRO”) that freezes Defendants’ assets, expedites discovery, grants immediate access,  
 14 and appoints temporary receivers over the corporate Defendants. This relief is  
 15 necessary to prevent ongoing injury to consumers, destruction of evidence, and  
 16 dissipation of assets, and to preserve the Court’s ability to provide effective final relief.

17 **II. DEFENDANTS’ ILLEGAL BUSINESS PRACTICES**

18 Defendants promise money back if they cannot reduce consumers’ credit card  
 19 interest rates and save them thousands of dollars. Then they fail to deliver on both the  
 20 service and the refund.

21 A. Defendants Violate the FTC Act

22 1. Defendants’ Deceptive Sales Calls

23 Defendants initially contact many consumers through unsolicited prerecorded  
 24 messages, or “robocalls.” Using a name like “card services” to sound like a  
 25 consumer’s own credit card issuer, the message warns consumers they need to speak to  
 26  
 27  
 28

1 them about their credit card interest rates.<sup>1</sup> Instructed to press “1” to speak to a live  
 2 agent,<sup>2</sup> consumers are transferred to one of Defendants’ telemarketers, who declines to  
 3 provide a company name or again purports to be calling from “card services,” etc.<sup>3</sup>  
 4 When a consumer asks who is calling, or to be removed from the call list, the caller  
 5 often hangs up.<sup>4</sup> Persistent, interested consumers are eventually told the caller is  
 6 “AMS Financial” or “Priority Direct Marketing” or are directed to  
 7 www.prioritydirect.net.<sup>5</sup> Defendants also make live outbound calls to consumers, also  
 8 posing as “card services” or the like.<sup>6</sup>

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10 <sup>1</sup> Plaintiff’s TRO Exhibit (“Exh.”) 18, p. 446, ¶ 3; p. 456, ¶ 3; p. 458, ¶ 3; p.  
 11 466, ¶ 3; p. 470, ¶ 3; p. 481, ¶ 3; p. 483, ¶ 4.

12 <sup>2</sup> Consumers who press “2” to stop further calls keep getting them anyway.  
 13 Exh. 18, p. 450, ¶ 3; p. 458, ¶ 4; p. 464, ¶ 3; p. 475, ¶ 4; p. 483, ¶ 4.

14 <sup>3</sup> Exh. 12, p. 320, ¶ 4; Exh. 18, p. 448, ¶ 4; p. 450, ¶ 4; p. 452, ¶ 3; p. 460,  
 15 ¶ 4; p. 468, ¶ 4; p. 470, ¶ 5.

16 <sup>4</sup> Exh. 18, p. 454, ¶ 4; p. 456, ¶ 4, p. 458, ¶ 4; p. 466 ¶ 4; p. 475, ¶ 5; p. 481,  
 17 ¶ 4; p. 483, ¶ 5.

18 <sup>5</sup> AMS: Exh. 18, p. 448, ¶ 3; p. 452, ¶ 3; p. 468, ¶ 4; p. 484, ¶ 6. PDMI: Exh.  
 19 12, p. 320, ¶ 4; Exh. 18, p. 446, ¶ 5; p. 451, ¶ 6; p. 454, ¶ 5; p. 456, ¶ 4; p. 458, ¶ 4;  
 20 p. 460, ¶ 4; p. 462, ¶ 4; p. 466, ¶ 4; p. 470, ¶ 5; p. 473, ¶ 4; p. 476, ¶ 6; p. 477, ¶ 4;  
 21 p. 481, ¶ 4.

22 <sup>6</sup> Exh. 5, p. 122, ¶ 3; Exh. 6, p. 126, ¶ 2; Exh. 8, p. 183, ¶ 2 (Financial  
 23 Services); Exh. 17, p. 428, ¶ 2 (card services); Exh. 18, p. 452, ¶ 3 (credit card  
 24 services); Exh. 20, pp. 508-09, ¶ 17. Generic company names allow Defendants to  
 25 remain anonymous to complaining consumers. In the past year, more than 42,000  
 26 Do Not Call complaints were filed against “card services,” “client services,”  
 27 “credit card services,” and “financial services.” Exh. 20, p. 510, ¶ 19. AMS has  
 28 worked with a confusing array of other companies, whose names are displayed on

1 Whether consumers press “1” or receive a live call directly from Defendants, the  
 2 telemarketers’ pitch is the same. They ask some basic questions about credit card debt,  
 3 balances, and interest rates, then claim they can significantly reduce those rates,<sup>7</sup> often  
 4 to below 10%.<sup>8</sup> Defendants told Nancy Pederson that they could take her credit card  
 5 interest rates from 18 - 26% down to 2.9 - 6.9%.<sup>9</sup> They told Robin Zwartjes that they  
 6 could negotiate her interest rate to one-third of her current rate.<sup>10</sup> Defendants’ websites  
 7 contain similar representations.<sup>11</sup> Such blanket claims are groundless, and rates this  
 8 low are generally impossible to negotiate.<sup>12</sup>

9 Defendants claim special affiliations or expertise in dealing with financial  
 10 institutions that make such low rates possible.<sup>13</sup> An undercover government agent  
 11 (“UCA”) recorded a self-identified Rapid Reduction telemarketer (“Brandon”)  
 12 claiming:

13 BRANDON: [W]e go in there and we negotiate the rates on your behalf,  
 14 and . . . we do actually have the direct lines to the retention department of

15 consumers’ materials along with the AMS Spokane address. Exh. 13, p. 329, ¶ 16  
 16 & pp. 332, 343, 361; Exh. 20, pp. 508-09, ¶ 17; Exh. 21, pp. 1283-1285. *See, e.g.*,  
 17 Exh. 17, pp. 429-30, ¶ 5 & p. 434.

18 <sup>7</sup> Exh. 1 through 17, pp. 21- 444.

19 <sup>8</sup> Exh. 6, p. 126, ¶ 2; Exh. 8, p. 183, ¶ 2; Exh. 11, p. 259, ¶ 3; Exh. 17, p.  
 20 428, ¶ 2.

21 <sup>9</sup> Exh. 11, p. 259, ¶ 3.

22 <sup>10</sup> Exh. 17, p. 428, ¶ 2.

