

COPIES

1 FAYE CHEN BARNOUW, CA Bar No. 168631
2 MARICELA SEGURA, CA Bar No. 225999
3 BARBARA CHUN, CA Bar No. 186907
4 JOHN D. JACOBS, CA Bar No. 134154
5 e-mail: fbarnouw@ftc.gov; msegura@ftc.gov;
6 bchun@ftc.gov; and jjacobs@ftc.gov
7 FEDERAL TRADE COMMISSION
8 10877 Wilshire Blvd., Suite 700
9 Los Angeles, CA 90024
10 Telephone: (310) 824-4343
11 Facsimile: (310) 824-4380

12 Attorneys for Plaintiff
13 FEDERAL TRADE COMMISSION

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA

16 SACV10-1161 JVS(RNBx)

17 Case no.

18 FEDERAL TRADE COMMISSION,

19 Plaintiff,

20 v.

21 MEMORANDUM OF POINTS AND
22 AUTHORITIES IN SUPPORT OF
23 PLAINTIFF'S *EX PARTE*
24 APPLICATION FOR TEMPORARY
25 RESTRAINING ORDER AND
26 ORDER TO SHOW CAUSE WHY A
27 PRELIMINARY INJUNCTION
28 SHOULD NOT ISSUE

29 HEALTH CARE ONE LLC, an Arizona
30 limited liability company, also d/b/a
31 "HealthcareOne," "Americans4
32 Healthcare," "Citizens4Healthcare,"
33 "American Eagle Healthcare,"
34 "EasyLife Healthcare," "Elite
35 Healthcare," "Global Healthcare," and
36 "Republic Healthcare";

37 AMERICANS4HEALTHCARE INC., a
38 Delaware corporation;

39 MICHAEL JAY ELLMAN, an
40 individual;

41 ELITE BUSINESS SOLUTIONS, INC.,
42 a Nevada corporation, also d/b/a
43 "EasyLife Healthcare," "Elite
44 Healthcare" and "Republic Healthcare";

45 ROBERT DANIEL FREEMAN, an
46 individual;

47 Defendants.
48

2010 AUG - 3 AM 10: 31
U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SAN FRANCISCO

FILED

TABLE OF CONTENTS

1

2 I. INTRODUCTION..... 1

3 II. THE PARTIES. 3

4 A. Federal Trade Commission..... 3

5 B. The Defendants. 3

6 III. FACTS..... 5

7 A. Introduction..... 5

8 B. Defendants misrepresent that their discount program is health insurance

9 7

10 C. Defendants Health Care One and Americans4Healthcare misrepresent

11 that their discount program is affiliated with or endorsed or sponsored

12 by the government 11

13 D. Defendants misrepresent that the program will save consumers

14 significant amounts of money..... 14

15 E. Defendants misrepresent that consumers will be able to obtain program

16 benefits from the consumers’ current healthcare providers, and from

17 other healthcare providers in the consumers’ local communities. 18

18 F. Defendants Health Care One and Elite Business Solutions misrepresent

19 their refund policy and make it difficult or impossible for consumers to

20 obtain refunds. 21

21 G. Consumer injury is substantial and ongoing..... 25

22 H. Defendants Health Care One and Americans4Healthcare are engaging in

23 deceptive practices as a “common enterprise”. 27

24 IV. LEGAL ARGUMENT. 27

25 A. This Court has the authority to grant the requested relief..... 27

26 B. Granting Plaintiff’s TRO Application is appropriate under *Winter v.*

27 *NRDC*. 28

28 1. The FTC is likely to succeed on the merits..... 29

a. The legal standard..... 29

b. The FTC is likely to succeed on Count One of the

Complaint (deceptive acts and practices in violation of

Section 5(a) of the FTC Act). 30

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

c.	The FTC is likely to succeed on Count Two of the Complaint (Misrepresentations relating to material aspects of Defendants’ program, in violation of TSR Section 310.3(a)(2)(iii)).. . . .	32
d.	The FTC is likely to succeed on Count Three of the Complaint (Misrepresentations regarding Defendants’ refund or cancellation policies, in violation of TSR Section 310.3(a)(2)(iv)).. . . .	32
2.	Consumers will suffer irreparable harm if the TRO and preliminary injunction are not granted.	33
3.	The equities weigh in favor of granting injunctive relief.	35
4.	It is in the public interest to issue the TRO and preliminary injunction.	38
C.	Health Care One and Americans4Healthcare are liable for each other’s deceptive acts and practices because they are operated together as a common enterprise	38
D.	The Court should hold the individual Defendants personally liable both injunctive and monetary relief.. . . .	39
V.	CONCLUSION.	42

1 **TABLE OF AUTHORITIES**

2 **CASES**

3 *Alliance for the Wild Rockies v. Cottrell*,
4 2010 U.S.App. LEXIS 15537. 29, 33, 35, 38

5 *CFTC v. British American Commodity Options Corp.*,
6 560 F.2d 135. 36

7 *CFTC v. Hunt*,
8 591 F.2d 1211. 37

9 *Clear Channel Outdoor, Inc., v. City of Los Angeles*,
10 340 F.3d 810. 29

11 *Delaware Watch Co. v. FTC*,
12 332 F.2d 745. 38

13 *FTC v. Affordable Media*,
14 179 F.3d 1228. 37, 39, 40

15 *FTC v. Amrep Corp.*,
16 102 F.T.C. 1362. 31

17 *FTC v. Amy Travel Services*,
18 875 F.2d 564. 29, 34, 39

19 *FTC v. Beatrice Foods Co.*,
20 587 F.2d 1225. 29

21 *FTC v. Figgie International*,
22 994 F.2d 595. 30

23 *FTC v. Five-Star Automobile Club Inc.*,
24 97 F.Supp.2d 502. 31, 37

25 *FTC v. Freecom Communications*,
26 401 F.3d 1192. 39, 40

27 *FTC v. GTP Marketing, Inc.*,
28 1990-1 Trade Cas. (CCH) ¶68,959. 29

FTC v. Gem Merchandising Corp.,
87 F.3d 466. 28

FTC v. H.N. Singer, Inc.,
668 F.2d 1107. 3, 27, 28

FTC v. J.K. Publications,
99 F.Supp.2d 1176. 38, 39

1	<i>FTC v. Kitco of Nevada, Inc.</i> ,	
2	612 F. Supp. 1282.	31
3	<i>FTC v. Lancaster Colony Corp.</i> ,	
4	434 F.Supp. 1088.....	29
5	<i>FTC v. Marvin Wolf</i> ,	
6	1996 U.S.Dist. LEXIS 1760.	38
7	<i>FTC v. Medicor LLC</i> ,	
8	217 F.Supp.2d 1048.....	39
9	<i>FTC v. Pantron I Corp.</i> ,	
10	33 F.3d 1088.	30
11	<i>FTC v. Publishing Clearing House, Inc.</i> ,	
12	104 F.3d 1168.	39, 40
13	<i>FTC v. Security Rare Coin & Bullion Corp.</i> ,	
14	931 F.2d 1312.	29
15	<i>FTC v. SlimAmerica, Inc.</i> ,	
16	77 F.Supp.2d 1263.....	30
17	<i>FTC v. Southwest Sunsites Inc.</i> ,	
18	105 F.T.C. 7 (1985), aff'd, 785 F.2d 1431.....	30
19	<i>FTC v. Thompson Medical Co., Inc.</i> ,	
20	104 F.T.C. 648 (1984).....	30
21	<i>FTC v. Thomsen-King & Co.</i> ,	
22	109 F.2d 516.	36
23	<i>FTC v. U.S. Oil & Gas Corp.</i> ,	
24	748 F.2d 1431.	27, 28
25	<i>FTC v. USA Bevs.</i> ,	
26	2005 WL 5654219.....	34
27	<i>FTC v. World Travel Vacation Brokers, Inc.</i> ,	
28	861 F.2d 1020.	30, 34, 37
	<i>FTC v. World Wide Factors, Ltd.</i> ,	
	882 F.2d 344.	28, 36
	<i>Flynt Distributing Co., Inc. v. Harvey</i> ,	
	734 F.2d 1389.	29
	<i>Goodman v. FTC</i> ,	
	244 F.2d 584.	30

1	<i>Heideman v. South Salt Lake City,</i>	
2	348 F.3d 1182.	29
3	<i>Johnson v. Couturier,</i>	
4	572 F.3d 1067.	34, 35, 36
5	<i>Kraft, Inc. v. FTC,</i>	
6	970 F.2d 311.	30
7	<i>Miller v. Cal. Pac. Medical Ctr.,</i>	
8	19 F.3d 449.	33
9	<i>In re National Credit Management Group,</i>	
10	21 F.Supp.2d 424.....	34, 39
11	<i>National Society of Prof. Eng'rs. v. United States,</i>	
12	435 U.S. 679.	36
13	<i>Porter v. Warner Holding Co.,</i>	
14	328 U.S. 395.	28
15	<i>Removatron International Corp. v. FTC,</i>	
16	884 F.2d 1489.	30
17	<i>SEC v. Bankers Alliance Corp.,</i>	
18	881 F.Supp. 673.....	35
19	<i>SEC v. Parkersburg Wireless,</i>	
20	156 F.R.D. 529.	35
21	<i>SEC v. R.J. Allen & Associate, Inc.,</i>	
22	386 F.Supp. 866.....	37
23	<i>Standard Educators, Inc. v. FTC,</i>	
24	475 F.2d 401.	39
25	<i>United States v. Diapulse Corp. of America,</i>	
26	457 F.2d 25.	36
27	<i>United States v. Laerdal Manufacturing,</i>	
28	73 F.3d 852.	28
	<i>Weinberger v. Romero-Barcelo,</i>	
	456 U.S. 305.	37
	<i>Winter v. N.R.D.C.,</i>	
	129 S.Ct. 365.....	28, 37

STATUTES AND RULES

1
2 15 U.S.C. § 41. 3
3 15 U.S.C. § 45 3, 30
4 15 U.S.C. § 53. 3, 27
5 15 U.S.C. § 57a(d). 30
6 15 U.S.C. § 57b. 3, 28
7 15 U.S.C. § 6101. 3, 29
8 15 U.S.C. § 6102(c). 30
9
10 16 C.F.R. § 310.2. 32, 33
11 16 C.F.R. § 310.3(a)(2)(iii). 31, 32
12 16 C.F.R. § 310.3(a)(2)(iv). 32, 33

MISCELLANEOUS

13
14 S. Rep. No. 103-30, at 15-16 (1993). 28
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **I. INTRODUCTION**

2 Defendants **Health Care One LLC, Americans4Healthcare Inc., Elite**
3 **Business Solutions, Inc.**, and their principals **Michael Jay Ellman** and **Robert**
4 **Daniel Freeman**, are the sellers and marketers of what they describe as a “national
5 healthcare discount program” called Health Care One. They offer the program under
6 the names *HealthcareOne, Americans4Healthcare, Citizens 4 Healthcare, Elite*
7 *Healthcare, EasyLife Healthcare, Republic Healthcare, American Eagle Healthcare,*
8 *and Global Healthcare.* Since 2006, their unlawful business practices have
9 generated hundreds of consumer complaints like these:

10 – *My 85 year old father purchased what he though was supplemental*
11 *health insurance over the phone [because] it was advertised on TV as*
12 *“National Health Care.” (June 2, 2010 complaint of New Jersey*
consumer C. Dodi about Health Care One)

13 – *I ... [purchased what] I thought was insurance, was told to me by a*
14 *rep I spoke with on February 26, [2010] and when received the*
information, it was a discount plan. (June 2010 complaint of Missouri
consumer Z. Harris about Health Care One)

15 – *Why must these companies lure you in, over the TV, take your money,*
16 *give you guarantees of refunds and then treat you like you are non*
17 *existent[?]* (July 9, 2010 complaint of Colorado consumer D. Cortina
about Health Care One)

18 – *Easy Life Healthcare ... offered affordable health insurance policy ...*
19 *for \$99.95 a [month] and \$30.00 one time processing fee. ... I was*
20 *explained, that this is health insurance policy with no deductible, pre*
21 *existing condition acceptable and so on. ... [I was told, if] you don't like*
it, you may cancel within 30 days with a full refund ... [T]hey do not
give a full refund This is a fraud. (May 13, 2010 complaint of New
York consumer T. Derkacz about EasyLife Healthcare)

22 – *Signed up ... in February 2010 and was not as advertised. Was given*
23 *[doctor] in area that accepted discount but when [I] called they never*
24 *heard of such a company. ... [T]hey have not issued refund as promised*
25 *when they said it would take 30 days. They are stealing my money and*
will not let me speak to anyone in charge. (June 30, 2010 complaint of
Florida consumer L. Matias about Health Care One)

26 See Gale ¶¶52-53, Att.2.

27 Defendants advertise Health Care One’s program through television and radio
28 commercials, websites, and telemarketing. As these consumer complaints indicate,

1 Defendants trick many consumers into thinking that the program is health insurance,
2 when in fact it is a non-insurance “discount program.” Defendants falsely imply that
3 the program is affiliated with or sponsored by the government. They misrepresent
4 that consumers who enroll in the program will enjoy “20 to 60%” savings in their
5 healthcare costs, when in fact, consumers are unable to obtain these savings from
6 their enrollment in the program. Defendants also falsely portray the program as
7 widely accepted by healthcare providers in the consumers’ local communities. After
8 they enroll, consumers find that their healthcare providers do not accept the program.
9 Finally, Defendants induce consumers into paying hundreds of dollars to enroll by
10 promising a “100% satisfaction” and a “money-back” guarantee. In reality,
11 Defendants make it difficult or impossible for consumers to secure a refund. In those
12 instances where they return some money to consumers, they withhold a substantial
13 “processing fee.” Since 2006, when Defendant Health Care One began selling its
14 national healthcare discount program, Defendants have swindled thousands of
15 consumers, resulting in an estimated millions of dollars in consumer injury.

16 To put an immediate stop to their deceptive activities and preserve
17 Defendants’ assets for redress to their consumer victims, Plaintiff Federal Trade
18 Commission (“FTC”) seeks an *ex parte* temporary restraining order (“TRO”)
19 enjoining Defendants from continuing their fraudulent sales practices and ordering
20 ancillary equitable relief, including an asset freeze, the appointment of a temporary
21 receiver, immediate access to Defendants’ business premises and records, an
22 accounting, limited expedited discovery, and an order to show cause why a
23 preliminary injunction should not issue and why a permanent receiver should not be
24 appointed. These measures are necessary to prevent continued consumer injury,
25 dissipation of assets, and destruction of evidence, thereby preserving this Court’s
26 ability to provide effective final relief to Defendants’ victims.

27
28

1 **II. THE PARTIES**

2 **A. Federal Trade Commission**

3 Plaintiff **Federal Trade Commission** is an independent agency of the United
4 States created by the FTC Act. 15 U.S.C. §§ 41 et seq. The FTC enforces Section
5 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts and
6 practices in or affecting commerce. The FTC also enforces the Telemarketing Sales
7 Rule (“TSR”), 16 C.F.R. Part 310, as amended, promulgated pursuant to the
8 Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing
9 Act”), 15 U.S.C. §§ 6101 *et seq.* Sections 13(b) and 19 of the FTC Act, 15 U.S.C.
10 §§ 53(b) and 57b, respectively, authorize the FTC, through its own attorneys, to
11 initiate U.S. District Court proceedings to seek permanent relief to enjoin violations
12 of the FTC Act and the TSR, and to secure such other equitable relief as may be
13 appropriate in each case, including consumer redress. *See, e.g., FTC v. H.N. Singer,*
14 *Inc.*, 668 F.2d 1107, 1110-13 (9th Cir. 1992).

15 **B. The Defendants**

16 **Health Care One LLC** is an Arizona limited liability company formed in
17 April 2006. Stahl ¶29, Att. 15, 16. Its principal place of business is located at 3220
18 S. Fair Lane, Suite 12, Tempe, AZ 85282. *Id.* It sells what it calls a “national
19 healthcare discount program.” Stahl ¶3, Att.2. Both directly and through its
20 submarketers, it advertises its program through television, radio, and print
21 advertising, on numerous websites, and by inbound and outbound telemarketing.¹
22 The Health Care One program has been marketed under several names, including
23 *HealthcareOne, Americans4Healthcare, Citizens 4 Healthcare, Elite Healthcare,*
24 *EasyLife Healthcare, Republic Healthcare, American Eagle Healthcare, and Global*
25 *Healthcare.* Lorimer ¶¶8, 19, 21, 24, 26-28, 30-31, 32, 34-35, 36, 38-39. Since at
26 least March 2010, Health Care One has also been airing television commercials,

27 ¹ *See generally* Declarations - Volumes One and Two (consumer declarations),
28 Stahl and Gale declarations, *passim*, and Non-paper Physical Exhibits 1 and 2.

1 under the name *Citizens 4 Healthcare*, to promote the program. Stahl ¶¶6.²

2 **Americans4Healthcare, Inc.** is a Delaware corporation formed in November
3 2009. Stahl ¶¶37, Att.31. It markets Health Care One’s program through television
4 commercials and various websites. Stahl ¶¶4-5; Gale ¶¶25, 59, 60-65, 72-73, 95.
5 Americans4Healthcare was formed by Ellman, who is listed as the company’s sole
6 director. *Id.* Americans4Healthcare’s toll-free telephone accounts are controlled by
7 Ellman and paid for by Health Care One. Stahl ¶¶35. Its websites
8 www.americans4healthcare.com, www.a4hrx.com, and www.hcorx.com are
9 registered to another company controlled by Ellman. Gale ¶¶73, 75, 71. The address
10 listed in Americans4Healthcare’s incorporation file is Ellman’s address. Stahl ¶¶37,
11 Att.31; Gale ¶¶73, Att.11, ¶¶75, Att.13, ¶¶77, Att.15, ¶¶80, Att.18, and ¶¶88, Att.21.

12 **Michael Jay Ellman** is the managing member and owner of Health Care One.
13 Stahl ¶¶29, Att.15, p.166. Lorimer ¶¶10. He holds himself out as Health Care One’s
14 President and Chief Executive Officer. Stahl ¶¶32, Att.23, p.185, ¶¶38, Att.32, p.433,
15 ¶¶40, Att.35. He has entered into contracts on Health Care One’s behalf. Stahl ¶¶32.
16 Ellman controls bank accounts in Health Care One’s name. Stahl ¶¶38, Att.32, 33,
17 ¶¶39, Att.34, ¶¶40, Att.35. He is the registration contact for several of the Internet
18 domain names used by Defendants, including www.healthcareone.com,
19 www.americans4healthcare.com, www.a4hrx.com, www.hcorx.com,
20 www.citizens4healthcare.com, and www.republichealthcare.com. Gale ¶¶70, 71, 73,
21 75, 77, 81. He is also Health Care One’s contact person for responding to consumer
22 complaints filed with the Better Business Bureau (“BBB”). Lorimer ¶¶14.

23 **Elite Business Solutions Inc.** is a submarketer of the Health Care One

24 _____
25 ² The website, www.citizens4healthcare.com identifies the entity as a limited
26 liability company (“Citizens 4 Healthcare LLC”), but public records searches
27 indicate that no such entity legally exists. Gale ¶¶93. Citizens 4 Healthcare is
28 controlled by Defendant Michael Ellman. Its toll-free telephone accounts are
controlled by Ellman and paid for by Defendant Health Care One LLC. Its website
is registered to another company controlled by Ellman. Gale ¶¶77, Att.15.

1 program. Stahl ¶32, Att.24, 25. It is a Nevada corporation formed in April 2007.
2 Stahl ¶31, Att.18. In corporate filings, it lists as its principal place of business a
3 private mail box located at Pacific Mail, 17595 Harvard Ave., Suite 2150, Irvine, CA
4 92614. *Id.* Its customer service functions are performed by Health Care One’s
5 employees at 3220 S. Fair Lane, Suite 12, Tempe, AZ 85282. Lorimer ¶¶19, 26-28.
6 It has sold Health Care One’s national healthcare discount program under the name
7 “Elite Healthcare” since May 2007 (Gale ¶91, Att.23), under the name “Republic
8 Healthcare” since April 2009 (Gale ¶92, Att.24), and under the name “EasyLife
9 Healthcare” since August 2009 (Gale ¶90, Att. 22). Elite Business Solutions markets
10 Health Care One’s program through outbound telemarketing (Stahl ¶36, Att.30) and
11 through at least three websites, including www.elitehealthcareinc.com,
12 www.republichealthcare.com and www.easylifehealthcare.com, which solicit
13 inbound telemarketing calls (Gale ¶78, 80, 83, Non-paper Physical Exhibit 2-d.v.,
14 vi., vii.).

15 **Robert Daniel Freeman** is the owner, sole officer, and sole director of Elite
16 Business Solutions. Stahl ¶31, Att.18, 20-22. He maintains financial accounts in the
17 name of Elite Business Solutions doing business as “Easy Life Healthcare,” “Elite
18 Healthcare,” and “Republic Healthcare,” and is a signatory on Elite Business
19 Solution’s checking accounts. Stahl ¶40, Att.36-38. He controls Elite Business
20 Solutions’ telemarketing operations, including serving as the contact person for the
21 telephone service provider of Elite Business Solutions’ telephone lines. Stahl ¶36,
22 Att.30. He has also recorded fictitious business name statements in Orange County,
23 California, for Elite Business Solutions to do business as “Elite Healthcare Group”
24 and “Republic Healthcare.” Gale ¶91, Att.23, ¶92, Att.24. Freeman is the
25 registration contact for Elite Business Solutions’ websites. Stahl ¶34, Att.28.

26 **III. FACTS**

27 **A. Introduction**

28 Defendants offer a “national healthcare plan” (Stahl ¶8, Att.7) which promises

1 consumers access to networks of physicians, dentists, hospitals, pharmacies, and
2 ancillary healthcare providers. Health Care One has sold this program since 2006.
3 Stahl ¶40, Att.35. Elite Business Solutions has sold this program since 2007. Stahl
4 ¶32, Att.24, 25; Gale ¶91, Att.23. Americans4Healthcare has sold the program since
5 2009 or 2010. Stahl ¶37, Att.31, ¶¶4-5. Enrollment is offered at various price
6 points, ranging from \$79.95 to \$99.95 per month, with a one-time enrollment fee
7 typically around \$100. Gale ¶57.

8 Defendants advertise their program through several media. Through television
9 and radio commercials broadcast throughout the country and on various websites,
10 Health Care One and Americans4Healthcare solicit inbound telemarketing calls.
11 Stahl ¶¶3-8; Gale ¶¶69, Non-paper Physical Exhibit 2-d.i., ¶72, Non-paper Physical
12 Exhibit 2-d.ii. Health Care One and Elite Business Solutions also make unsolicited
13 outbound telemarketing calls to pitch their program.³ Through these advertising and
14 telemarketing campaigns, Defendants have tricked consumers across the country into
15 paying hundreds of dollars for what is essentially a useless “discount” program
16 which provides no benefits.

17 Defendants’ misrepresentations can be grouped into five categories: (1) the
18 program is health insurance; (2) the program is affiliated with, or endorsed or
19 sponsored by, the government; (3) enrollment in the program will result in
20 substantial healthcare savings to the consumer; (4) consumers will be able to obtain
21 program benefits from the consumers’ current healthcare providers and other
22 healthcare providers in the consumer’s local community; and (5) Defendants will
23 refund the money the consumer has paid to enroll in the program if the consumer
24 submits a cancellation request before the thirty-day trial period expires. As
25 discussed below, each of these misrepresentations is false.

27 ³ See, e.g., *Health Care One*: Dichter ¶2. *Global*: VanHeuvelen ¶2. *Elite*: Pence
28 ¶2. *Easy Life*: Andlovec ¶3. *Republic*: Ferrari ¶2. See also Gale ¶¶7, 18, 25, 35, 44.

1 **B. Defendants misrepresent that their discount program is health**
2 **insurance**

3 Defendants represent that their “national healthcare program” is health
4 insurance in their television commercials, radio commercials, on the Internet, and in
5 their telemarketing campaigns.⁴ Consumers enroll in the Health Care One program
6 believing it is health insurance. Indeed, in some cases, the telemarketers make this
7 misrepresentation explicitly, using the term “insurance” to describe the program.⁵

8 ⁴ See, e.g., *TV commercials* (Washington ¶¶20-22 (commercial make the plan
9 sound like insurance); Turner-Chappell ¶2 (commercial used the phrase “insurance”
10 after the company’s name)). *Telemarketing calls* (Derkacz ¶3 (telemarketer asked if
11 consumer had insurance, she told him that she did not); Rainey ¶3 (telemarketer
12 asked if consumer had insurance, consumer told him she did not and that she was
13 looking for insurance, telemarketer said American Eagle’s plan would be “perfect”
14 for her)). *Internet* (McRae ¶¶2-3 (searched Internet with term “medical insurance”
15 and got “Global Healthcare” as one of the results; consumer called the phone number
16 associated with Global)).

17 ⁵ *Health Care One*: Earle ¶4.a. (telemarketer claimed that Health Care One was
18 part of the Obama/Biden healthcare package and was offering health insurance to
19 those who cannot qualify); Peyton ¶4 (telemarketer called the plan “insurance” and
20 “discount insurance” plan). *Global Healthcare*: Hopke ¶5 (telemarketer used words
21 “insurance” and “premium”); Turner-Chappell ¶2 (TV commercial included the term
22 “insurance” after the company’s name; telemarketer said consumer and her husband
23 would be insured for medical care and prescriptions); Hadden ¶2 (representative used
24 the word “insurance” to describe the product); Reidy ¶¶2, 3 (telemarketer said that
25 plan would meet needs of consumer looking for more affordable insurance).
26 *Republic*: Ferrari ¶2, see also Att.2. *Easy Life*: Schill ¶¶2, 3; Kelley ¶4 (telemarketer
27 described plan as “insurance” at least 5 times; when Kelley asked if agent was “sure”
28 that company offered insurance, agent said yes); Derkacz ¶3 (telemarketer said he
could offer insurance, answered yes when asked if product was “regular insurance”).
American Eagle: Peyton ¶4 (telemarketer called plan “insurance” and “discount
insurance plan”); Rainey ¶3 (telemarketer used the word “insurance” in pitch and
said that plan was “perfect” for consumer who was looking for insurance); *Elite*:
Caia ¶¶2, 4 (telemarketer described the plan as “insurance” and later confirmed that
the plan was insurance); Hernandez ¶3 (“the salesman used the term ‘insurance’
several times”); Dahlstrom ¶2 (in response to direct question, telemarketer confirmed
that product was insurance); see also Gale ¶¶9, 26, 29, 36, 45, 53.b., 53.c.