23 <sup>11</sup> Exh. 15, p. 401, ¶ 2; Exh. 20, p. 504-07, ¶¶ 6, 9, 11, 13, p. 544 (AMS), pp.  
 24 552-53 (PDMI), p. 565 (Rapid Reduction), pp. 879-81 (Priority Direct).

25 <sup>12</sup> Exh. 19, pp. 494-96, ¶¶ 16-19.

26 <sup>13</sup> Exh. 2, p. 40, ¶ 3; Exh. 3, p. 59, ¶ 2; Exh. 9, p. 220, ¶ 2; Exh. 10, p. 231,  
 27 ¶ 3; Exh. 11, p. 259, ¶ 4; Exh. 13, p. 324, ¶ 2; Exh. 14, p. 382, ¶ 3; Exh. 20, pp.  
 28 504-07, ¶¶ 6, 11, 13 and pp. 547, 553, 567, 880-81.

1 all seventy seven FDIC regulated banks, where they issue credit cards, and  
 2 where they do negotiations. So, we don't deal with customer service. I  
 don't know if you've tried to call yourself and have them lowered?

UCA: Yeah.

3 BRANDON: It's a . . . it's a dead end street. We don't deal with  
 4 that, and that's why we're able to do this. People ask me how we're able  
 5 to do this, because they can't do it on their own? Well how about  
 seventeen thousand people in customers and it's called leverage?<sup>14</sup>

6 One telemarketer claimed to work for a MasterCard subsidiary while offering to  
 7 lower credit card interest rates.<sup>15</sup> Another consumer thought the caller was from Bank  
 8 of America because of the offer to reduce her Visa card rate.<sup>16</sup> In reality, Defendants  
 9 have no special expertise or relationship with banks.<sup>17</sup> Indeed, many banks will not  
 10 work with a third party hired to negotiate lower interest rates.<sup>18</sup>

11 Defendants charge from \$499 to \$1590 for their service. Wary consumers are  
 12 assured that this fee will be more than recouped.<sup>19</sup> In fact, Defendants guarantee  
 13 consumers will save (typically) \$2500 because of reduced interest rates.<sup>20</sup> One  
 14 consumer was told that the service "would be 'absorbed' into my savings, meaning that  
 15 the fee wouldn't come out of my credit card but instead would be taken from the

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16 <sup>14</sup> Exh. 20, pp. 521-22, ¶ 46 & pp. 946-47.

17 <sup>15</sup> Exh. 7, p. 144, ¶ 2.

18 <sup>16</sup> Exh. 6, p. 126, ¶ 2.

19 <sup>17</sup> Exh. 19, pp. 496-97, ¶ 20.

20 <sup>18</sup> Exh. 2, pp. 40-41, ¶ 4; Exh. 10, p. 233, ¶ 7; Exh. 11, p. 262, ¶ 8; Exh. 13,  
 21 pp. 327-28, ¶ 12; Exh. 19, pp. 496-97, ¶ 20 .

22 <sup>19</sup> Exh. 1, p. 22, ¶ 4; Exh. 2, p. 40, ¶ 2; Exh. 3, p. 59, ¶ 3; Exh. 4, p. 94, ¶ 2;  
 23 Exh. 7, p. 144, ¶ 3; Exh. 8, p. 184, ¶ 3; Exh. 11, p. 260, ¶ 5; Exh. 12, pp. 320-21,  
 24 ¶ 5; Exh. 13, p. 325, ¶ 3; Exh. 14, p. 382, ¶ 2; Exh. 15, p. 401, ¶ 2 (PDMI website  
 25 makes this claim), Exh. 16, p. 414, ¶ 3; Exh. 17, p. 428, ¶ 2; Exh. 20, pp. 506, ¶ 11  
 26 & 552.

27 <sup>20</sup> TRO Exhs. 1-17, pp. 21-444. *See, e.g.*, Exh. 1, p. 22, ¶ 4, p.30; Exh. 2, p.  
 28 40, ¶ 2, p. 46; Exh. 3, p. 59, ¶ 3, p. 64; Exh. 6, p. 126, ¶ 2 & p. 133.

1 monthly savings.”<sup>21</sup> Consumers are assured of a full refund if the guaranteed interest  
2 rate savings are not achieved.<sup>22</sup>

3 Defendants record the consumer’s agreement to pay the fee by credit card.<sup>23</sup>  
4 Apparently included is a fleeting first-time reference to a \$199 “non-refundable fee,”  
5 which many consumers do not recall hearing.<sup>24</sup> The shenanigans used by Defendants  
6 to convince consumers to purchase the service are not recorded.<sup>25</sup> Defendants charge  
7 the entire fee to consumers’ credit cards within a day or two of the telemarketing call,  
8 before performing any services.<sup>26</sup>

## 9 2. Defendants’ Welcome Package

10 About a week after being charged, consumers receive a welcome package.  
11 Included is a “Credit Liability Summary,” which asks customers to list the details of

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16 <sup>21</sup> Exh. 16, p. 414, ¶ 3.

17 <sup>22</sup> Exh. 1, pp. 22-23, ¶ 4; Exh. 10, p. 231, ¶ 3; Exh. 11, p. 260, ¶ 5; Exh. 13,  
18 p. 325, ¶ 3; Exh. 17, p. 428, ¶ 2; *See also* Exh. 8, p. 183, ¶ 2 (\$199 deducted from  
19 refund).

20 <sup>23</sup> Exh. 1, p. 23, ¶ 6; Exh. 4, p. 94, ¶ 3; Exh. 6, p. 127, ¶ 4; Exh. 7, p. 145,  
21 ¶ 4; Exh. 10, p. 232, ¶ 4; Exh. 11, p. 260-61, ¶ 6; Exh. 15, p. 402, ¶ 4; Exh. 17, p.  
22 428-29, ¶ 4.

23 <sup>24</sup> Exh. 1, p. 23, ¶ 6; Exh. 2, pp. 41-42, ¶ 7; Exh. 9, pp. 223-24, ¶ 15; Exh. 12,  
24 p. 321, ¶ 7; Exh. 14, p. 384, ¶ 8; Exh. 17, p. 429, ¶ 5.

25 <sup>25</sup> *See, e.g.*, Exh. 11, p. 260, ¶ 6, p. 263, ¶ 10; Exh. 12, p. 320, ¶ 5.