1 Other consumers report that they expressly told the telemarketers that they were
2 looking for health insurance, some even saying that they did not want to buy a
3 discount plan; the telemarketers assured those consumers that the program was
4 health insurance.⁶

5 Other consumers report that Defendants' telemarketers described the program
6 in a way that led them to believe that they were buying health insurance. Those
7 telemarketers used terms typically associated with health insurance, such as
8 "premiums," "co-pays," "deductibles," and "coverage," to convey the impression
9 that the program is health insurance.⁷ Moreover, when consumers made statements
10 to the telemarketers which made clear that the consumers believed they were buying
11

12 ⁶ *Health Care One*: J. Acinelli ¶3 (consumer told telemarketer he was looking for
13 insurance for his daughter and asked whether preexisting condition would be a
14 problem; telemarketer never clarified that product is not insurance), ¶7 (consumer
15 and his daughter, D. Acinelli, were clear with telemarketer that the daughter needed
16 health insurance); D. Acinelli ¶4 (consumer told telemarketer she was looking for
17 insurance and asked whether preexisting condition would be a problem, telemarketer
18 never clarified that product is not insurance); *Elite*: Carl-Lee ¶3 (consumer told
19 telemarketer that she did not want a discount plan, only insurance; telemarketer said
20 product was not a discount plan, but "healthcare program").

21 ⁷ *Health Care One*: Blaxton ¶6 (told enrollment requires payment of monthly
22 "premium"); Kendall ¶10 (same). *Republic*: Robinson ¶¶3-5 (telemarketer called
23 plan a "healthcare plan" providing "medical benefits," said that plan offered same
24 sort of coverage that people get under COBRA, and claimed that website for actual
25 insurance company was Republic's). *American Eagle*: S. Bowman ¶5
26 (representative described the product as "coverage," used insurance-related language
27 such as "preexisting conditions" and "copay," and did not clarify that product was
28 not insurance even when the consumer said that she was looking for insurance);
Global: Hopke ¶5 (telemarketer used words "insurance" and "premium"), ¶7
(telemarketer's supervisor also used insurance terms like "premium," and did not
clarify that the product was not insurance); VanHeuvelen ¶4 (same); Lizza ¶3
(same); Reidy ¶¶2, 3 (telemarketer talked about "premiums," "deductibles," and
"copayments," and said that plan would meet needs of consumer looking for more
affordable insurance); *see also* Gale ¶¶9, 26, 36, 45, 55.c.

1 health insurance, the telemarketers did not correct the consumers' misimpression.⁸

2 After consumers pay the enrollment fees, they receive written program
3 materials in the form of a pamphlet and "membership cards" in the mail. The
4 pamphlet includes the following disclosure: "THIS PLAN IS NOT HEALTH
5 INSURANCE." It is only at this point that many consumers realize that the program
6 is not health insurance.⁹ At that point, consumers call Health Care One to cancel
7 their enrollment and to attempt to obtain a refund of the fees they paid.¹⁰

8 Defendants' advertising also shows that consumers are reasonable in
9 concluding that the program is health insurance. These advertisements make
10 constant references to health insurance and are deliberately designed to confuse the
11 public into believing that they are purchasing health insurance. Health Care One's
12 and Americans4Healthcare's television commercials, for example, are styled to
13 appear as an "emergency broadcast" which "interrupts" regularly-scheduled
14 television programming to announce the latest developments in President Obama's
15 healthcare reform agenda to provide health insurance to all Americans. *See, e.g.*,
16 Stahl ¶4, Att.3, ¶6, Att.4, ¶8, Att.5. The television commercials are expressly

17 ⁸ *Health Care One*: J. Acinelli ¶3 (consumer told telemarketer he was looking for
18 insurance for daughter and asked whether preexisting condition would be a problem,
19 telemarketer never clarified that product is not insurance); D. Acinelli ¶4 (consumer
20 told telemarketer she was looking for insurance and asked whether preexisting
21 condition would be a problem, telemarketer never clarified that product is not
22 insurance). *American Eagle*: Rainey ¶3 (telemarketer asked if consumer had
23 insurance, consumer told him she did not and that she was looking for insurance,
24 telemarketer said American Eagle's plan would be "perfect" for her); *see also* Gale
25 ¶¶26, Att.1 (Sherman), ¶51, Att.2 (Howes), ¶53.c., Att.2 (Derkacz).

26 ⁹ *Easy Life*: Schill ¶6 ("As soon as I received all the information in the mail, I
27 looked through its contents and quickly realized that it was nothing like what the
28 telemarketer described"); *Republic*: Robinson ¶8 ("I was shocked to see disclaimers
stating 'THIS IS NOT INSURANCE'"); Ferrari ¶3 ("card stated clearly that the plan
was not insurance").

¹⁰ Gale ¶¶14, 31, 41, 53.b.; *see also* Declarations - Volumes One and Two
(Consumer Declarations), *passim*.

1 addressed to “uninsured Americans.” They highlight the documented harm that
2 consumers will suffer if they do not have access to health insurance. They then
3 convey by implication that their program is health insurance that will address this
4 harm.

5 A television commercial aired by Health Care One in Fall 2009 is typical in
6 creating this impression. In this commercial, Health Care One states as follows:

7 *The New York Times* reported that having no insurance leads to poor
8 health and lack of early detection of potentially fatal conditions. Stop
9 putting your health at risk. Start protecting yourself and your family
10 today.

11 Stahl ¶¶7-8, Att.5; Non-paper Physical Exhibit 2-a; Gale ¶58, Att.3.

12 Television commercials that Americans4Healthcare and Citizens 4 Healthcare
13 aired in Spring 2010 also imply that their program is health insurance.

14 Americans4Healthcare’s commercial, for example, begins with the following

15 announcement: “*We interrupt this program with an important health care bulletin.*”

16 It then shows a part of President Obama’s September 9, 2009 remarks on healthcare

17 to a joint session of Congress, in which the President states: “. . . *show the American*

18 *people that we can still do what we were sent here to do. Now’s the time to deliver*

19 *on health care.*” An unidentified announcer then states that there is “*immediate*

20 *availability*” of a healthcare plan “*for all uninsured Americans.*” Stahl ¶4, Att.3.

21 Health Care One’s radio commercials also convey the impression that it is

22 offering health insurance. One radio commercial, broadcast over satellite radio in

23 Fall 2009, describes the program as a “*national family health care plan.*” The radio

24 commercial begins by announcing: “*Good news for uninsured Americans – now a*

25 *national family health care plan for under three dollars a day.*” Stahl ¶3, Att.1.

26 These television and radio commercials lead consumers to believe that

27 Defendants are offering the health insurance that is the centerpiece of President

28 Obama’s national healthcare agenda. Gale ¶8, Att.1 (Coleman and Adams), ¶ 53.a.,

1 Att.2 (Dodi).¹¹

2 **C. Defendants Health Care One and Americans4Healthcare**
3 **misrepresent that their discount program is affiliated with or**
4 **endorsed or sponsored by the government**

5 Health Care One (holding itself out as both “Health Care One” and “Citizens 4
6 Healthcare”) and Americans4Healthcare falsely represent that the healthcare
7 program they are offering is somehow affiliated with President Obama’s national
8 healthcare agenda or otherwise endorsed or sponsored by the government. They
9 convey this through their television commercials, telemarketing calls, and the
10 websites www.americans4healthcare.com, www.a4hrx.com, www.hcorx.com, and
11 www.citizens4healthcare.com.

12 Many consumers are first introduced to the idea that Health Care One is a

13 ¹¹ Defendants may claim they adequately disclose to consumers that Health Care
14 One’s program is “not health insurance” during a recorded portion of the
15 telemarketing call. Defendants have provided their verification recording script, but
16 no actual recordings, to some State Attorneys General in response to inquiries about
17 Defendants’ treatment of specific consumers. *See, e.g.*, Gale ¶52, Att.2, pp.136-37.
18 This script contains a brief disclosure. However, as an undercover call that an FTC
19 investigator made to Health Care One reveals, Defendants do not make this
20 disclosure until the very end of the telemarketing call, after consumers have verbally
21 committed to enrolling in the program and provided their payment information.
22 Stahl ¶11, Att.8 (verbal commitment to enroll made at pp.118-19; telemarketer takes
23 consumer’s credit card information at p.119; telemarketer does not make disclosure
24 that program is not health insurance until p.122, lns.10-12). In addition, the
25 telemarketer characterizes the recorded portion of the call as a ministerial
26 requirement which must be satisfied *before* the consumer may ask questions. *Id.* at
27 p.121, lns.11-20. The telemarketer also states that the consumer *must* answer “yes”
28 to each of the questions, or else the consumer must go through the entire call again.
Id. at p.121, lns.15-18. Defendants’ success in “burying” the disclosure is evidenced
by the fact that consumers who enroll in Defendants’ program do not recall the
telemarketer disclosing that the program is not health insurance. In the context of
their entire marketing pitch, including their TV and radio commercial and their
telemarketers’ misrepresentations, Defendants’ nominal “disclosure” does not
adequately alert consumers to the fact that Defendants’ program is not health
insurance before the consumers enroll and pay the substantial fees.

1 “government program” by Health Care One’s and Americans4Healthcare’s television
2 commercials. As discussed in Section III.B., *supra*, Health Care One’s and
3 Americans4Healthcare’s television commercials are styled as an “emergency
4 broadcast” which “interrupts” regularly-scheduled television programming to
5 announce the “latest developments” in President Obama’s healthcare reform agenda.
6 Health Care One’s Fall 2009 television commercial describes its program as a
7 “national healthcare discount program” with “daily registration limits.” Stahl ¶¶7-
8 8, Att.5; Gale ¶58, Att.3. Similarly, Americans4Healthcare’s Spring 2010
9 commercial begins by announcing: “*We interrupt this program with an important*
10 *health care bulletin.*” This is followed with an excerpt of President Obama’s
11 September 9, 2009 remarks on healthcare to a joint session of Congress, in which the
12 President states: “. . . *we can still do what we were sent here to do. Now’s the time*
13 *to deliver on healthcare.*” An announcer then breaks in to offer limited but
14 “*immediate availability of an affordable healthcare discount plan for all uninsured*
15 *Americans.*” This narration is accompanied by images of President Obama, the
16 American bald eagle, and the Capitol Building. Stahl ¶4, Att.3.

17 Citizens 4 Healthcare’s television commercial goes even further, by implying
18 that it has been “endorsed” by the government to offer the program. The commercial
19 begins with the announcement: “*Breaking Healthcare News - This is a Healthcare*
20 *Alert for all uninsured Americans.*” It features a different excerpt of President
21 Obama’s September 9, 2009 remarks to Congress, in which the President states: “*No*
22 *American should be without healthcare. . . . No one should go broke because they*
23 *get sick. That is heartbreaking, it is wrong and no one should be treated that way in*
24 *the United States of America.*” A spokesperson then breaks in, to announce that
25 Citizens 4 Healthcare “*is now authorized to offer*” the program. Like
26 Americans4Healthcare’s commercial, this commercial is also accompanied by
27 images of President Obama, the American bald eagle, and the Capitol Building.
28 Stahl ¶6, Att.4.

1 The net impression conveyed by these television commercials is that Health
2 Care One's program is part of the government's plan to expand health insurance to
3 uninsured Americans.¹² Many consumers state they first learned of Health Care
4 One's program through television commercials, which they described as featuring
5 President Obama, and which led them to believe that the "government was offering a
6 healthcare plan." See fn.12.

7 Health Care One's and Americans4Healthcare's websites disseminate a similar
8 message of government endorsement. Like their television commercials, these
9 websites are designed as an "official" news bulletin about the national healthcare
10 program. The website www.americans4healthcare.com prominently displays images
11 of the White House, the American bald eagle, and the American flag, and reads as
12 follows:

13 *HEALTHCARE BULLETIN! AMERICANS4HEALTHCARE ANNOUNCES*
14 *IMMEDIATE AVAILABILITY OF AN AFFORDABLE HEALTHCARE*
15 *DISCOUNT PLAN FOR ALL UNINSURED AMERICANS." Over 500,000*
16 *Healthcare Providers nationwide – Doctors, Hospitals, Dentists &*
17 *Pharmacies – are now joined with Americans 4 Healthcare to bring you*
18 *quality Healthcare Protection at 20 to 60% savings for UNDER \$3 A DAY.*

19 Gale ¶72, Att.10. The website www.citizens4healthcare.com includes the same
20 "Healthcare Bulletin!" and prominently displays images of the American flag, the
21 Statue of Liberty, and President Obama with the quote: "No one should go broke if
22 they get sick." Gale ¶76, Att.14. Like the television commercials, these websites
23 imply that Americans4Healthcare and Citizens 4 Healthcare are offering a healthcare
24 program which is affiliated with President Obama's national healthcare agenda for
25 health insurance and has been "endorsed" by the government.

26 ¹² *Healthcare One*: Peyton ¶¶3, 5 (Peyton and her daughter saw Health Care One
27 TV ad and thought that "government was offering a healthcare plan"). *American*
28 *Eagle*: S. Bowman ¶¶2-3 (TV commercial gave consumer the impression that the
plan was part of a government program).

1 In addition to these generally disseminated advertisements, Defendants’
2 telemarketers make similar misrepresentations directly to consumers, which lead the
3 consumers to believe that Health Care One’s program is a “government program.”¹³
4 One consumer reported that the telemarketer described the program as part of the
5 “Obama/Biden healthcare package” and used the names Obama and Biden frequently
6 throughout the call.¹⁴ This is consistent with the FTC’s findings in two undercover
7 calls made to Defendants’ telemarketers by FTC investigators. In an undercover call
8 to Americans4Healthcare, the telemarketer told an FTC investigator twice that he
9 would be charged a one-time “*state processing fee*” of \$95, and that this fee would
10 go directly to his state government. Gale ¶62, Att.5 (p.151, lns.10-13, pp.157, lns.9-
11 15). In an undercover call to Health Care One, the telemarketer told another FTC
12 investigator repeatedly that she would be charged a one-time “*\$95 state enrollment,*
13 *non-refundable fee.*” Stahl ¶11, Att.8 (p.106, lns.13-14, p.114, lns.6-8, p.115,
14 lns.19-25, p.116, lns.1-3, p.122, lns.16-17).