26 <sup>26</sup> Exh. 1, p. 24, ¶ 8; Exh. 2, p. 41, ¶ 4; Exh. 3, p. 60, ¶ 4; Exh. 4, p. 94, ¶ 4;  
27 Exh. 7, p. 145, ¶ 6; Exh. 8, p. 184, ¶ 5; Exh. 13, p. 325, ¶ 4; Exh. 14, pp. 382-83,  
28 ¶¶ 2, 5; Exh. 15, p. 402, ¶ 5; Exh. 16, p. 415, ¶ 5.

1 each credit card account.<sup>27</sup> The form is to be mailed back within 30 days.<sup>28</sup>

2 Those who read the rest of the paperwork closely may discern that what they  
3 bought is not what they received. The agreement explains that the guaranteed savings  
4 will be achieved only if the consumer follows a “Liability Reduction Schedule.”<sup>29</sup> A  
5 disclaimer states: “I also understand that I am not guaranteed any interest reductions  
6 with my creditors. Such a result may be within my ability and earned between myself  
7 and my creditors . . . At any time after a rescission period [undefined], I understand  
8 that I may cancel this service with written or verbal notice. I acknowledge that I will  
9 not be reimbursed any of the fees that I have paid for this service, prior to the  
10 cancellation.”<sup>30</sup> This is most certainly not what consumers are told on the telephone.<sup>31</sup>

### 11 3. Defendants’ “Services”

12 After mailing back the forms, some consumers report that Defendants either did  
13 not contact them<sup>32</sup> or said they could not lower the consumer’s interest rates.<sup>33</sup>  
14 Sometimes a three-way call is arranged. The telemarketer asks the consumer to hang  
15

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16 <sup>27</sup> See, e.g., Exh. 2, p. 47; Exh. 6, p. 135; Exh. 8, p. 200; Exh. 9, p. 226; Exh.  
17 13, p. 335.

18 <sup>28</sup> Exh. 1, p. 30; Exh. 2, p. 46; Exh. 3, p. 64; Exh. 7, p. 151; Exh. 8, 199; Exh.  
19 9, p. 225.

20 <sup>29</sup> See, e.g., Exh. 1, p. 30; Exh. 2, p. 46; Exh. 3, p. 64; Exh. 6, p. 133; Exh. 7,  
21 p. 151; Exh. 8, p. 199; Exh. 9, p. 225; Exh. 11, p. 268; Exh. 13, p. 337; Exh. 17, p.  
22 436.

23 <sup>30</sup> Id.

24 <sup>31</sup> See, e.g., Exh. 12, p. 321, ¶ 7 (“the documents did not corroborate my  
25 telephone conversations with [defendant’s telemarketer]”); Exh. 17, p. 429, ¶ 5  
26 (noting differences between telephone claims and written materials).

27 <sup>32</sup> Exh. 4, p. 95, ¶ 5; Exh. 13, pp. 326-27, ¶ ¶ 8-10; Exh. 14, p. 383, ¶ 5.

28 <sup>33</sup> Exh. 16, p. 415, ¶ 6, and p. 423.

1 up after authorizing his or her card issuer to speak to the telemarketer, later informing  
 2 the consumer that the issuer refused to lower the rate.<sup>34</sup> Some consumers remain on the  
 3 line and listen; typically, the credit card company declines and the call ends.<sup>35</sup> The  
 4 Defendants' representative sometimes tells the consumer that he or she will try again in  
 5 a few months.<sup>36</sup> It is apparent to most consumers at this point that Defendants have no  
 6 special relationship or expertise with credit card issuers. After failing to achieve  
 7 interest rate reductions, Defendants sometimes urge consumers to transfer their  
 8 balances to a new credit card with a low rate.<sup>37</sup> This is not what consumers paid for.

9 Instead of interest rate reductions, what Defendants provide to consumers is a  
 10 "Debt Elimination Plan" that simply instructs them to keep paying the same monthly  
 11 amount on their credit cards, even when the minimum payments decline. A consumer  
 12 paying \$1000 in monthly credit card payments would continue paying \$1000 per  
 13 month until all cards are paid off.<sup>38</sup> Defendants' financial plan consists of nothing  
 14 more than telling consumers to pay off their credit card bills faster.

#### 15 4. Defendants' Failure to Provide Refunds

16 Many consumers demand a refund from AMS. Often they are told they must  
 17 speak to a "manager" (which generally does not help),<sup>39</sup> complete and sign AMS forms

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21 <sup>34</sup> Exh. 3, p. 60, ¶ 5; Exh. 7, p. 146, ¶ 8; Exh. 8, p. 185, ¶ 7; Exh. 15, pp. 402-  
 22 03, ¶ 5.

23 <sup>35</sup> Exh. 10, p. 233, ¶ 7; Exh. 11, p. 262, ¶ 8; Exh. 13, pp. 327-28, ¶ 12; Exh.  
 24 14, p. 383, ¶ 6.

25 <sup>36</sup> Exh. 10, p. 233, ¶ 7.

26 <sup>37</sup> Exh. 13, p. 328, ¶ 13; Exh. 15, p. 404, ¶ 8; Exh. 16, pp. 415-16, ¶ 6.

27 <sup>38</sup> *See, e.g.*, Exh. 3, pp. 74-75; Exh. 7, p. 162.

28 <sup>39</sup> Exh. 2, p. 41, ¶ 5; Exh. 10, p. 234, ¶ 8; Exh. 13, p. 328, ¶ 13.

1 and a contract,<sup>40</sup> or give defendants more time to complete the process.<sup>41</sup> Some find it  
 2 difficult to talk to anyone once the subject of a refund is broached.<sup>42</sup> Even after  
 3 contacting the BBB or a state attorney general, many do not receive refunds.<sup>43</sup> A few  
 4 succeed in disputing the credit card charges, but others do not.<sup>44</sup>

5 Responding to BBB referrals, AMS typically declines refund requests, claiming  
 6 that it has provided what it promised – a way to pay off debts faster and save thousands  
 7 of dollars in interest<sup>45</sup> – or citing the recorded verification to argue that the consumer  
 8 was “only hearing what he wanted to hear,”<sup>46</sup> that “it is not our responsibility to assure  
 9 the client pays attention when authorizing charges,”<sup>47</sup> or that “[A]n additional detail in  
 10 the agreement paperwork, which the client seems to have overlooked, is that we cannot  
 11 guarantee any rate reductions.”<sup>48</sup> AMS sometimes says refund requests should go to  
 12 PDMI (or another company) and purports to forward the complaint there.<sup>49</sup> PDMI  
 13

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14 <sup>40</sup> Exh. 9, p. 221, ¶ 5.

15 <sup>41</sup> Exh. 16, p. 417, ¶ 11.

16 <sup>42</sup> Exh. 2, p. 43, ¶ 13; Exh. 3, p. 61, ¶ 7; Exh. 14, p. 395; Exh. 15, p. 404, ¶ 8.

17 <sup>43</sup> Exh. 1, p. 25, ¶ 12; Exh. 2, p. 43, ¶¶ 11-14; Exh. 4, p. 95, ¶ 6; Exh. 6, p.  
 18 129, ¶¶ 11-12; Exh. 7, p. 146, ¶ 11; Exh. 10, p. 234, ¶ 9; Exh. 11, p. 265, ¶ 16;  
 19 Exh. 14, p. 385, ¶ 11; Exh. 17, pp. 430-31, ¶¶ 7-8.

20 <sup>44</sup> Exh. 3, p. 62, ¶ 9; Exh. 7, p. 147, ¶ 12 (chargeback declined); Exh. 9, p.  
 21 223, ¶ 15; Exh. 12, p. 322, ¶ 8 (received chargeback).

22 <sup>45</sup> TRO Exh. 7, p. 146, ¶ 11, & p. 173; TRO Exh. 8, p. 186, ¶ 9; TRO Exh.  
 23 10, p. 256 (“The program sold on the original sales call was financial planning  
 24 services not specifically lower interest rates”); TRO Exh. 11, pp. 299-300.

25 <sup>46</sup> Exh. 11, p. 264, ¶ 13 & p. 299.

26 <sup>47</sup> Exh. 1, p. 37 (referring to non-refundable fee).

27 <sup>48</sup> Exh. 10, p. 256.

28 <sup>49</sup> Exh. 4, p. 95, ¶ 6.

1 either does not respond or provides a refund minus a \$199 non-refundable fee that it  
2 claims is disclosed in the recorded verification call.<sup>50</sup>

3 B. Defendants Violate the TSR

4 Defendants also violate numerous provisions of the TSR. They blast their  
5 messages to consumers on the Do Not Call Registry (“Registry”) and to those who ask  
6 not to be called.<sup>51</sup> Often they do not identify the company, frustrating consumers’  
7 efforts to complain to law enforcement.<sup>52</sup> Finally, Defendants do not obtain express  
8 written consent before sending consumers the prerecorded messages.<sup>53</sup>

9 **III. DEFENDANTS**

10 Three companies and three individuals are responsible for these practices. AMS  
11 and Rapid Reduction are owned and controlled by Defendants Bishop and Rohlf, share  
12 nearly identical business practices, materials, telephone numbers, and websites, and  
13 operate as a common enterprise.<sup>54</sup> Thus they are jointly and severally liable for their  
14 violations. *See FTC v. Think Achievement Corp.*, 144 F. Supp. 2d 993, 1011 (N.D. Ind.

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16 <sup>50</sup> Exh. 1, p. 24, ¶ 10 (\$199 in verification call); Exh. 3, p. 62, ¶ 8 (no  
17 response). *See also* n. 24 *infra*.

18 <sup>51</sup> Indeed, when consumers ask to be put on Defendants’ do not call list,  
19 Defendants’ telemarketers often simply hang up on them. Exh. 18, p. 446, ¶ 4; p.  
20 454, ¶ 4; p. 475, ¶ 5; p. 479, ¶ 4; p. 481, ¶ 4; p. 483, ¶ 5.

21 <sup>52</sup> Exh. 18, p. 450, ¶ 4; p. 456, ¶ 4; p. 464, ¶ 4.

22 <sup>53</sup> Exh. 18, p. 447, ¶ 7; p. 467, ¶ 6, p. 484, ¶ 8. As of September 1, 2009, the  
23 TSR prohibits most prerecorded telemarketing telephone calls made without  
24 express written consent. 16 C.F.R. § 310.4(b)(1)(v)(A)(i)-(iv).

25 <sup>54</sup> Compare names, addresses, and telephone numbers at Exh. 20, p. 503, ¶ 3,  
26 and pp. 525, 527-28, 530, with those at Exh. 20, p. 504, ¶ 5, and pp. 534-35, 537-  
27 39. Compare website at Exh. 20, pp. 540-49, with that at pp. 561-69. *See also*  
28 Exh. 13, pp. 327, 329-30, ¶¶ 9, 16, pp. 343-60, 361-78.

1 2000) (*citing Sunshine Art Studios, Inc. v. FTC*, 481 F.2d 1171, 1175 (1st Cir. 1973)),  
 2 *aff'd*, 312 F.3d 259 (7th Cir. 2002); *Delaware Watch Co. v. FTC*, 332 F.2d 745, 746-47  
 3 (2d Cir. 1964); *see also CFTC v. Wall Street Underground, Inc.*, 281 F. Supp. 2d 1260,  
 4 1271 (D. Kan. 2003). The third entity, PDMI, is owned by William D. Fithian.

5 Each entity plays a crucial role. Although AMS claims merely to provide  
 6 customer service and fulfillment for PDMI and others,<sup>55</sup> it also markets the service on  
 7 its website<sup>56</sup> and via telemarketing<sup>57</sup> and robocalls.<sup>58</sup> It processes payments through its  
 8 own merchant account.<sup>59</sup> Indeed, it may well be the central player in the scheme.  
 9 AMS Debt Elimination Plans have called the plan the “AMS Financial program.”<sup>60</sup>

10 Rapid Reduction was formed in May 2009. Bishop and Rohlf are its officers.<sup>61</sup>  
 11 Rapid Reduction markets the debt reduction service online and by telephone and  
 12 provides customer service and fulfillment.<sup>62</sup> Consumers’ credit card charges are

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14 <sup>55</sup> Exh. 4, p. 95, ¶ 6; Exh. 21, pp. 996-97, ¶ 4 & pp. 1094-95 & 1168, 1182,  
 15 1283, ¶ 2.