15 **D. Defendants misrepresent that the program will save consumers**
16 **significant amounts of money**

17 One of Defendants’ major selling points is that Health Care One’s program
18 will save consumers significant amounts of money on their healthcare costs. Health
19 Care One’s and Americans4Healthcare’s television commercials, for example, are
20 addressed to the millions of “*uninsured Americans*” and represent their program as
21 “*an affordable national healthcare discount program that can save you 20-60% on*
22 *doctors, hospitals, labs, prescription drugs, and more.*” Stahl ¶4, Att.3, ¶8, Att.5.
23 Citizens 4 Healthcare’s Spring 2010 television commercial couples this savings
24 claim with a video featuring President Obama’s September 9, 2009 remarks on

25 ¹³ See, e.g., *Republic*: Ferrari ¶¶2-3.a. (telemarketer stated they were “helping
26 families by offering government sponsored insurance plans”); Robinson ¶3
27 (telemarketer asked consumer if he was “familiar with President Obama’s plans to
28 make healthcare more affordable”).

¹⁴ *Health Care One*: Earle ¶¶4.a, 4.c.

1 healthcare to Congress, where he states:

2 *No American should be without healthcare. . . . No one should go broke*
3 *because they get sick. That is heartbreaking, it is wrong and no one*
4 *should be treated that way in the United States of America.*

5 Stahl ¶6, Att.4.

6 Health Care One’s Fall 2009 radio commercial and the websites,
7 www.americans4healthcare.com and www.citizens4healthcare.com, all claim that the
8 program will save consumers “up to 60% on doctors, hospitals, dental, RX and
9 more.” Stahl ¶3, Att.1; Non-paper Physical Exhibits #2-d.ii. and #2-d.iv.; Gale ¶¶72,
10 76. Other websites (including www.healthcareone.com,
11 www.elitehealthcareinc.com, www.republichealthcare.com, and
12 www.easylifehealthcare.com) also contain material misrepresentations about the
13 savings which consumers will achieve through the program. These websites claim
14 savings of up to 50%. Gale ¶69, Att.7, ¶78, Att.16, ¶¶80-85, Non-paper Physical
15 Exhibits #2-d.i. through #2-d.ix. Similarly, the websites www.a4hRx.com and
16 www.hcoRx.com represent that their free “*national Rx discount card*” will provide
17 savings of “20-60%” at “[o]ver 60,000 Retail Pharmacies.” Gale ¶¶71, 74, Non-
18 paper Physical Exhibits #2-d.iii. and #2-d.x. Defendants’ telemarketers make even
19 more egregious savings claims, including that the program will provide savings of
20 “at least 60%” and even 80%.¹⁵

21 ¹⁵ *Health Care One*: Brady ¶3 (“The representative said . . . we would receive
22 between 30-70% off regular doctors visits, and about 80% off for hospital stays and
23 50% off our bills for emergency room visits.), *compare* ¶7 (Health Care One written
24 materials stated savings as between 5% - 80%); Blaxton ¶4 (Health Care One paid at
25 least 60% of costs, but normally up to 80% of doctor’s visits; generally covered
26 between 50% - 80% of prescription drug costs; generally paid between 60% - 80% of
27 dental and optometry costs), *compare* ¶8 (booklet stated much lower ranges from
28 20% to 45% for doctor’s visits, and as low as 10% for other services); D. Acinelli ¶5
(telemarketer told D. Acinelli that, with respect to prescription drugs, she would “be
responsible only for a small co-payment in those cases in which treatment was not

1
2 covered entirely”); Dichter ¶¶3-4 (Dichter assumed that benefits would exceed cost
3 of plan, found that it would only save her “a couple of dollars here and there”); Stahl
4 ¶11, Att.8 (p.108, lns.18-19) (telemarketer told FTC investigator that she could
5 receive 42-60% savings from providers in their network. *Global*: Hopke ¶6
6 (representative said that the consumer pays 40% of office visits, prescriptions; for
7 hospital stays, Global covers between 60% and possibly up to 80% for
8 hospitalization); Lizza ¶2 (representative said that Lizza could save 50% off all
9 medical expenses); ¶4 (Global written materials said savings would be *up to 50%*
10 and a cost comparison using the written materials showed consumer would be paying
11 more for prescriptions with the Global plan than with his existing Blue Cross
12 insurance); Orr ¶2 (the representative stated the savings were along the lines of 30 to
13 50%); McRae ¶¶3, 6 (told the average discount is up to 60%), ¶¶4, 7 (told that the
14 plan would greatly discount McRae’s medications through Walmart; told by
15 Walmart that the “discounted” amounts were the same prices she was already
16 paying); *see generally* VanHeuvelen ¶3 (quoted “large” savings on all medical costs;
17 VanHeuvelen recalls that the savings were large enough to make him seriously
18 consider the plan). *Elite*: Pence ¶3 (representative said that she could save 60% off
19 most of her medical expenses), *compare* ¶6 (the Elite written materials stated that
20 members could receive discounts of between 5% to 60%, not that most medical
21 expenses would be discounted 60%); Caia ¶¶4, 5 (told he would only have to pay a
22 \$20 co-pay), *compare* ¶9 (later told that Elite merely offered a discount plan that
23 some healthcare providers honor); *see also* Hernandez ¶¶2, 6 (told the card would
24 save him a great deal at K-Mart pharmacy, but K-Mart did not recognize the plan);
25 Dahlstrom ¶3 (telemarketer said that some bills would be covered entirely and that
26 Dahlstrom would be responsible only for “small copayment” for others); Smith ¶3
27 (covers “60% of all healthcare costs”); Smith-Kruck ¶3 (up to 60%). *EasyLife*:
28 Schill ¶6 (telemarketer told Schill that the discount card would “dramatically reduce”
the cost of her prescriptions, but ultimately it only provided \$5 off a \$100
prescription and no doctors in her area accepted it); *see generally* Andlovec ¶3 (no
co-pay for any prescriptions, and a low co-pay for doctors visits); Kelley ¶5 (“always
get an 80% discount on all hospital, physician, and prescription drug expenses”).
American Eagle: S. Bowman ¶5 (telemarketer told Bowman that her family would
only be responsible for \$5-10 copayments for visits to most healthcare professionals
and \$20 copayments for visits to specialists). *Republic*: Anderson ¶4 (“I would save
60% on visits to my doctor, 80% on emergency room services or any surgery, 60%
on prescription drugs, and 60% on dental and vision care”). *Americans4 Healthcare*:
Gale ¶62, Att.5 (p.151, lns.19-20) (telemarketer implies that the savings from the

1
2 In fact, consumers are unable to realize the purported savings touted by
3 Defendants. After enrolling in the program, consumers receive lists of participating
4 physician providers from Health Care One and Elite Business Solutions. These
5 provider lists are useless. Some doctor information on the list is incorrect, so that
6 consumers are unable to contact those doctors.¹⁶ Other doctors are reachable, but
7 inform consumers that the information on the list is outdated, they do not recognize
8 the program, and they will not honor the program's ostensible discounts.¹⁷
9 Consumers also attempt to use Defendants' purported prescription drug benefit;
10 those consumers find that the pharmacies also do not honor the purported

11
12 plan is 60%, contradicting the earlier statement that it is "up to" 60% savings). *See*
13 *also* Gale ¶11, Att.1 (Golden-Bell, Weger), ¶19, Att.1 (Bowman, Williams), ¶28,
14 Att.1 (Soriano, Parlato), ¶38 (Palmer), ¶46, Att.1 (Morris), ¶51, Att.1 (Wick), ¶55.B.,
Att.2 (Gross), ¶55.c., Att.2 (Salles-Nash).

15 ¹⁶ *See, e.g., Health Care One: Coulon* ¶5 (Health Care One provided consumer
16 with a list of doctors that contained many non-working phone numbers). *See also*
Gale ¶14 (Holt), ¶39 (Dragna), ¶45 (Paez).

17 ¹⁷ *See, e.g., Stahl* ¶¶17-20. *See also Health Care One: Coulon* ¶5 (consumer
18 provided with a faulty list of doctors, some who did not accept Defendants' program
19 and/or had never heard of Health Care One); ¶7 (to rectify the problem, Health Care
20 One sent consumer a second list of physicians, none of which accepted Defendants'
21 program). *See also Brady* ¶¶3, 6 (representative told Brady that her doctor was
22 within the network, but the doctor did not accept the Health Care One plan). *Easy*
23 *Life: Kelley* ¶9 (agent told Kelley that his doctor accepted plan; doctor and medical
24 billing company had never heard of Defendants). *Elite: Smith* ¶¶4, 8 (telemarketer
25 told Smith that her doctor and OB-GYN and granddaughter's pediatrician accepted
26 plan; none had heard of it). *Global: Orr* ¶¶2, 4 (representative asked for consumer's
27 zip code and stated that there were a large number of participating doctors in
28 consumer's area; Orr called 5 to 6 medical centers and practitioners in his area, and
they had never heard of Global, nor did they accept the plan); *VanHeuvelen* ¶¶3, 5
(telemarketer told consumer that his family doctor and dentist were in provider
network, but he found hospital and family doctor did not recognize or accept
program).

1 discounts.¹⁸

2 **E. Defendants misrepresent that consumers will be able to obtain**
3 **program benefits from the consumers' current healthcare**
4 **providers, and from other healthcare providers in the consumers'**
5 **local communities**

6 To get consumers to enroll, Defendants also falsely represent that consumers'
7 current doctors and other doctors in the consumers' local community are in the
8 program's "participating provider network," and that these doctors will honor the
9 program's purported discounts. Consumers report that, during the telemarketing
10 calls, Defendants' telemarketers specifically assured them that their current doctors
11 were in the program's network.¹⁹ After they enrolled in the program, however, these
12 consumers learned that their doctors were not part of the network and would not

13 ¹⁸ *Health Care One*: Coulon ¶¶3, 8 (Health Care One said that Walgreens, Walmart
14 and CVS accepted the plan, but Coulon called the local stores for each pharmacy
15 learned this was not true); Brady ¶6 (CVS called did not accept plan); Blaxton ¶10
16 (local pharmacist did not accept plan). *Elite*: Hernandez ¶¶2, 6 (told the plan would
17 save him a great deal at K-Mart pharmacy; K-Mart, however, did not honor the
18 card); Smith ¶6 (Walgreens had not heard of plan and did not accept card). *EasyLife*:
19 Rubino ¶5 (Rite-Aid unsure of EasyLife); Andlovec ¶6 (no local drugstores had
20 heard of EasyLife). *Global*: McRae ¶7 (Walmart provided no additional discount
21 from use of Global plan). *Americans4Healthcare*: Gale ¶62, Att.5 (p.152, ln.25,
22 p.153, lns.1, 14-20) (telemarketer claims there are 900,000 participating doctors
23 nationwide; then reads off a list of doctors within Tate's zip code). *See also* Stahl
24 ¶¶21-23.

25 ¹⁹ *EasyLife*: Rubino ¶3.c. (EasyLife representative told Rubino that their specific
26 doctors accepted the plan). *Elite*: Dahlstrom ¶3 (Dahlstrom told the telemarketer that
27 he lived in a rural area and asked whether a particular local hospital accepted the
28 plan, telemarketer said that it did). *Global*: McRae ¶3 (was told that her doctor
probably participated in the plan, but if not, he could easily be added; also told that
most doctors readily sign up because it is a good program for them as well as their
patients); McRae ¶4 (was told that pharmacy card would be accepted by Walmart
where consumer purchases prescriptions). *American Eagle*: Peyton ¶4 (asked
telemarketer if plan accepted by specific doctor, assured that it was; telemarketer
added that company has other customers with same doctor). *Americans4Healthcare*:
Gale ¶62, Att.5 (p.162, lns.18-20) (telemarketer states that the plan is "usable" in
every pharmacy in the United States, such as Wal-Mart, Walgreens, CVS).

1 honor the purportedly pre-negotiated discounts.²⁰

2 Other consumers report that the telemarketers assured them that the network
3 included physicians practicing in the consumer's local community, and that any
4 doctor in Blue Cross/Blue Shield's network was also available through Defendants'
5 network. These consumers similarly report that they are unable to find physicians
6 practicing in the consumer's local community, or doctors who are in Blue Cross/Blue
7 Shield's network, who will honor Defendants' purportedly pre-negotiated
8 discounts.²¹

9 ²⁰ *Health Care One*: Brady ¶¶3, 6 (representative told Brady that her doctor was
10 within the network and that the plan was accepted by CVS, but neither Brady's
11 doctor, nor the CVS branch that Brady called accepted the Health Care One plan).
12 *EasyLife*: Kelley ¶9 (agent told Kelley that his doctor accepted plan but Kelley's
13 doctor had never heard of company). *Elite*: Hernandez ¶¶2, 4-6 (told the plan would
14 save him a great deal at K-Mart pharmacy; K-Mart, however, did not honor the card,
15 and consumer's doctor had not heard of and did not accept card); Smith ¶¶4, 8
16 (Smith was told that her doctor and OB-GYN and granddaughter's pediatrician
17 accept plan, none had heard of it). *Global*: VanHeuvelen ¶¶3, 5 (telemarketer told
18 consumer that his family doctor and dentist in Global's provider network, but found
19 when wife hospitalized that neither hospital or family doctor recognized or accepted
20 the program). *See also* Gale ¶12, Att.1 (Teeters), ¶29, Att.1 (Norris), ¶37, Att.1
21 (Bracken), ¶¶39, 47.