16 <sup>56</sup> Exh. 20, p. 504, ¶ 6, pp. 540-49.

17 <sup>57</sup> *See* n. 5, *infra*; Exh. 10, p. 231, ¶ 2; Exh. 11, p. 259, ¶ 2. AMS registered  
 18 as a telemarketer on the FTC’s Do Not Call Registry. Exh. 20, pp. 510-11, ¶¶ 20-  
 19 21 & pp. 570-77.

20 <sup>58</sup> Bishop paid \$17,700 to SBN Dials, a company that sends prerecorded  
 21 messages to consumers, Exh. 20, pp. 517-18, ¶ 37, pp. 729-45, 746-61, some of  
 22 whom call and reach AMS Financial in Spokane, Washington. *See* n. 5, *infra*.

23 <sup>59</sup> Some consumers’ charges have been processed under “ADV MGMT  
 24 1866-404-2858 509-242-8542.” Exh. 6, p. 128, ¶ 7 & p. 141.

25 <sup>60</sup> Exh. 4, p. 107; Exh. 10, p. 241; Exh. 13, p. 347.

26 <sup>61</sup> Exh. 20, p. 504, ¶ 5 & pp. 537, 539.

27 <sup>62</sup> Exh. 6, p. 126, ¶ 2; Exh. 13, p. 329, ¶ 16; Exh. 20, pp. 507, ¶ 13, & 561-  
 28 69; pp. 521-23, ¶¶ 46-47 & pp. 928-66 & 975-88.

1 processed under what is apparently an AMS merchant account.<sup>63</sup>

2 PDMI, in Texas, is owned and controlled by William Fithian.<sup>64</sup> Incorporated in  
3 Delaware in 2005, it has telemarketed the interest rate reduction service since 2008.<sup>65</sup>  
4 PDMI has processed consumers' payments via its merchant account,<sup>66</sup> and its name is  
5 on documents sent to consumers.<sup>67</sup>

#### 6 IV. ARGUMENT

7 Defendants' deceptive business practices have cost innocent consumers millions  
8 of dollars and violated Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and multiple  
9 provisions of the TSR, 16 C.F.R. Part 310. To prevent further injury, the FTC seeks a  
10 temporary restraining order and a preliminary injunction prohibiting Defendants'  
11 practices, freezing their corporate and personal assets, and appointing temporary  
12 receivers to preserve assets for restitution to victims of this enterprise. Courts in the  
13 Ninth Circuit have repeatedly granted such relief.<sup>68</sup>

##### 14 A. This Court Has the Authority to Grant the Relief Requested

15 "In proper cases the Commission may seek, and after proper proof, the court  
16 may issue, a permanent injunction." 15 U.S.C. § 53(b). Defrauding consumers by  
17 misrepresenting or omitting material facts in violation of Section 5(a) of the FTC Act  
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19 <sup>63</sup> Exh. 20, p. 507, ¶ 13.e. & p. 569 (statements show "ADV MGMT 1866-  
20 4042858").

21 <sup>64</sup> Exh. 20, p. 518, ¶ 39 & p. 830; p. 519, ¶ 41 & pp. 863, 885-86; pp. 519-20,  
22 ¶ 42 & p. 904; p. 521, ¶¶ 44-45 & p. 920.

23 <sup>65</sup> See n. 6, *infra*; Exh. 20, pp. 503-04, ¶ 4 & p. 532; pp. 518-19, ¶ 40 & p.  
24 854, ¶¶ 7-8, p. 855, ¶ 10.

25 <sup>66</sup> Exh. 3, p. 63; Exh. 8, p. 190; Exh. 16, p. 419.

26 <sup>67</sup> Exh. 2, p. 41, ¶ 6 & pp. 45-54; Exh. 8, pp. 184-85, ¶ 6 & p. 202; Exh. 15,  
27 p. 403, ¶ 6.

28 <sup>68</sup> Benfield Dec., p. 5, ¶ 12 .

1 presents a “proper case” for injunctive relief. *FTC v. World Travel Vacation Brokers,*  
 2 *Inc.*, 861 F.2d 1020, 1028 (7th Cir. 1988). Once the FTC invokes the federal court’s  
 3 equitable powers, the full breadth of the court’s authority is available, including such  
 4 ancillary final relief as rescission of contracts and restitution. *FTC v. Febre*, 128 F.3d  
 5 530, 534 (7th Cir. 1997); *FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 571-72 (7th Cir.  
 6 1989). The court may also enter a TRO, a preliminary injunction, and other  
 7 preliminary relief as needed to preserve effective final relief. *World Travel*, 861 F.2d  
 8 at 1026; *see also Amy Travel*, 875 F.2d at 571. Such ancillary relief may include a  
 9 freeze of defendants’ assets to preserve them for eventual restitution to victims, and  
 10 appointment of a receiver. *FTC v. U.S. Oil & Gas*, 748 F.2d 1431, 1432-34 (11th Cir.  
 11 1984); *see also World Travel*, 861 F.2d at 1031; *FTC v. Am. Nat’l Cellular, Inc.*, 810  
 12 F.2d 1511-12, 1514 (9th Cir. 1987).

13 The FTC may enforce the TSR with the same functions and powers as the FTC  
 14 Act. *See* 15 U.S.C. § 6105(b). Courts may enter any relief necessary to redress injury  
 15 to consumers, including “rescission or reformation of contracts [and] the refund of  
 16 money or return of property.” 15 U.S.C. § 57b(a)(1) & (b).

#### 17 B. The FTC Meets the Applicable Standard for Injunctive Relief

18 To grant preliminary injunctive relief in an FTC Act case, the district court must  
 19 (1) find a likelihood (not necessarily a strong or substantial likelihood) that the FTC  
 20 will ultimately succeed on the merits and (2) balance the equities, giving far greater  
 21 weight to the public interest. *World Travel*, 861 F.2d at 1029 (quoting *FTC v. Warner*  
 22 *Comm’ns, Inc.*, 742 F.2d 1156, 1160 (9th Cir. 1984)). Under this “public interest”  
 23 test, “it is not necessary for the FTC to demonstrate irreparable injury.” *Id.* at 1028-29.

#### 24 C. The FTC has Demonstrated a Likelihood of Success on the Merits

##### 25 1. Defendants are Violating the FTC Act and the TSR

26 Defendants’ activities are deceptive acts or practices under Section 5(a) of the  
 27 FTC Act, 15 U.S.C. § 45(a). An act or practice is deceptive if it involves a material  
 28 misrepresentation or omission that is likely to mislead consumers acting reasonably

1 under the circumstances. *FTC v. Bay Area Bus. Council*, 423 F.3d 627, 635 (7th Cir.  
 2 2005); *FTC v. World Media Brokers*, 415 F.3d 758, 763 (7th Cir. 2005); *World Travel*,  
 3 861 F.2d at 1029. Materiality is satisfied if the misrepresentation or omission involves  
 4 information that is likely to affect a consumer's choice of, or conduct regarding, a  
 5 product or service. *Kraft, Inc. v. FTC*, 970 F.2d 311, 322 (7th Cir. 1992). In deciding  
 6 whether particular statements are deceptive, courts should look to the overall "net  
 7 impression" of consumers. *See id.* at 314.

8 The same conduct that violates the FTC Act violates the TSR. The TSR  
 9 prohibits sellers and telemarketers from (1) misrepresenting any material aspects of the  
 10 goods or services for sale, and (2) misrepresenting any material aspects of the nature or  
 11 terms of the seller's refund or cancellation policies, and (3) failing to disclose all  
 12 material terms and conditions of a refund or cancellation policy if the seller has such a  
 13 policy and informs the consumer of the policy. 16 C.F.R. § 310.3(a)(2)(iii), 16 C.F.R.  
 14 § 310.3(a)(2)(iv), and 16 C.F.R. § 310.3(a)(1)(iii).<sup>69</sup>

15 Here, Defendants violate the FTC Act and the TSR by making a series of false  
 16 claims designed to induce consumers to purchase credit card interest rate reduction  
 17 services. They misrepresent that they will be able to substantially reduce consumers'  
 18 credit card interest rates, saving them thousands of dollars in a short time. Defendants  
 19 also promise a full refund if consumers do not save at least \$2500 in interest, failing to  
 20 disclose that the savings will come not from reduced interest rates, but from following  
 21 a payment acceleration plan. Consumer declarations show that these lies and  
 22 omissions are material; they often lead consumers to purchase Defendants' services  
 23 when otherwise they would not.

24 Defendants' conduct also violates a series of specific provisions in the TSR:

25 **TSR Sections 310.4(b)(1)(iii)(A) & (B):** These provisions prohibit

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27 <sup>69</sup> The Defendants qualify as "sellers" or "telemarketers" who are engaged in  
 28 "telemarketing" as defined in the Rule. 16 C.F.R. § 310.2(r), (t), and (u).

1 telemarketers from initiating outbound telephone calls to: 1) a consumer who  
 2 previously has stated that he or she does not wish to receive an outbound telephone call  
 3 made by or on behalf of the seller whose goods or services are being offered; and 2) to  
 4 a consumer's telephone number on the Registry. Defendants' telephone calls have  
 5 triggered numerous Do Not Call complaints. Defendants ignore both the Registry and  
 6 consumers' do-not-call requests.

7 **TSR Sections 310.4(d), 310.4(b)(1)(v)(B)(ii) and 310.4(b)(1)(v)(A)(i)-(iv):**

8 Section 310.4(d) requires telemarketers to disclose "truthfully, promptly, and in a clear  
 9 and conspicuous manner" the identity of the seller, that the purpose of their  
 10 telemarketing call "is to sell goods or services," and the nature of those goods or  
 11 services. In numerous instances, Defendants do not disclose their identities, nor that  
 12 they are selling a credit card interest rate reduction service. This conduct also violates  
 13 the newly enacted TSR Section 310.4(b)(1)(v)(B)(ii), which mandates that these  
 14 disclosures be made at the outset of all outbound telephone calls delivering  
 15 prerecorded messages. As of September 1, 2009, TSR Section 310.4(b)(1)(v)(A)(i)-  
 16 (iv) bans robocalls like those made by Defendants here without the prior express  
 17 written consent of the consumer being called.<sup>70</sup>

18 **TSR Section 310.3(b):** This provision prohibits a person from providing  
 19 substantial assistance or support to any seller or telemarketer if the person knows or  
 20 consciously avoids knowing that the seller is engaged in certain practices which violate  
 21 the TSR. AMS and its principals provide fulfillment and customer service for PDMI,  
 22 while knowing that PDMI makes misrepresentations about material aspects of their  
 23 services in violation of 16 C.F.R. § 310.3(a)(2)(iii) and (iv) and failing to disclose  
 24 terms and conditions of receiving a refund, in violation of § 310.3(a)(1)(iii). AMS

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26 <sup>70</sup> Ignoring this amendment, Defendants continue to use robocalls to contact  
 27 consumers. *See* Exh. 18, p. 450, ¶ 3, p. 466, ¶ 3; *see also* Exh. 20, pp. 517-18,  
 28 ¶ 37, pp. 738-45 (still paying robocaller SBN Dials in October 2010).

1 received and responded to numerous consumer complaints about unfulfilled promises.  
 2 They are well aware of PDMI's misrepresentations and material omissions, yet  
 3 continue to assist, if not perpetrate, the scam.

#### 4 2. The Equities Tip Decidedly in the FTC's Favor

5 Once the FTC has shown a likelihood of success on the merits, the Court must  
 6 balance the equities, assigning greater weight to the public interest than to Defendants'  
 7 private concerns. *World Travel*, 861 F.2d at 1029. The public equities in this case are  
 8 compelling. The public has a strong interest in halting the deceptive scheme and  
 9 preserving assets necessary to provide effective final relief to victims. *See FTC v.*  
 10 *Sabal*, 32 F. Supp. 2d 1004, 1009 (N.D. Ill. 1998). Defendants have no legitimate  
 11 interest in continuing to deceive consumers and violate federal law. *Id.* An injunction  
 12 will ensure that Defendants' scheme does not continue while the case is pending.