22 ²¹ *Health Care One*: Coulon ¶3 (representative made the discount plan sound as if
23 it were widely accepted and said that he would send Coulon a list of doctors in her
24 area based on her zip code), ¶¶3, 8 (Health Care One said that Walgreens, Walmart
25 and CVS accepted the plan, but Coulon called the local stores for each pharmacy and
26 learned this was not true); Kendall ¶4 (was told that most medical providers will
27 discount their services for Health Care One members); Schill ¶4 (told that the plan
28 would be widely accepted at local pharmacies and doctors offices throughout the
Richmond, Virginia area); Blaxton ¶5 (representative said that she did not know of
very many doctors that did not accept the plan; in many years that Health Care One
has been in existence, heard of maybe 2-3 healthcare practitioners who did not accept
the plan); Brady ¶3 (the representative "said that any doctor that participates with
Blue Cross/Blue Shield would be within the [Health Care One] network); ¶5
(Brady's regular doctor participates with Blue Cross/Blue Shield); J. Acinelli ¶5
(telemarketer told daughter, D. Acinelli, that all hospitals, dentists, and eye care

1 Similar representations of broad availability of healthcare providers are made
2 in Defendants’ television commercials, radio advertisements, and websites. There,
3 Defendants represent that the size of their network of healthcare providers ranges
4 from 500,000 to “almost a million providers nationwide.” Stahl ¶3, Att.1, ¶8, Att.5
5 (TV and radio commercials); Gale ¶58, ¶69, Att.7, ¶78, Att.16, ¶¶80-85; Non-paper
6 Physical Exhibits #2-d.i. through #2-d.ix. Such expressions of magnitude also
7 professionals accept Health Care One and only a small co-pay would be necessary
8 for medical services and prescription drugs); D. Acinelli ¶5 (telemarketer told
9 consumer that she would not have to change any of her doctors because any doctor
10 or hospital in the U.S. would accept the coverage). *Global*: Hopke ¶6 (told Global is
11 accepted anywhere Blue Cross and Blue Shield are accepted, representing their
12 network is as big as Blue Cross and Blue Shield insurance companies); Orr ¶2
13 (representative asked for consumer’s zip code and stated that there were a large
14 number of participating doctors in their area); McRae ¶4 (consumer told that that
15 most hospitals and pharmacies participate in the Global Healthcare discount
16 program); Lewis ¶5 (plenty of doctors in LA, probably many no more than a half
17 mile from Lewis’s home); Reidy ¶¶4, 6 (told plan has same network as Blue
18 Cross/Blue Shield and that there were providers in her town). *Elite*: Pence ¶3
19 (telemarketer represented that plan is widely recognized in her area); Hernandez ¶¶2,
20 6 (told the plan would save him a great deal at K-Mart pharmacy; K-Mart, however,
21 did not honor the card). *EasyLife*: Rubino ¶3.c. (told that all their doctors accepted
22 the plan and that all hospitals and pharmacies accepted the plan); Schill ¶4; Thurman
23 ¶3 (told that the EasyLife plan would work with *any* doctor or healthcare provider);
24 Andlovec ¶3 (EasyLife maintained contracts with many healthcare providers and
25 would enable her to chose her own physician); Kelley ¶5 (same network of
26 physicians as Blue Cross/Blue Shield). *Republic*: Anderson ¶5-6 (told that plan
27 would cover visits to “virtually ‘any doctor, anywhere, at any time’”; told that 99%
28 of doctors accept or recognize; telemarketer misrepresented ease with which
nonparticipating providers could be added to plan); Ferrari ¶2 (plan comparable to
Blue Cross/Blue Shield, “only limitation being that I would not be able to use the
insurance at Kaiser Permanente or Veterans’ Hospitals”). *Americans4Healthcare*:
Gale ¶62, Att.5 (p.152, ln.25, p.153, lns.1, 14-20) (telemarketer claims there are
900,000 participating doctors nationwide; then reads off a list of doctors within
Tate’s zip code). *See also* Gale ¶12, Att.1 (Garland), ¶14, Att.1 (Garagan), ¶29,
Att.1 (Chubb), ¶39 (Dragna), ¶51, Att.1 (Wick), ¶54.a., Att.2 (Norris), ¶54.b., Att.2
(Russell).

1 contribute to the impression that Defendants’ network includes healthcare providers
2 in consumers’ local communities.²²

3 Defendants’ representations are false. After enrolling in the program,
4 consumers can obtain from Health Care One or Elite Business Solutions a list of
5 local healthcare providers in the network. The lists of “participating providers” that
6 Health Care One or Elite Business Solutions send to consumers either contain
7 incorrect contact information for doctors, or information for doctors who do not
8 recognize or accept the program. *See* fns.16 and 17, *supra*.

9 **F. Defendants Health Care One and Elite Business Solutions**
10 **misrepresent their refund policy and make it difficult or impossible**
11 **for consumers to obtain refunds**

12 Defendants’ telemarketers tell consumers that they have 100% satisfaction
13 money-back guarantee.²³ Some of the telemarketers explicitly misrepresent that

14 ²² The doctor population in the United States was approximately 661,400 as of
15 2008. Gale ¶97, Att.27. Thus, it is reasonable for consumers to interpret
16 Defendants’ representations (500,000 to “over 900,000” healthcare providers) to
17 mean that Defendants’ provider network is very comprehensive. That these
18 misrepresentations leave consumers with the net impression that many doctors in
19 their local community are in Defendants’ provider network is also reasonable in the
20 context of the United States population, which is around 309,841,060. Gale ¶96,
Att.26. A network of 500,000 doctors is equivalent to one doctor for every 620
people in the United States. A network of 900,000 doctors is equivalent to one
doctor for every 344 people in the United States.

21 ²³ *Health Care One*: Blaxton ¶6 (if not satisfied, just cancel within 30 days and
22 Health Care One would refund all money); Boysaw ¶3.c. (told 30 day money-back
23 guarantee); Brady ¶4 (30 days to look over materials, and if not satisfied could
24 cancel and get money back); Coulon ¶4 (if plan did not work for her, could cancel
25 and get money back); Dichter ¶3 (30 day money-back guarantee); Earle ¶6 (30 day
26 guaranteed refund); Kendall ¶4 (could cancel without problem and get money back).
27 *Elite*: Caia ¶6 (if not satisfied for any reason, could cancel at any time and get
28 complete refund); Carl-Lee ¶3 (could call and cancel within 30 days of receiving
materials and receive full refund of monthly fees); Dahlstrom ¶4 (could cancel
within 30 days of receipt of membership packet and get refund less processing fee).
American Eagle: Bowman ¶2 (wife was told she had 30 days to cancel); S. Bowman

1 consumers may cancel for a “full refund” within 30 days of receiving the program
2 materials. *See* fn.23, *supra*. This guarantee contributes to and is material to
3 consumers’ decision to enroll in Defendants’ program.²⁴

4 ¶6 (could cancel within 30 days for refund less enrollment fee); Peyton ¶4 (told
5 money-back guarantee; could cancel any time and get full refund); Rainey ¶6
6 (representative said she could return product for full refund if not satisfied).
7 *EasyLife*: Andlovec ¶4 (if consumer changed her mind, she could just call to get full
8 refund); Schill ¶5 (telemarketer told Schill she could cancel within 30 days and
9 receive refund); Thurman ¶4 (monthly fees refundable if cancelled within 30 days).
10 *Global*: Hadden ¶3 (could cancel anytime within 30 days and get refund if not
11 satisfied); Hopke ¶7 (full refund less processing fee within 30 days of purchase);
12 Lewis ¶7 (told 30-day money back guarantee); Lizza ¶3 (could change mind within
13 30 days of receiving new member packet and get refund less \$99); McRae ¶6 (simple
14 to cancel and not lose any money if not satisfied); Orr ¶3 (could cancel within 30
15 days of receiving new member kit and get full refund less nominal processing fee);
16 Turner-Chappell ¶2 (30 day risk-free trial); VanHeuvelen ¶4 (guaranteed full refund
17 minus processing fee up to 30 days after receiving membership packet). *Republic*:
18 Anderson ¶7 (30 day trial period when Anderson could cancel and get full refund);
19 Ferrari ¶2 (if not happy, could cancel within 30 days and receive full refund of
20 monthly fee).

21 ²⁴ Consumer complaints indicate that very few consumers visited Defendants’
22 websites. Gale ¶56.e. Thus, the only refund policy Defendants made most
23 consumers aware of is the one described by their telemarketers.

24 Defendants’ websites include a similar, but slightly more conservative
25 guarantee. The Health Care One website, as of February 2010, states its “Guarantee”
26 as follows:

27 *100% Satisfaction or Your Money Back! HealthcareOne™ is so*
28 *confident you will see significant savings with our program, we offer an*
unconditional 30-day money-back guarantee on your entire first
*month’s payment.**

29 The bottom of the webpage includes fine print language relating to the Health Care
30 One’s and Elite Business Solutions’ cancellation and refund policy:

31 ** . . . You have the right to cancel within the first 30 days after receipt of*
32 *membership materials and receive a full refund, less a nominal*
33 *processing fee.*

34 This disclosure is not clear or conspicuous. Moreover, even this description of the
35 Defendants’ refund policy is a material misrepresentation, as the processing fee that

1 When consumers realize that the program is not as advertised, they find that
2 Health Care One and Elite Business Solutions make it very difficult to cancel and
3 obtain refunds. Gale ¶¶9, 19, 26, 36, 14. Calls to cancel their enrollments and obtain
4 refunds are directed to Health Care One’s customer service representatives, who
5 handle the customer service functions for both Health Care One and Elite Business
6 Solutions. Lorimer ¶¶26-27. Health Care One and Elite Business Solutions delay
7 the processing of refunds for months, and require consumers to satisfy unreasonable
8 conditions.²⁵ Many consumers are not able to obtain any relief until they file

9 Defendants refuse to refund to most consumers is not “nominal.” Defendants’ other
10 websites, including www.elitehealthcareinc.com, www.republichealthcare.com,
11 www.easylife.com, www.myglobalhealthonline.com, and
12 www.americaneaglehealthcare.com contain the same or similarly-worded guarantees.
13 Gale ¶69, Att.7, ¶78, Att.16, ¶¶80-85, Non-paper Physical Exhibits #2-d.i., and #2-
14 d.v through #2-d.ix.

15 ²⁵ *Health Care One*: Coulon ¶10 (representative told Coulon that he had no record
16 of her cancellation call, and that she would not receive a refund because she called
17 outside of the refund period); *see also* Boysaw ¶¶3.b, c., 7 (Health Care One misled
18 Boysaw on their refund policy and when the membership would be activated, and
19 later claimed she missed the cancellation window). *Republic*: Ferrari ¶4 (Republic
20 Healthcare denied Ferrari’s refund because her letter arrived a day late, even though
21 it was mailed a few days before the 30-day deadline, and even though she had
22 previously cancelled by telephone). *Elite*: Dahlstrom ¶4 (telemarketer had told
23 Dahlstrom that his money would be refunded if he cancelled within 30 days of
24 receipt of member packet), but see ¶8 (customer service later told Dahlstrom that
25 cancellation within 30 days of receipt of packet too late for refund); Carl-Lee ¶3
26 (consumer was told that 30-day time limit on refund did not begin until receipt of
27 materials, company later told her that time started at sign-up). *Global*: Turner-
28 Chappell ¶¶2, 8 (More than two years after requesting a refund from Global, Turner-
Chappell still had not received it); McRae ¶10 (Global booklet clearly stated her
cancellation request had to be in writing; however, the Global representative told
McRae that she needed to call to cancel before sending in her letter otherwise she
would delay her refund); Hadden ¶¶3-5 (consumer called to cancel within 30 days,
got cancellation number; subsequently told to send in letter, this arrived after 30
days; no refund issued). *See also* Gale ¶16, Att.1 (Baker, Cleveland), ¶22, ¶33, Att.1
(Colbert), ¶50, Att.1 (Register), 56.c., Att.2 (Matias).

1 complaints with their State Attorney General or with the BBB.²⁶ Intervention by
2 these consumer protection agencies has typically resulted in the consumers receiving
3 only partial refunds, with Health Care One and Elite Business Solutions refusing to
4 refund a substantial “processing fee” (typically, around \$100).²⁷ This substantial,
5 non-refundable processing fee comes as a surprise to many consumers, who were
6 unaware before enrollment that there would be a non-refundable processing fee, or

7
8 ²⁶ *Health Care One*: Brady ¶¶9-10 (received a refund after complaining to the NY
9 AG’s office, who mediated between the Bradys and Health Care One); Coulon ¶11
10 (submitted a BBB complaint); Kendall ¶11 (submitted a BBB complaint); Blaxton
11 ¶17 (same); Earle ¶7 (sent letter to Health Care One 3 months prior to declaration
12 and “have never gotten a response until I complained to the BBB”); Dichter ¶¶7, 8
13 (partial refund issued only after complaints filed with credit card company and AZ
14 AG). *Global*: Hopke ¶11 (submitted a BBB complaint); Lizza ¶7 (same); Orr ¶8
15 (same); McRae ¶¶13, 15 (submitted complaints to the FTC and the Oregon AG’s
16 office; partial refund received); Reidy ¶8 (BBB). *Elite*: Pence ¶10 (submitted a BBB
17 complaint); Caia ¶¶13-14, Att. 2 (same); Hernandez ¶¶8-9 (same); Smith ¶11 (partial
18 refund issued after NC AG complaint filed); Smith-Kruck ¶¶9-13 (three month
19 delay, numerous calls to company, BBB complaint). *Republic*: Ferrari ¶6 (submitted
20 a BBB complaint); Robinson ¶10 (New York City Dept. Of Consumer Affairs).
21 *American Eagle*: S. Bowman ¶10 (filed a BBB complaint); B. Bowman ¶6 (wife
22 filed a BBB complaint); Rainey ¶11 (company told BBB it would refund monthly
23 payment of \$79, ended up refunding only a portion of this amount before consumer
24 complained again). *EasyLife*: Schill ¶¶8, 9, 10 (submitted a BBB complaint);
25 Thurman ¶¶7 (same); Andlovec ¶7 (same); Derkacz ¶12); Lorimer, ¶¶8, 19, 21, 24,
26 32, 36, Att.1-6.

27 ²⁷ *Health Care One*: Coulon ¶11; Kendall ¶¶10, 11, 15; Washington ¶¶13, 15, 19;
28 Blaxton ¶17; *Cf.* Boysaw ¶¶7, 8 (Health Care One stated it would only refund
Boysaw \$139.90 of the \$399.75 she paid); Dichter ¶8. *Global*: Hopke ¶11 (Global
did not refund the consumer the \$49.95 processing fee); Lizza ¶7 (refunded only
\$302, out of the \$494.95 paid); Orr ¶8 (refunded only \$149 out of the \$199 paid); *see*
also McRae ¶¶8, 12, 15 (Global refunded a total of \$199, but kept a \$50 start-up fee
that initially the Global representative stated the company would waive). *EasyLife*:
Schill ¶10; Thurman ¶8; Andlovec ¶8. *American Eagle*: Rainey ¶11. *Republic*:
Anderson ¶13 (first monthly payment refunded, but not processing fee); Ferrari ¶6
(no refund of processing fee). *See also* Gale ¶¶22, 42, 51, Att.1 (Piestewa).

1 told that the non-refundable processing fee would be “nominal.”²⁸

2 **G. Consumer injury is substantial and ongoing**

3 Relying on Defendants’ misrepresentations, consumers are persuaded to enroll
4 in the Health Care One program to make an up-front payment of one to twelve
5 month’s “premium” and a processing fee. Consumers report making an initial
6 payment ranging from approximately \$120 to \$750 at the time they enroll in
7 Defendants’ program. Gale ¶57. Over 700 consumers have complained to the FTC,
8 various State Attorneys General, and the BBB about Defendants’ misrepresentations
9 and refusal to provide refunds with respect to Defendants’ sales under the
10 *HealthcareOne* and *Elite Healthcare* names alone. Gale ¶3. More than 200
11 additional consumers have complained to the FTC, various State Attorneys General,

12 ²⁸ *American Eagle*: Peyton ¶¶4, 9 (telemarketer told Peyton that she could cancel
13 for “full refund,” later found that she would get back less than half of her initial
14 payment). *Health Care One*: Coulon ¶4 (representative never said that any portion
15 of her fee would be non-refundable); ¶11 (Health Care One did not provide Coulon a
16 full refund); Washington ¶6 (representative said she could cancel later and did not
17 say there were any non-refundable fees); Boysaw ¶3.c; Kendall ¶4; Blaxton ¶6 (told
18 she would receive a refund of *all* her money back if cancelled within 30 days); J.
19 Acinelli ¶¶6, 7 (J. Acinelli does not recall being told that processing fee would be
20 nonrefundable); D. Acinelli ¶7 (D. Acinelli does not recall being told that processing
21 fee would be non-refundable). *Global*: Orr ¶3 (the representative stated that the non-
22 refundable processing fee was *nominal*), ¶6 (Orr later learned the non-refundable
23 processing fee would be \$100); Turner-Chappell ¶2 (Turner-Chappell told she would
24 have a 30-day risk free trial period; authorized charge of \$79.95, ended up being
25 charged \$129.95); McRae ¶6 (representative said initial cost would be \$149.95 and
26 then \$99.95 per month thereafter, then agreed, after purportedly checking with
27 supervisor, to waive \$50 start-up fee), ¶9 (noticed that cancellation conditions
28 mentioned “nominal processing fee,” but did not specify amount); Lewis ¶4 (told
that cost of plan would be \$99.95 plus “tax”). *Republic*: Anderson ¶12 (telemarketer
did not tell consumer that processing fee was nonrefundable). *EasyLife*: Schill ¶¶5,
10; Thurman ¶8 (consumer’s husband’s separate non-refundable \$49.95 enrollment
fee was not disclosed in the first call); Andlovec ¶¶4, 5. *See also* Gale ¶¶15, Att.1
(Erhart), ¶33, Att.1 (Grace), ¶42, Att.1 (Louk), ¶49, Att.1 (Bosley), ¶56.a., Att.2
(Moss), ¶56.b., Att.2 (Santiago), ¶56.d., Att.2 (Cortina).

1 and the BBB about Defendants’ misrepresentations and refusal to provide refunds
2 with respect to Defendants’ sales made under the *EasyLife Healthcare, Global*
3 *Healthcare, Republic Healthcare, and American Eagle Healthcare* names. Gale ¶4.
4 These complaints show that Defendants routinely engage in the deceptive practices
5 described in this memorandum. The volume of consumer complaints received by the
6 FTC, State Attorneys General, and BBB suggests that thousands of consumers have
7 suffered financial loss.

8 Recognizing this consumer injury, the California Department of Managed
9 Healthcare has issued cease and desist orders against Health Care One, Michael
10 Ellman, Elite Healthcare, Republic Healthcare, EasyLife Healthcare, and Global
11 Healthcare. Stahl ¶¶42-43, Att.42, 43. These cease and desist order prohibit
12 Defendants from engaging in their unlawful activity in the State of California. In
13 addition, the Utah Division of Consumer Protection issued an Administrative
14 Citation against Elite Healthcare. Stahl ¶44, Att.44.

15 The evidence shows that rather than being sobered by the high volume of
16 consumer complaints and State actions, Defendants are “ramping up” their business.
17 As of a week ago, Health Care One and Americans4Healthcare are “seeking 25+
18 additional Full Time Sales Reps.” Applicants who have a “positive attitude,
19 excellent phone voice, persistence [sic] and strong closing ability,” are “reliable” and
20 will “show up at work on-time” “CAN START WORK TOMORROW!!!!!!!!!!!!!!” Gale
21 ¶95, Att.25. A few weeks ago, Defendant Ellman also started operating under new
22 names, including: *Secure Healthplan Corporation, HealthcareOne Telemedicine*
23 *Corporation, and United Livecare Inc.* Gale ¶¶86-87, Att.20, ¶88-89, Att.21, ¶94;
24 Non-paper Physical Exhibits #2-d.xi and #2-d.xii. Bank records show that these
25 entities are also marketing discount healthcare programs, as well as a program which
26 purports to provide telephone access to doctors. Stahl ¶41, Att.39-41. These recent
27 activities suggest that unless Defendants are enjoined by the Court, consumer injury
28 will grow.

1 **H. Defendants Health Care One and Americans4Healthcare are**
2 **engaging in deceptive practices as a “common enterprise”**

3 Defendants Health Care One and Americans4Healthcare are operating together
4 as a common enterprise. Factors for determining the existence of a common
5 enterprise include common control, sharing office space, and transacting business
6 through interrelated companies. Both Health Care One and Americans4Healthcare
7 are owned and controlled by Ellman. As discussed in Section II.B., *supra*, Ellman is
8 the managing member of Health Care One and the sole person identified in
9 Americans4Healthcare’s corporate filing. In addition, the toll-free telephone lines
10 used by both entities are provided under a common telephone service account paid
11 for by Health Care One. Finally, Ellman and a partnership under his control are the
12 registrant contact for all of the websites used by Health Care One and
13 Americans4Healthcare.

14 **IV. LEGAL ARGUMENT**

15 Plaintiff asks the Court to enter a temporary restraining order that prohibits
16 Defendants from making material misrepresentations in the marketing and sale of its
17 “national healthcare discount program,” freezes Defendants’ assets, grants immediate
18 access to Defendants’ business premises, orders an accounting, grants limited
19 expedited discovery, appoints a temporary receiver, and orders Defendants to show
20 cause why a preliminary injunction should not issue and why a permanent receiver
21 should not be appointed.

22 **A. This Court has the authority to grant the requested relief**

23 Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes this Court to issue
24 the temporary and preliminary relief that the FTC seeks. The second proviso of
25 Section 13(b) authorizes the FTC to seek, and this Court to issue, a permanent
26 injunction “in proper cases.” A “proper case” includes any matter involving a
27 violation of a law that the FTC enforces. *Singer*, 668 F.2d at 1113. A common fraud
28 case such as this one qualifies as a “proper case” for injunctive relief under Section

1 13(b). *Singer*, 668 F.2d at 1111-13.

2 Section 13(b) also permits the Court to grant whatever additional, temporary,
3 or preliminary relief is necessary to preserve the possibility of effective final relief.
4 *Singer*, 668 F.2d at 1113-14. Such relief may include a temporary restraining order
5 enjoining practices and a preliminary injunction. *See, e.g., id.* *See also FTC v. U.S.*
6 *Oil & Gas Corp.*, 748 F.2d 1431, 1434 (11th Cir. 1984) (“Congress did not limit the
7 court’s powers under the [second] proviso of § 13(b) and as a result this Court’s
8 inherent equitable powers may be employed to issue a preliminary injunction,
9 including a freeze of assets, during the pendency of an action for permanent
10 injunctive relief.”). In fact, Congress observed that Section 13 “authorizes the FTC
11 to file suit to enjoin any violations of the FTC Act. The FTC can go into court ex
12 parte to obtain an order freezing assets, and is also able to obtain consumer redress.”
13 S. Rep. No. 103-30, at 15-16 (1993), *reprinted in* 1994 U.S.C.C.A.N. 1776, 1790-91.
14 The exercise of this broad equitable authority is particularly appropriate where, as
15 here, the public interest is at stake. *Porter v. Warner Holding Co.*, 328 U.S. 395, 398
16 (1946); *United States v. Laerdal Mfg.*, 73 F.3d 852, 857 (9th Cir. 1995); *FTC v.*
17 *World Wide Factors, Ltd.*, 882 F.2d 344, 347 (9th Cir. 1989). When the public
18 interest is implicated, this Court’s equitable powers “assume an even broader and
19 more flexible character than when only a private controversy is at stake.” *FTC v.*
20 *Gem Merch. Corp.*, 87 F.3d 466, 469 (11th Cir. 1996) (quoting *Warner Holding*, 328
21 U.S. at 398).

22 In addition, Section 19(b) of the FTC Act, 15 U.S.C. § 57b, authorizes this
23 Court to grant relief as it finds necessary to redress injury to consumers resulting
24 from violations of a Trade Regulation Rule, including the TSR. Relief for TSR
25 violations may include, but is not be limited to, “rescission or reformation of
26 contracts, the refund of money [and] return of property.” *Id.*

27 **B. Granting Plaintiff’s TRO Application is appropriate under *Winter***
28 ***v. NRDC***

“A plaintiff seeking a preliminary injunction must establish that he is likely to

1 succeed on the merits, that he is likely to suffer irreparable harm in the absence of
2 preliminary relief, that the balance of equities tips in his favor, and that an injunction
3 is in the public interest.” *Winter v. N.R.D.C.*, 129 S. Ct. 365, 374 (2008). As
4 discussed below, the FTC’s facts are compelling with respect to each of the four
5 factors. Thus, the Court should issue the proposed TRO.

6 *1. The FTC is likely to succeed on the merits*

7 A party seeking a preliminary injunction must show that it is likely to succeed
8 on the merits or that “serious questions going to the merits were raised and the
9 balance of hardships tips sharply in [plaintiff’s] favor.” *Alliance for the Wild*
10 *Rockies v. Cottrell*, No. 09-35756, 2010 U.S. App. LEXIS 15537 at *10 (9th Cir.
11 July 28, 2010) (quoting *Clear Channel Outdoor, Inc., v. City of Los Angeles*, 340
12 F.3d 810, 813 (9th Cir. 2003)). As discussed below, the FTC is likely to succeed on
13 the merits of all three Counts of the Complaint.

14 *a. The legal standard*

15 Generally, the FTC “meets its burden on the likelihood of success issue if it
16 shows preliminarily, by affidavit or other proof, that it has a fair and tenable chance
17 of ultimate success on the merits.” *FTC v. Beatrice Foods Co.*, 587 F.2d 1225, 1229
18 (D.C. Cir. 1978) (quoting *FTC v. Lancaster Colony Corp.*, 434 F.Supp. 1088, 1090
19 (S.D.N.Y. 1977)). This can be shown “by a prima facie showing of illegality.” *FTC*
20 *v. GTP Mktg., Inc.*, 1990-1 Trade Cas. (CCH) ¶68,959 at 63,150 (N.D. Tex. 1990).
21 The FTC can prove its claims through a small number of injured consumers, from
22 which a court can infer a pattern or practice of deceptive behavior. *FTC v. Sec. Rare*
23 *Coin & Bullion Corp.*, 931 F.2d 1312, 1316 (8th Cir. 1991); *FTC v. Amy Travel*
24 *Serv., Inc.*, 875 F.2d 564, 572 (7th Cir.). Moreover, in considering an application for
25 a temporary restraining order or preliminary injunction, the Court has the discretion
26 to consider hearsay evidence. *Flynt Distrib. Co., Inc. v. Harvey*, 734 F.2d 1389,
27 1394 (9th Cir. 1984) (even inadmissible evidence may be given some weight when
28 to do so serves the purpose of preventing irreparable harm before trial); *see also*

1 *Heideman v. S. Salt Lake City*, 348 F.3d 1182, 1188 (10th Cir. 2003) (“The Federal
2 Rules of Evidence do not apply to preliminary injunction hearings.”).