#### 13 D. The Individual Defendants are Personally Liable

14 The individual defendants are responsible for the deceptive and unfair practices  
 15 of the companies they control and thus should be subject to the TRO and asset freeze.  
 16 An individual defendant may be held liable for injunctive relief and monetary  
 17 restitution under the FTC Act if the Court finds that he (1) participated directly in or  
 18 had some measure of control over a corporation's deceptive practices and (2) had  
 19 actual or constructive knowledge of the practices. *World Media Brokers*, 415 F.3d at  
 20 764; *Bay Area Bus. Council*, 423 F.3d at 636; *Amy Travel*, 875 F.2d at 573-74.  
 21 Authority to control may be evidenced by "active participation in the corporate affairs,  
 22 including assuming duties as a corporate officer." *World Media Brokers*, 415 F.3d at  
 23 764 (*citing Amy Travel*, 875 F.2d at 573). The knowledge requirement is satisfied by a  
 24 showing that the defendant (1) had actual knowledge of the deceptive acts or practices,  
 25 (2) was recklessly indifferent to the truth or falsity of the representations, or (3) had an  
 26 awareness of a high probability of fraud coupled with an intentional avoidance of the  
 27 truth. *Id.*; *Bay Area Bus. Council*, 423 F.3d at 636; *Amy Travel*, 875 F.2d at 573-74.  
 28 An individual's "degree of participation in business affairs is probative of knowledge."

1 *Id.* The FTC does not need to prove subjective intent to defraud. *Id.* at 574.

2 All three individuals are liable. Each is an owner or officer of at least one of the  
 3 corporate defendants. These authority positions alone establish their ability to control  
 4 corporate acts and practices. *See, e.g., World Media Brokers*, 415 F.3d at 764-65  
 5 (corporate officer “hard-pressed to establish that he lacked authority or control” over  
 6 corporate entity); *Amy Travel*, 875 F.2d at 574. Moreover, Defendant Bishop is or has  
 7 been a signatory on AMS bank accounts;<sup>71</sup> has initiated or authorized payments or wire  
 8 transfers from these AMS accounts to persons or entities in apparent furtherance of the  
 9 enterprise;<sup>72</sup> is or has been listed as the contact on the AMS website registration;<sup>73</sup> and  
 10 has been the AMS contact for the BBB.<sup>74</sup> Defendant Rohlf signed a contract between  
 11 AMS and PDMI as an owner of AMS, is or has been a signatory on AMS bank  
 12 accounts through which he has initiated or authorized payments or wire transfers to  
 13 persons or entities in apparent furtherance of the enterprise;<sup>75</sup> and has also been an  
 14 AMS contact for the BBB.<sup>76</sup> Defendant Fithian signed a contract between AMS and  
 15 PDMI as president of PDMI.<sup>77</sup> He is or has been listed as the contact on the PDMI  
 16 website registration and as the primary contact for a PDMI telephone service account.<sup>78</sup>  
 17 Fithian has also initiated or authorized the wiring of significant funds to AMS from a  
 18  
 19

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20 <sup>71</sup> Exh. 20, p. 513, ¶ 29 & pp. 612-18, 620-28.

21 <sup>72</sup> Exh. 20, p. 513, ¶ 29; pp. 620-28; 643-59, 517-18, ¶ 37; pp. 729-45.

22 <sup>73</sup> Exh. 20, p. 505, ¶ 8 & p. 550.

23 <sup>74</sup> Exh. 20, p. 508, ¶ 16; Exh. 21, pp. 996-98, ¶¶ 4-6 & pp. 1268-73.

24 <sup>75</sup> Exh. 20, pp. 515-16, ¶¶ 31-33, pp. 612-18, 690-97, 698-705 & 711, pp.  
 25 519-20, ¶ 42 & pp. 892-904.

26 <sup>76</sup> Exh. 20, p. 508, ¶ 16; Exh. 21, pp. 996-98, ¶¶ 4-6.

27 <sup>77</sup> Exh. 20, p. 519, ¶ 42, & pp. 892-908.

28 <sup>78</sup> Exh. 20, pp. 505-07, ¶¶ 10 & 12, & pp. 559-60, & p. 512, ¶ 25, & p. 610.

1 PDMI bank account.<sup>79</sup> This degree of participation in corporate affairs indicates at  
 2 least an awareness of a high probability of fraud coupled with an intentional avoidance  
 3 of the truth.

4 E. Immediate Access and Limited Expedited Discovery are Appropriate

5 The FTC also seeks immediate access to Defendants' business premises to locate  
 6 assets wrongfully obtained from defrauded consumers and ensure the integrity of  
 7 books and records. This relief is often granted in FTC actions where receivers  
 8 are appointed. The proposed TRO requires the receivers to provide both the FTC and  
 9 Defendants reasonable access to Defendants' premises.

10 The FTC also seeks limited expedited discovery to locate quickly and efficiently  
 11 assets Defendants have wrongfully taken from consumers, documents pertaining to  
 12 Defendants' business, and the individual Defendants themselves, should they evade  
 13 service. Specifically, the FTC seeks permission to conduct depositions upon forty-  
 14 eight hours' notice, and to issue requests (or subpoenas) for production of documents  
 15 on five days' notice. In appropriate circumstances, district courts are authorized to  
 16 depart from normal discovery procedures. *See* Fed. R. Civ. P. 26(d), 30(a)(2), 33(a),  
 17 and 34(b) (authorizing courts to alter the standard provisions, including applicable time  
 18 frames, governing depositions, interrogatories, and the production of documents).  
 19 Expedited discovery is particularly appropriate when a party seeks preliminary relief in  
 20 a case involving the public interest. *See Porter v. Warner Holding Co.*, 328 U.S. 395,  
 21 398 (1946) (court's equitable powers are broader and more flexible where public  
 22 interest is involved than in strictly private controversies).

23 To protect the asset freeze, the FTC asks the Court to require defendants to  
 24 produce financial records and information on short notice, and to require financial  
 25 institutions and other third parties served with the TRO to disclose whether they are  
 26 holding any of Defendants' assets.

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27  
 28 <sup>79</sup> Exh. 20, p. 518, ¶ 38 & pp. 762-822.