3 The FTC adopted the TSR pursuant to the Telemarketing Act, 15 U.S.C.
4 §§ 6101 *et seq.*, in which Congress directed the FTC to prescribe rules prohibiting
5 abusive and deceptive telemarketing acts or practices. Pursuant to Section 3(c) of the
6 Telemarketing Act, 15 U.S.C. § 6102(c), and Section 18(d)(3) of the FTC Act,
7 15 U.S.C. § 57a(d)(3), violations of the TSR constitute unfair or deceptive acts or
8 practices in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15
9 U.S.C. § 45(a).

10 *b. The FTC is likely to succeed on Count One of the*
11 *Complaint (deceptive acts and practices in violation of*
Section 5(a) of the FTC Act)

12 Section 5 of the FTC Act prohibits unfair and deceptive acts and practices in
13 or affecting commerce. 15 U.S.C § 45. An act or practice is deceptive under Section
14 5(a) if it involves a material representation, omission, or practice that is likely to
15 mislead consumers, acting reasonably under the circumstances, to their detriment.
16 *FTC v. Pantron I Corp.*, 33 F.3d 1088, 1095 (9th Cir. 1994); *Kraft, Inc. v. FTC*, 970
17 F.2d 311, 314 (7th Cir. 1992). The FTC need not prove reliance by each purchaser
18 misled by Defendants. *FTC v. Figgie Int’l, Inc.*, 994 F.2d 595, 605 (9th Cir. 1993);
19 *FTC v. SlimAmerica, Inc.*, 77 F. Supp. 2d 1263, 1275 (S.D. Fla. 1999).
20 Misrepresentations are material under Section 5(a) if they involve facts that a
21 reasonable person would consider important in choosing a course of action. *Figgie*,
22 994 F.2d at 606 (citations omitted). If consumers are likely to have chosen
23 differently but for the deception, the misrepresentation is material. *FTC v. Southwest*
Sunsites Inc., 105 F.T.C. 7, 149 (1985), *aff’d*, 785 F.2d 1431 (5th Cir. 1986).

24 Express claims, or deliberately made implied claims, used to induce a
25 purchase, are presumed to be material. *SlimAmerica*, 77 F. Supp. 2d at 1272; *FTC v.*
26 *Thompson Med. Co., Inc.*, 104 F.T.C. 648, 788-89 (1984), *aff’d*, 791 F.2d 189 (D.C.
27 Cir. 1986); *Pantron I*, 33 F.3d at 1095-96. The FTC need not prove that Defendants’
28

1 misrepresentations were made with an intent to defraud or deceive, or were made in
2 bad faith. *See, e.g., FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020,
3 1029 (7th Cir. 1988); *Removatron Int'l Corp. v. FTC*, 884 F.2d 1489, 1495 (1st Cir.
4 1989). Misrepresentations about essential characteristics of the transaction violate
5 Section 5(a). *See, e.g., Goodman v. FTC*, 244 F.2d 584, 599 (9th Cir. 1957); *FTC v.*
6 *Amrep Corp.*, 102 F.T.C. 1362, 1642-43 (1983), *aff'd*, 768 F.2d 1171 (10th Cir.
7 1985); *FTC v. Kitco of Nevada, Inc.*, 612 F. Supp. 1282, 1292 (D. Minn. 1985).
8 Consumer reliance on express claims is presumptively reasonable. *FTC v. Five-Star*
9 *Auto Club Inc.*, 97 F. Supp. 2d 502, 528 (S.D.N.Y. 2000).

10 As discussed in Section III.B.-F., *supra*, Defendants misrepresented the
11 following facts to consumers: (1) Defendants' program is health insurance; (2) the
12 program is affiliated with, or endorsed or sponsored by, the government; (3)
13 enrollment in the program will result in substantial healthcare savings to the
14 consumer; (4) consumers will be able to obtain program benefits from the
15 consumers' current healthcare providers and other healthcare providers in the
16 consumer's local community; and (5) Defendants will refund the money the
17 consumer has paid to enroll in the program if the consumer submits a cancellation
18 request before the thirty-day trial period expires. These representations are presumed
19 to be material because Defendants make them expressly, and to the extent that they
20 are implied claims, they are deliberately made. Moreover, the consumer declarations
21 show that many consumers called to cancel their enrollments as soon as they learned
22 that Defendants' representations were false (*see, e.g.,* Section III.B., III.D., and
23 III.E., *supra*); thus, under the case law, these misrepresentations are deemed
24 material. By making misrepresentations likely to mislead consumers acting
25 reasonably, Defendants have engaged in deceptive acts or practices in violation of
26 Section 5 of the FTC Act. Thus, the FTC is likely to prevail on Count One of the
27 Complaint.

1 c. *The FTC is likely to succeed on Count Two of the*
2 *Complaint (Misrepresentations relating to material aspects*
3 *of Defendants' program, in violation of TSR Section*
4 *310.3(a)(2)(iii))*

5 Count Two of the Complaint alleges that Defendants violated Section
6 310.3(a)(2)(iii) of the TSR, 16 C.F.R. § 310.3(a)(2)(iii). Section 310.3(a)(2)(iii)
7 prohibits telemarketers and sellers from misrepresenting, directly or by implication,
8 in the sale of goods or services any material aspect of the performance, efficacy,
9 nature, or central characteristics of goods or services that are the subject of a sales
10 offer.²⁹

11 As discussed in Sections III.B., III.D., III.E., and IV.B.1.b., *supra*, Defendants
12 have misrepresented, directly or by implication, material aspects of the performance,
13 efficacy, nature, or central characteristics of the program, including that: (1) the
14 program is health insurance; (2) enrollment in the program will result in substantial
15 healthcare savings to the consumer; and (3) consumers will be able to obtain
16 program benefits from consumers' current healthcare providers and from other
17 healthcare providers in the consumers' local communities. By making these
18 misrepresentations, Defendants are in violation of Section 310.3(a)(2)(iii) of the
19 TSR, 16 C.F.R. § 310.3(a)(2)(iii). Thus, the FTC is likely to prevail on Count Two
20 of the Complaint.

21 d. *The FTC is likely to succeed on Count Three of the*
22 *Complaint (Misrepresentations regarding Defendants'*
23 *refund or cancellation policies, in violation of TSR Section*
24 *310.3(a)(2)(iv))*

25 Count Three of the Complaint allege that Defendants violated Section

26 ²⁹ Defendants are "sellers" because, in connection with telemarketing, they
27 provide, offer to provide, or arrange for others to provide Health Care One's program
28 to customers in exchange for consideration. 16 C.F.R. § 310.2(z). The corporate
29 Defendants are "telemarketers" because, in connection with telemarketing, they
30 initiate or receive telephone calls to or from customers. 16 C.F.R. § 310.2(bb).
31 Defendants are engaged in "telemarketing" because they are engaged in "a plan,
32 program, or campaign which is conducted to induce the purchase of goods or
33 services ..., by use of one or more telephones and which involves more than one
34 interstate telephone call." 16 C.F.R. § 310.2(cc).

1 310.3(a)(2)(iv) of the TSR, 16 C.F.R. § 310.3(a)(2)(iv). Section 310.3(a)(2)(iv)
2 prohibits telemarketers and sellers from misrepresenting, directly or by implication,
3 in the sale of goods or services, any material aspect of the nature or terms of the
4 seller's refund or cancellation policies.

5 As discussed in Section III.F., *supra*, Defendants have misrepresented, directly
6 or by implication, material aspects of the nature or terms of Health Care One's and
7 Elite Business Solutions' refund or cancellation policies, including that they will
8 provide a full refund, subject to no or only a nominal processing fee, if the consumer
9 submits a cancellation request before the thirty-day trial period expires. By making
10 these misrepresentations, Defendants are in violation of Section 310.3(a)(2)(iv) of
11 the TSR, 16 C.F.R. § 310.3(a)(2)(iv). Thus, the FTC is likely to prevail on Count
12 Three of the Complaint.

13
14 2. *Consumers will suffer irreparable harm if the TRO and
preliminary injunction are not granted*

15 A party seeking a preliminary injunction must also show that irreparable harm
16 is likely if the preliminary relief is not granted. *Alliance for the Wild Rockies*, 2010
17 U.S. App. LEXIS 15537 at *9. In statutory enforcement cases where the government
18 has met the "probability of success" prong, the Ninth Circuit presumes the
19 "irreparable injury" prong has been met "because the passage of the statute is itself
20 an implied finding by Congress that violations will harm the public." *Miller v. Cal.*
21 *Pac. Med. Ctr.*, 19 F.3d 449, 459 (9th Cir. 1994).

22 In the instant case, issuing the proposed TRO and preliminary injunction are
23 justified because irreparable harm to Defendants' consumer victims is likely. As
24 discussed in Section III.G., *supra*, consumer injury to date is substantial. Moreover,
25 Defendants' recent activity shows that they are actively hiring new telemarketers and
26 are now also operating through new corporate shells. If the proposed TRO and
27 preliminary injunction are not granted, Defendants will continue their advertising
28 and telemarketing campaign in which they induce consumers to enroll in their

1 program by materially misrepresenting the nature, effectiveness, and usability of the
2 program, as well as their refund policy. They will continue to trick thousands of
3 additional consumers into thinking that the program is health insurance or will
4 provide substantial discounts, and that if they need to see a doctor or go to the
5 hospital in the future, their medical costs will be covered by the program. These
6 consumers will suffer irreparable harm when they seek medical care under the
7 reasonable belief that this care will be covered or discounted by Health Care One's
8 program. Like those consumers who have already been victimized by Defendants'
9 deceptive and fraudulent practices, new enrollees will also suffer irreparable
10 monetary harm because they will not be able to get a full, or any, refund if they
11 cancel.

12 Moreover, the presence of irreparable harm makes an asset freeze essential in
13 this case. "A party seeking an asset freeze must show a likelihood of dissipation of
14 the claimed assets, or other inability to recover monetary damages, if relief is not
15 granted." *Johnson v. Couturier*, 572 F.3d 1067, 1085 (9th Cir. 2009). An asset
16 freeze is appropriate where, as here, there is a large magnitude of financial injury and
17 a risk of dissipation. *See, e.g., FTC v. USA Bevs.*, 2005 WL 5654219 at *8-9 (S.D.
18 Fla. 2005) (noting considerable motivation to hid assets because of potential size of
19 monetary remedy). *See also* Certification and Declaration of FTC counsel Faye
20 Chen Barnouw ("Barnouw") ¶¶10-12 (in numerous instances, in other FTC actions,
21 defendants facing large monetary exposure have attempted, sometimes successfully,
22 to dissipate assets). Where a district court determines that the FTC is likely to
23 prevail in a final determination on the merits, it has "a duty to ensure that ... assets ...
24 [are] available to make restitution to the injured customers." *World Travel Vacation*
25 *Brokers*, 861 F.2d at 1031. Not only may the Court freeze the assets of the corporate
26 Defendants, it may also freeze the assets of the individual Defendants where, as here,
27 the individual Defendants controlled the deceptive activity and had actual or
28 constructive knowledge of the deceptive nature of the practices in which they were

1 engaged. *Amy Travel*, 875 F.2d at 574-75; *In re National Credit Management*
2 *Group*, 21 F. Supp.2d 424, 462 (D.N.J. 1998). Even assuming the FTC ultimately
3 prevails at trial, if the TRO and preliminary injunction are not granted, consumers
4 will not be able to recover full monetary relief. First, because Defendants use some
5 of consumers' money for expenses associated with running their scam, consumers
6 will not be able to get back the full amount paid. Second, consumers may suffer
7 expenses beyond what they paid directly to Defendants, such as medical expenses
8 they would not have incurred if they had not been lied to by Defendants. These are
9 precisely the types of harm against which a temporary restraining order and
10 preliminary injunction, including an asset freeze, are meant to protect. *See Alliance*
11 *for the Wild Rockies*, 2010 U.S. App. LEXIS 15537 at *20-21 (noting that
12 irreparable harm includes injury which can seldom be adequately remedied by
13 money damages and is often permanent or at least of long duration).

14 Finally, the irreparable injury makes it essential for the Court to grant the other
15 equitable relief (appointment of a temporary receiver, immediate access to
16 Defendants' business premises, an accounting, and limited expedited discovery) that
17 the FTC is requesting. This equitable relief will increase the likelihood of preserving
18 existing assets and evidence pending final determination of this matter. *See, e.g.*,
19 *SEC v. Parkersburg Wireless*, 156 F.R.D. 529, 532 n.3 (D.D.C. 1994); *SEC v.*
20 *Bankers Alliance Corp.*, 881 F. Supp. 673, 676-78 (D.D.C. 1995). *See also* Barnouw
21 ¶¶ 14, 15. Courts in this district have entered non-noticed *ex parte* TROs that have
22 included the types of relief sought in this matter in many previous Section 13(b)
23 cases. Barnouw ¶ 7.

24 3. *The equities weigh in favor of granting injunctive relief*

25 The third factor that the Court must consider is whether the equities balance in
26 favor of granting injunctive relief. Recent Ninth Circuit cases discuss this factor in
27 terms of the relative hardships that will be suffered by the parties. In *Alliance for the*
28 *Wild Rockies*, for example, the Court ordered that a preliminary injunction should be

1 issued to enjoin the U.S. Forest Service from logging a forested area because the
2 hardship that would be suffered by the public if the preliminary injunction were not
3 granted – a loss of work and recreational opportunities in the forested area –
4 outweighed the small monetary loss that the Forest Service would suffer from the
5 injunction. 2010 U.S. App. LEXIS 15537. In *Johnson v. Couturier*, a company’s
6 employees, who were participants in the company’s employee stock ownership plan,
7 sued, and sought a preliminary injunction against, the company’s president for
8 breaching his fiduciary duties by unlawfully diverting almost \$35 million of
9 corporate assets for his personal use. The Court acknowledged the hardship that the
10 company’s president would suffer if enjoined from accessing company funds to
11 cover his defense costs but held that this hardship was outweighed by the potential
12 hardship the employees would suffer because this would mean that the president was
13 essentially allowed to dissipate the employees’ funds that were supposed to be
14 protected under ERISA. *Johnson v. Couturier*, 572 F.3d at 1081-82.

15 Similarly, in this case, the equities balance in favor of granting injunctive
16 relief. Compliance with the law is not an unreasonable burden. *See World Wide*
17 *Factors*, 882 F.2d at 347 (affirming the district court’s finding that “there is no
18 oppressive hardship to Defendants in requiring them to comply with the FTC Act,
19 refrain from fraudulent representation or preserve their assets from dissipation or
20 concealment”). Defendants have continued this scam despite the Cease and Desist
21 Orders issued by the California Department of Managed Healthcare, the Utah
22 Attorney General’s administrative action, and the large number of consumer
23 complaining about their business practices. Because the FTC’s proposed injunction
24 will preclude only harmful, illegal behavior, the public equities supporting the
25 proposed injunctive relief outweigh any burden imposed by such relief on
26 Defendants. *See, e.g., Nat’l Soc’y of Prof’l Eng’rs v. United States*, 435 U.S. 679,
27 697-98 (1978). In fact, Defendants will not suffer any legitimate hardship, as they
28 have no right to engage in practices that violate the law. *See World Wide Factors*,

1 882 F.2d at 347. Where, as here, Defendants “can have no vested interested in a
2 business activity found to be illegal,” *United States v. Diapulse Corp. of Am.*, 457
3 F.2d 25, 29 (2d Cir. 1972), a balance of equities tips decidedly toward granting the
4 requested relief. *See also CFTC v. British Am. Commodity Options Corp.*, 560 F.2d
5 135, 143 (2d Cir. 1977) (quoting *FTC v. Thomsen-King & Co.*, 109 F.2d 516, 519
6 (7th Cir. 1940)) (“A court of equity is under no duty ‘to protect illegitimate profits or
7 advance business which is conducted illegally.’”).

8 The temporary and preliminary relief sought here would prohibit Defendants
9 from engaging in these deceptive practices in all states and under any corporate
10 name. Equally importantly, the requested provision to preserve records will prevent
11 the Defendants from destroying evidence. Defendants’ past and current conduct
12 indicates that they will likely continue to deceive the public, and therefore, such
13 relief is necessary. *CFTC v. Hunt*, 591 F.2d 1211, 1220 (7th Cir. 1979); *Five-Star*
14 *Auto Club*, 97 F. Supp. 2d at 536 (“[P]ast illegal conduct is highly suggestive of the
15 likelihood of future violations.”); *SEC v. R.J. Allen & Assoc., Inc.*, 386 F. Supp. 866,
16 877 (S.D. Fla. 1974) (past misconduct suggests likelihood of future violations).
17 Absent the relief sought here, Defendants’ illegal conduct will continue unabated
18 with foreseeable ongoing consumer injury. *Id.* at 877-78 (“The egregious conduct
19 of the defendant casts doubt on any promise of future compliance with the [law].”).

20 In particular, with respect to the asset freeze, receivership, immediate access to
21 Defendants’ business premises, and related provisions in the proposed TRO, the
22 Court should give great weight to the harm that Defendants’ consumer victims will
23 likely suffer if Defendants are allowed to dissipate illicit proceeds wrongfully taken
24 from consumers or are allowed the opportunity to destroy incriminating evidence.
25 *See FTC v. Affordable Media*, 179 F.3d 1228, 1236 (9th Cir. 1999) (“Obviously, the
26 public interest in preserving illicit proceeds . . . for restitution to the victims is
27 great.”); *see also World Travel Vacation Brokers*, 861 F.2d at 1030-31.

1 4. *It is in the public interest to issue the TRO and preliminary*
2 *injunction*

3 Finally, it is in the public interest to issue the requested TRO and preliminary
4 injunction. “In exercising their sound discretion, courts of equity should pay
5 particular regard for the public consequences in employing the extraordinary remedy
6 of injunction.” *Winter*, 129 S. Ct. at 376-77 (quoting *Weinberger v. Romero-Barcelo*,
7 456 U.S. 305, 312 (1982)). In *Winter*, the Supreme Court found the Navy’s national
8 security interest in being able to conduct realistic training for its military personnel
9 overwhelmingly outweighed any speculative harm that this training might cause to
10 ecological, scientific, and recreational interests. In *Alliance for the Wild Rockies*, the
11 Ninth Circuit noted that the statutorily mandated emergency procedures with which
12 the United States Forest Service is required to comply is an expression of the well-
13 recognized public interest in preserving nature and avoiding irreparable
14 environmental injury. In *Couturier*, the Ninth Circuit recognized the public interest
15 in protecting employees’ retirement benefits, as expressed in ERISA. Likewise, in
16 the instant case, Congress expressed the importance of and public interest in
17 protecting consumers from deceptive and fraudulent marketing practices, such as the
18 ones used by Defendants, when it enacted the FTC Act and the Telemarketing Act,
19 and in directing the FTC to promulgate the FTC’s TSR.

20 **C. Health Care One and Americans4Healthcare are liable for each**
21 **other’s deceptive acts and practices because they are operated**
22 **together as a common enterprise**

23 Defendants which act jointly as a common enterprise are jointly liable for the
24 violations of each other. Courts have found common enterprises in a variety of FTC
25 actions under Section 13(b) where there has been common corporate control, shared
26 office space, shared employees and officers, interrelated funds, and other factors.
27 *See, e.g., FTC v. J.K. Publications*, 99 F. Supp. 2d 1176, 1202 (C.D. Cal. 2000); *FTC*
28 *v. Marvin Wolf*, 1996 U.S. Dist. LEXIS 1760 (S.D. Fla. 1996). Indeed, where “the
same individuals were transacting an integrated business through a maze of

1 interrelated companies[,] . . . ‘the pattern and frame-work of the whole enterprise
2 must be taken into consideration’” and the companies may be held jointly liable as a
3 common enterprise. *J.K. Publications*, 99 F. Supp. 1176, 1202 (quoting *Delaware*
4 *Watch Co. v. FTC*, 332 F.2d 745, 746 (2d Cir. 1964)). As discussed in Section
5 III.H., *supra*, Ellman operates and controls both Health Care One and
6 Americans4Healthcare, including their telemarketing operations and Internet
7 websites. The address listed on Americans4Healthcare’s incorporation documents is
8 the same address Ellman uses to register several of Defendants’ websites. Ellman
9 uses the two entities together as a vehicle to market the Health Care One program.
10 Thus, the Court should hold Health Care One and Americans4Healthcare jointly
11 liable for each other’s violations of the FTC Act and TSR.

12 **D. The Court should hold the individual Defendants personally liable**
13 **both injunctive and monetary relief**

14 To obtain an injunction against an individual for corporate practices, the FTC
15 must show that the individual either had the authority to control the unlawful
16 activities or participated directly in them. *See Affordable Media*, 179 F.3d at 1234-
17 35; *FTC v. Publishing Clearing House, Inc.*, 104 F.3d 1168, 1170-71 (9th Cir. 1997);
18 *FTC v. Medicor LLC*, 217 F. Supp. 2d 1048, 1055 (C.D. Cal. 2002). *See also J.K.*
19 *Publications*, 99 F. Supp. at 1203 (citing *Publishing Clearing House, Inc.*, 104 F.3d
20 at 1170). “Authority to control the company can be evidenced by active involvement
21 in business affairs and the making of corporate policy, including assuming the duties
22 of a corporate officer.” *Amy Travel*, 875 F.2d at 573; *see also J.K. Publications*, 99
23 F. Supp. 2d at 1203-4. An individual’s status as a corporate officer gives rise to a
24 presumption of liability to control a small, closely held corporation. *Standard*
25 *Educators, Inc. v. FTC*, 475 F.2d 401, 402-03 (D.C. Cir. 1973). Assuming the duties
26 of a corporate officer is probative of an individual’s participation or authority.
27 *Publishing Clearing House*, 104 F.3d at 1170; *Medicor*, 217 F. Supp. 2d at 1055.
28 This standard has been applied to determining the individual liability of members of

1 limited liability companies, as well as corporate officers and directors. *In re*
2 *National Credit Management Group*, 21 F. Supp. 2d 424, 461.

3 An individual who is liable for injunctive relief under Section 13(b) of the
4 FTC Act is additionally liable for monetary relief if the individual had sufficient
5 “knowledge” of the deception. *Publishing Clearing House*, 104 F.3d at 1171; *FTC*
6 *v. Freecom Communications*, 401 F.3d 1192, 1207 (10th Cir. 2005); *Amy Travel* at
7 573-74. The requisite degree of knowledge can be demonstrated by showing actual
8 knowledge of material misrepresentations, reckless indifference to the truth or falsity
9 of the misrepresentations, or an awareness of a high probability of fraud along with
10 an intentional avoidance of the truth; the Commission need not show intent to
11 defraud. *Publishing Clearing House*, 104 F.3d at 1171. In short, the issue is
12 whether the individual Defendants “knew or should have known of the entity’s
13 misrepresentations.” *Freecom* at 1203. Moreover, the extent of an individual’s
14 involvement in the business affairs of a company engaged in deception “is sufficient
15 to establish the requisite knowledge for personal restitutionary liability.” *Affordable*
16 *Media*, 179 F.3d at 1235.

17 Defendant Ellman: Ellman is the managing member of Health Care One. He
18 holds himself out as Health Care One’s president and chief executive officer. He has
19 filed corporate documents with the Arizona Secretary of State on Health Care One’s
20 behalf. He has also entered into contracts on Health Care One’s behalf. Ellman
21 controls Health Care One’s bank accounts. He is also Health Care One’s contact
22 person for responding to consumer complaints filed with the BBB. He arranged for
23 the incorporation of Americans4Healthcare and is that company’s sole director.

24 Ellman controls the television advertising, radio advertising, and telemarketing
25 operations of Health Care One, Americans4Healthcare, and Citizens 4 Healthcare.
26 Through a partnership under his control, Ellman is the registration contact for many
27 of the Internet domain names used by Defendants, including
28 www.healthcareone.com, www.americans4healthcare.com, www.a4hrx.com,

1 www.citizens4healthcare.com, and www.republichealthcare.com. Moreover, as a
2 corporate officer or director of Health Care One and Americans4Healthcare, he has
3 access to the companies' business records and has authority to correct the
4 companies' offensive business practices. *See* Section II.B., *supra*. In short, Ellman
5 has the authority to control and direct the companies' activities; has participated in
6 those activities; and has had knowledge of the companies' misrepresentations and
7 other misconduct.

8 Defendant Freeman: Freeman is the owner and sole officer and director of
9 Elite Business Solutions. He has entered into contracts on Elite Business Solutions'
10 behalf. He controls financial accounts in the name of Elite Business Solutions doing
11 business as "EasyLife Healthcare," "Elite Healthcare," and "Republic Healthcare."
12 He controls Elite Business Solutions' telemarketing operations, including serving as
13 the contact person for the telephone service provider of Elite Business Solutions'
14 telephone lines. He has also recorded fictitious business name statements in Orange
15 County, California, for Elite Business Solutions to do business as "Elite Healthcare
16 Group" and "Republic Healthcare." Freeman is the registration contact for Elite
17 Business Solutions' various Internet domain names. Moreover, as a corporate officer
18 or director of Elite Business Solutions, Freeman has access to that company's
19 business records and has authority to correct the company's offensive business
20 practices. *See* Section II.B., *supra*. In short, Freeman has the authority to control
21 and direct Elite Business Solutions' activities; has participated in those activities; and
22 has had knowledge of Elite Business Solutions' misrepresentations and other
23 misconduct.


24 Both Ellman and Freeman have authority to control, participate in, and know
25 about the corporate Defendants' wrongful acts. The relief requested in the proposed
26 TRO is thus appropriate against the individual Defendants, as well as against the
27 corporate Defendants.

1 **V. CONCLUSION**

2 Defendants' deceptive practices have caused substantial injury to consumers.
3 This injury will continue to grow absent the Court's intervention. The FTC thus
4 requests that this Court issue the proposed temporary restraining order and order to
5 show cause why a preliminary injunction should not issue and why a permanent
6 receiver should not be appointed.

7
8 Dated: August 3, 2010

Respectfully submitted,



FAYE CHEN BARNOUW
MARICELA SEGURA
BARBARA CHUN
JOHN D. JACOBS
Attorneys for Plaintiff
Federal Trade Commission