1 F. The Temporary Restraining Order Should Be Issued *Ex Parte*

2 A TRO may be granted without notice if it appears notice will result in  
 3 irreparable injury and the applicant certifies the reasons why. Fed R. Civ. P. 65(b).  
 4 Here, there is considerable risk that Defendants will dissipate or conceal assets and  
 5 destroy documents identifying injured consumers. The Defendants' scheme exposes  
 6 them to substantial liability. If they succeed in concealing assets, any monetary  
 7 judgment for the FTC will be rendered unenforceable. The FTC's experience shows  
 8 that defendants engaged in similar schemes will withdraw funds from bank accounts  
 9 and move or shred documents upon learning of impending legal action.<sup>80</sup> District  
 10 Courts therefore have regularly granted the FTC *ex parte* relief in similar cases. It is  
 11 particularly appropriate where giving notice could result in an inability to provide any  
 12 relief at all. *In re Vuitton et Fils S.A.*, 606 F.2d 1, 4 (2d Cir. 1979).

13 The threat of irreparable harm in this case meets the Rule 65(b) standard for *ex*  
 14 *parte* preliminary relief. *See Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S.  
 15 663, 679 (1974) (“[P]reseizure notice and hearing might frustrate the interests served  
 16 by the statutes, since the property seized . . . will often be of a sort that could be  
 17 removed to another jurisdiction, destroyed or concealed, if advance warning of  
 18 confiscation were given.”); *Cenergy Corp. v. Bryson Oil & Gas P.L.C.*, 657 F. Supp.  
 19 867, 870 (D. Nev. 1987) (“[I]t appears proper to enter the TRO without notice, for  
 20 giving notice itself may defeat the very purpose for the TRO.”).<sup>81</sup>

21 Defendants have already shown their ability to hide their identities. Their  
 22 telemarketers initially claim to be “card services” or the like rather than disclosing the  
 23 company name; they have switched the company name under which they work at least  
 24 once; and they shuffle refund-seeking consumers from one entity to another, using

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26 <sup>80</sup> *See* Benfield Dec., ¶¶ 13-16 (citing numerous instances of such conduct).

27 <sup>81</sup> The FTC has filed a motion to temporarily seal this matter to ensure that  
 28 defendants do not learn of this action in time to conceal assets and evidence.

1 other company names with AMS's mailing address. Moreover, Bishop and Rohlf have  
 2 shown a pattern of making personal use of corporate assets, indicating they will likely  
 3 continue to deplete assets. Issuing the TRO *ex parte* is indispensable to preserving the  
 4 *status quo* and securing full and effective relief pending a hearing on the preliminary  
 5 injunction.

6 G. An Asset Freeze is Necessary to Preserve Assets for Consumer Redress

7 An asset freeze is appropriate once the Court determines that the FTC is likely to  
 8 prevail on the merits and restitution would be an appropriate final remedy. *See FTC v.*  
 9 *World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1031 n. 9 (7<sup>th</sup> Cir. 1988). In the  
 10 Ninth Circuit, to justify an asset freeze, the FTC must show a likelihood of dissipation  
 11 of assets. *Johnson v. Couturier*, 572 F.3d 1067, 1085, n. 11 (9<sup>th</sup> Cir. 2009). Where a  
 12 Defendant's business is permeated with fraud, the court may conclude that there is a  
 13 likelihood of Defendant attempting to dissipate or conceal assets while the action is  
 14 pending and may grant an asset freeze. *See, e.g., SEC v. Manor Nursing Ctrs., Inc.*,  
 15 458 F.2d 1082, 1106 (2d Cir. 1972); *SEC v. R.J. Allen & Assocs., Inc.*, 386 F. Supp.  
 16 866, 881 (S.D. Fla. 1974).

17 Ill-gotten corporate funds are being used to support Bishop's and Rohlf's  
 18 lifestyle. According to bank records, in 2008 and 2009, Bishop used AMS's corporate  
 19 funds to pay for personal items such as cars, home remodeling, and other personal  
 20 expenditures.<sup>82</sup> Likewise, Rohlf used corporate funds for a personal car.<sup>83</sup> The asset  
 21 freeze should include any assets of the individual Defendants, who have no right to  
 22 dissipate or conceal funds that the Court may later determine were wrongfully gained.  
 23 If frozen, those assets can be located and inventoried. Freezing individual assets is  
 24 warranted where the individual defendant controls the business that perpetrated the  
 25 unfair and deceptive acts alleged. *World Travel Vacation Brokers*, 861 F.2d at 1031.

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27 <sup>82</sup> Exh. 20, pp. 513-15, ¶ 30 & pp. 660-89.

28 <sup>83</sup> Exh. 20, p. 516, ¶ 34 & pp. 712-16.

1 The FTC has amply demonstrated a likelihood of success on the merits. Defendants'  
2 failure to reform their practices in the face of numerous complaints and state actions<sup>84</sup>  
3 shows a lack of concern for the law and a clear risk that assets will be dissipated.

4 H. Appointment of Receivers is Necessary to Ensure Effective Relief

5 The appointment of temporary receivers over the corporate Defendants is  
6 necessary to preserve the potential for a complete remedy. Such an appointment is  
7 particularly appropriate where defendants' pervasive fraud is likely to continue. If  
8 Defendants remain in control of their business, evidence will likely be destroyed and  
9 the fruits of their fraud will be dissipated. A neutral receiver would prevent further  
10 harm to consumers and prevent destruction or concealment of assets and records but  
11 not disrupt any legitimate business activity. A temporary receiver would also help  
12 assess the extent of the fraud, trace its proceeds, prepare an accounting, and make an  
13 independent report of Defendants' activities to the Court.

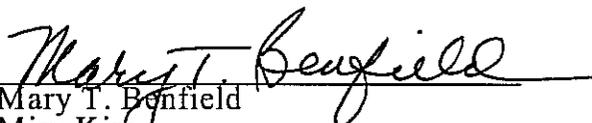
14 V. CONCLUSION

15 Defendants are likely to continue to cause substantial injury to the public  
16 through their violations of the FTC Act and the TSR. The FTC respectfully requests  
17 that the Court issue the proposed TRO to protect the public from further harm and to  
18 help ensure effective final relief for defrauded consumers.

19 Respectfully Submitted,

20 WILLARD K. TOM  
21 General Counsel  
22 ROBERT J. SCHROEDER  
23 Regional Director

24 DATED: May 10, 2010

25   
26 Mary T. Benfield  
27 Miry Kim  
28 Attorneys for Plaintiff  
Federal Trade Commission

<sup>84</sup> Exh. 20, pp. 518-21, ¶¶ 39, 40, 41, 43, 44.